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EMPLOYEE RELATIONS
COMMISSION
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Case No. UFC 70.40

Decision and recommendation

of

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COUNTY OF LOS ANGELES

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The charging party, Geoffrey Levitt filed this action alleging unfair labor practices by the Public Library Department on March 26, 1991. (Hearing Officer Exhibit 1) The Respondent filed a denial of all charges on January 30, 1992. (H. O. Ex. 3) On February 12, 1992, the Charging party filed a motion to amend the charge. (H. O. Ex. 7) The amendment was allowed because of the similarity of the accusations in the initial charge and in the Motion to Amend. A hearing on all charges was conducted over three days, specifically March 10, April 21 and May 6, 1992, and the case submitted to the Hearing Officer in July, 1992.

CHARGING PARTY'S COMPLAINTS

The allegations of the initial complaint can best be described as rambling, and the precise nature of the charge does not spring forth easily from the words on the page. The gravamen of the protest seems to lie in the following sentence of the complaint:

"We feel that Mr. Levitt was not promoted because of his Union Membership and the 75 score (on a Library Assistant exam) was in retaliation for his filing grievances and being represented by Local 660."

The essence of the charge set out in the amendment of February 1992 is based on Mr. Levitt's termination, to-wit, that:

". . . said dismissal was in retaliation for his Union Membership, his filing of grievances in connection with said membership, and his filing of said previous charges of Union Discrimination with the Employees Relations Commission."

THE APPLICABLE REGULATIONS

The charge alleges the Public Library Department violated Section 12, Unfair Employee Relations Practices, of Ordinance 9646 of the County of Los Angeles. (EMPLOYEE RELATIONS ORDINANCE OF THE COUNTY OF LOS ANGELES, adopted September 3, 1968, last amended July 5, 1975) That section provides in pertinent part:

"(a) It shall be an unfair employee relations practice for the County:

(1) To interfere with, restrain, or coerce employees in the exercise or the rights recognized or granted in this Ordinance. . ."

THE EVIDENCE AND CONCLUSIONS OF FACT

The first element of the charge relates to a score of 75 Mr. Levitt received on a promotional qualifying exam. He avers that the low score was in retaliation for his Union membership and engaging in protected activities. The objective facts presented were:

On October 29, 1990, the Mr. Levitt filed a grievance alleging that he had been unfairly passed over for promotion. Somewhat later, on November 13, 1990, he interviewed for Library Assistant I, Exam No Q8326B. The interviewers were Harriet Traeger, a Librarian III and Evelyn Baca, a Librarian IV. The interviewers conducted the interrogation in the conventional manner for such examinations, to-wit, standard oral questions asked of all applicants. The examiners graded each applicant on an evaluation of their answers. The interviewers testified that they had not known the Charging Party prior to the interview, did not know whether he was a Union member or whether he had filed a grievance. Both interviewers testified they were members of the Union. Bias of a long time union member against the Charging party for his Union membership seems unlikely indeed.

Although the Charging Party filed several subsequent grievances, they were after the examination in question and hence immaterial to the charge based on the grade for that November examination.

Moving to the evidence about the charge that others were promoted to several positions for which he had applied and that the reason he was passed over was because of his union membership:

The record is devoid of any objective proof that such reasons motivated the choice of others for the position. Indeed, the record is replete with testimony that others were selected over the charging party because those chosen were adjudged to be better qualified. Nothing in the record points to a contrary conclusion. Charging Party called more than a dozen witnesses in his own behalf. These witnesses uniformly testified that they held no bias against the Charging party. Most of them did not know him; some of those involved in the examination and selection process were Union members. All who were asked denied having given him a low qualifying grade or having recommended others for promotion as a restraint or retaliation against Mr. Levitt for his union activity. The testimony points clearly to the conclusion that the sole motivation of the examiners as well as those involved in the promotion process was their sincere best evaluation of the relative merits of the candidates involved.

The only evidence offered to show bias and restraint was the subjective opinion of Mr. Levitt and his counsel that he was better qualified to hold the promotional positions to which others had been appointed. Mr. Levitt offered no hard evidence in support of his subjective contentions. Absent objective positive proof that such decisions were predicated upon a forbidden reason, that is, Union membership and/or activity, no basis exists for a finding of violation of the Ordinance.

On the other side of that coin, Mr. Levitt's own witnesses testified that in making their decisions about promotion the sole factor considered was their (consensus) evaluation of the relative qualifications of the candidates.

As to Mr. Levitt's termination, alleged in the amendment to his complaint to be in restraint of his protected activity or in retaliation therefor:

Mr. Levitt charges that the Respondent terminated him effective February 14, 1992; that his termination occurred after he had filed several grievances, the last on January 7, 1992.

First, Mr. Levitt's position was temporary; second, it was part time. Charging party offered his opinion that he was better qualified to perform the work of his position than the person retained, but this testimony constituted subjective opinion only. This is the extent of Charging Party's evidence of restraint. On the other hand, Respondent showed that between January 15, 1992, through February 27, 1992, Library management released ninety one employees from temporary part time positions in a general reduction of staffing levels throughout the system. Respondent showed that the reductions were part of a general departmental staff consolidation.

DISCUSSION

In order to prevail, Charging Party must show that he was restrained or interfered with in the exercise of his right to union

membership or in protected activities (such as filing grievances). The theory of the case appears to be that since he was terminated after he had filed a number of grievances, and since he received a low grade in a promotional examination after having filed a single grievance, the low grade and the termination were retaliation for union activity. No objective evidence connects union membership and filing grievances on the one hand with the low grade and ultimate termination on the other. Charging Party is indulging in one of the best known of all fallacies of inductive reasoning, the "post hoc ergo propter hoc" (after this, therefore because of this) fallacy. Simply because one event occurs later in time than another does not make the first incident the cause of the second. There must be some causal relationship. In this case no such relationship appears from the evidence.

On the contrary, hard, uncontradicted evidence shows that many proper reasons existed for Mr. Levitt's low examination score - simply that the applicant didn't respond well to the examiners, certainly not as well as other candidates.

As to the termination of employment, other objective evidence showed clearly that the termination was part of a general reduction in force like that being endured by many public and private organizations in these recessionary times.

More importantly, Charging Party's own witnesses averred positively that his union membership and activity formed no part of the basis

of any of their decisions. Charging Party offers a thesis which, if adopted, would hold that all his own witnesses were lying.

In cases of this sort, the weight to be given testimony must lie in large measure on the credibility of the witnesses. None of the witnesses who testified about the circumstances of this case had any apparent self interest. None had anything to gain or to lose. All the library personnel who testified impressed the Hearing Officer by their sincerity and truthfulness. Consequently, their assertions that no hidden motive, particularly anti-union motive formed any part of their evaluation or treatment of the Charging Party must be believed.

As to the failure to promote, Charging Party's does not present any objective evidence that he was better qualified than those who were appointed to the promotional positions for which he applied. His assumptions in that regard are purely subjective and speculative. On the other side of that coin, the witnesses themselves testified that their conclusions were based purely on their evaluations of the relative merits of the candidates without any reference to the involvement of any of them in Union activity. Again, these witnesses put an entirely credible face on their statements.

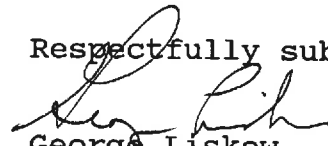
DECISION AND RECOMMENDATION

The Hearing Officer finds that the Charging Party has failed to present a prima facie case of violation of Section 12 of the Los Angeles County Employee Relations Ordinance. Although not required

to do so because no prima facie case was presented, the County has presented evidence and argument which completely rebuts the assertions of the Charging Party. Consequently, the Hearing Officer recommends that the Unfair Labor Practice charge be dismissed in its entirety.

Sierra Madre, California
August 24, 1992

Respectfully submitted,


George Liskow
Hearing Officer