

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TIM HOYT,)	
)	
Complainant,)	CASE 7979-U-89-1728
)	
vs.)	DECISION 3456 - CCOL
)	
PIERCE COLLEGE,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
_____)	

Eric R. Hansen, Attorney at Law, appeared on behalf of the complainant.

Ken Eikenberry, Attorney General, by Richard M. Montecucco, Assistant Attorney General, appeared on behalf of the employer.

On May 19, 1989, Tim Hoyt filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Pierce College had violated RCW 28B.52.073 by its refusal to renew his teaching contract. A hearing was held in Tacoma, Washington, on October 16 and 17, 1989, before Examiner Mark S. Downing. Both parties submitted post-hearing briefs.

BACKGROUND

Pierce College is a state-supported community college located in the southern portion of Pierce County, Washington. A five-member board of trustees acts as the governing body of the college. Dr. Frank B. Brouillet serves as interim president. The college provides academic instruction to approximately 9,200 students.

The Pierce College Faculty Association (PCFA) is the exclusive bargaining representative of a unit comprised of approximately 400 full-time and part-time instructors, counselors and librarians employed by the college. The PCFA and the employer negotiated a collective bargaining agreement

covering the period of September 1, 1986 through August 31, 1988.

Tim Hoyt was hired by Pierce College as a full-time chemistry instructor on September 18, 1987. He was a member of the bargaining unit represented by the PCFA.

As a new faculty member, Hoyt's attainment of tenure status was governed by Chapter 28B.50 RCW. New faculty are appointed on a "probationary" basis and may be terminated without "cause" upon expiration of that appointment. The probationary period may not exceed three consecutive regular college years, excluding summer quarters. A tenure review committee, composed of members of the administrative staff, members of the teaching faculty and a student representative, is established to periodically evaluate a probationary faculty member's performance.¹ Pursuant to RCW 28B.50.856, the evaluation process places primary importance on probationers' effectiveness in their positions. The review committee makes a recommendation to the board of trustees concerning tenure, though the final decision to award or withhold tenure rests with the board. A probationer must be notified of the board's decision not to renew their faculty appointment by the last day of the winter quarter. If tenure is granted, a faculty member may only be discharged for adequate and sufficient cause, after due process of law.

Hoyt's first year tenure committee was composed of seven persons, as follows:

Administrators:

Ruben Ceden, Dean of Educational Services
Tana Hasart, Director of Continuing Education

Faculty Members:

Ray Egan, Business Instructor
George Cummings, Science & Technology Division Chairman
Jere Knudtsen, Music Instructor
Keith Forman, Social Science Instructor

Student Representative:

Roosevelt Miller, Jr.²

¹ A majority of the committee is composed of the probationary faculty member's peers.

² Committee minutes from the February 4 and 19, 1988 meetings indicate that the student representative had been changed to Ms. C. Crawford.

Hoyt was included as an active participant in the process, and attended committee meetings.

The committee held its first meeting on November 24, 1987. The committee discussed the development of procedures for evaluation of Hoyt, asked him to prepare a draft resume and self-evaluation for the committee, and elected Egan as chairman.

Hoyt distributed copies of his self-evaluation on December 11, 1987, describing his teaching philosophy as one where "science is an exciting subject and can be learned successfully and enjoyably by a wide range of students." Hoyt indicated that he attempts to instill a positive attitude in students through his "Chemistry is Fun" approach. Hoyt noted his particular interest and training in the area of organic chemistry. In the area of curriculum review and development, Hoyt detailed changes he had made and was planning to make so that certain courses would be more relevant to students. Hoyt described his community service objectives, including his participation as "Tim the Wizard" at several civic events. With his extensive computer background, Hoyt envisioned beginning a computer users group at the college in the fall of 1988. In the area of self-improvement, Hoyt stated that his teaching classes were going well in all aspects and that he intended to develop lecture note outlines as an aid for the taking of notes by his students.

At the committee's February 1, 1988 meeting, evaluation criteria checklists were agreed upon, and committee members were asked to submit their written evaluations by February 19th. Evaluations were to include a report on classroom observation, a narrative assessment utilizing the evaluation checklist, and a recommendation regarding Hoyt's rehiring for a second year and continuation in the tenure process. The evaluation checklist included five areas of teaching performance: Classroom, professional, institutional, student, and self-evaluation. Classroom criteria included objectives such as knowledge of subject being taught, preparation for class, clear explanation of ideas, treating students with respect, providing extra help where needed, and stimulating student curiosity on the subject. Professional criteria included evaluation of the appropriate education and professional certificates necessary for the position, membership in professional organizations, participation in conferences and workshops, and community involvement. Institutional criteria took into account attendance at division and department meetings, support of departmental and institutional goals, assistance to colleagues, willing advice to students, and prompt and accurate reporting of grades. These goals were to be measured by reports from the division chair, administration and tenure committee. Student criteria would be met by assuring that students prepared the classroom evaluation forms. Self-evaluation criteria included preparing a professional development plan, evaluating classes quarterly and preparing a report addressing student classroom evaluations.

Six tenure committee members, including four faculty and two administrators, submitted classroom observation reports for Hoyt's first year. The reports were generally favorable, though certain classroom problems from the autumn quarter of 1987 and the winter quarter of 1988 were noted. One committee member suggested that students' note-taking could be improved if Hoyt would outline his lecture at the beginning of class and then re-outline the important points at the end of class. The division office also indicated that it did not have copies of all of Hoyt's syllabi, or course outlines. Committee Chair Egan noted the generally disruptive nature of the Chemistry 110 class, and recommended that Hoyt address his lectures to the dominant interests of that particular group of students.

While no classroom observation was received from the student representative on the tenure committee, student evaluations from Hoyt's first two quarters were reviewed by the tenure committee at its February 19, 1988 meeting. Particular attention was focused on the chemistry 110 class, part of the animal technology curriculum. Egan agreed to institute a meeting with the directors of the veterinary technician program, to discuss the negative attitudes of those students toward Hoyt and the class.

Though some changes in Hoyt's teaching techniques were suggested by the committee, it unanimously recommended that he be rehired for a second year and that he also be retained in the tenure process. That recommendation was approved by the board of trustees and Hoyt was reappointed for the 1988-89 school year.

Concurrent with Hoyt's passage through the "probation" process, the PCFA had conducted an internal vote of its membership in which 27 of 44 participating members, or roughly 60%, had expressed an interest in affiliation with a larger organization. During or about the spring of 1988, representatives of the PCFA contacted the Washington Education Association (WEA) and the American Federation of Teachers (AFT) with questions concerning affiliation with those organizations. Both the AFT and the WEA then commenced an organizing drive among the employees in the bargaining unit represented by the PCFA. Forty-seven of the PCFA's 91 members had failed to participate in the internal vote on whether to seek affiliation, however, and the affiliation issue was not free of controversy. During mid-June, 1988, several PCFA members, including Egan, sent two memos to bargaining unit employees, urging them to refuse to sign "hard cards"³ then being circulated by the

³ "Hard cards" appears to be the terminology used by these parties for the "individual

AFT. Hoyt encountered Egan in the college parking lot on one occasion and attempted to discuss the memos, but Egan refused to discuss the matter.

On June 29, 1988, the AFT filed a representation petition with the Commission, seeking to replace the PCFA as exclusive bargaining representative for the Pierce College faculty.⁴ The following day, the Pierce Faculty Association for Higher Education/WEA/NEA filed a motion to intervene in those representation proceedings. An intense representation campaign ensued during the summer of 1988; however, no election was conducted as the petition was withdrawn on December 9, 1988.⁵

Hoyt was a moderately active supporter of AFT's organizing efforts. His office at the college was the site of several meetings in the spring of 1988 with Susan Levy, the president of the Washington Federation of Teachers/AFT. Although he was not one of the prime promoters or organizers, Hoyt did encourage fellow faculty members to explore affiliation of the PCFA with another labor organization, and he made AFT authorization cards available to faculty members. Hoyt was also frequently seen wearing an AFT pin on the lapel of his lab coat. On the other hand, Hoyt told a fellow faculty member

authorization cards or letters signed and dated by employees" that are required to comply with the Commission's "showing of interest" requirements under WAC 391-25-110.

⁴ Case 7466-E-88-1281.

⁵ Pierce College, Decision 3061 (CCOL, 1988).

that he did not want to openly support unions, as he was in the middle of the tenure process.

Hoyt pursued several grievances during the autumn of 1988. In one of those, Hoyt questioned Vice-President for Academic Affairs Joan Bevelacqua as to why he was placed at the three year experience step on the salary schedule, when he in fact had eight to nine years of community college teaching experience. Bevelacqua indicated that previous teaching experience was credited on a three to one basis, so that his salary placement at the three year level was proper. Hoyt did not pursue that matter further through the parties' grievance procedure. The second grievance concerned Hoyt's 1988-89 teaching contract. He inquired of Director of Personnel Services Jennie Adkins as to why the contract did not reflect an additional step over his previous year's contract. The PCFA's president had recently spoken with Bevelacqua concerning the same problem, and Bevelacqua had agreed that the contracts were in error. The matter was apparently resolved on that basis, and Hoyt did not file a formal grievance or make any further contacts on this matter.

Hoyt's tenure committee met again on October 24, 1988, when two new committee members were present. George Cummings, having been promoted to Dean for Occupational Programs, remained on the committee, though now as an administrator. Allan Hawk, the new Science and Technology Division chair, joined the committee. Mike Tilley, was added as student representative. Hoyt's spring, 1988 quarter student evaluations were discussed, prompting the following list of concerns:

1. Provide more organization.
2. Test at the times announced.
3. Stay on schedule.
4. Encourage students to ask questions.
5. Tailor lectures more towards the interests of the students wherever possible.
For example, include more references and explanations that pertain to animals when the class is composed of Animal Tech students.
6. Be aware that he can intimidate some students.

Hoyt was asked to provide an up-dated self-evaluation for the committee's next meeting.

When the committee convened on November 21, 1988, Hoyt distributed copies of his up-dated self-evaluation. That document indicated his pleasure with the curriculum changes instituted for chemistry 100 and 139, that he had participated in several "Wizard" shows, as well as teaching a computer workshop to a small group of Pierce College faculty. Hoyt had also developed and implemented an improved safety program for the storage of chemicals, and had attended a three day computer conference. No mention was made of his previous year's goal to develop lecture note

outlines for his classes. The committee expressed concern that Hoyt not take on or be burdened with so many on-campus activities (e.g., "Tim the Wizard" and computer training of faculty) that further development of his classroom skills suffered. Hoyt was requested to address the concerns expressed by the committee at its previous meeting about student evaluation comments.

In early November, 1988, Hoyt was appointed to the Pierce College Council for Academic Affairs. Composed of faculty, administrator and student representatives, that council serves as a policy-recommending and review body for curriculum matters. It evaluates and approves changes in courses, programs, degrees and certificates given by the college. Joan Bevelacqua serves as its chairperson.

Hoyt's tenure committee next met on January 17, 1989. Classroom observations by four committee members were discussed. One member reported that Hoyt failed to distribute a syllabus on the first day of chemistry 101, held on January 3, 1989. In that same class, Hoyt stressed that students needed to organize their time and activities to succeed in chemistry, while noting that the appearance of his office might not convey an impression of organization. Another committee member repeated his previous year's comment on the lack of an outline at the beginning of a class as well as a summary at the end of class. Another committee member summarized his classroom observation as follows:

Tim is a very knowledgeable [sic] and enthusiastic instructor who needs to work on his presentations, attitudes toward the needs of some students, and being fully responsible in the laboratory. I feel certain that Tim is aware of these areas and will work to demonstrate improvement.

At this meeting, Hoyt addressed the concerns raised by the committee regarding student evaluations. He noted that though his student ratings were improving, there were areas that he still needed to work on. Hoyt questioned the accuracy of evaluations from small classes, as such could be easily distorted by the lack of a representative sample. Student evaluations for the summer, 1988 and autumn, 1988 quarters were also discussed. The committee noted the recurring pattern of student criticisms concerning Hoyt's disorganized lectures and suggested that he have several lectures videotaped so he could see himself as his students see him. Committee Chair Egan closed the meeting with a request that committee members have their tenure recommendations submitted by January 23, 1989.

Hoyt attended a meeting of the Council for Academic Affairs on January 18, 1989, where he raised the issue of salaries for part-time faculty members. Bevelacqua informed him that the agenda item for discussion was stipends for part-time faculty attending an orientation session, and that his

concerns on the broader issue of part-time faculty salaries should be raised with the PCFA, as that topic was outside of the council's authority.

When Hoyt's tenure committee met in executive session on January 25, 1989, to review the recommendations, numerous problems were cited concerning Hoyt's teaching performance. Chief among those were his lack of organizational skills, as shown by the absence of cleanliness and neatness in the chemistry lab, lack of course syllabi and late returns of graded assignments. Other problems noted were Hoyt's lack of patience in dealing with both students and fellow faculty members, lack of adequate notice before tests, making students feel intimidated when they asked questions, and the appearance that he lacked the cooperative attitude and spirit required to fit into any organization. Chairman Egan's recommendation stated: "Not once has he provided specific proposals for improving his course and lecture organization." The committee voted five to two to continue Hoyt in the tenure process, so long as the following conditions were met by him in the upcoming year:

- a. . . . prepare detailed syllabi for each class including scheduled exams and quizzes with clear documentation of the topics and text references to be covered. . . .
- b. Videotape . . . lectures to let him view his communication skills and teaching style.
- c. . . . document the date of exams and quizzes and the date they were graded and returned.
- d. . . . prepare a statement of student responsibilities and requirements for each class.
- e. . . . work at, and demonstrate progress in:
 1. Fitting into the organization as an effective member.
 2. Learning to be a more effective instructor in terms of course, class and test organization and continuity.
 3. Becoming a better motivator of students by exhibiting patience and tolerance.

4. Improving work habits such as organization of lab facilities and returning graded work to students in a timely manner.
- f. . . . make improvements in specific areas: communication with students, organizational abilities and testing procedures.
- g. . . . take specific steps to improve the productivity of his interpersonal relationships and . . . specific steps to improve his organizational skills.

Four committee members met on January 28, 1989, to develop a sub-committee approach to working with Hoyt during the coming year. It was envisioned that this committee would work closely with Hoyt to determine ways to improve his organizational and interpersonal skills, as well as to develop a methodology for determining whether improvement had been made.

On January 29, 1989, the student representative on the tenure committee reversed his negative vote, and recommended that Hoyt be continued in the tenure process as long as certain improvements were made in his teaching performance. The sole negative vote remaining was that of Committee Chair Egan, whose recommendation stated:

It is my concern that if, after 15 months of a probationary process, Tim has not learned to self-evaluate and to self-correct the short-comings repeatedly documented by his students then can we expect him to do so once he has been granted tenure? I am not certain that he can.

Egan nevertheless conveyed the committee's recommendation to renew Hoyt's contract, so long as certain conditions were attached, to Bevelacqua on January 31, 1989.

Bevelacqua reviewed the information submitted by the tenure committee and, on February 6, 1989, recommended to Brent Knight, who was then the president of the college, that Hoyt's contract not be renewed for the 1989-90 school year. Bevelacqua's negative recommendation was based upon the degree and nature of the concerns and conditions that had been expressed by the committee. Knight forwarded Bevelacqua's recommendation to the board of trustees.

Acting in executive session on February 8, 1989, the board of trustees voted to discontinue Hoyt's teaching contract at the end of the 1988-89 school year. Hoyt was notified by the board of trustees in February, 1989, that his contract was not being renewed for the upcoming school year.

POSITIONS OF THE PARTIES

Hoyt alleges that the employer did not renew his teaching contract because of his participation in protected union activities, namely his affiliation efforts on behalf of the AFT and his pursuit of grievances on behalf of himself and other faculty members. Hoyt asserts that his union activities were well known to Egan, who in turn communicated that information to Bevelacqua. Hoyt points to the fact that Bevelacqua's recommendation to the college president was followed by the board of trustees in making its nonrenewal decision. Hoyt maintains that the employer's motivation for such an action was its desire to keep the PCFA, which he terms a "company union", from affiliating with a "strong" union.

The employer contends that Hoyt failed to prove that he engaged in protected activities, or that the employer was aware of his alleged union activities. Even assuming that some administrators may have been aware of Hoyt's protected activities, the employer argues that the board of trustees was not privy to that information, and that any such activities had no effect on the employer's nonrenewal decision. The employer maintains that Hoyt's contract was not renewed because serious deficiencies existed in his teaching.

DISCUSSION

Chapter 28B.52 RCW (Collective Bargaining - Academic Personnel in Community Colleges) was amended by the Legislature in 1987, granting jurisdiction to the Public Employment Relations Commission to resolve unfair labor practice complaints filed by community college academic employees.⁶

Discrimination by an employer for employees' exercise of their collective bargaining rights is

⁶ That legislation reversed a previous Commission ruling, holding that the Commission lacked jurisdiction to hear and determine unfair labor practice allegations involving community college academic faculty. Yakima Valley College, Decision 240 (CCOL, 1977). It was noted in that case that the Legislature had specifically rejected language incorporating the unfair labor practice provisions of Chapter 41.56 RCW (the Public Employees' Collective Bargaining Act) in its 1971 enactment of Chapter 28B.52 RCW.

prohibited, as follows:

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

...

RCW 28B.52.073 UNFAIR LABOR PRACTICES. (1) It shall be an unfair labor practice for an employer:

...

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

The legal standard to be applied in a "discriminatory discharge" unfair labor practice case is commonly known as the Wright Line causation test. City of Olympia, Decision 1208-A (PECB, 1982). Under that test, the burden is initially placed on the employee to show that his or her conduct was protected, and that such conduct was a substantial or motivating factor in the employer's discharge decision. Once such a showing is made, the burden shifts to the employer, to demonstrate that it would have discharged the employee even in the absence of the protected conduct. The Commission's use of this test was affirmed in Clallam County, Decision 1405-A (PECB, 1982), aff. 43 Wn.App. 589 (Division II, 1986).⁷

Hoyt's Participation in Protected Activities

The right to participate in union organizing efforts is guaranteed by RCW 28B.52.025, as follows:

RIGHT TO ORGANIZE OR REFRAIN FROM ORGANIZING. Employees have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and also have the right to refrain from any or all of these activities except to the extent that employees may be required to make payments to an exclusive bargaining representative or charitable organization under a union security provision authorized in this

⁷ Also see Washington Public Employees Ass'n v. Community College District No. 9, 31 Wn.App. 203 (1982).

chapter.

Protected conduct includes actions and activities undertaken by academic employees in furtherance of those rights.

Hoyt met with faculty members to discuss affiliation of the PCFA with the AFT, he was seen wearing an AFT pin, and he made AFT authorization cards available to other faculty members. All of these union organizing activities are protected activities under the provisions of Chapter 28B.52 RCW.

The filing and pursuit of grievances through a contractual procedure is also a protected activity. Valley General Hospital, Decision 1195-A (PECB, 1981); King County, Decision 1698 (PECB, 1983); City of Seattle, Decision 3066 (PECB, 1988), aff. Decision 3066-A (PECB, 1989).⁸ Hoyt also claims that his pursuit of several grievances in the fall of 1988 on behalf of himself and other faculty members constituted protected activities. The employer responds that such matters were never pursued by Hoyt as formal grievances.

Grievances are defined in the parties' collective bargaining agreement as follows:

B. GRIEVANCE AND ARBITRATION

B.1 A grievance is defined as any complaint by any Faculty member concerning the effect or interpretation, or a claim of breach, of this negotiated agreement or any claimed violation, misinterpretation, or misapplication of any law, rule, regulation, or College policy and practice affecting conditions of employment.

Appendix A of the contract sets forth the parties' agreed upon procedure for resolving grievances. Step 1 provides for oral presentation of the alleged violation to the employee's immediate supervisor. Step 2 calls for written presentation of the grievance to the next level of supervision. If not satisfactorily resolved, the grievance proceeds to the college president at step 3. Step 4 of the

⁸ The employer contends, for the first time in its post-hearing brief, that no grievance procedure was in effect after the parties' collective bargaining agreement expired on August 31, 1988. However, the PCFA continued as exclusive bargaining representative of the faculty. An employer has a duty to meet with the exclusive bargaining representative to discuss employee grievances which arise during the hiatus between expiration of one agreement and the reaching of a new one. Clark County, Decision 3451 (PECB, 1990).

procedure calls for mediation, followed by final and binding arbitration if the matter is still unresolved. Employees may pursue grievances without the assistance of the union, so long as the union is advised and permitted to have an observer at all meetings and/or hearings. Hoyt's complaints to Bevelacqua and Adkins in the fall of 1988 involved disputes concerning salaries. Both matters involved the interpretation of contractual language and would clearly be defined as grievances under the parties' collective bargaining agreement.

In regards to the employer's complaint that Hoyt was not pursuing these matters as formal grievances, the agreement is unclear as to what person is designated as a faculty member's immediate supervisor for purposes of the grievance procedure. The agreement does provide for "division chairs", whose main responsibility is managing a division's instructional programs. It seems wholly appropriate for Hoyt to have addressed his salary concerns to a college administrator, as opposed to his division chair. Hoyt's complaints concerning salary, though orally presented, were grievances within the parties' contractual definition of those matters. The fact that they were not pursued beyond the first step does not mean that they are any less protected activities within the meaning of Chapter 28B.52 RCW.

Employer Knowledge of Hoyt's Protected Activity

An employer must be aware of an employee's protected activities in order to form the requisite motivation and intent to react against that conduct. Seattle Public Health Hospital, Decision 1911 (PECB, 1984); Metropolitan Park District of Tacoma, Decision 2272 (PECB, 1986); City of Seattle, supra.

The employer claims in this case that it was unaware of Hoyt's participation in protected activities. Indeed, no evidence was presented to show that college administrators were aware of Hoyt's union organizing efforts on behalf of the AFT. However, both Adkins and Bevelacqua were parties, as administrators, to Hoyt's grievances. The employer is thus charged with an awareness of at least that portion of Hoyt's participation in protected activities.

Employee's "prima facie" Burden

Hoyt must demonstrate that his participation in protected activities was a substantial or motivating factor in the employer's decision to discharge him. As an employer's anti-union motivation is rarely

publicly broadcasted, that motivation may be inferred from the use of circumstantial evidence. City of Seattle, supra.

The complainant would infer anti-union motivation in this case from the employer's departure from its usual practice of renewing probationary faculty contracts. Hoyt cites the fact that the contracts of fourteen faculty members were considered by the board at its February 8, 1989 meeting. Seven first year faculty were renewed for their second year of employment. Of the seven second year faculty under consideration, six were moved to their third year of employment with conditions attached to only one of those renewals. Hoyt's contract was the only one that was not renewed.

Evidence regarding the employer's historical practice concerning renewal of probationary faculty contracts was provided by two witnesses. Bevelacqua testified that, in her three and one-half years of employment with the college, one other probationary faculty member's contract was not renewed. That nonrenewal occurred at the end of the employee's third year of employment. Jack Watkins, a board member since 1982, testified that faculty other than Hoyt have been denied contract renewals in the past including, to his belief, a nonrenewal after the first year of employment. Hoyt failed to prove that his nonrenewal was a sudden departure from an established practice of the employer.

Hoyt would also infer anti-union motivation from the employer's failure to follow its own rules and regulations in the discharge of Hoyt. The tenure policy of Pierce College is codified in Chapter 132K-20 WAC. The duties and responsibilities of the tenure committee are set forth in WAC 132K-20-040(1) as follows:

- (1) The general duty and responsibility of the review committee shall be to assess and advise the probationer of his professional strengths and weaknesses and to make reasonable efforts to encourage and aid him to overcome his deficiencies.

Hoyt contends that he was never told that he was in jeopardy of nonrenewal, and that he was never given notice of specified areas of performance that needed improvement. Hoyt's tenure committee did point out several weak areas in his teaching performance and made suggestions to help him correct those problems. As the board of trustees makes the final decision not to renew a contract, Hoyt's tenure committee was not in a position to notify him that he was in jeopardy of nonrenewal. That decision was not theirs to make. Hoyt thus failed to prove that the employer did not follow its own rules and regulations.

The complainant would also infer anti-union motivation from the timing of the employer's actions, as those actions were taken after Hoyt participated in union activities. Tenure committee members were aware that Hoyt wore an AFT pin on his lab coat. Support of that organization can certainly be inferred from this activity. In the summer of 1988, Ray Egan, chair of Hoyt's tenure committee, signed two memos opposing AFT's organizing campaign and refused Hoyt's request to discuss the union affiliation issue in the college parking lot. Hoyt also testified of a conversation between Egan and Mike Tilley, the student representative on the tenure committee, that had been related to Hoyt by Tilley. According to that testimony, Egan had indicated some concerns about Hoyt's union activities, and about the fact that Hoyt's wife was an attorney. Hoyt believed that Egan's statement referred to PCFA concerns that Hoyt was going to litigate contract items he had pointed out to the administration.⁹

Egan was entitled, as an employee, to his own opinion on the union affiliation issue. Pursuant to RCW 28B.52.025, an employee has the right to refrain, as well as to participate in, discussions regarding union organizing activities. On the other hand, an employer has an obligation to base its personnel decisions on information that is not tainted by anti-union animus. Hoyt alleges that Egan's anti-AFT bias was communicated to Bevelacqua when she met with Egan to discuss the tenure committee's recommendation. Though that fact was not proven, the timing of the employer's actions in relation to Hoyt's protected activities and Egan's anti-AFT activities, is sufficient to infer that Hoyt's participation in those activities was a motivating factor in the employer's decision to discharge him.

Employer's Burden of Proof

The burden of proof now shifts to the employer to demonstrate that it would have discharged Hoyt, even absent his protected conduct.

The employer contends that Hoyt's contract was not renewed because his teaching performance contained serious deficiencies. The tenure committee's recommendation regarding Hoyt was initially reviewed by Bevelacqua. She was concerned about the continuing list of problems in Hoyt's teaching performance: Being disorganized in the classroom, being unprepared, talking down to his

⁹ Though Egan was called as a witness in this matter, neither party questioned him as to his recollection of such a conversation with Tilley.

students, making students feel stupid and uncomfortable, not returning materials to students in a timely fashion, and either not preparing and giving out a syllabus or not following it.¹⁰ In her mind, these problems were particularly serious as there was no showing that improvements were being made. Bevelacqua testified that her recommendation not to renew Hoyt's contract for the 1989-90 school year was based on his totality of job performance. The record reflects that Bevelacqua did not always follow tenure committee recommendations concerning contract renewals. She went against the committee's recommendation in at least one other situation.

Bevelacqua's recommendation was forwarded to the board of trustees by the college president. Board member Watkins testified that the board serves two primary functions: Selection of a college president, and the reviewing and granting of tenure. Prior to the February 8, 1989 board meeting Watkins had reviewed Hoyt's tenure packet, including classroom observations by tenure committee members, student evaluations, Hoyt's self-evaluation, minutes of tenure committee meetings, the recommendations of the committee, and Bevelacqua's recommendation. No mention of Hoyt's participation in protected activities was contained in any of those materials, nor was mention made of such fact during the board's executive session discussions. Watkins testified that performance was the only consideration utilized by the board in arriving at its unanimous decision not to renew Hoyt's contract. At the request of the PCFA attorney, the board met at a later date to reconsider its decision, but decided to stand by its initial ruling.

Based on his student evaluations, Hoyt was consistently rated high in the areas of instructor's enthusiasm, student confidence in instructor's knowledge, and instructor's use of examples and illustrations. Students often commented that he made learning chemistry fun and that he "knew chemistry". But Hoyt was just as consistently rated poor in the areas of instructor explanations, answers to student questions, evaluative and grading techniques, clarity of student responsibilities and requirements, and course organization. Complaints included failure to return tests by the date specified, talking down to students, difficulty in understanding test questions, lack of course syllabi and lecture outlines, and lack of advance notice for tests. One student stated: "He knows what he is talking bout [sic] but can't explain very well." While liked by some students for his enthusiastic approach to chemistry, Hoyt's organizational problems greatly affected his ability to be an effective teacher. Ample evidence was provided by the employer regarding Hoyt's teaching deficiencies.

¹⁰ Hoyt testified that he prepared a syllabus for every class. But several students complained in their evaluations that syllabi were not received until the sixth or seventh week of a class.

The Examiner concludes that the employer would have failed to renew Hoyt's contract, even absent his participation in protected activities.

FINDINGS OF FACT

1. Pierce College is a community college district within the meaning of Chapter 28B.52 RCW.
2. The Pierce College Faculty Association (PCFA), an employee organization within the meaning of RCW 28B.52.020(1), is the exclusive bargaining representative for a bargaining unit of full-time and part-time academic employees of Pierce College.
3. Tim Hoyt was hired by Pierce College as a full-time chemistry instructor on September 18, 1987. He was placed in "probationary" status and a tenure review committee was established under Chapter 28B.50 RCW and past practice.
4. During 1988, the Washington Federation of Teachers/AFT and the Pierce Faculty Association for Higher Education/WEA/NEA were engaged in organizing efforts to replace PCFA as the exclusive bargaining representative of academic faculty of Pierce College. Hoyt participated in protected activities through his support of AFT organizing efforts, evidenced by his meetings with AFT officials, wearing of an AFT lapel pin and making AFT authorization cards available to faculty members. Ray Egan, a member of the bargaining unit represented by the PCFA, opposed affiliation with the AFT.
5. The tenure review committee established to review Hoyt's teaching performance as a probationary faculty member met on four occasions during the 1987-88 school year. Ray Egan was elected as chairman of that committee. The tenure review committee recommended that Hoyt's contract be renewed for the 1988-89 academic year.
6. During the initial portion of the 1988-89 academic year, Hoyt engaged in activities protected by Chapter 28B.52 RCW, including the filing of two grievances concerning salary issues with college administrators in the fall of 1988, and an attempt to raise an issue before the Pierce College Council for Academic Affairs in January, 1989.
7. Four additional meetings were held during the 1988-89 academic year by the tenure review

committee established to review Hoyt's teaching performance as a probationary faculty member. In January, 1989, by a vote of six to one, the committee recommended that Hoyt's contract be renewed for the 1989-90 school year, so long as certain conditions were met. Egan cast the sole dissenting vote, and it was Egan, in his capacity as chairman of the tenure review committee, that presented the committee's recommendation to the employer.

8. After reviewing the tenure review committee report issued in January, 1989, Vice-President for Academic Affairs Joan Bevelacqua recommended to the college president that Hoyt's contract not be renewed for the 1989-90 school year.
9. The president forwarded Bevelacqua's recommendation to the board of trustees and, on February 8, 1989, that board voted to discontinue Hoyt's contract at the end of the 1988-89 academic year, due to deficiencies in his teaching performance.
10. Hoyt failed to establish anti-union motivation from the employer's practice of renewing probationary faculty contracts, or from the employer's failure to follow its rules and regulations.
11. Based on the timing of Hoyt's discharge in relation to his participation in protected activities, and based on evidence concerning a bias on the part of Tenure Review Committee Chairman Ray Egan against the organization supported by Hoyt, the record is sufficient to infer that Hoyt's participation in protected activities was a motivating factor in the employer's discharge decision.
12. The employer met its burden of proof to show that Tim Hoyt would have been discharged from employment due to certain teaching deficiencies, without regard to his participation in protected activities.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 28B.52 RCW and Chapter 391-45 WAC.
2. Pierce College did not interfere or discriminate under the provisions of RCW

28B.52.073(1)(a), (b) or (c), concerning its decision not to renew the contract of Tim Hoyt for the 1989-90 school year.

ORDER

The complaint charging unfair labor practices filed in the above entitled matter is DISMISSED.

DATED at Olympia, Washington, this 9th day of April, 1990.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK S. DOWNING, Examiner

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