STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 589,	)	
Complainant,	)	CASE NO. 3270-U-81-467
vs.	)	DECISION NO. 1405-A PECB
CLALLAM COUNTY,	)	
Respondent.	)	DECISION OF COMMISSION

Davies, Roberts, Reid, Anderson & Wacker, by Herman L. Wacker, Attorney at Law, appeared for the complainant.

Grant A. Meiner, Prosecuting Attorney for Clallam County, by Michael D. Chinn, Deputy Prosecuting Attorney, appeared for the respondent.

Examiner Rex L. Lacy of the Commission staff entered his findings of fact, conclusions of law and order in the captioned matter on April 29, 1982, wherein he determined that Clallam County had discharged Mark Baker in discrimination for Baker's attempt to process grievances under the collective bargaining agreement between Clallam County and Teamsters Local 589. The county was ordered to reinstate Baker and make him whole for lost wages and benefits. The county has petitioned for our review.

The county raises a number of issues in its extensive appeal brief. It contends that Baker was discharged because of a proven attitude problem and that an outburst directed at his supervisors was particularly flagrant. The county contends that a statement made by one of Baker's supervisors in a civil service hearing, to the effect that the discharge was based in part on Baker's attempts to process grievances, was neutral on its face and not sufficient to base a finding that the employer was motivated by an anti-union animus. The employer disputes the Examiner's finding that reasons given as the ultimate cause for discharge were pretextual, and continues to press the argument made before the Examiner, to the effect that Baker was not engaged in any activity protected by RCW 41.56 when he sought to advance as grievances matters which the county views as not properly grievable. The union responds that the grievances were within the scope of activity protected by RCW 41.56, and that Baker's protected activity was a motivating factor in the county's decision to terminate Baker.

DISCUSSION:

The facts are set forth in detail in the Examiner's decision and will not be repeated here. From our review of the record, we concur with the Examiner's statement that Baker had a good employment record except as indicated in the Examiner's decision. Those exceptions are notable, as discussed below, but even the county admits in its appeal brief that Baker's work product was otherwise adequate. Both the classification/pay rate and the holiday/vacation pay disputes which Baker sought to process as grievances fall within the broad definition of subjects for collective bargaining in RCW 41.56.030(4), so the fact that the positions asserted by Baker ultimately found no substantive support in the provisions of the collective bargaining agreement does not make them any less matters within the scope of activity protected by RCW 41.56. Baker's statements made to his supervisors, which are discussed below, were, indeed, discourteous. It was not necessary that the Examiner repeat each expletive and insult used.

The Examiner's decision also contains citation of the applicable authorities and a correct analysis of the legal principles applicable to this case. We stand by our holding in Valley General Hospital, Decision 1195-A (PECB, 1981), and we agree with the Examiner that this case is controlled thereby. The county's reliance on City of Seattle, Decision 489-A (PECB, 1978) is misplaced, and that case is distinguished by the fact that the employee involved there was attempting to process grievances completely outside of the context of collective bargaining activity under RCW 41.56. As concluded by the Examiner, this case turns on the burden of proof.

Baker's outburst directed at his supervisors would have been cause for his immediate discharge. But the employer did not discharge Baker at that time. Contrary to the employer's present contention that it was too busy to spare Baker at that point in time or to absorb the productivity that would be lost by his discharge, the employer's actions at the time of the outburst were limited to issuance of a reprimand. All indications were that the reprimand was all that the employer intended to do about the outburst. Baker had no reason to think that discharge was still in the offing.

When the employer did get around to discharging Baker, it relied on reasons which the Examiner properly concluded were pretextual. The previous practice of county employees to work at a nearby college library is adequately established in the record. The employer admits in its appeal brief that Baker and a more senior employee had worked in the college library on previous occasions, but seeks to distinguish the situations with the claim that they were working assessments in the area surrounding the college on those previous occasions. The explanation is not satisfactory. The college, a public institution, was clearly not on the county's tax rolls. Baker and

the other employee used the college library to do paperwork, as an alternative to working in the county's own offices. The same situation prevailed on the day of the incident claimed as the precipitating incident leading to the discharge.

The supervisor statements which constitute the "smoking gun" in this case are preserved for our ears in a tape recording. It is rare that an allegation of a discriminatory discharge unfair labor practice is founded on evidence so certain as the tape recorded proceedings of the employer's own civil service body. The first reason given by the supervisor for the discharge, at the outset of what may have been intended as a list of problems, was that Baker had sought to process grievances under the union contract. The Examiner correctly concluded that the supervisor's comments attributing Baker's discharge in part to his attempt to process grievances was sufficient to establish a prima facie case on behalf of the union, and to shift the burden of proof to the employer. We also concur with the Examiner that the County has failed to sustain its burden of proof that the discharge would have occurred regardless of the unlawful motivations indicated by the supervisor. The untimely revival of the outburst incident as a cause for discharge and the pretextual appearance of the library incident serve to undermine rather than support the county's case.

ORDER

1. The findings of fact, conclusions of law and order of the Examiner are affirmed.

2. Clallam County shall notify the Executive Director of the Public Employment Relations Commission, within thirty days following the date of this Order, as to what steps it has taken to comply with the Order issued by Examiner Rex L. Lacy in the above entitled matter, and shall at the same time provide the Executive Director with a signed copy of the notice posted in accordance therewith.

Issued at Olympia, Washington, this 29th day of October, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane Wilkinson

JANE R. WILKINSON, Chairman

Robert J. Williams

R. J. WILLIAMS, Commissioner

Commissioner Mark C. Endresen
took no part in the consideration
or decision of this case.