

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 3173,)	
)	
Complainant,)	
)	
vs.)	CASE 7676-U-88-1615
)	
PORT OF PASCO,)	
)	
Respondent.)	
<hr/>		DECISION 3307 - PECB
RODERICK D. LINGLE,)	
)	
Complainant,)	CASE 7713-U-88-1629
)	
vs.)	
)	
PORT OF PASCO,)	CONSOLIDATED
)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	AND ORDER
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Critchlow and Williams, by Alex J. Skalbania and Robert D. Merriman, Attorneys at Law, appeared on behalf of the complainants.

McKinlay, Hultgrenn and Vanderschoor, by Edward H. McKinlay, Attorney at Law, appeared on behalf of the respondent.

On November 16, 1988, International Association of Firefighters, Local 3173 (union) filed a complaint charging unfair labor practices against the Port of Pasco (employer). Docketed as Case 7676-U-88-1615, that complaint alleged that the employer violated RCW 41.56.140(1), by discharging Roderick D. Lingle for exercising collective bargaining rights guaranteed by Chapter 41.56 RCW.

On December 8, 1988, Roderick D. Lingle filed a complaint charging unfair labor practices against the employer, reasserting the

factual allegations contained in the union's complaint. That complaint was docketed separately, as Case 7713-U-88-1629.

The two complaints were consolidated for further processing. A hearing was conducted on March 22 and 23, 1989, in Pasco, Washington, and on May 1, 1989, in Richland, Washington. The parties submitted post-hearing briefs.

BACKGROUND

Under the general policy direction of an elected three-member Board of Commissioners, the Port of Pasco operates several transportation-related facilities in and around Pasco, Washington. In addition to a sizable marine and industrial facility located on the Columbia River (often referred to as "Big Pasco"), the employer also operates the Pasco Airport. Overall port operations are supervised by General Manager Paul Vick.

The airport serves as a regional air terminal, with several commercial airlines providing regular service. James Morasch serves as Airport Manager, and Ronald L. Foraker is the Assistant Airport Manager. The Port of Pasco purchased the airport from the City of Pasco in 1962, and accounting for the airport is maintained separately from the employer's other activities. In addition to the runways and taxi-ways, the airport facility consists of a passenger terminal, a control tower, a fire station, air freight buildings, and an industrial area where private businesses lease building space. The airport receives operating funding from several sources, including landing fees charged to commercial airlines. While the record indicates that the airport is expected to generate its own income, the record also establishes that the airport had always operated at a deficit up to the time of hearing in these matters. The airport also receives capital improvement funds from the federal government for activities such as terminal

construction, runway and taxi-way repair, and snow removal equipment.¹

At all times pertinent to the instant unfair labor practice proceedings, the airport's workforce consisted of approximately five maintenance workers, three watchmen and three custodians. The maintenance employees were responsible for the general upkeep and repair for the area around the terminal, as well as the control tower and the fire station. Watchmen provided security services for the airport perimeter, including the industrial area. The custodians were primarily concerned with janitorial work in the terminal building, but the record indicates that custodians have also performed cleaning assignments immediately outside the terminal building.

In addition to their other duties, the maintenance employees, the watchmen, and one of the custodians were expected to serve as emergency personnel on an "on call" basis.² In response to Federal Aviation Agency (FAA) requirements concerning the availability of fire suppression and emergency personnel where commercial air traffic is present, the employer provided its personnel in this group with training in aircraft fire and rescue techniques. After initial training was completed at Moses Lake, Washington,

¹ The record indicates that the federal monies arrive in the form of "dedicated funds", which must be spent for specific improvement projects.

² Throughout the hearing and in their closing briefs, the parties disagreed over the titles to be used in reference to the airport personnel. The union sought to characterize the employees as "firefighters", while the employer emphatically denied that the employees were firefighters within the meaning of pertinent statutes and rules. The instant unfair labor practice proceedings do not depend on classifying the employees beyond the fact that they are public employees within the meaning of RCW 41.56.030(2) and RCW 53.18.010. Rather, emphasis must be placed on the course of conduct leading to these complaints.

periodic training was conducted at the airport itself. Port employees are primarily responsible for aircraft fire and rescue services, and the local training consisted of controlled burns for that type of situation.³ Those employees who were on-duty when a commercial airliner arrived or departed were required to stop their other work and proceed to the airport fire station, where they waited "on stand-by" with the airport's emergency response equipment in the event of an accident or a report that an airliner was in distress. Each of the affected employees carried a portable radio, so that they could respond to airport emergencies when they were not on stand-by duty.

Events leading to these instant unfair labor practice complaints can be traced to the latter part of June, 1988, when airport employees in the above-mentioned classifications decided to organize for purposes of collective bargaining.⁴ Arthur Glasow, a security guard, initiated the organization drive and approached the maintenance, security and custodial employees. Among the employees contacted was Roderick Lingle.

Lingle had been hired as a temporary maintenance employee in April, 1985, and became a full-time employee in the early part of 1986. He did not receive firefighting training, however, until 1988.

³ The City of Pasco Fire Department continued to be responsible for suppression of other fires at the airport, and the record indicates that the training of Port of Pasco employees did not include training for structure fires.

⁴ Port of Pasco police officers were involved in a separate representation effort at approximately the same time. Examination of Commission docket records indicates that the Port of Pasco Police Officers Association filed a representation petition with the Commission on May 27, 1988. That union was certified as exclusive bargaining representative of a unit of commissioned law enforcement officers employed by this employer in Port of Pasco, Decision 2974 (PORT, 1988), issued July 22, 1988.

Lingle testified that he began thinking about unionization in the early part of 1988, when he became concerned about the quality of fire and rescue training that airport personnel received. Lingle testified that he expressed his concerns to Assistant Airport Manager Foraker shortly after the training session was completed. While he could not recall the date or location of that meeting, Lingle testified that Foraker was not receptive to ideas about improved training, and that the discussion soon moved on to other operational issues.

Lingle was purchasing a new house at approximately the same time that he received fire and emergency response training. Lingle became aware at that time of rumors concerning layoffs in the Port of Pasco's main terminal facility, and he was concerned that the employer's financial difficulties could affect his continued employment. Lingle testified that he discussed the situation with Foraker, who informed him that the airport was not in financial distress. Foraker testified that he did not learn of Lingle's real estate dealings until much later, and that he did not give Lingle any assurances about continued employment.

Airport Manager Morasch testified that he conducted a meeting with approximately 14 employees in February, 1988, at which time he explained the financial difficulties experienced at "Big Pasco", and expressed his opinion that the airport would not be adversely affected. The record is silent as to whether Lingle was present at that meeting. Layoffs took place shortly thereafter at "Big Pasco". The employer followed a "straight seniority" approach in implementing that layoff, rather than a "by classification" approach. As a result, at least one senior employee "bumped" a junior employee in another work classification. No airport employees were affected by the layoffs at "Big Pasco".

Glasow's initial contacts had indicated employee support for unionization, and the union organizing effort went forward with

Glasow contacting the airport's maintenance, custodial and security employees and discussing the reasons for unionization. The record indicates that the employees were concerned about their status as "firefighters" at the airport. The employees believed that their primary duty was firefighting, and that they should be recognized for the type of work they were expected to perform. Accordingly, they pursued their unionization effort by seeking to join the International Association of Firefighters, AFL-CIO (IAFF). Glasow contacted Danny Downs, a state representative for the IAFF, and explained the situation to him. Downs believed that the affected employees could be represented by the IAFF, and he asked to meet with the employees to discuss unionization. The record indicates that Downs' meeting with the employees was set for the early part of August, 1988.

Before the meeting between Downs and the employees could take place, the employer became aware of the employees' interest in organizing. Airport Manager Morasch testified that he met with several employees, including Lingle, in the early part of July, 1988. At that meeting, Morasch asked the employees about the possibility of unionization at the airport. Morasch testified that Lingle responded to his question, informing him that the employees were only in the exploratory stage of organizing, and that no decision had been made.

On July 21, 1988, each affected employee received a packet of information from Assistant Manager Foraker, explaining that the employer had scheduled a meeting for July 22, 1988, at which time the employees could discuss unionization with Roy Wesley, a management consultant hired by the employer. Only the eight employees involved in the organizational effort were contacted by the employer. The employees understood the purpose of the meeting was to discourage union membership. Glasow contacted Downs, and informed him of the situation. Downs advised the employees not to attend the proposed meeting. Glasow then told Foraker that the

employees would not attend, and the meeting was cancelled. Morasch testified that Glasow presented himself as the "spokesman" for the employees in his conversation with Foraker.

On July 25, 1988, several of the employees, including Glasow and Lingle, were working at the airport fire station when Morasch and Foraker went to that facility for the purpose of having a discussion with the employees about their refusal to meet with Wesley. Glasow testified that Morasch was quite upset about the employees' decision not to meet with Wesley. According to Glasow, Morasch contended that the employees could not form a bargaining unit as "fire fighters", and that the employer would seek the creation of three separate bargaining units: Security, maintenance, and custodial. Morasch testified that the meeting was not hostile, and that a number of issues were discussed. The employees and management personnel had very few contacts after the July 25 meeting. Morasch testified, however, that he attempted to arrange a meeting between the employees and William Sarver, a local representative of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, in an effort to have the employees understand the employer's concerns about their organizing as "fire fighters". The record indicates that the proposed meeting between the employees and Sarver did not take place.

The employees met with Downs in August, 1988, and decided to pursue union representation. Authorization cards were signed in the latter part of August and in the early part of September, 1988. Application was made to the IAFF for a charter for a local at the Pasco Airport.

The employer continued to be concerned about characterizing the affected employees as "fire fighters" and, on August 24, 1988, sent a memorandum to the its police officers, ordering them not to use the term "fire fighter" in any incident reports involving the employees who were seeking representation by the IAFF.

The affected employees did not make further contact with the employer concerning union representation until the latter part of October, 1988. The record indicates that the employees had received a charter from the International Association of Firefighters on October 10, 1988, for the creation of a new local union as IAFF Local 3173. Lingle testified, however, that he was very active on behalf of the union during this period, that he made a number of telephone calls concerning the organizational effort, and that he spoke openly about his support for unionization in circumstances where he could have been observed by management personnel. Morasch, on the other hand, testified that he was not aware of Lingle's activities on behalf of the union.

On October 10, 1988, General Manager Paul Vick had sent a memorandum to the Port of Pasco Commission, explaining that the employer was undergoing serious financial difficulties. The record indicates that revenue from "Big Pasco" was less than anticipated, and that airport revenue was also down because of a lack of business rentals and a downturn in airline activity. Vick proposed a reduction in operating expenses of \$271,000. To help accomplish such a reduction, Vick called for reducing the employer's workforce by three positions: Two positions at "Big Pasco" and one position at the airport.⁵ The layoffs at "Big Pasco" were set for October 15, 1988. The layoff at the airport was not set for a specific time, pending developments with certain improvements to be made at the terminal facility. Although Vick's memorandum did not identify which employees would be affected by the layoffs, Vick testified that the memorandum was prepared with the assumption that an airport maintenance employee would be laid off. Vick testified, further, that the maintenance employees were more expendable,

⁵ Apart from personnel reductions, Vick proposed reductions in material purchases, travel expenses and advertising costs. In addition, Vick called for the creation of monthly budget review meetings to monitor compliance with the proposed budget controls.

because of the type of work they performed. Vick was aware of the union organizing effort at the airport when he prepared the budget memorandum.

On October 24, 1988, Glasow and Dan Cooper, a maintenance employee at the airport, went to Morasch's office with the intention of asking for voluntary recognition of the IAFF as the exclusive bargaining representative of the airport employees. They brought with them the authorization cards signed by the affected employees. The parties presented different accounts of events surrounding that recognition request. Glasow and Cooper testified that Morasch was unavailable for a meeting in the morning, even though they believed that he was present in the airport terminal. Morasch testified that he had been in meetings all morning at another location, and did not know that Glasow and Cooper were waiting for him. The parties agree that they did not communicate until Morasch called a meeting of the airport's maintenance crew at 1:00 p.m. on that date.

At the meeting held on the afternoon of October 24, 1988, Morasch explained that the airport was undergoing serious financial difficulties, and that it would be necessary to lay off a maintenance employee. Morasch testified that airport management had determined that a maintenance employee could be laid off with the least impact on airport operations. Lingle was present at the meeting. He testified that he was not aware of the meeting's purpose until Morasch made his presentation. Lingle further testified that Morasch specifically mentioned a \$30,000 budget problem in his discussions with the maintenance employees. While Lingle realized that he was the junior maintenance employee, he was not specifically told during the meeting that he would be the employee laid off.

Lingle testified that he had heard rumors concerning possible personnel reductions before the layoff was announced. Specific-

ly, Lingle testified that David Bickle, a custodian hired by the airport in 1986, had mentioned possible layoffs several times.⁶ Lingle testified, further, that Bickle had made it clear that he would not be affected by a layoff, even though he was junior to Lingle. The record indicates that Bickle left the impression that he had been in contact with airport management, and had been given assurances that only union activists would be affected by any layoffs. Bickle did not consider himself to be an "activist" in favor of unionization. Bickle testified that he had been in contact with Morasch, and that the issue may have been discussed, but that he never received specific assurances about continued employment. Morasch testified that he never discussed the layoff issue with Bickle.

Following the conclusion of the meeting attended by all of the maintenance employees, Morasch met with Glasow and Cooper, who asked that IAFF Local 3173 be granted voluntary recognition as the exclusive bargaining representative of airport employees. Morasch declined that request, and the representation issue was submitted to the Commission for disposition.⁷

On October 25, 1988, Morasch gave Lingle a layoff notice, setting November 7, 1988 as the termination date. When he received the layoff notice, Lingle asked Morasch if it would be possible to allow "bumping" in the airport layoff, similar to the procedure followed in the earlier layoff at "Big Pasco". Morasch stated that he would check into the matter, and would get back to Lingle. Morasch never gave Lingle a reply on that commitment.

⁶ The record reflects that Bickle was the custodial employee who regularly participated in fire and emergency drills and "stand-by" operations.

⁷ The representation petition was filed on October 26, 1988, and was docketed as Case 7639-E-88-1307. That case remains pending as "blocked" by the instant unfair labor practice complaints under WAC 391-25-370.

Lingle later spoke with Port Commissioner William Clark and Port Commission President Richard Banks about the impending layoff. While Clark expressed sympathy for Lingle's position, the layoff decision was not changed.

On November 7, 1988, Port Manager Vick spoke to Lingle about the layoff. While complimenting Lingle for his good work on behalf of the port, Vick explained that the layoff would take effect as planned. Evidently, Lingle asked why Bickle, a junior employee, would not be laid off. Vick responded that Bickle's work was specialized, and he could not be spared.

The record reveals that Lingle's employment with the Port of Pasco was terminated on November 7, 1988. Shortly thereafter, the employer granted all employees a five per cent (5%) wage increase. Morasch testified that the wage adjustment had been planned for calendar year 1987, but could not be paid at that time because of poor financial conditions at the airport.

Morasch testified that he did not know that Lingle represented himself to be a leader of the union organizing effort until he read a newspaper article about the layoff, in which Lingle alleged that his termination was caused by his organizing efforts.

POSITIONS OF THE PARTIES

The complainants allege that the Port of Pasco terminated Roderick Lingle's employment because of his outspoken union sympathies and his attempts to further a union organizing effort among the airport workforce. The complainants contend that the employer displayed an anti-union animus during the organizing period, and interfered with the employees' free choice of union representatives. The complainants note that the affected employees were instructed not to refer to themselves as "fire fighters", even though they served

in a firefighting capacity, once they sought representation by the International Association of Fire Fighters. The complainants maintain that the employer's "economic justification" argument fails, because other employees received a substantial wage increase shortly after Lingle's employment was terminated. The complainants seek Lingle's reinstatement, with back pay.

The employer denies that any unfair labor practice can be found from the facts presented in the instant complaints. The employer contends that the affected employees are not "fire fighters", and should not have attempted to organize under the direction of the International Association of Firefighters. In addition, the employer maintains that the layoff which precipitated the current litigation was not done as retaliation for a union organization campaign. The employer notes that the layoff was announced before the employees made their demand for recognition, and that the layoff affected two employees from "Big Pasco" in addition to Roderick Lingle. In the same regard, the employer contends that it was never aware of Lingle's activities on behalf of the union organizing effort, and other employees held themselves out as "spokesmen" for the employee group. The employer argues that airport management had never considered the use of "bumping" across work classifications, and that Lingle was laid off solely because he was the junior maintenance employee at the airport. Finally, the employer argues that the "cost of living" adjustment granted in November, 1988, was not related to the termination of Lingle's employment. The employer contends that the pay increase was due employees in 1987, but was deferred because of poor economic conditions.

DISCUSSION

By enacting Chapter 41.56 RCW, the Public Employees' Collective Bargaining Act, the Washington State Legislature made a clear

policy statement allowing public employees the right to organize for the purposes of collective bargaining. RCW 41.56.040 expresses that policy:

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.

Inherently, that provision of statute focuses attention on the time period when employees attempt to organize for purposes of collective bargaining. Events occurring during such a time period must be scrutinized with the utmost care, to guarantee that employee rights are not infringed.

At several points during the unionization effort involved here, the employer took active steps to convince its employees that it was inappropriate for them to seek representation by the IAFF, to the point of soliciting the involvement of another labor organization. The employer had no right to inject itself into the employee's choice of exclusive bargaining representative. International Association of Fire Fighters v. Public Employment Relations Commission, 45 Wa.App 686 (Division III, 1986), reversing City of Richland, Decision 1519-A (PECB, 1983). Its actions interfered with the employees' right to freely select representatives of their own choosing. The record thus clearly supports a finding that the employer violated RCW 41.56.140(1) by its attempts to manipulate the representation process.

The instant unfair labor practice complaints deal primarily with the discharge of a public employee during the pendency of a union organizing campaign. In City of Olympia, Decision 1208-A (PECB,

1981), the Public Employment Relations Commission adopted the causation test set forth in Wright Line Inc., 251 NLRB 150 (1980) to address such matters.⁸ Following the Wright Line analysis, the complaining party must make a prima facie showing to support an inference that "protected activity" was a motivating factor in the employer's decision to discharge or to take other action against a public employee. See, Port of Seattle, Decision 1624 (PECB, 1983), and City of Asotin, Decision 1909 (PECB, 1984).⁹ If the complaining party presents a prima facie showing, the burden of proof shifts to the employer, to establish that the same action would have been taken even in the absence of the employees' protected activity.

In the instant case, the record does not support the complainant's claim that Lingle was a "leader" in the unionization drive. Through testimony presented by a number of the complainant's own witnesses, it became clear that Arthur Glasow was, in fact, the primary union advocate among the airport employees. Glasow told Airport Manager Morasch that he was the "spokesman" for the

⁸ Prior to the adoption of the Wright Line test, the Commission had issued a number of decisions dealing with issues similar to those presented in the instant complaints. See, for example, Town of Fircrest, Decision 248 (PECB, 1977), where factors such as length of service, nature of employment, the employee's financial needs, the employer's union attitude, and the timing of the discharge were considered. See, also, King County Water District No. 75, Decision 100-A (PECB, 1976), and City of Pasco, Decision 504-A (PECB, 1978). While instructive, those decisions are not controlling, and the following analysis relies on Commission precedent developed using the Wright Line analysis.

⁹ Thus, the complainant must prove both: (1) That the affected employee was engaged in protected activity; and (2) that the employer had knowledge of such activities when the disputed action was ordered. See, City of Olympia, supra. Failure to prove either of these elements is fatal to the complainant's case. See, Intercity Transit, Decision 2580 (PECB, 1986).

employees, and Glasow, accompanied by another employee, presented the request for voluntary recognition. Characterization of Lingle's involvement in the unionization effort does not dispose of the matter, however. While the record would not support a finding that Lingle was a "leader" of the organization effort, the record does clearly show that the employer had full knowledge of the union organization efforts.

The record also supports an inference that the employer knew of Lingle's concerns and views in harmony with the organizational effort. It seems clear that fire fighter training and status were a subject of discussion and concern among the affected employees. Lingle had attempted to raise such issues with Foraker some time earlier. When the employees expressed those concerns by seeking organization by the IAFF, the employer, as discussed above, took the clearly unlawful step of seeking to influence which organization the employees chose. At a point in time, long before the recognition request was presented or the representation petition filed, the employer asked employees to attend a meeting with a management consultant to discuss the advantages and disadvantages of union membership and asked a different labor organization to talk to the employees. It is apparent that the Teamsters official was invited to address the employees because of the employer's displeasure over the employees' seeking recognition as "fire fighters" and representation by the IAFF. Further, Morasch and Lingle spoke about the union issue in the presence of other affected employees, and the complainants presented credible evidence that Lingle was openly supportive of the organization effort.

Even in the absence of direct evidence contradicting the employer's claim of lack of knowledge of Lingle's union activity, the record indicates that the airport workforce was relatively small, and worked in an area immediately accessible to management personnel. Accordingly, the "small plant doctrine" set forth in Coral Gables Convalescent Home, Inc., 234 NLRB 1198 (1978) strengthens the

inference that the employer knew of the organizing effort. See, also, Asotin County Housing Authority, Decision 2471 (PECB, 1985).

Given the foregoing factors, it is inferred that Lingle's dismissal occurred, at least in part, because of his participation in union organizing activities. See, Valley General Hospital, Decision 1195-A (PECB, 1981). The complainants have established a prima facie case, and the burden of proof now shifts to the employer to demonstrate that Lingle's discharge would have taken place in the absence of his participation in the organizing effort.

The employer maintains that it was forced to terminate Lingle's employment because of difficult financial conditions at the airport, and it presented a variety of fiscal records to support its contention that the layoff was a necessary business decision, not motivated by the union organization drive. The Examiner is not persuaded by those explanations.

The decision in Housing Authority of the City of Bremerton, Decision 3168 (PECB, 1989), presents an example of an employer that successfully defended against an inference of anti-union discrimination. The employer in that case announced that several positions were to be eliminated. The announcement was made the day after a representation election had been conducted, and the affected positions were held by union supporters. Apart from the suspect timing of the announcement, the union accused the employer of disparate treatment of the two employees to be laid off, contending that the employer could have modified their positions to retain them after a previously announced reorganization was completed. The Examiner found in that case that the employer had not committed an unfair labor practice, noting that the employer had announced the plan to reorganize its operations long before the unionization effort began. Furthermore, the employer had not taken any other action that could be construed to show an anti-

union animus, and several other employees who identified themselves as union activists had testified that they did not feel discriminated against because of the employer's reorganization.¹⁰

By contrast to the Bremerton situation, the employer's sudden changes of direction here, against a background of unlawful interference, undermine its claim of business necessity. It must be acknowledged that other union activists were not discharged or otherwise discriminated against here, but the employer here had displayed a very negative attitude toward the unionization effort at the airport. More importantly, the announcement of a layoff at the airport was a substantial change of direction for this employer. While the employees had been made aware of financial problems at "Big Pasco", they were not told that the same economic condition would cause workforce reductions at the airport, and may even have been given assurances to the contrary. Then, the employer changed directions again, by refusing to allow Lingle to "bump" a junior employee, even though it had allowed such an exercise of seniority in its previous layoff at "Big Pasco". The employer simply did not produce evidence to substantiate its claim that Bickle had skills that Lingle could not replace.¹¹

An employer is precluded from making unilateral changes of wages, hours or working conditions of affected employees while a representation petition is pending before the Commission. See, for example, Mason County, Decision 1699 (PECB, 1983). Nevertheless, this employer granted a five percent (5%) wage increase for all

¹⁰ In fact, the employer's announcement of a reorganization may have motivated the union organizing attempt.

¹¹ It is not necessary to decide whether the employer gave Bickle assurances of continued employment based on his non-support of the union organizing effort. The Examiner notes, however, that it would clearly be unlawful for the employer to retain an employee who did not support the union while laying off a union adherent. See, Asotin Housing Authority, Decision 2471, 2471-A (PECB, 1987).

remaining employees after the layoff of Lingle, a known union supporter, was implemented due to "poor economic conditions". This is in marked contrast to the situation in City of Bremerton, where the controversial action was taken after a representation election had been conducted, thereby eliminating a potential disruption in an orderly election process. Taken alone, the airport's decision to grant a wage increase during the pendency of a representation petition may have supported an independent unfair labor practice complaint. When considered in the context of the employer's overall conduct, the wage increase can be seen as part of a clear effort to prevent public employees from freely exercising collective bargaining rights.

REMEDY

To remedy the unfair labor practice, the employer shall be ordered to reinstate Roderick Lingle as a maintenance employee at the Pasco Airport. In addition, the employer shall pay Lingle back pay for the period of his termination, with interest and the usual offsets, as required by Commission rule.

FINDINGS OF FACT

1. The Port of Pasco operates several transportation-related facilities in and around Pasco, Washington, and is a "public employer" within the meaning of RCW 41.56.030(1). Among other facilities under its direction, the Port of Pasco operates the Pasco Airport. The airport serves as a regional air transportation and cargo facility. In addition, there is an industrial park on the airport grounds, where private businesses can lease commercial space. At all times pertinent to the instant proceedings, James Morasch served as Airport Manager, and Ron Foraker served as Assistant Airport Manager.

2. The Pasco Airport employs approximately eight employees in the classifications of maintenance, custodian, and security. Apart from their regularly assigned duties, all of the maintenance and security employees, as well as one custodian, serve as emergency personnel on the airport's fire and rescue equipment. Following Federal Aviation Agency requirements, the employees receive training in fire suppression and rescue techniques involving aircraft accidents. Employees are required to "stand by" on the emergency equipment when commercial passenger aircraft are using the airport.
3. Roderick Lingle was hired in April, 1985, as a maintenance employee at the Pasco Airport. He received training on aircraft fire and emergency work, and continued to work in that capacity until his dismissal in November, 1988.
4. International Association of Firefighters, Local 3173, is a "bargaining representative" within the meaning of RCW 41.56-.030(3).
5. The Pasco Airport employees became interested in union organization, in part, because they believed their primary responsibility was firefighting, and they sought representation by the International Association of Firefighters.
6. The employer learned of the organizational effort among its employees in July, 1988. At an unspecified time in July, 1988, Morasch met with several of the employees, including Lingle, and interrogated them about the possibility of union organization. At that time, Lingle told Morasch that the employees were still in the "exploratory" stage, and firm decisions had not been made.
7. On July 21, 1988, Morasch sent information packets to each of the employees involved in the organizational effort at the

Pasco Airport. The packets were sent along with an invitation to a July 22, 1988 meeting with Roy Wesley, a management consultant, who had been hired by the employer to discuss the advantages and disadvantages of union membership with the employees. On advice from a representative of the International Association of Fire Fighters, the employees decided against meeting with Wesley.

8. On July 25, 1988, Morasch met with several employees, including Lingle, at the airport's emergency vehicle garage. Morasch told the employees that they could not be represented as "firefighters", and that the employer would seek three separate bargaining units to divide the airport workforce among maintenance, security, and custodial employees.
9. At an unspecified time after July 25, 1988, Morasch attempted to arrange a meeting between employees and a representative of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.
10. The employees signed authorization cards for the International Association of Fire Fighters in the latter part of August and the early part of September, 1988.
11. On October 10, 1988, the International Association of Fire Fighters chartered Local 3173 at the Pasco Airport.
12. During the organizational period, Lingle did not hide his union sympathies, and made several statements supporting union membership in the presence of management personnel. In view of the small size of the workforce and Lingle's activities, the employer had reason to know of his union activity.
13. On October 10, 1988, Port Manager Paul Vick sent a letter to the Port Commission, detailing economic difficulties at both

port facilities. Vick proposed a number of cost-cutting measures, including the elimination of two positions at "Big Pasco" and one maintenance position at the airport. Vick did not propose a specific time for the staff reductions, nor did he suggest which employees would be terminated. Vick was aware of the union organization effort when he prepared that letter.

14. On October 24, 1988, employees Arthur Glasow and Dan Cooper attempted to meet with Morasch to request that the employer voluntarily recognize Local 3173 as the exclusive bargaining representative of the airport workforce. Morasch was unavailable when Glasow and Cooper initially went to his office. Later on that same day, Morasch called a meeting of all airport personnel, where he explained that a maintenance employee would have to be laid off because of financial difficulties. After that meeting was concluded, Glasow and Cooper made their request to Morasch for voluntary recognition of the union for the purposes of collective bargaining, and Morasch refused the request.
15. Lingle was then the least senior maintenance employee, and he was notified, on October 25, 1988, that he was to be laid off. During a previous layoff, the employer had used a seniority procedure which permitted an employee to "bump" across classifications. Although Lingle had been employed at the Pasco Airport for a longer period than one of the custodians, David Bickle, Lingle was not permitted to "bump" Bickle.
16. On October 26, 1988, Local 3173 filed a petition for investigation of a question concerning representation, seeking to represent a bargaining unit of Port of Pasco employees at the Pasco Airport. That petition was docketed as Case 7639-E-88-1307. The case remains pending before the Commission.

17. Lingle's employment with the airport was terminated on November 7, 1988.
18. Shortly after the termination of Lingle's employment, the employer unilaterally granted all employees a five percent (5%) wage increase.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. By events described in paragraphs 7, 8 and 9 of the foregoing findings of fact, the Port of Pasco engaged in a course of conduct which interfered with the right of its employees to be represented by a bargaining representative of their own choosing, and committed unfair labor practices within the meaning of RCW 41.56.140(1).
3. By events described in paragraphs 6, 7, 8, 9, 13, 14, 15, 17, and 18 of the foregoing findings of fact, the Port of Pasco engaged in a course of conduct which interfered with the employees in the petitioned-for bargaining unit in the free exercise of their collective bargaining rights, and committed unfair labor practices within the meaning of RCW 41.56.140(1).
4. By events described in paragraphs 6, 7, 8, 9, 13, 14, 15, 17, and 18 of the foregoing findings of fact, the Port of Pasco engaged in a course of conduct which interfered with and discriminated against Roderick Lingle in the free exercise of his collective bargaining rights, and committed unfair labor practices within the meaning of RCW 41.56.140(1).

ORDER

Pursuant to RCW 41.56.160 of the Public Employees' Collective Bargaining Act, it is ordered that the Port of Pasco, its officers and agents immediately:


1. Cease and desist from:
 - a. Interfering with employees in their selection of a bargaining representative under Chapter 41.56 RCW.
 - b. Interfering with or discriminating against its airport maintenance, security and custodial employees in the exercise of their collective bargaining rights under Chapter 41.56 RCW.
 - c. Interfering with or discriminating against Roderick Lingle for his exercise of his collective bargaining rights under Chapter 41.56 RCW.
2. Take the following affirmative actions to remedy the unfair labor practices and effectuate the purposes of Chapter 41.56 RCW:
 - a. Reinstate Roderick Lingle as an employee in good standing at the Pasco Airport, with back pay for the period from November 7, 1988 to the 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. Roderick Lingle shall report to the employer all earnings that he accrued during the period of his unlawful layoff.
 - b. Post, in conspicuous places on the employer's premises where notices to employees are customarily posted, copies

of the notice attached hereto. Such notice shall, after being duly signed by an authorized representative of the Port of Pasco, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the employer to ensure that said notices are not removed, altered, defaced, or covered by other material.

- c. Notify the complainants, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the complainant with a signed copy of the notice required by this Order.
- d. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time, provide the Executive Director with a signed copy of the notice required by this Order.

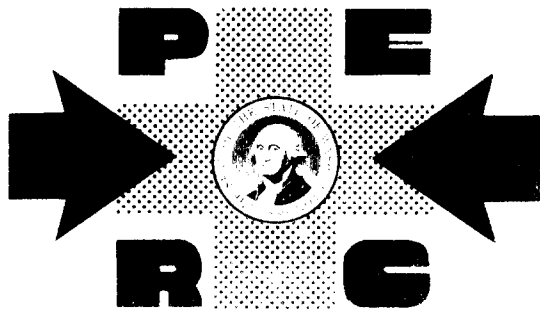
DATED at Olympia, Washington, this 5th day of October 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KENNETH J. LATSCH, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION HAS HELD A HEARING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE. THE COMMISSION HAS FOUND THAT WE VIOLATED THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT (CHAPTER 41.56 RCW) AND HAS ORDERED US TO POST THIS NOTICE.

WE WILL NOT interfere with employees in their selection of representatives for the purpose of collective bargaining.

WE WILL NOT discriminate against employees because they exercised collective bargaining rights in the selection of a bargaining representative.

WE WILL reinstate Roderick Lingle as an employee in good standing, and shall provide Mr. Lingle back pay for the period of his termination.

PORT OF PASCO

By: _____
Authorized Representative

DATED _____

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

This notice must remain posted for sixty (60) days from the date of posting and must not be altered, defaced, or covered by other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.