

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STEVE TAYLOR,)	
)	
Complainant,)	CASE 15137-U-00-3820
)	
vs.)	DECISION 7421 - CCOL
)	
WHATCOM COMMUNITY COLLEGE)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
)	

Nancy Kennedy, Labor Relations Specialist, Washington Federation of Teachers, represented the complainant, and Steve Taylor, appeared pro se.

Christine Gregoire, Attorney General, by Wendy Bohlke, Assistant Attorney General, appeared for the respondent.

On April 12, 2000, Steve Taylor filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Whatcom Community College as respondent. The case was reviewed under WAC 391-45-110, and a preliminary ruling issued June 12, 2000, found a cause of action to exist on allegations of:

Employer interference with employee rights and discrimination in violation of RCW 28B.52.073(1)(a) and (1)(c), by failing to hire Steve Taylor in reprisal for his union activities protected by Chapter 28B.52 RCW.

The employer filed an answer to the complaint. A hearing was held on September 26 and October 18, 2000, before Examiner J. Martin Smith. The parties filed post-hearing briefs.

Based on the evidence presented at the hearing and the parties' arguments, the Examiner rules that Taylor has established that the employer has committed unfair labor practices in violation of RCW 28B.52.073.

BACKGROUND

Whatcom Community College (WCC or employer) is a state institution of higher education located at Bellingham, Washington.¹ President Harold Heiner is its chief administrative officer. The employer offers both vocational classes and two-year "associate" degrees.

The computer science and information technology classes offered by the employer are of interest here. The employer offers about 53 quarter credits in computer and business courses. Although it does not offer an "associate" degree in computer science as a degree program, students taking some of those courses receive credits which can be transferred and used to attain a "bachelor" degree at a four-year college or university.² Other "vocational" courses in that curriculum do not yield transfer credits.

Steve Taylor has been a part-time employee at WCC for a number of years. His initial assignment was as a classroom assistant in student-centered computer laboratories. During or about 1991, the

¹ Other state institutions of higher education in the region are: Bellingham Technical College and Western Washington University (each located in Bellingham) and Skagit Valley College (located in Mt. Vernon).

² A student completing 91 quarter credits at WCC (including CS-100, CS-109, CS-170, CS-105, BIS-121, BIS-141, and BIS-161) may earn the "Computer Support Specialist/Associate in Science" degree that is considered to be a "transfer" degree.

computer lab assistants were reassigned to maintenance of the employer's growing network of personal computers or to other duties. Taylor learned the skills needed to repair computers, drives, monitors, printers and modems. Taylor began teaching classes concurrent with his computer lab and computer repair assignments, although he had neither an "associate" nor a "bachelor" degree at that time.

Although Taylor had received a "bachelor" degree by 1995, he was informed prior to the 1995-96 academic year that he could no longer teach "transfer" classes, because he did not have a "master" degree. Although there was no official position at WCC in 1995-96 dedicated to computer and technology support, Taylor was primarily responsible for support of an IBM-PC compatible system. It appears, however, that Taylor's computer lab and computer repair assignments ended prior to the events giving rise to this case.

The classes taught by Taylor, and the time periods in which he taught them, included:

- "Computer Science 100" (CS-100), an introductory computer course, from 1988 through 1998.
- "Computer Science 101" (CS-101), another introductory course, from 1989 through 1995. This was designated as a "transfer" course prior to the 1995-96 academic year, and it is clear that the course was eliminated from Taylor's duties because he lacked a "master" degree.
- "Computer Science 102" (CS-102), covering the MS-DOS operating system, from 1989 through 1996. This was designated as a "transfer" course some time in the 1991-95 period.
- "Computer Science 105" (CS-105), covering operating systems, in 1993, 1994, and 1996 through 1999.

- "Business 101" (BIS-101), another introductory course, from 1995 through 1999.
- "Computer Science 160" (CS-160), covering hardware technology, from 1996 through 1999.

Although Taylor and another instructor, Charles DeMarco, developed most of those courses, they generally did not produce credits eligible for transfer to "bachelor" programs at other institutions.

Union Activity at Whatcom Community College -

For an unspecified period, the Whatcom Community College Federation of Teachers, affiliated with the WFT, AFT and AFL-CIO (union) has been the exclusive bargaining representative of the employer's academic faculty, including part-time instructors. The union became more active regarding campus policies during or about 1995. Taylor became active in the union at about that time, and he was elected as a vice-president of the local union representing part-time faculty members.

There was what the union defined as a "crisis" at WCC in November 1998, when it appeared that an instructor named Samples would be suspended. The minutes of a meeting of the union's board held at that time described problems identified in regard to President Heiner, and possible solutions, but did not single out a particular union leader as an instigator or contact person.³ Minutes of a union meeting held in December 1998 named some individual union members in regard to the Samples controversy, but not Steve Taylor.⁴ However, a letter which the union sent to Heiner concerning the Samples grievance had Taylor's name affixed at the end over his title as the union vice president representing the part-time

³ Exhibit 3.

⁴ Exhibit 4.

faculty.⁵ In addition, the union submitted a letter to the president of the WCC Board of Trustees, indicating alarm with what it perceived were Heiner's violations of the collective bargaining agreement with regard to student evaluations, personnel files, and the use of professional development plans. The union felt that Heiner's actions jeopardized academic freedom and faculty tenure policies.⁶

Reassignments of Taylor -

For the 1998-1999 academic year, the employer gave Taylor an annual contract which guaranteed him a set level of pay even if a class was cancelled due to low enrollment. This constituted a significant improvement of his status, inasmuch as part-time faculty are usually employed on a quarter-by-quarter basis with no guarantee of any set level of work.

Under date of July 30, 1999, Associate Dean of Instruction Dal Symes sent a letter to Taylor, as follows:

This year . . . WCC will be undertaking the accreditation self study. Consequently, we are checking our records to insure that all faculty teaching transfer credits hold at least a master's degree. We cannot find any record of your requisite advanced degree. We will need to have evidence of your master's degree before we can issue a contract to teach a transfer class.

Taylor had not been teaching transfer classes since 1995, so he did not perceive an immediate threat to his employment. Taylor also talked to Dean of Instruction Richard Fulton and a registrar, and

⁵ Exhibit 5. President Bob Riesenbergh signed the letter on behalf of the union and all of its members.

⁶ Exhibit 5 (see first page summary in particular).

was assured that his lack of a "master" degree was not yet a problem.

In a conversation on August 3, 1999, Symes told Taylor that the CS-105 and CS-160 courses would probably become transfer courses, and that Taylor would not be able to continue teaching them. Taylor considered CS-105 and CS-160 to be vocational classes, and he sent Symes a note emphasizing that fact.⁷

Symes responded with a note dated August 4, 1999, informing Taylor that Corrine Sande would be teaching CS-105 in September, "to ensure her a full [teaching] load," and that Taylor would keep CS-160 and BIS-101. Accreditation issues were not mentioned.⁸ Taylor was issued a contract to teach CS-160 and BIS-101, at an hourly rate of \$37.22.⁹ Although that amounted to a pay cut for Taylor at a 0.4 full time equivalency (FTE) where he was no longer eligible for insurance benefits, Taylor accepted that offer.

The union president, Riesenbergs, testified that he and the union executive board met with Heiner after October 14. They tried to explain that Taylor was not teaching transfer classes, and that there was no reason to short Taylor of his expected load of classes. Heiner raised a question as to whether Taylor had vocational certification, based on a letter he had received from a former dean named Parnell. When told of Heiner's response, Taylor was puzzled by what sounded like a new requirement. The union also concluded that the vocational certification constituted a new requirement, to be aimed first at Taylor in the autumn of 1999.

⁷ Exhibit 7.

⁸ Sande holds only a two-year degree in "netware administration" from Skagit Valley Community College.

⁹ Exhibit 2.

In August 1999, Riesenbergr and another union official, Jeff Klausman, requested that Taylor be assigned the same classes as he taught in 1997-1999. On August 16, 1999, Symes rejected that proposal, and refused to discuss part-time faculty assignments.¹⁰

Taylor began teaching CS-160 and BIS-101 in September 1999. In a letter dated October 14, 1999, Symes informed Taylor that he was expected to achieve "a master's degree or acceptable vocational certification at the journey person's level." Symes proposed a professional development plan whereby Taylor could take the "A+ Certification" or Microsoft certification, and make progress toward attaining a "master" degree, in return for WCC offering Taylor two sections of BIS-101 for the winter quarter of 2000 and one section of BIS-101 for the spring quarter of 2000. The union leadership felt this was disparate treatment,¹¹ but that it was probably the best offer Taylor would receive at that time. Taylor rejected the employer's proposal. He did not teach at WCC in the winter quarter of 2000 or thereafter.

After the winter quarter of 2000, the employer posted a position announcement for a full-time instructor in a computer information systems program.¹² That position required only a "bachelor" degree in computer science and three years of experience. Believing that he was qualified for that position, Taylor applied prior to the April 7, 2000, deadline. Taylor was not interviewed for the position. Instead, the employer hired Pamela Helberg, who was once a student of Taylor's and who does not have either a "bachelor"

¹⁰ Exhibit 14.

¹¹ Union witnesses also recalled that WCC would consider Taylor for re-application in 2000, after he completed the additional training.

¹² Exhibit 18.

degree in computer science, a vocational certificate, or three years of experience in the computer field. Helberg does, however, have a "master" degree in English, "A+ Certification," Microsoft training, and experience teaching CS-101, CS-106, and other courses similar to those which had been taught by Taylor.

POSITIONS OF THE PARTIES

Taylor contends that the employer eliminated the vocational classes he taught, and effectively abolished his position, in retaliation for his activities on behalf of the union. He particularly cites his activities surrounding the notorious grievance of faculty member Samples, and a "no confidence" vote directed at the college president. Taylor contends the employer's actions against him were a message to part-time faculty members, warning them to refrain from active and vocal participation in union activities.

The employer urges that Taylor's complaint filed in April 2000 is untimely with regard to claimed discrimination in September 1999. As to any claims which are found to be timely, the employer urges there was no nexus between Taylor's union activities and the decisions about his teaching assignments for 1999-2000. It asserts the requirement for a "master" degree to teach transfer courses was legitimate, and that Taylor failed to meet that requirement.

DISCUSSION

The Law to be Applied

The ultimate issue to be decided in this case is whether the employer violated RCW 28B.52.073, when it chose to limit the

classes assigned to Steve Taylor. Like the Public Employees' Collective Bargaining Act,¹³ which has been described by the courts as "remedial" legislation,¹⁴ Chapter 28B.52 RCW secures the right of employees to organize and bargain collectively with their employers. The statute applicable in this case includes:

RCW 28B.52.073 (1) It shall be an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it . . .

(c) *To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment, or any term or condition of employment;*

(d) To discharge or discriminate otherwise against an employee because that employee has filed charges . . .

(emphasis added).

In *Pierce College*, Decision 3456 (CCOL, 1990), a community college was found guilty of "discrimination" in violation of RCW

¹³ Chapter 41.56 RCW.

¹⁴ In *Roza Irrigation District v. State of Washington*, 80 Wn.2d 633 (1972), the Supreme Court of the State of Washington wrote that Chapter 41.56 RCW was remedial legislation entitled to liberal construction to effect its purpose, and rejected a restrictive interpretation of the intent of the legislature, in the absence of a restrictive intent expressed in the statute or a plausible reason for such an interpretation. The remedial nature of the legislation was also used as a basis to hold that bargaining obligations under Chapter 41.56 RCW prevail over conflicting civil service rules adopted under Chapter 41.08 RCW. *City of Bellevue*, Decision 3156-A (PECB, 1990).

28B.52.073(1)(c). Decisions under the comparable provisions of collective bargaining statutes applicable to other groups of public employees in the state of Washington include, *Clover Park School District*, Decision 7073 (PECB, 2000)[decided under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW] and *Mansfield School District*, Decision 5238-A (EDUC, 1996) [decided under the Educational Employment Relations Act, Chapter 41.59 RCW].

The Timeliness Defense

The employer's claim that the unfair labor practice complaint in this matter is untimely is unfounded, and is rejected.

It is true that Chapter 41.56 RCW, Chapter 41.59 RCW, and many other public sector collective bargaining statutes patterned after the federal Labor-Management Relations Act of 1947 (the Taft-Hartley Act) contain statutes of limitations (usually 6 months) on filing of unfair labor practice complaints. Those limitations were added to Chapters 41.56 RCW and 41.59 RCW in 1983.¹⁵ Chapter 28B.52 RCW contains no similar limitation, however. The unfair labor practice provisions were not added to Chapter 28B.52 RCW until Chapter 314, Laws of 1987, and the Examiner must presume that the Legislature (and the proponents of the 1987 legislation) were aware of the statute of limitations features pre-existing in the federal law and other state laws. The Examiner will not write a substantive limitation into the statute. See also *Green River Community College*, Decision 3861 (CCOL, 1991).

The Standards for "Discrimination" Claims

In deciding discrimination allegations, the Commission applies the "substantial motivating factor" test set forth by the Supreme Court

¹⁵ See Chapter 58, Laws of 1983.

of the State of Washington in *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991). Thus:

- The complainant must establish a *prima facie* case of discrimination, showing:
 - ▶ The exercise of rights protected by an applicable collective bargaining statute, or communicating an intent to do so;
 - ▶ That one or more employees was (were) deprived of some ascertainable right, status or benefit; and
 - ▶ A causal connection between the exercise of protected rights and the discriminatory action.
- If the complainant makes out a *prima facie* case, the respondent must undertake the burden of production, to set forth lawful reasons for its actions.
- While the burden of proof remains on the complainant at all times, that burden may be met by showing that the reasons set forth by the respondent were pretextual and/or that protected activity was nonetheless a substantial motivating factor underlying the disputed action(s).

That is the analytical method applied by the Examiner to the claim by Steve Taylor against Whatcom Community College.

The *Prima Facie* Case

The Examiner concludes that Steve Taylor has adduced sufficient evidence to make out a *prima facie* case that the employer's actions in regard to his teaching assignments constituted discrimination in reprisal for his previous union activities.

Taylor's Union Activity and Visibility -

A finding of employer intent is necessary to find a discrimination violation. See *Clover Park School District*, Decision 7073 (EDUC, 2000). The evidence in this case establishes that the employer had the knowledge necessary to form such an intent.

Steve Taylor was active in, and held a leadership role in, the union at WCC. As the union vice-president representing part-time faculty, Taylor was representing over 76 percent of the bargaining unit.

Senior employer officials, including President Heiner, Dean of Instruction Fulton, Associate Dean Symes, and former Associate Dean Parnell,¹⁶ were all aware of Taylor's activity and leadership position in the union. Even if they were not conversant with all aspects of internal union affairs, Taylor's union activity was given visibility by his involvement in several negotiation sessions held in the president's office,¹⁷ and by the appearance of his name and union title on the letter concerning the Sample grievance.¹⁸

Deprivation of Ascertainable Right -

Taylor was clearly deprived of both pay and benefits after July 30, 1999, when his teaching assignments were severely reduced by the employer. Additionally, there is indication that the professional development assistance made available by the employer to other instructors who lacked a "master" degree was not made available to Taylor until after he contacted the union for assistance in retaining his class assignments and level of work.

¹⁶ Paul Parnell was Associate Dean for Vocational Education.

¹⁷ Transcript, at 172.

¹⁸ Exhibit 5.

Causal Connection -

Where discrimination is alleged, the evidence must show that the respondent bore sentiments against the collective bargaining process, against the particular union chosen by or seeking to represent its employees, or against the particular leaders of a union. Thus,

An employee may establish the requisite causal connection by showing that adverse action following the employee's known exercise of a protected right under circumstances from which one can reasonably infer a connection. Employers are not in the habit of announcing retaliatory motives, so circumstantial evidence of a causal connection can be relied upon.

Port of Tacoma, Decision 4626-A (PECB, 1995).

The disputed employer actions concerning Taylor followed a five-year period of escalating union activity, during which the union had become more combative and its willingness to cooperate had diminished. During the last two rounds of contract negotiations, and in regard to the Samples grievance, the union pushed for solutions that were unpopular with the employer's administrators, and Taylor was visible as a spokesperson for part-time faculty who out-numbered the full-time faculty by more than twice.

The record reveals that teaching "credentials" were a two-edged sword. Ample testimony described employer practices whereby instructors who lacked a "master" degree or vocational certification were kept on so long as their teaching was favorably evaluated, and whereby the recommendations of area coordinators were usually followed in deciding who was to teach a particular course. Even though there is no evidence suggesting the existence of doubts about Taylor's teaching skills, and there is ample evidence that he

had been assigned to teach both transfer and non-transfer courses after the 1995 reminder about attaining a "master" degree, both of those past practices were changed in 1999. Those alterations were amplified with the hiring of Helberg, who possessed neither a vocational certificate nor academic credentials related to computer classes.

In its effort to retain and improve the computer support specialist program, WCC administrators had historically favored employees who taught in the program (DeMarco, Ball and Taylor), and had acceded to the deans who administered the program. By late 1999, instructors who had strong ties to the union (DeMarco and Taylor) were gone from WCC, and had been replaced by employees who had no ties to the union (Helberg, Sande and Barker).

Finally, there is ample evidence that the employer's administrators were more than casually interested in who would lead the union in coming months. Evidence of their questions about the composition of the union's executive board without Steve Taylor provides clear basis for an inference that the employer officials were wary of the increased influence of the part-time faculty.

The evidence is thus sufficient to establish a *prima facie* case of discrimination under RCW 28B.52.073.

The Employer's Articulation of Reasons

Although the employer acknowledges that Taylor joined the union in 1995, it insists that he was never considered a visible union leader. The employer contrasts the situation of Taylor with that of Robert Ball, who was a visible union adherent for many years and was never disciplined or adversely affected by the employer.

The essence of the employer's defense is that Taylor was treated the same as other instructors. Employer official Fulton testified that he has been involved in reviewing the academic credentials of faculty members at several other community colleges, that faculty development is an important matter at all community colleges, and that personnel development was pursued at WCC so far as funding permitted.¹⁹ Fulton indicated that the 160 part-time faculty at WCC were necessary to offer the courses that students wanted, in addition to serving the whole community and the "associate" degree program, and that WCC had added 45 to 55 full-time faculty in recent years. Further, the employer was instituting a grant from the Perkins Program to improve the computer science curriculum, and that its need to improve its computer science program led to a self study, re-designation of certain courses, and appointment of Corrine Sande to teach some of the classes previously taught by Taylor.

Finally, the employer points out that Taylor was told in 1995 that he could not teach transfer courses without a "master" degree, and it contends Taylor was "always" on notice that he needed to continue his education. The employer points out that Dean Symes was in charge of the self study and program improvement effort, and alleges that both Symes' letter of July 30 and the ultimate reduction of Taylor's teaching load as a part-time instructor grew out of those legitimate employer initiatives.

The Examiner acknowledges that concerns about accreditation are real and ongoing for institutions of higher education. There is nothing inherently unlawful about requiring advanced academic credentials (e.g., a "master" or "doctor" degree) for teaching courses that yield transfer credits. Thus, the reasons articulated by the employer for its actions cannot be rejected as unlawful or inherently discriminatory.

¹⁹ Transcript at 356.

The Complainant's ProofCredentials Deficiency Pretextual -

The record in this proceeding is clear that, while the requirement of a "master" degree to teach transfer courses was a legitimate policy, it was not consistently enforced at WCC. Other evidence supports an inference that former employer official Christopher either ignored Taylor's lack of a "master" degree, or affirmatively waived the "master" degree requirement to enable Taylor to continue teaching. It is clear there was a tightening of the requirement after Christopher was replaced by Dean Fulton. This case turns on whether that change of policy was substantially related to Taylor's union activities.

Accreditation of the college is reviewed every 10 years, and such a review was due in the 1999-2000 academic year. In preparation for that process, WCC began a self study to review its faculty standards and credentials for conformity with "Standard II" and "Standard IV" of the accreditation criteria:

- WAC 131-16-091(2) requires that professional personnel in vocational fields or other specialized areas for which advanced degrees are not normally available have sufficient broad and comprehensive training and work experience to particularly qualify them in their area of specialization;
- WAC 131-16-091(4) allows employment of other vocational education teaching personnel who do not meet the specified work experience and educational requirements on either a full-time or part-time basis, provided that such individuals possess appropriate technical skills and knowledge in the specific program area assigned.

Since the employer has not asserted that a lack of teaching skills on Taylor's part provides basis to invoke either Standard II or

Standard IV,²⁰ and has not asserted any recent change of the requirements themselves,²¹ the employer can only justify the diminution in Taylor's assignments based on other policies or changes in direction. None of those are shown, however.

Despite the employer's alleged anxiety about an accreditation review, its actions regarding the computer science program suggest confusion and a lack of understanding. The employer contends it proposed making all of its computer class offerings "transfer" courses,²² but that is contradicted by other evidence. Symes' letter of August 9, 1999, only mentioned a "possibility" of upgrading the classes. It was not until September 30, 1999, that Symes and DeMarco proposed to re-designate CS-105 and CS-160 as transfer classes.

²⁰ In fact, the Examiner's review of Taylor's evaluations, including both WCC evaluations and comments of students in the classes he taught, would support an opposite conclusion. In a letter of recommendation written in 1993, Professor Gary Bornzin of Western Washington University described Taylor as an "excellent teacher," "conscientious," and "of the highest quality." Taylor also received "excellent" reviews from private seminar attendees (e.g., Intalco Aluminum, TCI Cable, and Whatcom County Legal Secretaries Association). Similar remarks are evident from Mary Easley and Dean Christopher of WCC. Student evaluations for CS-100 and CS-101 for at least 1989, 1993, and 1995, reveal a well-prepared instructor with a strong personality and sense of humor.

²¹ WAC 131-16-091 originated in 1973, was amended in 1980, and was last amended (in an unknown manner) in 1993. The Examiner notes that, although Taylor was already teaching classes during the 1989-1990 period when the previous accreditation review should presumably have occurred, this record contains minimal information about that process and no indication that it produced any of the pressure upon Taylor to obtain a "master" degree in 1999.

²² Employer's brief at 7; Exhibit 11.

Taylor also provided evidence that contradicts the employer's claim that he was treated the same as similarly-situated employees:

- Taylor points to letters and e-mail messages in July 1999,²³ as the beginnings of a move by Symes to ease Taylor out of his computer-related teaching assignments.
- The employer decided to not allow Taylor to teach two sections of BIS-101, even when that assignment was recommended by the area coordinator.
- Disparate treatment is evident with respect to giving Sande extra teaching assignments to assure her a "full load." Although Sande has a "master" degree which superficially fits the profile now preferred by the employer, close examination discloses her "master" degree is not in any computer-related field.
- Disparate treatment is also evidenced by the answers of WCC administrators to direct questions asked of them at the hearing in this matter: In response to inquiry as to why Taylor was continually re-hired and assigned to teach classes at WCC, Symes could only state, "I can't answer that. . . ."²⁴ Nor could Jane Gordon-Ball, the full-time business instructor who was Taylor's coordinator for two years.
- Taylor's academic credentials were never mentioned to or by Gordon-Ball as a problem, even after she met with Taylor and former Dean Parnell in March of 1998.
- The employer deviated from its own prior policy when it came to staffing the "new" computer program. Rather than relying upon its area coordinators to recommend hiring of new instruc-

²³ Exhibit 23.

²⁴ Transcript at 352.

tors, the employer moved to hire any available applicant who had a "master" degree.

- Charles DeMarco indicated that the "professional development plan" solution offered to Taylor was encumbered by the fact that part-time faculty were not funded by the WCC for this purpose. Thus, Taylor would have had to bear the costs of any additional academic credentials.
- Gordon-Ball pointed out that the much-feared "visit" by accreditation observers was not scheduled to occur until April 2001, more than a year after the "in exchange for" demand imposed by the employer on Taylor, and even some six months after the last date of hearing in this case.

The foregoing circumstances support a conclusion that the reasons given by the employer were pretexts designed to conceal a different explanation for its actions, one in violation of Chapter 28B.52 RCW.²⁵

Substantial Motivating Factor-

If President Heiner was not fully convinced that Taylor was instrumental in the union's bargaining and grievance processing, he certainly did not explain away either Taylor's presence in the administration office on a number of occasions for negotiations, or

²⁵ Put another way, the following things would have transpired if the employer's reduction of Taylor's teaching load were based on legitimate rationale:

- ▶ In August 1999, WCC would have decreed that no employee could teach a "transfer" course without possessing a relevant "master" degree;
- ▶ An "A+ Certification" would have been required for all employees teaching computer courses; and
- ▶ WCC would have satisfied its need for a qualified instructor for a second section of BIS-101, by engaging Taylor to teach the course on a non-conflicting schedule for 1999-2000.

his own inquiry to Riesenbergs about Taylor's future as the union spokesperson for the part-time faculty at WCC. As to the latter, the strict prohibition of employer interference with internal union affairs found in RCW 28B.52.073(1)(b) provides an inference that the employer official was engaging in surveillance when he showed interest in this subject area, and that Taylor's union activity was a substantial factor in Heiner's thinking.

The decision in *Pierce College*, Decision 3456 (CCOL, 1990) applied the standard formerly used for evaluating "discrimination" claims. That employer prevailed after sustaining a burden of proof that the non-renewal of an instructor was based on his less-than-acceptable performance (including negative evaluations by his students), notwithstanding involvement in a spirited representation campaign. That does not fore-ordain a similar result here. The employer in *Pierce College* had no legitimate stake in the outcome of the campaign between affiliated and non-affiliated unions, while the employer in this case was directly attacked by the union. The *Pierce College* case is further distinguished by the absence of involvement by that individual complainant in face-to-face negotiations and open conflict with college administrators at the highest level.

The facts of this case are comparable to the situation in *Morton School District*, Decision 5838 (PECB, 1997), where unfair labor practice violations were found for employer discrimination against the co-leaders of the local teachers' union. The employer took action against those employees close on the heels of their filing a grievance. As with the situation here, no performance-related reasons were articulated that would have supported the employer's actions; only an effort to reward a group of employees less likely to use the union to defend their interests.

Conclusions

The Examiner concludes that this employer dislodged Taylor from teaching computer classes as a pretext to conceal reprisal against Taylor's union activities, and to warn part-time faculty against opposing curriculum changes at the college. Taylor's lack of a "master" degree was never of concern, or was ignored, from 1995 to 1999. In taking action against Taylor in 1999, the employer changed the way it appointed faculty, and Dean Symes displaced the area coordinator system by making two appointments while Mr. Ball was on vacation. The employer's discrimination did not end there, and was furthered by the assignment of the BIS-101 class to another employee, contrary to the recommendation of the area coordinator and escalating the retaliation after Taylor questioned the rationale of Symes' decisions to minimize Taylor's workload. Symes' answers to questions in this proceeding were confusing and illogical, particularly in light of the fact that accreditation reviews and course upgrades had not yet been put in place. Taylor might have been given the benefit of these doubts except that he sought out the assistance of the WFT affiliate to raise a protest to his appointments. The employer's actions against Taylor took place after he had become a spokesperson for the union, and for the part-time faculty in particular, and the employer's chief officer took an inappropriate interest in the internal affairs of the union. An unfair labor practice is found; a remedy is necessary.

FINDINGS OF FACT

1. Whatcom Community College is a state institution of higher education operated under Title 28B RCW, and is an employer for purposes of Chapter 28B.52 RCW.

2. Steve Taylor was, at all times material to this case, a member of the academic faculty of Whatcom Community College, and an employee for purposes of Chapter 28B.52 RCW.
3. Whatcom Community College Federation of Teachers, affiliated with the Washington Federation of Teachers and the American Federation of Teachers, AFL-CIO, is an employee organization for purposes of Chapter 28B.52 RCW and is the exclusive bargaining representative of the academic faculty of Whatcom Community College.
4. Taylor initially worked for Whatcom Community College as a computer laboratory assistant helping students. He learned personal computer repair skills, and was an unofficial repair person for the employer's computer network.
5. Taylor taught various computer science and business courses at Whatcom Community College on a part-time basis, beginning in 1989. He acquired a "bachelor" degree while so employed. He does not hold a "master" degree or any special certification for teaching computer courses.
6. The courses taught by Taylor were initially categorized as "vocational" courses which did not produce credits transferrable to other institutions of higher education as partial fulfillment of requirements for a "bachelor" degree.
7. In advance of the 1995-1996 academic year, Taylor was told that he could not teach transfer credit classes, because he lacked a "master" degree. During or about 1995, a "Computer Science 101" course which Taylor had been teaching was converted to a transfer credit class, and Taylor was not assigned to teach that course thereafter. A "Computer Science

102" class which Taylor had been teaching was converted to a transfer credit class at an unspecified time between 1991 and 1996, and Taylor was no longer assigned to teach that course. The requirement of a "master" degree was waived or ignored by the employer at other times.

8. During or about 1995, Taylor became an active member of the union identified in Finding of Fact 3. He became a vice-president of the local union prior to 1998, served on the union's executive board, and was identified as the leader of the part-time faculty in union matters. Taylor's name appeared as a holder of union office in correspondence directed by the union to the employer.
9. In 1998, Taylor was an active participant, along with the local union president and Charles DeMarco, in the union's defense of an instructor in regard to a suspension.
10. Taylor was regarded as a good instructor by both faculty and student evaluators.
11. Notwithstanding Taylor's status as a part-time instructor, the employer offered him an annual contract for the 1998-99 academic year, which guaranteed him a set level of salary irrespective of student enrollment levels.
12. The employer was preparing for an "accreditation review" which was to occur during or after the 1999-2000 academic year. In a tightening of the employer's policy, Dean Symes encouraged the computer science division to use only persons who held a "master" degree as instructors for transfer courses.

13. Symes pointed out Taylor's lack of a "master" degree in a letter dated July 31, 1999. Upon consulting with Dean of Instruction Richard Fulton and another employer official, Taylor received assurances that his employment with the employer would not be affected.
14. In August 1999, Symes informed Taylor that he could only teach CS-160 and BIS-101 for the Fall Quarter, that a CS-105 class that Taylor had taught was being re-designated as a transfer course. As a result, Taylor's workload was reduced below the minimum necessary for him to qualify for employer-paid medical insurance coverage. By its actions, the employer constructively discharged Taylor, and he has not worked for this employer since the 1999 Fall Quarter.
15. In August 1999, the employer imposed a professional development plan upon Taylor which conditioned his continued employment, including that he obtain a "master" degree. Because the employer did not provide professional development benefits for its part-time employees, conformity with those conditions would, as a practical matter, have been entirely at Taylor's own expense.
16. In August 1999, the employer assigned Corrine Sande to teach CS-105, stating an intent to assure her a full-time workload. Sande lacked either a "bachelor" degree or a "master" degree at that time.
17. When the employer identified need for another class section of BIS-101 in the 1999 Fall Quarter, it overruled the recommendation of area coordinator Robert Ball favoring the assignment of Taylor. A new employee was eventually hired to teach that class.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 28B.52 RCW and Chapter 391-45 WAC.
2. In its diminution of the teaching assignments of Steve Taylor, as described in Finding of Fact 15 through 18, Whatcom Community College was substantially motivated by animus toward Taylor's lawful activities for and on behalf of the Washington Federation of Teachers, so that the employer committed unfair labor practices in violation of RCW 28B.52.073(1)(c) and (a).

ORDER

Whatcom Community College, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
 - A. Discriminating against Steve Taylor or other members of the academic faculty represented by the Whatcom Community College Federation of Teachers in reprisal for their union activities during their course of employment;
 - B. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the state of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 28B.52 RCW:

- a. Offer Steve Taylor immediate and full reinstatement to his former position or a substantially equivalent position,²⁶ and make him whole by payment of back pay and benefits in the amounts he would have earned or received from the date of the unlawful termination of his employment to the effective date of the unconditional offer of 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 all employees are usually posted, copies of the notice attached hereto and marked "Appendix." Such notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.
- c. Read the notice attached to this order into the record at a regular public meeting of the Board of Trustees of Whatcom Community College, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

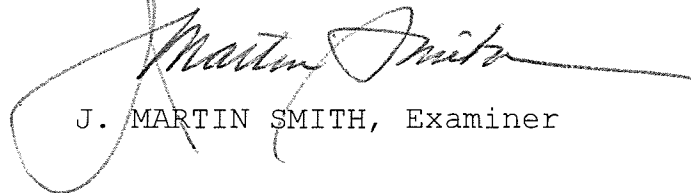
²⁶ Taylor may request to teach one "transfer" course per quarter between Fall 2001 and through Summer 2002, so long as he is qualified to teach the course. A waiver under existing policy will not be unreasonably withheld. By March 1, 2002, Taylor must decide and so indicate his intention to pursue a Master's Degree either as part of a professional development plan as presented in February 2000, or a new plan of academic improvement.

- d. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

- e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice attached to this order.

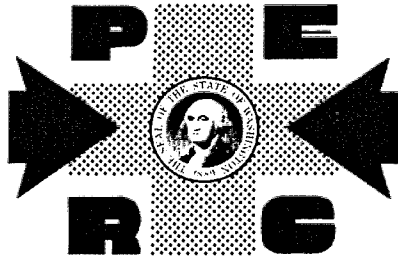
Issued at Olympia, Washington, on the 1st day of June, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Martin Smith", written in black ink. The signature is fluid and extends across the width of the text below it.

J. MARTIN SMITH, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL offer Steve Taylor an annual contract on the same basis as his employment at WCC in 1998-99 academic year. Beginning with Summer Quarter 2001, Taylor will be offered teaching assignments consistent with the courses he taught prior to the unlawful termination of his employment.

WE WILL NOT discriminate against Steve Taylor or other part-time instructors on the basis of the activity in or on behalf of the exclusive bargaining representative.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____

WHATCOM COMMUNITY COLLEGE

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 753-3444.