

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

BEFORE THE BOARD OF PERSONNEL APPEALS

CHAUFFEURS, TEAMSTERS, WAREHOUSEMEN)
& HELPERS LOCAL #45)
Complainant,)
vs-)
HILL COUNTY)
Defendant.)

ULP-1-1976

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER.

* * * * *

On January 6, 1976, the Chauffeurs, Teamsters, Warehousemen and Helpers, Local #45, herein referred to as the Union, filed an unfair labor practice charge, herein referred to as ULP No. 1, 1976, with the Montana State Board of Personnel Appeals against Hill County.

Basically at issue in ULP No. 1, 1976, is the county's underlying reason for discharging four (4) employees of the Hill County Road Department. The Union maintains that the County's action was discriminatorily motivated, in violation of sections 59-1603(1) and 59-1605(1)(a) and (c), R.C.M. 1947, because of the union activity or sympathy of those employees; The county denies the charge and answers:

"...that four (4) employees were layed off from work due to budget problems and poor workmanship of the employees."

A hearing was held in the above captioned matter on March 3, 1976, in the Hill County Courthouse, Havre, Montana. The Union was represented by Ms. Emilie Loring of the law firm of Hilley and Loring, Great Falls, Montana; Hill County was represented by Mr. Ronald W. Smith, County Attorney of Hill County.

As the duly appointed hearing examiner of the Board of Personnel Appeals, I conducted the hearing in accordance with the provisions of the Montana Administrative Procedures Act (Sections 82-4201 to 82-4225, R.C.M. 1947).

During the course of the hearing a motion was made by the defendant for dismissal on the grounds that the complainant failed to make a prima facie case. Upon receipt of briefs by both parties and after review of the record, I dismissed the motion. The reasons for the dismissal will be made obvious in the discussion of the case. In the briefs presented on the motion a point was raised

1 regarding rules of evidence which demands clarification. This hearing was an
2 administrative proceeding held in accordance with the provisions of the Montana
3 Administrative Procedures Act and the Montana Public Employees Collective Bar-
4 gaining Law. Mr. Smith incorrectly cites section 82-4210:

5 (1) Except as otherwise provided by statute relating directly to an
6 agency, agencies shall be bound by common law and statutory rules of
7 evidence.

8 The relevant statute is in fact section 59-1607(1) which states in part:

9 In any hearing the board is not bound by the rules of evidence prevailing
10 in the courts.

11 After thorough review of the entire record of the case, including sworn
12 testimony of a number of witnesses, and upon consideration of briefs filed by
13 both parties on the merits of the case, I make the following:

14 FINDINGS OF FACT

15 1.) On December 18, 1975, the Union filed a petition for a new unit deter-
16 mination and election for the Hill County Road Department pursuant to section
17 59-1606, R.C.M. 1947. The Union's petition followed an organizational meeting
18 which was arranged by Gregory Thackeray, a member of the proposed unit, and Lloyd
19 McCormick, Secretary-Treasurer of the Union, and which was held on December 12,
20 1975. At that meeting a majority of the members of the proposed unit were present
21 and authoriaation cards were circulated to those not present.

22 2.) On December 22, 1975, four members of the proposed unit were given
23 notice of lay off, effective January 2, 1976. Jerald Chamberlain, one of the men
24 laid off, contacted the Union which filed an unfair labor practice charge on
25 January 6, 1976, alleging violations of sections 59-1603(1) and 59-1605(1)(a)
26 and (c). The Union based its allegations on the assumption that the four employees
27 were laid off because of their union activities.

28 3.) The four men who were laid off, Gregory Thackeray, Jerald Chamberlain,
29 Roy Phillips and Merle Doney were employees of the Hill County Road Department.

30 Mr. Thackeray had worked for the county almost four years and had worked
31 there longer than eight other men in the proposed unit.

32 Mr. Chamberlain had worked for the county almost five years and had worked
there longer than nine or ten other men in the proposed unit.

Mr. Phillips had worked for the county six and one-half years.

1 Mr. Doney had worked for the county almost one year.

2 4.) Mr. Dan Morse, Chairman of the Hill County Commissioners, testified
3 that the four men had been selected for discharge because of budgetary problems
4 and job performance, and the Road Foreman, Mr. Marvin Kleinjan added that also
5 considered was "their ability to get jobs and the ones that already had the income
6 coming in". The decision was made after discussions between the commissioners
7 and Mr. Kleinjan.

8 5.) Mr. Kleinjan testified that he had spoken to Mr. Thackeray and Mr.
9 Chamberlain about the quality of their work, but that he had not mentioned the
10 possibility of discharge or lay off. Mr. Phillips testified that he had once been
11 reprimanded by the county commissioners. Mr. Kleinjan alleged in testimony that
12 Mr. Thackeray had on two separate occasions shown negligence in his work. In
13 one case a crane boom was damaged and in the other, a battery charger was damaged.
14 In very credible rebuttal testimony Mr. Thackeray pointed out that the crane
15 was damaged due to a malfunction in the equipment on which unsuccessful attempts
16 at repair had been made and that the battery charger had been damaged as he was
17 driving a piece of heavy equipment through a narrow space while being directed
18 by hand signals from the Shop Foreman, Mr. Wilbur Earl.

19 6.) Mr. Thackeray was recognized by his supervisors as a spokesman for the
20 crew and as being knowledgeable about union activities. He had held discussions
21 about the union with Mr. Dan Morse and on another occasion with Mr. Marvin Kleinjan.
22 However, at no time during these discussions did these supervisors either encourage
23 or discourage union membership. In fact, at no time did the defendant's agents make
24 anti-union remarks or exhibit anti-union tendencies.

25 7.) There was no expressed or implied seniority plan established by Hill
26 County for its employees. There was no past history of winter lay offs, however
27 this year the county budget was strained because of extra equipment and machinery
28 purchases. The equipment and maintenance fund was exhausted and while the salary
29 fund was adequate these funds are not transferable. It was felt that reducing
30 the number of employees and slowing down operations would reduce the pressure on
31 the equipment and maintenance fund,

32

1 8.) Upon applying for unemployment compensation after the lay off, all
2 four men were told they had been permanently laid off and would not be subject to
3 rehire in the spring. Mr. Kleinjan testified that there was no provision made
4 for rehiring these people.

5 9.) Mr. Doney had not read nor was he aware of the complaint filed by
6 the Union. He was originally hired under a special program in which the state
7 paid some or all of his wages for the first six months.

8 DISCUSSION

9 The basic determination that has to be made in ULP No. 1, 1976, is whether
10 or not Hill County discriminated against the four employees who were laid off in
11 an effort to discourage their membership in a labor organization.

12 Often, in cases where discrimination has in fact taken place, direct ev-
13 idence, such as threats, coercion and promises, is difficult to obtain. It is
14 in such cases that "reasonable inferences from evidence presented"¹ must be drawn
15 to determine whether or not a violation has occurred.

16 Thus, in the case at hand where direct evidence is absent, the Union's
17 arguments based on circumstantial evidence must be carefully considered. Spe-
18 cifically, this evidence is:

19 The timing of the lay off. The lay off took place shortly after a petition
20 for unit determination and election was filed.

21 The county's inadequate explanation of reasons for the lay off. The county
22 did not adequately explain their reasons for the lay off giving only vague and
23 general reasons.

24 Paucity of indications of dissatisfaction by the county. There was little
25 prior censure, warning, criticism or other indication of dissatisfaction by the
26 foreman or county commissioners with the work performance of the four employees,
27 in fact one of the reasons given for selecting these employees for lay off was
28 "their abilities to get jobs".

29 The permanent nature of the lay off. Despite the experience and the gen-
30 erally acceptable quality of work of these employees there was no provision made
31 for their rehire.

32 ¹⁾ *Republic Aviation v. NLRB*, 324 US 793, 26 LRRM 620 (1945)

1 The experience of the laid off employees. Three of the employees had between
2 four and six and one-half years experience with the county.

3 Union activities of the employees. At least one of the employees was active
4 in organizational work on behalf of the Union.

5 However, after carefully weighing the entire record, I find that the pre-
6 ponderance of evidence in this case does not support the allegation that it was
7 union activities on the part of the employees which resulted in their being laid
8 off. Essentially it is the employer's purpose which determines if the employer
9 in engaging in an unfair labor practice when an employer discriminates among
10 his employees, and this purpose has not been proven to have been to discourage
11 union activities, involvement or sympathy.

12 The evidence presented by the county regarding the condition of the budget
13 was not challenged by the Union and it must therefore be accepted that a shortage
14 of funds did exist and that although the salary fund was not in serious difficulty
15 the maintenance fund was exhausted and a reduction in manpower and the subsequent
16 reduction in equipment operation would result in a savings of county funds.

17 To prove this unfair labor practice violation it must be proven that em-
18 ployees were discriminated against because of union involvement or sympathy.
19 Three of the laid off employees, Jerald Chamberlain, Roy Phillips and Merle Doney,
20 were only peripherally involved with the Union and no more so than the great
21 majority of the road crew who either received union authorization cards or at-
22 tended the December 12th meeting and who have continued in the employ of the county.
23 There was no evidence that either the foreman or the county commissioners had any
24 knowledge of these employees' union activities or sympathies.

25 Also to be taken under consideration in the case of Mr Doney is his lack
26 of knowledge of the Union's actions, the brief tenure of his employment, and the
27 nature of his hire.

28 The case of Gregory Thackeray is somewhat more complex. He was quite active
29 with regard to the Union and was known to his supervisors as being knowledgeable
30 about union activities. Accusations of his negligence by foreman Marvin Kleinjan
31 were shown to be without basis. However, in the light of the budget situation,
32 the lack of anti-union animus, and the rather arbitrary methods employed in

1 deciding which personnel would be laid off, no violation has been proven.

2 In my opinion, the filing of ULP No. 1, 1976, was the result of four
3 things:

4 The extraordinary budget situation which existed in Hill County at the time
5 of and prior to the lay off.

6 The poor management practices of Hill County. There was a great lack of
7 communication between supervisors and employees. The method of selecting those
8 employees to be laid off was quite arbitrary and did not follow seniority or any
9 other established pattern.

10 The timing of the lay off. The notice of lay off was given just four days
11 after the filing of the unit determination petition.

12 Incomplete investigation by the Union. The charge was filed by the Union
13 merely upon notification of the lay off without any investigation into the cir-
14 cumstances regarding the county's budget or the situations of the individuals
15 involved.

16 CONCLUSIONS OF LAW

17 The allegation of ULP No. 1, 1976, that Hill County has engaged in unfair
18 labor practices within the meaning of sections 59-1603(1) and 59-1605(1)(a) and
19 R.C.M. 1947, has not been sustained by the Union.

20 Hill County was exercising its prerogative to operate and manage its affairs
21 as recognized by section 59-1603(2), R.C.M. 1947.

22 RECOMMENDED ORDER

23 The unfair labor practice charge filed by the Chauffeurs, Teamsters,
24 Warehousemen and Helpers, Local #45, against Hill County of January 6, 1976, is
25 hereby dismissed.

26 
27 Jeff Andrews
Hearing Examiner

28 Dated this 28th day of April, 1976.

29

30

31

32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

CERTIFICATE OF MAILING

I, Trena Scoffield, hereby certify and state that I did, on the 28th day of April, 1976, mail a true and correct of the foregoing Findings of Fact, Conclusions of Law and Recommended Order to the following:

Ronald Smith
Attorney at Law
Hill County Attorney
Havre, Mt 59501

Emilie Loring
Attorney at Law
1713 Tenth Ave. So.
Great Falls, Mt 59401

Lloyd McCormick
Secretary-Treasurer, Chauffeurs, Teamsters,
Warehousemen, & Helpers, Local #45
P. O. Box 2648
Great Falls, Mt 59401

Board of Hill County Commissioners
Courthouse
Havre, Mt 59501

Dated this 28th day of April, 1976.


Trena Scoffield