

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ELISABETH TUREMAN,)	
)	
Complainant,)	CASE NO. 4076-U-82-643
)	
vs.)	DECISION NO. 1886 - PECB
)	
WHATCOM COUNTY,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER

Brown and Hardesty, by David D. Hardesty, Attorney at Law, appeared on behalf of the complainant.

David S. McEachran, Prosecuting Attorney, by Gene R. Moses, Chief Civil Deputy Prosecuting Attorney, appeared on behalf of the respondent.

On May 7, 1982, the complainant filed a complaint charging unfair labor practices against Whatcom County claiming she was discharged in reprisal for union activities, in violation of RCW 41.56.140(1). A hearing was held in the matter July 22, 23, August 25, and 26, 1982. The parties filed post-hearing briefs over the next six months.

FACTS

Elizabeth Tureman was hired by Whatcom County as a corrections officer July 29, 1981. Under applicable civil service rules Tureman was to serve a one year probationary period.^{1/} Tureman was terminated December 31, 1981. Present at the time of her termination were Undersheriff Geleyense, Chief Deputy Gill, Chief Corrections Officer Gordon and Tureman. Tureman asked why she was being terminated and testified she was told by Geleyense that:

1/ Rule X

Section 1 - Probation

To enable the appointing power to exercise a choice in the filling of position no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of one year's probationary service.

Section 2 - Separation of Probationary Employee

During the period of probationary service the appointing power may terminate the employment of any person certified to him if the appointing power deemes him unfit or unsatisfactory for service in the Office of the County Sheriff.

1. She had an evaluation from Supervisor Kovacs indicating she could improve on security techniques;
2. She had not closed the door to the isolation cell at one time;
3. Once she had entered the main tank without securing all the cell doors;
4. She was lax in locking the sally port doors;
5. She had been given a poor psychological report;
6. She had received poor recommendations for the job.

Undersheriff Geleynse, who was in charge of the personnel for the department until December 31, 1981, (after which time Gill took over because Geleynse retired) testified he recommended Tureman's termination because of her security violations involving Kootnekoff, one of the most dangerous and violent prisoners Whatcom County Jail had ever housed. Coupled with reports he received from Chief Corrections Officer Gordon regarding security violations earlier in Tureman's employment, Geleynse stated the time had been reached to terminate her. Geleynse further testified it was strictly a matter of judgment on his part. Gordon testified he recommended complainant's termination because in the absence of supervision "she tended to free wheel and do things pretty much her own way," and because of her breaches of security. The sheriff testified that the subject of Tureman's potential grievance never came up during the termination procedure for Tureman. The sheriff recalled the undersheriff recommending Tureman's termination due to her being a "marginal employee" and having committed security violations.

Marven Eggert, secretary-treasurer for Local 231, testified he had a conference with the sheriff's staff to investigate the reasons for Tureman's discharge and was told it was due to security breaches, her attitude toward fellow workers and inmates.

Formal notification of Tureman's discharge was given to the shift supervisors at a meeting a few days after the termination. Officer Williams remembered the reasons were negative information from the Bellingham Police Department and her psychological evaluation. Officer Syme recalled that the reasons given were breaches of security, the psychological test and complaints from other corrections officers. Officer Kovacs remembered being told that Tureman was terminated for security violations and that as a probationary employee she had no right of appeal.

Evaluations

With the advent of a newly elected sheriff in 1981, the administration of the sheriff's department was tightened up. Whereas under the prior administration evaluations of staff were rarely done, the new sheriff instituted evaluation procedures where probationary employees usually would be evaluated every month by every shift supervisor who had worked with the probationer more than four shifts that month; the evaluation process was still being developed as to frequency, forms to use, etc. Tureman's evaluations written by supervisor Williams are in the record; she worked on Williams' shift the majority of her assignments. On her September 4, 1981 evaluation Williams ranked her generally as "meets standards" and wrote:

I have been pleased to have Liz (sic) on my shift. I do not have to assign her work. If there is work to be done, she does it. She is eager to learn her duties and tries to do them as well as they can be done. I have no reservations about having her work on my shift.

On the same evaluation Chief Corrections Officer Gordon commented:

Liz (sic) is doing very well in her position as probationary corrections officer. (Refer to evaluation for this period by C. Supervisor Kovacs).

That evaluation like all others under the new procedure was reviewed and signed by Undersheriff Geleynse and Sheriff Mount. In her November 14, 1981 evaluation, Williams again ranked her as generally "meets standards" and wrote:

6.3 This officer is always striving to get work done even if she can see that it means an eight-hour shift with no breaks as is quite often the case in the jail.

10.9 Lis is always asking questions to improve her knowledge, even about things that have not been a problem to her, but just so she will have the answer when it does come up on the future.

Gordon wrote:

I have not received complaints regarding Tureman's performance. I feel that this is fair evaluation of Officer Tureman's performance.

On December 16, 1981, Williams evaluated Tureman as "Elisabeth continues to be a good worker and I enjoy having her on my shift". Supervisor Kovacs also evaluated Tureman three times. In September he ranked her generally "meets standards"; in October he ranked her "slightly above standards"; in December he ranked her as "meets standards". He wrote:

I feel at this time that I have not worked with Officer Tureman enough to give a comprehensive evaluation. Yet to be fair I feel that she is 'average' in most areas until I have seen her work under various circumstances. (September 23, 1981.)

I feel Officer Tureman is coming along well and does the things she has learned so far very well. I would like to see Liz (sic) be more authoritative and security conscious in her dealings with the inmates and not be hesitant in applying her ability, as I feel the confidence is there and just needs to be used more assertively. (October 15, 1981.)

Officer Tureman does a fine job on work assignments given to her. She more readily assists in all aspects of corrections work and handles the majority male population extremely well in interaction situations. She shows up to work!! (December 18, 1981.)

On each of Kovacs's evaluations Chief Corrections Officer Gordon wrote Tureman was "progressing nicely."

Supervisor Syme testified she evaluated Tureman twice. The first evaluation ranked Tureman as "slightly above standards" with the following comments:

I have not worked very often with this officer, but the few times I have I have been pleased with her performance. She has always been very eager to do the required duties and anxious to keep the shift on schedule. Liz (sic) is knowledgeable of the daily routine and takes the initiative in make sure (sic) the routine is followed. Liz (sic) is pleasant to work with and I enjoy having her on my shift.

Geleynse wrote on that evaluation:

"I note some considerable improvement on Tureman's evaluation over her first one."

The second Syme evaluation could not be located by the county. Syme testified that in it she recommended Tureman to be considered for training for a supervisory position.

On December 28, 1981, Chief Corrections Officer Gordon commented on Kovacs' evaluation of Tureman:

Overall Ms. Tureman is progressing nicely in her position as probationary corrections officer. There are two area of concern on my part: (1) Section V, #3 and (2) Section IX, #2. Both areas are graded as '5'. Re: 1. I would rather see Ms. Tureman become more concerned about positive job principals than popularity. 2. Improvement in job security awareness is mandatory.

The sheriff wrote on the December evaluation from Kovacs:

This report does not concur with the verbal reports I am receiving on Officer Turman (sic) progress. (January 4, 1982.)

The sheriff testified the verbal reports were from the undersheriff.

Alleged Security Breached Absent a Shift Supervisor

On December 22, Tureman and Corrections Officer Ladner were the only corrections officers assigned to the swing shift. Although neither held the rank of "supervisor", as senior officer Tureman was technically in charge of the shift, for only the second or third time in her employment with Whatcom County.^{2/} That evening three incidents took place.

Early in the shift Tureman had to enter the main tank to settle a verbal altercation between two prisoners. The main tank is a hallway off which individual cells are located. Tureman operated the lock box outside the main tank securing all the prisoners in their cells. She called Ladner for backup to stand by the lock box while she entered the tank hallway. As she approached the prisoner's cell where the altercation had begun, a prisoner from the last cell on the right side of the corridor opened the cell door and shouted at her. Ladner re-engaged the lock box and locked the cell door at the end of the corridor. The record established that from the lock box area a corrections officer could not see whether all the cell doors were locked. Supervisors testified that the lock box was an antiquated mechanism that did not always engage all the cell doors. Tureman was told that the same "slippage" had happened to others.

Later on in the shift Tureman decided to keep up with the scheduled cell cleanings. She directed Ladner to put the cleaning gear in the isolation cell holding prisoners Kootnekoff and Brambett while she secured the isolation hall door. Ladner testified that after Tureman locked him in the isolation hallway, he opened the cell door and had Kootnekoff and Brambett come out. Kootnekoff then engaged Ladner in conversation. Ladner testified that after a few minutes he realized he had lost track of Brambett. Ladner turned around and saw Tureman talking with Brambett through the door of the isolation hall which was opened. Tureman did not recall the incident specifically, but testified when she spoke to prisoners there was a window in

^{2/} Ladner was hired shortly after Tureman's hire date.

the door that would be opened while the door was still locked. Ladner did not report the cleaning incident to supervisors until after Tureman's discharge.

Ladner testified that Gordon phoned during the shift and spoke with Ladner. Ladner reported to the chief corrections officer that he felt uneasy with the climate in the jail that evening, and Gordon told Ladner to do what he thought best.

Late in the shift, Officer Pete Guyer, who had been a corrections officer since April, 1980, and had been working transportation to Western State, had returned to the booking room to turn in his reports. He observed on the monitor for the isolation cell area, inmate Kootnekoff exercising in the back hallway with what appeared to be a homemade jumprope. Guyer, Ladner and Tureman discussed the situation and decided Tureman would let Ladner into the isolation cell and wait by the door. Ladner would take the rope from Kootnekoff and Guyer would stand by out of Kootnekoff's line of sight. Guyer testified that when Ladner went through the door to the isolation area Tureman pulled the door tightly closed behind him, kept the key in the lock and held on to the door handle while she watched through the door window. The procedures of the jail call for the door to be locked; this was not done. The testimony of Tureman, Guyer and Lander substantiates the position that the three had agreed that if a problem developed when Ladner approached Kootnekoff, Tureman would open the door as quickly as possible and Guyer would enter to assist. Tureman would then lock both officers in the isolation area while she would go to summon help. Guyer was senior officer in the jail, but Tureman was senior officer on duty. According to policy, Guyer would not have had authority to order the door to be left unlocked. Guyer testified that considering the distance Kootnekoff would have to cover to reach the unlocked door, there was not a potential risk of escape. Ladner corroborated that testimony. Supervisor Kovacs testified policy called for the door to be locked, not just shut and he considered it a breach of security that should be reported. Geleynse testified he received his information regarding the December 22nd shift from Corrections Officer Ladner. The undersheriff did not know until the time of the hearing that Corrections Officer Guyer was also on the scene during the Kootnekoff incident.

Sally Port Doors

The Whatcom County Jail is on an upper floor of the Whatcom County Courthouse. After stepping off the elevator, a person must wait to enter a small vestibule that has locked doors on opposite walls; this locked ante-chamber is called a sally port. Once the party wanting admission is cleared by the corrections officer in the booking room, the corrections officer unlocks the door, steps into the sally port, the door is then relocked behind him/her. Then the corrections officer crosses the sally port and unlocks the

opposite door allowing the party in and relocks the entry door. Gordon testified that he has received reports that Tureman allowed both sally doors to be opened simultaneously. He testified he corrected Tureman as well as many others on this habit. Shift Supervisor Syme testified she continually had to unlock the sally port for Tureman to get back in and that Tureman locked the sally port doors more than any other corrections officer.

Psychological Evaluations

Prior to being hired by Whatcom County Sheriff's Department applicants are given a psychological assessment by an outside consultant. Dr. Paul MacBeth conducted the pre-employment screening of Tureman. He testified he passed Tureman "with some reservations" as he has done for all passing applicants except two in 15 years. He further testified that the "reservations" are given to the employer as consideration for how the applicant could be aided in adapting to his/her work and that "reservations" should not enter into any employee's evaluation. He also testified his evaluation letter of Tureman was missing for a long time and that the letter should be confidential in the hands of management and not passed on to intermediate supervisors or co-workers.

Recommendations for the Job

From 1977 to 1981 the complainant worked as a jailer for the Bellingham City Jail. In January, 1981, the city closed its jail, prompting Tureman to apply for a job as a corrections officer for Whatcom County. The complainant called three witnesses who were in the chain of command above her in her employment at the city jail. All three testified that she was an above average employee and none were aware of Tureman committing any security violations while working for the city. Her letter of recommendation, introduced into the record, was laudatory. Tureman testified that when she asked Geleyse to see her written recommendations that he considered "poor" he responded that he would not tell her the name of the evaluator and that there was a difference between what a person would write and what a person would say in confidence. The respondent's witness, Henry Wohlarb, supervisor of the Bellingham City Jail nine and one half months prior to its closure, testified that he recommended Whatcom County not hire Tureman as a corrections officer. He also testified she was a satisfactory employee and he gave her satisfactory evaluations. Tureman filed a grievance that went through arbitration while she was employed by the Bellingham City Jail.

Knife Incident

During some unidentified shift, Officer Ted Milano and Tureman were working together. Both testified the evening was busier than usual. Tureman testified that she and Milano were working with separate arrestees, when campus security patrol brought in two females. The females were fighting with each other so they were chained to a bench in the booking area. As Tureman walked by, one female lunged at her with a pen knife. Tureman took the knife away and put it in the desk in front of Milano. Milano, senior officer of the shift, made no report of the incident. Tureman, female officer on the shift, did not strip search the arrestees prior to the knife being pulled.

Treatment of Prisoners

Anton Staal, a volunteer spiritual counselor at the jail, wrote to Gordon that Tureman used loud and abrasive language while on duty and he filed a written complaint with the sheriff. Supervisors Williams, Syme and Kovacs specifically denied that Tureman used inappropriate language while on their shifts. No fellow corrections officer or other witness corroborate Staal's testimony. Staal testified that he had incorrectly worded his letter.

Seniority Grievance

During shift bidding in December, 1981, Tureman stated to Chief Corrections Officer Gordon she was no longer going to be at the bottom of the seniority list since Audrey Miller had become a permanent staff member. (Miller had been hired as a part-time provisional employee during February, 1981, approximately five months prior to Tureman's hire date as a full-time employee.) Gordon replied that Miller would be more senior than Tureman since Miller began work at Whatcom County before Tureman. Tureman voiced an objection since she had received a full-time appointment prior to Miller. Tureman discussed the situation with the shop steward, who was shift supervisor Kovacs, and with Officer Milano. Kovacs told her to take it through the chain of command. He called the union. Mr. Eggert told him that Miller would be more senior based on a decision of a previous situation involving Whatcom County. Eggert said he would research the situation further and get back to Kovacs. During his research, Eggert discussed the issue with John Edgar, business agent for the local. Edgar produced Whatcom County civil service rules which showed that Tureman would be more senior. In the meantime, Tureman wrote to Gordon, Geleyse and Mount December 6, 1981, in part:

* * *

If you gentlemen feel that Audrey Miller has more seniority than I my alternative is to file a grievance for clarification of the situation with the union.

I have spoken with Audrey Miller and she is aware of the action I have taken. This will not hinder our working relationship in any way.

* * *

Geleyne showed the sheriff the memo around the date it was written. Geleyne instructed Gordon to refer the matter back to Tureman and ask her to go to the union for its decision. Eggert had a chance meeting with Gill after December 6th. Eggert testified that at no time did Gill or others from the sheriff's administration voice a preference for how to resolve the issue, rather the office just wanted the matter ended. No formal grievance was ever filed.

Employer-Union Relationship

Whatcom County Sheriff's Department and Teamsters Local 231 have had a collective bargaining relationship for over ten years. Gill, Gordon and other sheriff administration members were former Local 231 members. Gill organized the department in 1964 for the Teamsters. He testified there had not been any grievances filed during at least the previous four years.

Eggert testified Tureman came to the union after her discharge and asked the union to appeal it. Eggert stated there were no grounds for appeal under civil service rules since she was still in her probationary period. He did not file unfair labor practice charges since he did not see any facts regarding interference with union activities. Eggert told Edgar to verify whether the charges were substantial. Edgar reportedly talked with Williams, Kovacs and the administration staff. No testimony was entered as to the results of Edgar's investigations.

POSITIONS OF THE PARTIES

The complainant contends that she was progressing normally through her probationary period until she notified the department administration of her intention to file a grievance regarding seniority. She argues that her statement of intent to exercise her contractual rights in a department where

grievances were not filed caused management of the department to seek the first pretext possible to terminate her probationary period: without warning, without attempt to correct her alleged deficiencies during the remaining seven months of her training period, and without giving the complainant herself or any of her immediate supervisors an opportunity to speak on her behalf. Therefore, she concludes that her termination was discriminatorily based on her union activities.

The respondent argues that these proceedings before the Commission affords a probationary civil service employee a "just cause" hearing which is contrary to the collective bargaining agreement, the civil service rules, and state law, and that, therefore, the Commission is without jurisdiction in the matter. Further, the respondent argues that the alleged unfair labor practice was "manufactured" by the complainant's legal counsel. As to the facts, the respondent contends that since the employer resolved the complainant's grievance by conferring with the union without a formal grievance ever having to be filed, it shows that the county did not discriminate because of union activities.

DISCUSSION

Adverse action against an employee because of an employee's union activities or exercise of protected activities is a violation of RCW 41.56.140(1), and as such, is within the scope of the Commission's jurisdiction. Port of Seattle, Decision No. 1624, (PECB, 1983). The elements of this type of unlawful discharge are: employer knowledge that the employee is engaged in protected activity and employer motivation for the discharge based on the employee's protected activity.

Protected Activity

The right of a probationary employee to pursue grievances under a collective bargaining agreement has been held by the Commission to be a protected activity. In Public Hospital District No. 1 of King County d/b/a Valley General Hospital, Decision No. 1195-A, (PECB, 1981) the Commission wrote:

The case is more complex than a simple discharge of an employee who may or may not have been performing her duties in a satisfactory manner. Laden complainant alleged that her discharge was caused by the pursuit of her legal rights concerning break time, measurement of radiation absorption and union representation. Her pursuit of her legal rights in those areas included seeking assistance from her union for the processing of her grievances. The rights conferred and protected by Chapter 41.56 RCW, the Public Employees Collective Bargaining Act, are independent of any rights secured to employees in a collective bargaining agreement negotiated under the provisions of the Act.

In the instant case, as in Valley General Hospital, the reasoning holds that since the state legislature has decided to allow public employees to designate representatives for collective bargaining without interference and has embraced grievance procedures in its definition of collective bargaining, then the integrity of the statute would demand that represented employees have a protected right under the Act to pursue grievances through the grievance procedure in their contract, whether or not on probation.^{3/}

Employer Knowledge

In order to establish a violation of the statute the complaining party has the burden of showing that the employer had knowledge of the protected activity. NLRB v. Electro Mart, 90 LRRM 2679 (9th Cir. 1975). The employer in the instant case obviously had knowledge of Tureman's exercising of protected activities. Her December 6th letter was addressed to Chief Corrections Officer Gordon, Undersheriff Geleyne and Sheriff Mount. All three testified they had seen the letter. The letter clearly sets out Tureman's intent to file a grievance with the union if the seniority issue was not resolved as Tureman desired. In fact, in his answer to her December 6th memo, Gordon replied to Tureman that he had "forwarded copies to the sheriff's office administration" and that Tureman had "followed the grievance procedure by discussing the matter with your department manager (me) and failing relief, petitioning the undersheriff and sheriff."

Also in the record, is a decision of a "board of arbitration" dated September 28, 1979 where Tureman is listed as one of the grievants. The decision was entered as a document from Tureman's employment file from her tenure at the Bellingham City Jail. However, there is not sufficient enough testimony establishing that the Whatcom County Sheriff's administration office personnel were aware of this prior participation in a grievance by the complainant.

^{3/} RCW 41.56.030(4) defines "collective bargaining" as:

...The performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiation on personnel matters, including wages, hours and working conditions, which may be particular to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. (emphasis added)

Employer Motive

The complainant must also prove that the employer based her discharge on a discriminatory motive or unlawful intent. "Absent a showing of anti-union motivation, an employer may discharge an employee for a good reason, a bad reason or no reason at all without running afoul of the labor laws." Clothing Workers v. NLRB, 564 F2d 434 et 440 (4th Cir, 1977), accord Stephenson v. NLRB, 614 F2d 1210 (9th Cir, 1980).

As a standard for determining whether a discharge was an unfair labor practice, the Commission has adopted the "causation test" from Wright Line Inc., 251 NLRB 150 (1980). [See: City of Olympia, Decision No. 1208-A (PECB, 1982)]. In the causation test the complainant must make prima facie showing sufficient to support an inference that protected conduct was a "motivating factor" in the employer's decision to discharge. Once this is established, the employer has the burden of demonstrating that the same action would have taken place even in the absence of protected conduct.

In defending against allegations of discriminatory discharge, employers may assert facially nondiscriminatory reasons for the terminations. Such a claim may be rebutted with proof that the alleged justification is pretextual and that the real reason is the employer's union animus. Valley General, supra. The complainant's case here has several points which cause one to pause. It is odd that the new sheriff's administration eagerly replaces an archaic, capricious evaluation system with an entirely new and highly detailed one which calls on the efforts of all ranks from shift supervisor to sheriff, but that administration ignores these evaluations at Tureman's discharge. Uncontroverted testimony established that the undersheriff considered several "verbal reports" in deciding to terminate the complainant. Also by relying on Ladner's version of the December 22nd incidents, the administration gave more credence to someone who is not in a supervisory capacity than to five months of improving evaluations from all Tureman's shift supervisors. A nagging question remains regarding why the county could not produce the second Syme evaluation that recommended Tureman for management training in a supervisory position. The respondent built testimony regarding the "policies" of the jail and created inferences that Tureman violated those policies. However, no written policies ever came into evidence. In fact, the record establishes that the administration tolerated varying procedures under the different shift supervisors or corrections officers. In the "knife incident" the employer seems to have indulged Milano's failure to report an additional criminal charge more than it did Tureman's actions, even through testimony regarding the incident casts a doubt as to whether her behavior was inappropriate given the progression of

the events during that shift. All testimony established that the shift was hectic. There is not enough evidence to conclude she should have stopped booking the person she was working with and immediately strip searched the two female arrestees. A bigger question is raised as to why Milano did not report the knife which Tureman laid on the table in front of him since it could have been grounds for an additional criminal charge by the county against the arrested female.

The complainant's point that the probationary period is a time for training is well taken. Especially since the employer chose to schedule an entire shift to be staffed by officers-in-training on December 22nd when, by the administration's own admission, the most dangerous prisoner ever to be housed in Whatcom County Jail was one of the inmates. The respondent also emphasized that Tureman was senior officer on shift that night. However, Gordon called in and talked with Ladner and not with the "senior officer." Additionally, evidence for Gordon's analysis that Tureman "free-wheeled" on shifts where there was no supervision was not adequately developed in the record. Similarly, there is more testimony that Tureman got along well with her fellow corrections officers, than that she had complaints from other staffers. The psychologist who administered the pre-employment screening test to Tureman proved to this examiner that the employer used the report in a way it was never intended to be used.

Furthermore, timing is an important factor when assessing motivation. In the present situation, Tureman's notice of intent to file a grievance (in a "happy home" where there had been no formal grievances filed for at least four prior years) was made known to the administration approximately three weeks prior to her termination.

However, as the respondent accurately stressed this is not a "just cause" hearing (although a just cause type of record is common when the complainant is trying to show pretextual reasons for termination.) Motivation is a factual determination which must be supported by substantial evidence either circumstantial or direct. NLRB v. Gogin, 575 F2d 596 (7th Cir. 1978).

Although the witnesses testified to varying explanations of Tureman's discharge, each witness named one reason in common: breaches of security. In examining this employer's motivation it is important to delve into what the undersheriff perceived was the situation on December 22nd. At this point the inquiry is not into whether the jail was, indeed, in a risky situation that evening, but whether the undersheriff thought it was. It is clear that as a witness the undersheriff actually thought there had been a major security violation that evening. The fact that the undersheriff did not know until this hearing there was a third and more senior correction officer present that evening is significant in establishing his perception of the

alleged security compromises. It is also clear that he had seen a letter from Anton Staal, although factually inaccurate, which was critical of Tureman's behavior. While the lack of a full investigation of Tureman's progress on her probationary period, including ignoring Tureman's side of the December 22nd shift incidences, may show faulty administration, it does not conclusively prove union animus.^{4/}

In the present situation there has been a collective bargaining relationship with the union for over ten years. There is uncontroverted testimony from the union secretary-treasurer and one of the original organizers -- now a management member -- that the department's working relationship with the union is excellent. Further testimony substantiates that the employer wanted Tureman's seniority situation settled but it did not demand the settlement to be one way or another.

The timing of the discharge, the improving evaluations during her probationary period, the employer's tolerance of various "styles" make this discharge suspicious. Nevertheless, the employer's overall working relationship with the union on the balance, indicates Tureman's discharge lacked a union discrimination motive. The complainant did not prove by substantial evidence that the employer harbored an anti-union animus in Tureman's discharge.

FINDINGS OF FACT

1. Whatcom County is a public employer within the meaning of RCW 41.56.030(1). Whatcom County runs a jail as part of the sheriff's department. At all times material herein the sheriff was Larry Mount, the undersheriff was Dennis Geleyse until December 31, 1981 and thereafter Douglas Gill. The chief corrections officer was Robert Gordon.
2. Elisabeth Tureman is a public employee within the meaning of RCW 41.56.030(2). She was hired by Whatcom County as full-time corrections officer July 30, 1981 and discharged December 31, 1981 while serving a one-year probationary period.

^{4/} The administration would do well to heed the NLRB's holding, sustained by the Court of Appeals, that discriminatory motivation existed where an employer enforced rules and discharged employees "without significant investigation of their alleged misconduct." W.W. Grainger, Inc. vs. NLRB, 582 F2d 118 (7th Cir. 1978).

3. The Teamsters Local Union No. 231 is a bargaining representative within the meaning of RCW 41.56.030(5); at all times herein Marvin Eggert was the secretary-treasurer and John Edgar was the business agent.
4. Tureman received improving evaluations during her employment with Whatcom County Sheriff's Department. She received no more warnings regarding security procedures than other corrections officers. She did not work poorly with other members of the corrections department staff or with the inmates.
5. Tureman sent a notice of intent to file a grievance to Chief Corrections Officer Gordon December 6, 1981. By December 8, 1981, the sheriff and undersheriff had knowledge of Tureman's memo.
6. On December 22, 1981, Tureman was senior corrections officer on swing shift working with only one other probationary corrections officer, Joe Ladner. During that shift the lock box for the main tank malfunctioned. Later during that shift Corrections Officer Guyer reported back to the jail. While he was present the three corrections officers as a team removed a jumprope from a prisoner. Ladner reported the incident to department administrators in such a way that Gordon and Geleyse perceived that Tureman had committed a breach of security.
7. The Whatcom County Sheriff's Department had a collective bargaining relationship with Local 231 for over ten years at the time of this incident. During at least four years immediately preceding Tureman's discharge the working relationship between the Whatcom County Sheriff's Department and the union was excellent; during that same time period no grievances went to arbitration.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter under RCW 41.56.
2. The complainant did not meet her burden of proof to show that she was terminated by Whatcom County in violation of RCW 41.56.140(1).

Based on sworn testimony during the hearing, the exhibits received into evidence, the post-hearing briefs of the parties, and the record as a whole, it is

ORDERED

The complaint charging an unfair labor practice against Whatcom County is dismissed.

DATED at Olympia, Washington, this 9th day of March, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker
KATRINA I. BOEDECKER
Examiner