

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RENTON FEDERATION OF TEACHERS,)	
LOCAL 3914, WFT/AFT/AFL-CIO,)	
)	
Complainant,)	CASE 13262-U-97-3228
)	
vs.)	DECISION 7441 -- COL
)	
RENTON TECHNICAL COLLEGE,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
)	

Schwerin, Campbell, Barnard, by *Dimitri Iglitzin*,
Attorney at Law, for the complainant.

Christine Gregoire, Attorney General, by *James Tuttle*,
Assistant Attorney General, for the respondent.

On June 25, 1997, the Renton Federation of Teachers, Local 3914 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Renton Technical College (RTC or employer) as the respondent. A deficiency notice issued on September 19, 1997, pointed out that the complaint suffered from lack of details, contained an incorrect statutory citation, and claimed a contract violation not subject to a remedy through the unfair labor practice proceedings before the Commission. The union filed an amended complaint on September 25, 1997. A preliminary ruling was issued on December 22, 1997, finding a cause of action to exist on allegations of:

Discrimination against William Scott Norris,
in the form of denial of tenure or renewal of
his teaching contract, in reprisal for: (1)
his use of the grievance procedure concerning

his placement on the salary schedule; and/or
(2) his actions through the Renton Federation of Teachers to obtain information concerning the use and allocation of "equity money".

The matter was originally set for a hearing to be held in March 1998, and the employer filed its answer. The hearing was postponed at the request of the union, and was then held on 11 days in 1998: May 26, 27, and 28, July 27, 28, 29, 30, and 31, October 6, 7, and 8, before Examiner Paul T. Schwendiman. The parties requested extension of the briefing schedule, and the last brief was not filed until April 7, 1999.

The Examiner rules that the employer discriminatorily denied Norris tenure or renewal of his teaching contract, due to his union activities. A remedial order is entered.

BACKGROUND

The ASSET Program

The ASSET program is a two-year automotive technician program sponsored by Ford Motor Company. The Ford company provides instructor training, including training at its factory in Dearborn, Michigan. The Ford Company also provides the syllabi and other associated instructional material that are used. Ford grants \$3,000 per school in overhead funding, as well as tools, automobiles and associated equipment to aid in the instruction.

The ASSET program is taught at Renton Technical College as a cooperative program, in association with numerous Ford dealerships in western Washington. Students attend classes at the college for nine weeks, and then report to a sponsoring dealership for 9 to 11

weeks for work experience each in various areas covered in the classroom sessions. Each student, the supervising service manager, and the supervising mechanic are to be visited by the college instructor at least twice while the student is at the dealership. Students completing the program receive an "associate" degree from the college and a certification from the Ford Motor Company that they are skilled in major areas as automotive technicians.

The Employee Involved

Scott Norris worked as a teacher in the ASSET program at RTC. He began working on a "bachelor" degree in Work Force Education and Development after 20 years on active duty as a commissioned officer in the United States Air Force, and he completed a student teaching assignment at RTC in 1995 under the supervision of an RTC instructor and union steward named Jack Devine.

During his student teaching, Norris applied for an upcoming opening for an instructor in the ASSET program. He was interviewed by two representatives of Ford Motor Company, by RTC Vice President for Human Resources Gary Koppang, by ASSET Instructor John Mundy, and by one or two other college officials. Norris was offered the job, starting in September 1995.

There was a controversy about Norris' placement on the salary schedule at RTC. Koppang placed Norris at step six of the RTC salary schedule, after reviewing Norris' experience. Norris questioned whether he had received three years of credit for his military service, as outlined in the collective bargaining agreement between the employer and union, and he additionally questioned whether he should be given credit for another year of experience. Koppang maintained his placement of Norris at step six of the salary schedule.

The Tenure Review Process

A tenure committee is convened to review the progress of new instructors for a period of three years. Tenure committees are composed of three faculty members, one student member, and one administrator. During 1995 and 1996, the union gave the employer a list of faculty members who could serve on tenure committees, and the employer's human resources department then made the committee assignments. During contract negotiations in 1997, the employer agreed to a union proposal that allowed the union to appoint the faculty members of tenure committees. When appointed, all tenure committee members sign a confidentiality statement. The committee members are to help the person get tenure by giving advice. There is a tenure manual which specifies what tasks are to be done each of the three years.

A tenure committee usually meets three times a year. The first meeting is usually held in October or November, and is mostly informational. The employee subject to tenure review is told about the tenure process. In later meetings, the tenure committee decides whether to recommend renewal of the instructor's teaching contract for the next year. Those recommendations are forwarded to the college board of trustees through the administration.

As a beginning instructor in 1995, Norris was placed under a tenure review process for a period of up to three years. The tenure committee created for Norris included:

- The chairperson of the committee was George Lake, who has been an instructor at RTC for over 15 years. Lake was treasurer of the union for 13 years, and he was vice president and acting president of the local union in the summer of 1996. He had served on three tenure review committees, chairing two, and

sees tenure as a faculty-oriented process that attempts to ensure that individuals on the tenure track meet the educational needs of the class and campus. While the success of the tenure process depends on the employee being reviewed, Lake testified of his belief that the committee shares in the responsibility. Noting that faculty make up the majority of the committee, Lake sees tenure as a "faculty defined" function.

- One of the faculty members was Dave Parker, who has been a welding instructor at RTC for 18 years. He sees tenure review as a committee of tenured instructors that can offer guidance, and can be available to help new instructors during their three-year probationary period. Parker took the minutes of the meetings.
- The administrative member was Karl Hommer, the dean of the Automotive Department and Norris' supervisor.¹

During the 1995-1996 school year, Norris received positive written evaluations from his tenure review committee as well as positive written evaluations from Hommer.

Perceived Deficiencies

Certification Problems -

A five-year teaching certificate appears to be the standard for ongoing employees. A one-year temporary certificate can only be applied for once. Another form of certificate can be used for one year, but can be requested for a second year. The responsibilities of Paul Greco, as vice president for instruction at RTC, include assuring that teachers are properly certified and that certification progresses appropriately.

¹ Hommer is a past-president of the union.

Norris did not pass a mandatory industrial safety and hygiene test the first time he took it, and he also let his first year certificate lapse. Greco notified Norris of additional courses he had to pass to get his one year certificate.² Greco saw these events as very unusual, and as showing a lack of effort on Norris' part.

Norris complained to his tenure committee that he was not re-certified because RTC did not accept his credits from Southern Illinois University. Greco eventually accepted those credits, and RTC granted Norris a temporary certificate expiring in September 1996. At that time, Norris applied for a five year certificate. Greco explained Norris could not get a five year certificate until he had taught for two years.

The Emission Class -

As an ASSET instructor, Norris has to be certified in certain areas of automotive maintenance. Some "train the trainer" classes are periodically offered at RTC, and Norris wanted to attend an emission specialist class that was to start at 8:00 a.m. on June 17, 1996. The class was to consist of 40 hours of instruction in a one-week period, with registration on the first day.

The ASSET students were to be on the RTC campus during the week when the emissions specialist training was being offered. Hommer approached Norris during the registration process, and they discussed how the classes assigned to Norris were being covered. Norris claimed he had arranged for another automotive instructor to teach the ASSET students for the week, but that instructor had backed out at the last minute. Norris next told Hommer he had

² Greco later admitted that his notice to Norris was in error, and that Norris did not need to take a specified professional development course before he could be issued his initial one year certificate.

another automotive instructor, Jack Devine, covering his class. Hommer directed Norris to teach the ASSET students himself, and Norris withdrew from the emissions class within ten minutes of its start. Hommer learned later that Devine was attending the emissions class for his own certification.

Leaving Students Unattended -

Later in the month of June 1996, Hommer was driving into the parking lot at 7:30 a.m. when he saw Norris driving out. Hommer went to the ASSET classroom, where classes started at 7:00 a.m., and inquired about who was teaching the class. The students informed Hommer that Norris had left for an hour, to take his daughter to the airport. When Norris returned, Hommer counseled him that he had to get prior approval to leave his class, and that he was to make sure there was a substitute to teach the students. Norris assured Hommer that he would get a substitute in the future.

Absence Reports -

In July 1996, another ASSET program instructor, John Mundy, complained to Hommer about the amount of time that he had to cover classes for Norris. After looking into the complaint, Hommer concluded that Norris had been absent nine times; of which three were previously approved as days Norris had to muster out of the U.S. Air Force. Hommer notified Norris that he needed to submit an absence report for each time he was gone, including the pre-arranged dates involving his separation from the military. On the last day of the summer quarter, August 12, 1996, Norris submitted an absence report. Hommer subsequently asked Norris to revisit his calendar, because all of the absences were not documented. Norris submitted a second absence report that day, but Hommer again told Norris that not all of his absences were documented. Norris submitted a third absence report. This exchange caused Hommer to begin wondering if Norris was trustworthy.

New Faculty Orientation -

In August 1996, Hommer learned that Norris had missed three of six "new faculty" meetings held during the 1995-1996 academic year. Hommer later concluded that Norris was teaching at the times of the meetings he missed, since the schedule for ASSET students to be on campus is different than the rest of the RTC class schedule.

Alleged Unauthorized Use of RTC Vehicle -

From August 5 through 8, 1996, Norris attended training sessions at the Ford Training Center in Issaquah, Washington, about 10 miles from RTC. Norris used a RTC vehicle, but kept it at his residence each evening without prior approval. Hommer counseled Norris not to violate the policy about the use of the RTC cars.

Picnic -

August 9, 1996, was the last day of attendance by ASSET students session before their summer break. Hommer testified it was routine for students to have on-campus picnics on the last day of class and for instructors to attend. Picnics were allowed on-campus after 11:00 a.m., using the first three hours of the school day for testing; then the student could go home or go to the picnic.

Norris asked Hommer for permission to take students to a park to have a picnic and play ball. Hommer refused to authorize the off-campus activity due to possible legal implications if an accident were to occur during school hours. Later in August, Hommer learned that Norris had taken his students for a picnic in the park.³

³ Devine testified that picnics were routine at that time, and there had been a bomb threat and evacuation on the morning involved. He testified he told Hommer he and Norris were taking the students off-campus to have a picnic and hand out certificates, and that Hommer did not tell them not to go. Devine and other instructors were reprimanded for an off-campus picnic the next year.

Financial Aid Records -

In July and September 1996, Hommer learned of accusations that Norris failed to provide proper documentation to the financial aid office. Hommer received a memo from the student services department expressing concerns about Norris' lack of responsibility in dealing with financial aid matters, which had caused delay in some students getting financial aid. Hommer had never had this problem with any other instructors, and he began to have concerns about Norris. He decided to document further instances.

No Substitute in Classroom -

On an unspecified date, Norris telephoned Devine to report he had just taken his child to the hospital, that he couldn't get ahold of his partner, and that Hommer's office had not opened for the day.

Union Activity and Repercussions

Prior to the summer of 1996, the legislature had allocated funds which were labeled "equity money" or "transition funds" at RTC.⁴ There was discussion at RTC about using the money to equalize salaries between technical college faculty and their counterparts in the community colleges.

The employer and union had bargained the creation of a Joint Workload Committee which operated in the period relevant to this case. The union proposed reducing student contact time from six

⁴ Chapter 238, Laws of 1991, transferred five institutions, each of which had formerly been a "vocational-technical institute" operated by a common school district organized under Title 28A RCW, to an expanded state system of community and technical colleges operated under Title 28B RCW. The community colleges historically operated under Chapter 28B.50 RCW had apparently been receiving more money per student than the vocational-technical institutes.

hours per day to five hours per day. After several meetings, it was acknowledged that the "equity" and "transition" funds available would only buy .25 hour reduction of student contact time. The teachers were given 13 extra days per year, as well as some extra aide time to help with paperwork.

Discussion at Union Meeting -

The union held an all-members meeting in July 1996, at which there was discussion about using the "equity monies" for salary enhancements. Norris believed that discussion was based on extremely limited information that had been filtered through the college administration. Norris volunteered to contact a personal friend who was a member of the legislature at that time, the Hon. Grant Pelesky, Representative from the 25th Legislative District.

George Lake objected to Norris' intervention, and advised Norris not to be involved with finding information about the equity money. Lake couched his advice in terms that Norris was an untenured faculty member, and would put himself "at hazard" by pursuing contact with the state legislator. Lake told Norris he believed "that it would potentially be damaging to Norris if his call somehow got back to the college." Lake also testified:

There's a feeling among campus instructors that union activity increases the potential for observations and perception during those observations. Many people in the union feel that union activities have generated impacts back into the classroom evaluation. The two are not kept separate.

Lake testified that the union executive board believed "something different" was going on in negotiations, and that there were moneys available in a different process than the union had seen before.

Jack Devine, who was a union official representing the trade and industries section of RTC at that time, also thought that, in general, circumventing normal channels was not a wise thing to do.

Contact by Norris with Legislator -

Norris spoke with Representative Peleski shortly after the union meeting. Norris asked Peleski to find the enabling language involved in the disbursement of the "equity monies" and asked if there was any direction on how those funds were to be used. In fact, the legislature prohibited the use of the equity or transition funds for salaries in Fiscal Year 1996.

Reactions to Inquiry from Legislator -

The president of RTC, Robert Roberts, called RTC Vice-President for Finance Charles DeMoss into his office during the first week of August 1996. Roberts stated that he had been contacted by Scott Morgan, the financial director for the State Board for Community and Technical Colleges, and that Morgan had reported receiving an inquiry from a state legislator about the use of certain funds for salary increases. The legislator had indicated that his inquiry was based on an inquiry from a constituent. Morgan asked if RTC had salary money, and the focus turned to equity/transition funds after some discussion. DeMoss was the employer's chief negotiator in collective bargaining with the union, and Roberts asked DeMoss to look into the matter.

DeMoss had a conversation with Morgan, wherein DeMoss explained how the Joint Workload Committee was planning to use the transitions funds. Morgan approved the approach described by DeMoss, but voiced a concern that a legislator had been told that RTC and the union were bargaining salary increases, and that use of the money for salary increases might offend some legislators.

DeMoss then contacted Lake, who was serving as acting president of the union while the union's president and chief negotiator were away for the summer.⁵ De Moss told Lake that a legislator had spoken with someone at the state board. DeMoss and Lake discussed the possibility of a legislator blocking what the Joint Workload Committee was trying to accomplish. DeMoss told Lake the employer did not care what the union was inquiring about, but that both parties would have to live with whatever answer came back, and that the result could cause the employer to pull back its proposal.

Lake contacted Norris, and told Norris, "[It] doesn't do any good for a tenure probationer to be initiating things like that." Lake felt that there was nothing positive that could come from an exchange of information between a legislator, state higher education officials, and the president of RTC.

On August 17, 1996, Norris received a telephone call from Lake, who reported having just received a telephone call from an RTC vice president, Jon Pozega. In turn, Pozega had advised Lake that Roberts had received a telephone call from the auditor for the State Board for Community and Technical Colleges. The auditor was reported to have said that Norris was accusing Roberts of some wrongdoing regarding the equity money. Lake stated that he was "under fire" and "in danger" from the administration himself, regarding an alleged illegal distribution of unlicensed software.⁶ Lake went on to convey a "stay away from this matter" warning to Norris, and further cautioned "don't be surprised if things hit the fan" when Norris returned to RTC.

⁵ DeMoss did not know that Lake was on Norris' tenure committee.

⁶ In August 1996, Koppang accused Lake of illegally distributing unlicensed software.

At a meeting attended by the RTC president, vice presidents, and other administrators and deans late in 1996, Roberts reported that Hommer had heard that someone had made inquiries in Olympia about the equity monies. Roberts indicated that inquiry might jeopardize the distribution of the money. Greco attended that meeting; he was also aware of the grievance concerning Norris' salary.

Dave Jordan, who was president of the union in 1996, testified that Roberts had told him the union leadership had to be ready to take responsibility for the loss of the equity money because of the questions that Norris had asked at the state level. Roberts was characterized as being upset when he talked with Jordan about Norris's contacts with Representative Pelesky. Roberts was quoted as asking whether Norris was prepared to go back to the faculty and "take the heat" for having compromised the equity money as a result of his inquiries. Roberts is also quoted as having stated that employees in the tenure review process should not be active in the union. Jordan also related a conversation he had with Roberts shortly after Norris filed his salary grievances, wherein Roberts told Jordan that anyone in the tenure review process was not teacher material if they would go so far as to file a grievance while they were not yet tenured, since it demonstrates a lack of cooperation and faith.⁷

Hommer's Counseling of Norris -

On September 17, 1996, Norris attended an hour-long, school-wide faculty meeting, followed by an additional one hour department meeting. At the end of the second meeting, Hommer asked Norris to report to his office. At the end of a brief meeting in Hommer's office, Hommer handed Norris papers that purported to document

⁷ The statements attributed to Roberts stand uncontroverted, inasmuch as Roberts was not called as a witness in this proceeding.

violations of college procedures by Norris during the previous academic year. Specifically referenced were:

- A conversation in June 1996, when Norris was told he had behaved inappropriately by leaving his class uncovered for one hour while he took care of family business;
- Four absences for which Norris had not filed timely absence reports, including one when no substitute covered his class, and that not all of Norris' hours were accounted for yet;⁸
- Norris leaving his class uncovered when he went to the emissions class;⁹
- Delays in returning students' financial aid forms;¹⁰
- The unauthorized off-campus picnic;¹¹ and

⁸ Norris claimed he was not aware of the absence report procedure until late in the year, and he agreed to take care of the missing absence reports. Hommer acknowledged Norris had turned in some absence reports late, and that staff members had to be reminded periodically about the procedures for submitting absence reports.

⁹ Norris explained that another instructor who had agreed to cover his class during the emission training had backed out at the last minute, and that he arranged another substitute on his own. Hommer discounted that explanation, noting that coverage for a week-long class should have gone through his office and that the substitute named by Norris was, in fact, attending the emissions class himself.

¹⁰ Norris claimed the forms are sent out blank, which caused delays. Hommer later learned the original form is completely filled out and put in the teacher's box. If that form is not returned, a blank form is given to the student for the instructor to complete and return.

¹¹ Norris expressed that he thought he could have the picnic, but not play ball because of the possibility of injury.

- Improper use of RTC vehicles.¹²

Hommer emphasized his concerns about Norris' disregard for procedures. Hommer also criticized the number of co-op visits that Norris was making and, although he admitted there were no written procedures regarding the number of visits, he told Norris that he expected that each dealership be visited two times per session.

Hommer did not recall any discussion of the equity money at that meeting, but Norris testified that Hommer asked whether Norris had been in contact with anyone in the legislature regarding the equity money. Norris also quotes Hommer as having expressed that Norris had an unspecified "major problem" of some sort. While Hommer claimed to be indicating that there would be problems if the already-specified problems should continue, Norris testified that he asked whether the major problem was related to his inquiry to the legislator, and that Hommer responded by saying he was not allowed to comment. Norris thus believed the reference was to his inquiry about the equity monies.

Norris immediately brought the issue of deficiencies to the attention of his union representative, Devine.

Devine had been aware of the situation when Norris took the RTC car home after finding the parking lot locked, and he pursued at least that matter. On September 16, 1996, Hommer verified that the key held by Norris did not open the lock to the area where the cars were kept.

¹² Norris acknowledged his error with regard to the use of RTC vehicles, but explained that he had brought the RTC car back to the parking lot the first night after a gate was closed, and found that his keys would not unlock the parking lot gate. Because his personal car was locked inside the gate, he decided to take the school car home.

After the September meeting, Norris never missed filing an absence slip in a timely manner, was current with all financial aid forms, and never had a problem with the use of a RTC car.

Students complained to Devine that Norris was being removed from the classroom by Hommer on several occasions right in the middle of a presentation and it was creating a problem within the classroom.

Norris Files Grievances -

In October 1996, Norris filed two grievances with Hommer: One sought salary placement credit for another year of experience; the other sought credit for his military service. Hommer was responsible for making the step one response in the grievance procedure, and he denied both grievances on November 6, 1996, characterizing them as untimely. An arbitration hearing on the two grievances filed by Norris was held in March 1997, and the arbitrator ruled in favor of Norris on both grievances.¹³

Second Year Tenure Review -

Norris' tenure review committee met in September 1996, to begin its observations of Norris' second year of teaching. Hommer contacted Lake with his concerns about Norris, but Lake thought the concerns related to policies, procedures, and other administrative functions of the college were strictly between Hommer and Norris. As such,

¹³ The actual issues in dispute at the arbitration hearing turned out to be different from those identified in the original written grievances. By the time of the hearing, RTC had abandoned its claim that the grievances were untimely, and had conceded that Norris was entitled to credit for his military service. RTC had reevaluated the experience credit initially given to Norris, and argued that it had granted him one year too much credit. The arbitrator ruled that Norris had not been granted enough credit for his work experience, but limited the back pay to begin from 14 days prior to the filing of the grievance and denied interest on the back pay.

Lake believed them to be outside the province of the tenure committee, but he decided to hold a meeting of the committee without Norris present.

Hommer brought five alleged deficiencies in Norris' performance to the attention of the tenure review committee in September 1996. The committee was not concerned at that time about the absence reports, the vehicle use issue, or the industrial safety and hygiene test. The tenure review committee did send a letter to Norris on September 23, 1996, addressing concerns that the committee saw as impacting the "educational environment" in his classroom. Two specific areas were cited: Absences without arranging for a substitute; and delay in students getting financial aid because paperwork is not completed. The committee members continued to offer their experience and understanding, and invited Norris to call on them for advice. Norris did not pursue the latter invitation.

The tenure committee scheduled a meeting with Norris for a day when Norris had scheduled a visit to a dealership. On the way back to RTC from the dealership, Norris was delayed by the breakdown of a ferry. Norris used his personal cellular telephone to call Lake. Because Norris could not get back to the RTC campus in time for the tenure committee meeting, the meeting was canceled.

The tenure committee held a meeting with Norris on October 18, 1996. Norris reported that he had been successful in getting scholarships for nine students, with two more pending, and that he had recruited high school students for a program visit in November. Hommer brought up problems he thought Norris was having, and Norris responded that the administration was not supportive of his needs. Among other examples, Norris complained that he was not getting credit toward his teaching certificate for certain classes

he had taken through Southern Illinois University. Both Hommer and Norris made sarcastic remarks. Lake indicated that the meeting had been expected to be controversial, and that it had turned even "uglier" than he expected.

1996-1997 Evaluation -

Hommer did an observation of Norris on November 2, 1996, and he gave a report on that observation to Norris on December 11, 1996. Hommer gave Norris another satisfactory rating for his overall performance,¹⁴ but suggested a need for Norris to improve in accepting responsibility, professionalism, and familiarization with college procedures. Norris refused to sign the observation report because he did not agree with its content, notwithstanding a requirement that observations be signed to acknowledge receipt.

January 1997 Tenure Review -

Lake scheduled a meeting of Norris tenure review committee for January 10, 1997, but did not invite Norris. Lake wanted the committee to discuss Norris' inability to accept responsibility for his actions. At the meeting, Hommer stated he was not aware of any other instructor that continuously disregarded procedures. While Lake had earlier thought the criticisms brought forth by Hommer were not relevant to the committee, he decided that the frequency of those issues was creating an environment that was difficult to ignore when considering whether to recommend tenure. Their overall concern was lack of collegiality. The committee voted to discontinue the tenure process for Norris, but sent a letter offering Norris an opportunity to respond to their concerns. The letter, written by George Lake and in evidence as Exhibit 8-122 , stated:

¹⁴ A positive performance evaluation of Norris issued in July 1996, had included, "Scott seems to be comfortable and doing a good job. It was nice to see him adjusting well."

It is my duty as chair of your tenure committee to inform you that we are unanimously concerned about the many reports of what we consider unprofessional behavior on your part. These concerns are centered in three areas:

- A seeming disregard of Renton Technical College policies.
 - Absence reports filed very late, and only after repeated requests
 - Financial Aid reports not filed, causing difficulty for students
 - Leaving students unattended to attend an emissions class
 - Keeping school vehicles overnight, notwithstanding the fact that the college was on your way home.
 - Unauthorized off campus picnic activities with students, after having been informed that such activities are not approved.
 - Performing work on personal vehicle without a work order
 - Coming in late to work without telling your immediate superior, but taking the time to arrange a substitute
- Unwillingness to assume personal responsibility for events, or difficulties, or your own actions:
 - Providing a test to students and when preset answers are shown to be incorrect, blaming others, when in reality the responsibility lies with you.
 - Blaming your Associate Dean for having to adhere to the break schedule even when that schedule was presented to all instructors at the same meeting
 - Your seemingly great concern about someone entering your area to use the restroom
 - Your response during the last meeting, "I salute smartly and press on. . . ." seemingly indicating that college

policies are of little consequence to you

- During the period of time when you were to attend new faculty meetings you missed three of the six, and only informed the responsible person once that you were going to miss a meeting.
- The fact that you were only scheduling one dealer visit per day, even when the dealer was close to the college;
- Scheduling meetings and visits and then canceling without notice. Examples: the scheduled tenure committee meeting to the Issaquah facility with Erhard Volcke and then canceling the day of the meeting; and scheduling a visit to a Poulsbo dealer on the day of a tenure committee meeting.
- Your distribution during the in-service meetings of December 20, 1996 of the material presented in "Change" magazine - speaking to the effect of many educational institutions construing teaching almost entirely in terms of lecturing.
- Your vocal and critical comments are considered by this committee to be unprofessional.
- Your misrepresentation of statements made by others. causing you to appear blameless in the incident
 - Your concern expressed to this committee about the college accepting your Southern Illinois University degree credits for a certificate when in fact you had been informed that the only remaining items for a five year certificate were your Industrial Safety and Hygiene and two years of teaching experience
 - Your statement that both Dr. Goldstein and Mr. Greco had informed you that you would be paid for attending the new faculty orientation in Lynnwood when in fact they had not.

Scott, any one of these incidents by themselves would not generate this letter. It is the continued series of events, without assuming willingness on your part to assume responsibility for your actions, that have caused your tenure committee to advise you that we considering not extending your tenure period beyond the 1996 - 1997 academic year.

We must inform you of three important points regarding this action:

1. You have the right to provide your viewpoints on any or all of the above items, in writing, to this committee before our scheduled meeting on January 21, at 1:30 P.M. in room J108. Any written material you provide will be given the most careful consideration at that meeting and our final vote on tenure will occur immediately after our consideration. We will not require your attendance during our additional consideration.
2. The actions of this committee are bound in secrecy. We each, on entering this obligation, signed a letter of confidentiality. We are bound by that letter not to discuss our deliberations, or actions with any outside party which will include other instructors as well as any part of administration.
3. The tenure function is a mandated, by RCW, faculty controlled function. It is not part of the contract between Renton Technical College and the Renton Federation of Teachers. We as a committee have not been pressured by any outside source to any action. This action is not taken lightly, nor without a great deal of deliberation on the committee's part.

Several staff and students wrote letters of support for Norris. Devine collected them and presented them to Lake on the day before the next meeting of Norris' tenure committee. The committee was

also presented with Norris' written response to their letter. It is in evidence as Exhibit 8-119 and stated:

This letter is in response to the meeting and the letter provided to me by Mr. George Lake on 16 Jan. I would hope that this letter might serve to clarify some of the issues raised by the letter.

Clearly and by my own admission I have made mistakes particularly early on. I would like to respond to those highlighted in the letter by item and area as represented in your letter.

1. School policies:

During my first year I did not turn in my absence report in a timely manner nor did I keep the record of those absences with the accuracy that I should have. I am very aware of this and since that date have turned in a report the day of or the day after on every occasion.

While financial aid forms were not filed on time on one occasion this was brought about first by being in Dearborn Mich. for training on the day the reports went to my mail box and I returned the day they were due. Due to the printing error the students names were not on the grade request form. I requested that day that I either get new forms or they tell me who the grade reports were needed for, and that information was not given to me that day. The following day I was on a Co-op visit until around 11:00 p.m. On my return I found out that 2 students had been informed by financial aid that their checks were to be picked up and they drove to the school that morning to pick them up. Financial aid had John Mundy provide a copy of my grade book page and released the check that day. While this did cause the students some delay that day the checks were received that day. That afternoon I took the grade slips and showed them to financial aid in response to their request to verify that no names were

printed on the slips. While I regret the delay caused my students I also believe in this case the circumstances were not working in my favor. I have exercised great diligence since this occurrence regarding this matter.

I was mistaken and regret the problem caused by my attempt to get the emissions class and the confusion that ensued. My need for this course and the arrangements made by me were poor and not properly communicated. I still hope to receive this training in the near future as the benefits of this course to my students is great. I will ensure that proper arrangements are made when that opportunity arrives.

I did take a school vehicle home during a training session my class was attending at the Issaquah training center. However my home is south in Puyallup and Issaquah is north of the school. This course also served as my qualification to teach that course in the future, so additional hours were spent with the instructor so that I was familiar with the lab set ups. On the trip in question I returned to the school very late and found the gates to the automotive complex locked with my car behind the gate. Karl Hommer personally tested my keys in the gate and confirmed that my keys will not open the door. Karl suggested that I find a janitor to open the door but I had no way of knowing what building the janitor was in and honestly it didn't occur to me to find a janitor to let me in as it was already evening.

I have not held a picnic since that event. I admit that I did go to the picnic after talking to Karl Hommer and it was a mistake. I was furnishing the grill and the students were already at the park with the food purchased when this occurred. I have avoided putting myself in this situation since this regrettable mistake.

On the day that I was late to work but had arraigned for John Munch to sub I was at

the Emergency Room with my child starting around 4:00 AM until around 8:00. I was able to reach John as he left for work to take care of my class from the lobby pay phone and then was called to enter the doctors area. When I left the ER I checked my daughter out and went directly to the baby-sitter and dropped her off en route to work. I arrived at work shortly prior to 9:00 and went to Karl's Office enroute to my class and filled out the absence slip. Karl was not in his office at the time. Karl has requested and will in the future try to leave a voice mail at his office if I am not present and needing a sub.

Assuming responsibility:

The test instruments used in my program are not my own and are provided by Ford Motor Co. Some of the test provided by Ford contain errors. If a student finds a question to be in error and can show me a Ford published reference I will give credit for the other answer. I note these errors in the Master copy so that I am aware of them the next time I use the test. In many cases the test is written to the Ford provided textbook but as car models change from year to year the shop references supersede the reference in the textbook, and at times the answer is different from model to model. Allowing students to use shop references encourages them to be critical of what they read since even the shop manual is in error on many occasions. Students also learn a lot by looking for the (new) answer if it can be found, and some work hard at it. This method of proofing textbook test against shop references is identical to that employed by Ford instructors in the training I receive. I will be more tactful with my class about the source of the test and will continue to warn students of errors that I am aware of.

When I started at the school I was on lecture days giving a 10 minute break at the end of the first hour to allow people to refresh and wake up, then taking a 10 minute break around 9:00 per the schedule.

I found that I was in error and have since given breaks and lunch at the scheduled time only. This has caused many student to request the old break schedule and I have asked that If they desire to change it they need to take it to Karl Hommer since I cannot change that policy.

I am concerned about people entering my classroom during lecture. During lab period it is little problem. The door to my area is noisy and any person wishing to use the bathroom in my shop must cross the shop over a concrete floor then cross the back of our classroom. This usually causes me to loose the attention of the majority of my class during that time and interrupts the lecture. There are 4 other shops with heated bathrooms that can be used without crossing into a classroom. I do appreciate that Alice has refrained from using our bathroom when lecture is occurring.

I wish that my schedule would have permitted me to attend all of the new faculty meetings since they were a valuable tool. I did not call on all three occasions since my conversation with Norma Goldstein on the first occasion was, "Norma, I will not be able to attend the meetings that happen when I am not in Co-op because my class starts at 7:00". Norma replied that she understood that I would not be there during those times. I regret I did not make sure that I understood that Norma still wanted me to call with regrets on each occasion.

I canceled the meeting with Erhard Volcke the day of the meeting because when I called to confirm that someone would be at the training center. It was closed. The center keeps irregular hours and can be unpredictable when they do not have training in session. I apologize to Erhard for not articulating the reason why they were closed. The visit to Poulsbo on the day of the committee meeting was a mistake and I should have known that I could not have made that schedule work. One of the struggles I have had during the first year in particular is accurately predicting the

traffics [sic] effect on my travels around the sound area.

During my last Co-op I attempted to limit my schedule to one dealer visit per day to allow me time to establish a relationship with the service managers and lead techs that my students work with. Keeping these people interested in sponsoring and training our students is a must. Since I am new to this area I also made informal visits to High schools during their school day to see if I could meet the automotive instructor since they are our greatest source of students. and I made informal stops at dealers not currently sponsoring students to try to increase the number of sponsors available to our program. I very strongly believe that being able to put a face to my name with these people is important. All of the automotive instructors in the state have received personal letters from me, and I considered the visits a follow up to that letter. My desire to get as many classes as possible done with Ford has caused my Co-op schedules to become very compressed. but the payoff is that after this 2 year round of teaching my schedule should relax to 1 or two weeks of training per Co-op session allowing a more structured visit schedule.

My distribution of the article at the in service meeting was an attempt at humor and was in bad taste. It was inappropriate and I apologize to the committee and anyone who may have been offended by this. Also my statement about saluting smartly and press is a common expression in the Air Force and is meant to say "I know my orders, I will carry them out immediately and without dispute". I have never understood this expression to mean any other thing. I am very sorry that it came across as meaning anything else.

Statements by others.

I was aware that I needed industrial hygiene and safety for my certificate but I was very concerned that when I met with Paul Greco I thought he told me that he

would also not be allowing me credit for a part of my SIU degree towards the block requirements for the certificate. I corrected the Industrial Hygiene and Safety as quickly as possible and asked for the boards help regarding my degree. I regret any misunderstanding I may have had regarding my conversation with Paul Greco in his office regarding this matter, and I regret that my misunderstanding caused the board to attempt to correct a problem that apparently resulted from me misunderstanding my conversation with Mr. Greco.

Conclusion:

I have learned a great deal over the short period of time I have worked with you. I deeply regret that I have caused the current situation to occur. I do believe that I have the capacity to learn from my mistakes and believe that I have corrected the highlighted problems. I ask that I be afforded the opportunity to prove myself during the third year of probation. I can assure you that if I am failing to meet your standards at that time no action should be required by the board as I will remove myself from this position before such action is necessary.

In asking Lake how had everything changed so dramatically, Devine implied that Norris had been a golden boy during his first year of teaching and that something must have happened over the summer. Lake responded that the issues before the tenure committee were confidential. Devine advanced that Norris had been complying with the directives that had been given by his fellow instructors, as well as by the administration, and that nothing was identified as being out of the ordinary. Lake reiterated the confidentiality constraint of the tenure committee rules, and declined to reveal the tenure committee's criteria. Devine testified that Lake stated, "This is a done deal," and that the decision had come from above him. Devine was shocked at what he thought was an invasion of the tenure process.

Norris met with his tenure committee later in January 1997. Lake believed this to be a faculty function, and did not invite Hommer to attend because he was an administrator. Norris did not come across to the committee as sincere in his responses to the areas of concern. While Lake had never told the tenure committee about the contact by Norris with a legislator, Norris brought that subject up at this meeting. Lake believed that Norris was looking for issues outside of the events that caused his difficulties. When Norris brought up his successful salary placement grievances, the tenure committee responded that it was not their business, and was an issue between Norris and the employer.

Lake did not believe explanations provided by Norris. He could not see how an employee would not know he needed to account for time off, and had never received a financial aid request without a name on it. Lake saw Norris as still failing to take responsibility.

Parker thought Norris was an habitual liar and the other faculty members on the committee agreed with that assessment. Parker thought it would not have taken much for Norris to change the committee's mind, but saw his letter as insincere and full of blaming and excuses. Parker had not been aware of the salary grievances until Norris brought them up, and did not consider them. He was shocked that Norris left the class unattended, and saw that as a safety concern. Parker believed that not filling in the financial aid forms equated with denying students food on their tables. He was surprised that Norris held the picnic after being told not to do so, and felt it showed an attitude that he did not have to follow procedures. Parker believed, however, that the issues concerning use of the RTC car, leaving campus, and the absence reports all needed to be dealt with by the administration. He believed the committee was a support mechanism for new instructors, and should concentrate on student issues.

The tenure committee did not discuss the contact by Norris with the legislator or the equity money.

After the meeting, Norris was advised that his tenure process was in great jeopardy.

Termination

At a meeting held on January 21, 1997, the committee voted not to continue Norris' tenure process. The vote was four-to-one, with all of the faculty members and the administrator voting with the majority.

In February 1997, Greco recommended to the board of trustees that Norris' tenure process not be continued. The recommendation cited that Norris was not progressing as a teacher, that Norris blamed the administration for his own misunderstandings, that Norris continually did not accept what Greco told him, that Norris did not follow policies, and that Norris did not meet performance expectations. Greco did not tell the board of trustees about either the salary grievances or the legislative inquiry.

The board of trustees had options of constituting a new tenure committee for Norris, non-renewing Norris' contract, or renewing that contract. At that juncture:

- Norris came before the board of trustees with his private attorney, who asked Roberts to leave the meeting because she believed he was prejudiced. Norris' attorney raised the issues of Norris' contact with the legislator and his filing of the salary grievances.
- The technical training area manager for Ford Motor Company spoke as a company representative. He was interested in

having the ASSET program continue, but did not take a position on the tenure issue.

- There was discussion with Hommer that it was unprofessional for Norris to have solicited letters from the students.
- Greco told the board that his recommendation would be to not renew, even if the tenure committee recommended otherwise, because he believed Norris acted unprofessionally and would not make a good instructor by his deficiency in getting certifications and his lack of visits to the Ford dealers.
- Roberts supported the recommendation of the tenure committee, and told the board that he had not exercised any influence on the tenure committee.

After private deliberation, the board came back in open session and unanimously voted not to continue Norris' probation. Don Jacobson, who was then the chairman of the RTC board,¹⁵ testified that the board had always concurred with the findings of tenure committees during the five years he had been a trustee, and that the Norris case was the first where a committee had recommended denial of tenure.¹⁶ Jacobson testified of his strong support for Norris' right to question his salary placement, and of Norris' right to make inquiry to a legislator about the equity money. He also supported the concept of peer review.

¹⁵ Jacobson had been a business agent for the Plasterers' Union for western Washington for 11 years.

¹⁶ Since September 1991, 42 instructors had been granted tenure through the tenure review process; 7 dropped out; 11 were still in the process. Four instructors filed grievances while on probation. The union filed a grievance on behalf of another probationary employee who feared retaliation. There is no claim or evidence of reprisals against any of those grievants.

On the day after the board took action to non-renew Norris' teaching contract, Devine and Jordan went to see Lake. Devine stated that he was not asking for information, but just wanted to make sure that everything alleged was true. Devine thought Lake was very upset. Lake again said the matter was confidential. Lake testified that he was frustrated that his colleagues were arguing an issue that was not germane to the reasons behind the decision, but he could not talk about the situation because of the confidentiality of the tenure committee process.

POSITIONS OF THE PARTIES

The union alleges that the employer discriminated against Scott Norris because of his participation in protected union activities. It cites his legislative contact(s) regarding the proper use of the "equity monies" at RTC and his pursuit of several grievances.

The employer contends that, even assuming Norris was engaged in protected union activities when he made his legislative inquiries, there is no evidence that the employer knew of his actions. Further, the employer argues that, even if some of its administrators eventually learned of Norris' protected activities, the board of trustees was not privy to that information, so that any such activities had no effect on the employer's nonrenewal decision. The employer maintains that Norris' contract was not renewed because serious deficiencies existed in his teaching.

DISCUSSION

By amendments to Chapter 28B.52 RCW (Collective Bargaining - Academic Personnel in Community Colleges) enacted in 1987, the

legislature granted the Public Employment Relations Commission jurisdiction to resolve unfair labor practice complaints filed by academic employees of what is now the state system of community and technical colleges. Employer discrimination against the exercise of collective bargaining rights by such employees is prohibited, as follows:

RCW 28B.52.070 DISCRIMINATION PROHIBITED. Boards of trustees of community college districts or any administrative officer thereof shall not discriminate against academic employees or applicants for such positions because of their membership or nonmembership in employee organizations or their exercise of other rights under this chapter. . . .

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

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

. . .

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

Under the authority conferred upon it by RCW 28B.52.080, the Commission has adopted Chapter 391-45 WAC to regulate the processing of unfair labor practice cases.

The Test for Discrimination

In deciding discrimination allegations, the Commission applies the "substantial motivating factor" test set forth by the Supreme Court of the State of Washington in *Wilmot v Kaiser Aluminum*, 118 Wa.2d 46 (1991) and *Allison v Seattle Housing Authority*, 118 Wn.2d 79 (1991). Thus:

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

That is the analytical method applied by the Examiner to the claim on behalf of Scott Norris against Renton Technical College.

The Prima Facie Case

The Examiner concludes that the union has adduced sufficient evidence to make out a prima facie case that the employer's actions in regard to Norris constituted unlawful discrimination.

Union Activity and Visibility -

A finding of employer intent is necessary to find a discrimination violation. See *Clover Park School District*, Decision 7073 (EDUC,

2000). The evidence in this case establishes that the employer had the knowledge necessary to form such an intent.

The legislative contacts were protected activity under the facts of this case. The Examiner is not persuaded by the employer's argument that Norris' inquiries to Representative Pelesky as an "American citizen" rather than acting on behalf of the union in a capacity that would render his actions protected under the statute. Citing *City of Seattle*, Decision 6326 (PECB, 1998), the employer claims that Norris' "minimal and vague action" was insufficient to be protected under the statute because he "never held union office, never served in any official capacity such as shop steward, and never participated in any collective bargaining on behalf of the union."¹⁷ The Examiner instead agrees with the argument set forth by the union, that protected conduct includes "actions and activities undertaken by academic employees . . . to assist employee organizations." *Pierce College*, Decision 3456 (PECB, 1990). Even though Norris was not acting in any official union capacity, his actions were an effort to "assist" the union in collective bargaining.¹⁸ Even if the employer was not privy to the union meeting where Norris first spoke of contacting a legislator about the funds being discussed as a source of salary increases,

¹⁷ See also *Mansfield School District*, Decision 5238-A (EDUC, 1996), where the Commission found activities other than current union leadership can be protected. One of the employees involved there was president-elect of the union at the time of the adverse action, but the union activity of the other complainant (as local union president, as union chief negotiator, as union witness, and as grievant) was in the past.

¹⁸ See also *City of Federal Way*, Decision 5183-A (PECB, 1996), where an employee wrote a strong "vote union" letter to other employees, and testified against the employer at an unfair labor practice hearing.

the evidence supports a conclusion that the employer subsequently identified Norris as the employee whose contact with Representative Pelesky had triggered conversations between at least three RTC administrators and one or more officials of the State Board for Community and Technical Colleges.

Scott Norris was the grievant in cases concerning his salary placement. The filing and pursuit of any grievance through a contractual procedure is a clearly protected activity. *Valley General Hospital*, Decision 1195-A (PECB, 1981). In this case, the grievances were arbitrated, and the employer was obligated to pay back pay to Norris. The employer's officials involved in the nonrenewal knew or should have known of those protected union activities.

Deprivation of Ascertainable Right -

Norris was clearly deprived of both pay and benefits by the termination of his employment. Discharge is the classic form of discrimination outlawed by Chapter 28B.52 RCW when based upon union activity.

Causal Connection -

An employee may establish the requisite causal connection by showing that adverse action followed the employee's known exercise of a right protected by the collective bargaining statute, under circumstances from which one can reasonably infer a connection. This is because employers are not in the habit of announcing retaliatory motives, so circumstantial evidence of a causal connection can be relied upon. *Wilmot*, p. 70. See also *Port of Tacoma*, Decision 4626-A (PECB, 1995). In this case, the disputed employer actions concerning Norris closely followed his contact with a state legislator and the successful prosecution of his salary grievance.

A conclusion that President Roberts was upset with the inquiry by Norris is fully supported by this record. That inquiry came back to the RTC administration. The employer's claim that it did not view Norris' inquiries regarding the equity monies as connected to any union activity is also unconvincing, in light of the evidence that DeMoss intruded into the union's internal affairs when he contacted the acting union president, Lake, and inquired as to whether Norris was acting as the union's representative. The strict prohibition of employer involvement in union affairs set forth in RCW 28B.52.073(1)(b) provides basis for an inference adverse to the employer in this case. DeMoss was treading in an area where he had no business.

Resolution of the salary issue did not create an open season on Norris or any other union adherent. The Examiner is not persuaded by the employer's argument that, even if it somehow believed Norris was acting on behalf of the union when the tenure committee met in September 1996, the issue concerning the state funds was resolved by a memorandum of understanding between the employer and union and the money had been distributed. The Examiner finds cause for concern about the timing of events. When the inquiry by Norris to the legislator, the interactions between RTC officials and state higher education officials, the filing of the grievances and the heightened employer scrutiny of Norris' performance are all taken together, there is sufficient evidence to conclude there was a connection between Norris' protected activities and the employer's decision to not renew his contract. *Pierce College, supra.*¹⁹

¹⁹ See also *City of Winlock*, Decision 4784-A (PECB, 1995), where the timing of the adverse action and the employee's participation in union activity served as additional circumstantial evidence of a causal connection. The discharge of a union activist close to significant events in a representation case raised a suspicion of discrimination.

Roberts looked with disdain upon union activity, according to the uncontradicted testimony in this record. The comments attributed to him about probationary employees who would make a legislative contact and/or file a grievance support a conclusion that there was a causal connection in this case.

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

The Employer's Articulation of Reasons

The employer has the burden of producing relevant, admissible evidence of a legitimate, non-retaliatory motive for its decision not to renew Norris' contract. The failure to articulate lawful reasons, or the articulation of unlawful reasons, would be a basis for finding the employer guilty of an unfair labor practice. See *City of Winlock, supra*.

The employer cites Norris' lack of collegiality and deficiencies in his teaching performance, and it would lay responsibility for the non-renewal of Norris at the feet of his tenure committee. It first points to evidence that the tenure committee wrote to Norris on September 23, 1996, citing two areas of concern: (1) absence from the classroom without arranging for a substitute; and (2) delays of paperwork regarding student financial aid. It next points out that Norris did not respond to the invitation of the tenure committee for advice, and the tenure committee meeting that "turned ugly" on October 18, 1996. The employer then points to the actions of the tenure committee in January 1997, when it embraced a broader range of concerns regarding his performance. Finally, the employer points to the negative recommendation of the tenure committee after hearing the responses of Norris to the letter it sent following the meeting of January 10, 1997. While it acknowl-

edges that Norris brought up concerns about retaliation against his contact with the legislator and his grievances, the employer defends that the tenure committee told Norris that those actions were not of concern to the committee. While it does not dispute that Greco forwarded the tenure committee recommendation to the board of trustees, the employer defends that the board always concurred with the findings of tenure committees.

The Examiner is unable to state that any or all of the defenses asserted by the employer are unlawful. The tenure review committee process used at RTC is rooted in the statutes which create community and technical colleges, at Chapter 28B.50 RCW, and a majority of the committee members who voted against continuation of Norris' employment were necessarily members of (and even a leader of) the same union which is the complainant in this proceeding.²⁰ That tenure review process undoubtedly produced the recommendation which was forwarded to and considered by the board of trustees. The burden of proof remains on the union in this case.

Application of Burden of Proof

The union can prevail in this case notwithstanding the reasons articulated by the employer, if it can establish that one or more of the employer officials involved in the termination of Norris' employment unlawfully solicited or advanced the recommendation acted upon by the board of trustees. That burden can be sustained by showing that the reasons asserted by the employer are pretexts designed to conceal an unlawful motive and/or that Norris'

²⁰ As noted above, the complaint in this case was filed by the union against the employer. There is not now (and never has been) any claim by Norris of "breach of duty of fair representation" or other alleged wrongdoing by the union. There is no basis for the Examiner to express any opinion on the conduct of Lake.

protected union activities were nevertheless a substantial motivating factor behind the employer's actions.

Pretext

The 4 to 1 vote of the tenure committee to recommend against continuation of the tenure process for Norris does not entirely insulate the employer from scrutiny of what has transpired.

It is of great concern to the Examiner that many of the alleged transgressions by Norris that were relied upon by the employer in January 1997 occurred prior to the performance evaluation of Norris that the employer issued in July 1996. Because that evaluation was very favorable, it is difficult to discern why the same "new employee" foibles should have resurfaced again and again from the employer's member of the tenure review committee, Hommer, or from other employer officials. There is no evidence in the record of repetitive misconduct of the same type, or that Norris failed to correct his conduct once he was advised of his error.

Both the concerns that Hommer addressed to the tenure review committee in September 1996 and the specific concerns summarized by that committee in its letter of January 1997, included:

- A continuing disregard of RTC policies on a number of administrative matters, many of which the tenure committee sought to disregard when they were first raised by Hommer;
- A continuing unwillingness to assume personal responsibility for his own actions, many of which concern the administrative matters that the tenure committee sought to disregard when they were first raised by Hommer;
- Misrepresentations of statements by Greco in regard to the certification issue, which is an administrative matter; and

- Misrepresentations of statements made by Greco and another RTC official concerning being paid for attending orientation meetings, which is again an administrative matter.

The Examiner is not persuaded by the employer's claim that Norris' attitude and lack of collegiality were continuing problems even after he corrected behaviors as they were presented to him. Labels such as "team player" have been aligned with discriminatory intent in past cases of this type. See *Port of Tacoma, supra*. Again, the employer's reiteration of Norris' new employee foibles seems to have worn down the resolve of the tenure review committee.

Substantial Factor

The union argues that the record establishes union animus on the part of the employer, and the union can overcome a showing of a legitimate reason for an employer action by demonstrating, by a preponderance of the evidence, that union animus was a substantial motivating factor behind the non-renewal of Norris. *Grant County Hospital, supra*. Union animus may be inferred from a wide variety of behavior. In *Mansfield School District, supra*, the superintendent of schools exhibited strong anti-union sentiments through statements made to a union activist, as well as remarks made to his secretary and another bargaining unit member. A pattern of union animus was also indicated by the record in an earlier unfair labor practice proceeding involving that employer. In *City of Winlock*, Decision 4784-A (PECB, 1995), union animus was found partly because of the employer's vigorous opposition to a representation case, and in anti-union statements of employer representatives.

Greco not only forwarded the tenure committee recommendation to the board of trustees but also ramped-up the recommended action from a termination of tenure review to a non-renewal of Norris. Greco was clearly aware of the salary grievances.

Roberts not only supported the tenure committee recommendation before the RTC board, but recommended the termination of Norris' employment. The fact that Roberts took pains to tell the board that he had not exercised any influence on the tenure committee (i.e., that he had not done something that he was not supposed to do) provides basis for an inference that he was uncomfortable with the situation. In fact, a union witness gave testimony which clearly and credibly attributed anti-union sentiments to Roberts in the months preceding that meeting of the board of trustees. The employer neither discredited that testimony through cross-examination, nor impeached that testimony by other evidence, nor called Roberts as a witness to controvert that testimony. Accordingly, the Examiner accepts the of-record testimony indicating that Roberts stated: (1) that employees in the tenure review process should not be active in the union; and (2) anyone in the tenure review process was not teacher material if they would go so far as to file a grievance while they were not yet tenured, since it demonstrates a lack of cooperation and faith.

The Examiner rejects the employer's assertion that this case is comparable to *Seattle School District*, Decision 5237-B (PECB, 1996), *aff'd*, King County Superior Court, WPERR CD-869 (1997), where the Commission dismissed an unfair labor practice complaint because of a lack of union animus on the part of the employer. The *Seattle* case is distinguished from the case at hand by its absence of anti-union statements by employer officials. Similarly, the complainant in *Mukilteo School District*, Decision 5899-A (PECB, 1997), failed to prove that the employer expressed anti-union sentiments to him or anyone else, and the record in that case contained nothing to show the employer had a sentiment against unions or union activity.

The union argues that this case is comparable to *Educational Service District 114*, Decision 4361-A (PECB, 1994), where an Examiner concluded that actions showing employees that the employer was concerned by or upset about union activity were part of the basis for concluding union animus existed. In the case at hand, the evidence amply demonstrates that the RTC administration was concerned, and even upset, because of Norris' inquiries regarding the equity monies. Unrebutted testimony indicates that Roberts was upset when he talked with union leader Jordan about Norris' contacts with the legislator, and that Roberts said the union leadership would have to take responsibility for the loss of the equity money because of the questions that Norris had asked at the state level. In fact, Roberts specifically targeted Norris in asking Jordan whether Norris was prepared to go back to the faculty and "take the heat" for having compromised the equity money by his inquiries.

The evidence regarding the administrator's meeting held late in 1996 discredits any suggestion that Roberts' views were kept to himself. The attendees at that meeting included the vice-presidents and deans of RTC, including Hommer who was the administration insider in the Norris tenure review process. Roberts reported that Hommer had heard that someone had made inquiries in Olympia about the equity money, and stated that the inquiry might jeopardize the distribution of that money.

The timing of Robert's interest and the actions of the tenure committee certainly lend weight to an inference of anti-union motivation, as those actions were taken after Norris participated in union activities. RCW 28B.52.025 secures the right of technical college academic employees to participate in, as well as to refrain from, participation in discussions of concern to his or her union. An employer has an obligation to base its personnel decisions on

information that is not tainted by anti-union animus. Therefore, the timing of the employer's actions in relation to Norris' protected activities is sufficient to infer that Norris' participation in those activities was a substantial motivating factor in the employer's decision to terminate his employment.

Credibility of Witnesses -

Much of the Examiner's inference is based upon the credibility of the witnesses presented by both parties. As the Commission noted in *City of Pasco*, Decision 3307-A (PECB, 1990), citing *Asotin County Housing Authority*, Decision 2471-A (PECB, 1987):

We attach considerable weight to the factual findings and inferences therefrom made by our Examiners. They have had the opportunity to personally observe the demeanor of the witnesses. The inflection of the voice, the coloring of the face, and perhaps the sweating of the palms, are circumstances that we, as Commission members are prevented from perceiving through the opaque screen of a cold record. This deference, while not slavishly observed on every appeal, is even more appropriate of a "fact oriented" appeal . . .

This case requires resolution of sharp conflicts in testimony in order to render a decision. Credibility determinations are more than ordinarily difficult, because it does not appear that certain key witnesses on either side have been entirely candid or forthcoming in various aspects of their testimony. Accordingly, the Examiner may credit some, but not all, of the testimony given by a particular witness. *Bethel School District*, Decision 6731 (EDUC, 1999).

In deciding which version of events is more credible, appropriate weight has been given to the demeanor of the witnesses on the

stand. The testimony of each witness has been considered in conjunction with established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. In evaluating testimony, recognition has been given to a general tendency to testify about impressions or interpretations of what was said or done, rather than to give a verbatim account of what was seen or heard. Experience has shown that witnesses may express what they intended to say in clearer or more explicit language than they actually used in conversations, and this factor has also been included in the evaluation of testimony. Where any witness has testified in contradiction with the findings of fact set forth below, such testimony has been discredited either as conflicting with the testimony of credible witnesses or documentary evidence or as being in and of itself unworthy of belief. All testimony has been reviewed and carefully weighed in light of the entire record.

REMEDY

In addition to ordering the party which has committed an unfair labor practice to cease and desist from unlawful conduct, the customary remedies in discrimination cases include reinstating the employee(s) involved, making the employee(s) whole for lost wages and benefits, posting of notices to employees, and public reading of notice to inform the general public of the unlawful conduct. In this case, such an order requires an offer of reinstatement as a third-year probationer with a new tenure review committee.

FINDINGS OF FACT

1. Renton Technical College is a state institution of higher education and an employer under Chapter 28B.52 RCW.

2. The Renton Federation of Teachers, Local 3914, WFT/AFT/AFL-CIO (union), an employee organization within the meaning of RCW 28B.52.020(1), is the exclusive bargaining representative of a bargaining unit of full-time and part-time academic employees of Renton Technical College.
3. Scott Norris was hired by the employer in September 1995, as an instructor in the ASSET program at the college. He was placed in probationary status, and a tenure review committee was established under Chapter 28B.50 RCW and local practice.
4. During the 1995-1996 academic year, employer officials counseled Norris on several matters, including leaving his class unattended, failing to provide timely processing of financial aid forms for students, failure to provide timely leave slips for all periods of absence, taking an employer-owned vehicle home without permission, failure to attend new faculty orientation sessions, and taking students off-campus for a picnic. As to the alleged failure to submit leave slips, Norris provided leave slips for some, but not all, of his absences. As to the alleged violation of the employer's policy on vehicle use, Norris explained and the employer later confirmed that the keys issued to Norris did not operate the lock which had to be opened to return the employer-owned vehicle and retrieve his personally-owned vehicle.
5. Notwithstanding the matters described in Finding of Fact 4, the employer issued a favorable performance evaluation concerning Norris for the 1995-1996 academic year.
6. During the summer of 1996, the employer and union were engaged in collective bargaining negotiations. One of the issues under discussion in those negotiations concerned the distribu-

tion of certain funds provided to the employer by the State of Washington.

7. During a union meeting held in July 1996, Norris announced his intention to contact a state legislator for information about the funds then being negotiated by the employer and union. One or more union officials expressed caution about a probationary employee making a controversial inquiry.
8. Following the union meeting described in Finding of Fact 7, Norris made contact with the Hon. Grant Pelesky, who was then a member of the Washington State House of Representatives, and inquired about the proper uses of the funds then being negotiated by the employer and union.
9. Shortly after the contact described in Finding of Fact 8, the president of RTC, Robert Roberts, received a telephone call from an official of the State Board for Community and Technical Colleges. The state official indicated to Roberts that a member of the Washington State Legislature had inquired about misuse of the funds allocated by the legislature at RTC.
10. Shortly after the conversation described in Finding of Fact 9, Roberts directed Chuck DeMoss, a vice president of RTC that was the employer's chief negotiator, to make contact with the union about the inquiries described in Finding of Fact 8 and Finding of Fact 9.
11. During the initial portion of the 1996-1997 academic year, the union filed and pursued two grievances concerning the placement of Norris on the salary schedule. The employer initially denied those grievances as untimely, but later altered its position to deny the grievances on a substantive basis

different than it initially asserted. The remaining issues were processed to arbitration under the collective bargaining agreement between the employer and union, and an arbitrator sustained those grievances. The employer was ordered to pay back pay to Norris.

12. Uncontroverted evidence in this record establishes that Roberts was upset by the contact made with a member of the state legislature and the resulting inquiry from an official of the State Board for Community and Technical Colleges; that Roberts made a statement to a union official, to the effect that employees in the tenure review process should not be active in the union; and that Roberts made a statement to a union official, to the effect that anyone in the tenure review process was not teacher material if they would go so far as to file a grievance while they were not yet tenured, since it demonstrates a lack of cooperation and faith.
13. The evidence of record establishes that, by September 1996, employer officials had identified Norris as the employee who made the contact with the Hon. Grant Pelesky. Employer official DeMoss made inquiry to union officials about whether the contact made by Norris with Representative Pelesky had been authorized by the union.
14. The tenure review committee established to review the teaching performance of Norris met in September 1996. At that time, the employer representative on that committee sought to have the committee consider the matters described in Finding of Fact 4. The committee considered the allegations concerning leaving classes unattended and concerning delayed processing of financial aid paperwork, as it regarded those matters as educational issues with its jurisdiction. The committee

declined to consider the other matters, which it regarded as administrative.

15. The tenure review committee established to review the teaching performance of Norris met in January 1997. It is inferred that the employer representative on that committee continued to seek committee consideration of all of the matters described in Finding of Fact 4, and the committee sent a letter to Norris in January 1997 regarding all of those matters.
16. When questioned by a union official concerning the change of employer attitude toward Norris since the issuance of the evaluation of Norris for the 1995-1996 academic year, the chairperson of the tenure review committee made statements to the effect that a negative committee recommendation was a done deal, and that the decision came from above him.
17. In January 1997, the tenure review committee recommended, by a vote of four-to-one with the administrative representative and the committee member referred to in Finding of Fact 16 both voting with the majority, that the tenure review process concerning Norris be terminated.
18. Roberts and other employer officials forwarded the recommendation described in Finding of Fact 17 to the board of trustees, coupled with a recommendation that Norris' contract not be renewed for the 1997-98 academic year.
19. Although it had authority to reject the recommendation of the tenure review committee and had authority to require that a new tenure review committee be formed for Norris, the board of trustees accepted the recommendation described in Finding of Fact 18.

20. By the action described in Finding of Fact 19, the employer terminated the employment of Scott Norris at the end of the 1996-1997 academic year.
21. The activities of Scott Norris described in Finding of Fact 8 and Finding of Fact 11 were a substantial motivating factor in the actions and decisions of employer officials to co-opt the tenure review process and obtain the discharge of Norris.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 28B.52 RCW and Chapter 391-45 WAC.
2. The activities of Scott Norris described in Finding of Fact 8 and Finding of Fact 11 were protected union activities under RCW 28B.52.025.
3. By terminating the employment of Scott Norris in reprisal for his protected union activities, Renton Technical College has committed, and is committing, unfair labor practices in violation of RCW 28B.52.073(1)(c) and (a).

ORDER

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

1. CEASE AND DESIST from:
 - a. Discriminating against academic employees in regard to hire, tenure of employment or any term or condition of

employment, in reprisal for their pursuit of inquiries to members of the state legislature concerning mandatory subjects of collective bargaining, filing and pursuit of grievances, and any other lawful union activities protected by Chapter 28B.52 RCW.

- b. In any other manner, interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 28B.52 RCW:

- a. Offer Scott Norris immediate and full reinstatement to his position as a third-year probationary employee subject to tenure review with a newly-constituted tenure review committee, or a substantially equivalent position, and make him whole by payment of back pay and benefits in the amounts he would have earned or received from the date of the unlawful discharge to the effective date of the unconditional offer of reinstatement made pursuant to this order. Such back pay shall be computed, with interest, in accordance with WAC 391-45-410.
- b. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked Appendix. Such notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

- c. Read the notice attached to this order into the record at a regular public meeting of the board of trustees of Renton Technical College, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.
- d. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.
- e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice attached to this order.

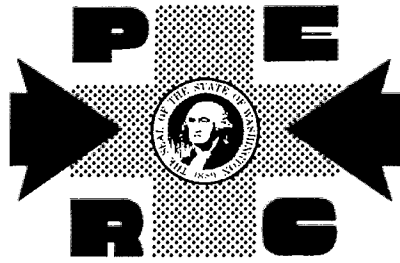
DATED at Olympia, Washington, this 7th day of June, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



PAUL T. SCHWENDIMAN, 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 discriminate against academic employees in regard to hire, tenure of employment, or any term or condition of employment, in reprisal for their pursuit of inquiries to members of the state legislature concerning mandatory subjects of collective bargaining, filing and pursuit of grievances, or any other lawful union activities protected by Chapter 28B.52 RCW.

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

WE WILL offer Scott Norris immediate and full reinstatement to his position as a third-year probationary employee subject to tenure review with a newly-constituted tenure review committee, or a substantially equivalent position, and make him whole by payment of back pay and benefits in the amounts he would have earned or received from the date of the unlawful discharge to the effective date of the unconditional offer of reinstatement made pursuant to this order. Such back pay shall be computed, with interest.

WE WILL read this notice into the record at a regular public meeting of the board of trustees of Renton Technical College, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

DATED: _____

RENTON TECHNICAL COLLEGE

BY: _____
Authorized Representative

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

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