

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION,)	
LOCAL 587,)	
)	
Complainant,)	CASE 13899-U-98-3418
)	
vs.)	DECISION 7104 - PECB
)	
KING COUNTY,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	AND ORDER
)	
)	

Frank and Rosen, by Martin Garfinkel, Attorney at Law, represented the complainant.

Norm Maleng, King County Prosecuting Attorney, by Susan N. Slonecker, Senior Deputy Prosecuting Attorney, represented the respondent.

On May 6, 1998, Amalgamated Transit Union, Local 587 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC. A preliminary ruling was issued on June 3, 1998, finding a cause of action to exist on allegations concerning:

The employer's retaliation against and harassment of bargaining unit employee Annie Summers, because of her having engaged in the protected activity of filing a grievance.

The employer answered. A hearing was held October 7 and 28, 1998, before Examiner Martha M. Nicoloff. The parties filed briefs.

The Examiner rules: (1) The employer interfered with Summers' rights, in violation of RCW 41.56.140(1), in regard to a request

for funeral leave and in regard to overtime opportunities; and (2) the union did not carry its burden of proof concerning the allegation of employer discrimination against Summers in disciplining her for deficient work performance.

BACKGROUND

The employer operates public transportation (bus) services and related facilities. Annie Summers has worked as a custodian in that operation since April 1990.¹

At the core of this controversy is interaction between Summers and her supervisor, Ken Taft. Taft was Summers' supervisor from 1995 or 1996 through the time of the incidents at issue in this case. Summers described her working relationship with Taft as "difficult at best" up to November of 1997, although no worse than his relationships with other employees. She testified:

Mr. Taft treated myself and the employees like we were beneath him. He had a way that was not PR. He did not have a public relations - how to approach his employees, talk to us correctly, give us orders correctly. He took everything personally. If you went to him with any problem or went over his head to his boss, you hear [sic] about it.

In 1997 and 1998, Summers was assigned to clean shop, office and lunchroom spaces at the Central Base, as well as the bus fueling stations at the Central Base and at the Atlantic Base.

¹ Summers was initially employed by the Municipality of Metropolitan Seattle (METRO), which subsequently became part of King County operations. See King County, Decision 6696 (PECB, 1999).

The Incident Leading to the Grievance

At about 1:00 p.m on November 13, 1997, Taft learned that a window washer had cut an artery in an accident at the Atlantic Base, resulting in a blood spill. Taft called Summers to his office, told her to clean up the blood spill,² and provided a biohazard cleanup kit.³ Summers proceeded to the area of the blood spill,

² Taft had been told a number of people were "waiting around to get back to work".

³ Both parties presented evidence regarding the nature and adequacy of METRO's safety policy and training practices on blood-borne pathogens, as well as the extent to which Summers had been trained in such matters. The Examiner does not deem that evidence material to this case, which concerns subsequent interference and discrimination.

The accounts of the exchange also differ in some particulars that need not be resolved in this decision:

According to Summers: She told Taft she had not been properly trained, and that she had an open cut on her hand; Taft said she was the only person available; the biohazard kit consisted of only gloves, tongs, rags, and a disposable bag; she told Taft she fears blood; Taft asked if she was refusing to clean up the spill; she said she was not refusing; she left his office with the kit; she returned to talk to Taft after another employee told her she did not have proper protective equipment; and Taft again asked if she was refusing to do the work.

According to Taft: Summers said she would rather not do the work; he told her he had no one else to do the job, and really needed her help. Taft denied that Summers said she had not been adequately trained. He listed the contents of the kit as a biohazard disposal bag, powder bleach, an emergency cleaning material called Vital-I, needle tubes, antiseptic towelettes, a disposable breathing device, surgical rubber gloves and heavier gloves, an antiseptic hand cleaner, tongs, protective goggles, hydrogen peroxide, a waste bag, and a dust mask. He did not recall asking if Summers was refusing to do the work. He did not testify about Summers having returned to his office after departing for the job site. Taft testified that Summers first told him of her fear of blood and the cut on her hand during their later telephone call.

and began the clean-up work. She went to a restroom and vomited several times while performing that assignment, and then called Taft to tell him she could not complete the job because she was ill. Taft told Summers to "pull off the job", and went to do the task himself. On his way to the site, Taft encountered a custodian who was coming on duty for a later shift, and had that employee accompany him. When Taft arrived at the site, Summers had finished cleaning up the blood, but had not yet mopped and disinfected the area. Taft then told Summers that the other custodian would finish the work.

The Grievance

On November 24, 1997, Summers filed a grievance concerning the blood spill cleanup assignment. Summers' remedy request was to be "made whole in every way - as my health may have been endangered, possible blood diseases, mental stress, additional worries!" She reported that she was depressed and suffered from mood swings in the days following the incident, and that her physician recommended that she be off work for a period of time.

The first step hearing on Summers' grievance was held by Taft's supervisor, Paul Sorensen. He denied the grievance. It was also denied at the second step of the contractual procedure, and apparently was not pursued beyond the second step.

The Alleged Course of Retaliation

The Funeral Leave Incident -

As the participants were gathering for the first-step meeting on Summers' "blood spill" grievance, Summers received a telephone call informing her that one of her relatives had died. The collective bargaining agreement in effect between the parties at that time

provided for funeral leave under specified circumstances. Sorensen initially assured the union representatives that there would be no problem in granting funeral leave to Summers. The grievance meeting was recessed, and Summers left almost immediately.

Summers took time off during December of 1997,⁴ and submitted a request for the funeral leave after her return to work on January 4, 1998. Employer officials then took the position that Summers was not eligible for funeral leave.

After Summers' eligibility was questioned, a shop steward asked Sorensen to allow the funeral pay because Summers was experiencing problems and was off work after the blood spill incident, and because the contract language made allowances for close family members. Sorensen ultimately agreed to allow the funeral leave.

The "Snow Days" Incident -

Summers was working the day shift on January 12, 1998, when the employer declared a snow emergency. Employees began arriving for the swing shift two hours earlier than usual, and Summers learned they had been given overtime. Summers had not been offered any overtime, and she filed a grievance on February 3, 1998. After reviewing the matter, Sorensen determined that Summers should be awarded two days of overtime pay.

The "Revenue Processing Center" Discipline -

Summers was responsible for cleaning an area known as the "Revenue Processing Center". In January 1998, employees who worked in that

⁴ In addition to taking time off for the funeral, Summers filed a claim for workers' compensation in regard to the blood spill incident. She returned to work after her time loss claim was denied. Her appeal from denial of her workers' compensation claim remained pending at the time of hearing in this matter.

area sent two e-mail messages to Taft, complaining about the quality of the cleaning in their work area. After reviewing the matter with revenue processing personnel, Taft convened a meeting in his office on January 29, 1998. Taft and Sorensen attended for the employer. Summers was accompanied by a union steward.

Taft issued a memorandum to Summers' file, dated "February 29, 1998" [sic]. Although there is a dispute about the intent of that memo, the parties agreed at the hearing in this matter that it was entered into Summers' file as a "minor infraction" under the parties' collective bargaining agreement. Summers maintained that she should have been provided assistance, rather than being disciplined. Both Sorensen and Taft believed a minor infraction was appropriate, given the nature of the complaint.

Other Incidents of Alleged Animus -

In addition to the specific incidents described above, the union alleged that Taft's general behavior toward Summers exhibited increased animus after she filed her grievance regarding the blood spill.

Complaints about work performance - Apart from the issue involving the Revenue Processing Center, the only problem with Summers' work performance documented in this record was a September 29, 1997 "action memo" Taft sent to Summers,⁵ including:

I also recieved [sic] complaints from Central Maint. Chief that the fuel bldg and restroom are not being cleaned. They mentioned trash on the floors, garbage cans not emptied, oil and grease spots not washed down and the drains not being cleared of debris. You have recieved [sic] a copy of the work assignment and instruction from the former custodian in

⁵ That was prior to Summers' having filed the grievance.

your new area. Let me know if you need any additional training.

Summers also recalled an occasion when Taft told her he had received a complaint regarding her cleaning of the restrooms at the Central Base fuel and wash area, but she placed it after her grievance on the blood spill.⁶ Summers testified that Taft became less cordial than usual after she filed the grievance, she noted at least three occasions in the December 1997 - February 1998 period when Taft told her to "get your butt over there" when she needed to clean a particular area, and she claimed that Taft told her he was receiving complaints about her work with regard to the Atlantic Base fuel and wash area. Taft recalled discussing the restrooms, but denied ever having said that Summers could not do anything right, and also denied ever having said "get your butt over there" to Summers.

Crew meetings - Summers described an incident which occurred during a crew meeting in December of 1997 or January of 1998, with Taft, Summers, and other employees under Taft's supervision present. Employees began passing their time sheets to Taft, but he indicated they should retain the copies. Summers testified:

A: [By Ms. Summers] I said, Excuse me, sir, past policy. And Mr. Taft slammed his fist down on the table and said, Annie, I'm damned tired of you being a trouble-maker.

Q: [By Mr. Garfinkel] All you had said was, Excuse me, sir, past policy?

A: Yes. ...

Q: So after he slams his fist on the table and says, I'm tired of you being a troublemaker, what happens next?

⁶ Summers placed the time as "when I first came back after L & I", which would have been January 1998.

A: I stood up and I said, I'm tired of being treated that way and I want a shop steward. And he said, a shop steward is not needed here at this meeting. I sat down. That was the end of it.

Taft remembered a meeting involving a discussion of time sheets, but he placed it in December of 1996, he denied ever having slammed his fist on the table, and he denied having called Summers a troublemaker. He believed he raised his voice to Summers only to the extent necessary "to get her attention, let her know that she needed to calm down". There was no testimony from other witnesses as to either the date or content of such a meeting.

Brenda Mies, another custodian who worked under Taft's supervision, testified that Taft became angry and abusive during a crew meeting in January of 1997,⁷ after which she complained to Sorensen about Taft's behavior. Sorensen investigated the incident, and found the opinions among the people who attended the meeting were divided, with some thinking Taft's behavior was inappropriate and others believing the problem lay more with Mies. Sorensen decided that Taft should go to a series of leadership classes which might assist him in improving certain skills, and followed up with a memorandum to Mies dated March 19, 1997. He wrote:

... I have completed an initial investigation and feel that there is a shared responsibility on this issue. The information gathered from your fellow employees, points to the fact that both of you, at times, has [sic] exhibited behavior that has been inconsistent with Metro's acceptable limits.

[Taft] and I are working together to effect a change in his manner of communication. I have

⁷ A memorandum from Mies to Sorensen appears to date the meeting as December 2, 1996.

enrolled [Taft] in several classes that will be of special help in this communication area. They include instruction in: Effective communications, giving feedback, resolving conflicts, recognizing positive results, coaching and solving problems, to name just a few of the areas covered by this battery of classes.

...
The feedback I am getting from employees, both represented and non-represented, is that his manner, in the last month, has been much more calm and cooperative.

Mies believed that relationships with Taft were "better for a while", but then deteriorated again. She testified:

Q: [By Mr. Garfinkel] And when was it that it got worse again?

A: [By Ms. Mies] Well, you don't necessarily have to file a grievance for your relationship with [Taft] to go to hell. All you have to do is ask a question he doesn't want to answer or he doesn't think you should ask.

Mies referred in her testimony, however, to grievances filed in June and September of 1998.

Work shift times - Summers testified to a conversation with Taft in February of 1998, concerning her desire to have an early morning shift to accommodate child care needs.⁸ Summers asserted that Taft told her that her shift would begin at 10:00 a.m and conclude at 6:30 p.m., if he had his way. Taft did not recall such a discussion with Summers, but did remember a conversation with the entire crew in March 1998. Although the shift was changed to start at a later time, Taft asserted that he had been contemplating such a change prior to Summers' holding the position. He cited numerous

⁸ Summers had been working a 5:30 a.m. to 2:00 p.m. shift.

reasons for starting the shift later, most of which centered on his ability to keep in contact with employees.

Lunch period times - In September 1998, Summers was working a shift which ended around 9:00 p.m. She asked Taft if she could take her lunch period at the end of her shift. According to her testimony, Taft commented that she must think she was better than anyone else. Taft also was allegedly unhappy with Summers for having gone to his supervisor to request a deviation from the standard shift. Summers testified that Taft told her, on more than one occasion, that he was unhappy with her having "gone over his head".⁹ Summers testified that she was considering quitting her job, because of the stress of working for Taft.

POSITIONS OF THE PARTIES

The union argues that Taft's handling of Summers' funeral leave, his accusation that she lied about that matter, his failure to assign Summers overtime in the "snow emergency" situation, his unsubstantiated claim of having attempted to telephone Summers to offer her overtime, and his ongoing sarcasm and hostile comments directed toward Summers, as well as the timing of those events, point to a finding that those actions were retaliation for Summers' grievance concerning the blood spill cleanup. While acknowledging that most of Taft's actions never rose to the level of depriving Summers of any right or benefit, the union contends the standard for interference violations only requires that Summers reasonably perceive Taft's conduct to be in reprisal for her grievance. The

⁹ Sorensen testified that Summers frequently attempted to communicate directly with him, and would call him for time off and shift changes. He noted that "It got to the point where I actually had to remind her to go through her base chief first."

union asserts that it has met the test for an "interference" violation, and also asserts that there was a clear causal connection between the filing of the grievance and Taft's issuance of the disciplinary notice concerning the Revenue Processing Center, so that it has met the burden for proving discrimination with regard to that discipline. Finally, it asserts the employer's stated reasons for that discipline were pretextual.

The employer acknowledges that filing a grievance is a protected activity, but asserts that none of the actions alleged to have been taken by the employer after Summers filed her grievance were shown to be retaliatory. The employer also argues that no causal connection has been established between the filing of the grievance and the disputed actions, and that Summers was not deprived of any right, status, or benefit by any of the employer's actions. Therefore, the employer argues that the union did not meet its burden of proof for either interference or discrimination. The employer argues, further, that even if the union were found to have met its burden of proof, the employer had legitimate, non-pretextual reasons for all of the actions which it took after Summers filed her grievance, so that the complaint should be dismissed on those grounds.

DISCUSSION

The Applicable Legal Standard

King County and its employees are subject to Chapter 41.56 RCW, which includes the following provisions:

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.

...

RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:

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

(2) To control, dominate or interfere with a bargaining representative;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining.

An interference violation will be found under RCW 41.56.140(1), where an employee reasonably perceives actions to be a threat of reprisal or force or promise of benefit associated with the exercise of protected activity, regardless of whether the employer intended such a threat or promise. City of Tacoma, Decision 6793 (PECB, 1999), and cases cited therein; City of Mill Creek, Decision 5699 (PECB, 1996), and cases cited therein. As noted in Tacoma, the legal determination of interference is based not upon the reaction of the particular employee involved, but rather on whether a typical employee in a similar circumstance reasonably could perceive the actions as attempts to discourage protected activity.

Evaluation of discrimination allegations under RCW 41.56.140(1) is made under the standard first enunciated by the Commission in Educational Service District 114, Decision 4631-A (PECB, 1994), and reiterated in subsequent decisions such as: City of Federal Way, Decision 4088-B (PECB, 1994); City of Mill Creek, supra; North

Valley Hospital, Decision 5809-A (PECB, 1997); City of Port Townsend, Decision 6433-A (PECB, 1999). That standard is based on decisions of the Supreme Court 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). Under that standard, a complainant must show: (1) the exercise of a statutorily protected right, or communicating an intent to do so; (2) that he or she was discriminated against; and (3) that there was a causal connection between the exercise of the legal right and the discriminatory action. Once a complainant establishes a *prima facie* case, the respondent has the opportunity to articulate legitimate, non-retaliatory reasons for its actions. The complainant may then respond to a defense by showing either: the reason given is pretextual, or although some or all of the stated reason is legitimate, the employee's pursuit of a protected right was nevertheless a substantial factor motivating the disputed action.

Credibility Determinations

Issues of credibility are often difficult in cases of this nature, and are unusually challenging in this case. For reasons indicated here, the Examiner does not deem it appropriate to rely solely upon the testimony of either of the principal actors, or of Mies. Where there were no other witnesses to an incident, but where specific facts are deemed critical to a conclusion or particular inferences appear warranted, those are noted in the analysis of the incident. Where other individuals witnessed or were involved in incidents, their testimony has generally been credited.

It is clear from the record that Taft and Summers have a very difficult working relationship. The nature of their relationship makes it reasonable to conclude that, if a situation allowed for any doubt, each would draw negative conclusions about the other,

regardless of whether such conclusions were warranted by an objective review of the facts. The Examiner noted several examples of such reactions in the testimony, as well as a tendency on the part of both Taft and Summers to depict their own actions as more praiseworthy or innocent than warranted.

It is also apparent from the record that Taft has a similarly difficult working relationship with bargaining unit member Mies, and that Taft and Mies would draw similar negative conclusions about each other.

Augmenting the testimony and documentary evidence is the Examiner's own observation of the witnesses during two days of hearing. At one point, the Examiner found it necessary to caution attendees, on the record, regarding overt reactions to testimony.¹⁰

The Particular Incidents

Funeral Leave -

The union has met its burden of proof to support finding an "interference" violation as to this matter.

The collective bargaining agreement in effect between the parties in 1997 provided, at Article X, Section 2 A, as follows:

If an Employee's **spouse/domestic partner or a child, parent, brother, sister, grandparent, or grandchild** of an Employee or his/her spouse/domestic partner dies, such Employee may take two (2) days off with pay to attend

¹⁰ Tr. 270, referring to reactions by Mies and Summers to testimony from Taft. Counsel will recall that the Examiner had twice requested, in previous off-the-record discussions, that they admonish their witnesses to maintain decorum in the hearing room.

the funeral or memorial service, and one (1) additional day off with pay when total travel from the Employee's home to the funeral or memorial service and back exceeds two hundred (200) miles. Additionally, an Employee may use vacation, AC time and/or up to three (3) days of accrued sick leave for funeral leave purposes, with the approval of the Employee's supervisor. **METRO may, at its discretion, grant funeral leave for persons other than those listed above where a close family relationship exists.**

[Emphasis by **bold** supplied.]

Summers was called to the telephone while she, Taft, Sorensen, and union representatives Kimball Daniels and Kenny McCormick were gathered on December 9, 1997, for the first-step meeting on Summers' grievance concerning the blood spill. Both Taft and Sorensen testified that an office clerk who first received the call informed them that Summers' **brother** had died.

When Summers returned from taking the call, she reported that her **uncle** had died, but neither Taft nor Sorensen heard her. The union representatives talked with Sorensen about whether the employer would grant funeral leave, and Sorensen gave assurances that there would be no problem in granting the leave.

Summers submitted a leave request after she returned to work on January 4, 1998.¹¹ Sorensen then became aware that the person who had died was Summers' uncle, and he instructed Taft to tell Summers: (1) the employer could not allow funeral leave for an uncle under the terms of the collective bargaining agreement, but (2) that they would try to find other ways to make sure that "the time off she had was covered".

¹¹ Supporting Summers' credibility here, the "uncle" relationship was clearly disclosed in the leave request.

Summers and Taft have differing recollections of their subsequent discussion concerning the funeral leave:

According to Summers: Taft told her that her request for funeral pay was being denied, because she had lied about who had died; she told Taft she had never said that anyone other than her uncle had died; Taft raised his voice and was nasty and sarcastic; and she had to raise her voice as well, in order to be heard.

According to Taft: He called Summers into his office after hearing from Sorensen, and told her there was "a little problem" with her leave request; he attempted to show Summers the applicable contract language, and tried to explain that the employer was "going to find another way to cover her time"; and Summers got very upset and "said that I was harassing her ... management, in general, was picking on her again". Taft recalled telling Summers that nobody was trying to deny her the time. He did not recall ever accusing Summers of lying about who had died.

It is clear that Summers informed shop steward Daniels that her funeral pay had been denied. Daniels testified that he went to Taft's office, where Taft told him that Summers would not get funeral pay. Daniels did not recall Taft giving any indication that the employer would try to find a way to cover Summers' leave time. Daniels testified:

A: [By Mr. Daniels] [N]othing specifically was resolved in the meeting in that [Taft] said that [Summers] had told him that it was her brother. And, in fact, she had said it was her uncle. And since it was not her brother, he was not going to grant bereavement pay. I'd say at some point the conversation got a little bit heated. Then [Taft] commented at one point that he felt that he was being harassed by [Summers] and myself and -

Q: [By Mr. Garfinkel] Did he say why?

A: Specifically, I don't recall his reasoning for being harassed. However, I do believe I mentioned at that time that this was beginning to look like retaliation or harassment for [the] grievance filing.

Taft agreed that he told Daniels he felt harassed, because it was the first time he had met Daniels, and "I never even got an opportunity to explain what was going on".

Daniels spoke to Sorensen after meeting with Taft, and asked Sorensen to allow the funeral pay. Sorensen then agreed to grant funeral leave to Summers.

The Examiner's analysis of the funeral leave allegation commences with the clear evidence that Sorensen instructed Taft to tell Summers that the employer would find some way to cover her time off in connection with her uncle's death.¹² The issue is what Taft did with that instruction.

The Examiner deems the testimony of Mies too biased to be considered conclusive,¹³ but comparison of Taft's testimony with Daniels' testimony provides clues which warrant rejection of Taft's explanation of what happened. Taft denied telling Summers that she would not be granted funeral leave, but he acknowledged that she probably had that impression, "because she never gave me the opportunity to explain it". Taft made a similar claim regarding

¹² The record clearly indicates Sorensen and Taft initially relied upon erroneous information about Summers' relationship to the deceased, and that this controversy resulted from their error. Nothing suggests that Summers or the union was responsible for that misinformation.

¹³ Mies testified that Taft told her that Summers had lied about the matter and would not get funeral leave, while Taft denied ever having spoken to Mies about the situation.

his discussion with Daniels. It strains credulity to accept that Taft was completely unable to explain, on two different occasions and with two different individuals, that Summers' time off would be covered. Even if Summers was too upset to hear an explanation, Taft could surely have corrected the situation in his conversation with Daniels by merely saying, "Wait, there's a mistake here", or "You have the wrong impression". Daniels credibly testified that Taft gave no indication that he would try to find another way to pay Summers for her time off. Daniels had no prior negative history with Taft, and his testimony did not dramatize the situation in the union's favor. It is reasonable to infer from the record as a whole that, at the very least, Taft did not disabuse Summers or Daniels of the impression that the employer would not pay for the funeral time. The ease by which the matter could have been corrected supports a conclusion that a reasonable employee could perceive Taft's action as threatening.

Finally, the timing of Taft's action supports finding a violation. The onset of the funeral leave controversy was closely tied to the grievance concerning the blood spill, and to Summers' return to work after her unsuccessful attempt to obtain workers' compensation benefits on account of the blood spill incident. A reasonable employee could perceive Taft's action as interference.

Overtime for "Snow Days" -

The union has met its burden of proof to support an "interference" violation. The failure of Taft to offer overtime work to Summers on the same basis as other employees was reasonably perceived as related to Summers' grievance.

While working her regular shift on January 12, 1998, Summers heard an announcement declaring a snow emergency. When swing shift employees began arriving two hours earlier than usual, Summers

learned that they had been given overtime because of the snow emergency.

As with other issues in this proceeding, there is substantial conflict in the testimony as to the subsequent events:

According to Summers: She asked Taft why she had not been given overtime, noting that she was already on-site and was senior to at least one employee who was given overtime; and Taft stated it was his prerogative to determine who received overtime.

According to Taft: He did not even see Summers on January 12; none of the day shift employees worked any overtime on January 12, because "the snow didn't hit until late afternoon, early evening, after which Ms. Summers had already gone home"; he began calling employees at their homes on the previous day, to determine if they would be interested in working overtime if a predicted snowstorm actually materialized; and he placed two calls to Summers on January 11, but no one answered the phone and there was no answering machine. Taft did not believe any other employee at the site received more than four hours of overtime for the entire snow emergency.

Summers responded: She had U.S. West voice mail service on her home telephone, which had been in place and working well for about five years.

Sorensen met with union representatives regarding the grievance Summers filed concerning the overtime issue. Notwithstanding agreement of both parties that it was not timely filed, Sorensen agreed to process Summers' grievance.¹⁴ He testified:

I had an ongoing conversation with [union representative] Kenny McCormick about [Sum-

¹⁴ Sorensen also convened the meeting in order to meet the employer's deadline, because Taft was unavailable.

mers] and the problems that [Summers] was having with - you know, since the blood-borne issue and then her uncle dying. And he thought it would be in the spirit of true working together to go ahead and hear this grievance. And I agreed with him.

Summers testified that at some point Taft told her he was going to grant her overtime pay for one day, that she responded that the offer of one day was not acceptable, and that Taft then said, "Annie, you will never learn." After reviewing the matter, Sorensen determined that Summers should be awarded two days of overtime pay.

The Examiner's analysis of the overtime allegation is based on evidence other than the testimony of Taft and Summers.

A comparison of Taft's usual demeanor with his demeanor concerning this incident might shed light on the situation under more normal circumstances, but use of that method is rejected here because of the evidence indicating Taft had a history of problems communicating with Summers and other employees.¹⁵ It would be inappropriate for the Examiner either to excuse unlawful behavior on the basis that Taft's problematic baseline relationships make interference difficult to discern, or to impute unlawful motives merely because of the lack of cordiality between Taft and his subordinates.

At the same time, a finding that Summers is a typical "reasonable employee" is also problematic, because of the generally contentious nature of her working relationship with Taft. Analysis of her

¹⁵ Supporting this view of the situation, Sorensen clearly found it appropriate to send Taft to a series of leadership classes, and Sorensen testified (with corroboration by Mies and Summers) that Taft had some problems dealing with his subordinates.

perceptions is further complicated by evidence that Summers held a strong belief that Taft was hostile to her, even before any issue arose concerning the snow emergency.¹⁶ Summers' general desire to report to someone other than a crew chief, as indicated by Sorensen's testimony that he had received such requests from her at other times and that "Annie would rather deal with the supervisor than the chief", tends to weigh against her perceptions about Taft's hostility.¹⁷

In weighing the evidence on this issue, the Examiner concludes that the timing of Taft's failure to offer overtime opportunities to Summers, coming soon after the grievance and the funeral leave incident, lends credence to a conclusion that Summers could reasonably have perceived Taft's actions as relating to her pursuit of protected rights. It is uncontroverted that Taft never offered Summers overtime work for the second day of the snow emergency, January 13, 1998, and nothing in this record indicates there was any business or circumstantial reason for withholding that offer.

Additional support for finding a violation is found in Summers' unimpeached testimony that she had voice mail service operated by the telephone company on her home telephone. That directly contradicts Taft's testimony about his calls and the absence of a message facility on Summers' home telephone. The Examiner thus infers that Taft likely made no call to offer Summers any opportu-

¹⁶ Summers' own testimony was that she became aware of the overtime opportunity when swing shift employees began coming in at 1:00 p.m. At 12:03 p.m. on January 12, 1998, she had submitted a request to Sorensen and his superiors to "be removed immediately" from Taft's supervision because of his "ongoing deliberate acts of intimidation toward me".

¹⁷ It is noteworthy, however, that Sorensen did not say that Summers thought other chiefs had been hostile toward her.

nity for overtime work.¹⁸ Such inaction by Taft could reasonably be perceived as interference.

The Disciplinary Notice -

The union has not met its burden of proof to establish a prima facie case of discrimination with regard to the disciplinary notice issued to Summers on or after January 29, 1998.

Summers was responsible for cleaning an area known as the "Revenue Processing Center". On January 27, 1998, employees in that area sent an e-mail message to Taft, complaining about the quality of the cleaning in their work area. That message included:

Just a short note about our janitorial service. For the past couple of months our janitorial service has been declining in its regularity and quality of cleaning. We used to see our janitor four days a week or so, but as of late we hardly ever see her. She came in on 1/20/98 for 19 minutes, 1/23 for 34 minutes, and 1/27 for 30 minutes. On the last two times she has been here she has only emptied garbage cans and swept the floors. She has not cleaned our bathroom in over a week. Is there something going on with her schedule that doesn't allow her enough time to clean our office?

For reasons not explained in this record, a second e-mail was sent to Taft within a day or two thereafter. That e-mail noted:

¹⁸ The existence of an external voice-mail service (as opposed to a personally-owned answering machine) on Summers' home telephone was a verifiable fact. Because it directly contradicted Taft's testimony, the failure of the employer to impeach Summers' testimony about the voice-mail service supports a finding that Summers was telling the truth as to this matter.

Lately we have been concerned with the support supplied by our janitor. It's true, [Summers' predecessor] would be a hard act to follow. [Summers] started out pretty well. She came most days, spending an hour and a half or so, and doing a pretty good job. Now we see her only a couple of days a week, and when we do, she spends no more than 30 minutes in our office cleaning. She took some time off last month and we had several temporary janitors fill in for her. They all came every day and spent two hours or so working. The office looked a lot better, almost ... like [when Summers' predecessor had the assignment]. Question. How many days a week should we expect to see our janitor and also how much time should they be spending here? Thanks for your help.

Taft visited the area to review the matter with the revenue processing personnel, and found some problems.

Taft convened a meeting with Summers on January 29, 1998, in his office. Daniels attended as a union representative, at Summers' request. Taft asked Sorensen to attend the meeting as well, even though Taft would normally have handled the matter by himself. Sorensen testified as follows:

A: [By Mr. Sorensen]: ... He was nervous about that session and asked me to come down and sit in with him just as an observer.

Q: [By Ms. Slonecker]: Do you know why he was nervous?

A: I believe that it was because of an ongoing series of events that had taken place with Ms. Summers and he didn't want that to escalate any more than it had at that point.

Q: What sorts of things do you recall, issues which would have made him uncomfortable?

A: Well, he would tell me about different - you know, different times when he and [Summers] had not seen eye-to-eye on issues, and that [Summers] had gotten fairly perturbed, and that he was worried that it was going to escalate into something that he couldn't control or couldn't get out of.

All participants in the meeting agree that Summers said problems with the drains at the Atlantic fuel and wash facility were keeping her from spending time at the Revenue Processing Center.¹⁹

There are, again, substantial differences in the accounts of Summers and Taft on this issue:

According to Summers: Her voice "was only heard [in the meeting] because I spoke out of sequence", and:

Well, I had asked for support, you know. I'm under a lot of duress. I haven't been back from L&I all that long. I shouldn't have been back. I was trying to get the fuel and wash building caught up like I told Mr. Taft. So naturally, something would have to slip because I was doing the basics. And half the time I wasn't at work because I was on L&I.

She testified she called the drain situation to Taft's attention right after she began that assignment and several times thereafter, and that Taft had said he would take care of the drains.

According to Taft: He opened the meeting by attempting to assure Summers that he simply wanted to know what was happening regarding the Revenue Processing Center; he was trying to quash rumors that he "was out to fire Annie"; he gave Summers a copy of

¹⁹ That the drains were a problem during at least the December 1997 - January 1998 time period was corroborated by the testimony of painter Malcolm Marx.

the e-mail messages concerning the Revenue Processing Center; he allowed Summers to respond to the e-mail messages; and Summers said she hadn't realized there was a problem because no one from the Revenue Processing Center had talked to her about it. With respect to the drains, Taft testified that he was unaware of problems except in September of 1997.

According to Daniels: Taft initiated the meeting in order to inform Summers of disciplinary action that had been decided upon before the meeting began. He did not recall Taft asking Summers any questions, or soliciting any information from Summers during the course of the meeting.

According to Sorensen: Taft went into the meeting with a goal of finding out exactly what the problems were with Summers' work area, and Taft gave Summers an opportunity to explain her situation. Sorensen did not recall that Taft raised his voice, nor did he believe that Taft was hostile to Summers during the meeting.

Following the January 29 meeting, Taft issued a memorandum to Summers' file, dated "February 29, 1998" [sic] and titled "Minor Infraction: Failure to follow directives or written procedures, poor work performance". One of the headings described the results of the meeting as "Counseling session entered into employee file". Elsewhere in the memorandum, the terms "minor infraction" and "counseling session" were both used. The memo noted, in part:

Ms. Summers indicated that she had been spending more time in the fuel and wash buildings and was not aware that the people in revenue processing were dissatisfied with her performance. I explained to Ms. Summers that if she was having a problem with her work assignment, she should have notified me at the beginning and we could have found a solution to the problem. I also reiterated that the work assignment sheet indicated that each task was

to be performed daily and that she needed to follow this directive in the future. I also stated to Ms. Summers and Mr. Daniels that Paul and I are here to support Annie and all the crew members in the performance of their jobs, and if Annie needs assistance or is having a problem with her work assignment, she can contact Paul or I [sic] and we will do our best to help.

Summers maintained that she should have been provided assistance, rather than being charged with a minor infraction.

The Examiner's analysis of the "discipline" allegation begins with unquestioned facts: (1) Summers' filing of the "blood spill" grievance was an exercise of protected rights; and (2) the employer was aware of her exercise of protected rights.²⁰ The question before the Examiner is whether there was a causal connection between the exercise of protected rights and the discipline, and whether Taft handled the performance issues differently than he would have done in the absence of protected activity.

The collective bargaining agreement in effect during the relevant period forms part of the context in which this allegation must be decided. It included, at Article IV:

SECTION 4 - DISCIPLINARY ACTIONS FOR MINOR
INFRACTIONS

A. The following are examples of specific categories of minor infractions: passenger relations, off-route operation, off-schedule operation, failure to stop for passengers or

²⁰ Although not explicitly relied upon by the union, the Examiner notes that Summers' grievance on the denial of overtime for the snow emergency and the union's multiple interventions on Summers' behalf were also examples of protected activity, and that the employer officials were certainly aware of those facts.

failure to unload passengers, traffic code violations, failure to report any traffic violation conviction other than parking, out of uniform violations, smoking in a METRO facility or vehicle, willful failure to follow other procedures or directives, not properly accounting for passenger fares, safety related infractions, fuel nozzle breakage, and failure to report defective equipment.

B. Disciplinary actions issued within a twelve (12) month period within a category of minor infraction shall be administered in the following manner:

1. First minor infraction - Oral Reminder.
2. Second minor infraction - Written Reminder.
3. Third minor infraction - appropriate discipline for the severity of the infraction, which could include disciplinary probation, decision making leave, suspension, or discharge.

SECTION 5 - REMOVING INFRACTIONS

A minor infraction which is one (1) year old shall be crossed off the Employee's record. Future disciplinary action will be based on the number of infractions that remain. For example, if an Employee commits a minor infraction on January 3rd of a year, that infraction shall be crossed off on January 3rd of the next year. When an Employee takes a leave of absence that is at least thirty (30) calendar days, the total time on leave will be added to the one (1) year period that must elapse before a minor infraction is crossed off that Employee's record. A permanent record of all minor infractions will be maintained.

The union argues that plugged drains prevented Summers from meeting her cleaning obligations, and that only counseling was appropriate under the circumstances.²¹ While both Sorensen and Taft initially testified that Taft's "February 29" memorandum simply memorialized

²¹ The Examiner finds no contract language providing for the "counseling" suggested by the union.

a counseling session, they both later acknowledged that it had been entered into Summers' record as a minor infraction.²²

Another piece of the context in which this allegation must be decided is that the record establishes, and the union does not dispute, that there were problems with the cleanliness of the Revenue Processing Center in January 1998. The fact that Summers had exercised protected rights does not excuse her from performing her assigned work, or insulate her from the consequences of failing to perform the work expected of her.

A further piece of the context for the January 29, 1998 meeting and the disciplinary memo is that the drains at the Atlantic Base were an ongoing problem. Taft had specifically addressed those drains in his memo dated September 29, 1997, and Sorensen was also aware of the problem. A printout from the employer's computerized maintenance management information system (CMMIS) showed that work was performed on plugged floor drains at the Atlantic fuel and wash facility on at least September 26, 1997, December 18, 1997, February 17, 18, and 19, 1998, and March 17, 1998.

The primary criticism of Summers in the disciplinary memo was that she had not communicated with Taft about problems at the Atlantic Base causing her to neglect her responsibilities in the Revenue Processing Center. The need for Summers to communicate with Taft about problems she encountered had been addressed in Taft's September 29, 1997 memo, where he wrote:

²² Interpretation and application of the parties' contract would be for an arbitrator to decide under a contractual "just cause" standard. Even then, the existence of a contract violation would not necessarily establish a causal connection for purposes of deciding a "discrimination" claim under Wilmot and Allison.

I recieved [sic] a copy of your work request for **plugged drains in the Atlantic fuel & wash bldgs.** [Summers' predecessor] should have instructed [Summers] that the drains are your responsibility to keep free running. Also, in the future please **make all of your work requests through your chief.** I have to review them before they are approved any way [sic].

[Emphasis by **bold** supplied.]²³

The Examiner need not (and does not) decide whether Summers was somehow culpable for the condition of the drains, as that does not appear to have been a subject of discussion at the January 29 meeting or a subject addressed in the disciplinary memo.²⁴

Taft's testimony that he was unaware of drain problems other than in September of 1997 strains credulity, but that is not enough to support an inference of animus on the part of the employer.

²³ Another portion of this memo was quoted for another purpose, at pages 6-7, above.

²⁴ At the hearing in this matter, Taft testified as follows:

Q: [By Ms. Slonecker]: Before Annie Summers was the custodian in the fuel and wash building, did you have any of your custodians have trouble with the drains there?

A: [By Mr. Taft]: We again went into the CMMIS, which is a computerized maintenance management information system. I checked the previous six months, and we had one call for a plugged drain in one of the lanes. During Ms. Summers' tenure we had I believe it was six calls for plugged drains. Since Annie left the area, we haven't had any, according to what was printed out by the computer.

Such an inference would be for an arbitrator to make, if Summers had been disciplined for having plugged the drains.

Taft's lack of recall of the December 18 work request, which was made while Summers was off work, is not enough, standing alone. The union did not specifically impeach or discredit Taft's testimony in this regard.

While Summers testified that she asked Taft on numerous occasions for assistance with the drains, she did not provide details as to the dates and circumstances in that regard. Moreover, the lack of entries in the computer system during periods when Summers was at work tends to confirm that Summers did not make any work requests about the Atlantic Base drains between September 1997 and January 29, 1998.²⁵

The "February 29, 1998" date of the disciplinary notice is problematic for multiple reasons:

- First, there was no such date, because 1998 was not a leap year;
- Second, the copy admitted in evidence bears what appears to be a legend line added by a telefacsimile machine, indicating transmission on February 4, 1998; and
- Third, while Summers testified to having signed some document in connection with the January 29 meeting and the administration of discipline, no document signed by Summers was placed in evidence.

The Examiner thus infers that the origin of the "February 29, 1998" document was more likely on or closer to the date of the January 29

²⁵ The testimony of another employee, a painter, indicates that Summers rejected his advice to submit a work request. If anything, that supports an inference that Summers likely withheld information in order to avoid dealing with Taft.

meeting, and that Taft acted prior to having knowledge of the drain problems in February.²⁶

Finally, the fact that substitute custodians apparently were able to provide adequate cleaning service in the revenue processing area while Summers was off work in December of 1997, notwithstanding the second of the documented drain problems, tends to favor the employer's contention that discipline of Summers was non-retaliatory and supported by the circumstances.²⁷

Different from the funeral leave controversy (which was closely tied to the processing of the grievance concerning the blood spill), and the snow days incident (where inaction on the part of Taft led to a deprivation of overtime opportunities corrected by Sorensen), the impetus for the revenue processing situation came from persons outside of the troubled Taft/Summers relationship. The reasonability of any perception of "interference" must be questioned with regard to the January 29 meeting, because of the presence of Sorensen (who had resolved both of the prior controversies in Summers' favor). The fact that Taft asked Sorensen to attend the January 29 meeting tends to support Sorensen's assessment that Taft was attempting to keep the situation with Summers from escalating. Sorensen's testimony that Taft behaved appropriately toward Summers in the January 29 meeting also weighs against an inference of union animus. Not only was Sorensen a credible witness, but his willingness in the snow days incident to hear an

²⁶ An inference adverse to the employer might be warranted if Taft had proceeded with the disciplinary action after work orders were submitted for the Atlantic Base drains on three consecutive days in February of 1998.

²⁷ This is a "tends to support" (rather than "conclusive") finding because the employer made no record as to whether the substitute custodian(s) were assigned the totality of Summers' assignment or only portions of her work.

untimely grievance for the sake of good labor-management relations, and then grant that grievance, is additional support for a lack of animus on his part, and is an additional reason to credit his evaluation of the revenue processing meeting. While Daniels' perspective of the meeting was somewhat different than Sorensen's, his testimony about the meeting does not support a finding of animus, or a finding that the level of hostility in this meeting reached anything close to that exhibited during the bereavement leave discussion.²⁸

²⁸ Other incidents cited by the union as lending support to its contention of discrimination suffer from critical factual insufficiencies:

The timing of the crew meeting is critical to its relevance, particularly in light of the claim that Taft used "troublemaker", a term often used as a euphemism for individuals asserting protected rights. Summers' testimony was vague, Taft placed that meeting a year earlier, and the union did not offer other evidence to establish the timing of the event.

The discussion between Taft and Summers regarding the restroom walls at the Central Base fuel and wash facility also suffers from a problem as to timing. Summers' testimony placing that discussion in early January of 1998 was contradicted by Taft's September 1997 memo, which reflects that Taft was concerned about the Central Base restroom walls before Summers filed her grievance.

Summers appeared to assert that her recent return from leave and being "under duress" at the January 29 meeting warranted treatment by Taft different from what she received. While the Examiner credits that Summers was under stress, and remained so at the time of hearing in this case, this decision does not turn on whether it would have been compassionate for Taft to have behaved differently under the circumstances. Even with ample evidence in this record that Taft's style was not particularly warm or conciliatory, the question before the Examiner in this statutory proceeding is limited to whether the union proved that Taft's issuance of the disciplinary notice was substantially motivated by Summers' protected activity.

FINDINGS OF FACT

1. King County (employer) is a "public employer" within the meaning of RCW 41.56.030(1). At all times pertinent to this proceeding, Ken Taft was a "base chief" in charge of custodial employees at Central Base and Atlantic Base, and Paul Sorensen was Taft's immediate supervisor.
2. Amalgamated Transit Union, Local 587, is the exclusive bargaining representative of various employees working in the public transportation operations of King County. At all times pertinent hereto, Kimball Daniels was a union shop steward.
3. Annie Summers was employed by King County, at all times pertinent hereto, as a custodian within the bargaining unit represented by Amalgamated Transit Union, Local 587. Summers began her employment with a predecessor employer in 1990. In 1997, Summers was assigned to clean shop, office, and lunch-room spaces at Central Base, as well as bus fueling areas at Central Base and Atlantic Base.
4. Summers began working under Taft's direction in 1995 or 1996, and continued working under Taft's direction at all times pertinent to this proceeding. The working relationship between Summers and Taft was described as "difficult at best", although no different than the working relationships between Taft and other employees under his direction.
5. On November 13, 1997, Taft assigned Summers to clean up a blood spill. After Summers questioned whether she was properly trained for the task, she began the cleanup work. During the cleanup process, Summers became ill and then reported to Taft that she was unable to complete the job.

6. On November 24, 1997, Summers filed a grievance concerning the blood spill cleanup assignment.
7. On December 9, 1997, Summers received a telephone call as she, Taft, Sorensen, and union representatives were gathering for the first-step meeting on the grievance described in paragraph 6 of these Findings of Fact. Summers was informed that her uncle had died. Upon returning to the meeting, Summers informed the other participants that her uncle had died. The grievance meeting was suspended, and Summers left the workplace soon thereafter.
8. The union representatives attending the meeting described in paragraph 7 of these Findings of Fact asked Sorensen to grant funeral leave to Summers. The collective bargaining agreement in effect between the parties in December of 1997 provided for funeral leave to be granted to employees upon the death of certain family members, including brothers but not uncles. A clerk had given Taft and Sorensen incorrect information that Summers' brother had died, and Taft and Sorensen did not hear Summers' comment that her uncle had died. Operating under mistaken information about Summers' relationship to the deceased, Sorensen assured the union representatives that there would be no problem in granting funeral leave to Summers.
9. Summers was off work for the balance of 1997, and for the first three days in January of 1998. In addition to the time associated with her uncle's funeral, Summers claimed illness due to her work on the blood spill cleanup assignment. Summers filed a claim for workers' compensation benefits for that illness, but returned to work when her claim for workers' compensation benefits was denied.

10. Upon her return to work on January 4, 1998, Summers filed a leave request form citing the death of her uncle as her basis for requesting funeral leave. Sorensen thereupon learned that the deceased was Summers' uncle, rather than her brother. Sorensen instructed Taft to inform Summers that the employer could not allow funeral leave for the death of her uncle, but would find a way to make sure that "the time off she had was covered".
11. Taft met separately with Summers and with a union representative, but failed to completely communicate the information that Sorensen had directed him to convey. Specifically, Taft communicated that Summers' request for funeral leave would be denied, but failed to communicate Sorensen's assurance that the employer would find a way to cover the time off Summers had taken. The conversation between Taft and Summers was contentious, and an employee in the status and situation occupied by Summers in this case could reasonably have perceived Taft's statements as threats associated with the exercise of their collective bargaining rights.
12. Subsequent to his discussion of the funeral leave issue with Taft, Daniels discussed the matter with Sorensen. Sorensen ultimately agreed to grant funeral leave to Summers.
13. On January 12 and 13, 1998, while the dispute concerning the request for funeral leave remained pending or soon after it was resolved, the employer declared a snow emergency. Taft failed to offer Summers overtime work opportunities in the same manner as offered to other employees in the same or similar classifications. While Taft testified that he did not see Summers on the first day of the snow emergency, credible evidence establishes that she was at work on that day, that

Taft did not leave a message for her on the telephone company voice-mail service connected to her home telephone, and that Taft did not offer Summers the opportunity for overtime work on the second day of the snow emergency. An employee in the status and situation occupied by Summers in this case could reasonably have perceived Taft's actions as interference with the exercise of their collective bargaining rights.

14. Summers filed a grievance concerning the denial of overtime work opportunities described in paragraph 13 of these Findings of Fact. Sorensen granted that grievance, and provided a remedy granting Summers 16 hours of overtime.
15. In January of 1998, Summers neglected her responsibilities for cleaning an area known as the Revenue Processing Center, while she was distracted by problems with plugged drains at the Atlantic Base fuel and wash area. The credible testimony of another employee supports an inference that Summers avoided telling Taft of the difficulties she was encountering.
16. In late January of 1998, Taft received two e-mail messages in which the staff of the Revenue Processing Center complained about the cleaning service provided by Summers. Taft investigated the situation, and concluded that Summers' work in the Revenue Processing Center was inadequate.
17. Taft held a meeting with Summers on January 29, 1998. Sorensen was present, at Taft's request. Daniels was present as Summers' union representative, at her request. Summers was criticized for failing to complete her work and for failing to advise Taft of the problems that had distracted her from completing her assignments. At or soon after that meeting,

Taft placed a memorandum in Summers' file as a "minor infraction" under the applicable collective bargaining agreement.

18. In the context of her failure to perform her assigned duties, the complaints from the Revenue Processing Center staff, the presence of Sorensen at the meeting, and a letter issued in September of 1997 whereby Taft directed Summers to communicate with him about problems that were affecting her work, the evidence does not establish any causal connection between the grievance described in paragraph 6 of these Findings of Fact and the events described in paragraphs 15, 16 and 17 of these Findings of Fact.

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 the actions of its agent Ken Taft in regard to the request of Annie Summers for funeral leave and in regard to the opportunity to work overtime during the snow emergency, King County has interfered with the exercise of collective bargaining rights protected by Chapter 41.56 RCW, and has committed, and is committing, unfair labor practices in violation of RCW 41.56.140(1).
3. The complainant has failed to sustain its burden to prove, by a preponderance of the evidence, that there was a causal connection between the disciplinary notice issued to Annie Summers under date of February 29, 1998, and the exercise of rights under RCW 41.56.040 by or on behalf of Annie Summers,

so that no discrimination in violation of RCW 41.56.140(1) has been established in this case as to that disciplinary action.

ORDER

King County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
 - A. Treating, or threatening to treat, Annie Summers and similarly situated employees differently, following their exercise of rights conferred by Chapter 41.56 RCW, than employees are otherwise treated, particularly with regard to eligibility for leave benefits and overtime work.
 - 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 41.56 RCW:
 - A. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall 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.

- B. Read the notice attached to this order into the record at a regular public meeting of the King County Council, 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.

- C. 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.

- 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 attached to this order.

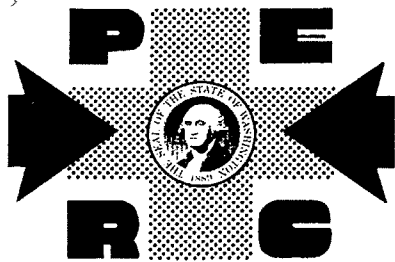
Issued at Olympia, Washington on the 21st day of June, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARTHA M. NICOLOFF, 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.



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 treat, or threaten to treat, Annie Summers and similarly situated employees differently, following their exercise of rights conferred by Chapter 41.56 RCW, than employees are otherwise treated, particularly with regard to eligibility for leave benefits and overtime work.

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.

WE WILL read this notice into the record of the next regular public meeting of the King County Council, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read.

DATED: _____

KING COUNTY

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.