

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Respondent.

No. 11463-A

negotiation committee which was, at that time, engaged in regular negotiation meetings with the Respondent during working hours.

4. That Buckman was reassigned to his regular crew, due to objections to his transfer raised by himself and the Complainant, on approximately November 25, 1972; and that Forney went on sick-leave for ten days after his transfer, worked for three days with his new crew, and then went on a leave-of-absence which was in effect on the date of the hearing herein.

5. That the Respondent's motives in ordering said transfers did not include hostility toward the said transferee's activities on behalf of the Complainant, but related to the facts that Forney was assigned to a three man crew which also included another member of the Complainant's bargaining committee who, with Forney, was absent from work when negotiation meetings were held, and, in the case of Buckman, that there was a general reassignment of certain "swing-men" of which he was one.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following

CONCLUSION OF LAW

That the Respondent, by its aforesaid transfers of employees Charles H. Forney and Kenneth Buckman, has not committed and is not committing any prohibited practices within the meaning of the Municipal Employment Relations Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER

IT IS ORDERED that the complaint of prohibited practices filed in the instant matter be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 20th day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Examiner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

Transcript of the instant hearing issued on May 16, 1973 and final briefs were received on May 29, 1973.

The record clearly establishes that the basis for the transfer of Forney was his absences from work including particularly such absences as were due to attending the negotiation sessions. These absences were particularly troublesome because Forney's regular crew also included another Union negotiator.

Buckman was transferred as part of a general reassignment of "swing-men" to meet certain manpower needs. The evidence indicates that his status as a Chief Steward was not recognized by the City officials who ordered the reassignments, and that his retransfer was effected pursuant to their gaining such knowledge.

The record includes a considerable amount of evidence adduced by both parties to indicate whether or not the transfers violated their collective bargaining agreement, work rules or other mutual understandings. However, the Complainant's contentions, as understood by the Examiner, based upon statements of Counsel at the hearing and the Complainant's brief, are not that the Respondent committed a prohibited practice under Section 111.70(3)(a)5 which covers violations of agreement. (Indeed, if such a contention were made it would be unsupported by any allegation that the contractual grievance procedure was exhausted prior to the filing of the instant complaint.) Rather, the Complainant is understood to contend that the transfers were acts of prohibited discrimination under Section 111.70(3)(a)3 and prohibited interference under Section 111.70(3)(a)1.

Of course, the contention of prohibited discrimination requires proof that the Respondent's motive was, at least in part, comprised of hostility toward the employees' Union activities. In this regard the Union argues that, inasmuch as the City's transfer of Forney was based, to some extent, upon his Union activities, (i.e. attendance at negotiation meetings) and said conduct by the City violated its understanding with the Union regarding transfer; the transfer of Forney was discriminatory against Union activities, and cannot be soundly related to legitimate management considerations of efficiency.

However, the Examiner finds the record devoid of evidence of anti-union animus in this matter and believes that, although the City may have violated some understanding with the Union, 1/ its agents were concerned only with the efficiency of their operation when making the transfers.

There is considerable evidence that the absences of Forney and his fellow crew member due to attending negotiations were impediments to smooth operation and that the transfer of Forney would serve to reduce the problem involved. There is no evidence of any unit-wide scheme by the City to harass the Union or its officers. Forney was only one of many bargaining representatives of the Union.

1/ No attempt is made herein to resolve such question.

With regard to Buckman's transfer, as well as Forney's, the Union is apparently also contending that the City's actions constituted prohibited interference. This prohibited practice requires no finding of hostile motive, but rather of a possible discouraging or inhibiting effect upon the protected activities of the employees. In this respect, there is considerable testimony to the effect that employees, upon learning of the transfers, became worried that the City would commence broad actions against them in general, and that transfers of stewards would cripple the Union's ability to administer its contract with the City.

The Examiner concludes that in view of the entire context in which the transfers occurred, their short duration and the possibility of contractual remedies or contractual justification, no finding of prohibited interference is warranted.

Although the complaint refers specifically to the cases of Forney and Buckman, the Complainant urges in its brief that prohibited practices were also committed against employees White and Lindsey by threatening to rearrange their crew assignments. White and Lindsey are on the same crew and are both bargaining representatives of the Union. The record indicates that on approximately November 10, 1972 White had a conversation with Joseph N. Alberti, Assistant Superintendent of the Bureau of Sanitation, in which Alberti expressed a desire to separate White and Lindsey by transfer, White objected, and thereafter no such transfer occurred. On this evidence, the Examiner concludes, no prohibited practice can be found.

Dated at Madison, Wisconsin, this 20th day of August, 1973.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Howard S. Bellman
Howard S. Bellman, Examiner