

BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

DENNIS REDMON,

Appellant,

vs.

DEPARTMENT OF REVENUE,

Respondent.

CASE NO. R-DEMO-06-003

ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS

I. INTRODUCTION

1.1 Hearing on the Motion. This matter came before the Personnel Resources Board, MARSHA TADANO LONG, Chair; LARRY GOODMAN, Vice Chair; and LAURA ANDERSON, Member, on October 9, 2006, for hearing oral argument on Respondent's Motion to Dismiss.

1.2 Appearances. Franklin Plaistowe, Assistant Attorney General, represented Respondent Department of Revenue (REV). James Richmond, Attorney at Law, represented Appellant.

1.3 Documents Considered. The Board considered the files and documents in this matter, including:

- 1) Respondent's Memorandum in Support of Motion to Dismiss, filed August 11, 2006, with the following:
 - a) Declaration of Franklin Plaistowe, with attachment;
 - b) Declaration of Dolly Garcia, with attachments;
 - c) Declaration of Christopher Parsons; and
 - d) Declaration of Michael Grundhoffer, with attachments.
- 2) Appellant's Brief in Opposition to Respondent's Motion to Dismiss, filed September 22, 2006, with exhibits; and
 - a) Declaration of Dennis Redmon.
- 3) Respondent's Reply to Appellant's Brief in Opposition to Respondent's Motion to Dismiss, filed October 3, 2006,

- 4) Copies of four pages of email communications between Dolly Garcia and David Lazar presented at the hearing on the motion.

II. BACKGROUND

2.1 Pursuant to WAC 357-52-010, Appellant Dennis Redmon appealed his demotion from District Compliance Manager (WMS Band 2) to a Revenue Agent 4 with the Department of Revenue. Appellant filed his appeal on April 17, 2006.

2.2 On August 11, 2006, Respondent filed a motion to dismiss.

III. FINDINGS

3.1 Appellant worked with the Department of Revenue as a District Compliance Manager. Appellant's position was in the Washington Management Service.

3.2 Appellant's responsibilities included the supervision of staff.

3.3 REV provided Appellant training and instruction on appropriate conduct when discussing labor relations on June 23, 2004, October 13, 2004, May 12, 2005, September 22, 2005, and November 15, 2005.

3.4 On December 14, 2005, Appellant attended a meeting organized by David Lazar. The meeting was also attended by employees who were represented by the Washington Public Employees Association (WPEA).

3.5 Based on the emails provided at the hearing on Respondent's motion, the purpose of the meeting was for Mr. Lazar to share information about his current experience with the Unfair Labor Practice (ULP) process.

1 3.6 During the December 14, 2005 meeting, Appellant identified himself as a manager, stated
2 that he was not acting as a manager and that he was on annual leave. He then commended Mr.
3 Lazar for his efforts in working on the ULP against the WPEA. Also during this meeting, Appellant
4 indicated that a new union would be forming.

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6 3.7 On December 15, 2005, Appellant filed Articles of Incorporation for the Fair Washington
7 Labor Association (FWLA). The Articles of Incorporation listed Appellant as the President and
8 Secretary of the FWLA and provided that in addition to reasonable salaries, members, officers or
9 directors may receive awards or bonuses.

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11 3.8 Appellant did not complete and submit an Outside Paid and Volunteer Employer Record
12 (OPVER) before starting the FWLA.

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14 3.9 Effective March 27, 2006, REV demoted Appellant, in part, as a result of his conduct at the
15 December 14, 2005 meeting and his participation in an organization intended to displace the existing
16 exclusive bargaining unit.

17 18 **IV. ARGUMENTS OF THE PARTIES**

19 4.1 Respondent argues that Appellant had been given adequate training and was on sufficient
20 notice that as a member of management, he was to remain neutral on union activities. Respondent
21 contends that Appellant's statements at the meeting exposed the department to an unfair labor
22 practice charge by WPEA. Respondent asserts that as a manager and member of the Washington
23 Management Service, Appellant's behavior flies in the face of the department's obligation to refrain
24 from dominating or interfering with the formation or administration of employee organizations. In
25 addition, Respondent argues that because Appellant was eligible to receive compensation from the
26 FWLA, he was required to complete an OPVER which he failed to do prior to filing the Articles of
27 Incorporation.

1 4.2 Appellant argues that his supervisor was aware that he was considering forming an employee
2 organization. In addition, Appellant states that he attempted to meet with Mr. Grundhoffer to learn
3 about the grounds rules and limits in order to avoid conflict with REV policy but the meeting with
4 Mr. Grundhoffer did not take place prior to the December 14, 2005 meeting. Appellant contends
5 that the training offered by REV was inadequate and failed to put him on notice that his conduct at
6 Mr. Lazar's meeting would be a violation REV policy. In addition, Appellant argues that he should
7 not have been required to complete an OPVER because FWLA is an employee organization, that he
8 determined there was no conflict of interest, and that at the time of Mr. Lazar's meeting, no activities
9 had occurred in regard to the FWLA.

10 11 **V. DISCUSSION**

12 5.1 The Board may decide an appeal by motion if the documents on file, depositions and
13 affidavits show there is no genuine issue as to any material fact and the appeal should be
14 dismissed as a matter of law. WAC 357-52-140. All facts and reasonable inferences therefrom
15 are to be determined in favor of the nonmoving party. For purposes of Respondent's motion to
16 dismiss, we must assume any disputed facts in favor of Appellant. *See, Hall v. University of*
17 *Washington*, PAB No. 3863-V2 (1995).

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19 5.2 In order to preclude summary judgment, the non-moving party must set forth specific facts
20 by affidavit or otherwise show a genuine dispute of material fact. A material fact is one upon which
21 the outcome of the litigation depends. *Hudemand v. Foley*, 73 En.2d 880, 886, 441 P.2d 532 (1968).

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23 5.3 There is no question of material fact that Appellant failed to follow REV process when he
24 participated in the December 14, 2005 meeting. Appellant attended numerous training sessions at
25 which he could have sought clarification if he was unclear of his obligations in respect to union
26 activities. Furthermore, Appellant admits that he attempted to meet with Mr. Grundhoffer prior to
27 Mr. Lazar' meeting to learn the ground rules and appropriate limits to avoid conflict with REV
28 policy. Appellant also admits that at the December 14, 2005 meeting, he identified himself as a
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1 member of management. By his actions in requesting a meeting with Mr. Grundhoffer and
2 identifying himself as a manager at the December 24, 2005 meeting, Appellant has shown that he
3 was aware of his obligation as a member of management to refrain from participating in union issues
4 and to remain neutral on union activities.

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6 5.4 There is no question of material fact that at the meeting on December 14, 2005, Appellant
7 informed members of the WPEA that a new union would be forming. There is also no question of
8 material fact that the following day, he started a union to replace the existing exclusive bargaining
9 representative. Appellant's actions clearly violated his obligation to remain neutral on union
10 activities.

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12 5.5 There is no question of material fact that based on the activities discussed above, REV had
13 just cause to demote Appellant. Therefore, Respondent's motion should be granted.

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15 5.6 The Board having reviewed the files and documentation, being fully advised in the premises
16 now enters the following:

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18 **VI. ORDER**

19 NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted,
20 and the appeal of Dennis Redmon is dismissed.

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22 DATED this ____ day of _____, 2006.

23 WASHINGTON PERSONNEL RESOURCES BOARD

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25 _____
26 MARSHA TADANO LONG, Chair

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29 LARRY GOODMAN, Vice Chair

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2 LAURA ANDERSON, Member
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