Seattle School District, Decision 10328 (PECB, 2009)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE-KING COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,	)	
Complainant,	)	CASE 22140-U-08-5642
vs.	)	DECISION 10328 - PECB
SEATTLE SCHOOL DISTRICT,	)	FINDINGS OF FACT,
Respondent.	)	CONCLUSIONS OF LAW, AND ORDER

Robblee Brennan & Detwiler, by *Daniel R. Hutzenbiler*, Attorney at Law, for the union.

John M. Cerqui, Senior Assistant General Counsel, for the employer.

On December 4, 2008,[1] the Seattle-King County Building and Construction Trades Council[2] (union) filed an unfair labor practice complaint against the Seattle School District (employer). The complaint alleges the employer discriminated and interfered with employee rights in violation of RCW 41.56.140(1) when it (1) terminated Roger Mayfield's employment in retaliation for engaging in union activities and (2) failed to maintain the status quo under WAC 391-25-140(2) while a representation petition was pending before the Public Employment Relations Commission. The Commission appointed Jamie L. Siegel as the Examiner and I held a hearing on

---

[1] All dates refer to 2008 unless otherwise noted.

[2] The union comprises 12 affiliate labor organizations and represents the following job classifications: asbestos worker, bricklayer, carpenter, carpet layer, electrician, electronic tech, glazier, laborer, painter, plasterer, plumber/steamfitter, rigger, roofer, and sheet metal.

January 13, 2009. The parties filed post-hearing briefs on February 4, 2009.

ISSUES

1. Did the employer discriminate against Roger Mayfield or interfere with employee rights when it terminated his employment for possession of sexually explicit material at work and excessive use of work time and resources for non-business purposes?

2. Did the employer discriminate or interfere with employee rights by failing to maintain the status quo while a representation petition was pending when it terminated Mayfield's employment and when it transferred the work he had performed to the glazier job classification?

The employer did not discriminate or interfere with employee rights when it terminated Mayfield's employment or when it temporarily transferred the work he had performed to the glazier job classification. The union failed to establish a causal connection between Mayfield's union activities and his termination from employment.

ISSUE 1 - DISCRIMINATION - TERMINATION

APPLICABLE LEGAL STANDARDS

An employer unlawfully discriminates when it takes action against an employee in reprisal for the employee's exercise of rights protected by Chapter 41.56 RCW. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The union maintains the burden of proof in employer discrimination cases. To prove discrimination,

the union must first set forth a prima facie case by establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute, or communicated to the employer an intent to do so;

2. The employer deprived the employee of some ascertainable right, benefit, or status; and

3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

To prove an employer's motivation for an adverse employment action was discriminatory, the union must establish that the employer had knowledge of the employee's union activities. *Metropolitan Park District of Tacoma*, Decision 2272, *aff'd*, Decision 2272-A (PECB, 1986). Ordinarily, the union may use circumstantial evidence to establish its prima facie case because an employer does not typically announce a discriminatory motive for its actions. *Clark County*, Decision 9127-A (PECB, 2007).

Where the union establishes a prima facie case, it creates a rebuttable presumption of discrimination. In response to a union's prima facie case of discrimination, the employer need only articulate non-discriminatory reasons for its actions. The employer does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the union to prove by a preponderance of the evidence that the disputed action was in retaliation for the employee's exercise of statutory rights. *Clark County*, Decision 9127-A. The union meets this burden by proving either that the

employer's reasons were pretextual, or that union animus was a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

ANALYSIS

Roger Mayfield worked in the employer's shade shop for over 20 years. He made and repaired window shades and projection screens and re-upholstered cots for school health rooms. He served as the shade shop's only employee. No labor organization represents the shade shop position.

On October 7, Mark Pflueger, Maintenance Manager, and Marc Walsh, Maintenance Services Supervisor, conducted visual inspections of several employee work vehicles and shops to assess cleanliness.[3] Looking through the windows, they inspected Mayfield's work vehicle and found it to be in disarray. They retrieved the keys to the locked vehicle and looked inside. They found garbage, old work orders, shop materials, and tools on the floor of the vehicle. Upon inspecting Mayfield's shop, they found it in a similar state of disarray and also found what appeared to be a sleeping area with a cot behind screens that hid it from view of the shop entrance. Pflueger, concerned about the completion of Mayfield's work orders, instructed Walsh to inventory the shop prior to Mayfield's return from leave.[4]

On October 27, Pflueger learned that Walsh had not inventoried Mayfield's shop and insisted that Walsh do so that day. Walsh,

---

[3] Mayfield reports to Walsh; Walsh reports to Pflueger.

[4] Mayfield was on leave for a non-work related matter on October 7 and October 10 through October 31, returning to work on November 3.

along with the supervisor for the electronics shop,[5] went to the shade shop to fulfill Pflueger's direction. While in the shop, Walsh found sexually explicit magazines and two wooden dowels carved in the shape of penises; he contacted Pflueger. Pflueger contacted Jeannette Bliss, Human Resources Manager, and Pflueger and Bliss worked with security personnel to conduct an investigation. When security personnel saw that some of the magazines appeared to depict underage females, they contacted the Seattle Police Department, concerned that the magazines could constitute child pornography. A police officer inspected the magazines and determined that the material was not child pornography. Pursuant to Pflueger's request, the officer inspected Mayfield's work vehicle; the officer found a sexually explicit magazine in the vehicle.[6]

After finding the sexually explicit materials, the employer investigated Mayfield's internet usage. During a two-week period from September 25 through October 9, Mayfield spent 15.5 hours on the internet for non-business purposes. He accessed sites relating to mind control, knives, and guns.

The employer directed Mayfield to a meeting when he returned to work on November 3. At the meeting, Mayfield denied knowing anything about the sexually explicit materials. He stated that someone must have planted the magazines. In addition to the sexually explicit magazines, the employer found two other magazines

---

[5] The electronics shop supervisor came to assess the feasibility of installing a surveillance camera for the "sleeping area."

[6] The parties do not dispute that the magazines found in the shop and vehicle were sexually explicit.

in the shop with Mayfield's home address, a *Maxim* and a *Seventeen*.[7] Mayfield admitted that he brought those two magazines to work. Mayfield also admitted that he used the internet on work time; he said that he did not have enough work.

By letter to Mayfield dated November 6, Bliss confirmed the date and time for his pre-disciplinary meeting. The letter advised Mayfield that the employer was considering terminating his employment due to the sexually explicit materials and his use of work time and resources for non-business purposes.

Doug Strand, representative for Laborers Union, Local 242 (laborers union), one of the union's affiliate labor organizations, came to the November 10 pre-disciplinary meeting and participated as Mayfield's advocate. Mayfield again denied knowledge of the sexually explicit materials. He expressed his belief that Walsh, his supervisor, planted the magazines in the shop.

At the November 10 meeting, Strand provided the employer with a copy of its Petition for Investigation of Question Concerning Representation. The petition seeks a self-determination election under WAC 391-25-440 to ascertain Mayfield's desire to be included in the union's existing bargaining unit. The union filed the petition with the Commission on November 7.

By letter dated November 25, the employer terminated Mayfield's employment for possession of sexually explicit material at work and excessive use of work time and resources for non-business purposes.

---

[7] The *Maxim* was addressed to Mayfield; the *Seventeen* was addressed to Mayfield's daughter. These magazines did not contain sexually explicit materials and the employer did not produce evidence that possession of them violated employer policies.

Union's Prima Facie Case

Employee's Protected Union Activity

On October 30, Mayfield met with Strand and signed a laborers union authorization card. On November 7, Strand filed the petition with the Commission; Strand provided the employer a copy of the petition on November 10. In seeking to join the union, Mayfield engaged in protected union activity, satisfying the first element of a prima facie case.

Adverse Employment Action

Mayfield's employment was terminated, satisfying the second element of a prima facie case.

Causal Connection

Determining whether the union established a causal connection between Mayfield's protected activity and his termination from employment requires a more detailed analysis. As part of this analysis, I review the evidence the union relies on to demonstrate union animus, assess witness credibility, and discuss the employer's knowledge of Mayfield's union activities.

Mayfield's version of events and credibility During the course of the hearing, testimony and exhibits revealed significant inconsistencies in Mayfield's version of events. The following provide examples:

- In the November 3 meeting, Mayfield said that he had no knowledge of the sexually explicit magazines in his shop and vehicle. He said someone must have planted them.[8]

---

[8] The parties introduced evidence of the employer's investigation through testimony and exhibits, including the November 6 and 25 letters to Mayfield as well as Bliss' notes from the November 3 and 10 meetings with Mayfield.

- In the November 10 meeting, Mayfield again disavowed knowledge of the sexually explicit magazines and said that Walsh must have planted them.

- The morning of the hearing Mayfield testified that in April he found the magazines in a white bag left on his chair. A yellow sticky note on the bag bore the message "thought you might want to look at these." When counsel asked Mayfield why he had not told Bliss about the bag, he responded that he had, that he thought he told her about it during the first meeting.

- The afternoon of the hearing Mayfield testified again and revealed that he thought he knew who left the bag of sexually explicit magazines and testified that he told Walsh who it was and thought he shared that information with Bliss in the November 10 meeting. Mayfield testified:

> I definitely mentioned the white bag to Marc Walsh. He and I talked, and he was -- he was doing this thing where he was switching sides, acting like he was my friend and then playing as if he was management. So I told him, I said, you know it's not mine. I said, you know exactly where it came from. I told him who I thought it was and everything.

- In response to a question why he would take his daughter's *Seventeen* magazine to work with him, Mayfield testified, "There's good reading in the magazine."

- When the employer confronted Mayfield with his internet use at the meetings on November 3 and 10, he responded that he did not have enough work to do and that was why he was spending time on the internet. Yet, in the context of describing his interest in joining the union, Mayfield testified at hearing about being overwhelmed with work and how his workload was too much for one person.

What I find the most concerning is the inconsistency between Mayfield initially telling the employer that he knew nothing about the sexually explicit magazines and his testimony at hearing that he found the magazines in a white bag on his chair many months before the employer found the magazines in his work shop and vehicle.[9] After fully considering the totality of the evidence, including witness testimony and demeanor, I find that Mayfield's testimony lacked credibility.

Employer knowledge of union activity, Walsh's alleged animus

Mayfield testified that he first started talking with other employees about possibly joining the union in the spring of 2008. He said that he was overwhelmed with work and did not think one person could do all of the shade shop work. A bargaining unit employee agreed with him and told him that joining the union would help.

Mayfield testified that on October 9, he told Walsh he was thinking of joining the union; he said that he shared this at his evaluation meeting.[10] Mayfield testified that Walsh said he did not need to join the union, that he was covered and had nothing to worry about. Mayfield said that when he specified to Walsh that it was the laborers union he was thinking about joining, Walsh "kind of snarled about that and said that I didn't want to join the

---

[9] Bliss and Pflueger unequivocally and credibly testified that the first time they heard anything about Mayfield finding the magazines in a white bag was when he testified the morning of the hearing. During the November 3 and 10 meetings, Mayfield reported that he knew nothing about the magazines. This is documented in Bliss' notes and in the letters to Mayfield from Bliss dated November 6 and 25.

[10] The evidence reflects that the evaluation/expectations meeting took place on September 26.

laborers, I didn't want to have to deal with that fucking Doug Strand." Mayfield testified to a subsequent telephone conversation with Walsh where Walsh allegedly said that Mayfield did not want to be a part of the laborers union, that all they wanted to do was to take over the shop.

Walsh denied these conversations. He testified that he learned of Mayfield's interest in joining the union from Pflueger the second or third week of November. He denied advising Mayfield against joining a union or talking about Strand. In fact, Walsh testified he helped Mayfield gain representation for his November 10 pre-disciplinary meeting with the employer. Walsh explained that he offered to sit in with Mayfield and, after talking with Robert Chiovarie, another employee, he contacted Mayfield and told him that Lee Newgent, the union's assistant to the executive secretary, may be able to sit in with him. Chiovarie, who serves as the maintenance foreman for the asbestos shop and union representative for one of the union's affiliate labor organizations, corroborated Walsh's testimony about a conversation they had concerning representation for Mayfield's meeting. In response to counsel's question whether Walsh at any time seemed hostile to the idea of suggesting Mayfield contact the union, Chiovarie responded "No, he [Walsh] felt that he [Mayfield] needed representation."

I credit Walsh's testimony. I do not find that Mayfield told Walsh of his interest in joining the union or that Walsh made the alleged statements about the laborers union or Strand.

Even if I found that Walsh knew of Mayfield's interest in joining the union and that he made the alleged statements about the laborers union and Strand, the result would not change. As the Commission stated in *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004): "Activities, statements, and

knowledge of a supervisor are properly attributable to employers when the respondent does not establish a basis for negating the imputation of knowledge."

In this case, the employer established a basis for negating any imputation of knowledge. Bliss, Pflueger, and Lynn Good, Senior Facilities Manager and Pflueger's supervisor, made the decision to terminate Mayfield's employment. When Bliss issued the pre-disciplinary meeting notice on November 6 advising Mayfield that the employer was considering terminating his employment, neither she, Pflueger, nor Good knew that Mayfield had engaged in protected activity. Bliss and Pflueger learned of Mayfield's protected activity at the November 10 pre-disciplinary meeting; Good learned of it from Bliss or Pflueger after the meeting. Bliss, Pflueger, and Good testified clearly and convincingly on this point. Even if Walsh harbored union animus, the evidence does not support that any such animus impacted the decision-makers.

At the point the employer ultimately decided to terminate Mayfield's employment and issued the November 25 termination notice, the decision-makers knew that Mayfield had engaged in protected union activity.

Additional allegation of Walsh's animus Although the union acknowledges Walsh did not play a role in the employer's decision-making process, the union asserts that Walsh was biased against the laborers union and the bias infected the employer's investigatory process. The record contains insufficient evidence to support the union's argument.

As discussed above, I do not find that Walsh made negative statements about the laborers union or Strand. The union also seeks to establish union animus through a comment Walsh allegedly

made to an employee. Strand is the only person who testified about the alleged statement and he did not hear it directly. Instead, Strand testified that he heard about the statement from Newgent who heard about it from an employee. Walsh allegedly said words to the effect that the employees better enjoy what they have now because during the next negotiations there aren't going to be any unions down there.[11]

Alone, this hearsay carries little, if any, evidentiary weight. Strand also testified that he heard Walsh talk about the statement at a labor-management meeting when Newgent raised the statement as an issue. Strand testified that Walsh first denied making the statement in the manner alleged, he then acknowledged making the statement but asserted freedom of speech, and then, ultimately, he apologized. According to Strand, when Walsh asserted freedom of speech, management representatives rolled their eyes.

Although Strand's testimony concerning what he personally heard enhances the reliability of the evidence concerning the alleged statement, it still falls short of establishing animus. In response to questioning, Walsh testified that he had not made any statements that he considered anti-union in the past year. Neither party directly asked Walsh about the alleged statement or about the discussion of the statement at the labor-management meeting. Neither the employee who heard the alleged statement nor Newgent testified at hearing. As a result, with the limited evidence presented on this point, the union did not establish that Walsh was biased or made a statement demonstrating union animus.

---

[11] This alleged statement is the basis of another unfair labor practice complaint filed by the union in a separate case.

Good's alleged animus and credibility The union specifically attributes union animus to statements made by Lynn Good. The union's brief asserts: "Good did not believe laborers were sufficiently skilled to perform the work."

Good's statements relate to the assignment of the shade shop work after Mayfield's termination from employment. In a meeting between Good and Strand after Mayfield's termination, Good shared his perspective that the shade shop work was "skilled work" that bore the closest relationship to glazier or carpenter work. Good testified similarly at hearing. He testified that glaziers do window work and are involved in the need for shades. The glaziers previously rebuilt shades and helped to install them. Good testified that there is a certain amount of skill required in fabricating shades and he did not believe the laborers were the right group to do the work.

Although I agree with the union's characterization that Good did not believe that the laborer job classification was sufficiently skilled to perform the shade shop work, I do not find Good's belief or statements evidence union animus or bias against the laborers union. Good engaged in discussion concerning which job classification to assign the historically unrepresented shade shop work. He drew distinctions between the types of work several of the different job classifications perform. In such discussions, it makes sense for an employer and/or union to talk about the skills required to perform the work and the skills held by employees in different job classifications.[12] Good demonstrated no union animus or bias toward the laborers or toward the union.

---

[12] Pursuant to RCW 41.56.060, when the Commission determines the appropriateness of a bargaining unit, it considers the duties, skills and working conditions of the employees, in addition to other factors.

No causal connection The union failed to establish that Mayfield's union activities played any role in the employer's decision to terminate his employment. Having found no merit to the union's allegations that Walsh or Good demonstrated union animus, the union is left with the timing of the termination.

Although the timing of adverse actions in relation to protected union activity can create an inference of a causal connection, in this case, the timing creates no such inference. The employer began the investigation into Mayfield's conduct prior to learning of his union activity. The bulk of the employer's investigation took place on October 27; Mayfield signed the authorization card on October 30. The evidence establishes that it was not until the pre-disciplinary meeting that the employer learned of the union's petition. By that time, the employer had already informed Mayfield in writing that it was considering terminating his employment. Having given Mayfield an opportunity to formally respond to the allegations, the employer followed through with the termination action it was already considering.

"Proximity between a union activity and a discipline issued by an employer does not alone establish a prima facie case of discrimination, however." *Port of Seattle*, Decision 10097-A (PECB, 2009). In this case, the union established nothing more than proximity.

Although I find that the union failed to establish a prima facie case of discrimination, I complete the full analysis below.

Employer's Non-Discriminatory Reason for Action

In discrimination cases, the employer need not prove just cause for its action. Instead, the employer need only produce legitimate, non-discriminatory reasons for its action. In this case, the employer terminated Mayfield's employment because he possessed

sexually explicit materials in his work area and vehicle and because he spent excessive amounts of work time using the internet for non-business purposes. The employer articulated legitimate, non-discriminatory reasons for its termination decision.

Union's Ultimate Burden of Proof

The union bears the ultimate burden of establishing that the employer's reason for termination was pretext or that union animus was a substantial motivating factor in the employer's decision. The union argues both, that the employer's stated reason was pretext and that Mayfield's union activity was a substantial factor in the employer's termination decision. The union fails to establish either.

No Pretext

The union argues that because other employees have been less severely disciplined for similar conduct, the employer's reason for terminating Mayfield's employment must be pretext, particularly given Mayfield's long employment history with a spotless disciplinary record.

The parties produced evidence of the employer's disciplinary actions for employees possessing sexually explicit material and for employees using the internet for non-business purposes, including accessing pornography. The union focused on the discipline of several employees, including October 2006 letters of direction issued to four employees and a 2004 employee demotion and last chance agreement. The evidence also demonstrated the employer discharged employees for internet pornography in January 2006, September 2006, and July of 2007.

The employer credibly addressed the issue of inconsistent disciplinary actions. Lynn Good testified that when he began working

for the employer in 2006, he found inconsistencies in how the employer addressed discipline issues involving sexually explicit materials. As a result, he helped to develop Bulletin 2006-01, a policy prohibiting the intentional possession, storage, access, or display of sexually explicit material on the employer's property. The bulletin, which was sent to all employees with e-mail access in November of 2006, includes the statement: "The possession of material that is sexually explicit or depicts sexually explicit conduct is serious misconduct and is cause to terminate an employee's employment." Since implementation of this policy in November of 2006, one employee besides Mayfield faced discipline for sexually explicit material; that employee was discharged in 2007.

The union accurately points out that the employer's policy does not mandate termination; the employer maintains discretion under the policy to take less severe disciplinary action. In this case, the employer decided that Mayfield's conduct warranted termination from employment. The union failed to establish that the employer's stated reasons constitute pretext.

Animus Not Substantial Motivating Factor

As stated earlier, the union failed to establish union animus on the part of either Walsh or Good. The union did not specifically allege bias or union animus on the part of Bliss or Pflueger and nothing in the record even hints at bias or union animus. Union animus played no role in the employer's decision to terminate Mayfield's employment.

CONCLUSION

I conclude that the employer terminated Mayfield's employment because he possessed sexually explicit material at his work site in

violation of the employer's policies and because he used work time and resources for non-business purposes. The union failed to prove that Mayfield's protected union activities were a substantial motivating factor or that the employer's reasons for termination were pretextual.

Because I dismiss the discrimination allegations of the complaint, I also dismiss the interference allegations. The Commission does not find an independent interference violation based upon the same facts where a discrimination allegation is dismissed. *Reardan-Edwall School District*, Decision 6205-A (PECB, 1998).

ISSUE 2 - DISCRIMINATION - STATUS QUO

As stated in the preliminary ruling which frames the issues in this case, the union alleges that the employer discriminated or interfered with employee rights by failing to maintain the status quo when it terminated Mayfield's employment and when it transferred the work he had performed to the glaziers. The union does not allege the employer refused to bargain changes to the status quo or that it skimmed bargaining unit work. Instead, this issue focuses on whether alleged changes to the status quo constitute discrimination or interference.

APPLICABLE LEGAL STANDARDS

Once a union files a representation petition, the employer must maintain the status quo and cannot take unilateral action regarding wages, hours, or working conditions. *Snohomish County Fire District 3*, Decision 4336-A (PECB, 1994). WAC 391-25-140(2) specifies: "Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the

bargaining unit are prohibited during the period that a petition is pending before the commission under this chapter." This rule applies from the date the petition is filed up to the point that the petition fails or the bargaining unit is certified. *Val Vue Sewer District*, Decision 8963 (PECB, 2005). An individual's employment status is not part of the status quo that employers must maintain. *City of Seattle*, Decision 9938-A (PECB, 2009).

ANALYSIS

To prevail on this issue, the union must first establish that the employer failed to maintain the status quo as required by WAC 391-25-140(2). If the union establishes the employer failed to maintain the status quo, the union bears the burden of proving that the employer's failure to maintain the status quo was discriminatory.

Status Quo - Mayfield's Employment

Effective November 10, when the union served its petition on the employer, the employer was obligated to make no unilateral change concerning wages, hours, or other terms and conditions of Mayfield's employment. Consistent with *City of Seattle*, Decision 9938-A, this status quo obligation did not include maintaining Mayfield's employment while the representation petition was pending. As a result, the union's argument fails.

Status Quo - Assignment of Shade Shop Work

The evidence demonstrates that the shade shop has been unrepresented for over 20 years. Although testimony revealed that glaziers have previously rebuilt shades and helped to install them, the evidence does not clearly establish the time frame, frequency, or duration of glaziers performing this work.

After terminating Mayfield's employment, the employer did not take unilateral action to permanently assign the shade shop work to glaziers. The undisputed testimony revealed that during a meeting on December 1 attended by Bliss, Good, and Newgent, Good brought up the idea of assigning the shade shop work to the glaziers.[13] Although Newgent did not specifically agree to the assignment, he did not object. Based upon that discussion, Good assigned the previously unrepresented shade shop work to the glaziers. As soon as Good learned that the union had concerns with the assignment, the employer ceased assigning the work to the glaziers. The evidence established that the glaziers performed the shade shop work from December 8 through December 10.

Under the specific facts of this case, I do not find that the employer violated its obligation under WAC 391-25-140.

Discrimination

Even if the union established that the employer unilaterally changed the status quo by assigning the previously unrepresented work to the glaziers, the union has not established that the employer's actions were discriminatory. The crux of the union's complaint appears to be that the employer assigned the work to "a union other than the one that filed the petition."

The union lists "Sea Bldg Trades/Laborers Local 242" on the petition. The Commission's Notice to employees that the employer was required to post consistent with WAC 391-25-140 identifies "Seattle/King County Building and Constructions Trades Council" as the union seeking to represent Mayfield. The employer temporarily assigned previously unrepresented work to bargaining unit employ-

---

[13] The bargaining unit includes the glazier job classification.

ees. As discussed earlier in this decision, the employer demonstrated a reasoned approach to its assignment of the work to the glaziers. The union failed to establish any type of bias or animus behind the employer's decision to assign the shade shop work to a group other than the laborers. Furthermore, once the union raised objection to the assignment, the employer ceased the assignment.

FINDINGS OF FACT

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

2. The Seattle-King County Building and Construction Trades Council is a bargaining representative within the meaning of RCW 41.56.030(3) comprising 12 affiliate labor organizations, including the Laborers Union, Local 242. The bargaining unit includes the following job classifications: asbestos worker, bricklayer, carpenter, carpet layer, electrician, electronic tech, glazier, laborer, painter, plasterer, plumber/steamfitter, rigger, roofer, and sheet metal.

3. Roger Mayfield was a public employee within the meaning of RCW 41.56.030(2) whose position was not represented by a union.

4. Mayfield worked as the only employee in the employer's shade shop for over 20 years. Until his employment was terminated, the employer had never disciplined him.

5. Mayfield signed a laborers union authorization card on October 30, 2008. The union filed a Petition for Investigation of Question Concerning Representation with the Commission on November 7. The petition seeks a self-determination election

under WAC 391-25-440 to ascertain Mayfield's desire to be included in the union's existing bargaining unit.

6. In seeking to join the union, Mayfield engaged in protected union activity.

7. Mark Pflueger serves as the employer's Maintenance Manager, and Marc Walsh serves as the employer's Maintenance Services Supervisor. Walsh supervises Mayfield and Pflueger supervises Walsh.

8. On October 7, after discovering Mayfield's work shop and work vehicle were in disarray, Pflueger instructed Walsh to inventory the work shop. When that had not been done by October 27, Pflueger insisted that Walsh complete the work on that day.

9. On October 27 when Walsh went to inventory Mayfield's work shop, Walsh discovered sexually explicit magazines and two wooden dowels carved in the shape of penises. He informed his supervisor, Pflueger.

10. Pflueger contacted Jeannette Bliss, the employer's Human Resources Manager, and Pflueger and Bliss worked with security personnel to conduct an investigation.

11. The employer's investigation also revealed that during a two-week period from September 25 through October 9, Mayfield spent 15.5 hours on the internet for non-business purposes.

12. The employer met with Mayfield on November 3. At the meeting, Mayfield denied knowing anything about the sexually explicit

materials and stated that someone must have planted the magazines. He admitted that he used the internet on work time, stating that he did not have enough work.

13. By letter to Mayfield dated November 6, Bliss confirmed the date and time for his pre-disciplinary meeting and advised Mayfield that the employer was considering terminating his employment due to the sexually explicit materials and his use of work time and resources for non-business purposes. At this time, Bliss had no knowledge of Mayfield's interest in joining the union.

14. Doug Strand, representative for Laborers Union, Local 242, one of the union's affiliate labor organizations, came to the November 10 pre-disciplinary meeting and participated as Mayfield's advocate.

15. At the November 10 pre-disciplinary meeting, Mayfield again denied knowledge of the sexually explicit materials. He expressed his belief that Walsh planted the magazines in the shop.

16. At the November 10 pre-disciplinary meeting, Strand provided the employer with a copy of its Petition for Investigation of Question Concerning Representation. The petition seeks a self-determination election to ascertain Mayfield's desire to be included in the union's existing bargaining unit.

17. By letter dated November 25, the employer terminated Mayfield's employment for possession of sexually explicit material at work and excessive use of work time and resources for non-business purposes.

18. During the course of the hearing, testimony and exhibits revealed significant inconsistencies in Mayfield's version of events. Mayfield's testimony lacked credibility.

19. Mayfield did not inform Walsh of his interest in joining the union.

20. Walsh did not make the statements about the laborers union or Strand that Mayfield attributed to him.

21. The union did not establish that Walsh was biased or made a statement demonstrating union animus toward the laborers or toward the union.

22. The union did not establish that Good was biased or made statements demonstrating union animus or bias toward the laborers or toward the union.

23. Bliss, Pflueger, and Lynn Good, Senior Facilities Manager, made the decision to terminate Mayfield's employment. Until receiving the petition on November 10, Bliss and Pflueger had no knowledge of Mayfield's interest in joining the union; Good learned of Mayfield's interest at some point after the November 10 meeting.

24. When the employer made the ultimate decision to terminate Mayfield's employment and issued the November 25 termination notice, Bliss, Pflueger, and Good knew that Mayfield had engaged in protected union activity.

25. Mayfield's union activity played no role in the employer's decision to terminate his employment. No causal connection

exists between Mayfield's union activities described in Finding of Fact 5 and the employer's termination of his employment described in Finding of Fact 17.

26. Lee Newgent serves as the union's assistant to the executive secretary.

27. On December 1, 2008, during a meeting between Newgent, Bliss, and Good, Good brought up the idea of assigning the shade shop work to the glaziers. Newgent did not object.

28. Based upon the conversation on December 1, 2008, Good assigned the shade shop work to the glaziers who are part of the bargaining unit. He ceased the assignment when the union objected.

29. The employer did not take unilateral action to permanently assign the shade shop work to glaziers and its action did not amount to a change in the status quo.

30. The union failed to establish any type of bias or animus behind the employer's decision to assign the shade shop work to a group other than the laborers.

31. The employer articulated legitimate, nondiscriminatory reasons for its termination decision and the union failed to establish that they were pretext for discrimination.

32. The union failed to establish that Mayfield's protected union activities were a substantial motivating factor for his termination.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By terminating Roger Mayfield's employment as described in Finding of Fact 17, the Seattle School District did not discriminate against Mayfield or interfere with employee rights in violation RCW 41.56.040 or RCW 41.56.140(1).

3. By terminating Roger Mayfield's employment and temporarily transferring the work Mayfield had previously performed to the glaziers as described in Findings of Fact 17 and 28, the Seattle School District did not fail to maintain the status quo as required by WAC 391-25-140(2) and did not discriminate against Mayfield or interfere with employee rights in violation of RCW 41.56.040 or RCW 41.56.140(1).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 9th day of March, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jamie L. Siegel

JAMIE L. SIEGEL, 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.