STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CLINTON DEVOSS, Complainant, vs. KING COUNTY, Respondent.	)	CASE 17346-U-03-4478 DECISION 8630 - PECB CASE 17676-U-03-4583 DECISION 8631 - PECB
CLINTON DEVOSS, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 587 Respondent.	)	CASE 17347-U-03-4479 DECISION 8632 - PECB CASE 17675-U-03-4582 DECISION 8633 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Clinton DeVoss appeared pro se.

Norm Maleng, Prosecuting Attorney, by *Susan N. Slonecker*, Deputy Prosecuting Attorney, for the employer.

Rosen Law Firm, by *Jon Howard Rosen*, Attorney at Law, for the union.

On March 28, 2003, Clinton DeVoss filed unfair labor practice complaints with the Public Employment Relations Commission, naming both King County (employer) and Amalgamated Transit Union, Local 587 (union) as respondents. On July 14, 2003, DeVoss filed additional complaints against both the employer and union. A

deficiency notice was issued as to all four cases on July 17, 2003, and DeVoss filed amended complaints on August 7, 2003. A preliminary ruling issued under WAC 391-45-110 on August 19, 2003, found causes of action to exist on allegations summarized as:

> Case 17346-U-03-4478 - Employer interference with employee rights in violation of RCW 41.56.140(1), by negotiating rules with the union concerning election of union officers and campaigning for offices that restricted rights of employees to engage in protected activities under Chapter 41.56 RCW.
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> Case 17676-U-03-4583 - Employer interference with employee rights in violation of RCW 41.56.140(1), by its posting of a May 22, 2003 letter from Hal Poor, union elections committee chair, concerning campaigning and distribution of materials on company time for an election of union officers.
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> Case 17347-U-03-4479 - Union interference with employee rights in violation of RCW 41.56.150(1), by negotiating rules with the employer concerning election of union officers and campaigning for union offices that restricted rights of employees to engage in protected activities under Chapter 41.56 RCW.
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> Case 17675-U-03-4582 - Union interference with employee rights in violation of RCW 41.56.150(1), by its request that the employer post a May 22, 2003 letter from Hal Poor, union elections committee chair, concerning campaigning and distribution of materials on company time for an election of union officers.

The employer filed its answer on September 9, 2003, admitting some facts and (without asserting any affirmative defenses) denying that it had committed a violation of Chapter 41.56 RCW. The union filed its answer on September 10, 2003, admitting some facts, asserting some affirmative defenses, and denying that it had committed any violation. Examiner Karl Nagel conducted a consolidated hearing on the four complaints on December 1, 2003. The parties filed briefs. The Examiner dismisses all four complaints on their merits, based on the evidence and arguments submitted by the parties.

BACKGROUND

Clinton DeVoss is an employee of Metro, a division of the employer's Department of Transportation. The union represents most of the non-supervisory employees of Metro. DeVoss has been a union member since 1987.

In the autumn of 2002, DeVoss read about a Commission unfair labor practice ruling concerning the employer and union in the union's newspaper. That decision, *King County*, Decision 7819 (PECB, 2002), dealt with the employer restricting an employee from passing out flyers urging the non-ratification of a proposed contract. DeVoss obtained a copy of the decision from union representatives.

The examiner in *King County* found the employer committed an unfair labor practice and interfered with an individual employee's right to distribute protected literature when it relied upon an overly-broad no solicitation and distribution provision contained in a collective bargaining agreement.

In anticipation of an upcoming election of union officers, the union published its election rules in the March 2003 edition of the union's newspaper. DeVoss read the rules in the union newspaper, and believed they were overly restrictive under the previous *King County* decision. DeVoss sent a letter to the union's president and attorney on March 8, 2003, objecting to the published election rules. He received no response.

At some later time, a document titled "Rules and Regulations for Campaigning and the Posting and Distribution of Union Election Materials" (hereinafter, "the posted rules") was placed on bulletin boards at the employer's South Base and the employer's Component

Supply Center. Those election rules were co-signed by the union's president, Lance Norton, and by the employer's supervisor of transit employee relations, Beth Dolliver.

The posted rules contained five numbered paragraphs filling approximately two pages. The posted rules provided, in pertinent part:

> 1. For the Officer's elections to be held on May 8, 2003 and June 5, 2003, campaigning and the posting and distribution of materials are allowed on King County/Metro Transit property only during the period of April 14, 2003 through June 5, 2003.
>
> 2. The only campaign materials which may be posted or distributed on King County/Metro Transit property are those which relate to employees who have been certified in writing to King County/Metro Transit by the Union as being on the ballot for election.
>
> 3. Posting and distribution of campaign materials and campaigning shall be limited as follows:
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> a. . . .
>
> . . . .
>
> h. Demonstrations or campaign rallies of any type are not allowed on King County/Metro Transit property.
>
> i. Campaigning and distribution of materials may only be done on an informal basis during off duty hours and only in employee lunchrooms, lounges and non-work areas.
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> . . . .
>
> k. Material must be in good taste and suitable for reviewing by the visiting public. Adherence to these procedures will be monitored by non-Union supervisory personnel and the Election Committee at all work locations. The supervisor of each work area shall report questionable materials to the Election Committee. Any material found to be objectionable shall be immediately removed by the Election Committee and their decision shall be final. The Election Committee shall hold all materials found in violation.

4. Candidates or their representatives entering King County/Metro Transit property for the purpose of campaigning, posting and/or distributing materials shall first notify the work area supervisor or the designated person in charge if a supervisor is not on duty.

5. Any questions shall be directed to the union office. Questions by King County/Metro Transit management personnel shall be directed to Supervisor of Transit Employee Relations.

Later in the course of the election, a memorandum from the chairman of the union's election committee, Hal Poor, was posted on the employer's premises. That memorandum dated May 22, 2003, stated in part:

> It has been brought to my attention that some [Local] 587 members have been possibly campaigning or passing out material for candidates in the upcoming election while on company time. Please be reminded that this is against the election rules and regulations. While people are allowed to campaign at all the worksites, it is not permitted for them to campaign for themselves or someone else while on the company payroll.

DeVoss was not a candidate for union office, nor did he make an attempt to distribute or post any material related to the election of union officers. He had "planned" on supporting or opposing particular candidates and "had actually started planning how to support or oppose those particular candidates" prior to reading the election rules. Transcript 63. After reading the election rules, he "decided it would not be a good idea for me to do so and these never got out of the planning stage." DeVoss "perceived" that the election rules "would have precluded me from disseminating material in a fashion that I would have found to be most effective." Transcript 64. DeVoss did admit talking to individuals about who should be elected to better their working conditions. Transcript 72.

The employer has from time to time allowed other materials to be posted at the employer's work sites, such as classified ads, employee charitable campaign posters, employee leave requests and material from other organizations and companies.

ANALYSIS - PROCEDURAL ISSUES

After DeVoss completed the presentation of his case, the union moved for dismissal on multiple grounds:

(1) The Commission lacked subject matter jurisdiction;
(2) DeVoss did not establish that he had been damaged; and,
(3) DeVoss failed to exhaust his remedies within the union.

The employer joined in those motions, and also argued that DeVoss had failed to state a cause of action under Chapter 41.56 RCW. The union also asked the Examiner to award it costs and attorney fees. After consideration, the Examiner denied those motions at that time, but directed the parties to raise and argue those matters in the briefs.

Commission Jurisdiction -

DeVoss asserted that the Commission has jurisdiction over the subject matter of these cases, while the union and employer argued that the election of union officers is a matter of internal union affairs not regulated by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, and not subject to the jurisdiction of the Commission. The union and employer are correct that the Commission does not generally regulate the internal affairs of unions.

In representation proceedings, the Commission's inquiry into the internal workings of a union is limited to determining whether

there is an entity that is a labor organization as defined in Chapter 41.56 RCW. *King County*, Decision 4253 (PECB, 1992) (citing *Southwest Washington Health District*, Decision 1304 (PECB, 1981)). The contents of a union's constitution and/or bylaws are not prescribed by any state statute or rule administered by the Commission, so that a union's internal election processes are for its members, not the Commission, to decide.

The Commission, however, does have jurisdiction over the allegations advanced by DeVoss in these unfair labor practice cases under RCW 41.56.140(1) and RCW 41.56.150(1). In unfair labor practice proceedings, the Commission's intrusion into internal union matters is limited to the prevention of conduct that is reasonably perceived by employees as a threat of reprisal or force associated with their exercise of rights protected by the collective bargaining statute, and to enforcement of the duty of fair representation.[1] Thus, when union election rules regulate the conduct of employees in the workplace (and particularly when those rules are jointly posted and applied by the employer and the union), they could impact the statutory rights of the employees involved.

The National Labor Relations Board (NLRB) has dealt with similar issues in the context of distribution of literature in the work place. Interpreting Section 7 of the National Labor Relations Act (NLRA) in *General Motors*, 211 NLRB 986, (1974), *enforced in relevant part*, 512 F.2d 447 (6th Cir. 1975), the NLRB stated:

> We have long held that the right to oppose the reelection of incumbent union officials is protected activity within

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[1] Also in regard to unfair labor practice cases, the Commission can hear and decide allegations that an employer has improperly involved itself in the internal affairs of a labor organization, in violation of RCW 41.56.140(2), but a violation of that sub-section was not specifically alleged in these cases.

> the meaning of Section 7 of the Act. [footnote omitted] Furthermore, in a very real sense, the identity of the officers of a labor organization substantially influence the nature of the organization as a bargaining agent. Thus, the right of employees to distribute literature pertaining to the selection of union officers is intimately interwoven with the right to distribute literature pertaining to the selection or retention of a bargaining representative . . .

211 NLRB at 988. Like RCW 41.56.040,[2] Section 7 of the NLRA grants employees the rights to organize, to choose a bargaining representative, to bargain collectively with their employer, and to refrain from union activities.

Precedents developed under the NLRA are persuasive in the interpretation of similar provisions in Chapter 41.56 RCW. *Nucleonics Alliance, et al. v. Washington Public Power Supply System*, 101 Wn.2d 24 (1984). While RCW 41.56.040 most directly protects the right of public employees to select a union to represent them, this examiner believes it is broad enough to also protect the right of employees to be free from interference when choosing the individuals who will carry out the tasks of representing the union.

The union nevertheless argued that the NLRB has recently ruled that it lacks jurisdiction over internal union affairs except in limited

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[2] RCW 41.56.040 provides:

> 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).

cases where union conduct "against union members" impacts the employment relationship, impairs access to regulatory processes, or pertains to unacceptable methods of union coercion (such as physical violence in organization or strike contexts). *OPEIU, Local 251*, 331 NLRB 1417 (2000). That case is not persuasive here, however. Apart from a lack of court affirmation of the new policy,[3] and a potential for a return to the previous line of precedent with a change of NLRB members in a new administration, the complaints in these cases allege conduct (posting of rules) that could impact the employment relationship. There is also a difference between purely union conduct and actions taken in concert with the employer, and the involvement of the employer creates a nexus between the posted rules and the underlying employment relationship.[4]

Although the underlying election concerns union officers, the posted election rules co-signed by the union and employer seek to affect campaigning in the work place. The Commission has jurisdiction over the parties and the controversy. The motions for dismissal claiming a lack of jurisdiction are denied.

Failure to Exhaust Internal Remedies -

At the hearing, the union cited a failure to exhaust internal union remedies as a basis for dismissal. The union did not pursue that claim in its brief, and it is deemed to have been abandoned.

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[3] In so ruling, the NLRB overruled a 28-year line of precedents dating back to *Carpenters Local 22 (Graziano Construction)*, 195 NLRB 1 (1972).

[4] The outcome of the question of jurisdiction here may have been different if the employer had not signed the posted rules. It was the employer's involvement in those posted rules that clearly conferred jurisdiction.

Failure to Sustain the Burden of Proof -

At the hearing, both the union and employer argued that DeVoss had failed to sustain his burden of proof (i.e., to show by a preponderance of the evidence that there was a violation). Those motions go to the merits of the complaints. In light of the parties' briefs, the denial of those motions at the hearing is confirmed here and the complaints are examined on their merits.

ANALYSIS - SUBSTANTIVE ISSUES

Applicable Legal Standards

RCW 41.56.140(1) makes it an unfair labor practice for an employer to "interfere with, restrain, or coerce employees in the exercise of their rights under this chapter." RCW 41.56.150(1) makes it an unfair labor practice for a bargaining representative to engage in similar conduct.

Application of Standard

DeVoss argued that the posted rules interfered with his rights under Chapter 41.56 RCW.

Campaign Period -

DeVoss asserted that Section 1 of the posted rules was so broad that, on its face, it interfered with employee rights. Section 1 stated:

> For the Officer's elections to be held on May 8, 2003 and June 5, 2003, campaigning and the posting and distribution of materials are allowed on King County/Metro Transit property only during the period of April 14, 2003 through June 5, 2003.

Specifically, DeVoss argued that the posted rules interfered with his right to campaign on dates outside of the specified period. In response to a question from the union's attorney at the hearing, DeVoss stated that his difficulty with Section 1 was that he could not campaign or post/distribute materials on the employer's property outside of the specified time frame. In his brief, DeVoss also argued that Section 1 was overbroad because it was not restricted to "working time" and amounted to a content restriction. He also argued in his brief that the specification of dates prohibited campaigning for a candidate prior to the union's nomination meetings in early April.

Contradicting the implied claim by DeVoss that he had an unlimited right to campaign on the employer's premises, this limitation on employee activity was not of a type that automatically constitutes an interference violation. Rather than giving an appearance of employer support for or involvement in the union's affairs, as was found unlawful in *Pierce County*, Decision 1786, (PECB, 1983), Section 1 of the posted rules was a legitimate limitation on the use of the employer's premises for union business. On the basis of the evidence submitted, this examiner simply does not see where Section 1 of the posted rules interfered with rights protected by Chapter 41.56 RCW.

Certified Candidates -

The next portion of the posted rules challenged by DeVoss was Section 2, which limited campaign materials on the employer's premises to candidates duly nominated under the union's rules:

> The only campaign materials which may be posted or distributed on King County/Metro Transit property are those which relate to employees who have been certified in writing to King County/Metro Transit by the Union as being on the ballot for election.

How and when a union conducts its nomination processes, and internal election procedures such as limitations on the number of candidates or slates of candidates, are matters of internal union affairs. These matters do not affect the union members as employees. Instead, such limitations only affect union members as members of the employee organization, and are not within the Commission's jurisdiction. *King County,* Decision 7139 (PECB, 2000); *Clover Park Technical College*, Decision 6256 (PECB, 1998). On the basis of the evidence submitted, Section 2 of the posted rules did not interfere with rights protected by Chapter 41.56 RCW.

Demonstrations or Rallies -

DeVoss next set his sights on Section 3 of the posted rules. That provision prefaced all of its sub-sections with the statement: "Posting of campaign materials and campaigning shall be limited as follows." DeVoss focused first on sub-section (h):

> h. Demonstrations or campaign rallies of any type are not allowed on King County/Metro Transit property.

He asserted this rule limited the type of campaigning that could be done and prohibited those activities outside employer buildings. He asserted that as long as these activities would not have interfered with the employer's business operations, they could not be prohibited. He then contended that rallies and demonstrations were not defined, thereby leaving the rule ambiguous. DeVoss admitted he never tried to conduct either a rally or a demonstration and he submitted no evidence that any such activity was ever conducted or prevented.

Perhaps it is a vain hope, but this Examiner would chance to believe that laws and rules are to be applied reasonably. While a union election is an internal matter, it is reasonable to assume that the affected employees may discuss the issues as protected

activity in the workplace, so long as the employer's business is not disturbed. Likewise, it is reasonable for a union and an employer to agree on reasonable conditions under which a matter internal to the union can be discussed in the workplace in order to satisfy employees' protected rights.

Terms such as "rallies" and "demonstrations" clearly bring to mind activities far beyond casual discussions of union-related issues between employees. Those terms even go far beyond individual activities such as handing out pamphlets before or after working hours. DeVoss cited *Tri-County Medical Center*, 222 NLRB 1089 (1976), as supporting his assertion. That case has little relevancy to this situation as it involved a no-access rule for off-duty employees, something that is simply not present here.

"Good Taste" and Monitoring -

Sub-section (k) was DeVoss' next target. That provided:

> k. Material must be in good taste and suitable for reviewing by the visiting public. Adherence to these procedures will be monitored by non-Union supervisory personnel and the Election Committee at all work locations. The supervisor of each work area shall report questionable materials to the Election Committee. Any material found to be objectionable shall be immediately removed by the Election Committee and their decision shall be final. The Election Committee shall hold all materials found in violation.

DeVoss argued the first sentence restricted content and was ambiguous. He asserted the remainder of the provision resulted in surveillance and monitoring of employees engaged in protected activity.

Any content restriction on the exercise of protected rights can be seen as problematic. The record, however, is devoid of any

evidence or even an allegation that any material was censored or restricted. The involvement of supervisors under the above language was limited to bringing offensive material to the attention of the union's election committee. In addition, the supervisors appear to be represented by the same union. The parties' collective bargaining agreement covers both non-supervisors and supervisors.

There was no suggestion that supervisors spy on employees engaged in protected activity and police the employees' conduct. There was no reporting of the activity to the employer. This simply appears to have allowed supervisors to question whether a poster in the work area visible to the visiting public was offensive. Once again DeVoss failed to produce any example where this rule was applied to anyone or where it affected him directly.

Notice of Campaigning -

DeVoss next claims Paragraph 4 imposes a prior restraint on the exercise of protected rights. That paragraph stated:

> Candidates or their representatives entering King County/Metro Transit property for the purpose of campaigning, posting and/or distributing materials shall first notify the work area supervisor or the designated person in charge if a supervisor is not on duty.

Requiring someone who is going to engage in protected activity to first notify the employer can also be a problem. Having to secure the permission of a supervisor before you can speak to a co-worker about a protected topic would interfere with your rights. This rule, as stated, does not contain any distinction between Metro employees or non-employees. It would be logical that an employer could reasonably expect notification that a non-employee is entering the work place for security or safety concerns. That may not be the case where an off-duty employee, who is expected to know

the work area's security and safety procedures, returns to the work place. Requiring that employee to notify the supervisor of the protected purpose of the visit could interfere with the employee's rights if the employee was otherwise allowed to visit without checking in. There is nothing in the record, however, that allows the examiner to find that is the situation in this case. There was simply no testimony about the employer's practice in this regard. DeVoss failed to sustain the burden of proof on this allegation.

Campaigning on Breaks -

Another issue raised by DeVoss concerned whether employees were restricted from conducting protected activity while on breaks during their work day. DeVoss pointed at sub-section (i) of Section 3 of the posted rules and Poor's memorandum as limiting their ability to do so. The posted rules provided:

> i. Campaigning and distribution of materials may only be done on an informal basis during *off duty hours* and only in employee lunchrooms, lounges and non-work areas.

(emphasis added). Poor's memorandum of May 22, 2003, stated in part:

> It has been brought to my attention that some 587 members have been possibly campaigning or passing out material for candidates in the upcoming election while *on company time*. Please be reminded that this is against the election rules and regulations. While people are allowed to campaign at all the worksites, it is not permitted for them to campaign for themselves or someone else while *on the company payroll*.

(emphasis added). DeVoss argued that the use of the terms "off duty hours," "on company time," and "on the company payroll" could reasonably be construed as prohibiting employees from campaigning during their break times or lunch periods. He cites a number of

NLRB cases, primarily focusing on *Our Way Inc.*, 268 NLRB 394 (1983). In *Our Way Inc.*, the NLRB was considering a case where the employer had promulgated the following rule:

> In order to make our company a better place to work, the following are Prohibited: . . . 7. Soliciting, collecting or selling for any purpose during the working time of the soliciting employee or the working time of the employee being solicited.

The NLRB reviewed its past line of decisions and determined that a rule using the term "working time" was presumptively valid as "such rules imply that solicitation is permitted during nonworking time, a term that refers to the employees' own time." 268 NLRB 394.

A similar result should be applied to the term "off duty hours" contained in the posted rules. An employee on lunch or rest break is, by definition, off duty. It is their time and it is the time that protected activity can occur without interfering with the concept that "working time is for work," a long-accepted maxim of labor relations. *Peyton Packing Co.*, 49 NLRB 828, 843 (1943). There was no evidence presented that demonstrated the election rules' use of "off-duty" hours was confusing to employees.

Poor's memorandum was interpreting the previously posted rules, this time using the terms "on company time" and "on the company payroll." The first was simply a restatement of the term "working time" and I believe it communicated that reasonable concept. The latter was more of a concern. "On the company payroll" could possibly include an employee's break times. The application of the phrase in that manner would interfere with protected rights.

There was, however, no application of that phrase. It appears to have been an unfortunate turn of phrase by a union official in regard to an internal union election in an internal union memoran-

dum. Although posted in the work place, there was no counter-signature by the employer showing this was an amendment to the posted rules.[5] Further, there was, once again, no evidence this had been applied in any fashion.

The only evidence presented was that this rule was not applied to DeVoss because he did not prepare or try to distribute any material. His witness testified that material from other sources was distributed. DeVoss admitted he voiced his opinion on the candidates at the work place and conceded he was not subjected to any adverse action as a result. There was no effect on protected rights by the posted rules or the Poor memorandum.

Conclusions -

DeVoss' claims in these cases relied extensively on the case *King County*, Decision 7819 (PECB, 2002) and the NLRB cases cited therein. There the employer prohibited a Metro employee from handing out material urging the rejection of a new contract that was up for ratification. The examiner there held that the right to discuss the contract should be no less than that allowed in representation or organizing cases because the contract being voted on would restrain the employees' rights to decertify the union for the term of the contract. That determination was well made and the decision in these cases should in no way be interpreted as departing from that rationale.

The decision delves into dicta from several NLRB cases relating to employers' non-solicitation rules in an organizing context. While the dicta of those cases is instructive, it is not controlling here. These cases are not about soliciting union support or organizing a non-organized workforce. This is about a union and an

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[5] It was the employer's involvement in the posted rules that established Commission jurisdiction here. See note 4.

employer jointly posting reasonable time and place restrictions for activity within the context of an internal union election.

Some of the words used in the posted rules could possibly be construed so as to find the employer ran afoul of the cautions contained in the prior *King County* case and the NLRB cases cited therein. The examiner is aware of Commission precedent stating that the determination of an interference claim is whether a typical employee in the same circumstances could reasonably see the employer's actions as discouraging union activities.

There is not a sufficient basis in the record to determine that the language of the posted rules "chilled" the exercise of protected rights and interfered with protected rights.

Remedy Requested by Union -
The union requested that it be awarded costs and attorney's fees. The law does not allow such an award to be made. The Commission's authority to issue remedial orders is contained in RCW 41.56.160(2). That statute provides:

> If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

It is only when someone has committed an unfair labor practice that the commission is empowered to take remedial action. The determination here is that an unfair labor practice did not occur.

An examiner for the Commission did award a respondent in an unfair labor practice case its attorney's fees in order to prevent reoccurrence of frivolous claims and misuse of agency resources.

Anacortes School District, Decision 2464 (EDUC, 1986). The Commission, however, later reversed that award, stating that "an express underlying condition to any remedy . . . is that an unfair labor practice must have occurred and the award must be against the party committing it." *Anacortes School District*, Decision 2464-A (EDUC, 1986).

A complaint of unfair labor practice was not filed against DeVoss and as DeVoss correctly noted in his brief, there are only two parties that can statutorily commit an unfair labor practice, a "public employer" and a "bargaining representative." That does not include a "public employee." In light of the fact DeVoss is a public employee under the statute and he raised concerns clearly grounded in previous Commission case law, the union's request for costs and attorney's fees is denied.

FINDINGS OF FACT

1. King County is a "public employer" within the meaning of RCW 41.56.030(1).

2. Amalgamated Transit Union, Local 587, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of King County employees working in a public passenger transportation system known as Metro.

3. Clinton DeVoss, a "public employee" within the meaning of RCW 41.56.030(2), was employed by King County within the bargaining unit represented by Local 587.

4. The union and employer jointly posted election rules regarding the right of employees to campaign and post materials in the workplace about candidates in an internal union election.

5. DeVoss never tried to post or distribute campaign material and he was not prohibited from doing so. DeVoss was not otherwise prohibited from campaigning or discussing the election.

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 posted rules in the workplace concerned rights protected by Chapter 41.56.040.

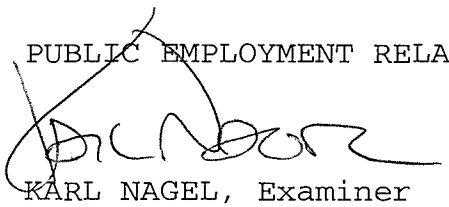
3. DeVoss has failed to establish, by preponderance of the evidence, that the posting of election rules for use in the work place during an internal union election interfered with employees in the exercise of their rights guaranteed by Chapter 41.56 RCW, and were thereby unfair labor practices in violation of RCW 41.56.140(1) and 41.56.150(1), respectively.

ORDER

The complaints charging unfair labor practices filed in these matters are DISMISSED on their merits.

Issued at Olympia, Washington, on the 29th day of June, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KARL NAGEL, 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.