

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 589,	)	
	)	CASE NO. 3270-U-81-467
Complainant,	)	DECISION NO. 1405 - PECB
vs.	)	
CLALLAM COUNTY,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER

Davies, Roberts, Reid, Anderson & Wacker, by Herman L. Wacker, Attorney at Law, appeared for the complainant.

Grant A. Meiner, Prosecuting Attorney for Clallam County, by Michael Chinn, Deputy Prosecuting Attorney, appeared for the respondent at the hearing. Craig D. Knutson, Deputy Prosecuting Attorney, filed the brief.

The above-named complainant filed a complaint with the Public Employment Relations Commission on January 22, 1981 wherein it alleged that the above-named respondent had committed unfair labor practices within the meaning of RCW 41.56.140. Rex L. Lacy was designated as Examiner to make and issue Findings of Fact, Conclusions of Law, and Order. The parties filed post-hearing briefs.

The material allegations of the complaint are as follows:

- "A. Mark Baker was an employee of Clallam County in the Clallam County Assessor's Office, and on or about October 22, 1980 he was terminated from his employment.
- B. The alleged reasons for termination were stated in a letter dated October 22, 1980, attached to this Complaint and expressly incorporated herein as Appendix.
- C. The reasons contained in the letter dated October 22, 1980 were pretextual in that the true and motivating reason for terminating Mr. Baker was his concerted activities in invoking union assistance in the processing of grievances against his employer.
- D. Employee Baker requested a hearing before the Clallam County Commissioners on the merits of his discharge and at that time it was expressly stated in justification for the discharge decision by Mr. Arleigh Linnell, Deputy Clallam County Assessor, that Mr. Linnell and the Assessor felt Mr. Baker should be fired because he kept going to the union."

## APPENDIX "1"

TO: MARK BAKER  
THROUGH: LESTER J. LANCASTER, ASSESSOR  
FROM: ARLEIGH LINNELL  
SUBJECT: LETTER OF TERMINATION  
DATE: OCTOBER 22, 1980.

Confirming our decision at 6:00 P.M. 21 October 1980 to terminate your employment with the Clallam County Assessor's Department for the reasons stated at that time and as set forth below.

At approximately 3:30 P.M., Lester J. Lancaster, Assessor, received a phone call from the Sheriff's Office, informing him that one of our vehicles was parked behind the Port Angeles Community Playhouse by the college. Believing our cars were all accounted for, we made a physical check to ascertain what vehicle it was and found it to be one belonging to the Assessor's office. We returned to the office to pick up the duplicate set of keys and returned the vehicle to the County parking lot.

We drove same vehicle back to where it had been parked at approximately 5:20 P.M. and waited. You arrived at approximately 5:45 P.M. driving your private car to pick up the County vehicle. I then asked you to meet us in my office. You requested your Leadman to be present and I asked William Corcoran to join us. Those present were Lester J. Lancaster, Assessor, and William Corcoran, you and I.

It was at this time I informed you of the decision to terminate your employment.

This is the second such incident to warrant this dismissal, as reference your letter of reprimand of August 15, 1980.

BACKGROUND:

The Clallam County Assessor's Office is responsible for evaluating real, personal, and commercial property located throughout the county. Lester Lancaster is the elected Assessor; Arleigh Linnell is the Chief Appraiser. The offices of the Assessor are located in the Clallam County Courthouse at Port Angeles, Washington.

International Brotherhood of Teamsters, Local 589, is the exclusive bargaining representative for employees employed at the Clallam County Courthouse, including those employed in the Assessor's Office. The county and Local 589 were parties to a collective bargaining agreement effective from January 1, 1978 to December 31, 1980. Mark Baker was hired as an appraiser trainee in the Assessor's Office on November 1, 1979. Baker was employed within the bargaining unit represented by the union.

In the spring of 1980, Baker attempted to schedule his vacation days and holidays concurrently, thereby obtaining double payment for the days. The employer informed Baker that taking vacation days on holidays was not permitted. Baker responded that his interpretation of the collective bargaining agreement permitted the use of vacation and holidays concurrently. The employer contacted Local 589 to seek the union's interpretation of the provisions for holiday and vacation days. The union later informed Baker that the county was correct in its interpretation of the vacation and holiday provisions of the contract.

In June, 1980, Baker was authorized by the employer to take the "Residential I" course at an appraisal training school in Ellensburg, Washington. The purpose of the school was to provide training that would assist Baker in obtaining certification that would ultimately lead to Baker's promotion to appraiser. While attending the school, Baker took the Commercial I course in addition to the Residential I course the employer had authorized. Baker scored 92 on the Residential I test and 96 on the Commercial I test given at the conclusion of the courses.

On June 30, the Board of County Commissioners adopted Personnel Ordinance 199. The ordinance standardized probation periods for county employees at 3 months. Probationary periods previously ranged from 3 to 18 months.

On July 23, 1980, Baker contacted Linnell regarding promotion from appraiser trainee to appraiser. Baker cited the recently passed personnel ordinance as the basis for his request for promotion.

On July 31, 1980, Baker inspected his personnel file to determine if his Real Property Assessment Certificate had been received by the employer. The inspection of the file confirmed that the certificate had been received and had been placed in Baker's file.

On August 1, 1980, Linnell responded to Baker's request for promotion. Linnell denied Baker's promotion because he felt that Baker did not meet the minimum training requirements to be a qualified appraiser. Baker thereupon filed a grievance with Lancaster, in accordance with Step 2 of the grievance procedure of the collective bargaining agreement. The department head has ten days to resolve the issue before the grievance can be appealed to Step 3, and Lancaster scheduled two meetings to discuss the promotion issue with Baker. The meetings were cancelled for business reasons.

On August 11, 1980, Lancaster and Linnell met with Baker concerning the promotion grievance. After a discussion regarding Baker's qualifications, experience, training, and the personnel ordinance, Lancaster requested an extension of the ten days to settle the dispute. Lancaster indicated he was not familiar with the new ordinance. Baker requested an extension be in

writing, because Lancaster had cancelled two previous meetings. Lancaster asked Baker whether or not Baker trusted him, and Baker replied in the negative. At that time, Baker made disrespectful remarks suggesting Lancaster was not an honorable man because Lancaster had signed a re-evaluation report which Baker categorized in expletive terms. Lancaster, upset, terminated the meeting.

Approximately one hour after the August 11, 1980 meeting in Lancaster's office, Baker was summoned to Linnell's office. Linnell orally reprimanded Baker for the remarks concerning Lancaster and suggested Baker might be happier working elsewhere. Additionally, Linnell implied a threat that Baker was subject to discharge because he continued to have out-of-state license on his personal auto.

On August 15, 1980, Linnell met with Baker and two other appraiser trainees to inform them that they were being promoted to appraiser. Linnell also presented Baker with a written reprimand for Baker's comments at Lancaster's office on August 11, 1980 as follows:

"DATE: August 15, 1980  
TO: Mark Baker  
FROM: Arleigh Linnell, Chief Appraiser  
THROUGH: Lester J. Lancaster

Letter of Reprimand:

This is to formally give you notice that another act of disrespect, insubordination and accusation not presented on facts, as you presented on 11 August 1980, will not be tolerated and will be cause for your dismissal from County employment.

A copy of this letter will become a permanent part of your personnel file."

In September, 1980, Baker sought to take the "Commercial II" training course. Permission was denied, and Baker's attempt to take the course by correspondence was cancelled by order of Linnell, who had not as yet taken that course himself.

On October 21, 1980, Baker was performing assessment work concerning the area around Forks, Washington, approximately 60 miles west of Port Angeles. Instead of traveling to Forks on that day, he went to the library at Peninsula Community College in Port Angeles to do paperwork. Baker did not request approval to work at the library because Baker and his leadman had previously worked at the library without seeking permission to do so. Baker parked his county vehicle in the parking area behind the Community Playhouse Theater, which is adjacent to the college campus.

At approximately 3:00 P.M. on October 21, 1980, Lancaster was notified by the Clallam County Sheriff's Department of the location of the vehicle. Linnell

and Lancaster proceeded to the college and removed the car. After taking the auto to the courthouse parking area, Linnell and Lancaster returned to the area and waited for Baker to return. Baker was directed to return to the courthouse, where Linnell, refusing to listen to Baker's reason for being at the college, informed Baker that he could resign or he would be terminated. Baker refused to resign and was terminated by Linnell.

In the evening of October 21, 1980, Baker contacted Viki Witschger, the employer's Personnel Director, regarding the county's termination procedures. Witschger informed Baker that he could have a hearing before the Board of County Commissioners, or that he could contact Local 589 for assistance in pursuing the issue through contractual grievance procedures.

On October 22, 1980, Linnell provided Baker with a written confirmation of his termination. That communication was attached as Appendix 1 to the complaint of unfair labor practices, and is set forth above.

Baker requested, and was granted, a hearing before the Clallam County Board of County Commissioners. While testifying, in those proceedings, Linnell stated:

"...What I want to talk about -- the only two gets this message -- is work habits that led to this message; not just work. And I want to make it clear that we are not questioning his work at all; just his work habits and what led to this dismissal. A lot of the points that I'm going to bring up are minor points that we could have lived with had not the major points arisen. I want to try to start from the beginning; I can't start at the first of November when he was hired because I did not take over this position until the first day of January. The first contact that we had with his unwillingness to accept the supervision in the office was when he went and tried to use the union contract to sell back to the department his vacation time and furthermore, he carried this one to the Union and the Union did talk to him with us present."

The Commission thereafter restricted Linnell's testimony to the contents of the October 22, 1980 discharge letter. The termination was upheld by the Board of County Commissioners.

#### POSITIONS OF THE PARTIES:

The union contends that Mark Baker's discharge was directly and wholly motivated by Baker's assertion of rights under the collective bargaining agreement; that the employer threatened Baker with discrimination because of his assertion of rights under the collective bargaining agreement; and that Baker was discharged for conduct that the employer allows, without discipline, by other employees in the Assessor's Office; and that Linnell's comments before the Board of County Commissioners indicate the anti-union motivation of the discharge.

The employer contends that Mark Baker was terminated for his conduct in the meeting with Lancaster and Linnell on August 11, 1980; and for his deceitful conduct involving a county vehicle and work location on October 21, 1980. Further, the county contends that RCW 41.56.140(1) does not make it an unfair labor practice to interfere with an individual employee's reliance upon his union's assistance in pursuing individual employment matters.

DISCUSSION:

The Standard for Determination

The National Labor Relations Board adopted its current test for dual motive discharges in August, 1980. Wright Lines, Inc., 251 NLRB 150 (1980). The new test, which replaced the "in part" test previously applied to dual motive cases, was modeled after the test established by the United States Supreme Court in Mount Healthy School District, Bd. of Directors v. Doyle, 429 U. S. 274, 50 L.ED. 471, 97 S Ct. 568 (1977). It effectively balances the interests of the employer and employee. The test reads:

"In all cases alleging violations of Section 8(a)(3) of LMRA or violations of Section 8(a)(1) turning on employer motivation, NLRB will employ the following "causation test". (1) General Counsel must make prima facie showing sufficient to support inference that protected conduct was a "motivating factor" in employer's decision; (2) once this is established, employer has burden of demonstrating that same action would have taken place even in absence of protected conduct. NLRB is abandoning use of term "in part", which it previously used in determining relationship, if any, between employer action and protected employee conduct."

In discussing the test in Wright Lines, supra, the NLRB stated:

"Under the Mt. Healthy test, the aggrieved employee is afforded protection since he or she is only required initially to show that protected activities played a role in the employer's decision. Also, the employer is provided with a formal framework within which to establish its asserted legitimate justification. In this context, it is the employer which has "to make the proof." Under this analysis, should the employer be able to demonstrate that the discipline or other action would have occurred absent protected activities, the employee cannot justly complain if the employer's action is upheld. Similarly, if the employer cannot make the necessary showing, it should not be heard to object to the employee's being made whole because its action will have been found to have been motivated by an unlawful consideration in a manner consistent with congressional intent, Supreme Court precedent, and established Board processes."

The Public Employment Relations Commission endorsed the Wright Lines test in its decision in the appeal of this Examiner's decision regarding an alleged discriminatory discharge of a classified employee by a school district. West

Valley School District, Decision 1179-A (PECB, 1981). See also: City of Olympia, Decision 1208, 1208-A (PECB, 1982).

In January, 1982, the Washington State Court of Appeals cited Wright Lines, supra, with approval in a case involving a community college employee, when it established the following legal standard to be applied in unfair labor practices cases alleging discriminatory discharges. The Court stated:

"Complaints alleging that an employer's discharge of an employee constitutes an unfair labor practice fall into three categories: (1) cases in which the employer asserts no legitimate ground for discharge; (2) cases in which the employer's asserted justification for discharge is a sham and no legitimate business justification for discharge in fact exists (pretextual firings); and (3) cases in which there is both a legitimate and impermissible reason for the discharge (dual motive discharges). The first two types of discharge constitute unfair labor practices. The third type may or may not constitute an unfair labor practice."

Public Employees v. Community College, 31 Wn App 203 (Division II, 1982).

#### Application of the Standard

The union has met its obligations of proving that Baker's union activities were a motivating factor in the employer's decision to terminate Baker. Linnell's statements before the Board of County Commissioners clearly establish that the employer resented Baker's union activities related to processing grievances and his use of the collective bargaining agreement to attempt to obtain increases in his income,

The burden of proof now shifts to the employer who must establish that its justification for Baker's discharge was not a sham, that legitimate business reason existed for the discharge, and that the reasons given were not pretextual to cover up the employer's true motive for discharging the employee. At the outset, the Examiner notes that Baker had evidenced an eagerness to improve his own skills (even at his own expense), and that there is no evidence of any fault found by the employer with the quality or the quantity of Baker's work.

The August 11, 1980 incident arose while Baker was involved in the processing of a grievance under the collective bargaining agreement. Grievance processing is a protected activity under RCW 41.56. The county asserts that an employer may discriminate against employees who choose to solicit union assistance in processing grievances relating to individual employment matters, because actions related to individual employment matters were held to not be protected activities in City of Seattle, Decision 489 (PECB, 1978). The employer misinterprets the decision. See: Valley General Hospital, Decision 1195-A (PECB, 1981). The employer admits that it knew Baker was processing his grievance. The grievance was within the scope of adjustment

available in the collective bargaining agreement, and the union had been made aware of the circumstances of Baker's desire to present his grievance at Step 2 of the grievance procedure. Don Lane, Business Representative for Local 589, was in the Assessor's Office to discuss Baker's grievance on August 11, 1980. Before he met with the employer, Baker requested Lane to withhold his services until Baker met with Linnell and Lancaster. Baker and the union did not protest the oral and written reprimands that the employer, through Linnell, issued to Baker for the alleged disrespectful remarks involving Lancaster's integrity on August 11, 1980.

Turning to the October 21, 1980 incident, Linnell asserted that any employee engaged in the same activities would be discharged. The Examiner concludes that the employer's past and present practice indicates otherwise. William Corcoran, Baker's leadman, introduced Baker to using the library facility to do paperwork. Corcoran parked the county vehicle assigned to him in a parking lot at the college, adjacent to the area where Baker parked on October 21, 1980. No discipline was meted out by the employer. Linnell testified in an unemployment compensation hearing on Baker's claim that employees had previously used, and are currently allowed to use the library. The record indicates that other employees have used county vehicles for personal business, have left vehicles parked where the public can readily see the vehicle, or have used county vehicles for other unauthorized purposes, but have not been discharged. Some of those allegations were directed at Linnell prior to his promotion to his current position.

The employer has not met its burden under part two of the dual motive cause test of proving that Baker's discharge was for legitimate business purposes and, therefore, has violated the Act.

#### FINDINGS OF FACT

1. Clallam County is a "public employer" within the meaning of RCW 41.56.030(1).
2. International Brotherhood of Teamsters, Local 589, is a "bargaining representative" within the meaning of RCW 41.56.030(2) and is the representative of employees of Clallam County employed in the County Assessor's Office.
3. Mark Baker was hired as an appraiser trainee on November 1, 1979. He was promoted to appraiser on August 15, 1980 when Clallam County Ordinance 199 reduced the probation period of employees in the Assessor's Office from 1 year to 3 months. Baker had a good employment record with the employer, except as indicated herein.
4. At some unspecified time, Baker attempted to use vacation days and holidays concurrently. The employer contacted Local 589 to seek an



interpretation regarding the intent of the parties for the use and method of payment of vacation and holiday pay. The union informed Baker and the employer that the union considered it improper to use vacation and holidays concurrently.

5. On July 23, 1980, Baker requested that his appraiser trainee classification be upgraded to appraiser, citing Ordinance 199 as the authority for the upgrade of classification.

6. On August 1, 1980, Linnell denied Baker's request for promotion to appraiser. Baker appealed Linnell's denial to the department head in accordance with Step 2 of the grievance procedure in the collective bargaining agreement. Two scheduled meetings to discuss Baker's grievance were cancelled by Lancaster for business reasons.

7. On August 11, 1980, Linnell and Lancaster met with Baker regarding his grievance arising from Linnell's denial of Baker's request for promotion to appraiser. During the course of that meeting, Baker made discourteous remarks toward Lancaster arising from the processing of the promotion grievance up to that time. Because of Baker's expletive remarks about a report signed by Lancaster, the meeting was terminated. Approximately one hour later, Linnell issued a verbal warning to Baker for his remarks during the meeting.

8. On August 15, 1980, Linnell met with Baker and two other appraiser trainees. He informed all three employees they were being promoted to appraiser due to the passage of Ordinance 199. Additionally, he issued Baker a written warning for Baker's remarks at the August 11, 1980 meeting.

9. A practice exists under which employees of the Assessor's office have been permitted to work at Peninsula Community College, and Baker was introduced to that procedure by his leadman Corcoran. On October 21, 1980, Baker went to the Peninsula Community College library to do paperwork. Baker parked the county vehicle assigned to him in the parking lot at the Community Playhouse Theater. The Clallam County Sheriff's Department reported the location of the vehicle to the Assessor's office. Lancaster and Linnell removed the vehicle from the parking lot, and returned to the parking lot to wait for Baker to return for the auto. Upon arriving at the Assessor's office, Baker refused to resign and was terminated by Linnell.

10. Baker appealed his discharge to the County Commissioners. During testimony at the hearing before the County Commissioners, Linnell stated that Baker was discharged, in part, for his processing of grievances under the collective bargaining agreement. Additionally, Linnell alleged that any employee who did as Baker did on October 21, 1980 would be discharged.

11. During testimony in this matter and at Baker's unemployment compensation hearing, Linnell admitted that no other employees had been

discharged or otherwise disciplined for using the Peninsula Community College library to do paperwork, or for substantially similar use of county vehicles assigned to the Assessor's office.

12. The employer's asserted reasons for Baker's discharge were pretexts to conceal a true motivation of anti-union animus, and no legitimate business reason exists for Baker's discharge.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW.
2. The processing of grievances under a collective bargaining agreement is a right of public employees protected by RCW 41.56.040, and Clallam County has violated RCW 41.56.140(1) by discriminatorily discharging Mark Baker for exercising his rights guaranteed by Chapter 41.56 RCW.

#### ORDER

Clallam County, Washington, its Board of Commissioners, elected officials, and agents, shall immediately:

1. CEASE AND DESIST from:
  - a. Discharging or otherwise discriminating against any employee because of the exercise of protected activities under Chapter 41.56 RCW.
  - b. In any other manner interfering with, restraining or coercing employees in the exercise of their right to file and process grievances against their employer.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION which the Examiner finds will effectuate the policies of the Public Employee Collective bargaining Act, Chapter 41.56 RCW:
  - a. Offer Mark Baker immediate and full reinstatement to his former position or a substantially equivalent position, without prejudice to his seniority and other rights and benefits.
  - b. Make its employee, Mark Baker, whole for any loss of pay or benefits he may have suffered by reason of his discriminatory discharge, by payment of the amount he would have earned as an employee, from the date of the

discriminatory action taken against him until the effective date of an unconditional offer of reinstatement made pursuant to this Order. Deducted from the amount due shall be the amount equal to any earnings such employee may have received during the period of the violation, calculated on a quarterly basis. Also deducted shall be an amount equal to any unemployment compensation benefits such employee may have received during the period of violation, and respondent shall provide evidence to the Commission that such amount has been repaid to the Washington State Department of Employment Security as a credit to the benefit record of the employee. The amount due shall be subject to interest at the rate of eight (8) percent calculated quarterly from the date of the violation to the date of the payment.

- c. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall, after being duly signed by an authorized agent of Clallam County, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the County to ensure that said notices are not removed, altered, defaced or covered by other materials.
- d. Notify the 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 a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington this 29th day of April, 1982.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
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REX L. LACY, EXAMINER



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT discharge or otherwise discriminate against any employee because of their exercise of protected activities under Chapter 41.56 RCW.

WE WILL NOT in any other manner interfere with, restrain or coerce employees engaged in filing or processing grievances.

WE WILL offer our employee, Mark Baker, immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges.

WE WILL make our employee, Mark Baker, whole for any loss of pay or benefits he may have suffered by reason of his discriminatory discharge, by payment of the amount he would have earned as an employee, from the date of the discriminatory action taken against him until the effective date of an unconditional offer of reinstatement made pursuant to this Order.

DATED: \_\_\_\_\_

CLALLAM COUNTY

By: \_\_\_\_\_  
CHAIRMAN, BOARD OF COMMISSIONERS

By: \_\_\_\_\_  
ASSESSOR

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

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any 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.