STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17, AFL-CIO,	)	CASE NO. 6663-U-86-1336
Complainant,	)	DECISION 3066 - PECB
vs.	)	
CITY OF SEATTLE,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Christopher K. Vick, Business Representative, appeared on behalf of the union.

Douglas N. Jewett, City Attorney, by Rodney S. Eng, Assistant City Attorney, appeared on behalf of the employer.

On November 24, 1986, International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Seattle had interfered with union and employee rights guaranteed by Chapter 41.56 RCW. An amended complaint followed on May 26, 1987. A hearing was held in Seattle, Washington, before Mark S. Downing, Examiner, on September 28, 29, 30, October 1, 2, 23, 26, 27, 28, 29, 30, and November 24, 1987. Post-hearing briefs were filed by both parties.

BACKGROUND

Local 17 is the exclusive bargaining representative of several bargaining units of employees of the City of Seattle. This case arises out of a

bargaining unit of approximately 18 "Human Relations Field Representatives" employed in the Seattle Human Rights Department. The bargaining relationship between Local 17 and the city for the human rights employees dates from 1980.

The Human Rights Department is organized into two divisions: "Contract Compliance" and "Enforcement". Field representatives in the compliance division process applications by businesses for certification under the employer's "Women and Minority Business Enterprise" (WMBE) program. They also conduct on-site surveillance, to assure that the actual work is being performed by women and minority businesses. Field representatives in the enforcement division, commonly known as investigators, process complaints of housing and/or employment discrimination relating to race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental, or physical handicap. This unfair labor practice case concerns certain alleged employer conduct affecting investigators in the enforcement division.

During the time period in question, Bill Hilliard was Director of the Human Rights Department.[1] Marilyn Endriss served as manager of the enforcement division. Two supervisory positions under Endriss were excluded from the bargaining unit, but both such positions were vacant in the spring of 1986.

On April 7, 1986, Robert Matz, a person of Native American ancestry, was hired to fill one of the supervisor positions. The department decided not to fill the remaining supervisor position at that time.

Enforcement division investigators Debbie Gillespie and Debra Hillary,[2] filed a grievance and lawsuit shortly thereafter, alleging that the department had engaged in reverse race discrimination, by giving illegal favorable treatment

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1 Prior to Hilliard's appointment on June 24, 1986, Randy Gainer had served as Acting Director and Contract Compliance Division Manager of the department.

2 Both were Caucasian employees within the bargaining unit.

to the applications of minority candidates.[3] The essence of Local 17's complaint in this case is that the Human Rights Department began a campaign of interference shortly after Gillespie and Hillary filed their grievance and lawsuit.

THE UNION'S ALLEGATIONS

Local 17 alleges that the employer discriminated and retaliated against employees who were active in the union or who sought protection of the union through use of the contractual grievance procedure. Specific allegations of interference with Gillespie's and Hillary's statutory rights, in violation of RCW 41.56.140(1), include monitoring of phone calls, desk searches, and difficulty in getting cases assigned, questions answered and work approved. The union claims that a "no-talking" rule was instituted in the enforcement division after the grievance and lawsuit were filed, in order to silence various "troublemakers" in the bargaining unit, and that probationary employee Laura Rasset was discharged because of her friendship with the two grievants. In addition, the union alleges that the employer interfered with its rights as the employees' exclusive bargaining representative, in violation of RCW 41.56.140(2), by circumventing the union discussing a 4/40 work schedule[4] directly with employees at a staff meeting held on June 26, 1986, and by failing to provide the union with timely information regarding a new performance evaluation system which the employer implemented on May 4, 1987. Additionally, the employer is charged with having incompletely advised employees of their rights in conjunction with a memo issued to employees on September 8, 1986, detailing the possible means to grieve an adverse performance evaluation. The union also maintains that certain actions taken by the employer in conjunction with the above-referenced events discriminated

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3 Through arbitration conducted pursuant to the parties' collective bargaining agreement, Gillespie was awarded the other vacant enforcement division supervisor position in April, 1987.

4 The term "4/40" refers to a work schedule in which employees work four days a week, 10 hours per day.

against bargaining unit members in violation of RCW 41.56.140(1). One such incident was a refusal to allow a 4/40 work schedule for bargaining unit members, while at the same time permitting non-represented employees to work such a schedule. Another incident involved the implementation of performance standards in order to evaluate whether or not enforcement division employees were producing an acceptable amount of work, while non-represented employees were not required to meet such standards.

DISCUSSION

Statute of Limitations Defenses

The employer contends that the union failed to demonstrate that the complained-of conduct occurred within six months prior to the November 24, 1986, filing of the complaint in this matter. The amended complaint filed on May 22, 1987, added an allegation concerning the employer's refusal to provide information to the union in regards to the implementation of the new performance evaluation system.

Pursuant to RCW 41.56.160, an unfair labor practice violation can be found only with respect to events occurring during the six month period immediately preceding the filing of the complaint. City of Seattle, Decision 2230 (PECB, 1985). Evidence of events pre-dating the six month period is admissible to establish background leading to complained-of conduct. Seattle School District, Decision 2524 (EDUC, 1986); City of Centralia, Decision 2904 (PECB, 1988). In particular, protected activities of employees that occurred more than six months prior to the filing of the complaint may be taken into consideration in determining the existence of employer knowledge or animus. City of Bellevue, Decision 2096 (PECB, 1986); Toutle Lake School District, Decision 2659 (PECB, 1987).

While the hiring of Matz and the filing of the grievance and lawsuit occurred more than six months prior to the filing of this case, the allegations run to

a pattern of conduct which is alleged to have commenced thereafter and to have continued for some time. The conduct which is subject to a remedy in this proceeding is limited to that which occurred after May 24, 1986, the date which marks the beginning of the six month period immediately preceding the filing of the instant complaint.

Interference and Discrimination Allegations

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, assures public employees of the right freely to organize and designate representatives of their own choosing. RCW 41.56.040 specifies:

> 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.

Actions and activities undertaken by public employees in furtherance of their rights under Chapter 41.56 RCW are known as protected activities. The filing and processing of grievances through a contractual grievance procedure has been held to be such a protected activity. Valley General Hospital, Decision 1195-A (PECB, 1981); Port of Tacoma, Decision 1396-A (PECB, 1983); King County, Decision 1698 (PECB, 1983). The Public Employment Relations Commission has established tests for measuring whether an employer's conduct interferes with or discriminates against a public employee in the exercise of their statutory rights.

An interference violation can be found if complainant shows that the employer's conduct could reasonably be perceived by employees as a threat of reprisal or force, or a promise of benefit, deterring them from the pursuit of lawful union activity. City of Mercer Island, Decision 1580 (PECB, 1983); City of Seattle, Decision 2134 (PECB, 1985); King County, Decision 2955 (PECB, 1988). The complainant is not required to make a showing of intent or

motivation on behalf of the employer, nor is it necessary to show that employees were actually interfered with or coerced. City of Olympia, Decision 1208 (PECB, 1981); City of Seattle, Decision 2134 (PECB, 1985); Metropolitan Park District of Tacoma, Decision 2272 (PECB, 1986); Spokane County, Decision 2674 (PECB, 1987); City of Seattle, Decision 2773 (PECB, 1987). The key question in an interference violation is whether the employees could reasonably perceive the employer conduct to be attempting to interfere with their statutory rights pursuant to Chapter 41.56 RCW. City of Mercer Island, supra. Certain conduct by an employer, though not necessarily intended to interfere with employees' rights, may be perceived by employees as a threat to their pursuit of various protected activities. In Seattle School District, supra, an employer official empowered to act as "ombudsman" made several attempts to persuade an employee to accept a transfer. Although aware that there was a pending grievance, the employer official failed to act through the established grievance procedure or through the designated union representative, and it was held that the pressure applied to the employee warranted finding an interference violation.

A discrimination violation occurs if the employer takes action against an employee, or withholds benefits to which the employee otherwise would be entitled, in reprisal for exercise of protected activity. The complainant must show that: 1) The employee was engaged in protected activity; 2) The employer was aware of the employee's protected activity; and 3) The employer intended to discriminate. King County, Decision 2955 (PECB, 1988). See, also, Whatcom County, Decision 1886 (PECB, 1984); City of Asotin, Decision 1978 (PECB, 1984). Thus, "intent" is a crucial element which must be proven in a discrimination case.

Surveillance by Monitoring Telephone Calls

The union alleged that the employer interfered with Gillespie's and Hillary's statutory rights, by monitoring their work phones. As no evidence was presented by the union in support of this part of its complaint, those allegations are found to be without merit.

Surveillance by Searches of Desks

The union alleged that numerous searches of Gillespie's and Hillary's desks were conducted by management personnel. The union maintains that such searches were unusual in regards to their length, scope and timing, and that they were even violative of department policy. The employer admitted that desk searches were conducted on a minimal number of occasions, but contended they were only for the purpose of obtaining information from case files.

The evidence showed that Acting Enforcement Division Supervisor Alene Anderson conducted several searches of Gillespie's and Hillary's desks during the autumn of 1986. Anderson was observed reviewing papers on top of Gillespie's desk on three or four occasions. Detailed information was provided concerning a search conducted on November 7, 1986, when Anderson was observed looking at papers on top of and in the drawers of Gillespie's desk. Although the search lasted for approximately 30 minutes and was observed by three employees, including the union shop steward, no one inquired of Anderson as to what she was doing. Anderson was also observed during the same time period reviewing files on the top of and in the drawers of Hillary's desk. Again, no one inquired as to what Anderson was doing. The testimony showed that she would often sit at Gillespie's and Hillary's desks for time periods of up to 30 minutes while searching for case file information needed for the department's computerized record keeping system.

Although Anderson was the supervisor of both Gillespie and Hillary during the time period in question, she remained a member of the bargaining unit in her capacity as acting supervisor. She was never directed by management to search Gillespie and Hillary's desks.

The department's official policy on desk searches required employees to obtain supervisor permission before looking for materials in another employee's desk. The evidence revealed that this policy, articulated in 1980, was not generally communicated to current department employees, and in practice, was rarely followed.

The union maintains that bargaining unit employees reasonably perceived Anderson as acting on behalf of management, thus creating the impression that the department was engaged in surveillance of employees' conduct. On the other hand, the employer contends that the actions of a single bargaining unit member, acting on her own initiative for legitimate business reasons, could not have been reasonably construed by employees as surveillance.

The United States Supreme Court recently addressed work place searches in O'Connor v. Ortega, 480 U.S. ___, 94 L.Ed.2d 714 (1987).[5] The Court noted that an employee's expectation of privacy in his office, desk and files may be reduced by virtue of actual office practices and procedures, legitimate regulation, or an intrusion by a supervisor rather than a law enforcement official, and that some government offices may be so open to fellow employees or to the public that no expectation of privacy is reasonable.[6] The Court also addressed the appropriate standard to be applied under the Fourth Amendment[7] for a search conducted by a public employer in areas in which a public employee has a reasonable expectation of privacy, stating:

> In the case of searches conducted by a public employer, we must balance the invasion of the employees' legitimate expectations of privacy against the government's need for supervision, control and the efficient operation of the workplace.

The Court decided that neither a warrant nor probable cause is necessary for a non-investigatory, work-related intrusion or an investigatory search for

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5 The case involved the warrantless search of a state hospital doctor's office. The evidence showed that work-related files were kept outside the office, and the only items found during the search were apparently personal items.

6 Applying its case-by-case approach, the court concluded that the employee involved in Ortega did have a reasonable expectancy of privacy in his desk and file cabinets.

7 The Fourth Amendment protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures ..."

evidence of suspected work-related employee misfeasance. Instead, the Court adopted a standard of reasonableness under all the circumstances with a twofold inquiry:

1) Whether the action was justified at its inception?

2) Whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place?

Ordinarily, a search of an employee's office by a supervisor will be "justified at its inception" if the search is necessary for a non-investigatory, work-related purpose such as to retrieve a needed file.

The standard of reasonableness adopted by the Supreme Court in Ortega is remarkably similar to the standard adopted by the Public Employment Relations Commission on surveillance matters. Under Commission precedent, an employer is guilty of an interference violation if it engages or creates the impression that it is engaged in surveillance of employees pursuing their statutory rights guaranteed by Chapter 41.56 RCW. City of Westport, Decision 1194 (PECB, 1981); Town of Granite Falls, Decision 2692 (PECB, 1987). The complainant must show that the employer's conduct could be reasonably perceived by employees as a threat to their protected activities. Toutle Lake School District, Decision 2474 (PECB, 1987).

In this case, it was reasonable for bargaining unit employees to assume that Anderson was acting on behalf of management, even though she remained a member of the bargaining unit while in "acting" status as a supervisor. As an agent directing operations on behalf of the employer, a supervisor exercises "apparent authority" in his or her dealings with the employer's workforce. Employees can reasonably believe that a supervisor acts with the employer's knowledge and approval. Port of Seattle, Decision 2661-A (PORT, 1988). A supervisor's actions can bind an employer, and unfair labor practices committed while the supervisor is serving in an official capacity in the interest of the employer are considered to be the responsibility of the public employer. City of Seattle, Decision 2230 (PECB, 1985).

The more critical question is whether bargaining unit employees could have reasonably perceived Anderson's searches of Gillespie's and Hillary's desks to be surveillance of their protected activities. The grievance and lawsuit filed by Gillespie and Hillary were still pending during the fall of 1986. Although Anderson was observed by bargaining unit members looking at information on employee's desks on numerous occasions, at no time did anyone challenge her or even inquire of her or any other management personnel as to what she was doing. Given the nature of Anderson's supervisory duties, and her legitimate need to obtain case file data, the Examiner finds that her conduct was neither unusual nor unreasonable. In view of the failure of other bargaining unit employees to take any steps to even minimally investigate the reasons behind Anderson's actions, viewing Anderson's conduct as surveillance of protected activities would not have been reasonable.

Case Production Difficulties

The union alleges that Gillespie and Hillary were subjected to additional interference, taking the form of difficulty in getting cases assigned, questions answered and work approved, after the grievance and lawsuit were filed in April, 1986. The employer maintains that insufficient evidence was introduced to show that any of these actions occurred, and that in fact, no adverse actions were taken against the grievants.

Discrimination in the form of changing of scheduling or assignment practices toward an employee who engages in protected activities is an unfair labor practice. Warden School District, Decision 1062 (EDUC, 1981); Toutle Lake School District, Decision 2659 (PECB, 1987). In the instant case, however, the union presented insufficient evidence to establish that Gillespie and Hillary were retaliated against for filing the grievance and lawsuit. No adverse actions were taken against the grievants. The only action taken by management during the time period of the complaint affecting Gillespie was a positive action, by promoting her to enforcement division supervisor in March, 1987.

"No-talking" Rule

The employer instituted what the union has termed a "no-talking" rule for enforcement division employees in August, 1986. Employees were instructed to limit visitation with other staff members, and to avoid case discussions in offices of other staff without supervisor permission. The union alleges that the employer's purpose was to silence "troublemakers", thus interfering with employees' statutory rights in violation of RCW 41.56.140(1). The employer admits that the rule was instituted after the grievance and lawsuit were filed, and that it was based upon a concern that employees were spending an inordinate amount of time talking among themselves. It maintains, however, that the scope of the rule was narrow, being limited solely to work concerns, and that employees remained free to meet and talk before and after work, and during breaks and lunch periods. The employer asserts that the rule was in no way intended to interfere with employees' statutory rights.

An employer can lawfully expect and require that its employees perform work-related duties during their normal working hours. The provisions of Chapter 41.56 RCW do not give employees a free hand to violate an employer's work rules or to conduct unlimited union advocacy on the employer's time. King County, Decision 2955 (PECB, 1988). Employees remain free, of course, to engage in activities of their own choosing on their own time, such as during breaks and lunch periods, and before and after working hours. The union has thus not proven that the so-called "no-talking" rule interfered with employees' protected activities. There is no evidence that the processing of grievances was affected by the rule, or that employees' statutory rights were adversely affected by the rule. Viewing the evidence as a whole, it was not reasonable for bargaining unit employees to perceive the institution of the "no-talking" rule as a threat to their protected activities.

Discharge of Probationary Employee Laura Rasset

Laura Rasset was hired as an investigator in the enforcement division on September 25, 1985. The union claims that she enjoyed a good working

relationship with her supervisors until she filed a grievance in January, 1986.[8] The union next alleges that Rasset's working relationship with her supervisors worsened after the Gillespie/Hillary grievance and lawsuit were filed in April, 1986, as Rasset was perceived to be a friend of Gillespie and Hillary. Rasset's employment was terminated by Director Hilliard on September 23, 1986, just before the completion of her probationary period.

Collective bargaining agreements often provide an employer with great latitude in deciding, during an initial period, whether to retain a new employee. The collective bargaining agreement in this matter grants the employer wide discretion:

> Article VIII - Probationary Period and Trial Service Period
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> . . .
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> Section 2. Probationary Period/Status of Employee- Employees who receive appointment to permanent positions from an eligible register shall serve a probationary period of twelve (12) months.
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> (a) The probationary period shall provide the department with the opportunity to observe a new employee's work, ... and to terminate any employee whose work performance fails to meet the required standards.
>
> (b) An employee shall become regular after having completed his/her probationary period unless the individual is dismissed under provisions of Section 3 and 3(a) below.
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> Section 3. Probationary Period/Dismissal - An employee may be dismissed during his/her probationary period after having been given written notice five (5) working days prior to the effective date of dismissal. ...
>
> (a) An employee dismissed during his/her probationary period shall not have the right to appeal the dismissal. ...

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8 The grievance concerned whether Rasset was entitled to paid release time from work for continuing legal education classes.

But probationary employees enjoy the same protections as permanent employees under Chapter 41.56 RCW.

Responding to the union's allegation that Rasset's discharge was motivated by anti-union animus, and that the reasons given by the department were pretextual, the employer maintains that the union has failed to show that Rasset was engaged in protected conduct or that such conduct was a substantial or motivating factor in its decision to discharge her. The employer believes that Rasset's discharge was justified, as it had a reasonable belief that she would not make a good employee.

Where anti-union motivation is alleged, the Public Employment Relations Commission has adopted the Wright Line causation test. City of Olympia, supra; Clallam County, Decision 1405-A (PECB, 1982), aff. 43 Wn.App. 589 (Division II, 1986).[9] Under the Wright Line test, the employee must first make a prima facie showing that protected conduct was a motivating factor in the employer's decision. Once such a showing is made, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

Rasset clearly participated in protected activities under the provisions of Chapter 41.56 RCW when she filed a grievance in January, 1986. She was also friendly with Gillespie and Hillary, who filed a grievance and lawsuit.[10]

Employer knowledge of Rasset's protected activities must be shown to establish a violation, since the employer must have knowledge of protected conduct in order to form a motivation and intent to react against the employee's protected conduct. Seattle Public Health Hospital, Decision 1911

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9 The Wright Line test was also adopted as the appropriate legal standard in Washington Public Employees Ass'n v. Community College Dist. 9, 31 Wn.App. 203 (1982), and NLRB v. Transportation Management Corp., 462 U.S. 393 (1983).

10 Actions in support of a grievant, either as a friend or as a representative, are protected activities. Port of Seattle, Decision 1624 (PECB, 1983).

(PECB, 1984); Metropolitan Park District of Tacoma, supra. Director Hilliard made the decision to reject Rasset as a permanent employee, based on recommendations from Enforcement Division Manager Endriss and Supervisor Matz. Hilliard had become director of the department on June 24, 1986, and no evidence was presented to show that Hilliard had any direct knowledge of Rasset's grievance filed in January, 1986. Nor was evidence provided to show that Hilliard had direct knowledge that Rasset was a friend of Gillespie and Hillary, whose grievance and lawsuit were also filed before Hilliard became director. A finding of employer knowledge of protected conduct can be based on an inference drawn from circumstantial evidence, however. Seattle Public Health Hospital, supra; Asotin County Housing Authority, Decision 2471 (PECB, 1986).[11] In this case, Endriss and Gainer[12] had been involved in the resolution of Rasset's grievance. Based on the NLRB's "small plant doctrine", an inference can be drawn that their knowledge was communicated to Hilliard. The Gillespie/Hillary litigation was still pending in September, 1986, and Hilliard had observed Rasset talking to Gillespie and Hillary, so it is reasonable to infer that he could perceive Rasset to be aligned with them. The union has proven that the employer had knowledge of Rasset's protected activities.

An employer's anti-union motivation is rarely publicly broadcasted. In this case, there is no direct evidence that Rasset's protected conduct was a motivating factor in the employer's decision to reject her as a permanent employee. A complainant may make use of circumstantial evidence to infer

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11 The fundamental test is whether there is a rational connection between the facts proved and the fact that is to be inferred. NLRB v. Wal-Mart Stores, Inc., 488 F.2d 114 (8th Cir. 1973). Knowledge is often inferred when the employee has engaged in overt union activities, Lizdale Knitting Mills, Inc., 211 NLRB 966 (1974), and when the employee's plant or operation is small in size. Permanent Label Corp., 248 NLRB 118 (1980). Where a supervisory employee has knowledge of union activity, an inference is permissible that he has communicated that knowledge to his superiors. Hunter Douglas, Inc. v. NLRB, 804 F.2d 808 (3rd Cir. 1986).

12 Gainer, who had been Acting Director of the department in the processing of Rasset's grievance, was still working within the department in September, 1986.

employer motivation on behalf of the employer. Valley General Hospital, supra; Hunter Douglas, Inc., supra.[13] Here, however, the employer followed its normal procedures in reviewing Rasset's status at the conclusion of her probationary period. There is no evidence that the timing of the employer's action was related in any way to Rasset's protected activities. The reasons for Rasset's discharge were clearly stated in writing to her and she was given an opportunity to respond to such reasons. On September 18, 1986, Rasset received a memo from Director Hilliard detailing the reasons he was considering that would prohibit her from becoming a permanent employee.[14] Such reasons included excessive social conversations with fellow employees during work time, lack of judgment in failing to obtain or follow supervisory direction, and a deteriorating relationship with her supervisor. After meeting with Rasset, Hilliard informed her on September 22, 1986, that she was being discharged.

Rasset's "prima facie" showing -

Rasset testified that Endriss' general attitude when problems arose was to indicate that she did not want a union grievance over the matter. Endriss did not testify in this proceeding. By themselves, it is unclear from the context of these statements whether this indicated a preference on the part

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13 Anti-union motivation has been inferred under the following circumstances: (1) a delay in the discharge after knowledge of the offense, Merchants Truck Line, Inc. v. NLRB, 577 F.2d 1011 (5th Cir. 1978); (2) a departure from established procedures for discharge, Richmond Refining Co., Inc., 212 NLRB 16 (1974); Pullman School District, supra; (3) failure to tell the employee the reason for the discharge at the time of discharge, Forest Park Ambulance Service, 206 NLRB 550 (1973); (4) change in position in explaining the reason for discharge, Coca-Cola Bottling Co., 232 NLRB 794 (1977); and (5) the timing of the discharge, in relation to when the employer gains knowledge of the union activity, Marx-Haas Clothing Co., 211 NLRB 350 (1974).

14 The union has raised concerns regarding certain additions made to this letter. The evidence showed that the reason related to Rasset's deteriorating relationship with her supervisor was added to the letter after Hilliard noticed its omission during his meeting on September 18 with Rasset. There is no evidence to suggest that the addition of this reason was anything other than a clerical oversight by the employer.

of Endriss to resolve issues at her own level, or whether the statements were, in fact, anti-union in nature.

Rasset and Endriss had a discussion concerning the open supervisor vacancies on St. Patrick's Day of 1986. Endriss informed Rasset that she had very good technical skills, but that her supervisory skills were inadequate. Endriss admonished Rasset that if she wanted a future in the department, she had better work with Endriss, not against her. Rasset had recently been involved in the January, 1986, grievance regarding paid release time for classes, and in discussions with Endriss regarding the allocation of out-of-class pay.

At a July 1, 1986, meeting between Endriss and Rasset the topics discussed included tardiness and excessive social chatting. Endriss also indicated that Rasset's friendship with Gillespie and Hillary made her uncomfortable.

When viewed as a whole, these statements support an inference of animosity by Endriss towards Rasset based on her participation in protected activities. Based on such evidence, Rasset has made a showing "sufficient to support an inference" that the employer's knowledge of her protected activities was a motivating factor in its decision to discharge her.[15]

Would the Discharge Have Occurred in Any Case?

Under the Wright Line test, after the complainant has met its prima facie showing that protected conduct was a motivating factor in the employer's decision, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct. The

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15 In reaching this conclusion, the Examiner does not rely on the union's attempt to utilize a remark made by Director Hilliard to Rasset in her September 22, 1986, termination meeting. When asked if he had considered extending Rasset's probationary period, Hilliard is alleged to have stated that, given the union situation, he could not do that. Hilliard denied that any reference was made to the union. Hilliard was under no obligation to extend Rasset's probationary period. It is unclear whether his alleged comment was a reference to the provision of the parties' collective bargaining agreement limiting the probationary period to 12 months, or was indicative of an anti-union intent.

employer's three areas of concern regarding Rasset's work performance were detailed in Director Hilliard's memo to her dated September 18, 1986.

Hilliard's first concern centered on Rasset's excessive "social chatting" with fellow employees. Hilliard observed Rasset talking in the hallways, which he perceived as a lack of attention on her behalf to getting her work accomplished. Rasset additionally had been warned several times by supervisory personnel to keep her talking and laughing in the hallways to a minimum. As the employer did not challenge Rasset's overall work production, it does not appear that this concern was of critical importance to the employer's decision to reject Rasset as a permanent employee.

Hilliard's second concern involved a lack of judgment shown by Rasset in failing to obtain or follow supervisory direction. The employer relied on two incidents to support this allegation. The first incident involved a conciliation conference that Rasset conducted between a complainant and respondent, without seeking direction from her supervisor, Endriss. Although Rasset apparently did not review the matter in detail with Endriss before the conciliation was held, Endriss was fully aware that the conference was scheduled and did not express any concerns to Rasset before the meeting. The second incident involved a housing test in which Rasset participated on July 1, 1986. After that test, Rasset phoned a friend to inquire as to whether her husband would be interested in participating in a similar test. Hilliard was concerned that such conduct by a department official[16] could be perceived by the public as a misuse of authority, that is, assisting a friend to obtain monetary damages, and he viewed the incident as a very serious matter. A warning was issued to Rasset for her conduct in this situation.[17]

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16 Rasset was serving as acting supervisor of the intake unit at the time of this incident.

17 The union stipulated that the employer had just cause for the issuance of this warning, but argues that Rasset would be subjected to double jeopardy if the employer is permitted to use this as evidence supporting its termination decision. The argument is meritless. An employer can consider an employee's total employment record in deciding whether to retain a probationary employee.

The employer's third concern, and that on which it primarily relies, was Rasset's deteriorating relationship with her supervisor, Matz. Rasset did case work investigation under the direction of Matz during a period in April and May, 1986, and from mid-July until the end of her employment on September 23, 1986.[18] Rasset had been one of the applicants for the supervisor vacancy filled by Matz in April, 1986. After Matz was hired, Rasset informed him that he did not have any right to the job, as she and two other employees (referring to Gillespie and Hillary) were better qualified than he. Instead of getting her case work questions answered by Matz, Rasset sought out Gillespie and Hillary for advice and information. Rasset was generally insubordinate to Matz and apparently never accepted his supervisory authority over her. For these reasons, Matz informed Endriss that he was unable to work with Rasset.

The Examiner need not agree with each and every reason the employer articulated for its refusal to retain Rasset as a permanent employee. Absent a showing of anti-union motivation, an employer may discharge an employee for "a good reason, a bad reason, or no reason at all" without running afoul of the collective bargaining statute. Clothing Workers v. NLRB, 564 F.2d 434 (D.C. Cir. 1977); Whatcom County, supra. The critical question is whether or not the anti-union statements made by Endriss carried over and affected the judgment of Director Hilliard concerning Rasset. Hilliard's primary concerns regarding Rasset focused on the housing test incident and her deteriorating relationship with Matz. Hilliard obtained first hand information from Matz regarding those matters, and there is no evidence that Matz engaged in any anti-union conduct. It is the conclusion of the Examiner that the employer would have rejected Rasset as a permanent employee, even in the absence of any protected conduct.

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18 Rasset was supervised by Hillary and Endriss for the first six months of her employment. Endriss supervised Rasset's work as acting supervisor of the intake unit from April to mid-July, and as investigator from June to mid-July, 1986. As acting supervisor, Rasset oversaw two employees who assisted complainants with initial case filing requirements. These duties occupied approximately half of her work time. The remainder of her time was spent investigating cases.

The June 26 Staff Meeting

Hilliard utilized his first staff meeting, held two days after his appointment as Director of the Human Rights Department on June 24, 1986, to introduce himself and discuss his goals for the department. Those goals included reduction of the case backlog and implementation of an evaluation system to judge employee performance. These problem areas had been pinpointed for action by an independent consultant's report, as well as by the Seattle City Council.

The union has raised two issues in connection with the June 26 staff meeting. Both are related to the employer's refusal to allow bargaining unit employees to change from a five day, eight hour per day work week to a 4/40 work schedule. In the first instance, the employer is accused of having circumvented the union in its role as exclusive bargaining representative, by dealing directly with bargaining unit members. The second involves a discrimination allegation, as non-represented employees were permitted to work the 4/40 schedule.

The collective bargaining agreement between Local 17 and the City of Seattle addresses the issue of scheduling of work in the following manner:

> ARTICLE XIX - HOURS OF WORK AND OVERTIME
>
> V. Human Relations Representative Unit
>
> Section 1. Employees working in positions covered by Appendix E (sic) shall make necessary adjustments when approved by the City in their normal daily work hours required to fulfill their normal job responsibilities within an average forty (40) hour work week. If no adjustment of work hours is necessary, the employee's normal work day shall be eight (8) consecutive hours of work excluding the period designated as meal time; provided, however, employees shall not be expected by the City to work in excess of an average of forty (40) hours per week without overtime compensation.
>
> Section 2. The normal work week for each employee will consist of five (5) consecutive work days.

> Section 3. All work required by the City in excess of forty (40) hours in a 7-day period from the day in which the employee works in excess of eight (8) hours or the day in which the employee works in excess of five (5) consecutive work days shall be considered as overtime and shall be compensated for at the overtime rate of one and one-half (1-1/2) times the employee's straight time hourly rate of pay; ...

Thus, the contractual standard is a work week of five consecutive days, eight hours per day.

The agreement provides for a 4/40 work schedule for certain of the units covered, under the following conditions:

> ARTICLE XIX - HOURS OF WORK AND OVERTIME
>
> VII. All Units
>
> . . .
>
> Section 2. Four-Day Work Week - It is hereby agreed that the City may, notwithstanding Section 1 and Section 5 of Subsection 1 (sic) and Sections 1 and 2 of Subsections II and III of this Article, upon notice to the Union, implement a four (4) day, forty (40) hour work week affecting employees covered by this Agreement. In administering the four (4) day, forty (40) hour work week, the following working conditions shall prevail:
>
> (a) Employee participation shall be on a voluntary basis.
>
> (b) Overtime shall be paid for any hours worked in excess of ten (10) hours per day or forty (40) hours per week.

Notwithstanding the reference to "all units" in the heading to the quoted provision, the specific references to other subsections do not include the subsection dealing with the human relations representative unit.[19] Thus, while the contract allows the employer, upon notice to the union and the

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[19] It is unclear whether the lack of a reference to the 4/40 work schedule for the Human Relations bargaining unit was an oversight or an intentional act by the parties.

voluntary participation of the employees, to implement a 4/40 work schedule for certain of Local 17's bargaining units, it is not clear that the same option was available for the employees involved in this case.

In early 1986, the union discussed the issue of 4/40 work schedules with Acting Director Randy Gainer. Although Gainer was open to experimenting with a 4/40 work schedule, so long as it did not have a negative impact on case production, the department's in-house legal counsel discovered that the collective bargaining agreement did not allow the 4/40 work schedule for the Human Relations bargaining unit. Gainer was also advised by the city's labor relations staff that, as the parties' agreement was due to expire on August 31, 1986, the subject of 4/40 work schedules would need to be addressed in overall bargaining for the successor agreement with Local 17.

The parties have a sharp difference of opinion as to who brought up the issue of 4/40 work schedules at the June 26 staff meeting. The union alleges that the issue was raised by Hilliard, while the employer claims that bargaining unit members first raised the issue. Regardless of who first raised the issue, it is clear that the employer's negative response was found to be objectionable by the union.

The union alleges that Director Hilliard stated at the June 26 staff meeting that employees represented by the union would not be permitted to work a 4/40 work schedule until they were "on track and meeting goals". The union interprets this statement as an invitation for direct negotiations with employees based on their individual case production statistics. The employer contends that Hilliard's statement can only be construed as a refusal to engage in negotiations with employees.

An employer may only engage in collective bargaining negotiations with the employee's exclusive bargaining representative. See RCW 41.56.030(4). While direct dealings with individual employees are prohibited, Royal School District, Decision 1419-A (PECB, 1982), an employer has a constitutional right to communicate with employees in a non-coercive way as long as it does

not engage in bargaining with individual employees on a mandatory subject. Lyle School District, Decision 2736 (PECB, 1987); Michigan Education Association v. North Dearborn Heights School District and Crestwood School District, 26 GERR 1138 (Mich. Ct App, 1988). Meetings held to convey information to employees have been held to be non-coercive. METRO, Decision 2197 (PECB, 1985); Centralia School District, Decision 2757 (PECB, 1987).

In June, 1986, at the time of Director Hilliard's comments, the parties' collective bargaining agreement did not permit Local 17 Human Rights Department employees to work a 4/40 work schedule. The context of Hilliard's comments, made at a department-wide staff meeting, show no evidence of intent to circumvent the union in its role as exclusive bargaining representative. The union presented no evidence that actual negotiations occurred between individual employees and their supervisors.

The union's "discrimination" allegations arising out of the same facts must also be dismissed. Responding to the union's claim that the employer discriminated against Local 17 employees by permitting non-represented employees to work a 4/40 work schedule, while at the same time refusing to allow represented employees to work an identical schedule, the employer denies any discriminatory intent. The employer stated several business-related reasons for not wanting to implement the 4/40 work schedule for union employees. A new director had just taken over operation of the department. Additionally, faced with a heavy backlog of cases, the employer was concerned that a 4/40 work schedule might adversely affect case production. The department was also being advised by the city's labor relations staff that the parties' collective bargaining agreement did not permit employees in this unit to work the 4/40 schedule. An employer is not required to have identical working conditions for represented and nonrepresented employees. Absent a showing of discriminatory intent based on union affiliation, an employer can grant or establish different working conditions and benefits for its non-represented employees than it negotiates with the exclusive bargaining representatives of its employees that are represented by a union.

Performance Evaluation System

The employer implemented a new performance evaluation system on May 4, 1987. In doing so, the employer relied upon the following contractual language:

> Article III - Rights of Management
>
> . . .
>
> Section 5 - The Union recognizes the City's right to establish and/or revise its performance evaluation system(s). Such systems may be used to determine acceptable performance levels, prepare work schedules, and to measure the performance of each employee or groups of employees.
>
> In establishing new and/or revising existing performance evaluation system(s) the City shall, prior to implementation, place said changes on an agenda of the Conference Committee for discussion.
>
> * * *
>
> Article IV - Employee Rights
>
> . . .
>
> Section 4 - Any performance standards used to measure the performance of employees shall be reasonable.

The union alleges that the employer committed three violations of Chapter 41.56 RCW by its implementation of the new performance evaluation system. The first concerns the employer's refusal to provide timely information to the union while the parties were discussing the various components of the new system. The second issue involves a discrimination charge, as specific performance standards were implemented for represented employees, while non-represented employees were not required to meet such standards. The third allegation involves an incomplete advisement of rights by the employer when informing employees of the grounds for grieving performance evaluations.

Duty to Disclose Information -

At a conference committee meeting held pursuant to the parties' collective bargaining agreement in December 1986, the union requested copies of Standard

Operating Procedures (SOPs) that the department was developing for the new performance evaluation system. The union claims that Acting Director Gainer promised to provide the information by January 15, 1987. The information was not provided to the union until a conference committee meeting on April 16, 1987. The union contends, further, that the employer deliberately attempted to lock the union out of being able to meaningfully represent the bargaining unit, by not providing the information until this late date, just two weeks before a May 1 deadline imposed by the city council for implementation of the performance evaluation system.

Gainer denied that the requested information was promised by January 15, 1987. He asserted that the SOPs were being revised by Enforcement Division Manager Endriss and supervisor Matz during the period of December 1986 to April 1987, and that the standards were provided to the union as soon as they were available. The employer additionally defends its actions by maintaining that it met with the union, in the conference committee format, on two occasions before the performance evaluation system was implemented on May 4, 1987. The employer asserts that those meetings met its contractual obligations and that it was not required to bargain with the union prior to implementing the performance evaluation system. The employer maintains that the union's arguments amount to seeking a ruling from the Examiner on whether there has been a contractual violation.

The duty to bargain collectively includes a duty on behalf of the employer to provide relevant information needed by a union for the proper performance of its duties as the employees' exclusive bargaining representative. Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979); Anacortes School District, Decision 2544 (EDUC, 1986); Pullman School District, supra; Highland School District, Decision 2684 (PECB, 1987). The duty also extends to requests for information necessary for the processing of grievances. NLRB v. Acme Industrial Co., 385 U.S. 432 (1967); Pullman School District, supra. Once a good faith demand is made for relevant and necessary data, the information must be made available promptly and in a useful form. Pullman School District, supra. If an employer claims that compiling data will be unduly burdensome, it must

assert that claim at the time the request for information is made, so that an arrangement can be made to lessen the burden. Pullman School District, supra. The issue before the Examiner is not, as the employer maintains, whether the employer's actions complied with the parties agreed-upon contractual language for implementing performance evaluation systems. Rather, the issue is whether the employer failed to respond in a timely manner to the union's request for information. Delay in supplying requested information necessary to the bargaining process is an unfair labor practice. Fort Vancouver Regional Library, Decision 2350-C, 2396-B (PECB, 1988).

Although the parties' contractual language did not permit the union to negotiate regarding the performance evaluation system, it was entitled to receive the requested information in conjunction with its role as the employees' exclusive bargaining representative. The information requested was relevant to the parties' discussion concerning the new performance evaluation system. However, for a violation to occur, the union must prove that the requested information was available to the employer at the time of the union's request. In this matter, the union has failed to meet that burden. The requested information was still in preparation until shortly before it was provided.[20]

Discrimination

The union additionally alleges that the employer discriminated against bargaining unit employees, by adopting specific performance standards for enforcement division employees, while non-represented employees were not required to meet such standards. The union alleges that the standards adopted were designed to eliminate bargaining unit employees, as all but two of the ten enforcement division investigators would be subject to discipline if their performance did not improve.

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20 The union made another request for information at the April 16, 1987, conference committee meeting. This request related to case production standards adopted by other human rights agencies. This information was promptly provided to the union by the employer on April 22, 1987.

The employer contends that performance standards were adopted in response to problems identified by independent consultants and to comply with directives from the Seattle City Council. The employer denies any attempt to coerce represented employees by the adoption of such standards. The employer claims that no evidence was presented by the union to show that the duties and responsibilities of employees in the contract compliance division are similar to those of enforcement division employees, or amenable to a case production standard.[21]

When the performance evaluation system was implemented on May 4, 1987, the employer adopted various standards to measure employee performance. For investigators in the enforcement division, who are represented by Local 17, the employer established a standard of five completed cases per month for a satisfactory level of performance. For human relations field representatives employed in the contract compliance division, who are also represented by Local 17, no specific numerical standards were adopted, but employees were expected to consider and apply all appropriate codes, rules, regulations and laws with a minimal amount of supervisory assistance. The employer's actions in this matter evidence no showing of discriminatory intent. Performance standards were not adopted on a basis of whether employees were represented or non-represented, as the union contends, but rather on the basis of what was relevant to a particular group of employees. Any allegation by the union that the adopted standards were unreasonable must by processed through the parties' contractual grievance process. The Commission does not have jurisdiction to determine issues of contractual interpretation. City of Walla Walla, Decision 104 (PECB, 1976).

Incomplete Advisement of Rights -

The employer is accused of having incompletely advised employees of their appeal rights in regards to grieving performance evaluations. The employer

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21 The contract compliance division processes Women and Minority Business Enterprise (WMBE) certification applications, monitors WMBE/EEO compliance in city contracts, and monitors the city's Affirmative Action Program.

maintains that it has no obligation to defend this particular allegation, as the union failed to include this charge in its complaint of November 24, 1986, or its amended complaint dated May 26, 1987, or to take steps at the hearing to amend its complaint. In the alternative, the employer contends that the notice given to employees was not misleading in any way.

A complaint charging unfair labor practices may be amended at hearing pursuant to WAC 391-45-070:

> AMENDMENT. Any complaint may be amended upon motion made by the complainant to the executive director or the examiner prior to the transfer of the case to the commission.

At the hearing held in this matter on September 29, 1987, the union moved to amend its complaint to add this additional allegation concerning the incomplete advisement of rights, based on the decision issued by an Examiner on September 16, 1987, in City of Seattle, Decision 2773 (PECB, 1987). The union's motion was granted by the Examiner.[22] The employer had ample opportunity to defend this allegation during the additional ten days of hearing held in this case. The union continued to base argument on the issue during the hearing, and specifically in response to the employer's motion for dismissal made at the conclusion of the complainant's case in chief.

On September 8, 1986, the department sent a memo to employees containing the following provisions:

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22 In an exchange which is recorded beginning at page 171 of Volume II of the transcript in this matter, the union specifically moved to amend the complaint and argued, in the alternative, that the "incomplete advisement of rights" allegation was within the scope of the "performance evaluation" allegations of the complaint. After going off-the-record to study the complaint, the Examiner overruled the employer's objection and permitted the testimony. Although the words "amendment granted" or the like were not used in overruling the motion, the employer was clearly made aware that the Examiner regarded the issue as a viable one in this proceeding. The employer moved on to other objections and arguments, without asking for any clarification of the ruling.

DEPARTMENT OF HUMAN RIGHTS APPEALS PROCEDURE

...

> Step Two: If you are not satisfied by the decision of the Reviewer you may appeal to your Department Head. You must do this within five working days after receiving your Reviewer's written response to your first appeal. ... The Department Head will have ten working days to give you a response in writing. ... The decision of the Department Head to uphold or deny the appeal is final. Only the evaluation as determined by the final decision in an appeal process will be retained in the employee's personnel file. Employees who are members of The International Federation of Professional and Technical Engineers, Local 17, AFL-CIO may contest the retention of material in their personnel file if they believe it is not reasonable or not accurate. Should this occur employees will file in accordance with established grievance procedure in a timely manner. (emphasis supplied)

Where an employer chooses to advise an employee as to some of their rights, it has an affirmative obligation to give the employee a full and complete explanation of such rights. City of Seattle, Decision 2773, supra. In this situation, the employer sought to advise employees as to the substantive grounds available to them for appealing their performance evaluations. The employer correctly advised Local 17 employees that the retention of materials in their personnel file, such as the performance evaluation, could be challenged if they believed such materials were not reasonable or accurate. Such advice was in accordance with Article IV, Section 2 of the parties' collective bargaining agreement. However, the employer failed to notify employees of the provisions of Section 4 of the same article, which allows employees to challenge the standards used to measure performance as being unreasonable. The employer's incomplete advisement of rights can reasonably be interpreted as interfering with the exercise of statutory rights by the employees represented by Local 17. The Examiner concludes that the advice was misleading and, as such, violated RCW 41.56.140(1).

FINDINGS OF FACT

1. The City of Seattle is a public employer within the meaning of RCW 41.56.030(1).

2. International Federation of Professional and Technical Engineers, Local 17, AFL-CIO, is a bargaining representative within the meaning of RCW 41.56.030(3).

3. Local 17 is the exclusive bargaining representative for a bargaining unit of human relations field representatives employed in the City of Seattle Human Rights Department. The bargaining relationship between Local 17 and the employer has existed since 1980.

4. The City of Seattle Human Rights Department is structured into two divisions: Contract Compliance and Enforcement. Local 17 represents human relations field representatives in both divisions.

5. Bill Hilliard was Director of the Human Rights Department during the time pertinent here. Randy Gainer was previously Acting Director. Marilyn Endriss served as Enforcement Division Manager.

6. On April 7, 1986, Robert Matz, a person of Native American ancestry, was hired as a supervisor in the Enforcement Division. A grievance and lawsuit by bargaining unit members Debbie Gillespie and Debra Hillary followed shortly thereafter, accusing the department of reverse race discrimination in its selection of Matz.

7. Acting Enforcement Division Supervisor Alene Anderson reviewed information on top of and in the desks of grievants Gillespie and Hillary on several occasions. Such conduct was, at least in part, to obtain information necessary for the department's computerized record keeping system. No employees inquired of Anderson as to what she was doing, and the record is insufficient to establish other reasons for such searches.

8. A "no-talking" rule for Enforcement Division employees was instituted by the employer in August 1986. Through this rule, employees were instructed to keep visitation during work hours with other staff brief, and to avoid case discussions in offices of other staff, without supervisor permission.

9. Laura Rasset was hired as a Human Relations Field Representative in the Enforcement Division on September 25, 1985. Rasset participated in protected activities, through the filing of a grievance, and was friendly with grievants Gillespie and Hillary. Knowledge by supervisors Endriss and Gainer of Rasset's participation in protected activities is inferred to Human Rights Department Director Hilliard.

10. Rasset was discharged by Director Hilliard on September 23, 1986, prior to the completion of her probationary period, based on a conclusion that she was not a satisfactory employee.

11. Hilliard held his first staff meeting on June 26, 1986. The issue of 4/40 work schedules was discussed at such meeting.

12. On September 8, 1986, the employer advised employees of the grounds available to them for appealing performance evaluations. The union requested information regarding Standard Operating Procedures (SOPs) from the employer in December 1986, in conjunction with discussions regarding implementation of a new performance evaluation system. On April 16, 1987, the employer provided the requested information to the union, promptly after it was completed. The employer implemented the new performance evaluation system on May 4, 1987. Performance standards to measure employee performance were adopted for Enforcement Division employees, but not for Contract Compliance Division employees.

CONCLUSIONS OF LAW

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

2. The union's allegations were filed in a timely manner pursuant to RCW 41.56.160, as the complained-of conduct occurred within six months prior to the filing of the complaint.

3. The union has failed to sustain its burden of proof to show that the work phones of Gillespie and Hillary were monitored, in violation of RCW 41.56.140(1).

4. The union has failed to sustain its burden of proof to show that actions of Acting Enforcement Division Supervisor Anderson, as set forth in Findings of Fact # 7, were unlawful surveillance of protected activities in violation of RCW 41.56.140(1).

5. The union has failed to sustain its burden of proof to show that Gillespie and Hillary were retaliated against, in violation of RCW 41.56.140(1), for filing a grievance and lawsuit.

6. The union has failed to sustain its burden of proof to show that the employer's "no-talking" rule was implemented in order to interfere with, restrain, or coerce employees in the exercise of their statutory rights pursuant to RCW 41.56.040, or that it was reasonably understood by employees as an interference with their right to engage in activity protected by Chapter 41.56 RCW, so as to violate RCW 41.56.140(1).

7. Laura Rasset participated in union activities protected by Chapter 41.56 RCW through her filing of a grievance and through her support of fellow employees who filed a grievance and lawsuit. Statements by Endriss regarding grievances and Rasset's friendship with Gillespie and Hillary

are sufficient to establish a prima facie showing that Rasset's protected conduct was a motivating factor in her discharge.

8. The employer demonstrated that Rasset would have been terminated at the end of her probationary period, even in the absence of protected conduct. The employer's decision to reject Rasset as a permanent employee was not violative of RCW 41.56.140(1).

9. The employer's discussions at the June 26 staff meeting regarding a 4/40 work schedule with employees did not amount to circumvention of the union as the employees' exclusive bargaining representative in violation of RCW 41.56.140(2) or (4).

10. The union has failed to sustain its burden of proof to show that the employer had an intent to discriminate, in violation of RCW 41.56.140(1) or (2), by its action in permitting nonrepresented employees to work a 4/40 schedule, while denying the same schedule to represented employees.

11. The employer's delay in responding to the union's request for information concerning the Standard Operating Procedures on performance evaluation was not violative of its duties and responsibilities pursuant to RCW 41.56.140(2) or (4), in view of the fact that the requested information was not available to the employer when such information was requested by the union.

12. The union has failed to sustain its burden of proof to show that the employer had an intent to discriminate, in violation of RCW 41.56.140(1) or (2), by its actions in adopting specific numerical standards of performance for Enforcement Division employees, without adopting similar standards for Contract Compliance employees.

13. By providing employees in the bargaining unit represented by Local 17 with incomplete and ambiguous advice concerning their appeal rights regarding performance evaluations, which advice could reasonably have

been taken as limiting or distracting from the rights of the employees under the collective bargaining agreement and Chapter 41.56 RCW, the employer interfered with, restrained and coerced public employees in the exercise of rights protected by RCW 41.56.040 and has committed an unfair labor practice in violation of RCW 41.56.140(1).

ORDER

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Human Rights Department of the City of Seattle, its officers and agents, shall immediately:

1. Cease and desist from:

   (a) Interfering with, restraining or coercing public employees in the exercise of their rights secured by RCW 41.56.040, including the failure to give full and complete advice to employees concerning appeal procedures for performance evaluations.

2. Take the following affirmative action which the Examiner finds will effectuate the purposes and policies of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW:

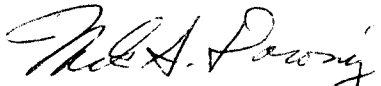
   (a) Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix." Such notices shall, after being duly signed by an authorized representative of the City of Seattle, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Seattle to ensure that said notices are not removed, altered, defaced, or covered by other material.

(b) Notify the complainant, in writing, within thirty (30) 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.

(c) Notify the Executive Director of the Commission, in writing, within thirty (30) 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 20th day of December, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARK S. DOWNING, Examiner

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

APPENDIX

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

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

WE WILL NOT interfere with, restrain or coerce employees in the exercise of their rights conferred by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, by giving incomplete advice to employees concerning appeal procedures for performance evaluations.

CITY OF SEATTLE

By:_____
AUTHORIZED REPRESENTATIVE

DATED_____

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

This notice must remain posted for sixty (60) consecutive 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, Olympia, Washington 98504. Telephone: (206) 753-3444.