STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the matter of the petition of:	
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES	CASE 9655-E-92-1590
Involving certain employees of:	DECISION 4088-A - PECB
CITY OF FEDERAL WAY	RECOMMENDED ORDER ON OBJECTIONS
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, and NORMAN BRAY, Complainants,	CASE 9889-U-92-2258
	DECISION 4495 - PECB
vs.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CITY OF FEDERAL WAY, Respondent.	
WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, and ELIZABETH SNYDER, Complainants,	CASE 9890-U-92-2259
	DECISION 4496 - PECB
vs.	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
CITY OF FEDERAL WAY, Respondent.	

Audrey B. Eide, Legal Counsel, appeared on behalf of the Washington State Council of County and City Employees and the individual complainants.

Carolyn A. Lake, City Attorney, and Perkins Coie, by Valerie L. Hughes, Attorney at Law, appeared on behalf of the employer.

On February 25, 1992, the Washington State Council of County and City Employees (WSCCCE) filed a petition for investigation of a question concerning representation with the Public Employment

Relations Commission, seeking certification as exclusive bargaining representative of certain employees of the City of Federal Way (employer).[1] On July 23, 1992, the WSCCCE filed objections in that proceeding under WAC 391-25-590, alleging that the employer had engaged in conduct improperly affecting an election conducted by the Commission.

On July 10, 1992, the WSCCCE and two individual employees, Norman Bray and Elizabeth Snyder, filed complaints charging unfair labor practices with the Commission, alleging that the City of Federal Way had discharged the two employees as a result of their having engaged in protected activities on behalf of the WSCCCE during the organizing campaign.[2]

The unfair labor practice charges and election objections were consolidated for purposes of hearing before the undersigned Examiner. A hearing was held on January 6, 8 and 14, and February 11 and 12, 1993. Briefs were filed by the parties to complete the record on May 7, 1993.

BACKGROUND

J. Brent McFall is the city manager of the City of Federal Way. Carolyn Lake was acting city attorney at the outset of the events involved in these cases, and has since been appointed as city attorney. Located in the southern portion of King County, the City of Federal Way was only recently incorporated. As a result, while the employer has hired employees to conduct most usual and customary business of an incorporated city, the employer has continued contracting with King County for law enforcement services. Fire and emergency medical services continue to be

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[1] Case 9655-E-92-1590.

[2] Case 9889-U-92-2258 (Bray) and 9890-U-92-2259 (Snyder).

provided by fire districts which pre-existed incorporation of the new municipality.

The Representation Petition and Initial Processing

The WSCCCE sought certification as exclusive bargaining representative of approximately 51 employees, in a bargaining unit described by the union as:

> All full-time and regular part-time employees of the City of Federal Way, excluding confidential employees and commissioned employees of the Police and Fire Departments.

The Commission directed an inquiry to the employer, requesting a list of employees from which to verify the sufficiency of the showing of interest provided with the union petition.

In a letter filed with the Commission on March 19, 1992, Lake asserted that the unit described by the WSCCCE would actually include approximately 70 employees, and that the proposed unit was inappropriate.[3] The letter acknowledged that the employees were not currently represented for purposes of collective bargaining.

On March 25, 1992, Lake sent a list of the names and addresses of the employees described in the petition. Contrary to her earlier estimate of 70 employees, that list contained the names of approximately 60 employees that the employer deemed eligible to vote. The employer identified approximately 24 individuals that it proposed to exclude as supervisors or confidential employees.

On March 25, 1992, City Manager McFall sent a letter to all city employees on city stationary, as follows:

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[3] The employer asserted that there were 12 confidential employees.

> The City has received a petition filed by the Washington State Council of County and City Employees (AFSCME) with the Public Employment Relations Commission (PERC). This document indicates that union authorization cards have been submitted by AFSCME as a basis to require a union election.
>
> In turn, PERC has advised the City that an election to determine if there will be a union will now be held. The petition, as drafted by AFSCME, asks for the formation of a wall-to-wall unit, meaning that all City employees, excluding only some supervisory employees and those employees associated with confidential employee matters, will be combined in one union.
>
> The City has submitted its determination of exempt employees to PERC; that agency makes the final determination of the proposed bargaining unit classification. A telephone conference between PERC, AFSCME, and the City to discuss this matter is scheduled for Friday April 3, 1992. Following that meeting, I will pass along to you PERC's decision.
>
> The City wishes to emphasize that it is not necessary for you to belong to any union to work for the City of Federal Way. Employees who might join or belong to a union will not get any preferred treatment over those who do not. You should also know that **federal law preserves your right to refrain from union activities and that it protects you from union coercion or harassment.**
>
> It is my sincere belief that union representation will not be in the best interests of you or the City. Between now and the election, we will answer any questions you have and further explain the issues that you must decide before you vote.
>
> At this exciting time in the development of this new city, I want to preserve all opportunity of joint efforts in developing proper values and in continuing the establishment of a winning team. We can do so without union intervention. Please give this matter your most serious consideration.

[Emphasis by **bold** supplied.]

On March 30, 1992, President Chris Dugovich of the WSCCCE wrote to Mary Gates, a member of the Federal Way city council:

> This letter is for the purposes of formally voicing my concern over the statements being made by the City of

Federal Ways [sic] management, in regards to the upcoming representation election.

During the week of March 23rd, employees were mailed a letter which openly stated the city's dislike for the union, and therefore, employees who seek to exert their rights under R.C.W. 41.56. Additionally, your city manager held what is usually termed in the business as a "captive audience meeting" on city time to further explain the city's bias against a union representing the City of Federal Way employees. Fair play would dictate that you provide this Union with the same opportunity.

You are probably not aware of the fact that approximately three years ago this Union was actively organizing some unrepresented employees at the City of Kent. Your current city manager was then the city manager of Kent. In the time leading up to the election he also held or was involved in the conducting of captive audience meetings, in which the same open biases were voiced. The result of that activity was that the Union was forced to file what are called "election objections" over what we believed to be clear "unfair labor practices" in regards to managements [sic] leading up to the elections.

Subsequently, prior to an actual hearing by the Public Employment Relations Commission, Mr. McFall left his post and the City of Kent, and his successor settled the matter with the union. A new election was held and this Union now represents employees in that city. While attempting not to be confrontational at this point, I am questioning whether as an elected official of the City of Federal Way, you have approved an anti-union campaign to be waged by your city management. My initial hip shot opinion would be that you have not, and your city manager is showing on his own, his proven colors. If this is the case I believe it would only be appropriate for you to review your managements [sic] activities in regards to the upcoming election.

The Washington State Council of County and City Employees, AFSCME, AFL-CIO represents over 11,000 local government employees across this state, While at the same time we are certainly more than willing to litigate questionable legal behavior on an employer's part, our true goal is to work towards a prosperous, productive work environment for both the employees and the tax payers. We will be closely monitoring Mr. McFall's statements at gatherings of employees that he is terming "spirit Meetings". If we find that he has crossed the line or does so in the future, we certainly we [sic] will react in the appropriate manner. ...

On April 1, 1992, McFall sent a "personal" letter to each city employee, addressed to them by name at their home addresses:

> Thank you for your attendance and participation at the recent city-wide SPIRIT meeting during which I spoke to you about the current union campaign and of my preference that the City remain non-union.
>
> A number of very interesting questions were raised by employees at that meeting. The City is anxious for all employees to be fully informed on the issue of union representation and the processes involved during the union election campaign.
>
> In addition to the questions and answers presented here, if at any time you have a question or concern about the union election or activities, please feel free to contact your supervisor, the Personnel Department, or City Administration. Every effort will be made to obtain a prompt answer to any employee questions.
>
> We have included in this letter the questions asked by employees at the SPIRIT meeting and expanded answers to those questions, as follows:
>
> 1. Q. **In the event the union election is successful, is it possible for employees who have voted "no" to not be included within the bargaining unit?**
>
> A. Who is included in the bargaining unit and who is excluded from the bargaining unit is a matter determined by the Public Employment Relations Commission (PERC) in advance of the election. All employees who are included in the unit are eligible to vote. Voting is by secret ballot. No one will know how any individual votes. Employees can vote against the union even if they signed a union authorization card. If the City wins the election, the union will not represent any of the employees in the bargaining unit. Conversely, if the union wins the election, the union will represent all employees in the bargaining unit, even those employees who voted "No" to union representation.
>
> In the event the union wins the election, the question of whether or not the City would be a "union shop" (i.e. mandatory union membership) is an issue that would be negotiated between the union and the City.
>
> To follow up on the example mentioned at SPIRIT meeting, in Bothell the union requested mandatory union membership. However, it was finally agreed that some employees would be "grandfathered" out of the union. This means that certain employees were not required to join the union. However - those employees were still bound

by the union collective bargaining agreement regarding wages, terms of employment, etc. - and when those employees left the city, their replacements were required to join the union and pay union dues.

2. **Q. What are permissible and non-permissible election campaign activities of employees, including actions prohibited by union officials?**

A. There are only a few limitations on non-supervisory employees during a union campaign. Those that exist are as follows:

a. Union representatives or employees may not campaign for or against the union during working time. Instead, they must limit their activities to nonworking time. Employees are free to speak for or against a union as they wish during their nonworking time, even though they are on City premises. Nonworking time includes lunch periods and breaks, as well as before and after work.

b. Union representatives or employees may not at any time use City equipment (such as photocopy machines, computers, etc.) or supplies to produce literature supporting or opposing the union.

c. Literature about the union may be distributed only in nonworking areas (such as restrooms and designated lunch areas) and during nonworking time.

d. The posting on City property of literature relating to the union is prohibited except when the employee doing the posting is on nonworking time and the posting in [sic] on a bulletin board designated for employee use.

Actions prohibited by union officials are those that would cause an employee to violate one of the four rules listed above. **In addition, please remember that a union is free to make whatever promises or claims it wishes to about what it will do if elected. The City, on the other hand, cannot.**

3. **Q. Is it possible for an employee to play a role in determining who is exempt from the bargaining unit?**

A. PERC will determine which employees are excluded from the unit. Ordinarily, PERC does so without input from the affected employees. On occasion, however, PERC will ask for the views of the affected employees.

4. **Q. Why did the union decide to request a wall-to-wall bargaining unit, and why was there no input from employees on the parameters of the bargaining unit?**

A. The City does not know what led the union to petition for a wall-to-wall unit bargaining unit. Nor

does the City know if the union sought the input of City employees on the scope of the unit and, if not why not.

5. **Q. What is the required percentage of cards to be turned in, in order to justify a union, and is there any opportunity to verify the number of cards submitted?**

A. The union must submit authorization cards from not less than thirty percent of employees in the bargaining unit that the union claims to be appropriate. According to PERC regulations, whether a sufficient showing has been made is a matter for administrative determination by PERC and may not be challenged at any hearing. PERC will not disclose the identities of employees whose cards were filed in support of the union's position.

6. **Q. How was AFSCME chosen to be the appropriate representing agent for City employees?**

A. AFSCME has not yet been chosen to represent City employees. The only group who will decide that issue are the City employees themselves when they vote. All AFSCME has done is to file a petition with PERC. Another union with a sufficient showing of interest (thirty percent) could have done the same.

7. **Q. Is it possible to include another union within the process?**

A. Now that AFSCME has filed its petition, another union could ask PERC to intervene in the proceedings. According to PERC regulations, the intervenor would have to submit in a timely fashion authorization cards from ten percent of the employees in the unit AFSCME claims to be appropriate or from thirty percent of employees in whatever different bargaining unit the intervenor claims to be appropriate.

Thank you again for your thoughtful consideration of the full impacts of union representation for City employees. Throughout the union campaign, I will seek to respond to issues that are of concern to you. I encourage open dialogue on any questions you may have on any issue.

[Emphasis by **bold** and <u>underline</u> in original.]

The Commission held pre-hearing conferences on April 3 and 10, 1992.[4] On April 21, 1992, the WSCCCE and the employer filed an

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[4] On April 3, the parties resolved all conditions precedent to an election other than voter eligibility.

election agreement under WAC 391-25-230, stipulating the propriety of a bargaining unit described as:

> All full-time and regular part-time employees of the City of Federal Way, excluding supervisors (within the meaning of PERC precedent), and confidential employees.

The election agreement stipulated April 3, 1992 as the eligibility cut-off date, and was accompanied by a list of 51 eligible voters.

On April 23, 1992, the City of Federal Way Employees Association (FWEA) filed a motion for intervention in the representation case. Paul Quarterman, an employee within the petitioned-for bargaining unit, was designated as spokesperson for the FWEA. The FWEA sought a place on the ballot for an election in the bargaining unit previously stipulated by the employer and the WSCCCE.[5]

At some unspecified time prior to the election, McFall signed handwritten notes mailed to the eligible voters, as follows:

> I want to thank you for your past support in developing an atmosphere of City SPIRIT and teamwork. I ask for

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[5] On April 24, 1992, Quarterman sent a handwritten letter to Dugovich, as follows:

> RE: Petition as intervenor at City of Federal Way to establish an employees association.
>
> A group of employees at City of Federal Way have submitted a petition to PERC in order that staff have an opportunity to vote on an "Employee Association" as well as a Union. The ballot paper will therefore now be a three way vote with a choice of either no change, a union, or an employees association.
>
> I also wish to let you know that this is not an attempt at "union bashing", but an attempt to achieve similar ends through alternative means. I trust that this election takes place in a good spirit and that we are all able to work with the outcome of the election. I wish you the best of luck. Please find a copy of the petition submitted to PERC attached.

> your continued support by voting May 6, to maintain your opportunity to independently influence City policies.

On May 5, 1992, McFall sent out a memo to "Eligible Voters for May 6 Election", as follows:

> Just a reminder of the election to take place tomorrow, Wednesday, May 6, 1992. The election will be held in the City Council Chambers between the hours of 7:30 a.m. to 9:30 a.m. and 11:30 a.m. to 1:30 p.m.
>
> This is also a reminder that the eligible voters for tomorrow's election are **only those persons whose names appear on the attached list.** These names were agreed upon by PERC, the union, and the City as the sole eligible voters for tomorrow's election. Full-time employees hired by the City after the date of April 3 are not eligible to vote. Please consult the attachment for the complete list of voters for tomorrow's election.

[Emphasis by **bold** in the original.]

The city manager's memo mis-stated the hours of voting,[6] and the "voting list" enclosed with McFall's memo contained the names of only 47 employees.

The union sent out a memo which stated the correct polling hours.

Results of Initial Election Vacated

The results of the representation election conducted by the Commission on May 6, 1992 were inconclusive under RCW 41.56.070 and WAC 391-25-531, with votes distributed as follows:

15 ballots cast for the WSCCCE
14 ballots cast for the FWEA
17 ballots cast for "No Representation"
5 challenged ballots

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[6] As stated in the official Notice of Election issued by the Commission, the voting started at 7:00 a.m. and again at 11:00 a.m.

Apart from the need for a run-off election under WAC 391-25-570, the challenged ballots appeared to be sufficient in number to affect which choices would be on the runoff ballot.[7]

In a letter issued by the Commission on May 11, 1992, the following resolution of the challenged ballots was proposed:

> Four of the challenged ballots had been cast by employees who were excluded from the stipulated eligibility list as "temporary" employees. From the documents currently in the file, it was determined that those four individuals, Gary Norris, Gorge Perez, Amanda Grant, and Gretchen Weigman, were all hired as full-time employees after the April 3, 1992 eligibility cut-off date and therefore, those four ballots would not be counted.
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> The fifth ballot, cast by Jacquelyn Faludi, was challenged by the union on the basis that she was a supervisor. Again, holding the parties to the specifics of their stipulated agreement which excluded supervisors, and because Faludi's name had not been included; her ballot was therefore not to be counted.

The parties were directed to show cause why they should not be held to the stipulations made in the election agreement.

On May 12, 1992, the WSCCCE filed timely objections under WAC 391-25-590(1), alleging that the employer had engaged in conduct that improperly affected the outcome of the May 6 election, as follows:

> 1) The City of Federal Way made misleading statements in a letter to employees dated March 25th. They inferred that if the Union wins you would have to be a member of the Union even prior to employment. Union security is subject to the collective bargaining process and only if agreed, may be necessary thirty (30) days

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[7] The ballot of a sixth employee was challenged during the voting process, on the basis that the individual's name did not appear on the stipulated eligibility list. That challenge was cleared prior to the tally of ballots, however, based on the stipulation of all parties that the individual had been hired before April 3, 1992, and was erroneously excluded from the eligibility list.

after the employee is hired. The fourth paragraph states, "The City wishes to emphasize that it is not necessary for you to belong to any union to work for the City of Federal Way." The City of Federal Way inferred in the same, that the employees were protected by federal Law (not State) from union coercion or harassment. Misleading the employees to believe that this is a normal union practice. ...

2) The City of Federal Way conducted a number of captive audience meetings entitled Spirit meetings. The City discussed at length the attributes of "non-unionism" and "the eligibility or lack of eligibility of certain employees to vote". The Union or the Association were not provided equal access. The last of these meetings occurred on May 4th - just two days before the election. The Union requested equal access in a March 30 letter to the City Council - we never received a response. ...

3) The City of Federal Way on May 5th, less than 24 hours prior to the election, distributed an eligibility list to all the employees that clearly misrepresented who was able to vote, [sic] A sentence read, "full-time employees hired by the City after April 3rd are not eligible to vote". The correct statement is they may vote but it may be challenged. The timing of the letter did not afford the Union or the Association the ability to respond and this was part of their overall list to deny employees their right to vote. ...

4) The City of Federal Way mailed hand written notes signed by the City Manager, J. Brent McFall, that were delivered to the employees [sic] homes on May 5th. These notes were clearly in violation of the 24 hour rule against campaigning and the timing again did not give the Union the ability to respond. ...

5) The City of Federal Way made false statements during the pre-election process as to the expectation of continued employment and the possibility of full-time status for three employees in the Parks and Recreation Department. The three employees, Jorge Perez, Amanda Blake, and Grethen [sic] Weigman were described by the City of Federal Way as temporary employees with no expectation of continued employment. Even after repeated questions by the Union the City contended they were temporary employees and therefore ineligible. The Union contends that the City knew full well they would be hired and changed from their temporary status to full-time at the time of the pre-election conference. The City made these false statements in order to bolster their argument for their exclusion.

> All three employees shortly after the election agreement were hired full-time and therefore should be eligible to vote. ...
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> 6) The City of Federal Way during and after the pre-election process manipulated the hiring date of Gary Norris an Inspector for the City, so that he would be ineligible to vote. Mr. Norris was initially advised by this supervisor to report to work on April 1st because it would be the best for payroll, later that day his supervisor called Mr. Norris stating that personnel had since directed him to tell Mr. Norris that he couldn't start work until April 6th. Once the City learned that a pre-election conference was scheduled for April 3rd and a likely cutoff date for voter eligibility would be that day they them advised Mr. Norris to report to work the following week of April 6th.
>
> Remedy
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> The Union is requesting that the Commission - due to the misconduct of the City of Federal Way order a new election and order that the three employees of the Parks Department and the Inspector be included on the eligibility. In addition, the Commission shall order the City to post notices admitting their misconduct and any other remedy deemed appropriate by PERC.

Each of the parties nevertheless filed its response to the "show cause" directive on May 18, 1992:

The employer's response generally supported enforcement of the April 3 eligibility cut-off date stipulated by the parties, and sustaining the challenges to four of the ballots on that basis. The employer argued, however, that the ballot cast by Jacqueline Faludi should be counted, in that the omission of her name from the stipulated eligibility list was due to an error on the part of the city in preparing the list.

The focus of the response submitted by the FWEA was limited to the eligibility of Jacqueline Faludi. It urged correcting the erroneous omission of her name from the eligibility list.

The WSCCCE's response included a conditional withdrawal of its election objections, as follows:

> ... we accept your May 11, 1992, ruling which excludes the Federal Way Employees Association from the ballot.

> If your May 11, 1992, ruling becomes final, we will withdraw the objections we filed on May 11 (with the understanding they can be refiled after the run-off, if necessary) and urge a rapid scheduling of the run-off election between this Union and no representation.

The WSCCCE's withdrawal of its objections could not be implemented, however, because the assumption made by the WSCCCE concerning Faludi was controverted by other parties.

In an order issued June 1, 1992, the Executive Director withdrew his approval of the election agreement (insofar as it related to the stipulated cut-off date and eligibility list), and vacated the results of the election. The responses to the "show cause" directive had disclosed that the stipulated cut-off date improperly disenfranchised some otherwise eligible voters.[8] The Executive Director also noted that the employer's workforce was changing

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[8] City of Federal Way, Decision 4088 (PECB, 1992). The Executive Director wrote:

> Accepting that Grant, Perez and Weigman were only "temporary" employees at the time of the April 10 pre-hearing conference, the documents now on file provide substantial basis to infer that their status had changed by the April 17 date on which the election agreement was signed on behalf of the employer, and certainly by the April 21 filing of the election agreement with the Commission.
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> It appears that at least Grant and Perez had been offered full-time employment on April 15, and there is some basis to infer that the same offer was also extended to Weigman. Furthermore, it appears that the city manager had back-dated their hiring to "April 1, 1992", thus converting their "temporary" status to "full-time" as of a date that would have made them eligible to vote even under an April 3 eligibility cut-off date.
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> Had the facts which now appear to exist been known when the election agreement in this case was filed, the Executive Director would not have approved a stipulated eligibility list which excluded Grant, Perez and Weigman. No justification has been shown for a stipulated exclusion of those individuals where the employer knew or should have known when it signed the election agreement that the circumstances had changed since the April 10, 1992 pre-hearing conference.

rapidly, that there had been several changes of direction by the employer in its responses to the petition, that there were errors in the employee lists supplied by the employer, and that there was an absence of valid stipulations by the parties concerning the bargaining unit status of Faludi and another recently-hired employee. The parties were directed to present themselves for a new pre-hearing conference to continue the processing of the case.

Representatives of the WSCCCE and employer signed a new election agreement, together with a supplemental agreement under WAC 391-25-270, at a pre-hearing conference held on June 10, 1992. The date of the pre-hearing conference was stipulated as the cut-off date for voter eligibility.

On June 11, 1992, in response to a request from the WSCCCE, the employer sent the WSCCCE a list containing names and addresses of 95 employees.[9]

On June 12, 1992, the Commission issued a Notice of Election, setting July 1, 1992 as the date for a new election.

Investigation of Employee Misconduct

Norman Bray commenced his employment with the City of Federal Way in 1990, as a "building inspector". Bray functioned as a "lead" inspector, inasmuch as he assigned work to the two other building inspectors and supervised their work.

Elizabeth Snyder commenced her employment with the City of Federal Way in 1990, and was working as a "permit specialist" in the

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[9] Also included in that mailing was a copy of a June 9, 1992 memo, signed by 10 employees who requested that their names and home addresses be "removed from all election mailing lists".

employer's Community Development Department as of June 11, 1992.[10] Snyder and Bray worked in the same office in the city's administrative building.

On June 11, 1992, employer official Bruce Lorentzen received a telephone call from Dan Simon, who was then employed as a fire marshall with the neighboring City of SeaTac.[11] Simon reported having heard that Bray and Snyder were receiving gifts from a local building contractor, Ted Pederson.[12] Lorentzen met with Simon on the following day, to get further details of Simon's accusations.

Lorentzen passed along the information received from Simon to his supervisor, Ken Nyberg, the assistant city manager and director of the Community Development Department. On June 15, 1992, the employer engaged a private investigator, Roger Dunn, to investigate the allegations concerning Bray and Snyder.

On June 19, 1992, Dunn interviewed Bray. City Attorney Lake and a supervisor in the building department, Greg Moore, were also present. At the conclusion of the interview, Dunn hand-wrote a statement which Bray read and then signed, as follows:

> Norman R. Bray, being first duly sworn on oath, deposes and states: ... [I] am employed as the lead combination Inspector in the Department of Community Development. I've also worked in building inspections for the City of Tukwila between 1984 and 1990. Prior to that I worked as an inspector for the engineering division for the

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[10] The name "Elizabeth Snyder" is used throughout this decision, to avoid confusion. On October 27, 1992, Elizabeth Snyder had her name legally changed to Elizabeth Browning Barrett.

[11] Simon had previously worked with Snyder at the City of Mercer Island, and they had lived together for three and one-half years.

[12] Pederson's company, Fineline Design, was actively building residential structures in the Federal Way area.

University of California in New Mexico at Los Alamos. ... I started at the City of Federal Way in March 1990 shortly after the City was started. I was probably the first inspector hired. My duties entail conducting building inspections of both commercial and residential constructions sites. Most of my work is residential ... I first met Ted Pederson at some homes in the Parklane Development that he was building. His company is Fineline Design. One of my interests is fishing so at some time Ted and I talked about fishing. Ted has a boat he takes fishing and so do I. I'd estimate I've inspected 15 of Ted's homes since I first met him. The inspection process includes everything on the house. ... Sometime last fall, September or October 1991 I had a fishing trip planned to Port Angeles ... I ran into Ted Pederson at the same marina. ... Ted offered to let me go out with him. I fished with him ... and paid Ted about $20.00 for my contribution to gas. At some point Ted told me he has a yearly fishing trip that he puts together for his company, people who work for him and some friends. He may have asked me or I may have inadvertently said it would be nice to go fishing in Alaska. I didn't ask him if I could go on his trip. ... One day when I went into Fineline's job shack Ted Pederson said he'd like me to go on the trip with his company and felt I'd have a good time and get along with everybody. ... Ted then handed me an airline ticket envelope that was grayish white with red on it. I don't know if my name was typed or written on the outside. Inside was airline tickets and an itinerary to Alaska with my name on it. I don't remember the destination or resort. I told him I couldn't do that but he said since it was in my name he couldn't take it back. I was blown away by it and didn't know what to say. The trip was for some time around the end of June or first of July 1992.[13] I don't remember what the cost of the airfare or package was but Ted was offering it to me free. He didn't say that he expected anything from me for the tickets either at that time or in the future. He asked me to think about the trip so I took the tickets with me and discussed with my wife what happened. I was concerned about how to get out of it in a graceful manner. My wife felt the same way I did and I decided I had to be as diplomatic as possible about giving the tickets back. I took the tickets back the next day and

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[13] Examiner's note: Other evidence in the record indicates that the airplane tickets were for June 20 - 26, 1992.

> gave them to Ted Peterson.[14] I told him there was no way I could accept them even if he couldn't take them back. Ted said that I could pay for the flight portion of the package. But I told him that it was something I just couldn't do. Ted took the tickets back and hasn't mentioned it since. I didn't tell anyone other than my wife about this. I didn't write anything down in my notebooks about it. There was probably an inspection to do at one of his houses on the day he gave me the tickets. There probably wasn't an inspection to do when I took the tickets back the next day. I don't know who all was going on the trip but I think his superintendent Jim and a guy named Mike who works for Ted were going. I don't know if he offered tickets for the trip to any other city employees or public employees. Ted Peterson has never asked anything of me that was inappropriate as far as inspecting his houses. I've never treated him an [sic] different than any other builders when I'm doing my job. I haven't heard other city employees mention they'd been offered anything by Ted Peterson or any other builder. I didn't say anything about the tickets to my boss or coworkers at the City because I didn't perceive that it was intended to be a bribe. ...

At the conclusion of the interview, Moore instructed Bray not to discuss the interview with anyone. Bray later acknowledged, however, that he called Snyder that evening, and told her that an investigation was being conducted which involved the offered fishing trip and her relationship with Pederson.

On June 22, 1992, Dunn interviewed Snyder, again with Lake and Moore present. At the conclusion of the interview, Dunn hand-wrote a statement which Snyder read and then signed, as follows:

> Elizabeth Browning Snyder being first duly sworn on oath, deposes and states: I am 29 years of age. My date of Birth is 2-15-63. I am single. I've been employed for the City of Federal Way since 2-26-90 as a Permit Specialist. My co-worker is Joanne Johnson. My supervisor is Bruce Lorentzen [sic]. We work in the building Department section of Community Development.

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[14] Examiner's note: Other evidence in the record indicates that Bray applied in March of 1992 for leave during the June 22 - 26, 1992 period.

> There are 3 building inspectors Gary Norris, Matt Bodhaine, and Norm Bray. ... My duties involve: receiving building and fire permit applications, processing the permits and issuing the permits. Most of our permits are for residential construction. A builder named Ted Pederson owns Fineline Design. He's been doing business with the city since the Parklane Development. In his dealings with our office a friendship developed between Ted Pederson and I. We dated between January 1992 and April 1992. ... During that time we never talked about our jobs. He never asked me for any special consideration in the permitting precess and I never offered or extended any favors to him. He never gave me any gifts. In about April 1992 Ted mentioned that he was scheduling a fishing trip with a bunch of guys for June 1992 to Ketchikan. He asked me if I wanted to go along. But I told him "no". Going on a fishing trip is not my idea of fun. I may have verbally asked about time off in June but that was for time to go see my Dad in Western Washington. I may have asked Bruce in May about the time off but I didn't submit a leave request. I don't have any vacation scheduled for 1992. Ted didn't tell me who he planned on taking to Ketchikan on the trip other than "friends". Ted didn't mention that he'd asked any building department employees to go on the trip. ... In my dealings with him he's always been truthful. He offered the trip out of friendship. If I thought he had any other agenda with me or if I'd heard he'd offered the trip to a building inspector, I would have reported it to my supervisor.

At the interview, Lake admonished Snyder not to discuss the interview with other employees, or other persons involved in the investigation. Snyder agreed not to discuss the interview. The record indicates, however, that Snyder told her co-worker, Joanne Johnson, about the investigation immediately after her interview, and that she later called Pederson and told him about it.

On June 24, 1992, Nyberg, sent McFall his recommendations concerning Bray, as follows:

> Norman Bray
> Norman Bray admitted in a signed affidavit to taking airplane tickets from a contractor whose job that he [sic] was inspecting on behalf of the City. Although Mr. Bray later returned the tickets, he did not report

> the incident to his superiors which results in a second infraction. The third infraction was consorting with the same contractor on another outing and failing to report his contact to his superiors. Mr. Bray exercised poor judgment in these matters and his supervisory chain, including myself, has lost confidence in his ability to perform his duties as lead building inspector for the City of Federal Way. I recommend he be terminated from employment.

On June 24, 1992, Nyberg prepared a memo to McFall, containing the following recommendation regarding Snyder:

> Elizabeth Snyder
> Elizabeth Snyder has admitted in a signed deposition that she too was offered an all expense paid fishing trip, which although she claims to have turned down at the time it was offered, she too failed to report the incident to her supervisory chain.
>
> It is recommended that Ms. Snyder be given a strong letter of reprimand and warned that any such failure in the future will result in termination. In addition to the letter of reprimand, it is recommended that she be given a five day suspension from her duties without pay.
>
> Copies of the deposition, including some which contained conflicting statements, are being reviewed for possible criminal action. The disciplinary measures recommended for these two employees does not preclude criminal charges being filed later if such is warranted. ...

The memo concerning Snyder was not sent, however, because Nyberg learned that Snyder had talked to Pederson about the investigation.

On June 29, 1992, Dunn interviewed Ted Pederson. At the conclusion of the interview Pederson signed the following affidavit:

> ... I am owner and sole proprietor of Fineline Design which is a building construction company. My company has built 18 homes in Federal Way ... My houses in Federal Way have gotten minor correction notices written up by all 3 inspectors. I've also been inspected by V.A. inspectors before 210 loans close and no corrections were noted that were overlooked by the Federal Way

> inspectors.[15] ... One of the building inspectors - Norm Bray - is also a fisherman and we've talked about fishing. On one occasion last July, August or September 1991 Norm met me and Kim (Buddha) near Aggie's Motel in Port Angeles and went fishing with us. Kim is a painter. I'd told Norm we were up there every weekend cause [sic] I knew he fished with his uncle. I didn't know Norm was coming up then. I can't recall if it was a weekend, weekday or holiday. Norm had a thermos with him. I don't remember if he had a lunch with him. I do remember he got skunked. Norm didn't give me any money for gas or other expenses. I wouldn't have expected him to give me any expense money. ... Norm never offered to do anything for me as a result of this trip in Port Angeles. I've never asked him for any favors. Last year I took my crew up to Alaska to go fishing. We went in June 1991. I don't think I talked about that trip with Norm. In about March of this year I started planning another fishing trip to Alaska through Huntington travel. I was dating Elizabeth Snyder at that time and she was going to go on the trip with us. We had a disagreement and she decided not to go. As a special surprise I arranged for a ticket on the fishing trip for Norm Bray. One day right around March I gave Norm a ticket in our job trailer near the site. The ticket cost $150. Norm said he'd get in trouble with work and that it was a conflict of interest. I don't recall him keeping the ticket for any length of time. The trip was scheduled for June 20 through 26th. We stayed at the Best Western in Ketchikan. Norm was to be responsible for his own lodging food and expenses in Alaska. He was very happy to get the ticket but didn't accept it. Al Fox who works for Boeing went in Norm's place using his name because the ticket was non-refundable. ... Norm has never stopped by after hours to B.S. about fishing or anything else. Norm has never asked for any favors like help at his house or material from one of my job sites. The first I heard about an investigation was Saturday night. Elizabeth Snyder told me she'd been spoken to about favors offered by Fineline Design. I pulled my correction notices earlier today to show that we get correction notices from all the building inspectors and not just from one of them. Elizabeth Snyder and I are still romantically involved.

On June 30, 1992, five City of Federal Way officials sent a memo to McFall, reviewing the "conflict of interest" situation from their

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[15] Examiner's note: The "210 Warranty Program" is part of the program of the federal Veterans Administration.

perspectives.[16] They recommended that both Bray and Snyder be discharged. The memo included the following concerning Bray:

> It is our recommendation that Norm Bray be immediately discharged as an employee of the City of Federal Way for the reasons discussed below.
>
> Based upon information that a Building Department employee had improperly received gifts from a contractor doing business with the City, an investigation was make [sic]. The results of that investigation revealed that Norm Bray exhibited behavior that had the potential to compromise his position as a Building Inspector for the City of Federal Way.
>
> The investigation revealed that Norm Bray accepted a gift form [sic] a contractor during a time period when Norm Bray's duties included performing inspections for construction projects of that contractor within the City of Federal Way. The contractor's gift included airline tickets to Ketchikan, Alaska, for a week's fishing trip. Norm Bray admitted by affidavit that he accepted and kept the tickets overnight.
>
> City employees are expected to exercise good judgment, loyalty and common sense in the performance of their duties. (See: Policy and Procedures Manual, Policy 9.1, Code of Conduct). Norm Bray's action in accepting the gift, even temporarily, violates the City's expectation that this employee exercise good judgment and common sense.
>
> Although Norm Bray later returned the tickets, he failed to report this incident to his superiors. This failure to report constitutes another basis in support of our recommendation for discharge. The investigation also disclosed that Norm Bray participated in a fishing trip at Port Angeles with this contractor during the period of time that Norm Bray's official duties included performing inspections on this contractor's construction projects.
>
> Discipline is warranted by an employee's violation of duties and rules imposed by any City rule, regulation, administrative order, or applicable State law. City of Federal Way Resolution No. 91-54 was adopted with the stated purpose of promoting confidence from the public in its government. Section 1 of Resolution 91-54 states that "Each official and employee is assumed and expected

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[16] The memo was co-signed by Nyberg, Lake, Lorentzen, Moore, and Acting Personnel Director Stephen Anderson.

> to act in accordance with all laws and codes of ethics that may apply to his or her position, as well as **striving to avoid even an appearance of impropriety in the conduct of his or her office or business."**
>
> In addition, specifically, Section 4 of Resolution No. 91-54 states that an employee "shall not knowingly engage in activities which are in conflict or **which have the potential to create a conflict with performance of official duties."**[17]
>
> Norm Bray's actions in accepting the gift of airline tickets and in accepting the favors of the contractor during the Port Angeles fishing trip at the time that Norm Bray was performing building inspections on this contractor's projects constitute a serious violation of the expected code of conduct for City employees and of the City of Federal Way Ethics Resolution. The action denotes a behavior unacceptable for City of Federal Way employees and shows a lack of proper judgment, and lack of loyalty and common sense. This series of actions by this employee warrants discharge.

[Emphasis by **bold** in original.]

The memo stated the following concerning Snyder:

> ... Based upon information that a Building Department employee had improperly received gifts from a contractor doing business with the City, an investigation was made. The results of that investigation revealed that Elizabeth Snyder continued to process building permits for a

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[17] Examiner's note: City of Federal Way resolution 91-54 includes:

> Section 2 - Definitions
> ...
> D. Gift - A rendering of money, property, services, discount, loan forgiveness, payment of indebtedness, reimbursements from or payments by persons, other than the City of Federal Way for travel or lodging or anything else of value in return for which legal consideration of equal or greater value is not given and received, **excluding**:
> ...
> 5. Things of value not used and that, within thirty days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes; ...
>
> [Emphasis by **bold** supplied.

builder with whom she had an ongoing personal relationship.

A review of building permit applications reveal that, since City incorporation, the builder in question has applied for and received sixteen building permits from the City of Federal Way. There are two permit specialists available to process these permits, Joanne Johnson and Elizabeth Snyder. Of the sixteen permits processed, five were processed by Joanne Johnson. The dates of the applications occurred June of 1991 through July of 1991.

All remaining eleven permits were processed by Elizabeth Snyder during the period of October, 1991, through June, 1992. No permits during this time were processed by Joanne Johnson. The processing of these permits coincided with the time frame of the personal relationship between Elizabeth Snyder and the builder.

City employees are expected to exercise good judgment, loyalty and common sense in the performance of their duties. (See: Policy and Performance Manual, Policy 9.1, Code of Conduct.) Elizabeth Snyder's action in failing to disclose the personal relationship and in continuing to process these permits violates the City's expectation that this employee exercise good judgment and common sense.

In addition, discipline is warranted by an employee's violation of duties and rules imposed by any City rule, regulation, administrative order, or applicable State law. City of Federal Way Resolution No. 91-54 was adopted with the stated purpose of promoting confidence from the public in its government. Section 1 of Resolution No. 91-54 states that "Each official and employee is assumed and expected to act in accordance with all laws and codes of ethics that may apply to his or her position, as well as **striving to avoid even an appearance of impropriety in the conduct of his or her office or business."**

In addition, specifically, Section 4 of Resolution No. 91-54 states that an employee "shall not knowingly engage in activities which are in conflict or **which have the potential to create a conflict with performance of official duties."**

Elizabeth Snyder's actions in processing these permits for a builder with whom there was an ongoing personal relationship is serious violation of the expected code of conduct for City employees and of the City of Federal Way Ethics Resolution.

In addition, during the process of the investigation of the Building Department, Elizabeth Snyder failed to

> maintain the confidentiality of the ongoing investigation.
>
> On June 22, 1992, at approximately 10:30 a.m., Elizabeth Snyder was interviewed with respect to her knowledge of any impropriety within the Building Department. At the conclusion of that interview, Elizabeth Snyder was specifically advised not to disclose any facts surrounding the investigation or to disclose even that the interview or investigation was taking place. During the process of the interview, she was advised that one potential subject of investigation was Ted Pederson of Fineline Design.
>
> On June 29, 1992, Ted Pederson was interviewed as part of the investigation. During that interview, he disclosed that he was informed of the investigation on June 27, 1992, by Elizabeth Snyder. Elizabeth Snyder advised him that she had been spoken to about favors offered by Fineline Design. Mr. Pederson has documented this disclosure by affidavit.
>
> Elizabeth Snyder's current action of failure to maintain confidentiality of an ongoing investigation to Mr. Pederson, a person whom she knew to be the subject of the investigation, as well as her disclosure of the investigation to other employees within the Building Department, denotes a behavior unacceptable for City of Federal Way employees. Her behavior shows a lack of proper judgment, lack of loyalty and common sense, and had the very real possibility of disrupting a sensitive investigation involving serious allegations. This action warrants discharge.

[Emphasis by **bold** in original]

Copies of those memos were sent to Bray and Snyder, respectively.

The Re-run Election

Just prior to July 1, 1992, McFall sent handwritten memos addressed to each employee individually and signed "Brent", as follows:

> The Management Team and I want to thank you for your patience and support throughout this campaign period. You are important to us and to the City's development. How you vote will greatly impact the City's and your future.
>
> Make sure your voice is heard. Please vote on July 1!

The tally of ballots for the election held on July 1, 1992, indicated the following results:

19 ballots cast for the WSCCCE
14 ballots cast for the FWEA
18 ballots cast for "No Representation"
2 challenged ballots

This election was also inconclusive under RCW 41.56.070 and WAC 391-25-531. Under WAC 391-25-570, a run-off election was needed, with the ballot limited to the WSCCCE and "No Representation" choices which had received the highest numbers of votes in the inconclusive election.

The Discharges of Bray and Snyder

After the conclusion of the balloting on July 1, 1992, McFall sent identical letters to Bray and Snyder, terminating their employment:

> Please be advised that it is my decision to terminate your employment with the City of Federal Way effective immediately.
>
> This decision is based upon the findings and memorandum presented to me dated June 30, 1992, by Kenneth E. Nyberg, Assistant City Manager; Stephen L. Anderson, Assistant City Manager; Carolyn Lake, Acting City Attorney; Bruce Lorentzen, Building Official; and Greg Moore, Development Services Manager, and is further based upon consideration of your oral comments submitted in response to that memorandum. ...

On July 2, 1992, McFall sent this memo to all city employees:

> Two employees of the City's Community Development Department are no longer employed by the city. Recently the City became aware of serious allegations involving the City's Building Department.
>
> Based upon the significance of the allegations, the City hired an outside professional investigator to make a determination of the facts. That investigation revealed violations of City standards.

> Based upon the facts revealed, the City is convinced that the action taken was appropriate and necessary. The City's decision is consistent with the Policy and Procedures Manual.
>
> The information will be reviewed by the King County Prosecutor's Office to determine whether further action will be taken.

Dunn submitted the results of his investigation to the employer one week after the discharges, on July 8, 1992. In addition to the interviews conducted with Snyder, Bray and Pederson, Dunn had interviewed Joanne Johnson, the building permit clerk who worked with Snyder. Dunn had also inspected leave requests for Snyder and Bray, and had examined building permit applications submitted by Fineline Design. Dunn summarized his investigation as follows:

> During the course of the investigation, it is obvious that Ted Pederson offered gifts to two City of Federal Way Building Department employees, Norm Bray and Elizabeth Snyder. Norm Bray accepted the airline tickets and, by his own admission, returned them the next day, after thinking better of it. Elizabeth Snyder, when the idea was proposed to her initially, made some inquiries with Joanne Johnson about scheduling the trip but then later decided not to go.
>
> What is missing is evidence of a solicitation by Ted Pederson for any special consideration or favors from the two City of Federal Way employees that he offered the gifts to. There appears to be nothing in the permit-inspection process or the correction-notice process which seemed to indicate Pederson got any special consideration from Bray. Without doing a thorough analysis of every building permit submitted to the department on the same days Pederson's permits were submitted, and without independently analyzing the degree or thoroughness in the permit application, could we determine if any special consideration was made for Pederson. Namely, if his permit was processed quicker or if appropriate scrutiny was not taken with his which at the same time subjecting others to normal review.
>
> CONCLUSION
> In my opinion, both Norm Bray and Elizabeth Snyder used very poor judgment in dealing with the responsibilities of their employment with the City of Federal Way.

Dunn reported that Snyder had processed 11 of 16 building permits submitted by Fineline Design, and that the 5 permits processed by Johnson had been among the first group of homes built by Pederson. Dunn reported that Bray had inspected 10 of the homes built by Fineline Design at some stage of their construction.[18]

On July 13, 1992, Matt Bodhaine, a City of Federal Way building inspector who had worked with Snyder and Bray, wrote the following letter to "fellow employees".

> What circumstances gave the City of Federal Way the right to destroy two people's ability to earn their livelihood in their respective fields after 2-1/2 years of faithful service? The appearance that they might possibly have done something to cast a negative reflection on the City.
>
> Feeling that there must be more to the firing of Norm and Liz than meets the eye, I did my own investigation on my own private time (if there is such a thing). I have talked with Norm, Liz, the contractor involved, as well as gained un-solicited information from a state inspector and other contractors that have worked for years with, and / or are currently in competition with the contractor involved.
>
> This is what I came up with:
>
> 1. Complaints came from anonymous sources, and the fired employees and contractor were not allowed the right to face or know their accusers.
>
> 2. Regarding Liz:
>
> a. Liz was dating the contractor and turned down airline tickets to go fishing in Alaska.
>
> b. Ex-significant other had threatened her with the loss of her job and never being able to work as permit tech in this state again (ex beau works with contractor's ex-wife).
>
> c. No verbal or written warnings about having a private relationship with the contractor, even though it was common knowledge in the building section and the City departments.

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[18] Each home is inspected at eight different stages during construction. The same inspector would not necessarily inspect all eight stages for a single building. The employer had three building inspectors on its staff.

3. Regarding Norm:

a. Norm went fishing one Saturday about nine months ago and ran into the contractor while in Port Angeles and then went fishing on the contractor's boat at no expense to the contractor. Norm also turned down tickets to go fishing in Alaska

b. No written or verbal warnings were given for his action.

c. Why did Norm's personal log books disappear from his desk after his termination? And who has them?

4. People who worked with Norm or have worked with Norm in the past, and other contractors have said that this contractor would not even attempt to bribe a city employee, but that he has been taking people on an annual fishing trip to Alaska for years if he thought they would enjoy it. He has done this without expecting anything in return.

5. None of the involved people have been contacted by the prosecutor's office, nor have any charges been filed against them.

6. The involved contractor has not been given preferential treatment of any kind or any slack on the inspections performed on his sites, nor has any been asked for by the contractor or Norm in his position as Senior Building Inspector.

The recent firing of Norm and Liz has made me come to some uncomfortable realizations about the conditions and terms of my employment with Federal Way.

1. I can be fired without notice and without just cause.

2. No verbal or written warnings for alleged or actual indiscretions are required (or are they?).

3. The private investigator might be following me around anytime day or night.

4. My personal life is not personal.

5. No appeals process or representation is available without retaining outside legal counsel.

One of the first things asked of the Washington State Council of County and City Employees (AFSCME) was free legal representation should anyone supporting the union be fired by the City. This promise has been fulfilled, not only has the Union's attorneys filed suit to get Norm and Liz back their jobs, it is also representing them at the hearing they have to go through to get unemployment benefits since they were both fired.

In the upcoming election we have two choices:

> 1. No representation which allows City management to do as they please with no regards to the effects its decisions have on the employees, OR
>
> 2. Union representation where each and every employee will have a voice and can be involved in the process of ensuring that the work environment at the City is safeguarded against arbitrary decisions and political whims.
>
> I urge each and everyone of you to take measure to keep your personal and private life private. VOTE UNION on Thursday, July 16th.
>
> P.S. Reminder - If your name appears on the eligibility list and / or you were hired full-time prior to June 10th - you are eligible to vote!

[Emphasis by underlining in original.]

On July 8, 1992, Bray and Snyder each filed a grievance disputing their discharge. Each of them cited RCW 41.56.140, and charged that the discharge constituted "threats, intimidation and interference" with the rights to organize and collectively bargain.

On July 13, 1992, Lake sent a memo to all city employees, citing Chapter 42.23 RCW as establishing a code of ethics for municipal employees, and also noted that the employer had adopted a code of ethics in Resolution 91-54. Lake particularly directed attention to conflict of interest situations.

As the date for the run-off election approached, McFall sent a memo to all employees on July 14, 1992:

> Like you, the City is looking forward to the election to be held Thursday, July 16, 1992.
>
> You are all urged to consider the long-term effect of your decision, and to use your best judgment as you cast your ballot.
>
> Each of you was hired because you possess skills and judgment a cut above average. During the campaign, the management team and I have been confident that each of you would resist all attempts to make decisions based on only part of the story, or based on emotional arguments, rather than the facts.

The City hasn't offered you "free lunches", "free attorneys", and hasn't visited you at your homes. The City also hasn't used words like "spies", "manipulate", "intimidate" or "climate of fear" in quotes to the newspapers.

Throughout the campaign, the City has respected each employee's ability to exercise his or her own independent judgment on issues relating to third party union representation.

In contrast, the union has filled your mail-boxes with position papers. Attempts have been made to turn recent unrelated and unfortunate events into campaign issues -- where there is no real basis for doing so.

It is at this point where I feel I have no choice but to respond on behalf of the City.

Like you, in your own lives, there are times when the City is called upon to make difficult decisions. The union has attempted to exploit and find fault with the City's actions.

It is important for each of you to know that the recent employee decisions were not made lightly, easily or with pleasure by any party. The City believes, however, that given the facts known to it, the decision was based on just cause. The same would be true with or without a union contract.

And, using the City's existing Policies and Procedures Handbook as a guide, the affected employees have been provided with an internal grievance process to review that decision.

At all times, the City has respected the confidentiality of employee personnel issues. The union, instead, speaks out in the newspaper.

The union now claims that both affected employees were active union organizers, and that the City's recent action is part of a campaign of City "threats, intimidation, and interference" with employees' rights to organize and collectively bargain. Based on your own knowledge, each of you can evaluate this claim.

As you review even those facts that are known to you -- does it make any sense that the City's decision was based on claimed union activities, as the union tells you? Or is this unfortunate event, and the affected employees, being used to create headlines, where respect of privacy would be more appropriate?

It is no coincidence that the union has copied the City's theme of "SPIRIT" in its mailings to you. To the City, "SPIRIT" stands for the real values of **service,**

> **pride, integrity, responsibility, innovation, and teamwork**. To the City, these are not empty words.
>
> The union's attempt to copy the City's theme of "SPIRIT" is the union's admission that to all City employees, this theme has true meaning, and is working, even despite temporary setbacks at times. To the City, integrity means keeping silent when the City is questioned about confidential personnel matters, even when we are unjustly accused of wrongdoing. To the City, teamwork means employees of all types and categories enjoying open dialogue, and not being segregated into "us versus them".
>
> Your vote on Thursday is your choice of the voice, the style, and the attitude that will represent you in the years to come. Please consider carefully which "SPIRIT" reflects **your** values when you cast your ballot. Thank you.

[Emphasis by **bold** in original]

Another memo sent by McFall to the city's employees was dated July 16, 1992, but apparently was actually delivered on July 15:

> Once more the City has no choice but to respond to an mailing recently received by employees. I am referring to an **unsigned** letter from Matt Bodhaine, which was **postmarked "Everett,"** and was sent to you on a **computerized** mailing list.
>
> It is unfortunate that this individual employee has chosen to undertake his "own investigation" of a confidential personnel matter.
>
> It is also unfortunate that the information contained in Matt Bodhaine's letter is incomplete and inaccurate.
>
> For example, the City has not and will not spy on employees. No employee has ever been followed. To suggest otherwise is offensive.
>
> Some of you may have received copies of **selected** affidavits. They also don't tell the whole story.
>
> Once again, you have been provided with information that is incomplete, inaccurate and inflammatory. While I would like to give you all the facts, my respect for the privacy of those involved prevents me from doing so.
>
> It is with true regret that I read the claims made in Matt Bodhaine's letter. However, I am confident that each of you can independently evaluate the weight to be given to the letter.

> Your vote tomorrow has long-range impacts. I trust you will not allow one recent unrelated and unfortunate event and the union's fanning of the flame to be your sole basis for that vote.
>
> Please continue to work with me to make this City organization one that reflects your values - not those of outside third parties.

[Emphasis by **bold** in original]

Bray and Snyder cast challenged ballots at the election held on July 16, 1992. The results of that election were:

24 ballots cast for the WSCCCE
26 ballots cast for "No Representation"
5 challenged ballots

The challenged ballots were sufficient in number to affect the outcome of the election, so that the election was inconclusive.[19]

Shortly after the tally of the ballots, McFall sent the following memo to all city employees:

> On behalf of the Management Team and myself, I want to personally thank each one of you for voting, and for expressing confidence in us.
>
> Although there remain challenged ballots, we are confident that their ultimate disposition will not affect the outcome of the vote. The City will participate in a PERC hearing in the near future to present the facts regarding the status of those votes. We will advise of the outcome of that hearing, but we consider your election results today to be final.
>
> While we are extremely pleased with the result of the vote, we also realize that our efforts to listen and respond to employee concerns must continue and improve. I am excited to be able to include that goal into the process of developing this new city.

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[19] Three challenged ballots were cast by individuals in positions covered by the supplemental agreement signed by the parties on June 10, 1993. The employer had asserted that those three employees were supervisors.

> But we also know that this effort is a two-way partnership. I urge each of you to take an active part in our City's employee committees, and to work closely with the Management Team and me to continue to make this City, and this organization, one of which we can all be proud.
>
> Once again, from all of us, a greatful [sic] "Thank You!" for your support!
>
> Election results:
>
> 55 persons voting
> 3 challenged votes (supervisor issue)
> 2 challenged votes (former employees)
>
> 50 counted votes
>
> 26 Independent votes
> 24 Union votes

On July 23, 1992, the WSCCCE filed objections under WAC 391-35-590, listing 10 specific objections to the employer's conduct during the period leading up to the election, as follows:

> On July 16, 1992, there was a representation election in the City of Federal Way. That election was the third such election in the City in the last two months. On May 6, 1992, there was an election which was ordered void by The Public Employment Relations Commission. Washington State Council of County and City Employees, Council 2, AFSCME filed objections to the election. A new election was ordered and held July 1. A run off election between Council 2 and no representation was held on July 16, 1992. Council 2 is objecting based on the following facts:
>
> FACT #1 -- Conduct of the City of Federal Way has been intimidating and created fear among the employee. They have made misleading statements, coercive statements and false statements throughout this process. They have manipulated hiring dates to affect the elections. The first election on May 6, 1992, was ordered void and a new election held on July 1.
>
> FACT #2 -- The day before the election on July 1, the City of Federal Way again, delivered handwritten notes to each employee. These notes were essentially the same as those delivered before the prior election. They were clearly to intimidate and willfully and flagrantly in violation of the rules and regulations surrounding elections.
>
> FACT #3 -- The day of the July 1 election two employees were terminated for their union organizing efforts. These employees were terminated for an appearance of a

conflict of interest and the potential of a conflict of interest. Their union organizing efforts were well known. The City has made clear their anti-union position. These employees were exemplary employees and were not accused of any action that is a violation of the code of ethics or wrong doing regarding the execution of their progressive discipline for appearances and potentials. Council 2 has filed Unfair Labor Practice Complaints in these two cases.

FACT #4 -- It has been made clear that there was a private investigator utilized in the decision to terminate these employees. This investigator in fact investigated their private as well as work lives. To further intimidate, it has been make clear to all employees that the City maintains these employees could be turned over to the prosecutors office. These terminations and the fact that a private investigator was hired have created an atmosphere of fear and intimidation for all employees.

FACT #5-- On July 2, and on July 7, the City had ethics meetings with the employees. They handed out the code of ethics and discussed the terminated employees. It was stated that the employees and the grounds for their terminations were handed over to the King County Prosecutors Office. When asked about the City Council person who pulled a gun on a King County Police Officer, there was no direct answer except to say that he would get a day in court and then it would be decided what to do about his holding office.

FACT #6 -- On July 13, 1992, a letter was sent to employees from fellow employee Matt Bodhaine. It stated the facts of these terminations. It included the fact that as far as Council 2 is able to determine the City has made false statements about turning the matter over to the prosecutors [sic] office.

FACT #7 -- On July 13, the City Attorney sent a memo regarding conflicts of interest to employees. The memo discusses a code of ethics for municipal officers and suggests that the City Code holds their employees to the same standards.

FACT #8 -- July 14, the City sent a SPIRIT Memo to the employees reminding them to vote. SPIRIT meetings have all along expressed the anti-union position of the City. On the same day, the City sent a SPIRIT Memo reminding employees of the consequences of their vote. That Memo states: "You are urged to consider the long-term effect of your decision, and to use your best judgment as you cast your ballot. Each of you was hired because you possess skills and judgment a cut above average. During the campaign, the management team and I have been confident that each of you would resist all attempts to

> make decisions based only on part of the story, or based on emotional arguments, rather than the facts." In light of the recent terminations, private investigations and the blatant anti-union position of the city, the "long-term effect" of the employees vote is clear. Mr Bodhaine feared for his job after this response by the City to his letter of July 13, 1992. To add to the fear, his fellow workers in the building department were the two individuals that had been terminated and are the subject of the ULP.
>
> FACT #9 -- The election results were sent to the employees by the City. The individuals that are the subject of challenged votes are in fear of losing their jobs. One of them checked the election all day to see how it would come out and if their vote would be counted. The fear is that the City will know how they voted. This kind of fear has affected the election results.

[Emphasis by underline in original.][20]

The three cases were then consolidated for hearing.

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[20] Examiner's notes:

1. The last statement in Fact #5 has no relevance here. The police officer is not employed by this employer.

2. Regarding Fact #6, in letter dated October 5, 1992, Senior Deputy Prosecuting Attorney Lynn S. Prunhuber advised Lake:

> I have reviewed the factual evidence gathered by investigator Roger Dunn, considered what other types of evidence might be available, and reviewed the various statutes which might possibly apply. My conclusion is that even under the strongest version of the facts presented by investigation, those facts do not prove that either the two employees or the outside contractor committed a crime. Whether they violated any ethical duties, as defined in the City of Federal Way ethics resolution, is of course a different question.
>
> ...
>
> All three people involved initially tried to minimize their involvement by statements which are provably false.
>
> In determining whether any of this is a crime, the critical evidence or lack of evidence is that it appears that there was no special treatment or "quid pro quo" requested, agreed to, or given in exchange for the (attempted) gifts.

POSITIONS OF THE PARTIES

The WSCCCE characterizes this case as: employer "union busting", an activity prohibited by Chapter 41.56 RCW. It argues that the employer-sponsored SPIRIT meetings, the mailings and memos issued by the employer during the pre-election periods, and the discharges of Bray and Snyder, were all part of a campaign conveying an "us versus them" posture. The WSCCCE also alleges that the employer collaborated with a competing organization, the FWEA; that the employer attempted to manipulate hiring dates to exclude employees from voting; that the employer used false and intimidating statements in various campaign mailings; and that the employer violated the "24 hour rule" in each of the three elections conducted by the Commission. More specifically, the WSCCCE charges that the employer made misleading, coercive and false statements to affect the outcome of the July 1 and July 16 elections, that the hand-written notes delivered to employees prior to the July elections were intimidating, in willful and flagrant violation of election rules and regulations, and that the July 14 SPIRIT memo contained an intimidating reference to the discharges of Bray and Snyder. Finally, the WSCCCE claims that the employer discharged two "exemplary" employees, without warning or progressive discipline, because they were involved in the organizing campaign.

The employer argues that there was no evidence that it engaged in any objectionable conduct prior to the July 16 election.[21] The

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[21] The employer contends that only the union's objections relating to the July 16 election are properly at issue here. It erroneously cites WAC 391-25-570 as pertinent to its argument to exclude the WSCCCE's May 6 objections. WAC 391-25-570 relates to objections by a party which is to be **excluded** from a run-off ballot, and that clearly does not apply to the WSCCCE in this case. The correct administrative code citation for election objections to be filed by a party **remaining** on the ballot in an inconclusive election is WAC 391-25-590. At the hearing, the Examiner ruled that the May 6 and the July 16 election objections were properly before the Examiner.

employer then defends against each of the charges, arguing that each decision and action taken by the employer during the election campaign and in the discharges of Bray and Snyder was lawful and based upon appropriate business considerations. It argues that Bray was discharged because of his improper dealings with a contractor whose construction projects Bray frequently inspected; it argues that Snyder was discharged because of her willful violation of a direct order not to discuss the employer's investigation of alleged bribes of building department employees.

DISCUSSION

The Right of Employees to Organize

As a municipality of the State of Washington, the City of Federal Way and its employees are subject to the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, which includes:

> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the **free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.**
>
> ...
>
> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:
>
> (1) **To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;**
>
> (2) To control, dominate or interfere with a bargaining representative;
>
> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
>
> (4) To refuse to engage in collective bargaining.

[Emphasis by **bold** supplied.]

The Commission conducts representation proceedings under RCW 41.56.060 through 41.56.090. The representation and unfair labor practice provisions of Chapter 41.56 RCW are generally similar to provisions of the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947 and subsequently.

Like the rules adopted by the National Labor Relations Board (NLRB) for its administration of the federal law, the Commission has adopted rules which provide for determination of "objections" to conduct improperly affecting the outcome of a representation election. WAC 391-25-590 provides:

> WAC 391-25-590 FILING AND SERVICE OF OBJECTIONS. Within seven days after the tally has been served under WAC 391-25-410 or under WAC 391-25-550, any party may file objections with the commission. Objections may consist of:
>
> (1) **Designation of specific conduct improperly affecting the results of the election, by violation of these rules, by the use of deceptive campaign practices improperly involving the commission and its processes, by the use of forged documents, or by coercion or intimidation of or threat of reprisal or promise of reward to eligible voters, ...**

[Emphasis by **bold** supplied.]

Any unfair labor practice committed during the processing of a representation case is inherently "objectionable" under WAC 391-25-590(1). The Examiner thus directs attention first to the alleged "interference" and "discrimination" against Bray and Snyder.

Standards for Determination of Dispute

To establish "interference" with protected rights, the charging party need only establish that a party engaged in conduct which employees reasonably perceived as threats of reprisal or force or promise of benefit associated with their union activity. The actual intent is not a factor or defense. City of Seattle, Decision 3066 (PECB, 1989), affirmed, Decision 3066-A (PECB, 1989).

The complainants allege that the reasons advanced by the employer for the discharges of Bray and Snyder were pretextual, and that their participation in protected activities formed the actual basis for a discriminatory decision to terminate their employment. The employer responds by asserting that it had legitimate reasons for the discharges.

In deciding such disputes in the recent past, the Commission and the National Labor Relations Board (NLRB) have consistently applied a two-stage analysis in which the burden of proof was initially on the employee to establish a prima facie case, after which the burden of proof shifted to the employer to establish valid reasons for its action. See, City of Olympia, Decision 1208-A (PECB, 1982), citing Wright Line, 251 NLRB 1083 (1980). In turn, the NLRB placed heavily reliance in Wright Line on Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977). In 1991, however, the Supreme Court of the State of Washington issued a pair of decisions which reject reliance upon Mt. Healthy, and dramatically changed the analysis in discrimination cases.

In Wilmot v. Kaiser Aluminum, 118 Wn.2d 46 (1991) and Allison v. Seattle Housing Authority 118 Wn.2d 79, (1991), our Supreme Court adopted a "substantial factor" test for the determination of causation under two discrimination statutes which parallel RCW 41.56.140. The complainant must now prove, by a preponderance of the evidence, that the discharge was done in substantial part in retaliation for the employee's exercise of statutory rights. In Wilmot, a discharge was alleged to be in retaliation for pursuing worker's compensation benefits. The Supreme Court stated:

> In Baldwin v. Sisters of Providence in Wash., Inc., 112 Wn.2d 127, 134 ... (1989), the court stated that in statutory discrimination cases, once the employee established the prima facie case, the burden of production shifted to the employer to show a legal excuse for the termination, but the burden of persuasion remains at all times with the employee. Baldwin, at page 134. The

> court said that the same rule applies in the context of breach of employment contract cases where termination is allegedly in violation of the contract ("common law termination claims"): ...
>
> The first step, therefore, is for plaintiff to make out a prima facie case for retaliatory discharge. To do this, plaintiff must show (1) that he or she exercised the statutory right to pursue workers' compensation benefits under RCW Title 51 or communicated to the employer an intent to do so or exercise any other right under RCW Title 51; (2) that he or she was discharged; and (3) that there is a causal connection between the exercise or intent to exercise the statutory right. ...
>
> Therefore, in establishing the prima facie case, the employee need not attempt to prove the employer's sole motivation was retaliation for discrimination based upon the worker's exercise of benefits under the IIA. Instead, the employee must produce evidence that pursuit of a workers' compensation case claim <u>was a cause of the firing,</u> and may do so by circumstantial evidence as described above.
>
> If the plaintiff presents a prima facie case, the burden shifts to the employer.
>
> To satisfy the burden of production, the employer must articulate a legitimate nonpretextual nonretaliatory reason for the discharge. ... <u>The employer must produce relevant admissible evidence of another motivation, but need not do so by the preponderance of evidence necessary to sustain the burden of persuasion, because the employer does not have that burden</u>. <u>Baldwin</u>, at 136.
>
> ...
> Because the substantial factor test is the appropriate standard by which plaintiff must ultimately prove his or her claim by a preponderance of the evidence, the plaintiff may respond to the employer's articulated reason either by showing that the reason is pretextual, or by showing that although the employer's stated reason is legitimate, the worker's pursuit of or intent to pursue worker's compensation benefits was nevertheless a substantial factor motivating the employer to discharge the worker.

[Emphasis by <u>underlining</u> supplied]

The "burden of production" concept was explained by the court of appeals in <u>Carle v. McCord</u>, 65 Wn.App. 93 (Division 2, 1992), as follows:

> The burden of production is met when the plaintiff produces evidence sufficient to support a finding of each element of the cause of action.

In Allison, an employee filed a lawsuit claiming that her employer had retaliated against her for her earlier filing of an age discrimination claim. The jury had been instructed to find for Allison if her discharge was motivated "to any degree" by retaliation, but the Court of Appeals (Division 1) had reversed and remanded the case with instructions for the trial court to apply a "but for" standard of causation. The primary issue appealed to the Supreme Court was the standard of causation to be applied to a claim alleging retaliation for the exercise of a statutory right. The Supreme Court held:

> ... On balance, the language of RCW 49.60 supports a more liberal standard of causation than the "but for" standard adopted by the Court of Appeals. Washington's law against discrimination contains a sweeping policy statement strongly condemning many forms of discrimination. RCW 49.60.010. It also requires that "this chapter shall be construed liberally for the accomplishment of the purposes thereof". RCW 49.60.020. This language suggests that a rigorous "but for" causation requirement is too harsh a burden to place upon a plaintiff in a retaliation case. This is particularly true, because enforcement of this State's antidiscrimination laws depends in large measure on employees' willingness to come forth and file charges or testify in discrimination cases.
>
> ...
>
> Rejecting both the "to any degree" and the "but for" standard of causation, this court instead requires plaintiff to prove that retaliation was a substantial factor behind the decision.

[Emphasis by underlining supplied.][22]

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[22] Citing Allison, the court in Johnson v. Goodyear Tire and Rubber Co. 790 F.Supp. 1516 (E.D. Washington, 1992), held that a plaintiff in a sex discrimination case brought in federal court must prove by a preponderance of the evidence that her pregnancy leave was a "substantial factor" in the disputed employer decision.

Thus, our Supreme Court continues to require a higher standard of proof to establish employer "discrimination" than is required for an "interference" violation, but that standard is not as high as in the past decade. The charging party must only establish that union animus was a "substantial factor" in the employer's decision to take action adverse to the employee.

Under either the Wright Line test or the Wilmot/Allison test, a finding of employer "intent" inherently requires that the charging party prove certain ingredients necessary for the employer to form such an intent (i.e., employee involvement in protected activities, and employer knowledge of that protected activity).

Application of Standard - The Prima Facie Case

Union Activity and Visibility -
Despite arguments to the contrary, the union did not convincingly prove that Bray was particularly visible in its organizing effort. Bray was one of the employees present at an initial organizing meeting, and he did identify himself to other employees as being pro-union. However, although he may have been known to the union and to fellow employees as part of a core of union supporters, there was no evidence that Bray had acted in a representative capacity to management in this or other employee-related matters, or that he had been publicly identified as a union leader in an otherwise very public campaign. There was no persuasive evidence that the city management had identified him as a union leader. In particular, there was no evidence that City Manager McFall, or Assistant City Manager Nyberg, the individuals ultimately responsible for Bray's discharge, had identified him as a union activist.

Snyder was even less identified with the union organizing campaign than was Bray. She and Bray worked in the same office with Matt Bodhaine, who had clearly identified himself to management as a union supporter. Snyder was also known to co-workers as "pro-

union", but there was no evidence that she had identified herself to the management, or had been brought to management's attention, as a union leader or supporter. As with Bray, no evidence was presented that Snyder had ever acted in a representative capacity to management, or that she had been publicly identified as being a union supporter.

An easier case is made where the alleged discriminatee is clearly identified as a union leader, or has previously confronted the management on employer-employee issues.[23] In the instant case, it would be necessary to infer that the employer imputed union sympathies to Bray and Snyder from their association with a department that might have been seen as "a hotbed of union sympathies", or based on rumor in a relatively small workforce. This would be entirely speculation, however, as no evidence or argument was presented to support such a conclusion.

The Stated Reasons for Discharge -
Bray was discharged for accepting an airline ticket from a client building contractor. That was not an activity that is protected by the collective bargaining statute, nor was it in any way related to the union's organizing campaign.

Although Nyberg had earlier recommended that Snyder be given only a warning and suspension for her failure to report the possible conflict of interest created by her relationship with Pederson, Snyder was discharged for discussing the investigative interview

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[23] In City of Olympia, supra, the complainant had served as the union's observer at the representation election; in Valley General Hospital, Decision 1195-A (PECB, 1981), the employee had a history of filing grievances that challenged the employer on various issues; in Wellpinit School District, Decision 3625 (PECB, 1990), the discharged employees were union officers, members of the union negotiating team, and had appeared before the school board as representatives of individual employees and of the bargaining unit.

with other persons of interest in the investigation. There is no indication that Snyder and Bray were communicating details about the investigation in capacities of union representative and employee, so as to suggest that they were engaged in protected activity under Chapter 41.56 RCW. It is clear, for example, that Peterson was not involved in the union organizing in any way.

Again, an easier case is made where the employer's stated reasons for the action alleged to have been discriminatory are closely associated to the employee's exercise of protected activity.[24] Here, a showing of a prima facie case would have to come from some other basis.

The Timing of the Discharges -

The Examiner cannot ignore the context in which these discharges occurred. While an employer may have some "free speech" rights, its opposition to union activity specifically protected by the statute cannot rise to the level of interference with or discrimination against employees for engaging in protected activities. Here, the City of Federal Way vigorously opposed the WSCCCE organizing campaign among its employees. The employer offered resistance in its initial correspondence with the Commission, questioning both the sufficiency of the showing of interest and the size and description of the bargaining unit. Throughout the processing of the representation case and up to the tally of the latest election, the employer engaged in a vigorous campaign against the union. The Executive Director's order vacating the results of the initial election was based on the employer's mischief in connection with the hiring dates and eligibility cut-

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[24] In Valley General Hospital, supra, the record showed that the employer was upset with the employee's filing of grievances; in City of Pasco, Decision 3804 (PECB, 1991), the employer's discipline of an employee in connection with a grievance hearing was found lawful, because the employee's suggestion of physical violence to resolve the dispute exceeded the bounds of protected activity.

off date. Finally, it appears that the discharges of Bray and Snyder were announced just after the tally of ballots in the second election had disclosed that the union's organizing effort was still alive, and that a run-off election would be necessary.

Even though the evidence is not compelling concerning identification of Bray and Snyder as union sympathizers, and the stated reasons for their discharges are not transparent, the Examiner is persuaded that the timing and context of the employer's actions provide a sufficient basis to infer that the discharges of Bray and Snyder **could have been** designed to scare off the remaining union sympathizers, just as the organizing campaign approached its climax in the run-off election. The fact of the discharges were announced a week before the employer received a full report from its outside investigator also supports an inference that the discharges were strategically timed. The burden of production is thus shifted, according to the standards enunciated in Wilmot and Allison, to the employer.

Application of Precedent - The Employer's Defense

This is not a case in which the employees deny having engaged in the wrongdoing cited by the employer as the basis for their discharge. Both Bray and Snyder in fact admitted the conduct for which they were discharged.

Bray accepted the airline tickets from the contractor. There was uncontroverted evidence that Bray even submitted a request for a leave of absence for the period of the subject fishing trip, before he thought better of the situation and returned the tickets.[25] It

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[25] In a leap of speculation, the employer argued that Bray "must" have kept the tickets as long as a week. The Examiner need not decide precisely how long Bray held onto the tickets before returning them. Given that he initially planned to use the tickets, the length of time that he had them is not relevant.

is clear that Bray did not report the situation to the employer, and that he did not cease performing inspections on homes built by that contractor.

Snyder talked to Pederson and co-worker Joanne Johnson about the investigation, even after agreeing to refrain from discussing the matter with others. Although the employer was most upset with her communications with Pederson, her contact with Johnson also had the potential for harming the investigation.

A public employer has a legitimate interest in protecting its reputation with the public. Regulatory agencies are aptly criticized if they become a puppet of the industry they are supposed to regulate. Both Bray and Snyder were called upon to treat Fineline Design and its owner at arm's length. The fact that the employees had a parallel involvement in protected union activities does not excuse or defend them from their misconduct on the job. There is no basis for a "disparate treatment" argument based on a history of past personnel actions, in that the entire employer entity is of recent origin.

The union argued that there were no legitimate business reasons for Bray and Snyder to be discharged, and that the employer did not have "just cause" for either discharge. Thus, asserts the union, the terminations "must have been" pretextual:

In the case of Bray, the union argues that his employment was terminated for a "**potential** that was based on rumor" [emphasis by **bold** in union's brief], and that there was no proof that Bray had accepted the tickets in return for special treatment. The union also argues that Bray did not violate the employer's personnel policies, the employer's code of ethics, or state law.

In the case of Snyder, the union argues that the employer acted only on what it perceived as "a very real possibility", and that there was no real basis for her discharge in the absence of proof that the investigation had been compromised by Snyder's

conversations with her co-workers and Pederson. Snyder's defense largely rested, however, on her inability to remember past specific details. For example, she initially did not remember that she had discussed the investigative interview with Pederson or Johnson, although both were very clear that she had done so.

The "defenses" asserted by the union are beyond the scope of this inquiry. The Examiner does not stand in the shoes of an arbitrator, deciding a grievance under a contractual "just cause" standard. The Wilmot test does not require the employer to meet the equities implied in the "just cause" concept. Even if the "just cause" standard were applicable, however, acceptance of the union's arguments would be problematical:

The union's failure to explain or controvert Bray's leave request undermines Bray's claim that he merely put the tickets in his pocket because he didn't know how to get out of the situation. In fact, Bray initially gave every indication that he intended to go fishing in Alaska, by submitting a leave request for the work days covered by the airline tickets.

The union's claim that it was unrealistic to expect Snyder to refrain from discussing important job events with her "significant other" was undermined by Snyder's agreement that she would not discuss the investigation with others.[26] Snyder should not have agreed to the employer's request if she felt an obligation to talk to Pederson. She may even have had an obligation to so inform the employer at the time of the interview. Furthermore, there was no evidence that Snyder had any personal relationship with Johnson which would have "justified" her discussions with her. The

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[26] The union argued that the employer had no right to expect confidentiality from Snyder, because of her relationship with Pederson. The union's claims go to whether the employer's decision is correct or reasonable (i.e., a "just cause" inquiry), or may raise questions under laws against other forms of discrimination (e.g., on the basis of marital status?), but such issues are clearly beyond the scope of this inquiry. Relationships with "significant others" are not protected under Chapter 41.56 RCW.

evidence basically suggests that Snyder never had any intention of keeping the details of the interview to herself. She discussed them freely, and was discharged for doing so.

Neither does the employer's subsequent conduct constitute any admission against interest. McFall responded on July 23, 1992, to the grievances filed by Bray and Snyder. As a matter of form, his response was made in apparent accord with the employer's grievance procedure. As to the substance of the claims, McFall deferred the claim of "interference with the right to organize" to the unfair labor practice proceedings before the Commission, and he rejected the other allegations made by Bray and Snyder. McFall concluded his responses with this statement:

> All objections contained in your grievance have been reviewed and considered. All objections have been found to be without merit. Accordingly, my decision of July 1, 1992 that the violations of City standards support termination remains unchanged.

Under the grievance procedure promulgated by the employer, the decision of the city manager is final, and no further appeal of that decision is permitted within the employer's organization.

Conclusions on Alleged Discrimination

While the timing and context of the discharges of Bray and Snyder makes the discharges suspect, it is clear that each of those employees compromised their roles as public regulators of construction projects. Considering the evidence as a whole, the Examiner is unable to conclude that the union activity was a "substantial motivating factor" in the employer's decision to discharge Bray and Snyder. The complainants have not established that the reasons given by the employer were pretextual. The possibility that another employer or an arbitrator might have viewed the employee misconduct differently, or might have imposed a lesser penalty than

discharge, is not sufficient to find that an unfair labor practice was committed. Whatcom County, Decision 1886 (PECB, 1984), quoting Clothing Workers v. NLRB, 546 F.2d 434 at 440 (4th Cir, 1977); accord, Stephenson v. NLRB, 614 F.2d 1210 (9th Cir, 1980).

The Election Objections

To implement the right of public employees to select a representative of their own choosing, under RCW 41.56.040, the Commission has adopted several rules that require notice to eligible voters of a representation election, regulate "electioneering", and specify election procedures:

> WAC 391-25-430 NOTICE OF ELECTION. When an election is to be conducted, the agency shall furnish the employer with appropriate notices, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall contain:
>
> (1) The description of the bargaining unit or voting group(s) in which the election is to be conducted.
>
> (2) The date(s), hours and polling place(s) for the election.
>
> (3) The cut-off date, if any, or other criteria to be applied in establishing eligibility to vote in the election.
>
> (4) A statement of the purpose of the election and the question to be voted upon or a sample ballot.
>
> Notices of the election shall be posted for at least seven days prior to the opening of the polls. In computing such period, the day of posting shall be counted, but the day on which the polls are opened shall not be counted. The reproduction of any document purporting to suggest, either directly or indirectly, that the agency endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.
>
> ...
>
> WAC 391-25-470 ELECTIONEERING.
>
> (1) Employers and organizations are prohibited from making election speeches on the employer's time to massed assemblies of employees:
>
> (a) Within twenty-four hours before the scheduled time for the opening of the polls for an election conducted under "in person" voting procedures; or

> (b) Within the period beginning with the issuance of ballots to employees for an election conducted under "mail ballot" voting procedures and the tally of ballots.
>
> (2) There shall be no electioneering at or about the polling place during the hours of voting.
>
> Violations of this rule shall be grounds for setting aside an election upon objections properly filed.
>
> WAC 391-25-490 ELECTION PROCEDURES--BALLOTING. All elections shall be by secret ballot. Multiple questions, including unit determination elections, may be submitted to employees at the same time on separate ballots. Absentee balloting shall not be allowed. The agency may conduct elections by mail ballot when it appears that an election by "in person" procedures would result in undue delay, or would effectively deprive some eligible employees of their opportunity to vote. If mail balloting is used, the notice required by these rules shall be mailed to each eligible voter and no less than ten days shall be provided between the date on which ballot materials are mailed to eligible employees and the deadline for return of the ballots. Each party may be represented by observers of its own choosing, subject to such limitations as the executive director may prescribe: PROVIDED, HOWEVER, That no management official having authority over bargaining unit employees nor any officer or paid employee of an organization shall serve as observer.

In addition, campaign tactics which destroy the "laboratory conditions for the exercise of employee choice" are objectionable under WAC 391-25-590. Such conduct objections are decided by the Commission on a case-by-case basis, taking the surrounding circumstances into consideration. The Commission recently reviewed the law on campaign misrepresentations, and restated its policies on "laboratory conditions" in Tacoma School District, Decision 4216-A (PECB, 1993), where it stated:

> "Laboratory Conditions"
>
> The purpose of a representation election is to determine the uncoerced choice of bargaining unit employees concerning their representation (if any) for the purposes of collective bargaining. It has long been the policy of the Commission that elections should be conducted under "laboratory conditions":

We ... agree with the [National Labor Relations Board's] statement of purpose from General Shoe Corp., 77 NLRB 124 (1948):

> In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.

Lake Stevens, Decision 2462 (PECB, 1986).

Apart from the "captive audience meetings" and "electioneering" conduct proscribed in WAC 391-25-470, objections concerning misconduct improperly affecting the results of an election are considered by the Commission under WAC 391-25-590(1), ...

There has been little discussion in Commission precedent of the standards applicable in cases where improper conduct is alleged to have affected an election.

An election result was overturned in Mason County, Decision 1699 (PECB, 1983), where a change of insurance benefits announced by the employer well in advance of an election destroyed the "laboratory conditions" for a fair election.

In Lake Stevens, supra, one of the unions competing in a representation election held a "free beer and pizza" party for eligible voters on the evening prior to an on-site election. While the meeting was not a "captive audience" meeting in violation of WAC 391-25-470, a gift of money given to one of the eligible voters was found to violate the "laboratory conditions" necessary for an uncoerced election.

In City of Tukwila, Decision 2434-A (PECB, 1987), the employer scheduled a "captive audience" meeting for eligible voters during the 24-hour period prior to the issuance of mail ballots, but then canceled the meeting. The Commission nevertheless found that communications by the employer to its employees violated the "laboratory conditions" deemed necessary for an election. [omitted footnote relates to codifying rule amendment].

Decisions by the National Labor Relations Board (NLRB) are ordinarily persuasive, particularly when the applicable provisions of the National Labor Relations Act (NLRA) are similar to those of the Washington statute. The NLRB's approach to campaign misrepresentations has, however, been a subject of substantial debate and change.

...

In City of Tukwila, supra, the Commission noted that the question of whether to follow Hollywood Ceramics or the

> NLRB's Midland precedent was an issue of first impression which the Commission did not then have to resolve. We now directly confront that issue. In our view, the Hollywood Ceramics rule and the dissent in Shopping Kart are better reasoned, and more consistent with this Commission's statutory responsibility for ensuring fair elections, than the precedent that PSE would have us follow. We thus decline to follow the wanderings of the NLRB into a policy which undermines both the "laboratory conditions" for the conduct of representation elections and the integrity of proceedings conducted by this agency. We instead adopt a policy concerning alleged campaign misrepresentations that is consistent with the policy adopted by the NLRB in Hollywood Ceramics.
>
> To set aside an election, a misrepresentation must:
>
> 1. Be a substantial misrepresentation of fact or law regarding a salient issue;
> 2. Made by a party having intimate knowledge of the subject matter so that employees may be expected to attach added significance to the assertion;
> 3. Occurring at a time which prevents another party from effectively responding; and
> 4. Reasonably viewed as having had a significant impact on the election, whether a deliberate misrepresentation or not. ...

The Commission re-affirmed that approach in a subsequent decision in the same case, Tacoma School District, Decision 4216-B (PECB, July, 1993).

There is no question that representation elections affect employer-employee relationships long into the future. Furthermore, there is a general expectation that public officials should engage in a high standard of behavior.

Application of Standards

The employer in this case took an active role in seeking to discourage union representation among its employees. The so-called SPIRIT meetings, as well as numerous items of correspondence from McFall to the members of the potential bargaining unit, attest to

the negative opinion of the employer concerning union organizing. For example, McFall's memo to all city employees dated March 25, 1992, included:[27]

> It is my sincere belief that union representation will not be in the best interests of you or the City.
>
> ...
> At this exciting time in the development of this new City, I want to preserve all opportunity of joint efforts in developing proper values and in continuing the establishment of a winning team. We can do so without union intervention.

[Emphasis by underlining supplied.]

This employer thus walked the narrow line between legitimate expression of its opinion, and intimidating behavior unlawfully influencing employee views on union representation.

However distasteful the employer's overall position and written statements may have been to the union, this Examiner finds that the pre-election propaganda issued by the employer in this case is of a kind that is typically tolerated. A similar case is Spokane County Health District, Decision 3516-A (PECB, 1991), in which the Commission discussed union objections to employer statements during a representation election. In that case, a letter written by the employer to its employees included:

> 1. ... with the union, we will no longer be able to deal with each other on a one-to-one or on an individual basis.
> 2. ... you can vote confidentially and without fear or reprisal from the union since the election is by secret ballot ....
> 3. Remember, unions will generally demand compulsory membership as a condition of employment by the agency.

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[27] The full text of this memo is set forth above.

> 4. Consider how much you will be asked to pay in dues, fees and assessments. Is it worth it?
>
> 5. I firmly believe that the imposition of a union creates a working relationship that is filled with artificial communication, [sic] barriers and unnecessary delays.
>
> 6. I hope those doors will not be closed or regulated by a union gate-keeper.

The union in Spokane charged in election objections that the employer's statements were coercive and intimidating,[28] but in responding to those allegations the Commission wrote:

> The Commission has reviewed the July 23, 1990 letter (quote above) in light of our rule, [WAC 391-25-590] and does not find the letter to be coercive or threatening. **The employer was entitled within limits to communicate its views on union representation.** The Spokane County Health District stayed within acceptable limits; especially since the record does not contain evidence of anti-union animus by the employer. We find, therefore, no merit to the union's objections.

[Emphasis by **bold** supplied.]

The campaign propaganda issued by the employer in this case is thus examined against this standard, to determine whether it falls within the range of "acceptable" conduct permitted by the Commission's rules and precedents.

Applying the standards of WAC 391-25-590(1), the City of Federal Way did not involve the Commission or its processes; nor did it use forged documents.

Intimidation by Statements and Memos -

The union charges that many statements in the employer's memos went beyond a mere statement of opinion and could be interpreted as

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[28] That union alleged that item 2 inferred that employees should fear the union, and that items 3 and 4 were contrary to its union security and assessment policies.

intimidating or coercive. For example, from the employer's pre-July 1 election memo:[29] "How you vote will greatly impact the City's and **your future**" [Emphasis by **bold** supplied.] That phrase, might be interpreted in several ways, however: In one sense, it could be read as a threat to the individual employee; in another sense, it could be read as just a factual statement. Because of that ambiguity, it is not at all conclusive that the statement was reasonably perceived by employees as a threat.

Pre-Election Mailings -

Because whoever gets out the last word in an election campaign has a profound advantage, both the NLRB and the Commission prohibit employers and labor organizations from conducting campaign **meetings** with employees on the employer's time and within 24 hours before an election. Peerless Plywood, 107 NLRB 427 (1953) and WAC 391-25-470, above. The employer here did not hold last minute meetings, but it did send "last minute memos" to the employees eligible to vote in the representation elections. The standards of Tacoma School District, supra, are determinative as to whether those memos contained sufficient misrepresentations of essential facts to require setting aside the results of the last election.

The employer's memos were not error-free:

The March 25 memo has several technical mis-statements, and refers to federal law instead of the applicable state law.

The April 1 memo incompletely describes Commission unit determination procedures.

The May 5 memo incorrectly states the times that the election polls would be open, and mis-states the Commission's procedures on balloting by persons who are not on the stipulated election list.

The union presented no evidence, however, that any of those errors had any discriminative effect on the outcome of the election.

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[29] The full text of the document is set forth above.

Although the employer repetitiously sent out memos, the union presented no evidence of misrepresentation of salient facts in any of them. For example: The July 1 memo was merely a reminder to vote; the July 16 memo responding to the Bodhaine letter contains McFall's denials of the specific charges in the Bodhaine memo, without misrepresentation of fact or law regarding any pertinent issues. Thus, although these memos were delivered to employees immediately prior to elections, there is no basis to conclude that the union was severely or unfairly handicapped by not having an opportunity to respond. Furthermore, neither Peerless Plywood nor the Commission's rule specifically limits or prohibits the distribution of written materials within the 24-hour period. City of Tukwila, Decision 2434 (PECB, 1986), affirmed, Decision 2434-A (PECB, 1987).

Intimidation by SPIRIT Meetings -
The union argues that the employer's behavior in holding SPIRIT meeting was intimidating and coercive. However, the union presented little evidence to support its arguments on this point.

The union's arguments concerning employee intimidation or coercion are undermined by an analysis of the election results. The ballots cast by individual employees were and remain "secret", but a cursory analysis of the results of the three elections shows that the union received progressively improving results of 15, then 19, and then 24 votes out of 51 to 55 eligible persons voting. Thus, the union's strength increased, rather than diminished, as the campaign progressed. It apparently persuaded some of the employees who had voted for the independent association or for "no representation" that union organization represented a better option.[30] It

[30] Between them, the WSCCCE and the association received 64% of the valid ballots cast in the first valid election.

simply did not increase enough to carry the day on unchallenged ballots on July 16, 1992.[31]

Conclusion on Election Objections

The record does not prove that the employer violated any state statutes or rules prohibiting intimidating, coercive or unfair campaign behavior. The union's objections to the employer's election conduct must be dismissed.

FINDINGS OF FACT

1. The City of Federal Way is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1). At all times pertinent to this case J. Brent McFall was the city manager of the City of Federal Way.

2. Council 2 of the Washington State Council of County and City Employees is a bargaining representative within the meaning of RCW 41.45.030 (3). At all times pertinent to this case, Chris Dugovich was the president/executive director of Council 2.

3. On February 25, 1992, the WSCCCE filed a petition for investigation of a question concerning representation with the Commission, involving a wall-to-wall bargaining unit of approximately 51 employees of the City of Federal Way.

4. The employer campaigned actively against the selection of an exclusive bargaining representative by its employees, beginning with a March 25, 1992 letter sent by McFall to potential members of the bargaining unit which included the following

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[31] That result could be reversed, depending on the outcome of the three challenged ballots cast by alleged "supervisors" on July 16, 1992.

statement: "It is my sincere belief that union representation will not be in the best interests of you or the City".

5. Prior to and during the union campaign the employer held SPIRIT meetings which all city employees were invited to attend on work time. At least one SPIRIT meeting dealt extensively with details of the union organizing campaign. On April 1, 1992, McFall sent a "personal" letter to all city employees which detailed questions and answers from that meeting. The questions concerned technical aspects of the election process, and was basically accurate.

6. On April 21, 1992, the employer and WSCCCE signed an election agreement in which they stipulated to conditions precedent to the conduct of a representation election for a bargaining unit described as:

> All full-time and regular part-time employees of the City of Federal Way, excluding supervisors (within the meaning of PERC precedent) and confidential employees.

7. On April 23, 1992, the City of Federal Way Employees Association filed a timely motion for intervention, seeking to represent the same bargaining unit petitioned for by the WSCCCE. The motion for intervention was granted and the FWEA was listed as a choice on the ballot in the representation election conducted by the Commission.

8. An election conducted by the Commission on May 6, 1992, was inconclusive. The "no representation" received the highest number of votes, but did not receive the votes of a majority of those eligible to vote. In addition, five challenged ballots were sufficient in number to affect the determination of the choices to be listed on the ballot for a run-off election.

9. On May 11, 1992, the Commission ordered the parties to show cause as to why the parties should not be held to the stipulations made in the election agreement previously submitted.

10. On May 12, 1992, the WSCCCE filed objections under WAC 391-25-590(1), alleging that the employer had engaged in conduct which improperly affected the outcome of the election.

11. Each of the parties responded to the show cause directive issued on May 11, 1992. Those responses disclosed that the employer had altered the employment status of certain employees in a manner and at a time when it knew or should have known that they became eligible voters, notwithstanding its previous assertion that those persons were not eligible voters.

12. In an order dated June 1, 1992, the Executive Director withdrew his approval of the previous election agreement and vacated the results of the May 6 election, based on discovery that the stipulations made by the parties concerning a cut-off date and eligibility list had improperly disenfranchised some otherwise eligible voters from participation in the election. The Executive Director ordered such further proceedings as might be necessary to properly process the petitions filed in the matter.

13. The parties thereafter entered into a new election agreement and submitted a stipulated eligibility list. The Commission scheduled a new election to be held on July 1, 1992.

14. As of June 11, 1992, Norman Bray was employed by the City of Federal Way as a building inspector. Bray had been offered airline tickets for travel to Alaska for a fishing trip organized by a local building contractor, Ted Pederson. Bray initially accepted the tickets, and he took steps to request

leave from his employer for the work days in June of 1992 that were in the period of the planned trip. Bray subsequently returned the tickets to Pederson, and did not participate in the fishing trip. Bray did not inform his employer of the offer, acceptance or return of the airline tickets.

15. As of June 11, 1992, Elizabeth Snyder was employed by the City of Federal Way as a building permit specialist. Snyder had become involved in a significant romantic relationship with Ted Pederson, but had continued to process and approve building permits for projects being built by Pederson's firm. Pederson had invited Snyder to participate in the same Alaskan fishing trip offered to Bray, but she declined. Snyder did not inform her employer of either her relationship with Pederson or his offered trip.

16. On June 11, 1992, the employer received information from an official of a neighboring municipality, to the effect that two City of Federal Way employees had received gifts from a local building contractor regularly doing business within the City of Federal Way. The employees were identified as Norman Bray and Elizabeth Snyder. The building contractor was identified as Ted Pederson.

17. On June 15, 1992, the employer hired a private investigator, Roger Dunn, to investigate the information described in paragraph 16 of these findings of fact. Dunn proceeded to interview persons involved, including Bray and Snyder.

18. At the conclusion of her interview with Dunn, Snyder was told not to discuss the interview with anyone. She agreed to, and did not question, that directive. Snyder nevertheless proceeded to discuss the interview with co-worker Joanne Johnson and with Ted Pederson.

19. On June 30, 1992, five City of Federal Way officials, including Community Development Department supervisors and the city attorney, sent a memo to McFall, recommending the discharges of Bray and Snyder. The recommendation concerning Bray was based on concern that his action in accepting a gift from Pederson, even temporarily, gave an appearance of impropriety and had the potential of creating a conflict of interest. The recommendation concerning Snyder was based on her failure to disclose her personal relationship with Pederson, while continuing to process permits for his building projects, and on her failure to maintain the confidentiality of the investigation of Pederson's actions in relation to the employer's building inspection program.

20. The record fails to establish that either Bray or Snyder was visibly involved in campaigning for union representation, or had they identified themselves as union leaders in such a manner that the employer knew or should have known that they were supporters of that organizing effort.

21. Immediately prior to the July 1, 1992 election, the employer distributed a handwritten memo to all of the employees eligible to vote, reminding them of the importance of the election.

22. The election conducted by the Commission on July 1, 1992, was inconclusive. The WSCCCE received the highest number of votes, but did not receive the votes of a majority of those eligible to vote. The "no representation" choice received the second-highest number of votes, thereby qualifying for a place on the ballot for a run-off election scheduled for July 16, 1992.

23. After the tally of ballots on July 1, 1992, the employer delivered separate letters to Norman Bray and Elizabeth

Snyder, terminating their employment. Bray was discharged for accepting a gift from a contractor, and for not having reported the gift to his supervisor. Snyder was discharged for her failure to disclose her relationship with Pederson, and for her failure to maintain the confidentiality of the employer's investigation of Pederson's relationships with city employees.

24. On July 10, 1992, the union filed two unfair labor practice complaints, alleging that the employer's discharges of Bray and Snyder violated RCW 41.56.140. The union and/or the author sent a mailing to employees which consisted of a letter written by a leader of the union organizing effort, taking issue with the employer's actions in discharging Bray and Snyder.

25. On July 15, 1992, McFall sent out another memo to employees in which he responded in detail to a union memo written by one of the city's employees detailing his views of the employer's campaign and Snyder's and Bray's termination.

26. Dunn submitted a report of his investigation to the employer on July 8, 1992. He concluded that Bray and Snyder had used very poor judgment in the handling of their employment responsibilities with the City of Federal Way.

27. On July 14, 1992, McFall sent a detailed memo to all of the employees eligible to vote, responding to statements attributed to the union in connection with the organizing campaign, and to the letter authored by an employee concerning the discharges of Bray and Snyder.

28. The election conducted by the Commission on July 15, 1992, was inconclusive. The "No Representation" choice received the

highest number of votes, but challenged ballots were sufficient in number to affect the outcome of the election.

29. On July 23, 1992, the union filed objections to a series of employer actions taken during the election campaign.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The evidence, as described in paragraphs 4 through 27 of the foregoing findings of fact, establishes a prima facie case sufficient to support an inference that union animus could have been a motivating factor in the employer's decision to discharge Norman Bray and Elizabeth Snyder, so that the employer could be found guilty of an unfair labor practice in violation of RCW 41.56.140.

3. The evidence, as described in paragraphs 14 through 23 of the foregoing findings of fact, fails to establish that the union activity among employees of the City of Federal Way was a substantial motivating factor in the employer's decision to discharge Norman Bray and Elizabeth Snyder from their employment with the City of Federal Way, or that the reasons given by the employer for its actions were pretextual, so that the employer did not commit an unfair labor practice under RCW 41.56.140.

4. Although it campaigned vigorously against union representation of its employees, including the mailing of partisan campaign materials to eligible employees immediately prior to the scheduled elections, the City of Federal Way did not involve the Commission and its processes in the election campaign, did

not use forged documents, did not use threats of reprisal or force, and did not misrepresent salient matters of fact or law to its employees, so that the employer has not engaged in conduct objectionable under WAC 391-25-590.

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following:

ORDER

1. Case 9655-E-92-1590: It is recommended that the election objections filed by the Washington State Council of County and City Employees be OVERRULED.

2. Case 9889-U-92-2258: The complaint charging unfair labor practices filed with regard to the discharge of Norman Bray shall be, and hereby is, DISMISSED.

3. Case 9890-U-92-2259: The complaint charging unfair labor practices filed with regard to the discharge of Elizabeth Snyder shall be, and hereby is, DISMISSED.

Issued at Olympia, Washington on the 15th day of September, 1993.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

WALTER M. STUTEVILLE, Examiner

This Order may be appealed by filing a petition for review with the Commission, within 20 days following the date of this Order.