

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 882,)	
)	
Complainant,)	CASE NO. 6720-U-87-1348
)	
vs.)	DECISION 2955 - PECB
)	
KING COUNTY,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	AND ORDER
)	

Hafer, Price, Rinehart and Schwerin, by John Burns,
Attorney at Law, appeared on behalf of the complainant.

Norm Maleng, Prosecuting Attorney, by Paul McDonald,
Legal Intern, appeared on behalf of the respondent.

On January 8, 1987, Teamsters Union, Local 882 (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that King County (respondent) had violated RCW 41.56.140(1) and (2) by imposing discipline on employee Patricia Calkins. A hearing was held on April 24, 1987, before Frederick J. Rosenberry, Examiner.

BACKGROUND

King County is a political subdivision of the state of Washington which provides a number of public services for its residents.

Teamsters Local 882 is the certified exclusive bargaining representative of a bargaining unit composed of full-time and regular part-time employees working

in the respondent's Finance Department, Purchasing Department, Records and Elections Department, Facilities Management Department, Real Property Department, and the Auto and Marriage License portions of the General Services Department.¹

Patricia Calkins has been employed by the respondent for 17 years, and had never received a warning letter or other discipline from the employer prior to the events at issue in this proceeding. During the period which is germane to this proceeding, Calkins was employed as a clerk in the Records Section of the Finance Department. Calkins' job responsibilities involved processing tax statements, including technical work such as name and address changes and making corrections to accounting records. She also served as department liaison with escrow and title insurance companies regarding tax matters, and performed file searches to retrieve stored data. Her work station was in the King County Administration Building, located in the central business district of Seattle, Washington. Her desk was located in the Records Section mail room, on the sixth floor of the building. She shared that work area with approximately seven other employees. Her job duties required that she occasionally work in other areas of the building when searching files for data. Her daily work schedule provided for two fifteen minute breaks and a one-hour lunch period.

As a clerk in the Records Section, Calkins was within the bargaining unit represented by Local 882, and she was a union shop steward for Local 882. Her duties as steward included providing new employees with information regarding the union, answering union-related questions, and attending union-management meetings. Calkins' union steward duties would, on occasion, take her away from her work station during work hours. It was indicated in

¹ Notice is taken of the proceedings and decision in King County, Decision 360-A (PECB, 1978), wherein the union received certification for the unit. Those representation proceedings were commenced on a "decertification" petition filed by one Patricia L. Calkins. Notice is also taken of the decision in King County, Decision 2644 (PECB, 1987), which indicates that the bargaining unit recently included approximately 267 employees.

The decertification case remained pending before the Public Employment Relations Commission for more than one year, while related unfair labor practice charges were heard and determined by an Examiner and eventually by the Commission.³

The pendency of the question concerning representation caused the employer to withhold implementation for this bargaining unit of a 2% cost-of-living wage increase for 1986, and this caused considerable consternation on the part of many employees. There were complaints of harassment among employees who had opposing views regarding decertification, and employees were instructed by management that they were to refrain from discussing the matter on the employer's time.

Opposing employee factions met in a series of volatile meetings in August and September of 1986, to determine if they could resolve their differences and dispose of the decertification issue. Calkins was a participant in that effort. The factions were unable to resolve their differences.

At about the same time or shortly thereafter, decertification proponent Karen Isaacson withdrew from active participation in the decertification effort. Isaacson told Calkins that she should henceforth confer with Debbie Lux on matters regarding the decertification effort.

³ The union filed unfair labor practice charges against the employer on November 6, 1985, alleging that the county had engaged in conduct that supported the decertification effort. It was determined that the alleged unfair labor practices could improperly affect the outcome of any representation election, and the representation proceedings were accordingly "blocked", pursuant to WAC 391-25-370, pending the resolution of the unfair labor practice case. The complaint was dismissed by the Examiner on October 24, 1986, in King County, Decision 2553 (PECB, 1986). The Commission affirmed the Examiner's dismissal on February 18, 1987, holding that the evidence was insufficient to show an appearance of support by King County for the decertification petition. King County, Decision 2553-A (PECB, 1987).

Management felt that the hostility in the Finance Department was adversely affecting productivity, and a meeting was held with union representatives on September 18, 1986, to determine if there was a way to reduce tension and the level of animosity among the employees. The meeting was attended by the Personnel Manager, Al Ross, who was accompanied by his Administrative Assistant, Wes Moore, and Finance Manager Detrick. Teamsters Local 882 was represented by Jim Clark and Lew Dascenzo. The effort was apparently not successful, and animosity over the decertification continued through the balance of 1986.

Union representative Dascenzo testified of a second meeting with Detrick, where Calkins' name came up in the context of Detrick asking what restrictions could be placed on her to keep her at her workplace, and what could be done about union shop stewards and business representatives wandering about the building.⁴ Dascenzo testified that he responded that, for several months, Debbie Lux would follow him and listen to his conversations whenever he entered the building, and that all of the employees must be treated in the same manner. The record does not contain additional information regarding the substance of this discussion, and Detrick did not testify on the point.

On either September 17 or 18, 1986, Calkins and co-worker Peter Wolfsehr were called to Detrick's office in response to a complaint lodged by Karen Isaacson. Wolfsehr was also a union supporter. Isaacson had charged that Calkins and Wolfsehr had been harassing her because of her stance regarding the effort to decertify the union. Although Calkins and Wolfsehr denied any wrongdoing, Detrick reminded them that it was against county employment rules to conduct other than work-related business on county time.

Calkins testified that she met with Detrick a second time, when he called her to his office with no one else present, and that they had an acrimonious

⁴ The Examiner infers from Dascenzo's uncontroverted testimony that Detrick's remarks were in the context of some annoyance with what he perceived to be Calkins and Dascenzo's unrestrained visitation throughout the building.

discussion regarding the union. Calkins did not elaborate on the date or substance of what was said in this second meeting. Dedrick testified that he recalled only one meeting with Calkins.⁵

Calkins' immediate supervisor during the relevant period was Lana Holmes, who had been employed as a supervisor for six years, and had been the supervisor of the Records Section since January, 1986. Holmes' office is adjacent to the mailroom, and a window provided a view from Holmes' work area into the mailroom.⁶

Holmes testified that she spoke to Calkins in October, 1986, regarding a complaint raised by two other employees who had charged that Calkins was away from her work station an excessive amount of time. The record does not reflect the identities of the complaining employees, and contains no evidence regarding the substance of the meeting. Calkins testified that she did not recall such a discussion.

Debbie Lux was employed on the sixth floor, as an office technician in the Disbursements Section of the Finance Department. During or about November, 1986, Lux complained to her supervisor, Bruce Martin, that Calkins was being permitted extended breaks and meal periods.⁷ Lux maintained that other employees should be given the same privilege.

5 Calkins also maintained that in the course of discussing the union relationship in one of her meetings with Dedrick, he asked her if she was threatening him with her "big bad union". The record does not reflect what was being discussed or the context of the remark.

6 The record is controverted as to the extent of Holmes' and Calkins' ability to observe each other while they were at their desks. Calkins maintained that she had an unobstructed view of Holmes' desk, while Holmes maintained that she had a partially obstructed view of Calkins' desk. The relevance of the debate, in relation to events described below, is in the ability of Holmes to easily observe whether Calkins was away from her desk.

7 The record does not reflect the precise date of this occurrence, other than that it was about two weeks before Lux provided the employer with a copy of a time record that she initiated regarding Calkins, as more fully discussed below.

Martin testified that he was of the opinion that the pending decertification situation was obvious to everybody, noting that it was referred to by material on bulletin boards and was the subject of conversation. Martin was aware that there were two employee factions, and he testified of having heard that Lux was an active proponent for decertification while Calkins was a vocal supporter of the union. Against that background, Martin testified that he raised Lux's complaint with Holmes, who responded with surprise and left him with the impression that she would do nothing about the complaint.

Martin reported the substance of his conversation with Holmes to Lux, and told Lux that if she wanted to do something about her complaint, she would have to provide some written evidence supporting her claim.

Holmes testified that she spoke to Calkins a second time in early November, 1986, when the subject of conversation was additional complaints that she had received from employees charging that Calkins was away from her work station an excessive amount of time.⁸ Holmes reminded Calkins of the employer's work rules concerning breaks and meal periods, and instructed Calkins to seek Holmes' prior approval if she planned on being absent from her work station for a longer period of time than scheduled. Calkins acknowledged that she may, at times, have been away from her work station longer than scheduled, and that the time she spent on breaks varied due to her varied workload and working into her lunch period when the volume of work and time deadlines required. Holmes testified further of Calkins' maintaining that she only took compensatory extended breaks or lunch periods as required, and that she did not use more time than was allotted. Calkins acknowledges that such a conversation took place.

Calkins brought her conversation with Holmes to the attention of Wes Moore, telling him that she was being singled out for harassment, that the com-

⁸ The record does not reflect the identity of the complaining employees or the nature of their complaint. It is possible that this was in response to Martin's contact with Holmes, but that was not sufficiently established by the record for the Examiner to draw such an inference.

telling him that she was being singled out for harassment, that the complaints were in reprisal for the fact that she was a union shop steward and an outspoken union supporter, and that she believed that she was being kept under surveillance by Dedrick. She based her allegation about Dedrick on her own feeling that he was present when she reported for work and that she was frequently running into him at what seemed to her to be strange places.

In November, 1986, Calkins informed Holmes that a previous back injury was causing her substantial pain, and that she desired to periodically combine her breaks. Holmes did not deny the request, but asked Calkins that she be informed when Calkins intended to do so. So far as it appears from the record, Calkins did not subsequently request permission to combine breaks for this reason.

At some point, Debbie Lux took it upon herself to commence maintaining a written record, or "log", concerning the comings and goings of Patricia Calkins. Lux has not maintained such a time log on any other employee. Lux's work station is physically separated from the Records Section by other offices, but her desk was then positioned in such a manner that she could observe one of the three entrances to Calkins' work area.⁹ Lux and Calkins do not share work responsibilities, and Lux did not have information about Calkins' work assignments or inquire about them. The time log entries were made by Lux while she was on work time, usually on a daily basis. The sources of the information were her personal observations and co-worker reports to her. Lux maintained the time log because she felt that Calkins was engaging in non-work related activity while on the employer's time. Lux did not inform Calkins that she was maintaining the log, nor did she inquire of Calkins where Calkins was going or had been when observed leaving or returning to the mail room. Lux did not verify the information that was reported by other employees. At no time after she provided the log to Martin was she contacted by anyone regarding its accuracy or substance.

⁹ Subsequent to December, 1986, certain areas of the sixth floor were remodeled, changing the floor plan and eliminating some partitions which obstructed the view in the area during the relevant period.

Lux provided her log of Calkin's activities to her supervisor, Bruce Martin, in December, 1986. Martin did not take any steps to verify the accuracy of the information. Martin passed the document along to Detrick, advising him that it was Lux who had lodged the complaint and prepared the time log.

Detrick did not take any steps at that time to verify the accuracy of the information provided by Lux through Martin.

On or about December 11, 1986, Detrick informed Holmes that Martin had advised him of employee complaints about Calkins taking extended break and lunch periods, and not following her work schedule. Detrick provided Holmes with a copy of the time log, but did not inform Holmes that Lux was its author. Holmes had not asked anyone to keep track of Calkins', and was not aware that anybody had appointed themselves to do so. Detrick and Holmes discussed the complaint and concluded that the information tended to support past allegations about Calkins. They also concluded that it appeared past discussions with Calkins had not corrected the situation. Detrick instructed Holmes that Calkins' taking of extended breaks would have to stop immediately. Further, he indicated that if conduct of that type continued, it could lead to formal disciplinary action.

Holmes had not acted on anonymous information in the past, nor had she made a written record of previous discussions with Calkins. In this instance, however, Holmes acted upon Detrick's directive without taking any steps to ascertain the authorship of the time log or to verify the substance or accuracy of the complaint or time log. Holmes summoned Calkins to her office on December 12, 1986, where they discussed the allegations relayed by Detrick. Holmes questioned Calkins regarding whether she was complying with the understanding that they had arrived at in their earlier conversation concerning breaks and lunches. Holmes remarked that she did not personally recall seeing any scheduling infractions, and that she did not know who had initiated the complaint and data. Calkins told Holmes that the complaint upset her, that she felt that whoever compiled the log had no idea what Calkins' job entailed, that the log was incomplete and had no validity, and

that there was no legitimate substance to the complaint. Calkins denied that she had violated any rules. Calkins was shown the material that had been provided to Holmes by Dedrick.¹⁰ Holmes' testimony confirms that Calkins was upset and crying during the meeting, which lasted for more than an hour. Holmes maintained in testimony that the purpose of the meeting was to bring the complaint to Calkins' attention, and to inform her that formal discipline would follow if she was violating policy. Holmes advised Calkins that she intended to prepare a written report regarding their conversation, and that they would review that report together after it was prepared.

On December 15, 1986, Holmes reviewed her draft of the report with Calkins, who requested that some modifications be made. The modifications were acceptable to Holmes, and were incorporated into the final copy, which states:

This letter is in confirmation of our conversation on Friday, December 12, 1986, regarding extended break and lunch periods.

As you know, I have recieved (sic) a time accounting record from an anonymous person that outlines dates and times you presumably have spent away from the office on break and lunch periods during part of October, November and through December 10th.

My understanding from our conversation on this matter is that you have been conscientiously trying to comply with our original conversation in early November on this very

10 The record is controverted as to the number of pages the time log contained. Holmes recollection was that it consisted of one page. Calkins maintained that it consisted of two pages. Lux retained the original document. The document received in evidence, without objection, is a photocopy of two pages of 8-1/2 inch by 11 inch paper, containing handwritten notes. The entries on the first page of the copy in evidence are made under columns entitled "arrived", "break", "lunch", and "went". The second page has columns entitled "lunch" and "left". The document consists mostly of undecipherable, random notations regarding what appears to be represented as arrival times when reporting to work, duration of breaks and lunches, departure times and duration of telephone calls. It contains miscellaneous entries for eighteen days during the period from October 13, 1986 to December 10, 1986.

issue. That is: two 15 minute breaks once a day, an hour for lunch, no combing (sic) break times together, adding break times to the lunch period and if is (sic) was necessary to extend your break or lunch period I was to be advised prior to its occurrence (sic), plus leaving work early in lieu break (sic) was not permitted unless I was aware of the situation and approved your request. I mentioned to you on Friday, that I personally have not seen any deviation from the break and lunch period policy on your part. In fact, I did see improvement shortly after our first discussion on this matter.

I want to re-emphaize (sic) however, that if for some reason you are taking longer breaks and or (sic) lunch periods, or leaving work early without authorization, this practice must stop immediately. Any continuance will result in formal disciplinary action.

At this time, it is my understanding you will continue to work within the break and lunch period policy and any deviation or request to extend a break period or lunch period will be brought to my attention for review prior to taking extended periods or leaving the workplace prior to the normal scheduled end of day work hours. (Your present work hours are Monday through Friday, 8:30 a.m., through 4:30 p.m.)

Please let me know if you have any questions or comments.

The report and a copy of the time log were presented to Calkins. Holmes testified that the report was not made a part of Calkins' personnel file or any other permanent file maintained on her, and that Holmes does not consider the written report to be serious. Nevertheless, Holmes retained a copy of the report and does consider it to be a formal warning.

Holmes reported back to Dedrick that she had talked to Calkins about the log document, and she showed Dedrick a copy of the report.

Within a few days after receiving the report and time log, Calkins brought the matter to the attention of Dascenzo. Together, they met with Wes Moore, and provided him with a copy of Holmes' report and the time log. Calkins informed Moore that she was upset with the memorandum and that she believed that it was unfair and in reprisal for her union advocacy. Calkins also took

the opportunity to voice her opinion that a recent request to change her work schedule had been unfairly denied.¹¹ Dascenzo and Calkins asked Moore to look into these matters. Moore agreed to do so, and he tore up and disposed of the time log in their presence, commenting that he does not give consideration to anonymous reports.

Moore's investigation disclosed that some of Calkins' co-workers had been keeping a time log recording her activities, and had relayed the information to Bruce Martin. Moore questioned Martin on the matter, and learned that the complaint and time log were presented by Debbie Lux. Martin indicated that he did not know who was involved in compiling the data, and that he had not verified its accuracy.

In response to Moore's inquiry, Dedrick re-affirmed that he had not personally taken steps to verify the accuracy of the log when he received the complaint, and that he referred it on to Holmes for disposition.

Moore conferred with Holmes about Calkins concerns and request to have her work shift changed. As a result, Calkins' work schedule was revised as she had requested, but the report remained in effect as written.

It took about 10 days for Moore to complete his investigation and report his findings back to the union representative. When he did so, he suggested to Dascenzo that Calkins should file a grievance if she wanted the memorandum out of her personnel file.¹²

11 Calkins had asked Holmes in October or November, 1986, to change her work shift so that she could report 15 minutes earlier in the morning to accommodate her bus schedule and avert evening rush hour traffic. The record does not reflect the reason for the denial.

12 This response reflects a difference of testimony among employer witnesses. Holmes retained a copy, but maintained that it did not become a part of Calkins' personnel file. Dedrick maintained that the materials are not a part of Calkins' personnel file, and that any formal discipline would have to be signed by himself and probably by the personnel manager. Moore, however, referred to the material as being a part of Calkins' personnel file.

The decertification petition was dismissed on March 13, 1987, upon a finding that the showing of interest filed in support of the petition was invalid. King County, Decision 2644 (PECB, 1987).

POSITIONS OF THE PARTIES

The union maintains that Calkins was unlawfully admonished and issued a written warning in retaliation for her outspoken union advocacy and her opposition to the employee faction that supported decertification. The union believes that the respondent singled Calkins out for harassment, citing the use of surveillance, its use of unsupported allegations of wrongdoing, and its denial of a legitimate request for modification of work schedule. Notwithstanding the respondent's claim to the contrary, it is the position of the union that submission of the dispute to the grievance resolution process contained in the parties' collective bargaining agreement is inappropriate, and that the Public Employment Relations Commission has jurisdiction in this unfair labor practice case to remedy unlawful reprisals against a union shop steward for engaging in lawful union activity. The union argues that the employees who were attempting to decertify the union used the county as their willing tool and agent to punish and silence Calkins. The union claims that the respondent knew that the time log was a partisan document, and that it failed to take steps to verify its accuracy or substance or to make its own investigation of Calkins' activities before it seized the opportunity to retaliate against Calkins. The union contends that if Calkins was away from her work station, it was for an authorized reason, and that the time log is inaccurate, so that there was no factual basis for the imposition of discipline. The union further contends that the written warning could be used in the future as support for the imposition of discipline, so that it is a threat to Calkins' job security. The union requests that the discipline be rescinded and that the employer be ordered to cease such illegal activity.

The respondent maintains that the Public Employment Relations Commission lacks jurisdiction in the instant matter, because the dispute is a grievance

which should be processed in accordance with the terms of the grievance procedure of the parties' collective bargaining agreement. The respondent claims that there was no anti-union motivation on its part when it admonished Calkins, and that her union advocacy had no bearing on its decision to counsel her or to reduce the matter to writing. The respondent denies that it has engaged in any form of harassment or reprisal against Calkins, and denies that it has interfered in the decertification campaign. The respondent maintains that it has an obligation to uniformly enforce its standards of required behavior, and that the complaint and time log originated by Lux were properly passed on to Calkins' supervisor because management had to demonstrate to the employees that the employer's rules would be enforced. The respondent further maintains that Calkins' immediate supervisor had spoken to her on more than one previous occasion about extended breaks, and that, because Calkins had indicated in the past that she may not have been complying with the rules, her supervisor felt that the complaint may be legitimate. The county maintains that the complaint is without merit and should be dismissed in its entirety.

DISCUSSION

The Legal Environment

The union maintains that the employer violated the provisions of the Public Employees' Collective Bargaining Act, by interfering with and discriminating against Calkins for her exercise of rights guaranteed by Chapter 41.56 RCW:

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.

Prior to the convening of the hearing, the respondent moved for either immediate dismissal of the complaint or, alternatively, deferral of the complaint to the grievance and arbitration procedure of the parties' collective bargaining agreement.

Collective bargaining agreements may, and often do, contain provisions which protect employees from discipline and/or discharge "without just cause". The Public Employment Relations Commission is empowered by RCW 41.56.160 to determine and remedy unfair labor practice violations, but the Commission does not assert jurisdiction through the unfair labor practice provisions of Chapter 41.56 RCW to remedy violations of collective bargaining agreements. City of Walla Walla, Decision 104 (PECB, 1976). The Commission does have jurisdiction to determine and remedy "interference" and "discrimination" violations under RCW 41.56.140:

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;

The Commission does not defer questions of violation of statutory rights to arbitrators empowered by contracts. Seattle-King County Health Department, Decision 1458 (PECB, 1982); Metropolitan Park District of Tacoma, Decision 2272, (PECB, 1986).

The Examiner does not accept the respondent's argument that the instant dispute is one of contract interpretation. There is no contention by the union that a contractual right has been violated. Rather, the complainant describes the issue before the Examiner as interference with, restraint and discrimination against Calkins, in violation of RCW 41.56.140. The issue framed by the Executive Director in the preliminary ruling made in this case under WAC 391-45-110 does not involve, or even require, the interpretation of a provision of a collective bargaining agreement. On the contrary, it

concerns "anti-union animus" and Calkins' statutory rights. Dismissal of the complaint or deferral to arbitration proceedings under the parties' collective bargaining agreement is inappropriate under these circumstances, and the Examiner reaffirms the denial of the respondent's motions in this regard.

An employer commits an "interference" violation under RCW 41.56.140(1) if it engages in conduct which can reasonably be perceived by employees as a threat of reprisal or force or a promise of benefit deterring them from pursuit of lawful union activity. A finding of "intent" is not necessary to find a violation. City of Seattle, Decision 2134 (PECB, 1985); City of Mercer Island, Decision 1580 (PECB, 1983).

An employer commits a "discrimination" violation under RCW 41.56.140(1) if it takes action against an employee, or if it withholds benefits to which an employee would otherwise be entitled, in reprisal for the exercise of protected activity. Findings that the employee was engaged in protected activity, that the employer was aware of the employee's protected activity, and that the employer intended to discriminate are necessary to sustain a violation. City of Asotin, Decision 1978 (PECB, 1984); Whatcom County, Decision 1886 (PECB, 1984).

The Work Environment

The setting for the instant dispute is a bargaining unit deeply split into two factions over a protracted period of time. Partisan division within the bargaining unit became so intense during 1986 that it adversely affected the employer's operations and caused management to call for a reduction of the tensions at the workplace. All employees were reminded that they were to refrain from discussing union business on county time.

The record fairly indicates that it was generally known both by the members of the bargaining unit and by management officials that Patricia Calkins was an outspoken proponent of the union.

To the extent that Calkins was engaged in support of the union on her own time or was engaged in the pursuit of her normal duties as a union steward, Calkins was engaged in protected activity. The rights of employees secured by Chapter 41.56 RCW would not extend to give Calkins or any other employee a free hand to violate the employer's work rules or to conduct unlimited union advocacy or decertification advocacy on the employer's time.

Interference

It is not necessary to review each and every fact present in this record, or to resolve each and every factual dispute, to conclude that an interference violation has occurred.

The Unusual Source of Information -

Importantly, it was generally known by both bargaining unit employees and management officials alike that Debbie Lux was an active proponent of decertification. In the context of the decertification debate, and the alignment of Calkins and Lux on opposite sides of that debate, the employer might well have questioned whether Lux and her cadre of observers were motivated by genuine concern for the employer's productivity or whether their complaint was a pretext, to obscure their desired intent to mark Calkins for discipline and silence her outspoken advocacy for the union.

In the context of the earlier admonitions to employees on both sides of the decertification debate, the employer might well also have questioned the propriety of Lux making use of county time to keep tabs on the comings and goings of an employee from a different section. Martin appears to have earlier invited Lux to put her complaints about Calkins in writing, but the record is not sufficient to infer that he authorized Lux to use county time to check up on Calkins' activities.

The Unusual Disciplinary Procedure -

The respondent acknowledges that it was highly unusual for the county to issue a warning letter to an employee in the absence of an established

violation of county policy. The respondent was also unaware of any previous instance where a supervisor issued a warning letter based on anonymous information that was contrary to the supervisor's own observations.

The Other Unusual Actions of Management -

Little is known about the experience or supervisory practices of Bruce Martin prior to the incidents in question. It is known that he responded to one previous complaint from Lux without independent investigation. When presented by Lux with her log, Martin passed it along to Dedrick without making any independent investigation to verify the accuracy of what was alleged.

When Dedrick was presented with the log, he did not personally take any steps to ensure its accuracy.¹³ Nor did he talk to Calkins, direct that the information be verified by his subordinates, or direct that independent observations be made by his subordinates. Rather, he told Holmes to act on the log without even telling Holmes the full facts as to its source.

Holmes clearly deviated from her own past practice when she acted on the basis of the anonymous log document. Had she wanted to make an investigation, she would have been hampered by Dedrick's omission of telling her what he knew of the authorship of the document. Additionally, it is clear from the statements made by Holmes during her interview with Calkins, and from the terms of the written warning letter itself, that the allegations were contrary to Holmes' own observations as Calkins' direct supervisor.

Moore destroyed a copy of the time log based on the anonymity of its origins, but then seemingly contravened his own position on its validity by refusing to have it deleted in its entirety except upon pursuit of a grievance.

¹³ Dedrick testified that he subsequently talked to mail room employees Wayne Maher and Debbie Beattle, and that they verified that the log reflected their personal observations. Those employees were not called as witnesses in this proceeding, and that information could not have been available to Dedrick when he passed the log along to Holmes with instructions to take action.

The employer was in a somewhat awkward position. If it did nothing about Lux's allegations, it could have given the mistaken impression that it was generally lax on the maintenance of discipline. An alternative interpretation of inaction could have been that it was granting favor to Calkins, and thus indirectly taking a partisan position regarding the decertification. If the county moved against Calkins based on the allegations made by Lux, it risked the perception by her and by the union that it was retaliating against Calkins for her union activity. The employer's officials evidently did not identify the existence of, and certainly did not pursue, a third possibility, i.e., forming their own opinion based on their own investigation of past activities or their own careful observations over some future period. The union has been able to establish a nexus between the proponents of the decertification petition and the county's unusual action against Calkins. The Examiner concludes that Calkins could reasonably have concluded that the county was used as a tool of her opponents, and that her job security was being threatened because of her support of the union.

Discrimination

While it is concluded that the county permitted itself to be manipulated into committing an "interference" violation under RCW 41.56.140(1), the record does not support an inference that the county intended to discriminate against Calkins or was a "willing tool" in the hands of the decertification proponents.

The respondent maintains that it had cause to impose the written warning on Calkins. The legal standard to be applied in such situations is that set forth by the Public Employment Relations Commission and the Washington State courts in Clallam County, Decision 1404-A (PECB, 1982), aff. ___ Wn. App. ___ (Division II, 1987) and Public Employees v. Community College, 31 Wn App 203 (Division II, 1982). Those precedents are based, in turn, on the principles set forth by the National Labor Relations Board in Wright Line, Inc., 251 NLRB 1083 (1980). Initially the burden is placed on the complainant to demonstrate a prima facie case of unlawful activity on the part of the

employer. Once such a prima facie showing has been made, the burden shifts to the employer to demonstrate that the action taken against the employee would have been taken regardless of the employee's exercise of rights under Chapter 41.56 RCW. The "just cause" standard used in grievance arbitration is not directly applicable in proceedings of this nature. A respondent will, however, be allowed the opportunity to justify its actions in its defense to the charges against it. Whatcom County, Decision 1886 (PECB, 1984).

Factors Supporting an Inference of Discriminatory Intent -

Calkins was a long-time county employee who had a good previous employment record. As noted above, the employer clearly knew of Calkin's official position as a union steward and of her actual vigorous advocacy for the union.

None of the supervisors who were instrumental in the imposition of the disputed written warning on Calkins investigated the accuracy or substance of the reports that were used as the basis for the allegation of wrongdoing on Calkins' part.

Factors Undermining an Inference of Discriminatory Intent -

Apart from the disputed written warning, the complainant has not been able to present any evidence of union animus on the part of the respondent directed either at Calkins as an individual or at the union as an institution. As noted above, the employer was exonerated of the unfair labor practice charges in the proceedings which blocked the decertification petition.

Calkins had been counseled in the recent past about failing to comply with the work schedule. She had acknowledged that she had perhaps been abusing the employer's time.

Looked at from a different perspective, the fact of the supervisors' reliance on unsubstantiated reports weighs against an inference of anti-union motivation. The respondent could lawfully impose discipline on Calkins for mis-use of break and meal rights, with no intention to discriminate against

her. On the record made here, it is difficult to conclude that the employer had formed an intent to discriminate against Calkins when it so clearly was acting without a clear direction of its own.

The burden is on the complainant to demonstrate that the employer had discriminatory motivation or an unlawful intent in imposing the discipline, absent this element, regardless of any other reason or lack of reason, there is no violation.

The Allegations of Employer Surveillance

The Executive Director's preliminary ruling in this case discounted the union's "surveillance" allegation as conclusionary, and insufficient to state a cause of action. The complainant did not move to amend the complaint, or to request reconsideration of that ruling.

On the record made here, the surveillance allegation could also be dismissed for lack of evidence. Calkins offered no support for her assertion that she felt that Dedrick commenced to keep her under surveillance after the September, 1986, meeting. Management has the right to observe employees to see to it that they are complying with work rules and are performing the work for which they are employed. There is no evidence that Dedrick was "spying" on Calkins, that he indulged in some other form of surveillance of Calkins while she was engaged in some form of lawful union activity, or that Dedrick's activity went beyond normal supervisory observation. The Examiner thus views the allegation as having no foundation, and as not being relevant to the case at hand.

FINDINGS OF FACT

1. King County, Washington, a political subdivision of the state of Washington, is a public employer within the meaning of RCW 41.56.030(1).

2. Teamsters Union Local 882, a bargaining representative within the meaning of RCW 41.56.030(5), represents a bargaining unit composed of employees in the Finance Department, Purchasing Department, Records and Elections Department, Facilities Management Department, Real Property Department, and the Auto and Marriage License portions of the General Services Department of King County.
3. Patricia Calkins, a public employee within the meaning of RCW 41.56.030(2), has been employed by the respondent for approximately 17 years. Prior to the events pertinent to this proceeding, Calkins had no warnings or other disciplinary actions on her record. At the time of the hearing in this matter, Calkins was employed as a clerk in the Records Section of the Finance Department.
4. Patricia Calkins served as a union shop steward for Local 882. As such, her duties included providing new employees with information regarding the union, answering union related inquiries by fellow workers and attending union meetings with management.
5. On October 23, 1985, a petition was filed with the Public Employment Relations Commission seeking to decertify the exclusive bargaining representative for the bargaining unit involved herein.
6. Subsequent to the filing of the decertification petition, there were serious conflicts between employees who supported the decertification petition and those who did not. That dispute continued over a lengthy period. Patricia Calkins was an outspoken proponent of the union. Debra Lux was an outspoken proponent of decertification. The existence of the dispute and the identities of proponents of both positions were known to management and employees alike.
7. During October, November, and December, 1986, Debra Lux initiated and maintained a time log setting forth observations concerning the comings and goings of Calkins from the room where Calkins' work station was

located. Lux's sources of information were her personal observations and those of other employees who reported them to her. Lux prepared the log on work time, but had not been authorized by any employer official to do so. Calkins was not aware that such surveillance was being undertaken, and she was not questioned regarding her whereabouts by those who submitted their observations.

8. During or about November, 1986, Lux complained to her supervisor, Bruce Martin, that Calkins was taking extended breaks and meal periods, and was leaving work early, she maintained that other employees should be granted the same privilege. Martin raised the matter with Calkins' immediate supervisor, who rejected the complaint as being contrary to her own observations of her subordinate.
9. In December, 1986, Lux provided Martin with a copy of the written time log that she had initiated, asserting that it supported her complaint regarding Calkins. Lux was never questioned at any time regarding the substance or accuracy of the log.
10. Bruce Martin relayed Lux's complaint and time record to his supervisor Lee Dedrick. The complaint and time log were, in turn, passed along by Dedrick, without investigation, to Calkins' immediate supervisor, Lana Holmes. Without informing Holmes of the authorship of the time log or the source of the complaint, Dedrick instructed Holmes to counsel Calkins on the matter.
11. On December 12, 1986, Holmes confronted Calkins regarding the complaint and time record. Calkins denied that she had violated the respondent's work rules and Holmes acknowledged that the complaint was not supported by her own observations of Calkins. On December 15, 1986, a written report was prepared and issued to Calkins, setting forth the substance of the complaint and time log. Holmes regarded the report as a written warning, and she retained a copy of the report and time log for future reference.

12. The procedures followed by the employer with respect to the investigation of the complaint made by Debbie Lux and its imposition of a written warning on Patricia Calkins differed from procedures normally followed by Holmes and endorsed by the employer's personnel department.
13. Patricia Calkins could reasonably have believed that the employer was acting at the behest of her opponents on the decertification issue.
14. The record does not support an inference that King County had, in fact, any intention to take any action to influence the decertification issue or to discriminate against Patricia Calkins or any other employee in their exercise of rights protected by Chapter 41.56 RCW.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. By acting, without normal investigation, upon information put forth under the circumstances here present, and by imposing a written warning upon Patricia Calkins in deviation from its own normal procedures and standards in such situations, King County has interfered with, restrained and coerced Patricia Calkins in the exercise of her rights guaranteed by RCW 41.45.040 and has engaged in unfair labor practices within the meaning of RCW 41.56.140(1).

ORDER

IT IS ORDERED that the respondent, King County, its officers and agents, shall immediately:

1. Cease and desist from interfering with the exercise of the rights of employees to engage in protected and concerted activities as detailed in RCW 41.56.040(1) and (2).
2. Take the following affirmative action to effectuate the purposes and policies of Chapter 41.56 RCW:
 - a. Expunge the written warning issued to Patricia Calkins on December 15, 1986 and the time log attached thereto from all records maintained concerning Patricia Calkins by King County, its officers or agents, and make no reference to that written warning or to the incidents referenced therein in any future disciplinary proceedings concerning Patricia Calkins.
 - b. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall, after being duly signed by an authorized representative of King County, be and remain posted for sixty (60) days. Reasonable steps shall be taken by King County to ensure that said notices are not removed, altered, defaced or covered by other material.
 - c. Notify Teamsters Union, Local 882, in writing, within twenty (20) days following the date of this order, as to what steps have been taken to comply herewith, and at the same time provide Teamsters Union, Local 882, with a signed copy of the notice required by the preceding paragraph.
 - d. Notify the Executive Director of the Commission, in writing, within thirty (20) days following the date of this order, as to what steps have been taken to comply herewith, and at the

same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

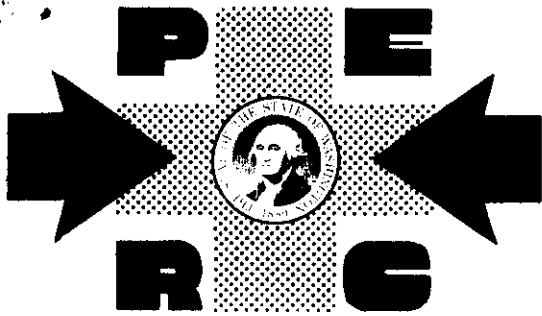
DATED at Olympia, Washington, this 15th day of June, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



FREDERICK J. ROSENBERRY, Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, AND IN ORDER TO EFFECTUATE THE POLICIES OF THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT, CHAPTER 41.56 RCW, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT interfere with, restrain or coerce employees in the exercise of their rights to organize and designate representatives of their own choosing for the purposes of collective bargaining.

WE WILL remove the written warning issued to Patricia Calkins on December 15, 1986, and the documents related thereto from her employment record.

All of our employees are free to become or remain members of any lawful labor organization, and are also free to refrain from such activity.

DATED: _____

KING COUNTY

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.