STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Complainant, vs. CITY OF TACOMA Respondent.	)	CASE 16607-U-02-4328 DECISION 8031-A - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Audrey B. Eide, General Counsel, for the union.

G. S. (Steve) Karavitis, Senior Assistant City Attorney, for the employer.

On August 13, 2002, Washington State Council of County and City Employees, Local 120 (union), filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Tacoma (employer) as respondent. The complaint was reviewed under WAC 391-45-110 and the Director of Administration issued a partial dismissal of certain claims,[1] but a cause of action was found to exist on allegations summarized as:

> Employer interference with employee rights and discrimination in violation of RCW 41.56.140(1), by its suspension of Ingrid Fields for insubordination in part due to her contacting a union representative about a problem rather than going directly to her supervisor.

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[1] *City of Tacoma*, Decision 8031 (PECB, 2003).

The employer filed an answer. A hearing was held on June 10, 2003, before Examiner J. Martin Smith. The parties filed briefs. After a thorough review of the record in this case, the Examiner concludes that no violations have occurred. The complaint is DISMISSED.

BACKGROUND

Among other municipal activities, the employer provides electric power and other utility services through the Tacoma Public Utilities Department (TPU). The union represents office-clerical, administrative and professional employees in the employer's public utilities department.

The employer has undertaken a business systems improvement project (BSIP) which modifies its systems for billing customers, and has contracted with a private firm, Cap Gemini, for that project. Bill Schatz is the TPU customer service manager in charge of the BSIP project, and Susan Daulton is a management analyst who reports to Schatz and works on the BSIP transition. TPU employee Steve McGowan also works with Schatz and Daulton in managing the Cap Gemini project. In turn, Daulton supervises several computer systems analysts and information technology personnel who are City of Tacoma employees within the bargaining unit represented by the union, but are assigned to work for and are directed by Cap Gemini.

Ingrid Fields is a bargaining unit employee assigned to work on the BSIP project. Her work history during 10 years as a bargaining unit employee included a disciplinary warning notice issued in April 2001, based on several absences or late arrivals at work.

The dispute now before the Examiner arose out of events that date back to February 2002. In the first week of that month, Fields had a dispute with a Cap Gemini supervisor named Barney Hehrir, who had asked Fields for periodic updates on her progress during a critical phase of the project. Several meetings were held and discipline was imposed upon Fields.

February 5 Meeting -

This meeting was held to discuss a perceived communication problem between Hehrir and Fields. Daulton attended, along with Fields, Hehrir, and McGowan. Notes taken by the employer at that meeting indicate that Fields agreed to "work cooperatively with [Hehrir] . . . apologized to [Hehrir] . . . and understood that [Fields] would . . . provide project updates to [Hehrir] on a daily basis." The record is not clear, however, as to whether the participants felt they had totally resolved the controversy at that meeting.[2]

February 7 Meeting -

A meeting was held with Daulton, Fields, Hehrir, and McGowan in attendance. Fields' communications with Hehrir were discussed again, and the supervisors were displeased with Fields' answers to Daulton's questions about how certain work assignments were progressing and were being reported. Participants at that meeting used terms such as "defiant, competitive and combative . . ." and "angry" and "hostile" and "demonstrative" to describe Fields' behavior at that meeting. Fields indicated that she felt "threatened" by the remarks of supervisors to her, but other participants cautioned Fields that her beliefs about threats and retaliation

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[2] In an e-mail message sent to Fields later that day, Daulton cautioned that Fields must not make "derogatory comments about people or to people . . ." and indicated that Daulton would intervene if communication between Fields and Hehrir broke down again.

were imaginary. During that meeting, Fields said that she discussed her problems at work with union representatives, and that she wanted to contact Brock Logan of WSCCCE in particular.[3]

February 7 Message -

Daulton sent an e-mail message to Fields after the conclusion of the February meeting, complimenting Fields on her willingness to work with Hehrir, McGowan and Daulton, and further stating:

> I was glad to have you acknowledge that you are responsible for notifying me of any issues that may arise in the future. *This afternoon you said you felt the need to contact Brock [Logan] and not me.* Stating you felt your career [with the employer] was threatened by [Hehrir]'s comments regarding your request for email direction instead of his method of meeting with you in person. . . . "

(emphasis added). While that e-mail message is largely the basis for the union's complaint in this case, Fields did not tell Logan about that message at that time. No grievance was filed alleging denial of access to union representation.

February 10 Meeting -

Fields walked away from, and did not return to, a meeting held on this date. She was cited for insubordination for her conduct.

February 21 Meetings -

There were two meetings involving Fields on this date, as well as mention of a third meeting:

Fields had received an e-mail message from Daulton the previous day, asking her to meet with Jerry Waddell of CapGemini

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[3] Daulton was familiar with Logan, who has represented City of Tacoma employees over an extended period of time.

and herself on February 21 to review "status reports" prepared by Fields on her work. Fields attended that meeting. Daulton then asked Fields to meet separately with Waddell to review the reports, which she did.

In the afternoon, Fields met with Hehrir, Waddell, Daulton, and McGowan. Fields recalled Waddell saying that the reports were "inaccurate and incomplete" at that meeting, whereas she remembered him making only editorial changes to the same documents during the meeting that morning. Daulton recalled the second meeting as being unproductive, and further recalled telling Fields there would be a third meeting later in the day and that Fields ought to be there.[4]

Fields did not recall a third meeting being set up for February 21, but insisted that Schatz and her union representative or shop steward should attend any such meeting. In fact, Fields attended no other meetings on February 21.

May 7 Letter -

Fields went on sick leave for "uncontrollable hypertension" as of February 25, and did not return to work until July 1, 2002.[5] In a letter sent while she was on sick leave, Fields was told that her behavior on February 21 was under review for possible disciplinary action. Logan was aware of the May 7 letter, but acknowledged that he took no action at that point.[6]

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[4] The February 21 meeting was mentioned in a letter from Tacoma PUD official Bill Schatz. That letter also made reference to the meetings on February 5, 7, and 10.

[5] Her medical condition was verified by her physician, and is not at issue in this proceeding.

[6] Under direct examination, Logan recalled negotiating in this time frame to keep Fields and other City of Tacoma employees in the bargaining unit, but indicated that no other action was taken regarding Fields until July 2.

July 2 Predisciplinary Notice -

On July 2, 2002, Fields received a "Notice of Intent to Suspend" letter from the employer, outlining a proposed five-day suspension for hostile, insubordinate and offensive conduct contravening Personnel Rule 1.240.940 C, F and O. That document included:

> [O]n two occasions in February 2002 you demonstrated hostile, insubordinate and offensive workplace behaviors that are wholly unacceptable. In addition, prior to your leave of absence, you did not comply with established procedures for notifying your employer of your absences.
>
> February 21, 2002
>
> On February 21, 2002, Jerry Waddell, Barney Hehrir's supervisor, met with you for about 10 minutes in the conference room to review your status report that was due on February 19th.
>
> When he asked you why certain tasks were not yet completed even though the deadline had passed, your voice rose and became shaky. After it became apparent to Jerry that you were extremely upset he indicated that he was not going to continue the conversation . . . .
>
> Shortly thereafter Sue [Daulton] and Barney Hehrir, your technical lead, joined you and Jerry in the conference room. When Sue and Barney asked you why you had not completed the tasks that were past due, instead of addressing the issue, you began yelling. You repeatedly shouted that Barney, Jerry and Sue were "liars, damn liars". Sue advised you that this behavior was inappropriate and suggested that you take a five minute break to compose yourself. . . . You refused to meet later in the day because you said that Sue was part of the problem and could not provide help. You then left the meeting.
>
> Refusing to meet with your supervisor about time-sensitive work issues is insubordination.
>
> Further, the manner in which you responded to reasonable request for an accounting of your activities is wantonly offensive . . . .
>
> February 7, 2002
>
> This is especially disconcerting since two weeks prior you demonstrated similar inappropriate behavior at a meeting held specifically to try to resolve communication

conflicts between you and Barney. This incident occurred on February 7, 2002 when Sue Daulton met with Barney, Steve and you to discuss the apparent communication difficulties between you and Barney.

Barney reports he has ongoing difficulties eliciting replies to his inquiries about status of your assignments. Your replies to Sue appeared evasive and manipulative to the point where they interfered with Sue obtaining basic information she needed in order to help alleviate the communication issues between you and Barney.

At the February 7 meeting, Sue said she had to ask you three times to share with her what issues you consider contribute to the communication problem between you and Barney. The first two times she asked you, you evaded the question by asking what she meant and then asking what she meant by the clarification she gave you. The third time she asked the question, you finally provided information to her. After asking for information from you, Sue told you that Barney and Jerry had asked her to intervene in this communication problem and *only then did you inform her that you believed there had been a problem and that you had called the union. When she asked you why you had not come to her first, you evaded the question by asking her why Steve and Barney had come to her.*

Answering her questions with questions that appear intended to derail the conversation is not acceptable. Not providing answers to Sue's questions when they are requested is also not acceptable.

During the February 7 meeting you appeared very angry and began to bang your tablet on the table. You also used your tablet to jab in Barney's direction. Your tone of voice was loud and you were very argumentative and confrontational. Your manner in evading questions and behaving angrily and confrontationally is insubordinate. You expressed concern that earlier in the day Barney had told you that you would not like getting an email from him. You indicated in the meeting that you believed that his comment was a threat to your career and that he was informing you that any email he sent to you would be derogatory. *You stopped your work and then called your union business representative.* You did not seek Sue out to mediate your disputes as you have been instructed to do previously. Your failure to follow her instructions and seeking her assistance when you had a dispute is insubordination.

. . . .

> During this February 7 meeting you agreed that Barney has the authority to request timely information from you, including project updates. You further agreed that management (including any designee) has the right to assign and prioritize, and review work. Barney has been granted this authority. You were notified of that fact when he was assigned as project lead several months ago.
>
> Before the meeting concluded you acknowledged that your behavior was inappropriate and asked for Sue's support in working with you to develop improved communication and teamwork skills.
>
> . . . .
> Defiant, competitive, combative communications are counterproductive and unprofessional.
>
> *Because you misconstrued a comment about Barney sending you an email, you immediately indicated to Barney that you felt threatened and you stopped working to call the union*. Later, the four of you were required to meet about this issue. Much valuable time was lost while you worked through yet another communication issue involving you. During the same meeting you expressed concern because you said Barney called you stupid. Barney indicated he told you that your reaction to a previous air-clearing meeting was poor. You said he told you that your reaction was stupid and then you indicated that Sue was giving approval for Barney to call you stupid. This is another example of where your communication appears manipulative, because a reasonable person would not have been led to that conclusion. Claiming that Sue was authorizing Barney to call you derogatory names was an attempt to divert attention away from the subject of, and is an example of, your choosing to interpret generally innocuous statements in a negative, menacing way. . . .

(emphasis added). The same document also made reference to the written warning imposed on Fields in 2001, and contained a reprimand of Fields for both being absent without leave on February 11, 2002, and being one hour late for work on January 22, 2002. The employer sent a copy of that document to Logan.

July 12 Prediscipliinary Hearing -

Bargaining unit employees are entitled to appeal proposed disciplinary measures to an "Administrative Appeal Panel" under the

employer's personnel system and rules. Logan represented Fields at a hearing held under that procedure on July 12, 2002.

The Suspension of Fields -

The appeal panel issued its report on July 19, 2002, stating as follows:

> Ms. Fields' refusal to attend meetings as instructed, answer directly supervisor's questions and contact the supervisor regarding problems was insubordination in violation of City Code Section 1.24.940(C) . . . Ms. Fields' angry and confrontational conduct in several meetings is not acceptable behavior . . . On February 21 this behavior did progress to the point of crossing the line of civility and therefore was wantonly offensive conduct toward the public or fellow officers or employees . . ."

Fields was thus informed that she was to be suspended for a three-day period running from July 30 through August 1, 2002.

POSITIONS OF THE PARTIES

The union contends that the employer's actions were coercive and discriminatory, because Fields' discussions with the union were mentioned in the message sent to Fields on July 2, 2002. The union would have that message interpreted as directing Fields to contact her supervisor -- rather than the union -- on workplace issues, and it contends that was an unfair labor practice. The union thus contends the message would have a chilling effect on relations between represented employees and their representative.

The employer argues that no case of discrimination has been made out under Chapter 41.56 RCW, and that the claim of unlawful interference should also be dismissed. The employer contends the discipline of Fields for insubordination was proper, since Fields'

assignment involved working and communicating with both the outside contractor and her supervisor. The employer points out that the appeal panel affirmed the imposition of a suspension. The employer contends that it at no time diverted Fields from her right to contact the union for representation in the grievance or any other matter.

ANALYSIS

The Statute of Limitations

RCW 41.56.160 limits the filing of unfair labor practice complaints to the six months following the alleged unlawful conduct. The complaint filed in this case August 13, 2002, was timely only as to employer actions that occurred on or after February 13, 2002. Thus, the February 7 e-mail message is part of the "background" in this case, but cannot be the subject of a remedial order here.

Applicable Legal Principles

This case involves alleged coercion and discrimination in violation of RCW 41.56.140. That section provides:

> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter; . . .

The rights guaranteed by Chapter 41.56 RCW include the rights set forth in RCW 41.56.040, as follows:

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

(emphasis added). Under long-standing Commission precedents, the rights guaranteed by Chapter 41.56 RCW also include the right to union representation on workplace issues (grievances). *Valley General Hospital*, Decision 1195-A (PECB, 1981).

The burden of proof in unfair labor practice cases is always on the complainant. WAC 391-45-270(1)(a).

The test for "interference" violations under RCW 41.56.140(1) is whether one or more employees could reasonably perceive employer actions as a threat of reprisal or force or promise of benefit associated with the pursuit of rights under Chapter 41.56 RCW. It is not necessary for a complainant to show that the employer intended to interfere, or even that the employees involved actually felt threatened. *City of Omak*, Decision 5579-B (PECB, 1997).

The test for "discrimination" violations under RCW 41.56.140(1) is more complex. Under *Educational Service District 114*, Decision 4361-A (PECB, 1994) (citing *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991)), the complaining party first makes out a prima facie case showing that:

1. One or more employees have exercised rights protected by the collective bargaining statute, or communicate to the employer an intent to do so; and

2. One or more employees is deprived of some ascertainable right, status or benefit; and

3. There is a causal connection between the exercise of rights and the discriminatory action.

The respondent then has the opportunity to articulate lawful reasons for its actions. A violation will be found if no defense is asserted, or if the reasons articulated are themselves unlawful. *See City of Winlock*, Decision 4783 (PECB, 1994).

The complainant can still prevail, if it proves that the reasons given for the disputed action were pretextual and/or that union animus was nevertheless a substantial motivation for the disputed action. *See Mansfield School District*, Decision 5238-A (EDUC, 1996).

Application of Standards

The Interference Claim -

The message sent to Fields on February 7 is part of the background to the letter sent to Fields on July 2. The question before the Examiner is whether the July 2 letter would have caused Fields to reasonably perceive a threat of reprisal or force, or a promise of benefit, associated with her union activity. The Examiner concludes that the union has not sustained its burden of proof as to its "interference" allegation in this case.

Fields herself was first to mention her contact with the union, so this case is clearly distinguishable from *City of Seattle*, Decision 2134 (PECB, 1985), where an employer made preemptive strikes to dissuade bargaining unit employees from contacting their union. It cannot be said that Daulton was giving Fields any advice or

steering Fields away from the union after Fields announced her contact with the union during the meeting on February 7. Daulton's remark is as easily interpreted as offering Fields the assistance of TPU management in dealing with the outside contractor. Daulton certainly did not threaten imposition of discipline (or any greater discipline) if Fields contacted her union representative.

Events subsequent to February 7 also contradict the reasonableness of any perceived threat. Fields went on leave of absence in February, and was not present in the workplace until July 1, 2002. In that period of time, the union made no effort to resolve Fields' situation with the employer, and there was no contact with the contractor about Fields' paperwork or data processing efforts. This case is thus distinguishable from *Port Angeles School District*, Decision 7198 (PECB, 2000), where a bargaining unit employee was threatened with more severe discipline if he sought assistance from his union.

The Examiner is not persuaded that the use of e-mail bore any significance. The people involved in this case all worked with information technology, so that the use of e-mail can be presumed to be a routine part of their work culture.[7]

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[7] On February 5, Daulton wrote to Fields about a meeting that day that clarified some of the roles Fields was to play on Hehrir's work team. Exhibit 6. Daulton emphasized "getting communications back on track" and there was no mention of communications with a union official. In the e-mail message sent two days later, after Daulton met with Hehrir, McGowan and Fields over similar topics, Daulton indicated that she heard Fields explain she had a problem with Hehrir and called union representative Logan about it. Daulton appeared to be disappointed about Fields' "accusatory" attitude during the meeting, but she didn't reveal any anger or spirit of retaliation over the contact with Logan.

Even with the advent of statutory collective bargaining rights under Chapter 41.56 RCW, union officials cannot be omnipresent in the workplace. They therefore can reasonably expect to be informed of workplace grievances some time after a supervisor or manager is knowledgeable of the situation. In *King County*, Decision 6994-D (PECB, 2003), an employee was repeatedly assured that she was not the target of discipline; her business representative was made similar guarantees, and the Commission verified that no discipline was actually initiated or considered. It is not illegal for an employer to engage an employee in discussions about workplace problems, corrective or supportive, routine or extraordinary. These conversations are typically informational, without malice or acrimony. A union philosophy of no-union-no-talk is destructive of sound labor-management relations. See *Spokane Fire District 1*, Decision 7275 (PECB, 2001), where the fire chief's negative comments about a union petition to sever the battalion chiefs from a bargaining unit had no impact upon his decision to discipline a supervisor not involved in the petition effort, and no reasonable apprehension was made out on those facts.

The union here simply overstates the import of the facts that are before the Examiner in this case. Its brief begins with:

> On February 7, 2002, Ingrid Fields felt threatened by a co-worker. She contacted her Union staff representative Brock Logan. . . . co-worker [Hehrir] went to the supervisor, Susan Daulton, concerned about Ingrid contacting the union. Ingrid was ordered to contact her supervisor before contacting the union.

Transcript 59. And yet the record as a whole does not prove at all that Fields was "threatened" by Hehrir. The union never established that Hehrir had any supervisory authority, being an employee

of the contractor and not City of Tacoma.[8] Nor is there proof in this record that Hehrir knew about, cared about, or mentioned any conversation between Fields and Logan at any time. His lack of labor relations authority is precisely the reason Fields was directed to talk to Daulton if problems arose, a logical course of action under the circumstances.

The Examiner cannot find a reasonable apprehension of a threat in the employer's actions, and thus no interference violation.

Discrimination Violation

The Examiner concludes that no prima facie case of discrimination was made out by the union on this record. The discipline of Fields initiated on July 2, 2002, was based upon Fields' hostile and insubordinate conduct, largely tied to her refusal to finish the February 10 meeting. There also were absence and tardiness issues for that calendar year. Whether Fields' requested a union representative or consulted with one is not mentioned anywhere in the letters, nor is any other mention of union communications in this record.[9] The employers's discipline was predominantly directed toward Fields' relationship with Hehrir and Daulton.

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[8] Even if not condonable, disputes between equals do not provide basis for finding an interference violation under Chapter 41.56 RCW.

[9] The July 19 panel report is not dispositive of the unfair labor practice claim. It suffers from a level of ambiguity, stating in "finding of fact 9" that the panel could not agree that the comments regarding the bargaining representative constituted an unfair labor practice. The panel also appears to transpose this legal standard with that of the grievable issues brought before it. In addition, such a finding would be one of law and not of fact.

There is no mention in the July 2 letter of e-mails between Daulton and Fields where communication with Logan is mentioned. *See Port of Seattle*, Decision 6854-A (PECB, 2001). Moreover, Logan acknowledged in his testimony that employees could not stop their work and contact union business officials at inappropriate times, and that employees ought to work on immediate resolution of workplace disputes with their supervisor. Logan agreed that Fields was told not to contact her business representative. The failure of the union to pursue any claim on behalf of Fields after February 7 speaks loudly, as support for an inference that there was no contemporaneous perception of any threat tied to Fields' union activity.

Although the three-day suspension ultimately imposed upon Fields might qualify as deprivation of an ascertainable right, status, or benefit, there is no evidence here to support finding a causal connection between Fields' contact with her union and the imposition of that discipline. Analysis of the union's discrimination claim thus ends here.

FINDINGS OF FACT

1. The City of Tacoma is a municipal corporation and a public employer within the meaning of RCW 41.56.030(1).

2. Washington State Council of County and City Employees, Local 120, a bargaining representative under RCW 41.56.030(3), is the exclusive bargaining representative of administrative and professional employees in the Tacoma Public Utilities (TPU) operations of the City of Tacoma.

3. Ingrid Fields was a computer programmer or information technologist within the bargaining unit represented by the union.

4. On July 2, 2002, Fields was given a predisciplinary notice for what the employer termed "hostile, insubordinate and offensive workplace behaviors that are wholly unacceptable." That letter made some references to Fields' previous contacts with the union, in connections with meetings held and messages exchanged more than six months prior to the filing of the complaint in this matter. The notice issued on July 2 recommended a suspension of Fields for five days.

5. Fields had been directed to attend several meetings in February 2002, concerning communications problems between Fields and one or more employees of an outside contractor that was providing services on a computer system project. Fields was hostile in those meetings, and refused to participate in one such meeting.

6. On February 7, 2002, Fields volunteered information that she had contacted her union representative about the problems she was encountering with the contractor's personnel. After the February 7 meeting, TPU supervisor Susan Daulton sent Fields an e-mail communication which requested that Fields communicate problems to her in situations where Fields felt a need to contact the union.

7. The exchange described in paragraph 6 of these findings of fact was not reasonably perceived by Fields as a threat of reprisal or force associated with her exercise of rights under Chapter 41.56 RCW.

8. Fields was on medically-approved sick leave from February 22, 2002, through July 1, 2002, and she was not involved in any meetings with the employer during that time period. The union took no steps during that time period to pursue a

grievance or other claim in regard to the exchange described in paragraph 6 of these findings of fact.

9. In response to the predisciplinary notice described in paragraph 4 of these findings of fact, Fields exercised her right to a hearing under the employer's personnel procedures. The union represented Fields in that process.

10. On July 19, 2002, the hearing panel created under the employer's personnel procedure recommended that Fields be suspended for three days for misconduct in connection with the meetings described in paragraph 5 of these findings of fact.

11. The evidence in this record does not establish a causal connection between the suspension imposed as described in paragraph 10 of these findings of fact and Fields' exercise of rights protected by Chapter 41.56 RCW.

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. The union has not sustained its burden of proof to establish that the references in the predisciplinary letter dated July 2, 2002, were reasonably perceived as threats of reprisal or force associated with Ingrid Fields' exercise of rights protected by Chapter 41.56 RCW, so that no violation of RCW 41.56.140(1) has been established in this case.

3. The union has not sustained its burden of proof to establish a prima facie case of discrimination against Ingrid Fields in

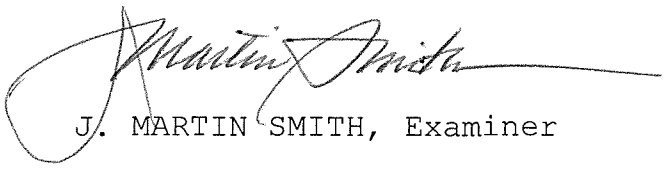
violation of RCW 41.56.040, so that no violation of RCW 41.56.140(1) has been established in this case.

ORDER

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

Issued at Olympia, Washington, this 15th day of March, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



J. MARTIN SMITH, 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.