STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 82,	)	CASE 15638-U-01-3964
Complainant,	)	DECISION 7390-B - PECB
vs.	)	
TACOMA HOUSING AUTHORITY,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER

Leggett & Kram, by *James F. Leggett*, Attorney at Law, for the union.

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, by *Lewis L. Ellsworth*, Attorney at Law, for the employer.

On February 7, 2001, the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 82 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the Tacoma Housing Authority (employer) as respondent. The complaint was reviewed under WAC 391-45-110, and a deficiency notice issued on April 17, 2001, indicated that it was not possible to conclude that a cause of action existed concerning several of the union's allegations. The deficiency notice gave the union a period of 21 days in which to file and serve an amended complaint, and indicated that the case would be dismissed in the absence of a timely amendment stating a cause of action. The union filed a "reply" to the deficiency notice on April 30, 2001, and the Director of Administration issued

a Partial Dismissal and Order for Further Proceedings on May 14, 2001,[1] stating the cause of action referred for hearing as follows:

> Employer interference with employee rights in violation of RCW 41.56.140(1), discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3), and refusal to bargain in violation of RCW 41.56.140(4), by skimming and subcontracting work previously performed by members of Local 82, by assignment of craft work of other unions to members of Local 82, and by elimination of two part-time positions filled by members of Local 82 in reprisal for union activities protected by Chapter 41.56 RCW.

The allegations that were found to state a cause of action were heard before the undersigned on August 29, and 30, September 24, and November 5, 2001. On the last day of the hearing, the parties agreed upon December 17, 2001, as the deadline for receipt of their simultaneous briefs.

On December 10, 2001, the union filed a motion for reopening of the hearing. It asserted that it had additional evidence that it had not known nor could have anticipated would be useful or necessary to the case. The Examiner granted the motion, and the hearing was reconvened on January 17, 2002. In response to the evidence produced by the union on that occasion, the employer called Warren Martin as a witness without objection from the union. Martin was a partner in the same law firm as the employer's counsel in this case, and he had been the employer's chief negotiator in contract negotiations described in the evidence produced by the union. At the close of Martin's testimony, the record was once again closed.

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[1] *Tacoma Housing Authority*, Decision 7390 (PECB, 2001).

The parties agreed on February 13, 2002, as the date for the receipt of simultaneous briefs.

On January 28, 2002, the union filed a motion for disqualification of the employer's counsel in this case. It cited section 3.7 of the Rules of Professional Conduct promulgated by the Washington State Bar Association, and alleged that counsel should be disqualified from further participation in the case because another member of the same law firm had been called to testify in the matter. Predictably, the employer opposed that motion. The undersigned Examiner denied the motion by a written order issued on February 13, 2002.[2]

After the ruling on the motion, the parties filed post-hearing briefs to complete the record.

The Examiner concludes that the union has not proven its case. The allegation that the employer "skimmed" work between crafts is dismissed, because all of the employees involved are included in the same bargaining unit; the allegation that the discharge of an employee was pretextual fails, because of the dismissal of the

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[2] *Tacoma Housing Authority*, Decision 7390-A (PECB, 2001). As was stated in *International Association of Fire Fighters, Local 2916 v. Public Employment Relations Commission*, 128 Wn.2d 375 (1995):

> While the Supreme Court generally accords great deference to PERC's interpretation of the law it administers, PERC has no more authority than is granted to it by the legislature.

Noting that the Bar Association Rules of Professional Conduct are neither statutory nor part of the Washington Administrative Code (WAC), the Examiner concluded that enforcement of those rules is not within the statutory authority delegated to the Commission and its Examiners by Chapter 41.56 RCW.

underlying skimming charge and because the employer provided reasonable grounds for its decision to terminate; the allegation that the termination was without just cause fails, because the Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of the statute.

BACKGROUND

The employer owns and operates approximately 1500 housing units in the greater Tacoma area, many of which have been part of its housing stock for 25 to 30 years. The employer is responsible for the maintenance and repair of those units, and it employs various craftspersons to perform specific types of maintenance on its buildings. In the past, this has included plumbers, sheet metal workers, electricians, carpenters, painters, janitors and laborers.

All of the craftspersons working for this employer have been represented for the purposes of collective bargaining in a single bargaining unit with the Pierce County, Washington Building and Construction Trades Council (council) as their exclusive bargaining representative. Local 82 is a signatory member of the council.

It is clear that this employer has had plumbers in its workforce for many years. Given a paucity of complete dates in the evidence, recent turnover among the plumber positions in this employer's workforce is reconstructed as follows:

- Berry Stepp was employed as a plumber in 1992. He worked on faucets, drain and vent systems, sewers, irrigation systems, boilers, and water-heating systems.

- Wes Burke was employed as a plumber beginning on a date not specified in this record. He filled a second plumber position that the employer traditionally maintained on its staff.
- Doug Watts was employed as a plumber by this employer on January 21, 2000.
- Burke resigned his position on February 21, 2000.
- Watts ceased working for this employer in mid-November of 2000.
- Stepp was discharged on December 8, 2000, leaving no plumbers on the employer's staff.[3]
- Mark Boote was hired by the employer as a part-time plumber following Stepp's discharge.
- Dan Iddings was hired by the employer as a part-time plumber following Stepp's discharge.
- Boote was laid off in mid-April of 2001, after he decided that he did not want a full-time position.
- Dan Iddings became a full-time plumber in about April of 2001, after Boote was laid off.
- John Hays was hired by the employer on a date not specified in the record. He has training and expertise to do both plumbing and heating/ventilating/air-conditioning (HVAC) work, and has been given assignments of both types.

In its discharge letter, the employer notified Stepp that he was being discharged for his failure to follow a supervisor's orders,

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[3] Stepp's discharge is the subject of an arbitration proceeding, but the Examiner has not been provided with a copy of a decision issued in that proceeding.

for his inappropriate behavior during work on November 17, 2000, and for his submission of an inaccurate time sheet on November 28, 2000.

POSITIONS OF THE PARTIES

The union asserts that the changes in the employer's plumbing staff in the year 2000 were the result of an employer effort to: (1) give plumbing work to an employee hired as a sheet metal worker to do HVAC work; and (2) to force the plumbers to do HVAC work in addition to the usual plumbing assignments. The union claims this was done without bargaining with the union, and that the employer "targeted" employees who were reluctant to work out-of-craft. It asserts that the employer intimidated two plumbers into quitting their jobs, that the employer discharged Stepp on pretextual grounds when intimidation did not work on him, and that Stepp was discharged in furtherance of the employer's goal of hiring workers with more generalized skills while eliminating employees that only have skills in one craft. The union argues that the employer eliminated two part-time positions in retaliation for the filing of this unfair labor practice case. Finally, the union argues that the utilization of non-licensed plumbers or furnace repair persons is a violation of the collective bargaining agreement and dangerous to life and property.

The employer denies that the events enumerated by the union are a result of a plan or effort to eliminate craft work or any single craft. It urges that it is impractical to maintain strict craft divisions with a relatively small staff, and that it never agreed to such divisions in the applicable collective bargaining agreement. It asserts that it did not terminate employees as a retaliatory measure, and it points out that one of the part-time

employees quit on his own volition. Finally, the employer argues that Stepp was discharged for on-the-job problems, and not as a part of any plan to eliminate craft workers from its staff.

DISCUSSION

Procedural Matters

Limited Allegations Before the Examiner -
It is appropriate to focus, at the outset, on the limited allegations which are properly before the Examiner in this case.

The original complaint cited RCW 41.56.140(1) (interference with employee rights), RCW 41.56.140(2) (domination of or assistance to a union), and RCW 41.56.140(3) (discrimination for filing unfair labor practice charges), but it also alleges skimming of work previously performed by members of Local 82.[4] The deficiency notice addressed several problems with that complaint:

- Concerning the allegation of employer domination, it pointed out that none of the facts alleged in the complaint suggested that the employer had involved itself in the internal affairs or finances of the union, or that the employer had attempted to create, fund, or control a "company union" citing *City of Anacortes*, Decision 6863 (PECB, 1999).

- Concerning the allegation of discrimination related to the filing of unfair labor practice charges, it pointed out that

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[4] Under a long line of Commission precedents dating back to *South Kitsap School District*, Decision 472 (PECB, 1978), transfers of bargaining unit work to employees of another employer have been termed "contracting out" while transfers of bargaining unit work to employees outside of the bargaining unit but within the employer's workforce have been termed "skimming."

such an allegation cannot stand absent evidence that the complainant had previously filed an unfair labor practice complaint with the Commission, and that the complaint did not contain any such factual allegation.

- Concerning the "skimming" allegation, it pointed out that unilateral transfers of bargaining unit work are processed under the RCW 41.56.140(4) (refusal to bargain), but that no such statutory violation was alleged in the complaint.

The union's response to the deficiency notice failed to allege any additional information which would support the existence of a cause of action for employer domination of or assistance to the union, and that allegation was dismissed.

The union's response to the deficiency notice alleged that the employer eliminated two part-time positions in reprisal for the filing of the complaint in this proceeding. While that could not have been a basis for the original citation of RCW 41.56.140(3), and while the issue was not specifically addressed in the order for further proceedings, post-complaint facts are accepted as an amendment to the union's original complaint under WAC 391-45-070(1). Thus, this allegation now states a cause of action.

The union's response to the deficiency notice added a citation of RCW 41.56.140(4) in regard to the alleged transfer of bargaining unit work. With that addition, the union cured the defect concerning the refusal to bargain allegation.

Motion To Reopen the Hearing -

The reasons for granting the union's motion are fully set forth in the record and are summarized above. Thus, the Examiner does not revisit that issue in this decision.

Motion to Disqualify Counsel

The reasons for denying the union's motion are fully set forth in the previously-issued order and are summarized above. Thus, the Examiner does not revisit that issue in this decision other than stating that the testimony given by Martin at the reopened hearing was clearly relevant to this proceeding.[5]

Form of Argument

From WAC 391-45-270 and a long line of Commission decisions, it is clear that the union has the burden of proof as the complainant in this matter.[6] It must provide clear and understandable evidence and argument that persuades the trier of fact. It is important to note that it is not the responsibility of the Examiner to reconstruct incomplete arguments or to supply missing facts.

In its briefs and arguments, the union consistently referred to positions without naming the employees involved, and has frequently failed to establish the dates when alleged events took place. This has made it difficult to follow the union's claims either chronologically or factually. With the exception of the workforce turnover reconstructed above, this Examiner has not attempted to repair the union's arguments and has only dealt with them as they

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[5] At the reopened hearing, the union evidence admitted on motion of the union included the original job descriptions that had been proposed by the employer in the parties' most recent round of collective bargaining negotiations. Those included job descriptions for "Laborer I" and "Laborer II" positions which had been rejected by the union at the bargaining table. The employer called Warren Martin to testify in response to that evidence, based on his role as the employer's chief negotiator in those negotiations.

[6] *Port of Seattle*, Decision 3064-A, 3065-A (PECB, 1989) and *Port of Tacoma*, Decision 4626-A, 4627-A (PECB, 1995).

were presented. Non-specific argument and statements cannot be the basis for the finding of an unfair labor practice.

Discrimination for Pursuit of Unfair Labor Practices

The union's amended complaint alleged that the employer "eliminated two non-full time positions" in the bargaining unit and subsequently hired one full time employee in retaliation for the filing of the unfair labor practice complaint in this proceeding and "in furtherance of its plan to eliminate craft jurisdiction within its employees." However, that is contradicted by uncontroverted testimony which establishes that the part-time position filled by Dan Iddings was converted into a full time position, and that Iddings was still in that position at the time of the hearing. The union's allegation is further contradicted by the testimony of the second part time employee, Mark Boote, who explained that he turned down the employer's offer of a full time position. There was no evidence presented that those personnel actions were in any way connected to the filing of the original unfair labor practice complaint. Thus, on the facts presented, the charge of reprisal for the filing of this unfair labor practice complaint must be dismissed.

Violation of Contract Not Actionable

In a long line of precedents dating back to *City of Walla Walla*, Decision 104 (PECB, 1979), the Commission has refused to assert jurisdiction over "violation of contract" claims through the unfair labor practice provisions of the statute. The appropriate method of resolving such disputes is through the grievance and arbitration machinery established within the collective bargaining agreement or through the courts.

The union has asserted "just cause" principles in regard to Stepp's discharge, notwithstanding the reference to "discrimination" in the order for further proceedings. A grievance has been filed on behalf of Stepp, and the question of whether the employer had just cause to discharge him is for the arbitrator to decide. There was no need to delay the hearing or decision of this case until the conclusion of the arbitration proceedings, because the Commission does not defer to arbitrators on discrimination allegations,[7] and an arbitrator's decision under the contract is neither controlling on nor controlled by the decision in this case.

The union has asserted contractual work jurisdiction provisions in this unfair labor practice proceeding, notwithstanding the explanation in the deficiency notice that "skimming" is dealt with as a violation of the duty to bargain under RCW 41.56.140(4). It is clear that the parties have dealt with issues of employee skills and work allocations in their collective bargaining agreement, and Section 2.3 of that agreement includes:

> SECTION 2.3 Work Practices
> The Authority is subject to the Department of Housing and Urban Development's (HUD's) policy regarding Maintenance mechanic personnel and employs numerous personnel within that classification who perform diverse services for the Authority. The Authority recognizes the need within the Maintenance Mechanic Classification for particular craft skills and therefore, consistent with Article 11, Section 11.1 will, for vacancies within the Maintenance Mechanic Classification, employ personnel within recognized crafts as the need of the Authority dictates.
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> This section recognizes that there are many cooperative work practices existing under the current Labor Agreement. This agreement is

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[7] *See City of Yakima*, Decision 3564-A (PECB, 1991).

> not meant to change those existing work practices, but to enhance current practices to ensure the efficient operation of the Authority. It is not the intent of this provision to eliminate any signatory Craft union, but to maximize the utilization of the employees under this Agreement.
>
> The Authority will assign work orders to employees in the trade in which the predominate work is to be done. An Employee will perform incidental work in the same unit or complex outside of the employee's trade to the extent the employee's skills permit in order to maintain efficient operations of the Authority. An illustrative list of additional tasks an employee will be expected to complete pursuant to this provision is attached as Appendix B to this Agreement.

The "Appendix B" referenced in Section 2.3 of that agreement includes:

> ILLUSTRATIONS OF JOB FLEXIBILITY
> BETWEEN TRADES
>
> TYPICAL REPLACEMENT ITEMS WHICH SHOULD BE HANDLED BY AN EMPLOYEE OF ANY TRADE WHO IS WORKING AT THE UNIT OR COMPLEX:
>
> Range drip pans and plug in burners
> Installation of smoke detector batteries
> Cut and deliver keys
> Tighten light switches and plugs
> Replace switch plates and outlet covers
> Refrigerator drawers and drawer covers
> Replacement of light bulbs
> Replacement of towel racks and toilet paper holders
> Replacement of toilet seats and tank lids
> Check and replace fire extinguishers
> Change filters
> Check and replace emergency light batteries
>
> TYPICAL ROUTINE REPAIRS WHICH SHOULD BE HANDLED BY AN EMPLOYEE OF ANY TRADE WHO IS WORKING AT THE UNIT OR COMPLEX:

Window pins
Door stops
Stuck windows
Window installations
Weather-stripping
Caulking
Loose hardware
Closet door tracks

TYPICAL COMPLETE-THE-JOB REPAIRS WHICH SHOULD BE HANDLED BY THE IDENTIFIED TRADE EMPLOYEES:

Plumbers and electricians need to do electric hot water tank repairs and replacements completely and reset temperature

Plumbers and stove repair persons need to do gas hot water tank repairs and replacements completely and reset temperature

Carpenters, plumbers or painters need to begin wall repair job (e.g., Sheetrock, tape and mud) and repair base

All trades need to clean heating vents/ducts

Laborers, janitors, and teamsters need to wash siding where an incidental task

All trades need to clean and repair gutters and downspouts

All trades need to deliver and set up new appliances

Carpenters need to paint their own repair work (for example, repairs of approximately 6" by 36" or less are deemed "minor")

Electricians and stove repair persons need to repair/replace electric motors, i.e. exhaust fans, range hoods, etc.

Electricians and stove repairpersons need to repair/replace all thermostats

Finally, "Appendix B" concludes with the following paragraph:

The foregoing list is intended to illustrate the work employees are expected to perform outside of the employee's trade pursuant to

> Article 2.3 of the Agreement. This list is not intended to be an exhaustive list of all work employees are expected to perform outside of the employee's trade pursuant to Article 2.3 of the Agreement and employees are expected to perform tasks of a similar kind or nature to the extent the employee's skills permit in order to maintain efficient operations of the Authority.

Thus, the Examiner concludes that these parties have negotiated practices for determining work between the various skills and crafts that are employed at the Authority. It follows that the parties have resolved inter-craft disputes in their contract negotiations, or that they are to do so in contract administration. An arbitrator could find significance in the fact that only the third of the lists set forth in "Appendix B" specifies which craft is to do any specific repairs, and that multiple crafts are listed as responsible for various types of repairs.[8] What is important here is that the enforcement of the parties' collective bargaining agreement is for an arbitrator or the courts, not for the Commission or the undersigned Examiner in this unfair labor practice proceeding.

The "Skimming" Allegation

The union has asserted "craft jurisdiction" principles in support of its claim that the employer has embarked upon a pattern of forcing plumbers to work outside of their craft and/or hiring

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[8] An inference of "flexibility" is reinforced by the fact that the employees are not hired into a craft designation, but are hired instead into classifications titled "Maintenance Laborer I," "Maintenance Laborer II," and "Mechanic"; the latter classification encompassing the carpenter, plumber, electrician, painter, and sheet metal (stove) crafts.

employees who can do both plumbing and sheet metal work. The only probative evidence on the subject suggests that the employer hired John Hays after Mark Boote resigned, that Hays had experience in both plumbing and furnace repair work, and that Hays was not dispatched by this union.[9] However, the union does not point to any statute or regulation which empowers the Commission to assert inter-craft jurisdiction through unfair labor practice procedures. In fact, any separation of building maintenance work along "craft" lines grows out of custom and contract rather than statutory interpretation and no unfair labor practice decision is cited by the union or found by the Examiner where the Commission has intervened in such a controversy. Although collective bargaining agreements covering multiple crafts are relatively common, particularly in the workforces of large public employers, inter-craft jurisdictional disputes remain a matter for arbitrators and courts to resolve. The "craft jurisdiction" basis for the union's "skimming" claim of an unfair labor practice is without merit.

The composition of the bargaining unit involved presents an additional, and compelling, problem for the union in this case: All of the employer's crafts employees are represented in a single bargaining unit. Where disputes concerning unit work have been adjudicated by the Commission, they have involved transfers of work outside of the bargaining unit represented by the union filing the complaint. Here, Local 82 does not represent a separate bargaining unit of plumbers. The trades council could be in a position to file and pursue a "skimming" claim if work historically performed by members of Local 82 was given to unrepresented employees of this employer or to employees of a private entity contracting with this

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[9] Hays came to the employer's attention when he applied for another position with the employer.

employer, but that is not helpful to Local 82. Thus, the union's entire "skimming" claim must be dismissed.

Pretextual Termination

The union charges that the employer's justifications for the discharge of Berry Stepp were just a pretext, and that Stepp's employment was terminated to further the employer's goal of eliminating more narrowly-trained craftspersons while hiring employees with more general skills. Significantly, the union does not contend that Stepp was a union activist, or that he was discharged in reprisal for engaging in any particular union activity protected by RCW 41.56.040.

The burden of persuasion is on the charging party where discrimination is alleged. To prevail, a complainant must make out a prima facie case of anti-union discrimination by showing that: (1) There was protected union activity or notice to the employer of an intent to engage in protected union activity; (2) one or more employees was deprived of some ascertainable right, status, or benefit; and (3) that there was a causal connection between (1) and (2). Only then is the employer required to assert (not prove) lawful reasons for its actions. The burden remains on the charging party to establish that the reasons asserted by the employer were pretextual, or that protected union activity was a substantial motivating factor behind the disputed employer action. Numerous Commission decisions applying that test since *City of Federal Way*, Decision 4088-A (PECB, 1993) have cited *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991).

The union has not carried its burden of proof in this case. It did not establish a prima facie case that Stepp's discharge was in reprisal for any protected union activity, particularly in light of dismissal of its underlying "skimming" claim. Even if the union had established a prima facie case, the employer's accusation that Stepp claimed hours worked for times when he was in fact not at work was based upon a reasonable evaluation of the facts.[10] The union has not provided evidence sufficient to support a finding that union activity was a substantial motivating factor in the discharge decision, or even that the reasons asserted by the employer were pretexts designed to conceal union animus. Thus, the allegation that the employer discriminated against Stepp must also be dismissed.

FINDINGS OF FACT

1. The Housing Authority of the City of Tacoma (employer) is a municipal corporation or political subdivision of the State of Washington, and is a public employer within the meaning of RCW 41.56.030(1).

2. The Pierce County, Washington Building and Construction Trades Council (Council) is the exclusive bargaining representative of a single bargaining unit which encompasses all the skilled crafts workers employed by the Housing Authority of the City of Tacoma.

3. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and

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[10] Whether that evidence would also persuade an arbitrator to uphold the discharge under the "just cause" standard is beyond the scope of this inquiry.

Canada, Local 82, a bargaining representative within the meaning of RCW 41.56.030(3), participates in the Pierce County, Washington Building and Construction Trades Council.

4. Sheet Metal Workers Union, Local 66, a bargaining representative within the meaning of RCW 41.56.030(3), participates in the Pierce County, Washington Building and Construction Trades Council.

5. A collective bargaining agreement between the employer and the council that is effective for the period from July 1, 2000, through June 30, 2003, contains general language concerning work practices in Section 2.3, and calls for cooperative work practices and flexibility between skilled crafts employees in Appendix B. In its recent history, the employer's staff usually included two full-time plumbers and an unspecified number of sheet metal workers.

6. On various occasions, the employer has asked at least the plumbers and sheet metal workers on its staff to work outside of their traditional craft jurisdictions, in order to complete needed repairs as soon as possible. There is no evidence that such assignments have been protested through the grievance and arbitration machinery of the applicable collective bargaining agreement.

7. During the six months prior to the filing of this complaint, Doug Watts left a full-time plumber position for reasons not at issue in this proceeding, Berry Stepp was discharged from a full-time plumber position for alleged misconduct; Mark Boote was hired as a part-time plumber, and Dan Iddings was hired as a part-time plumber.

8. Between the filing of the original complaint in this proceeding and the filing of an amended complaint on April 30, 2001, Boote was laid off after he rejected an offer of a full-time plumber position, Iddings became a full-time plumber, and the employer hired John Hays to do both plumbing and heating/ventilating/air-conditioning (HVAC) work. Hays was a member of Sheet Metal Workers Union, Local 66, at the time of his hiring, but he claimed training and experience that enabled him to do plumbing work.

9. The evidence in this proceeding does not establish that Berry Stepp was a union activist, or that he was otherwise engaged in lawful union activities protected by RCW 41.56.040, or that he communicated to the employer an intent to engage in lawful union activities protected by RCW 41.56.040.

10. When it discharged Berry Stepp on December 8, 2000, the employer accused Stepp of failure to follow a supervisor's orders, of inappropriate behavior during work on November 17, 2000, and of submission of an inaccurate time sheet on November 28, 2000. A grievance was filed protesting that discharge under the applicable collective bargaining agreement, and the matter was submitted to an arbitrator.

11. The evidence in this proceeding does not establish a causal connection between the discharge of Berry Stepp and any lawful union activities protected by RCW 41.56.040.

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. No remedy is available in this proceeding under RCW 41.56.140 and 41.56.160 for alleged violations of the collective bargaining agreement between the employer and the Council.

3. Because any transfers of work established by the evidence in this proceeding occurred within the bargaining unit represented by the Council, Local 82 has failed to establish that any "skimming" of bargaining unit work has occurred, so that no violation of RCW 41.56.140(4) has been established.

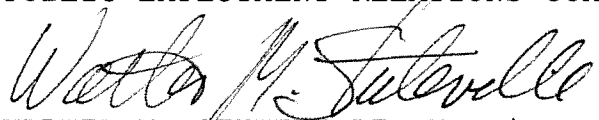
4. Local 82 has not carried its burden of proof to establish that the employer interfered with the rights of bargaining unit members in violation of RCW 41.56.140(1), or that the employer discriminated against bargaining unit members in violation of RCW 41.56.140(3), in regard to the manner in which the employer has assigned work among members of the same bargaining unit.

ORDERED

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

Issued at Olympia, Washington, on the 8th day of July, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, 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.