

VERDICTS & SETTLEMENTS

EMPLOYMENT LAW

RETALIATION

First Amendment, Union Activities

BENCH DECISION: Defense.

CASE/NUMBER: Wendy Thomas, Service Employees International Union, Local 721 v. County of Riverside, Colleen Walker, Rick Hall, Larry Grotefend, Erick Schertell, Heather Woods, Margie Gemende, Brian McArthur / 5: 2010-cv-01846.

COURT/DATE: USDC Central / Feb. 14, 2012.

JUDGE: Hon. Virginia A. Phillips.

ATTORNEYS: Plaintiff - Alan G. Crowley, Jacob J. White, Gary P. Provencher (Weinberg, Roger & Rosenfeld, APC, Alameda).

Defendant - Edward P. Zappia, Day B. Hadaegh, Brett M. Ehman (The Zappia Law Firm, Los Angeles).

FACTS: Plaintiff SEIU, Local 721 is an employee union representing approximately 5,700 employees in the County of Riverside. Plaintiff Wendy Thomas is a Riverside County Sheriff dispatch supervisor and SEIU member and lead negotiator for SEIU during the 2010 and 2011 contract negotiation.

In late 2008 through the present, Thomas became more active in her union activities, including collective bargaining when the County was imposing economic reductions. Thomas also became prolific and public in her union activity, participating in union rallies, issuing union press releases, drafting articles about collective bargaining on the union's website, and participating in filing SEIU member grievances against the County.

Between 2008 and 2011, the County granted every one of Thomas's requests for paid time off to participate in collective bargaining, union training and/or to act as an employee representative at grievance hearings.

By 2011, Thomas was granted over 750 hours of paid time off duty to engage in union activity.

Between April 2009 and November 2010, Thomas was transferred or reassigned four times, and was investigated on three occasions on complaints of misconduct, resulting in two written reprimands (one was rescinded).

Prior to becoming active in her union, she had never been transferred.

DEFENDANTS' CONTENTIONS: Defendants contended that Thomas was not subjected to any adverse employment action. Rather, Thomas was merely subjected to routine reassignments just like all other Sheriff's Department employees, and none of which resulted in any loss of rank or pay. Thomas was legitimately subjected to disciplinary investigations based on complaints the department received of rude, discourteous and other misconduct against Thomas as required by law, and exactly as would occur with any other employee. Further, Thomas was cleared in one discipline investigation, excused in another due to defects in the investigation, and merely received a written reprimand in another which was sustained.

Defendants contended that Thomas had a history of rude, discourteous, and bullying conduct in the workplace, and that Thomas became particularly disgruntled and sought vengeance against her supervisors when she was twice overlooked for a promotion to Dispatch Manager positions in 2008. Subsequently, Thomas therefore escalated her union activity to avoid work and to harass the county and her supervisors, and also came to relish the notoriety she received. Along the way, Thomas began orchestrating and fabricating allegations against the County in support of her lawsuit.

For example, Thomas alleged she was served with a Notice of Discipline in the middle of a collective bargaining session to send a threatening message to SEIU members, when in fact the Notice of Discipline was served at the exact time and location Thomas had requested in advance. As another example, Thomas alleged she found her vehicle missing from her parking space one day as a threatening gesture, when in fact she had requested that her county-issue vehicle be moved because it had become non-operational. Thomas alleged she was reassigned from night shift to day shift in retaliation for union activity, when she had previously requested the reassignment to facilitate her presence at collective bargaining, which took place during regular business hours.

Thomas complained one of her reassignments to a new work location was retaliatory, when in fact her entire unit was transferred because they had run out of space at their current location and, Thomas had previously expressed her excitement about the move to get her own office, whereas she had previously shared one small space with two other employees. Further, Thomas's own complaint and conduct demonstrated that her union association and free speech activities were prolific and only escalated at all times. Thus, there was no evidence that her First Amendment rights were in any way inhibited.

Defendants contended that plaintiff SEIU, Local 721 presented no evidence whatsoever that its member participation was curtailed by the County, or that a single one of SEIU's 5700 members employed by the County was discouraged from union activity by any defendants. To the contrary, the County submitted numerous SEIU member statements that they had positive relationships with department management, and were only discouraged from union activity by the petty or harassing conduct of Wendy Thomas when they did not support her.

RESULT: Defense motions for summary judgment were granted.

OTHER INFORMATION: The individual defendants were dismissed in their professional capacity on defendants' Motion to Dismiss, and defendant Undersheriff Colleen Walker was dismissed entirely at that stage.

On June 26, 2011, plaintiffs' Motion for Preliminary Injunction was granted in part and denied in part, with a ruling that Thomas could not be involuntarily transferred during the litigation, until hearing on the merits.

On Feb. 14, 2012, the court granted defendants' two Motions for Summary Judgment in their entirety, and entered judgment in favor of all defendants and against plaintiffs. The court also dissolved the preliminary injunction. The court found that defendants demonstrated legitimate reasons for all of its employment decisions, and noted that Thomas was presented as a disfavored employee who "caused friction in the workplace," had fabricated claims, and that plaintiffs employed "a shotgun approach" in the litigation, inclusive of numerous petty slights that did not rise to the level of actionable claims.

Plaintiffs filed a notice of appeal on March 13, 2012.

Defendants' subsequent motion for \$250,000 in attorney fees was denied, and defendants have appealed that ruling.

FILING DATE: Dec. 1, 2010.