STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBERT K. HIRANO, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE 7237-U-88-1481 DECISION 3198 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Robert K. Hirano, Complainant, appeared pro se.

Douglas N. Jewett, City Attorney, by Randy Gainer, Assistant City Attorney, and Cathleen Callihan, Rule 9 Intern, appeared on behalf of the employer.

On January 27, 1988, Robert Hirano filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Seattle had violated RCW 41.56.140(1) through a series of personnel actions taken against him.[1]

On January 28, 1988, Hirano filed a second complaint charging unfair labor practices, alleging that the Washington State Council of County and City Employees, Local 21 (WSCCCE) had violated RCW 41.56.150(1), by failing to initiate or process a grievance based on the events complained of against the City.[2]

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1 Case 7237-U-88-1481.

2 Case 7239-U-88-1482.

The complainant was advised on April 12, 1988, that the complaints as then constituted, did not state a cause of action for proceedings before the Commission. The complainant was allowed 14 days to amend either or both complaints. On April 26, 1988, Hirano amended his complaint against the City to allege that he was retaliated against as a result of the exercise of a protected right.

Hirano's unfair labor practice charge against WSCCCE was dismissed August 12, 1988. The basis for dismissal was that the Commission declines to assert jurisdiction over "fair representation" allegations concerning the processing of grievances, because the Commission lacks jurisdiction over the enforcement of the collective bargaining agreement which is the basis of the grievance dispute.[3]

On August 22, 1988, Hirano's complaint against the City, as amended, was determined to state a cause of action. A hearing was held before Examiner Katrina I. Boedecker October 20 and 22, 1988, in Seattle, Washington. The parties submitted oral closing argument at the conclusion of the evidentiary hearing. Although the parties reserved the right to file written closing arguments by December 8, 1988, no such briefs were received.

BACKGROUND

Robert Hirano is employed as a cement mixer/truck driver in the Engineering Department of the City of Seattle. Hirano usually works on a two-person crew with Russ Aquino; his immediate supervisor is Stewart Richmond. Richmond reports to the supervisor of the concrete area, Valerie Yamasaki.

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[3] City of Seattle, Decision 2987 (PECB, 1988).

"Concrete" is one of the three areas in the Paving and Equipment Section managed by Larry Mickelson. Mickelson reports to the Director of Street Maintenance John Randall. Street Maintenance is one of five sections in the Operations Division headed by Joseph Ralph. The Operations Division maintains, repairs, upgrades and monitors the use of the City's bridge and street systems, and is one of three divisions of the Engineering Department. The director of the Seattle Engineering Department is Gary Zarker.

Ralph and Randall attempt to inspect job sites approximately once a week. At times, they examine a location together; other times they conduct separate inspections.

During or about 1986 through 1987, the utility repair account in the Engineering Department went from a "break even" status to having a $800,000 deficit. In an effort to increase the productive work day, Ralph decided it was necessary to emphasize the administration of the departmental break policy, especially as it pertained to lunch breaks. Sometime in March, 1987, certain Engineering Department foremen began enforcing the break policy at the instruction of Ralph.[4]

On March 27, 1987, WSCCCE Deputy Director Anthony Hazapis wrote in protest to George Bray, manager of street maintenance, that the break policy and its enforcement was discriminatory and a unilateral change in working conditions.

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[4] Ralph's memo regarding the break policy directed that crews of two employees or less were to stay at the job site during breaks, or they could go to an engineering department facility if the facility was within one mile of the job site. Crews of more than two employees could go to the closest engineering department facility for their breaks, no matter what the distance.

On April 7, 1987, Robert Hirano wrote a three-page typed letter to Yamasaki, expressing concern about the enforcement of the break policy and asking for clarification of certain aspects. Hirano sent copies of his letter to Ralph and Zarker. In response to his inquiry, Hirano was given a memo dated 1985, stating basically the same break policy as Ralph was enforcing.

By April 17, 1987, Hazapis had not received a response from the City regarding the protested break policy. At that time, he requested that William Hauskins, director of labor relations for the City, schedule a discussion of the policy for the forthcoming meeting of the Labor/Management Conference Committee.

Sometime thereafter, Hirano hand-carried a packet of the correspondence regarding his and others dissatisfaction with the break policy to the offices of Ralph and Zarker. Hirano asked to speak with Ralph regarding the lunch policy.

Hirano and Ralph met on April 28, 1987. Ralph characterized the meeting as friendly, with the result that the two men "agreed to disagree". Ralph testified that he admired Hirano's initiative in making his concerns known to members of the management.

During spring of 1987, Randall began noticing a lax attitude on the part of truck drivers regarding the use of wheel blocks. The wheel block or "chock" is an additional safety measure in case the emergency brake on the truck fails to hold. In following the safety standard, a chock block is removed from its holder on the truck and placed under a tire of the vehicle while it is parked. The Washington Industrial and Safety Code regulations (WISHA) require the use of chock blocks on heavy vehicles.

On May 22, 1987, Randall wrote a memorandum to all street maintenance supervisors, including Mickelson, to be transmitted to all work crews. That memo provided:

> Safety Reminder -- "Chock Block"
>
> Please be advised that many of our vehicles have been observed, unoccupied on an incline with no "chock block" in place. This is a violation of WISHA Rules, WAC 296-24-233, Par. 14, and is subject to a citation if a state safety inspector makes the same observation. I request you remind all of our employees of this requirement and be more observant yourselves.
>
> Let's not lose a rig for lack of a chock block.

Ralph regarded the use of chock blocks as a serious safety concern. In the late 1960's a city truck driver had been killed when hit by a "run-away truck" on the West Seattle bridge. One of the attendant circumstances of the accident was that a wheel chock had not been used on the truck.[5] In June of 1977, the City was cited by the state Department of Industrial Safety and Health for failure to have wheel chocks on certain Peterbilt trucks, and was initially fined $225.00.

On July 17, 1987, Hirano was working with Aquino on a project at the intersection of 7th and Madison in Seattle. They were assigned with another crew consisting of Larry Gerber and John Ladden. The two crews completed the assignment early, and decided to proceed to another project at the intersection of 5th and Jefferson. The latter site is within one block of the

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[5] Memos regarding the use of chock blocks were issued in the Engineering Department on September 25, 1972; October 6, 1972; November 13, 1973; and March 23, 1976.

Seattle Municipal Building, where the Department of Public Works is headquartered.

The project at 5th and Jefferson was an experiment to test the viability of "granite pavers". Ralph had a particular interest in the experiment, because he was to make a recommendation to the mayor and the city council on the use of granite pavers for a project in Westlake Park. On that day, Ralph visited the 5th and Jefferson job site unannounced, approaching the site approximately six minutes after Hirano and Aquino had arrived. Ralph noticed that there was no wheel block under one of the trucks at the site; he did not know who was assigned to the truck. Ralph brought the safety violation to the attention of Richmond, who was the crew supervisor at the site. Richmond approached Hirano, who was releasing hose from the compressor to begin work. Richmond quietly asked Hirano to put a chock block under the wheel of the truck. Hirano, who was on the opposite side of the truck from where the chock block is stored, stated that he would do so as soon as he was done readying the compressor hose. Richmond, who was standing next to the chock block, took it off the truck and set it under the tire himself. He mentioned to Hirano that the block should be in place, especially when the truck is parked so close to the Seattle Municipal Building. Hirano mentioned the incident to the other crew members, since it was the first time that Richmond had spoken of the need to put down a chock block anywhere.

Approximately one week later, Ralph again inspected the job site at 5th and Jefferson. A City Light Department truck at the site had wheel blocks underneath the wheels; an Engineering Department truck was present, with no chock blocks being used. There was no supervisor at the scene. Because there were just a few Engineering Department employees present, Ralph was able

to surmise that Hirano was the truck driver. Ralph returned to his office and telephoned Mickelson, informing the general foreman / actual field supervisor that an Engineering Department truck was unattended and unblocked at the 5th and Jefferson job site. He instructed Mickelson to "do something" about the situation. Mickelson called upon Richmond to accompany him, and they went together to the job site. There, Richmond again asked Hirano to put down the wheel chock. Hirano did so.

In a letter to Yamasaki dated July 27, 1987, Hirano again questioned the lunch break policy. He stated, in part,

> But until this [Labor/Management Conference Committee] issues its findings, I can only hope that you would take the initiative to develop an interim policy that is fair and consistent and addresses the needs of the people in your section.

Hirano sent copies of that letter to Mickelson, Ralph and Zarker.

On July 29, 1987, Hirano went into Richardson's Charles Street office to talk about an unrelated matter. Richardson asked Hirano to sign a "Documentation of a Verbal Warning" form for "not using wheel blocks when parking your truck on the job site". Hirano refused to sign the memo, because there was no union representative present.[6]

Later in the afternoon of July 29, Hirano spoke with Les Hawley, the president of the local union. Hawley confirmed

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[6] Union official Les Hawley testified that the union advises any unit member, who believes that he/she has been unjustly dealt with concerning a verbal warning, not to sign the document.

that no other truck drivers were receiving warning memos for not using chock blocks, and that Ralph had been at a job site where Engineering Department heavy truck drivers did not have wheel blocks in use. Hawley, who had been an officer in the local union for 18 years (including 14 years as president), stated that he was unaware of any driver ever being reprimanded for lack of a wheel chock underneath a truck.[7] Hawley then accompanied Hirano to meet with Richmond.

Hawley and Hirano both recalled Richmond having stated at that meeting that he did not want to write the warning memo, but that he had been pressured from higher authority to do so. He handed Hirano a memo from Ralph dated July 28, 1987, that instructed first-line supervisors to tell their crews that "'wheel chocks are a requirement', not an option."[8] Richmond stated that he had written the "Documentation of Verbal Warning" form prior to his receipt of Ralph's memo. Richardson did not question Hirano about his use of chock blocks.

Richmond testified that he documents a second "verbal" warning for his own protection, to show that he is trying to address the problem. Richmond believed he had to write the "Documenta-

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7 On July 30, 1987, Hawley and other employees in the heavy equipment section received Ralph's chock block memo. Section Supervisor Stevenson told employees that the memo would be enforced. This was a new direction, because some of the section vehicles were not equipped to carry wheel blocks. Stevenson advised that chock block hangers would be mounted on the trucks as they were taken in for maintenance. The vehicle assigned to Hawley had a hanger mounted on it on September 1, 1987.

8 The foreman of the Equipment Pool told the drivers of heavy trucks that rigs with trailers and front-end loaders were exempt from the memo. Later, block carriers were added to the trucks and the drivers were required to follow the memo.

tion of Verbal Warning" form regarding the chock blocks, because the second incident had occurred so close in time to the first one, and because both incidents had been brought to his attention by his superiors. Richmond testified that he probably would not have written up the warning to Hirano if management had not seen the second incident. Richmond considers that, over all, Hirano has a good safety record and a good driving record.[9]

Hirano met with union Shop Steward Gail Bernardez on July 29, 1987, to request that a formal grievance be initiated regarding the warning given to him.

Around the beginning of August, 1987, Richmond asked Aquino to be sure that Hirano put chock blocks down in the future. Richmond indicated at that time that he had been forced to write up Hirano, and that he hid not want to do so. However, he believed that would have been jeopardizing his own job if he did not issue the discipline.

On or about August 14, 1987, Hirano asked Bernardez about the status of the grievance, stressing the need to comply with the 30-day contractual timeline for initiating a grievance. Bernardez reported that she had turned the request over to Hazapis.

Hirano met with Hazapis and others from the local union on approximately August 28, 1987, at which time he was assured that the grievance was being processed.
Ralph received feedback from his foremen that the former break

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9 Written evaluations of Hirano were available for 1984 and 1985. He was rated as "highly proficient" or "outstanding" in the areas of safety and learning procedures.

policy did not accurately cover all the present working situations. He instructed the general foremen for sewer maintenance, paving repairs, and street maintenance (Mickelson) to develop an accurate policy. The new policy was issued in the autumn of 1987 and was met with resistance, principally in the concrete area.

Randall knew about Hirano's lunch break grievance. He did not know Hirano received a warning. Randall confirmed that if a safety violation is repeated within a short period of time, a warning is usually documented.

During or about the same time period, the Engineering Department had a computer installed in the Paving and Equipment Section. Dee Bratt was the radio dispatcher of the section. She was given added duties involving the computer. Mickelson told Bratt that she might qualify for a reclassification and upgrade in pay because of her new responsibilities. Bratt asked Mickelson several times over the next months about her reclassification. Mickelson finally told Bratt that she would not get a reclassification, and that if she filed a grievance about the denial, she "would be shipped uptown and Miriam would be brought down". Bratt did file a grievance about the threat of retaliation. She later met with certain management personnel, including Ralph, regarding her grievance. Thereafter, she changed jobs and did not pursue the grievance further.

In November 1987, Hirano again heard Richardson state that he, personally, was not worried about chock blocks, but that he had been pressured from higher authority to write the "Documentation of Verbal Warning" form concerning Hirano's failure to use the wheel blocks.

The lunch break policy continued to be a matter of controversy. Two crews of six employees were written up, during or about January, 1988, for returning to the base for lunch, instead of staying in the field with their trucks. Although the policy had stayed basically the same, the applicability to various sections had changed, and the enforcement level varied.

At the time of the filing of the instant unfair labor practice complaint in January of 1988, Hirano had received no further word about the status of his grievance.

In February of 1988, Ralph and Robert Graham from the City's Personnel Department met with representatives of Local 21 and representatives of another labor organization which represents certain employees in the Engineering Department (Local 1239), to jointly develop a new policy memo about lunch breaks. The resulting memo was issued in March, 1988.

POSITIONS OF THE PARTIES

Robert Hirano alleges that his exercise of rights, through the protected conduct of filing a grievance regarding the lunch break situation, was a motivating factor behind the employer's decision to issue him a disciplinary warning about the use of wheel blocks. The complainant also argues that the employer committed an unfair labor practice by not allowing him to have union representation at a disciplinary interview.

The City defends that there is no connection between the complainant's union activities and the warning issued to Hirano regarding safety regulations. The City contends that the disciplinary action would have taken place even if Hirano had not been involved in the union activities. The City asserts

that the complainant had no right to union representation at the meeting where he received the verbal warning, because he was neither investigated nor interviewed at that meeting; the warning had already been prepared when the meeting occurred.

DISCUSSION

Legal Standard

It is unlawful for a public employer to engage in any form of reprisal or discrimination against its employees, because of their exercise of rights protected under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.[10] The pursuit of a grievance involving break times has been found to be an activity protected by the statute. Valley General Hospital, Decision 1195-A (PECB, 1981).

A discrimination violation occurs where it is demonstrated that an employer has deprived an employee of some ascertainable right, or has taken some adverse action against an employee, in reprisal for engaging in protected activity. Housing Authority of the City of Bremerton, Decision 3168 (PECB, 1989). Essential to such a finding is a showing that the employer intended to discriminate against the employee. City of Seattle, Decision 3066 (PECB, 1989).

The Commission has embraced the principles set forth by the National Labor Relations Board in Wright Line, Inc., 251 NLRB

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10 **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; . . .

1083 (1980), which prescribes a test for balancing the rights of employees with those of the employer in cases in which discriminatory motivation is a possibility. City of Olympia, Decision 1208-A (PECB, 1982). The Wright Line "causation test" requires the complainant to make a prima facie showing sufficient to support an inference that protected conduct was a motivating factor in the employer's decision. Once this is shown, the employer must come forward with credible evidence to demonstrate that the same action would have taken place even in the absence of protected conduct. Washougal School District, Decision 2055-A (PECB, 1985).

Employer Motivation

In applying the standard to the case at hand, there is the possibility of employer motivation to discipline Hirano for both lawful and unlawful reasons.

Hirano was clearly identified as being involved with the controversy concerning the break policy: He wrote directly to Yamasaki; he hand-carried his materials questioning the break policy to Ralph and Zarker; he had a face-to-face meeting with Ralph to make clear his objections about the break policy.

The affected employee could also view the timing of the events of this case with suspicion. The intensified enforcement of the chock block safety standard came, it is clear, in the summer of 1987, in the midst of the break time controversy. Hirano was the first employee in at least 14 years to be "written up" for a chock block violation. The enforcement level was beyond what even the first line supervisor believed to be necessary, as Richmond would rather have just talked with Hirano about the matter, and would have done so except for the fact that his superiors had brought the violations to

light. Further, Richmond's stressing of the significance of using the chock blocks around City Hall emphasizes that his concern was with who might view a violation rather than a deep belief that safety was in danger. The timing of the written warning -- two days after Hirano wrote to Yamasaki -- is also curious.

Hirano's claim of disparate treatment in the enforcement of the chock block requirement has potential merit. Although there is no direct evidence that other employees failed to use chock blocks, the City over the years had felt a need to periodically issue the chock block reminder memo. No other employee had received a written warning about failing to use a chock block. In the normal course of business, reminder memos are issued when there has been forgetfulness. Therefore, it can be deduced that other employees had forgotten to use wheel blocks in the past, but did not receive a written warning. Additionally, the City had operated heavy equipment that was not even equipped for carrying wheel blocks. Even when the City did decide to equip all vehicles for wheel blocks, it was not a pressing safety emergency; the Peterbilt trucks were to have the block hangers added to them at the time in the future when the truck would be taken in for regular servicing.

There was other indicia of union animus. Bratt testified that she had been threatened with a transfer if she filed a grievance. Bratt's testimony showed that the same supervisors who were involved in Hirano's matter could harbor union animus against a bargaining unit employee who was pursuing a grievance.

Shifting the Burden

Shifting of the burden is not automatic. Lyle School District, Decision 2736-A (PECB, 1988). Because of the involvement of the grievance procedure itself, the timing and the circumstances surrounding the written warning, a liberal interpretation of the principles set forth in Wright Line is appropriate in this case when evaluating the merits of the complaint. Housing Authority of the City of Bremerton, supra. Using such a view, it is concluded that the complainant has established the prima facie showing that the issuance of the written warning could have been in reprisal for Hirano's pursuit of the break time grievance.[11] That is all that is necessary to shift the burden, to prove otherwise, to the employer.

The Employer Defense

The question of whether there actually was retaliation by the City must be evaluated in the light of alternative explanations available and offered. City of Centralia, Decision 2481-A (1986).

The employer's explanation for its actions was that safety was always a priority. The City established that it was always concerned with following proper safety standards. The number of memos written over the years about the use of wheel blocks tends to substantiate this claim by the employer.

The employer has also cast doubt on the connection between the two sets of events. Hirano had met with Ralph about the break

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[11] The complainant need only establish an inference that the employer was motivated by anti-union feelings in the discipline. City of Centralia, Decision 2481 (PECB, 1986).

policy in April. Randall was not privy to the meeting between Hirano and Ralph. Randall drafted the chock block reminder notice in May. It was at a site visitation months later, in July, when Ralph brought the wheel block safety violation to Richmond's attention. Additionally, Ralph did not know that the truck that he observed without a wheel block was assigned to Hirano.

Richmond's statements regarding the "pressure from higher authorities" that he felt are found to be reflective of his desire to protect his own job as a supervisor, by showing that he was addressing safety violations that his superiors had seen. There is no evidence that the "pressure" from higher management was to discipline any employee in retaliation for complaints about the break policy.

Many employees other than Hirano were involved with or affected by the dispute concerning the break policy. The employer continued to deal with the problems concerning the break policy, and to work with the involved unions towards a resolution, for almost one full year after the policy was first issued.

The City enforced the safety rules on wheel blocks as a business decision within the normal course of its operation. Independently of the concerns with the safety rules, the City was attempting to develop a break policy which would increase productivity. The record establishes that the employer was taking action on these two legitimate business interests in a manner which was not related to any employee exercise of protected rights. Such actions dispel an inference that management singled out Hirano for disparate treatment.
Although Hirano might legitimately question if there had been a "just cause" basis for the issuance of a warning to him, to

link the warning with his pursuit of the break grievance involves speculation and misinterpretation. It is the conclusion of the Examiner that the employer would have written up Hirano for not using wheel blocks, even in the absence of Hirano's pursuit of a grievance regarding break periods.

Right of Union Representation in Investigatory Interview

An employer commits an unfair labor practice by denying an employee's request to have union representation present in an investigatory meeting which the employee reasonably believes might result in disciplinary action. NLRB v. Weingarten, Inc., 420 U.S. 251 (1975); Okanogan County, Decision 2252-A (PECB, 1986). If the meeting is called, however, for the limited purpose of announcing the discipline that is to be imposed, and the affected employee is not interrogated, a union representative need not be present. Mercer Island, Decision 1460 (1982). The Court of Appeals wrote in Alfred Lewis Co v. NLRB, 587 F.2d 403 (9th Circuit, 1978): "[W]hile union representation must be permitted at some types of disciplinary sessions, it is the presence of an investigatory element which gives rise to the right."

In the present case, no union representative was required at the July 29, 1987 meeting between Hirano and Richmond. The purpose of the meeting was not to interview Hirano or to obtain facts to support potential disciplinary action. The decision on the discipline (i.e., the issuance of the "Documentation of Verbal Warning" form) had already been made; Richmond had the document fully prepared when he approached Hirano on July 29th. At such a meeting, the protective role of the union representation envisioned by Weingarten is not applicable.

FINDINGS OF FACT

1. The City of Seattle is a public employer within the meaning of RCW 41.56.030(1).

2. Robert K. Hirano is an employee of the City of Seattle, employed as a cement mixer/truck driver in the Engineering Department, and is a public employee within the meaning of RCW 41.56.030(2).

3. Washington State Council of County and City Employees, Local 21, AFL-CIO, a bargaining representative within the meaning of RCW 41.56.030(3), is recognized as the exclusive bargaining representative of certain employees of the City of Seattle. Robert Hirano is employed within the bargaining unit represented by the union.

4. During or about March, 1987, Operations Division head Joseph Ralph instructed certain Engineering Department foremen to enforce a rest break / lunch break policy in an attempt to increase the productive work day. Hirano disputed the fairness of that policy, and he wrote a letter to his supervisor, Valerie Yamasaki, in that regard. Local 21 protested the policy through labor/ management channels. In April, 1987, Hirano hand-carried a packet of correspondence regarding dissatisfaction with the break policy to the offices of Ralph and of the City Engineer, Gary Zarker. On April 28, 1988, Hirano met directly with Ralph regarding the break policy.

5. On May 22, 1987, John Randall, Director of Street Maintenance, issued a safety memo to Engineering Department employees, including Hirano, reminding them to use wheel blocks on unoccupied vehicles parked on an incline.

6. During a routine site inspection on July 17, 1987, Ralph observed an Engineering Department truck at the site which was unoccupied, but had no wheel block. Ralph did not know the identity of the driver assigned to the truck. Ralph told Stewart Richmond, the crew supervisor at the site, to correct the safety violation. Richmond went to the truck and instructed the driver, Hirano, to put the wheel block in place. Since Hirano was busy at that moment, Richmond placed the wheel block himself.

7. Approximately July 24, 1987, Ralph again observed a violation of the safety rule concerning wheel blocks while at a job site. The truck involved was assigned to Hirano. Ralph inferred that the truck driver involved was Hirano, because of the limited number of Engineering Department employees present at that site at that time. Ralph returned to his office and instructed Field Supervisor Larry Mickelson to "do something" about the situation. Mickelson and Richmond went to the job site, where Richmond asked Hirano to use the wheel block. Hirano complied with that request.

8. On July 27, 1987, Hirano again wrote to Yamasaki, questioning the break policy. He sent copies of that letter to Zarker, Ralph and Mickelson.

9. On July 29, 1987, Hirano went into Richardson's office to talk about an unrelated matter. Richardson asked Hirano to sign a "Documentation of Verbal Warning" form for "not using wheel blocks when parking your truck on the job site". Hirano refused to sign the form, because there was no union representative present.

10. During or about the summer of 1987, Mickelson threatened to transfer Engineering Department employee Dee Bratt if she pursued a grievance regarding her reclassification.

11. In February, 1988, Ralph and a representative from the City Personnel Department met with union representatives to jointly develop and author a new policy about lunch breaks. Those negotiations resulted in a memo issued in March, 1988, to the apparent satisfaction of the union.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The complainant's allegations were filed in a timely manner pursuant to RCW 41.56.160, as the complained-of conduct, consisting of the issuance of a "Documentation of Verbal Warning" form, occurred within the six months prior to the filing of the complaint.

3. The complainant made a prima facia showing sufficient to support an inference that his protected conduct of pursuing a grievance was a motivating factor in the employer's decision to take adverse action against the complainant, in potential violation of RCW 41.56.140(1).

4. The employer has demonstrated, by credible evidence, that the Documentation of Verbal Warning form issued to Robert Hirano on July 29, 1987 would have been issued even in the absence of the complainant's protected conduct; therefore, the employer did not commit an unfair labor practice as enumerated in RCW 41.56.140(1).

5. The employer was not required by RCW 41.56.140(1) to allow the complainant to have union representation at the meeting between Hirano and Richmond on July 29, 1987, since the only purpose of that meeting was to inform Hirano of a decision on discipline that had already been made, and the employer did not seek to interview Hirano to obtain facts to support potential disciplinary action.

Based on the oral testimony, demeanor of the witnesses, the documents allowed into evidence, the legal argument of the parties and the record as a whole, it is

ORDERED

The complaint charging unfair labor practices filed against the City of Seattle in this matter is hereby DISMISSED.

DATED at Olympia, Washington, this 24th day of April, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner

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