STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, UFCW LOCAL 356,	)	
Complainant,	)	CASE 16499-U-02-4259
vs.	)	DECISION 8386 - PSRA
COMMUNITY COLLEGE DISTRICT 13 (LOWER COLUMBIA),	)	FINDINGS OF FACT, CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER

Mark S. Lyon, General Counsel, for the union.

Michael P. Sellars, Senior Assistant Attorney General, for the employer.

On May 13, 2002, Washington Public Employees Association, United Food and Commercial Workers Local 356 (union) filed an unfair labor practice charge with the Washington State Department of Personnel, alleging that Community College District 13 (Lower Columbia) (employer) committed statutory violations in connection with the selection of Carole Jordan for reduction in force and discipline of Ron Adkisson. The Public Employment Relations Commission acquired jurisdiction in the matter on June 13, 2002, under RCW 41.06.340(2). A preliminary ruling was issued on April 14, 2003, finding a cause of action to exist on allegations summarized as:

> Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its selection of Carole Jordan for reduction in force and by its discipline of Ron Adkisson, in reprisal for their union activities protected by Chapter 41.56 RCW.

A hearing was held on September 9, 2003, before Examiner Vincent M. Helm. At the outset of the hearing, the union withdrew its complaint with respect to Adkisson. The parties filed briefs to complete the record in this case.

On the basis of the evidence presented at the hearing, the Examiner holds the employer violated RCW 41.56.140(1) by its selection of Carole Jordan for reduction in force.

BACKGROUND

The Employer's Organizational Structure

The employer is an institution of higher education within the community college system. Its president is John McLaughlin. In the time period relevant to this proceeding, at least 11 individuals reported directly to McLaughlin, including three vice-presidents (one of which is responsible for administrative services) and three directors, including one responsible for the employer's human resource functions (Brian Poffenroth), and a second responsible for marketing and college relations.[1]

Historically, the marketing and college relations office consisted of its director (Janelle Runyon), a graphics designer/illustrator (who was responsible for graphics for employer publications), and an information specialist (who was responsible for writing and editing employer publications).

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[1] Subsequent to the time frame pertinent here, the office of the marketing and college relations director was placed under the direct supervision of the vice president for administrative services.

Three different individuals held the information specialist position during the time period relevant to this case: David Gainer was the information specialist from August 2000 to April 2001; he was replaced by Wendy Hall, who held that position from April to November of 2001; she was replaced (on a temporary part-time basis) by Janet Booth, who was hired in December 2001.

Jordan's Working History Prior to Joining the Union

Carole Jordan held the graphics designer/illustrator position in the marketing and college relations office from August 2000 through the period relevant to this case. She testified that she initially enjoyed an excellent working relationship with her supervisor, as well as with the other employee in that office.

Jordan and Runyon had a conversation in March 2001, during which two subjects of interest here were discussed:

First, Runyon mentioned the possibility of a promotion for Jordan to a higher classification; and

Second, Jordan told Runyon that she had accumulated, but had not been paid for, overtime work totaling 141 hours.

A few days after that conversation, Runyon told Jordan that she had made a mistake and could not pay Jordan for the overtime hours.

After Gainer terminated his employment in April 2001, Jordan suggested that savings from that vacancy could be used to pay her for the overtime work. She was paid for at least some of her accumulated overtime.[2]

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[2] Evidence in this record shows that, in correspondence with Poffenroth as of May 2002, the union was still actively seeking payment for Jordan's overtime hours.

Jordan had a good working relationship with Wendy Hall at the beginning of Hall's employment. Thereafter, Jordan noted that work she had previously performed in dealing with the printers of employer publications was being assigned to Hall by Runyon, and that began to affect their working relationship. Jordan testified that Hall seldom spoke to her after Jordan returned from vacation in August 2001.

During the period of Hall's employment, Jordan also noted a deterioration of the working relationship between herself and Runyon. One cited example was that Runyon said Jordan did not need to feel obligated to attend Runyon's wedding after Jordan prepared the wedding invitations as a wedding gift to Runyon.

After learning that Hall's employment in the office was ending, Jordan went to see Runyon on November 15, 2001, to inquire about how the office would function after Hall's departure. At that time, Runyon asked about Jordan's problems with Hall. Jordan refused to discuss the subject, and stated she that she wished to go through proper channels or procedures. Jordan testified that Runyon seemed upset by that response, and asked what Jordan meant by her reference to proper channels or procedures. Jordan refused to elaborate at that time.[3]

Runyon approached Jordan on the following day, and asked Jordan if she thought they could work together. Runyon said that Jordan was a difficult person, and again inquired as to what Jordan meant by proper procedures. Jordan again refused to respond and testified that Runyon appeared to be frustrated with her.

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[3] Jordan did not furnish any testimony at the hearing in this matter as to what, in her mind, constituted proper channels or procedures.

On the same day, Jordan attempted to initiate telephonic contact with a union representative. Until that time, Jordan had not been a union member.

Jordan joined the union, and began regularly attending union meetings on November 28, 2001. Jordan sent an e-mail message to Runyon, seeking permission to go to that union meeting.

Jordan's Work History Subsequent To Joining Union

Between November 28, 2001, and March 2002, Jordan noted that more of what she considered to be her work was being assigned to Janet Booth, the employee who was hired in December 2001 to replace Hall on a temporary part-time basis. Jordan was required to train Booth with respect to those functions.[4]

Sometime early in 2002 Jordan learned she would not be given a job evaluation for her 20 month period of employment. After a meeting between Jordan and her union representative, a written grievance was filed on March 15, 2002, alleging contract violations with respect to the failure to provide Jordan with a job evaluation and with respect to the transfer of Jordan's job duties.

Jordan testified that the atmosphere was very tense, and even hostile, with respect to her working relationships with Runyon and Booth after the grievance was filed on her behalf, and that she

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[4] Jordan equivocated in her testimony regarding the alleged erosion of job duties, so that this aspect of her testimony is questionable at best. The class specifications for the two positions in question indicate that the work assignments Jordan referenced could properly be performed in some cases by both classifications and in other instances by the employee classified as an information specialist.

increasingly was made to feel isolated and "left out of the loop" in the office.[5]

Processing of the March 15 Grievance

Jordan's supervisor denied the written grievance in writing, on March 28, 2002. The union's representative, Marion Gonzales, contacted Poffenroth on April 3, 2002, contending that the grievance should not have been denied prior to a discussion between the parties.[6]

A first-step grievance meeting was held, with Poffenroth and Runyon present for the employer. Although that meeting resulted in another written denial of the grievance, issued on May 6, 2002, Poffenroth testified at the hearing in this matter that the grievance concerning the failure to provide an evaluation was meritorious, and he was "shocked" that Jordan had not been evaluated at all since her hire.

A second-step grievance meeting was held, with the president of the college present at the union's request.[7] The grievance remained unresolved, however.

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[5] Neither Runyon nor Booth testified in this proceeding.

[6] The Examiner notes that the union might have filed the grievance prematurely. The parties' collective bargaining agreement provided for a meeting to be held prior to the filing of a written grievance, rather than afterward as was the situation here.

[7] Poffenroth would have represented the employer at the second step. Because Poffenroth was present at the first step meeting, the union believed it would be unproductive to have a step two meeting with Poffenroth solely representing the employer.

On May 10, 2002, pursuant to the parties' collective bargaining agreement and rules adopted under Chapter 41.06 RCW, the grievance was referred to mediation. The grievance was resolved on September 11, 2002.

The Reduction of Jordan's Work Hours

The employer's president and human resources director both testified about a contemplated reduction in the employer's budget. Beginning in the autumn of 2001, the employer became aware that approximately $280,000 might be cut from its budget by the state legislature. By January 2002, the potential cut had ballooned to more than $400,000. Since over 85 percent of the employer's budget is spent on employee wages and benefits, reductions in force were deemed by the employer to be the primary method to reduce costs and fit within a reduced budget.

The employer's president directed the three vice presidents to begin looking for non-essential areas where cuts in employment could be made. For his part, the president undertook the same examination of the departments reporting directly to him. Each of the department heads reporting to the president, including Runyon, advised that no employees were surplus in whole or in part.

Being aware that the marketing and college relations department had operated for a period of several years with two employees, rather than the three positions recently filled, the president determined that the employer could function with graphics services on only a one-half time basis.

The reduction in force issue was discussed at an off-campus retreat held by the employer's president and other employer officials on or

about January 11, 2002. A list of employees potentially identified for layoff was developed, including Jordan and seven others. During the course of the retreat, telephonic contact was made with Poffenroth to seek his advice with respect to the procedure to be utilized in layoff selections. Among other things, he suggested the formation of a budget committee composed in part of bargaining unit members including Rich Dolan, the president of the local chapter of the union. The role, if any, of the committee after its formation, was not made a part of the record.

McLaughlin testified that the ultimate selections for layoff were determined solely by him, after receiving input from Runyon.[8] By letter dated April 5, 2002, he notified Dolan of the plan to reduce Jordan's position by 50 percent and eliminate a half-time position in another area, both effective April 20, 2002. There was no evidence furnished as to what other steps were taken by the employer, if any, to address the anticipated budgetary shortfall.

The Union's Reaction to the Layoff Notice -

On April 8, 2002, the union submitted a request to the employer for the organizational chart for the marketing and college relations office, as well as for the job descriptions and specifications for positions in that office. The employer responded on April 13, 2002, in the form of a letter outlining the positions and furnishing position descriptions.

The parties then had a series of letters, information requests, and meetings, and the complaint to initiate this unfair labor practice proceeding was filed, prior to recision of Jordan's layoff. That exchange included:

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[8] McLaughlin testified that he met with Runyon on a routine basis, at least once per week.

- The layoff of Jordan was discussed at a labor-management meeting held on April 16, 2002, with the employer's president in attendance;

- In a letter issued on May 7, 2002, McLaughlin notified Jordan of her partial layoff (to 50 percent of full-time) on a delayed effective date of June 28, 2002, and described her options and appeal rights under civil service rules;[9]

- Following a telephone conversation between Poffenroth and Gonzales on May 13, 2002, a letter listed a variety of information that had been requested (but not received) by the union for its use in a review of Jordan's layoff;

- On May 13, 2002, the union filed the complaint to initiate this proceeding;

- In a letter sent to McLaughlin on May 17, 2001, Jordan requested a meeting with union representation, to discuss her layoff options;

- On May 20, 2002, Gonzales sent a letter to Poffenroth with additional information requests made in connection with the union's effort to bargain the impacts of the layoff;

- In a letter to Poffenroth dated May 22, 2002, Gonzales requested Jordan be assigned to perform the work of the information specialist position, in lieu of layoff;

- A letter from Poffenroth to Gonzales dated June 14, 2002, restated the layoff options previously provided to Jordan; noted that Jordan had conceded she was not qualified to do the work of the information specialist position; offered Jordan a

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[9] The options furnished were for Jordan to work as an office assistant II at 87.5 percent full-time equivalent, or to work full-time as a custodian.

further option of working 50 percent in her current position and 50 percent as an office assistant III with no reduction in pay;[10] and gave Jordan until June 24, 2002, to exercise an option or be terminated on June 28, 2002; and

- On June 24, 2002, Poffenroth received a letter in which Jordan accepted, under protest, the alternative to layoff first proposed by Poffenroth's letter of June 14, 2002.

Ultimately, the employer rescinded the proposed reduction-in-force of Jordan.

POSITIONS OF THE PARTIES

The union contends that both Jordan's pursuit of compensation for her overtime work and her refusal to discuss workplace concerns with her supervisor were exercises of rights she had under the collective bargaining agreement, and were accordingly protected by statute. The union also points to the filing and pursuit of a grievance as a right protected under the collective bargaining agreement and statute. While acknowledging that much of the protected activity occurred prior to the six month period preceding the filing of the complaint in this case, the union urges that protected activity nevertheless provided motivation for the employer's actions against Jordan within the period for which this unfair labor practice complaint is timely. The union maintains that Jordan's immediate supervisor was aware of her union activity at least since November 2001, that the employer regarded the grievance filing in March 2002 as the most recent in a series of actions which the employer would not permit to go unpunished, that

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[10] This was the first time an option was offered to Jordan that did not involve a loss in income.

McLaughlin was aware of the grievance by at least March 28, 2002, and that an inference of his earlier knowledge of the grievance can be made from his frequent contacts with Runyon. The union points to the close timing between the onset of Jordan's protected activity and the origin of the plan to reduce Jordan's employment, and contends the reasons given for selecting Jordan for layoff were either pretextual or motivated by hostility against her protected activity. The union thus asserts that the selection of Jordan for layoff was unlawful discrimination.

The employer contends that the reduction of Jordan's work hours had been contemplated long before she embarked on any union activity or filed a grievance, and that the timing of her selection was coincidental rather than the result of her protected activity. It contends the selection of Jordan for layoff was a business-related decision to address a budget cutback, and was premised on the belief that reduction of her work hours would have the least adverse impact on the employer's operations. The employer maintains the union failed to establish that the selection of Jordan for layoff was either pretextual or motivated by union animus, so as to establish that it was in retaliation for her exercise of protected rights.

ANALYSIS

Applicable Legal Standards

This case arises under the State Civil Service Law, Chapter 41.06 RCW, but a provision of that statute cross-references the unfair labor practice provisions of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. See RCW 41.06.340, making specific reference to RCW 41.56.140 through .160. In turn, the

unfair labor practice provisions of Chapter 41.56 RCW cross-reference the "rights" section of that statute, which states:

> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

Although the Public Employment Relations Commission did not have a role in the administration of RCW 41.06.340 until an amendment enacted as part of the Personnel System Reform Act of 2002 (PSRA) took effect on June 13, 2002, the Commission already had more than 25 years of experience and precedents under Chapter 41.56 RCW.

The Standard for Interference Violations -

An interference violation can be found where employee(s) can reasonably perceive employer actions as a threat of reprisal or force, or promise of benefit, associated with the employee(s) exercise of protected activity, without regard as to whether the employer intended such an effect. *North Valley Hospital*, Decision 5809-A (PECB, 1997), *aff'd* WPERR CD-965 (1988). Unlawful motivation need not be demonstrated in order to establish a violation of the statute.

Standard for Discrimination Violations -

A discrimination violation involves actual action for or against an employee, under the test set forth in *Educational Service District 114*, Decision 5238-A (EDUC, 1996) (citing *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991); and *Allison v. Seattle Housing Authority*, 118 Wn 2d 79 (1991)):

- The complainant must establish a prima facie case of discrimination, by showing that:
  - One or more employees exercised a right protected by a collective bargaining statute, or communicated to the employer an intent to exercise such rights;
  - The employee(s) is(are) deprived of an ascertainable right, benefit or status; and
  - A causal connection exists between the exercise of the protected right and the employer response.
- Where a prima facie case of discrimination is established, the respondent is then entitled to articulate (but is not obligated to prove) legitimate, non-retaliatory reasons for its actions; and
- The burden remains on the complainant to prove, by a preponderance of the evidence, that the disputed action was in retaliation for the exercise of statutory rights. This may be established by showing that: (1) the stated reasons for the disputed actions were pretextual; and/or (2) union animus was nevertheless a substantial motivating factor behind the action.

Thus, the test for "discrimination" violations is much more complex than the test for "interference" violations.

Application of Standards

The Evidence Establishes an Interference Violation -
Accepting the employer's premise at face value for purposes of discussion here, the Examiner concludes that the evidence supports finding an "interference" violation. Even if the selection of Jordan for layoff was not discriminatorily motivated, and was an

objective response to a budget reduction which was formulated after months of study, the focus and timing of the notification are crucial in evaluating its unlawful impact:

- Jordan was the only full-time employee selected for layoff in response to a budget reduction of several hundred thousands of dollars; and
- The timing of this notice in relation to the filing of Jordan's grievance, on March 15, 2002, could reasonably be viewed by Jordan and other employees as being reprisal for Jordan having had a grievance filed on her behalf.

The physical and organizational proximity of Jordan's position within the "office of the president" at the college supports an inference of management intolerance to union activity.

The Evidence Establishes a Discrimination Violation -
It has long been established that the filing and processing of grievances is guaranteed by RCW 41.56 and employer interference therewith is a violation of RCW 41.56.140(1). *King County*, Decision 1698 (PECB, 1983). Even though Jordan first advanced her claim for overtime more than six months prior to the filing of the complaint in this case, it is the fact of protected activity - not the timing of the protected activity - which is important here. While no remedy is available in this proceeding for any violations of the statute that occurred prior to November 13, 2001, the protected activity that occurred may be considered in evaluating whether more recent actions were unlawfully motivated. *City of Centralia*, Decision 2904 (PECB, 1988).

Prima Facie Case of Discrimination -
The evidence conclusively establishes that the relationship between Jordan and Runyon steadily deteriorated beginning in March 2001 when Jordan informed Runyon of her claim that she was owed pay for

in excess of 140 hours at the overtime rate.[11] Although the undisputed evidence is that the overtime work was performed at Runyon's instigation, Runyon's reaction indicated very real concern that her budget could not absorb this cost. The picture painted by Jordan is that the two barely spoke to one another by March 2002, due to Runyon's hostility, and that Jordan felt isolated from the inner workings of the department. Efforts to resolve this pay issue at some point became a part of matters being pursued by the union on Jordan's behalf.

Jordan testified that, in November 2001, Runyon overtly questioned whether the two of them could work together, and characterized Jordan as a difficult person. By that time, Jordan had joined the union and had informed Runyon of her attendance at union meetings. Thereafter, Jordan continued to press her concerns with the union concerning her failure to be evaluated and her perceived erosion in work duties culminating in the grievance filing of March 15, 2002.

It is also clear that Jordan believed that parts of her job duties were being transferred to another bargaining unit employee. Because of the small employee complement working directly in the office of the president, and the considerable friction between two of the three employees in one department reporting directly to the president which clearly impacted upon both the finances and work environment, it is reasonable to infer that McLaughlin was fully aware of the ongoing situation with Jordan. Even if not based on direct observation, an inference is available that such knowledge was certainly obtained during the course of weekly contacts between the president and Runyon. The propriety of inferring employer knowledge in such circumstances has long been recognized under the

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[11] Due to the absence of testimony from Runyon, the only evidence with respect to that relationship is the uncontroverted testimony of Jordan.

"small plant doctrine" applied in *City of Bremerton*, Decision 3168 (PECB, 1989). Moreover, Runyon's letter dated March 28, 2002, both denied the grievance filed on Jordan's behalf and indicated that a copy was sent to the president.

The evidence clearly establishes activity protected by the statute, (i.e., the filing of the grievance on Jordan's behalf), followed by the notice of reduction of 50 percent of her job on April 5, 2002. The existence of a cause-and-effect relationship could scarcely be more evident, especially when Jordan was the only full-time employee selected for layoff. The union herein has met its burden of proof to establish a prima facie case.

Articulation of Reasons -

The employer has asserted that it had legitimate non-retaliatory reasons for its layoff of Jordan. In essence, the employer contends that it became aware, as early as November 2001, that its budget might be cut. By January 2002, the amount of the potential budget cut had escalated to more than $400,000. McLaughlin aptly noted that most of the reduction would have to be absorbed through a reduction in personnel, either through attrition or reduction-in-force. That much of the story is not seriously contested, but the analysis cannot end there.

Pretext or Substantial Motivating Factor -

Absolutely no evidence was introduced by the employer as to how much the budget shortfall ultimately proved to be in early April 2002, or what measures were utilized to address the matter other than the reduction of Jordan's position to half-time and the elimination of one half-time temporary position. Moreover, the employer offered Jordan other positions which were impliedly vacant or where incumbents would be laid off to make room for Jordan, so that the budget-driven explanation offered by the employer is far from a complete picture.

As late as January 2002, McLaughlin and the three vice presidents reporting to him had generated eight potential employees to be considered for layoff. In the final analysis, however, McLaughlin said the decision as to how to meet the budget crunch was his alone. Certainly, the $17,000 per year to be saved by the partial layoff of Jordan would have been a drop in the bucket against the $280,000 to $400,000 budget reductions anticipated by the employer. Viewed in this light, it is difficult to accept that the employer's stated reason for its partial layoff of Jordan meets a "straight face" test. A finding of pretext is warranted here.

Even if the evidence fell short of establishing, strictly speaking, that the employer's asserted reason for the layoff was pretextual, the union has more than met its burden to show that union animus was a substantial motivating factor behind the employer's actions. In the union's view, the filing of the grievance in March 2002 was the "final straw" precipitating the employer's response. Whether it be so regarded, or seen as the employer's recognition that there would be unrest so long as Jordan worked for Runyon, there can be no doubt the employer took an action that would have removed Jordan from the "office of the president" for the future, and that adverse reaction to Jordan's claim for overtime compensation and the grievance filed on her behalf were part and parcel of the basis for the adverse employer reaction to Jordan's activities protected by statute. Thus, the union has established a discriminatory motivation for Jordan's selection for layoff, and thus a "discrimination" violation under RCW 41.56.040 and RCW 41.56.140(1).

Remedy

Since the announced partial layoff of Jordan was rescinded, she did not suffer any actual loss of pay, benefits, or other terms and conditions of employment. Thus, no affirmative remedy is required in this case.

The customary "cease and desist" order is issued, along with a requirement for posting and reading of a notice to employees.

FINDINGS OF FACT

1. Community College District 13 (Lower Columbia) is an institution of higher education operated under Title 28B RCW, and is an employer of its classified employees within the meaning of Chapter 41.06 RCW. At all times material herein, James McLaughlin was president, Brian Poffenroth was director of human resource services, and Janelle Runyon was director of marketing and college relations, for the employer.

2. The Washington Public Employees Association, United Food and Commercial Workers Local 356, was the exclusive bargaining representative of classified employees of the employer at all times pertinent to this proceeding.

3. At all times pertinent to this proceeding, Carole Jordan was a classified employee of the employer within the meaning and coverage of the State Civil Service Law, Chapter 41.06 RCW. Jordan was employed as a graphic designer/illustrator working under the direct supervision of Runyon, within the "office of the president" portion of the employer's table of organization, and was included in the bargaining unit represented by the union.

4. During or about March 2001, Jordan advanced a claim for compensation for overtime work performed at the direction of Runyon. A negative reaction by Runyon to that claim was followed by a lengthy process to resolve the claim, in which Jordan solicited assistance from the union and the union provided assistance to Jordan.

5. After Jordan raised the overtime question with Runyon, as described in paragraph 4 of these findings of fact, Jordan had increasing concerns with respect to her relationship with Runyon. Those concerns prompted Jordan to join the union and attend union meetings. Jordan advised Runyon of her attendance at union meetings.

6. Between March 2001 and March 2002, the working relationship between Jordan and Runyon became progressively more hostile and disruptive. Jordan noted that Runyon had become aloof, and Runyon questioned whether the two could work together after describing Jordan as a difficult person, which left Jordan to feel isolated and not a part of the departmental team. Jordan's claim for pay for the overtime work remained unresolved throughout that period, and became a subject of discussions between the union and the employer.

7. In March 2002, Jordan learned that her work performance to date was not going to be evaluated by Runyon. Jordan notified the union of that situation, as well as her belief that part of her job duties were being assigned to another employee.

8. On March 15, 2002, the union filed a grievance on behalf of Jordan, claiming contract violations in relation to both the failure to provide an evaluation and the alleged transfer of job duties.

9. On or before April 3, 2002, the union's representative, Marian Gonzales, lodged a protest with Poffenroth concerning Runyon's denial of the grievance described in paragraph 8 of these findings of fact without a hearing.

10. Because of the small employee complement in the office of the president and evidence showing there was contact between

McLaughlin and Runyon at least weekly and evidence that a copy of Runyon's grievance denial letter was sent to McLaughlin, it is inferred that McLaughlin was aware of the clearly-inharmonious relationship that had developed between Runyon and Jordan since Jordan advanced her claim for compensation for the overtime work, and of Jordan's pursuit of collective bargaining rights.

11. On April 25, 2002, McLaughlin advised the union that one temporary part-time employee was to be laid off and that Jordan was to be reduced to one half time, all due to an anticipated budget reduction. Those actions were decided upon by McLaughlin.

12. Although McLaughlin became aware of a potential budget reduction as early as October 2001, and although the potential size of the budget reduction had grown to approximately $400,000 by January 2002, the final amount of any budget reduction is not established in this record. At a meeting of the president and three vice-presidents of the institution held in January 2002, Jordan was among eight employees who were considered for layoff. Jordan was the only full-time employee affected by the layoff announced as described in paragraph 11 of these findings of fact, and the savings attributable to that layoff amounted to less than $18,000 per year.

13. In the context of occurring less than three weeks after the union filed a grievance on behalf of Jordan, the selection of Jordan as the only full-time bargaining unit employee for layoff could reasonably have been perceived by Jordan and other bargaining unit employees as reprisal for her engaging in union activities protected by RCW 41.06.150.

14. McLaughlin's selection of Jordan for layoff was motivated, in substantial part, because of her ongoing disputes with Runyon concerning compensation for overtime work and the failure to evaluate Jordan's work, and because of the filing of a grievance on Jordan's behalf.

15. Notwithstanding the layoff of Jordan announced as described in paragraph 11 of these findings of fact, the employer offered Jordan other employment with the employer and eventually rescinded the announced layoff, so that Jordan suffered no loss in pay or benefits.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.06.340 and Chapter 391-45 WAC.

2. By asserting her claim for compensation for overtime work, by enlisting the help of the union to pursue her claim for the overtime work, by enlisting the help of the union to pursue the employer's failure to evaluate her work, and by the filing of a grievance, all as described in the foregoing findings of fact, Carole Jordan and the Washington Public Employees Association, UFCW Local 356, acting as her exclusive bargaining representative, were engaged in lawful union activities protected by RCW 41.06.150.

3. By its actions involving Carole Jordan, Community College District 13 (Lower Columbia) has interfered with, restrained, and coerced its classified employees in the exercise of their collective bargaining rights under RCW 41.06.150, and committed an unfair labor practice in violation of RCW 41.56.140(1).

4. By its selection of Carole Jordan for layoff, Community College District 13 (Lower Columbia) discriminated against Jordan in reprisal for her pursuit of lawful union activities, and committed an unfair labor practice in violation of RCW 41.56.140(1).

ORDER

Community College District 13 (Lower Columbia), its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Interfering with or discriminating against Carole Jordan for her exercise of collective bargaining rights under state law.

   b. In any like or related 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 41.06 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 be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such

notices are not removed, altered, defaced, or covered by other material.

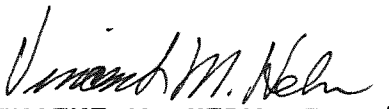
b. Read the notice attached hereto and marked "Appendix" aloud at the next public meeting of the board of trustees of Community College District 13 (Lower Columbia) and append a copy thereof to the official minutes of said meeting.

c. Notify the union, 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 above-named complainant with a signed copy of the notice required by the preceding paragraph.

d. 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 required by this order.

Issued at Olympia, Washington, on the 5th day of February, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



VINCENT M. HELM, 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.

APPENDIX

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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 NOT interfere with, restrain, or coerce our employees in connection with the exercise of their collective bargaining rights under the laws of the state of Washington.

WE WILL NOT discriminate in the selection of Carole Jordan or any employee for layoff because of the exercise of collective bargaining rights under the laws of the state of Washington.

WE WILL read this notice into the record of the next public meeting of the board of trustees, and will permanently append a copy hereof to the official minutes of such meeting.

DATED: _____

COMMUNITY COLLEGE DISTRICT 13 (LOWER COLUMBIA)

BY: _____
Authorized Representative

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

This notice of 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, 711 Capitol Way, Suite 603, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300.