



THE PUBLIC SECTOR

A very, very, very fine house

by Jonathan Holtzman

Even after practicing labor and employment law for 30 years, issues arise that remind me that reality is often stranger than fiction. A couple of months ago, I became involved in a dispute in Stockton that is one for the record books.

As those who follow the plight of cities know, Stockton is facing tremendous economic challenges. The city has declared a fiscal emergency and has been negotiating with its unions over concessions in an effort to decrease its significant labor costs. The city council has imposed changes on bargaining units whose labor contracts have not expired based on its inherent emergency powers.

Not surprising, relations with the police union are — and have been — particularly tense. For example, last year, when the council froze planned wage increases, the Stockton Police Officers' Association (SPOA) posted billboards warning visitors, "Welcome to the 2nd Most Dangerous City in California" and "Stockton Police Can No Longer Guarantee Your Safety." The SPOA also sued the city over the proposed discipline of an officer who ignored an order not to serve beer at a festival within the jurisdiction. The court threw out the lawsuit and awarded attorneys' fees to the city. The SPOA passed a "no-confidence" vote on the chief of police over the incident as well.

But none of that prepared me for what happened next. Just as negotiations between the city and the SPOA were breaking down, the union bought the house next door to the city manager as an "investment," even though it had never previously bought real estate as an investment. The house was one of about 600 in the union's price range available in Stockton, where the real estate market was and remains severely depressed. The city sees the purchase as an attempt to harass and intimidate the city manager, who, because of Stockton's difficult circumstances, has taken tough positions with the union.

After purchasing the house, which has been described as being in "tear down" condition, the union began to fix it up. Those activities included using a backhoe to shear branches off a tree situated on the city manager's property and responding to his

protests with vitriol. Rumors swirl within the police department of additional ways the SPOA can use the house to harass the city manager, though none has come to fruition to date.

The city has filed suit against the SPOA, alleging that the purchase and use of the house is an unfair labor practice. Was the action designed to chill the city manager's exercise of his official labor-relations duties and/or retaliate against him? The SPOA protests that it has a *right* to buy any property it wants and the fact that the city manager may not like his new neighbor doesn't render the purchase illegal. But if the purpose of buying the house is proven to be to harass or intimidate the city manager or otherwise coerce the city in connection with its labor-relations policies, the purchase constitutes an unfair labor practice.

How is the city manager harmed? Well, for starters, the house purchased by the SPOA has a direct view into his house, affecting his privacy. He conducts business at his house — he has a 24-hour job. How can he ensure that his meetings and conversations aren't being overheard? Moreover, his wife, who agreed to move to Stockton so he could take the job (he was the former administrator of Sonoma County), is drawn into the issue, very much against her wishes.

Discovery (the pretrial exchange of facts and evidence) will hopefully reveal the true motivations for the SPOA's actions. Motive is hard to prove, but the timing and location of the purchase might provide the proof needed.

But the interesting broader issue pervades labor and employment law: A perfectly legal action may become illegal if the underlying motivation for the activity is impermissible. The dismissal of an at-will employee is legal on its face but is illegal if it's based on the employee's race. Does the same apply to buying a house if the motivation is to intimidate and real harm is demonstrated? I think so.



The views expressed are those of the author and not necessarily those of the editor or publisher. The author can be reached at Renne Sloan Holtzman Sakai LLP in San Francisco, jholtzman@publiclawgroup.com. ♣