

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ARTHUR GLASOW,)	
)	
Complainant,)	CASE 8152-U-89-1766
)	
vs.)	DECISION 3580 - PECB
)	
PORT OF PASCO,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
)	

Critchlow and Williams, by Alex J. Skalbania, Attorney at Law, appeared on behalf of the complainant.

McKinlay, Hultgrenn and Vanderschoor, by Edward H. McKinlay, Attorney at Law, appeared on behalf of the employer.

On August 28, 1989, Art Glasow filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Port of Pasco had violated RCW 41.56.140(1) by discharging him because of his union activities. A hearing was held in Pasco, Washington, on November 16 and 17, and December 15, 1989, before Examiner Katrina I. Boedecker. Both parties submitted post-hearing briefs.

BACKGROUND

The Port of Pasco has divided its operations between an airport and a water-port. Paul Vick is the general manager of all of the operations. At the airport, James Morasch is the manager and Ronald Foraker is the assistant manager. Among the divisions reporting to Foraker are airport maintenance, law enforcement and guards.

In airport maintenance, Eldon Ostergaard supervises Donald Cooper, Kenneth Dagel, Roderick Lingle, and Robert Puckett. Law enforcement has three officers: Samuel Hansen, Bradley Lewis and Carl Vance. There are three watchmen/guards: Art Glasow, Randy Thomason and William Voss. Three custodians: David Bickle, Joseph Speeler and Clinton Stevens report to the Terminal Service Manager, Dee Carson. Eight parking lot attendants also report to Carson. In addition to their other duties, the maintenance employees, watchmen/guards and custodians also all perform fire fighter/first responder duties for the airport.

The airport is commonly known as the Tri-Cities Airport. The central section of the airport has a passenger terminal, a control tower to the northwest of the terminal, and a fire station to the west of the control tower. The fire station houses the Port's fire trucks, and has an area for the employees' break room and meetings. On the east side of the airfield, approximately one mile from the passenger terminal, are "fixed base operations" including warehouses and an industrial complex.

The Port's fire trucks are labeled #1 and #2. Truck #1 was acquired recently. It meets the water and chemical carrying requirements that the Federal Aviation Administration (FAA) establishes for a one-response vehicle. Truck #1 replaced the "fire boss" truck which had been the Port's quick response vehicle. Truck #1 carries 500 gallons of water and 200 gallons of Halon.¹ Truck #2 was acquired in 1982. Truck #2 is bigger than Truck #1 and carries about twice the amount of water and Halon. Because of

¹ Halon is a gas that is relatively new in the fire service. It extinguishes fire through what is called a free radical design. The medium is different than the cooling or quenching effect of water or the smothering effect of dry chemicals. Halon is injected by a hand held line directly into the shell of the aircraft. One person takes the line to the aircraft, a second person stands by at the truck.

its size, Truck #2 is somewhat slower than Truck #1. Thomason, Cooper, Dagel, and Voss testified that Truck #1 was to be used as the primary response vehicle. Others testified that Truck #2 should be the primary response vehicle if only one person was on the shift, because of that truck's bigger water capacity.

At the time in question, the Tri-Cities Airport was used by one major carrier, Delta Airlines. United Express and Horizon also flew passenger service in and out of the airport. The largest regularly scheduled aircraft were Boeing 727 and 737 types used by Delta. Horizon Airlines flew De Havilland Dash-8's and Metroliner aircraft; United Express flew Brazillias. All three airlines also used several smaller twin engine propeller type aircraft. Additionally, chartered "gambling flights" would fly DC-9's and the United States Navy occasionally used the airport for DC-9's and T-3's.

Art Glasow was hired by the Port in 1975. His job duties as a watchman/guard at the airport for the night shift include patrolling the airport grounds to detect and/or to prevent the occurrence of burglaries or other undesirable activities, and being on "stand-by" as a fire fighter/first responder for the arrival of certain aircraft. He inspects the warehouses on the airport perimeter daily. As part of the inspection, Glasow carries a time-clock that has a paper tape running through it continuously. There are keys stationed at five locations around the airport. During an inspection tour, Glasow would take the key from its location and insert it into the time clock. The time of the "punch" would be recorded on the paper tape. Foraker reviews the tapes each Friday. In order to avoid predictability, Glasow does not follow the same inspection route or time schedule every shift.² Additionally,

² The employer submitted transcripts of all the time-clock tapes from Glasow's 1989 shifts. The tapes showed Glasow's initial punch-in times ranged from 5:30 p.m. on February 10, and July 19, 1989 to 10:30 p.m. on March 15,

Glasow escorts the toll-booth operators, with the fees they collect, to the terminal from the tollbooths.

Foraker was responsible for preparing Glasow's yearly performance evaluation. In 1984, Glasow caused damage to Truck #1 when backing it into the fire station. He received two days suspension without pay. In 1986, Foraker wrote in Glasow's evaluation, "[Art] needs overall improvement under attitude concerning work duties and the Port as an employer". Glasow wrote in his comments that "Attitude is a misnomer in this case. The problem is that I experience acute, chronic depression, over which I have little control...." The following year Foraker evaluated that "Art has effectively improved upon his attitude toward work and the Port as his employer" and rated him "fully acceptable" in the area. In 1988, Glasow was again given a "fully acceptable, meets expectations" rating.

Glasow is considered the crash fire rescue employee on his shift³ which is from 4:00 p.m. to 1:00 a.m. generally; there are no other watchmen/guards who work the evening shift with him. Since 1986, Glasow has responded to six Horizon Fairchild F-27's radioing that they were landing with an engine shut-down. In each case, Glasow was the only person to respond to the emergency. Each flight experienced a routine landing after having shut down an engine for safety purposes. Glasow responded with fire Truck #2 to all of the emergencies. Glasow theorized, since he is alone on his shift, that he should get as much water as possible to the scene immediately so that the truck would not be depleted and he would not have

1989. Fourteen times he did not make his initial punch-in until 9:00 p.m. or after. The tapes submitted covered 155 shifts. Fifty-four shifts had no tape to be reviewed either due to Glasow being on leave or the tape running out in the machine. The tapes showed that Glasow punched the time-clock at 8:00 p.m. on 34 shifts and at 8:30 p.m. on 23 shifts.

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Crash fire rescue (CFR) has recently been changed to Airport Rescue and Fire Fighting (ARFF).

to drive the empty truck back in order to bring out the next tanker. The Halon capacity is not a factor since Halon cannot be used by just one person. Glasow has been given no instruction from the Port to respond in a different manner. The people on the day shift respond with fire truck #1 first during drills, since it is somewhat lighter and therefore quicker in its response time.

The FAA requires that the Port provide training to employees who are to respond to aircraft emergencies that would need fire fighting or first aid assistance. Generally, a newly hired watchman, maintenance worker or custodian would be sent to a three day Crash, Fire, Rescue Training Course (CFR) at Moses Lake Community College. Glasow had gone through the course twice in the 1970's and again in April, 1989.

The FAA also requires that the Port hold monthly in-house training sessions. During an FAA inspection, the training topics and monthly attendance records are reviewed. In June, 1982, Foraker had all the maintenance employees meet at the fire station for a drill. The training was on the use of the Jaws of Life, which is an apparatus that cannot be used by just one person. When Glasow reported for regular duty, Foraker invited him to join the session. Glasow did not sit down, claiming he already knew the procedures and they were not applicable to his situation. He thereafter walked about the room and did not appear to pay attention to the remainder of the session. The employer took no disciplinary action against Glasow.

The attendance records for the training sessions for 1987, 1988 and 1989 were submitted into evidence. No sessions were held in February or March, 1988. Union witnesses testified that a majority of the training sessions were held with little advance notice. Generally, Ostergaard would announce in the morning that there would be training at 11:00 a.m. or 3:00 p.m. that day. It is unclear how much effort was extended to get notice to Glasow of the

meeting. Apparently, if he could be contacted by telephone, he would attend. On December 28, 1988, with four days advance notice, Glasow specifically, in writing, declined to come to training sessions scheduled for 7:00 a.m. and 10:30 a.m. because it disrupted his sleeping schedule. He used obscene language in his written refusal. The Port did not discipline him, nor did it arrange training for him on his shift. For the three years of training-session-attendance-records submitted, Glasow was listed as present at 6 of 31 sessions.

Apparently, recent FAA guidelines require that all people on crash response crews receive 44 hours of first aid training. Washington State Fire Service offers a 45-hour fire fighter first-responder course. In February, 1988, the Port contacted Captain Don Birkhimer, from the City of Kennewick Fire Department, to teach the first-responder course to all the watchmen, maintenance and custodian employees.⁴ During this first-responder training, Birkhimer indicated to the employees that he felt the training and experience offered by the Port was inadequate for their fire fighting responsibilities. Birkhimer thought Glasow exhibited signs of stress, frustration and disinterest in the training. At one point in the class, Glasow left and did not return for the rest of the day. Birkhimer told Morasch of Glasow's action. Morasch advised him that Glasow had to pass the course or he would be without a job. Thereafter, Birkhimer spent extra time with Glasow, who did pass the course.

During the time of this training, the employees began talking among themselves and determined that they did have increased responsibilities and needed to receive more training, especially with the

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At one point, Birkhimer worked at the Tri-Cities Airport as a maintenance/fire fighter employee.

equipment.⁵ They decided to explore unionizing through the International Association of Fire Fighters (IAFF) to see if it would help their efforts in this area. On or about June 28, 1988, Glasow prepared a sign-up sheet for employees to indicate their interest in forming a union. He left the sheet out in the open on a table in the maintenance shop. All the employees with fire fighting duties signed on the sheet expressing their interest in contacting the IAFF.

In mid-July, the Port sent out informational material concerning the "pros and cons" of unionization to all the individuals whose names had appeared on the sign-up sheet. At this time, no employee had approached the Port management to directly communicate a desire to unionize.

At the same time, the Port asked the concerned employees to attend an informational meeting with the Port's labor relations consultant, Roy Wesley. The employees discussed attending the meeting. They decided it was premature, since they still wanted to speak with an IAFF representative before approaching the airport management. Glasow volunteered to speak for the group. A few days later, approximately July 21st, Glasow approached the airport assistant manager. Glasow told Foraker that he was acting as the spokesman for the fire fighters and that the fire fighters were not interested in attending the Port's proposed meeting with Wesley. At that time, the airport manager was out of town. Upon Morasch's return, he and Foraker approached Glasow at the fire station. Glasow perceived Morasch to be visibly upset because the employees had not attended the meeting with Wesley, and because the employees were considering unionization. Morasch told Glasow that the employees could not form a bargaining unit based on their fire-

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The employees were Art Glasow, Rob Puckett, Rod Lingle, Ken Dagel, Don Cooper, Dave Bickle, Bill Voss and Randy Thomason.

fighting responsibilities. Rather, they would have to form one as watchmen or maintenance workers.

Glasow nevertheless contacted Dan Downs, the area representative for the IAFF. Over the next few months, Downs assisted the employees in organizing and establishing IAFF Local 3173 at the airport. In October, 1988, Glasow and Don Cooper requested Morasch to voluntarily recognize Local 3173 as the exclusive bargaining representative for the airport fire fighters. Morasch refused to grant recognition to the local union.

On October 26, 1988, Local 3173 filed a petition with PERC seeking certification as exclusive bargaining representative of rescue and fire fighting personnel at the Tri-Cities Airport.⁶

On November 16, 1988, Local 3173 and Roderick Lingle filed unfair labor practices charges with the Commission, alleging that Roderick Lingle had been discharged from employment within the petitioned-for bargaining unit, in reprisal for his support of the union's organizing effort.⁷

In December, 1988, Glasow and Downs were quoted in the Tri-City Herald as being critical of Port management, specifically detailing lack of training and multiple job responsibilities. The two men were quoted as being concerned about safety at the airport and as criticizing FAA tests that were "staged" so that the Port would continue to receive its FAA certification.

The Port filed an unfair labor practice complaint against Local 3173 as a result of this newspaper article.⁸ In Port of Pasco,

⁶ Case 7639-E-88-1307.

⁷ Case 7676-U-88-1615 and Case 7713-U-88-1629. The proceedings were consolidated.

⁸ Case 7763-U-89-1643.

Decision 3134 (PECB, 1989), the complaint was dismissed for failing to state a cause of action.

A hearing was held on the Lingle unfair labor practices on March 22, 23 and May 1, 1989.⁹

On May 18, 1989, William Kozak filed a complaint charging unfair labor practices with the Commission. Kozak's complaint alleged that he had been discriminated against by the Port of Pasco, in reprisal for his testimony given at the hearing on the unfair labor practice charges concerning Lingle.¹⁰

A hearing on the representation petition was held May 23 and 24, 1989. The resulting decision, Port of Pasco, Decision 3134 (PECB 1990), issued January 23, 1990,¹¹ directed a cross-check be held in the petitioned-for bargaining unit.¹²

Glasow testified at the Lingle hearing and at the hearing on the representation petition. He was clearly identified as the presi-

⁹ In Port of Pasco, Decision 3307 (PECB, October 5, 1989), the Examiner found that an unfair labor practice was committed, and ordered a remedy. The employer petitioned for review, and the matter remains pending before the Commission.

¹⁰ Case 7965-U-89-1726. A preliminary ruling made pursuant to WAC 391-45-110 concluded that the complaint stated a cause of action, and the matter was assigned to an Examiner for further proceedings. The parties settled the case prior to a full hearing.

¹¹ The decision was substantially delayed due to the filing of the four unfair labor practices charges between October, 1988 and November, 1989 and the seeking of necessary Requests to Proceed in pertinent charges.

¹² The Port has appealed the directed cross-check contending that the bargaining unit should not refer to fire fighters, but instead should only refer to watchmen, custodians and maintenance employees. The appeal is currently pending before the Commission.

dent of Local 3173 and as a primary instigator of the organizational effort to establish the local.

In order to maintain its certification to operate, the Tri-Cities Airport must pass a yearly inspection conducted by the FAA. The inspection takes two days. One part of the inspection is a timed drill involving a simulated aircraft emergency. The FAA requires that no more than three minutes elapse between the time the emergency siren sounds from the air traffic control tower until there is a fire truck at the "crash" scene pumping "agent", either water or chemical. Seventy-five per cent of the tests are announced; 25% are unannounced.

The record established that quite a bit of confusion exists over the FAA requirements regarding "stand-by" during an "air operation window". An FAA official, Harold Handke, testified that the airport certification manual for the Tri-Cities airport defined the air operation window as 15 minutes prior to the arrival of a flight having the seating capacity of 30 or more; the time the craft is on the grounds and fifteen minutes after departure.¹³ If the plane is over-nighting, the stand-by is while passengers are deplaning only. Boeing 727 and 737 aircraft seat well over 30 passengers; Dash-8 aircraft have 30 fixed seats, plus a jump seat for a flight attendant to use.

Foraker testified that the Port left the definition of the appropriate place to stand-by "pretty much up to the individual" as long as the person could make the response to the fire station and then to the site of an emergency within three minutes. Voss, who works the weekend night shift was not always at the fire station to

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The FAA sets forth specific certification requirements for each airport. For example, the certification manuals for Seattle Tacoma International Airport require a three minute response coverage at all times, not just during an aircraft operation window.

cover the Delta 727 or 737 operations. Bickle, who does custodial work on Thursdays and Fridays, does not always cover the Delta 737 operations by waiting at the fire station. The last indication that Puckett had about stand-by was from Foraker in 1982, and he said it was for aircraft with 60 or more seats. Puckett did not stand by for Dash 8's and was not aware of other watchmen who did. Lingle did not know he was supposed to stand-by for Dash-8's. The flight schedules, indicating the size of aircraft and time of arrival, are posted sporadically in the fire house.

From 1975 until 1989, all of the FAA drills had been conducted in the daytime; Glasow had never been on duty during a drill. Effective October 1, 1988, the FAA required that night inspections be done; drills could be staged anytime. Although it is generally common knowledge among the employees when FAA inspectors are on the premises, some drills continue to be unannounced. For example, the 1988 drill was conducted on a Sunday; Morasch did not even know the inspectors were in the area.

Cooper testified that one year Stan Razen was manning the fire station during the time the FAA inspectors were present. Razen suited up in his proximity suit and waited in the fire truck for the emergency siren to sound. Another year, after seeing the FAA inspectors present, Maintenance Supervisor Ostergaard sat with Dagel and Puckett in the pickup truck with the engine idling between the terminal and the small freight shed. They waited for "quite some time" for the siren to sound and then they responded. Puckett testified that on the days that the FAA was to do an airfield certification test, his foreman would advise that the maintenance crew stay in close proximity to the fire station. Birkhimer testified that the FAA drills were pre-announced when he worked at the airport in 1977. He would be assigned to do work close to the terminal or the fire station itself and be told to stay close to the portable radio.

On August 16, 1989, Glasow reported to work at 4:00 p.m. at the fire station, as usual. He performed maintenance/janitorial work at the fire station while waiting for the daytime maintenance crew to return with the Port's truck around 5:00 p.m., the end of their shift. At 5:30 p.m. he drove the pick-up truck to the tollbooth plaza. He then helped the employee there check out and return to the terminal. He apparently had dinner in the terminal. At 7:15 p.m. he went to the fire station to stand-by for the 7:30 p.m. arrival of a Delta 737 aircraft. The Delta flight did arrive at 7:30 p.m. and experienced a routine landing. At 7:45 p.m. Glasow left the fire station in the Port pick-up truck to do a security patrol on the east side.¹⁴ He was accompanied by Port Police Officer Sam Hansen. Since Hansen was not assigned a Port vehicle, he routinely joined Glasow in the patrolling duties on the principle that it was prudent to have a back-up person for this task.

As they drove toward the warehouses, Glasow and Hansen discussed the fact that FAA inspectors had been seen at the airport during the day. The FAA inspectors, who were unknown to Glasow and Hansen were, in fact, Handke, who is the FAA Manager of Safety and Standards branch for the seven state northwest mountain region, and John Kal, an FAA evaluation officer from Washington, D.C.

Glasow and Hansen were aware that no simulated emergency drill had been held during the day. They rejected the idea that such a drill would be held on Glasow's shift, since there had never been a night

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The truck he was using at the time had a fairly new engine that was using quite a bit of oil. Soon after this incident the engine was taken out and replaced because it was found to have one dead cylinder, which would have decreased its horsepower. The maintenance employees had requested that the front two tires be replaced because the outside edges were balding and the lower ball joints were worn which would affect the truck operation around corners. The worn tires were replaced shortly after this date.

drill before and since they had no advance notice of the drill from the Port.

That evening, Handke determined when there would be an aircraft operation window which would require a three minute response. He then left the exact time for the siren to sound and the timing to begin up to the air traffic controller in the tower, Mark Bland. It was prearranged that the tower would position the FAA inspectors at the simulated crash site by the use of light guns so that there would be no radio traffic. At the earliest possible time that the traffic was clear, the tower would initiate the drill. The air traffic controller would keep record of the length of the response from the point of time that he picked up the crash phone.

Bland testified that there was a Horizon Dash-8 on the ramp at the terminal at the time of the test. Bland testified that the crash site was on Runway 21 Right. Handke testified that the drill was to take place at the intersection of Taxiway D-4 and Runway 12. Glasow placed the crash site at the intersection of Runway 30 and Runway 21 Right.

Handke did not know the specific time that the test started. The employer did not request that the radio tapes from the control tower be saved for review.

Glasow reached the warehouse area and punched the first time clock around 7:50 p.m.; he returned to the pick-up truck. As Glasow began to drive, the airport emergency siren sounded. Hansen looked at his watch and saw that it was 7:50 p.m. exactly. They were over one mile from the fire station in a gravelly area with pot holes. The area had rows of tied-down, single engine, privately-owned aircraft, as well as some baggage carts. Glasow and Hansen testified that it was still daylight out, and corroborative evidence shows that sunset on August 16, 1989, was 8:07 p.m. at the airport.

Glasow knew he was the only Port employee on duty at the time who was responsible for responding to emergencies that required fire fighting and/or emergency first aid training. He immediately began driving toward the fire station. Glasow contacted the control tower with the CB radio in the truck. Air Traffic Controller Bland advised Glasow that a simulated emergency timed response drill was being conducted by the FAA. Bland gave Glasow permission to cross Runway 30 on Taxiway Alpha to get back to the fire station. Bland also told Glasow the sight of the simulated crash and that the scenario was that a De Havilland Dash-8 had crashed and was on fire.

Glasow testified that he drove as fast as he could, given the condition of the pick-up truck and their location when the siren was sounded. Hansen, who has had training in emergency vehicles response techniques, thought Glasow was going too fast given the circumstances. Kal suggested to Handke that the truck "seemed to be going awfully slow". Neither FAA representative watched the truck with binoculars. Handke testified that it was dark at the time and that the pick-up truck had white headlights on. Handke admitted he may have been watching another vehicle during this time period. Bland watched Glasow driving toward the fire station. Bland thought Glasow could have driven faster. Bland testified that it was dark and that the pick-up truck had white headlights and yellow flashers operating.

Terry Votendahl is a mechanic employed at the Tri-Cities Airport by Horizon Airlines. Votendahl is not a member of any union. On occasion, Votendahl is assigned to a work station connected to the fire station. He knows Glasow as an airport guard, but is not a personal friend. He only casually knows the other airport fire fighters. On the evening of August 16, 1989, Votendahl was working the evening shift. He heard the emergency siren sound. He testified that when the siren went off one could still see very well in the day's lighting conditions. He then saw the pick-up

truck with Glasow and another person in it "racing" toward the fire station. Upon its arrival, Votendahl saw Glasow "jump" out and "quickly" move toward the fire truck. He watched Glasow drive the fire truck "like he had it floored. It was very loud RPMs, revved up." From where Votendahl stood near the fire station, he was able to watch the entire route that Glasow took to the simulated crash site. Under the existing lighting conditions he saw Glasow shoot foam across the runway at the drill site that the union advances is accurate, i.e., the intersection of Runway 30 and Runway 21 Right.

Glasow testified that when he arrived at the fire station, the bay doors were open. He got out of the pick-up truck and unplugged Truck #2. As he drove it out of the fire station, he was in contact with the control tower. Bland gave him permission to drive down Taxiway Delta to the location of the simulated crash. It took Glasow 3 minutes and 51 seconds to respond to the site of the simulated emergency.

After the drill was over, Glasow drove the fire truck back to the fire station and began servicing it to bring it back on line. Handke and Kal arrived at the fire station. Handke asked Glasow what he thought of the drill to which Glasow replied that it "was about normal" given where he had been when the siren sounded. Handke told Hansen that although the test was not completed within the three minute required response time, there would be no violation, because there was no Dash 8 actually on the ground when the test occurred. Handke emphasized, however, that the test was failed.

No official record was made by the FAA of what time the drill started. The tape in the time clock where Glasow first punched that night verified that Glasow had punched in at the east side warehouse area between 7:45 p.m. and 8:00 p.m. Foraker testified.

Hansen telephoned Cooper at 7:58 and left a message on his recorder. Cooper heard the message at 8:07 p.m. and drove directly to the fire station. He arrived at the fire station just as Handke and Kal drove up. Hansen also called Lingle and left a message on his phone answering machine saying that it was 8:05 p.m. and that "the FAA had just pulled a drill on Art and he failed." Lingle picked up the message at 8:10 p.m. and drove directly to the airport arriving approximately five minutes later.

Cooper asked Handke if they had passed the test and was told "no". Cooper offered that, given Glasow's location, that was about what could be expected for a response from that area of the airport. They then discussed some of the training. Cooper advanced that he had been concerned at times about being a long way away from the fire station when planes were landing. Handke mentioned several times that "well, there's a labor dispute in progress here." Cooper thought it odd that Handke was so obviously well versed in the facts of the labor dispute.

The next day, Handke reported to Morasch that the drill had not been completed in three minutes and that the driver seemed to be "dogging it." Handke recounted to Morasch that the test had occurred somewhere around 8:30 to 9:00 in the evening and that there was a Dash 8 on the ground that they believed was going on to Walla Walla that night.

Overall, the Port was deficient in 14 areas of the inspection; however, none of the deficiencies threatened the operation certification except the failure of the three minute response time. Handke also informed Morasch that a "retest" would be given within the next 30 days. If the Port failed the retest, the FAA would request that it surrender its operation certificate; if it did not do so willingly, then the FAA would take legal action necessary to get it back.

Morasch did not question Glasow, Hansen or any other employee about the drill. Morasch did telephone Port Director Paul Vick. Later on August 17, 1989, Morasch called Glasow into his office. Morasch tapped his hand on the transcripts that were stacked on his desk from the Lingle unfair labor practice hearing and the representation hearing. He stated that they showed that Glasow knew that he should have been at the fire station standing by for the Dash-8 flight when the drill began. Glasow was confused by the statement because the drill had begun at 7:50 and a Dash-8 was not scheduled until 8:40 p.m.; Glasow thought that Morasch was confused about the time that the drill had actually happened. Morasch testified that Glasow stated that he did not pay any attention to Dash-8's and that he had done everything humanly possible to make the three minute response. Morasch testified that he did not believe that Glasow gave it his best effort, relying on the FAA inspectors' report that Glasow appeared to be "dogging it". He told Glasow that the three minute response had been completed from the other side of the airport on numerous occasions in the past. Morasch stated to Glasow that he had to take corrective action with regard to the FAA drill to correct the deficiency. Morasch then terminated Glasow's employment. He told Glasow that he was being terminated for failing to complete the drill in less than three minutes. Morasch feared that if the FAA ran the drill on Glasow's shift again, the Port would fail the retest and lose its certificate to operate.

After his discharge, Glasow checked Horizon's schedule for August 16, 1989. No Dash-8's were scheduled on the ground at 8:00 p.m.; the next one was scheduled for an 8:40 p.m. arrival that evening. Glasow testified that he did not monitor Dash-8's since he had not been specifically instructed to stand-by for that aircraft.

All of the first-responder employees called by the union or the employer said that it would have been impossible to complete the

test in less than three minutes, given Glasow's location when the siren began. Randy Thomason testified that he had attempted to respond from the warehouses to the fire station and then to the simulated crash site to test it for himself. He had been unable to make that response in less than three minutes even though he: (1) had achieved speeds of up to 75 MPH, (2) was using a faster pick-up truck, and (3) had less blocking obstacles in his attempt. The drill took Thomason 3 minutes and 30 seconds.

Morasch testified that it was the first time in 13 years of testing that the Port had failed an FAA drill. If the Port lost its FAA certificate to operate, then the airlines would not come into the airport because their insurance would no longer be valid. To be recertified would take six to eight months.

In Handke's 6 years of testing, five airports have failed the 3-minute test; one airport has had its certification lifted.

Approximately one week after Glasow was discharged, the airport initiated a self-test drill. Cooper, Puckett, Lingle, and Ostergaard were working in the warehouse area, a few hundred yards closer than where Glasow had been. Cooper was in the truck and had a more direct route to the fire station than had Glasow. Puckett and Lingle responded in Truck #1. As Cooper and Ostergaard were leaving the station in Truck #2, the bay door malfunctioned and crashed back down on top of the truck. The men jumped from the truck to reactivate the electronic door opener. They responded to the drill site in 4 minutes and 5 seconds.

The FAA did retest the Port. The drill was responded to by Randy Thomason, who was working a graveyard shift. He was at the fire house when the siren sounded. He testified that the crash site was the intersection of Taxiway D-4 and Runway 12. He completed the test in 2 minutes and 15 seconds. During the time between the test

and the retest, someone was always assigned to be at the fire station.

In answer to an inquiry from the state Employment Security Department, Morasch stated on August 28, 1989, that Glasow was discharged for an FAA rule violation, Morasch also indicated that he had not discussed the "particular problem" with Glasow; further, that Morasch had no way of knowing whether Glasow's actions were intentional. In his September 4, 1989 statement to Employment Security, Glasow stated that he responded to the drill to the very best of his ability and alleged that he was unfairly fired and discriminated against because of his union activities.

POSITIONS OF THE PARTIES

The complainant argues that he was engaged in protected activity, and that the employer had knowledge of such activity when he was discharged. Thus, he contends, he has made his prima facie showing that the protected activity was a motivating factor in the decision of the employer to discharge him. The complainant advances that he has successfully shifted the burden to the employer to establish that the same personnel action would have been taken even in the absence of the protected activity. The complainant cites extensive proceedings in which the employer has been involved before the Commission as proof that the Port has an anti-union animus towards Local 3173 and its supporters. Furthermore, the complainant asserts that the lack of a reasonable investigation by the Port concerning the circumstances surrounding the FAA test establishes that failing the drill was merely a pretext; while, in fact, the Port was waiting for any opportunity to discharge the complainant because of his union-related activities.

The employer argues that, although it was aware of Glasow's union activities, there is no nexus between them and the reason for

Glasow's termination. The Port advances that the employer-employee relationship between the Port and Glasow had not always been a smooth one, pointing to Glasow's attitude towards training. It asserts that the Port unfortunately built a shell around Glasow out of consideration for his problems with depression, allowing him his own solitary niche on the evening shift. The Port sees Glasow's failure of the drill as a culmination of a long history of resentment and indifference to training and responsibility. The Port implies that Glasow was slow in responding to the drill on purpose, by choosing the wrong truck and the wrong route. The Port contends that Glasow's union activities were too remote in time to be linked to his discharge. The Port asserts that Glasow was discharged because his performance threatened the air travel opportunities for a community of 125,000 people.

DISCUSSION

The legal standard to be applied in a "discriminatory discharge" unfair labor practice case is commonly known as the Wright Line causation test. City of Olympia, Decision 1208-A (PECB, 1982). Under that test, the burden is initially placed on the employee to show that his or her conduct was protected, and that such conduct was a substantial or motivating factor in the employer's discharge decision. Once such a showing is made, the burden shifts to the employer, to demonstrate that it would have discharged the employee even in the absence of the protected conduct. The Commission's use of this test was affirmed in Clallam County, Decision 1405-A (PECB, 1982), aff. 43 Wn.App. 589 (Division II, 1986).¹⁵

¹⁵

Also see Washington Public Employees Ass'n v. Community College District No. 9, 31 Wn.App. 203 (1982).

Glasow's Participation in Protected Activities

The right to participate in union organizing efforts is guaranteed by 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.

The complainant argues that he has proven that he was engaged in the protected activity of selecting an exclusive bargaining agent to represent him and other employees for purposes of collective bargaining.

Glasow drafted the sign-up sheet for other employees to express their interest in contacting the IAFF. Glasow was the spokesperson to Foraker to decline the employer's invitation to meet with its management consultant. Glasow contacted Downs. Glasow, along with Cooper, sought voluntary recognition of Local 3173 from Morasch. All of these union organizing activities are protected activities under the provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

Employer Knowledge of Glasow's Protected Activity

An employer must be aware of an employee's protected activities in order to form the requisite motivation and intent to react against that conduct. Seattle Public Health Hospital, Decision 1911 (PECB, 1984); Metropolitan Park District of Tacoma, Decision 2272 (PECB, 1986).

The Port stated its knowledge of Glasow's union activities in both its answer to the complaint and in its written legal argument. It took the position, however, that since the activities took place 3 months (testimony at representation hearing May, 1989) to 14 months (announcement of his spokesman position July, 1988) that they are too remote to be considered the basis for the termination.

The employer's argument is not persuasive. At the time of Glasow's discharge, disputes were pending in the representation matter and in the Lingle unfair labor practice. The employer has appealed both decisions to the Commission. Especially damaging to the Port's argument is Handke's statement on the day before Glasow was discharged, to the effect that Handke was aware that there was a pending "labor dispute". Since Handke had not spoken previously to any of the fire fighters, it is logical to assume he received his information from management employees. In August, 1989, union activities certainly appeared to still be concerns of the Port, and Glasow was still president of Local 3173.

Employee's "prima facie" Burden

Under Commission precedent, Glasow has to prove that his participation in union activities was "a" motivating factor in the Port's decision to terminate him by providing evidence that is sufficient to support an inference. He does not need to prove that it was the "sole" motivating factor. As an employer's anti-union motivation is rarely publicly broadcasted, that motivation may be inferred from the use of circumstantial evidence. Pierce College, Decision 3456 (CCOL, 1990).

There is substantial evidence of the Port's continued resistance to unionization. The employer's delivery of the "pro's and con's" sheet about unionization before the employees approached for voluntary recognition is critical here, as is the employer's attempt to arrange a meeting between Wesley and the employees.

Morasch's agitated demeanor when confronting Glasow after the employees declined to attend the meeting further demonstrates anti-union animus. The record successfully establishes that Glasow's union activities were a motivating factor in the Port's decision to terminate him.

Employer's Burden of Proof

The burden of proof now shifts to the Port to demonstrate that it would have discharged Glasow, even absent his protected conduct. City of Olympia, supra.

The Port implies that Glasow was purposely slow in responding to the simulated emergency, in order to "show up" the Port or cause the intentional failure of the drill. It is critical of Glasow's location when the drill began; of his choice of response vehicle; and of his choice of route from the fire station to "crash site".

Was Glasow where he should have been when the siren went off?

The employer reviews the time clocks tapes weekly. It was aware of Glasow's habits that on a number of his shifts at 8:00 p.m. he is at the warehouse area. The employer never advised Glasow to perform his inspection duties in a different manner.

Employer seems to argue that since Glasow knew that FAA personnel were on the field he should not have gone to the warehouses. Glasow successfully defends against this argument by establishing that in the previous 13 years there had never been a night drill.

It is curious that the employer did not attempt to establish that this was a surprise drill. The employer can be charged with knowledge that the FAA regulations had recently changed to require night drills. The record shows that the employer has advance notice of the drills in 75% of the tests. If the employer was aware that there was going to be a night drill, why did the

employer not give direction to the employee(s) on duty, as it has in years past and it did for the retest, to stay near the fire station? Handke's knowledge of a "labor dispute" again becomes significant. It appears that the hunt for Glasow was on.

The record does not establish that Glasow absented himself from the fire station on purpose to fail the drill.

Did Glasow use the Wrong Truck?

The employees who testified were divided among themselves as to which truck Glasow should have selected. The conflicting testimony shows that the employer had no well-communicated training or policy regarding a single employee first response vehicle. It also shows that reasonable people, experienced in first responder training, could differ on the selection. Glasow had responded to other emergencies in that vehicle, and had received no specific instructions from the Port to alter his behavior. Glasow had a reasonable explanation in that Truck #2 had a larger water capacity so that in real emergency he would want to pump as much water as possible since there were no other employees on his shift to back him up. The employer's criticism of his choice of vehicle is invalid.

Did Glasow use the Wrong Route?

There is considerable confusion in the record as to the placement of the "crash site". The determination of where the drill was staged is crucial to the validity of the employer's criticism of Glasow's choice of routes. Bland and Handke both were observing Glasow from a significant distance away, and if their testimony is to be credited, in the dark. They do not appear to have been in the best position to render an accurate estimate of Glasow's speed in responding to the drill. Votendahl is a credible uninterested witness at these proceedings. His testimony is credited with significant weight. His testimony strongly corroborates in all respects the testimony of Glasow and Hansen. Interestingly, no record was developed as to where the retest crash site was located.

Glasow was only at the first drill site, so his memory is not clouded with a second site that could possibly be influencing Bland and Handke. The credible record establishes that Glasow responded to the simulated crash site from the position where he was located when the airport siren went off as quickly as was reasonably possible under the circumstances.

Why did the Port Fail to Investigate?

Given the gravity of the consequences of having the operation certificate denied, the employer's lack of any investigation about the drill is extremely perplexing. The record establishes that the emergency siren was sounded at 7:50 p.m. That left enough time from 7:45 p.m. for Glasow to enter the pick-up truck, drive the mile to the warehouse area, punch the first time clock, and get back into the pick-up. Morasch's initial comments to Glasow seem to indicate that Morasch thought the time of the drill was within a stand-by window, when Glasow should have been at the fire station. But the employer did not submit any airline schedules or other evidence to support its position that a Dash-8 was on the ground at the time of the drill. Additionally, the requirements for stand-by seem to have been inconsistently communicated to the employees. The Port's erratic coverage could have been easily discovered during an investigation. The absence of an investigation suggests that the Port was waiting for its chance to punish union supporters, especially Glasow.

It is odd, given the employer's professed distress about failing the drill, that Morasch did not call for the control tower tapes to be saved. Given the disastrous consequences that could befall the airport, it is also odd that Morasch made no attempt to question Handke about the test conditions or results. By making no attempt to verify the credibility of the drill or to defend Glasow's action, the Port appears to have been lying in wait for Glasow's demise.

Was Glasow Unfit for the Task?

The Port argues that it was in a dilemma since the original drill was in the evening, it contends that it was safe to assume that the retest would be in the evening. Given Glasow's failure of the previous drill, emotional difficulties and poor attitude towards training, the Port contends it could not run the risk that Glasow would fail again.

Glasow's attitude towards training was normal for anyone told to come in the middle of his night/sleep schedule. There was no attempt from the Port to address the situation, however. With no previous counselling or discipline meted out to Glasow, he had no awareness of a problem. At the hearing, Foraker advanced that Glasow could not handle job duties outside of a set routine without showing anger toward the Port or co-workers. Glasow was never disciplined for insubordination or poor attitude. Foraker justified the failure to discipline because of concern that such action would resurrect Glasow's depression and might trigger a suicide threat. Its own time-clock tapes prove, however, that Glasow did not perform his inspections the same time every day.

The employer's attempt to defend its actions by surfacing a medical problem Glasow had years previously is outrageous and contemptible. It was not referenced in the discharge meeting nor used at the employment security hearing. In fact, his medical history had never been advanced as a basis for the discharge until the hearing before the Examiner.

The employer's defense contains serious deficiencies. Rarely has so clear a case of discrimination for union activities been developed on record. The employer has not established that it would have discharged Glasow for failing the FAA drill regardless of his union activities.

REMEDY

To remedy the unfair labor practice, the employer shall be ordered to offer reinstatement to Arthur Glasow as a watchman/guard at the Tri-Cities Airport. In addition, the employer shall pay Glasow back pay for the period of his termination, with interest and the usual offsets, as required by Commission rule WAC 391-45-410.

FINDINGS OF FACT

1. The Port of Pasco is a "public employer" within the meaning of RCW 41.56.030(1). Among its operations, the Port runs the Tri-Cities Airport. At all times pertinent to the instant proceedings, James Morasch served as airport manager, and Ronald Foraker served as assistant airport manager.
2. The Tri-Cities Airport employs approximately 10 employees in the classifications of maintenance, custodian and watchman/guard. In addition to regularly assigned duties supported by their job titles, all of the maintenance and security employees, as well as one custodian, serve as emergency "first responder" personnel on the airport's fire and rescue equipment.
3. Arthur Glasow was hired in 1975 as a watchman/guard at the Pasco Airport. He received training on aircraft fire and emergency work, and continued to work in that capacity until his dismissal on August 17, 1989.
4. International Association of Fire Fighters, Local 3173, is a "bargaining representative" within the meaning of RCW 41.56-.030(3).

5. During 1988, the airport maintenance, custodian and watchman/guards were engaged in organizing efforts to have International Association of Fire Fighters, Local 3173, recognized as their exclusive bargaining representative. Glasow participated in protected activities through his support of the union organizing efforts, evidenced by his drafting of the sign-up sheet for employees to express their union interests, meetings with an IAFF official, acting as spokesperson for the employees in seeking voluntary recognition from the employer of International Association of Fire Fighters, Local 3173, and being identified as the president of the local union during separate unfair labor practice proceedings held in March and May, 1989.
6. The Port was aware of Glasow's participation in union activities.
7. Prior to the employees seeking recognition of a union from the Port, the Port mailed informational material concerning the "pros and cons" of unionization to all the individuals whose names had appeared on the sign-up sheet. The Port asked the employees to meet with Roy Wesley, a management consultant, who had been hired by the employer to discuss the advantages and disadvantages of union membership. Glasow informed Foraker that the employees declined to attend. Morasch confronted Glasow about the employees actions and was visibly upset.
8. In order to maintain its certification to operate, the Tri-Cities Airport must pass a yearly two-day inspection by the Federal Aviation Administration (FAA). The inspection includes a timed drill involving a simulated aircraft emergency which must be responded to in three minutes or less. Effective October 1, 1988, the FAA required that night inspections be done; the timed drill could be staged anytime.

9. From 1975 to 1989, the FAA had never conducted a timed drill at night. During those years, the employer usually advised and/or assigned emergency response employees to work at or near the fire station when the FAA inspectors were present.
10. The FAA requires the Tri-Cities Airport to offer monthly rescue and fire fighting training to its emergency response employees. During 1987, 1988 and 1989 the training sessions were offered only on the day shift with little advance notice to Glasow. He specifically declined to attend the session in December, 1988, because it disrupted his sleep schedule. For the three years, Glasow is listed as present at 6 of 31 sessions. The employer did not discipline Glasow for his lack of attendance at the training sessions.
11. On August 16, 1989, FAA inspectors Harold Handke and John Kal were at the Tri-Cities Airport during the day. No one from the Port advised Glasow to stay near the fire station during his night shift. Glasow performed his normal duties in a regular fashion that evening. He was inspecting the warehouses at 7:50 p.m. when the emergency siren sounded beginning the staged drill. Glasow responded to the drill in an appropriate manner; it took him 3 minutes and 51 seconds.
12. Later that evening at the fire station, FAA official Harold Handke told Glasow that the drill had been failed. Handke was aware that there was a labor dispute in progress.
13. August 17, 1989, Handke reported to Morasch that the drill had been failed and that the driver appeared to be "dogging it".
14. The Port did not conduct an investigation of the failure of the timed drill.

15. On August 17, 1989, after receiving Handke's report, Morasch discharged Glasow. Morasch told Glasow that he was being discharged for failing to complete the drill in less than 3 minutes.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. Based on the timing of Glasow's discharge in relation to his participation in protected activities, and based on evidence of anti-union animus on the part of the Port, the record is sufficient to infer that Glasow's participation in protected activities was a motivating factor in the employer's discharge decision.
3. The employer did not meet its burden of proof to show that Arthur Glasow would have been discharged from employment for failing to complete the timed FAA drill in less than 3 minutes regardless of his participation in protected activities. By discharging Arthur Glasow, on the pretext of failing an FAA timed drill, but in reality for his participation in protected union activities, the Port of Pasco engaged in a course of conduct which interfered with and discriminated against Arthur Glasow and its other employees in the free exercise of their collective bargaining rights, and committed unfair labor practices within the meaning of RCW 41.56.140(1).

ORDER

Pursuant to RCW 41.56.160 of the Public Employees' Collective Bargaining Act, it is ordered that the Port of Pasco, its officers and agents immediately:

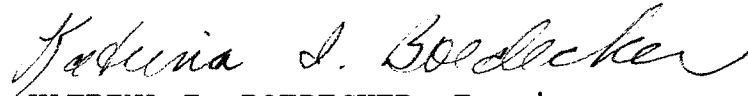
1. Cease and desist from:
 - a. Interfering with employees in their selection of a bargaining representative under Chapter 41.56 RCW.
 - b. Interfering with or discriminating against Arthur Glasow and its other employees in the exercise of their collective bargaining rights under Chapter 41.56 RCW.
2. Take the following affirmative actions to remedy the unfair labor practices and effectuate the purposes of Chapter 41.56 RCW:
 - a. Offer to reinstate Arthur Glasow as an employee in good standing at the Tri-Cities Airport, with back pay for the period from August 17, 1989 to the date of the unconditional reinstatement made pursuant to this Order. Such back pay shall be computed, with interest, in accordance with WAC 391-45-410.
 - b. Post, in conspicuous places on the employer's premises where notices to employees are customarily posted, copies of the notice attached hereto. Such notice shall, after being duly signed by an authorized representative of the Port of Pasco, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the employer to ensure that said notices are not removed, altered, defaced, or covered by other material.

- c. Notify the complainant, 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 the complainant with a signed copy of the notice required by this Order.

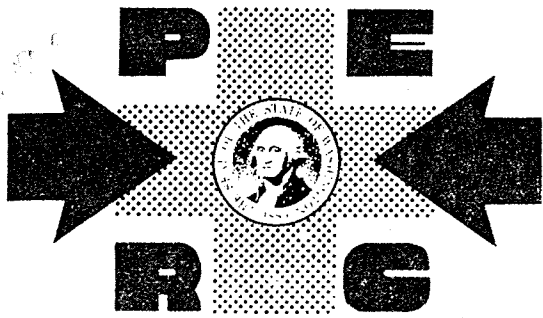
- d. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time, provide the Executive Director with a signed copy of the notice required by this Order.

DATED at Olympia, Washington, this 26th day of September, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KATRINA I. BOEDECKER, 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

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION HAS HELD A HEARING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE. THE COMMISSION HAS FOUND THAT WE VIOLATED THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT (CHAPTER 41.56 RCW) AND HAS ORDERED US TO POST THIS NOTICE.

WE WILL NOT interfere with employees in their selection of representatives for the purpose of collective bargaining.

WE WILL NOT discriminate against employees because they exercised their rights in the selection of a bargaining representative.

WE WILL reinstate ARTHUR GLASOW as an employee in good standing, and shall provide ARTHUR GLASOW back pay for the period of his discharge.

PORT OF PASCO

By: _____
Authorized Representative

DATED _____

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 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, FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.