STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Complainant, vs. ASOTIN COUNTY HOUSING AUTHORITY, Respondent.	)	CASE NO. 6117-U-85-1151 DECISION NO. 2471 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Pamela G. Bradburn, Attorney at Law, appeared on behalf of the complainant.

Charles T. Sharp, Attorney at Law, appeared on behalf of the respondent.

The Washington State Council of County and City Employees filed a complaint against Asotin County Housing Authority on November 18, 1985. The complaint alleged an unfair labor practice by the employer under RCW 41.56.140(1) as the result of the discharges of employees Roy Kennedy and Michael Bonaparte. A hearing was conducted at Clarkston, Washington, on January 15, 1986, by Examiner J. Martin Smith. Post-hearing briefs were filed.

BACKGROUND

The Housing Authority of Asotin County is a public employer, funded by Asotin County as well as by the federal government (through programs of the federal Department of Housing and Urban Development (HUD)). The authority operates approximately 140 house and apartment units in both the Town of Asotin and the City

of Clarkston. Most of the tenants qualify for low income or rent supplement benefits. Several local governments appoint members to a five-member board of directors; the board appointed Alice White as executive director, February 1, 1985.

In addition to its executive director, the housing authority employs an executive secretary and a rent subsidy administrator. Prior to the events giving rise to these proceedings, the housing authority also had three employees whose assignments involved the maintenance and operation of its housing units. Employees of the housing authority attempted to organize for the purposes of collective bargaining in 1978, but no exclusive bargaining representative was certified.

Since 1978, the employees of the housing authority have been subject to a "Personnel Policy" document drafted and amended periodically by the board of directors. The policy document outlines definitions of permanent employees, procedures for filling of vacancies, the formula for determination of wage rates, policies on nepotism and discrimination, reduction in force procedure, hours of work, overtime, holidays, and leave. Also included are job descriptions for the executive director, an accountant, maintenance mechanics, laborers and janitors. Wages are set by guidelines from HUD, but the housing authority has sole responsibility for hiring and discipline of its employees.

Roy Kennedy was hired by the housing authority in July of 1974. He originally worked as a 3/4 time laborer. He later became a full-time maintenance laborer and, in 1979, was promoted to maintenance mechanic and "head" of the maintenance department. In February, 1985, he was told that he was a "maintenance laborer" and not "maintenance mechanic". Kennedy was terminated from employment in April, 1985. There is no record of written reprimand, but a post-termination hearing was held. He was

reinstated for a 60-day trial period which was to begin July 1, 1985.

Mike Bonaparte was hired on August 10, 1979. He started as a maintenance laborer, training with Kennedy and former employee Ole Spaulding. There is nothing in the record concerning disciplinary problems involving Bonaparte.

Mel Ketchersid was hired by the housing authority in 1984. He was assigned groundskeeping duties as a "maintenance helper".

Kennedy and Bonaparte decided to seek union representation, and contacted the Washington State Council of County and City Employees in Spokane. In early July of 1985, business representative Bill Keenan was invited to meet with the maintenance employees at Clarkston. Keenan had mailed authorization cards to the employees. Keenan met with Kennedy and Bonaparte on Friday, July 26, 1985, first at the employer's shop and later at Bonaparte's home in Clarkston. Keenan received signed authorization cards from Bonaparte and Kennedy at Bonaparte's home on July 26, 1985. Mel Ketchersid knew of both meetings, but did not participate or sign an authorization card for the union.

Keenan planned to use the authorization cards to request voluntary recognition of the union, but never had a chance to do so. Within days after Keenan left Clarkston with the authorization cards, Kennedy and Bonaparte were terminated from their jobs with the housing authority. By a memorandum of July 31, 1985, they were told the following:

> After the last maintenance review with Mr. Escobar and discussion with the members of the Board and Mr. Wolfe it has been decided that the Maintenance Department of the Housing Authority of Asotin County will be

> closed down, keeping only the groundkeeper/-labor (sic) position.
>
> For the balance of this budget year we will use tenant services and those of licensed professionals in the community.
>
> At the end of the 1985 budget year this action will be evaluated in terms of effective maintenance and cost savings.
>
> This will become effective August 15, 1985.
>
> /s/_____
> Alice White, Executive Director

Mel Ketchersid was not laid off or discharged, and he continued working as a groundskeeper and maintenance laborer.

The record indicates that morning pleasantries were exchanged between White and Kennedy, Bonaparte and Ketchersid, but there is no direct evidence that the matter of unionizing was discussed prior to July 31, 1986. No one testified of having informed White that "we are forming a union" or spoken words to that effect to her.

After Kennedy and Bonaparte were notified of their layoffs, the union sought an explanation from the HUD office at Seattle. HUD officials pointed out that they made no labor relations decisions for local housing authorities. The union also talked to Alice White in a meeting held October 16, 1985. No resolution was reached as to the termination or layoff of Kennedy and Bonaparte.

POSITIONS OF THE PARTIES

The union urges that Roy Kennedy and Mike Bonaparte lost their jobs because of their efforts towards organizing a union. The union contends that the employer can show no consistent just

cause for terminating the two employees, and that circumstantial evidence exists to prove that discharges were motivated primarily by discrimination against the employees for their union activity, so that they violated RCW 41.56.140(1).

The housing authority insists that it had no knowledge of union activity by either Kennedy or Bonaparte and, therefore, that it had no motive or intent to punish them for such activity. The employer argues that their work was unsatisfactory, and that it was more cost efficient to contract-out the work they were performing. The employer urges that the union has failed in its burden of proving circumstantially an anti-union motive in the layoffs of Kennedy and Bonaparte.

DISCUSSION

Under RCW 41.56.140(1), it is an unfair labor practice for a public employer

> ... to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter . . . (emphasis added)

Those rights include:

> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter. (emphasis added)

When employees are discharged, suspended or laid off during a union organizing drive, there are often allegations that particular individuals have been singled-out for disparate and adverse treatment solely because of their union activity. If a discharge or other discrimination is found to have been unlawfully motivated, an unfair labor practice is found and remedies are ordered. See, generally, City of Olympia, Decision 1208, 1208-A (PECB, 1982); Pasco Housing Authority, Decision 702 (PECB, 1978); Bellingham Housing Authority, Decision 2335 (PECB, 1986); City of Bellevue, Decision 2096 (PECB, 1984); Town of Fircrest, Decision 248-A (PECB, 1977); City of Morton, Decision 459-A (PECB, 1978); Valley General Hospital, Decision 1195-A (PECB, 1981); Whatcom County, Decision 1886 (PECB, 1984).

The respondent's "waiver" arguments are without merit. The complaint charging unfair labor practices was timely filed in this case under the six-month period of limitation set forth in RCW 41.56.160. Assuming, without deciding, that the equitable remedy of laches might apply on behalf of a respondent if it were able to show some damage to it based upon a justifiable reliance upon the action or inaction of the opposite party, the respondent has made no such showing in this case.

Burden of Proof

The National Labor Relations Board set forth a "causation" test for such situations in Wright Lines Inc., 251 NLRB 150 (1980), borrowing the standard from the decision made by the Supreme Court of the United States in another setting in Mt. Healthy v. Doyle, 429 U.S. 274 (1977). The Public Employment Relations Commission adopted a similar test in City of Olympia, supra. Under that test, the complaining party in a "discrimination for union activity" unfair labor practice case must make a prima facie showing sufficient to support an inference that the

employee's protected conduct was a motivating factor in the employer's decision.[1] If such a prima facie showing is made, the burden shifts to the employer to prove that the same action would have taken place even if the employee(s) had not been engaged in union activity. cf. Washougal School District, Decision 2055 (PECB, 1984) aff., Decision 2055-A (PECB, 1985).[2] The test recognizes and deals with the difficulty of proving a negative or of proving facts not within the possession of the party. The moving party need not prove the mindset of the respondent (i.e., that protected conduct under Section 7 of NLRA or RCW 41.56.040 was a motivating factor in the action taken), but rather must make from the surrounding circumstances a showing "sufficient to support an inference" that protected conduct was being penalized. City of Bellevue, supra. The burden on the employer is then to prove (affirmatively) that the motivating factor for the adverse action was something other than protected conduct.

The Inference Stated: Protected Conduct

If the examiner views the events in a light most favorable to the employer, it is clear that the employment terminations at issue nevertheless fall into the "dual motive discharge" category of cases discussed above. Having set out the appropriate burden of proof to be applied, it is necessary to examine whether the complainant in this case has made a showing sufficient to support

---

1 Neither Wright Lines nor City of Olympia required a showing of a "substantial" factor in employer motivation, but the adjective "motivating" does, indeed, modify the word "factor" in both cases.

2 The use of this causation test in collective bargaining "discrimination" cases has been affirmed by both state and federal courts in WPEA v. Community College District 9 (Highline), 31 Wn.App 203 (Division II, 1982); Clallam County v. PERC, ___ Wn.App. ___ (Division II, 1986), cert. den., ___ Wa.2d ___ (1986); and NLRB v. Transportation Management Corp., 456 U.S. 998 (1983).

an inference that conduct protected by RCW 41.56.040 was a motivating factor in the employer's decision to terminate the employment of the two employees. An important issue in this case is whether, under all of the circumstances, an inference of discrimination against Kennedy and Bonaparte can be sustained without tangible proof of direct knowledge of their union activity. The complainant has made such a showing. The examiner cannot ignore certain facts.

Timing -
The termination letters were given to the two employees only five days after they had identified themselves as union sympathizers by meeting with the union representative and signing authorization cards.

Favoritism towards non-supporter -
Also self-evident is the employer's retention of Ketchersid, the only employee who had not signed an authorization card for the union.

The small shop setting -
The employer has a very small workforce. Bonaparte testified that he and Kennedy had discussed the union with Ketchersid. The record is clear that Ketchersid knew of the interest shown by Kennedy and Bonaparte in the union by early July, two weeks before the union ever sent authorization cards. Ketchersid was at first interested in the unionizing effort, but later came to have doubts. When asked to sign an authorization card, Ketchersid declined, saying to Kennedy; "If you sign these papers to join the union, we're all going to be fired". It is not likely that Ketchersid's anxiety was self-motivated. Rather, it is more likely than not that Ketchersid was told something by a housing authority board member or by a supervisor which gave him pause

for concern about his future with the employer if he joined his fellow employees in signing an authorization card.

There were further manifestations of Ketchersid putting a distance between himself and the union sympathizers. It was at about this time that Ketchersid stopped his daily routine of riding to work with Bonaparte. Ketchersid continued, however, to be in routine daily contact with White. Since Ketchersid worked separately from Kennedy and Bonaparte, there was ample opportunity for communications with the management.[3]

Inconsistency in describing the action -

The employer has been inconsistent in its characterizations of whether Kennedy and Bonaparte have been terminated or laid off. It is clear from the record that HUD was told at one point that the two employees were terminated "because they could not or would not perform certain work which the employer wanted con-

---

3 Much was made by the union at the hearing about an observed conversation going on between White and Ketchersid on the morning that Kennedy and Bonaparte picked up their termination notices. Standing alone, that evidence is not conclusive. Looked at in the light most favorable to the employer, the conversation could have been completely innocent. Since the notices to Kennedy and Bonaparte were enclosed with pay checks which they picked up a short time later, it is unlikely that the observed conversation could have been the first at which the union activity was discussed (i.e., it would have been necessary for White to make a discriminatory decision and prepare the termination notices in a very short time). On the other hand, the observed behavior of White and Ketchersid on that occasion (i.e., silence) could have been the result their advance knowledge of the bad news that Kennedy and Bonaparte were soon to learn. Thus, while the record does not substantiate that new information was given to the employer or that promises were made to Ketchersid at that meeting, there is unrebutted testimony in the record that supports, and certainly does not contradict, the inference of communications between Ketchersid and White on the subject of union activity. Mel Ketchersid was not called as a witness by either party.

tracted out". This is corroborated by remarks made by a housing authority board member, who wanted Kennedy's termination to be redesignated as a layoff so that he could collect unemployment compensation. In other settings, including the briefs to the examiner, these were described as "layoffs". Such inconsistency casts doubt on the motives of the employer.[4]

Deviation from its own standard -

Had a reduction-in-force for sound business reasons truly been the employer's predominant motive in this situation, it would have been logical and consistent for the employer to follow the standards which it had previously set out for reduction-in-force situations at Article VI of its 1978 "Personnel Policy". The employer, in fact, followed the dictates of part of the policy document, as it granted a two-week notice to each of the affected employees. But the policy also provided:

> ... 1. If it is necessary to reduce personnel, the selection of employees to be retained shall be based primarily on their relative efficiency and the necessity of the job. All things being equal, length of service shall be the determining factor.

Under that seniority preference provision of the policy, Kennedy or Bonaparte should have been offered the groundskeeper-laborer position that was to remain. No such offer was made.

---

4 Ultimately, it is irrelevant for the purposes of this unfair labor practice case whether the two men were laid off or discharged. Although a layoff infers a right to recall at some later date, either a layoff or a discharge would qualify as adverse effect upon their employment relationships with the Housing Authority and, if motivated by an anti-union animus, would qualify as a violation of RCW 41.56.140(1).

Conclusions -

In Radio Officers Union vs. NLRB, 347 U.S. 17 (1954), the Supreme Court stated:

> Employer protestation that he did not intend to encourage or discourage membership in a labor organization must be unavailing in proceeding under Section 8(a)(3) of the Act where a natural consequence of his action was such encouragement or discouragement.

33 LRRM at 2428

More recent is the ruling of the Eighth Circuit Court of Appeals in Alumbaugh Coal Corp. vs. NLRB, 635 F.2d 1380; 106 LRRM 2001 (8th Cir. 1980), where an employee was laid off one week after a union organizing campaign was started, but three months before the filing of an election petition with NLRB. In finding that the employee's layoff was unlawful, the court ruled that:

> Apart from the small plant doctrine, however, substantial evidence in the record as a whole supports the Board's determination that the Company discharged Bouch for engaging in union activities. Although there exists no direct evidence of the Company's knowledge of Bouch's pro-union activity, the element of knowledge may be proved by circumstantial evidence from which such knowledge may be reasonably inferred. E.g. Webco Bodies Inc., vs. NLRB, 595 F.2d 451, 101 LRRM 2041 (1979); NLRB vs. Wal-Mart Stores Inc., 488 F.2d 114, 84 LRRM 2865 (8th Cir. 1973). The fundamental test is whether there is a rational connection between the facts proved and the fact that is to be inferred. NLRB vs. Wal-Mart Stores Inc., supra, 488 F.2d at 117.

106 LRRM at 2004.

The court reasoned that the company had singled out the organizer of the unionizing effort (as they appear to have done here); the employer took the action one week from the date of the organizing

(as was the case here); the employer had laid off an employee of long-standing but allowed a junior employee to retain his job (as has happened here); and the employer failed to offer the union adherent reinstatement from the layoff (which is also the case here).

The Eighth Circuit's views on this point have been followed by the Ninth Circuit Court of Appeals, as well. In Fort Vancouver Plywood Company, 604 F.2d 546, 102 LRRM 2232 (9th Cir., 1979), the NLRB had ruled that an employer had unlawfully discharged a group of 72 employees who had contacted the union. The Ninth Circuit affirmed, pointing out that the employees had held one meeting with union officials where authorization cards were signed, but were terminated before a demand for recognition could be made by the union. "In determining motive," said the Court, "the Board may consider circumstantial and direct evidence and its inferences will prevail if reasonable and supported by substantial evidence on the record as a whole. . .". 102 LRRM 2232, at 2234.

On the record made in this case, the following inferences are made: First, that the layoffs of Bonaparte and Kennedy were motivated in part by the employer's knowledge or suspicion that a unionization effort was underway; and Second, that Mel Ketchersid was "rewarded" for his non-support of the union. The complainant need only prove the basis for these inferences to shift the burden of proof.

The Rebuttal of the Inference: The Employer Response

Having had the burden of proof shifted to it, the employer is now obligated under established precedent to prove that conduct other than that protected by Chapter 41.56 RCW was the motivating

factor in its decision to terminate the employment of Kennedy and Bonaparte. The record is problematic for the employer.

The decision to contract out maintenance -
The history of the Asotin County Housing Authority had been to contract out less technical tasks to tenants, not to outside contractors. On one occasion, a subcontract for electrical work was made to the husband of the executive director of the housing authority.

The employer asserts that both it and HUD wanted to subcontract certain heating, electrical and plumbing projects. Kennedy and Bonaparte had been doing electrical and heating projects for at least two years, including the replacement of hot water tanks. The two employees admitted that they could not do sewer repair, since they had no "Roto-Rooter" equipment. Neither Kennedy nor Bonaparte did refrigeration work, and neither was given any training to repair a new type of ignition system being installed on furnaces in housing authority units.

With the burden of proof before the employer, one would expect that proof existed of the HUD recommendations on termination of the maintenance department. In the July 31, 1985 termination letter, White refers to a maintenance review by a Mr. Escobar as a factor in the housing authority's decision[5] to eliminate the

---

5 There may even be some serious question, on the present record, as to whether the elimination of the maintenance department was ordered or approved by the board of directors of the Asotin Housing Authority prior to White's letter of July 31, 1986. There is neither a written resolution nor minutes of a meeting where such an action was discussed or taken, as would be typical under Chapters 42.30 and 42.32 RCW of municipal corporations operating under Washington State statutes such as RCW 35.17.190 (cities and towns), RCW 35.18.180 (cities and towns), RCW 35.24.210 (cities and towns), or RCW 36.32.140 (counties). The minutes of a September 10, 1985 board meeting contain a report that [Ms.]

two maintenance/laborer positions. But there is no evidence that HUD ever made such a recommendation. Some time prior to September 10, 1985, but after the layoffs, HUD apparently relayed to the housing authority some tenant complaints regarding the physical condition of the housing units, especially in the area of electrical, plumbing and bad paint. Frank Valdes of HUD may then have allowed the use of groundskeeper Ketchersid to perform painting duties. On September 11, 1985, one day after the meeting of the housing authority's board, HUD sent out a letter stating that a maintenance mechanic and a maintenance laborer should be able to do the tasks "farmed-out" in August and September of 1985. HUD expressly suggested hiring a maintenance mechanic and a maintenance laborer. If anything, the examiner must conclude from the record that HUD opposed the elimination of the maintenance department, disapproved the subcontracting of maintenance services and urged the Asotin County Housing Authority to reinstate the two disputed positions as soon as possible.

The employer argues that part of the problem was that Kennedy and Bonaparte did not perform their jobs as set out in a job description. Yet, it was HUD which pointed out that job descriptions for the maintenance mechanic and maintenance laborer positions were not on file with HUD. When White wanted to make clear a particular job duty - that of purchasing materials for maintenance work - she knew how to prepare a memorandum. She did so in March, 1985, and had all three maintenance employees sign the

---

"White informed Bonaparte and Kennedy that the layoff was a consensus of the board per individual conference that she had with each of the board members". It is evident to the examiner that the decision to terminate Kennedy and Bonaparte originated with Ms. White, and not with the board, which has ultimate authority for personnel decisions in this municipality, having itself promoted board member Alice White to the post of paid executive director.

document to acknowledge receipt of their new job descriptions as determined by HUD. In March, April or May of 1985, however, there were no indications that any of the three employees would be terminated or laid off, or that an imminent elimination of the maintenance department was being considered. The examiner is not persuaded that the subcontracting and layoff scenario had been set in motion independent of the employees' union activity.

Even assuming a legitimate decision to subcontract the work theretofore performed by Kennedy and Bonaparte, it is clear that the employer did not follow its own personnel policies in making layoffs to reduce, but not eliminate, the maintenance department. Given the fact that the most junior of the three employees was retained, and that its personnel policies were not followed in carrying out the layoffs, this employer must justify the actions as terminations.

The decision to retain the groundskeeper -

The employer urges the examiner to find that its retention of the groundskeeper position was necessary, while subcontracting of the two higher skilled positions was also necessary. Yet, the HUD labor relations officer told the employer that, under HUD policy, employees of any sub-contractor were to be paid the same wages as the maintenance mechanic and maintenance laborer. Since there would be little monetary advantage to either system, it would have been just as plausible to eliminate the groundskeeper position and subcontract that work as well, possibly to tenants of the housing authority under pre-existing practice.

Discharge for cause -

If there were sub-par performances being turned in by Kennedy or Bonaparte, they were not proven by the employer. With one exception detailed below, its personnel files revealed no written reprimands, suspensions or other discipline. White testified

that she had "heated discussions" with both Kennedy and Bonaparte over certain repair projects, although none of those discussions was ever memorialized as an oral warning or reduced to a written reprimand. The record supports Bonaparte's defense to complaints about his work, especially with respect to the installation of a water heater element. Kennedy also rebutted minor complaints about his job performance, which the housing authority sought to put forth, apparently for the first time in any official setting, in this record.

Roy Kennedy was working during July, 1985 under a "probationary" status imposed by the employer and set to end on August 30, 1985. The record is clear that Kennedy did not have a smooth working relationship with management after Alice White became executive director. He was terminated in April, 1985, for reasons which are not fully disclosed in this record. Kennedy hired an attorney, who persuaded the housing authority to reduce the termination to a two-month probationary period. Had his work been entirely unsatisfactory, as the employer now claims, the employer could have held to its original discharge decision. Instead, although it evidently had some dissatisfaction with Kennedy's work, the employer itself chose to give Kennedy a two-month period in which to prove his worth. Probationary employees have the same protections under Chapter 41.56 RCW as other employees. Valley General Hospital, Decision 1195, 1195-A (PECB, 1981). No violation of RCW 41.56.040 was found in connection with the discharge of a probationary employee in Bellingham Housing Authority, supra, but this case differs. Though the complainant in Bellingham was fired only four days after a successful union election, that day coincided with the last day of her probationary period. Here, Kennedy's "new" probationary period was set to extend for an additional month beyond the date of his layoff. There is no evidence of a particular precipitat-

ing incident to cause the employer to change its previous grant of a fixed trial service period.

Even if the employer's explanation based on Kennedy's probationary status were to be accepted, it would not explain or justify the summary discharge of Bonaparte, who seemingly had a better employment record. If anything, consistency in personnel policy would have suggested that a different form of discipline -- such as a two-month probationary period -- be meted out against Bonaparte. The outright termination of Bonaparte distinguishes his situation even from that of Kennedy.

Taken as a whole, this behavior is a typical pattern of facts in cases involving violations of RCW 41.56.140. While an employment relationship is satisfactory, there may be little incentive for public employees to seek out labor organizations or the protection of collective bargaining and union representation, whether they are a group of three or three hundred. In City of Olympia, supra, employee Timothy West felt abused after he had been demoted to a "part-time" employee, "laid off" or categorized as a "temporary employee" under city personnel rules which the PERC examiner eventually characterized as a "mish-mash which is contradictory at every turn". West had been given a suspension, was told that he was laid off, and then was terminated by the city for "insubordination". West did not find insubordination or other disciplinary cause mentioned when a written report was made summarizing for city officials the reasons for the termination. As the examiner noted in that case:

> This chaos severely undermines the city's claims that it has, and has implemented here, any broadly accepted personnel procedures. The city is asking the Examiner to credit as sound a set of personnel practices which have no bearing to the personnel resolutions of its own legislative authority.

Assuming, arguendo, acceptance of the claim by the housing authority that both Bonaparte and Kennedy had a clear attitude problem with their supervisor, Alice White, this does not overcome the inference that they were discharged for protected activities under RCW 41.56.140. The Kennedy and Bonaparte layoffs are more similar to the discharge of union sympathizers in Pasco Housing Authority, supra, where the employee was fired two days after he and two other employees had signed authorization cards requesting an election by the Public Employment Relations Commission. In the instant case, the employees met with a union representative at the employer's shop at Clarkston; fellow employee Mel Ketchersid knew of the union organizational effort; an employee of the City of Asotin also knew that two housing authority employees were bringing in Council 2 to represent them.

Conclusions -

The examiner emphasizes that this case rises and falls along a simple principal. In a Wright Lines type of case, the burden shifts to the employer to show that, but for the union organizing campaign or other protected activity by the employees, the employees would not have been terminated or otherwise adversely affected in their employment relationship with their employer. This record is devoid of the type of evidence which would justify termination, when viewed in the context of Wright Lines. Had there been no union organizing it is more likely that Roy Kennedy would have continued his "probationary period" until the end of August, 1985. Consequently, Asotin County Housing Authority is in violation of RCW 41.56.140(1) and (4).

FINDINGS OF FACT

1. The Asotin County Housing Authority is a "public employer" within the meaning of RCW 41.56.020 and RCW 41.56.030(1).

The employer maintains and operates a number of housing units, and has a maintenance workforce consisting of three positions.

2. Washington State Council of County and City Employees, Council 2, is a labor organization within the meaning of RCW 41.56.030 which began a campaign on or about June 24, 1985 to organize certain employees of the Asotin County Housing Authority.

3. Roy Kennedy is the senior maintenance employee for the housing authority. In April, 1985, he was terminated from employment but was re-instated after a hearing, for a 60-day trial period running from July 1, 1985.

4. Mike Bonaparte is a maintenance employee of the housing authority.

5. Kennedy and Bonaparte contacted representatives of Council 2 to inquire about union representation. Kennedy and Bonaparte discussed forming a union with the other maintenance employee, Mel Ketchersid, who at first endorsed the idea but later seemed to express little interest. Kennedy and Bonaparte met with William Keenan, union representative, on two occasions in July of 1985. Ketchersid did not attend either meeting.

6. On July 26, 1985, Keenan obtained the signatures of Kennedy and Bonaparte on authorization cards, with the intent of presenting them to the employer as support for a demand for recognition under RCW 41.56.050.

7. On July 31, 1985, Kennedy and Bonaparte reported for work as usual, but were given a memorandum which informed them that

the maintenance department of the employer would be closed down, and that they were laid off as of August 15, 1985.

8. Despite the purported shutdown of the maintenance department, Mel Ketchersid retained his position as a maintenance employee of the housing authority.

9. The supervisor and general administrator for the employer is Alice White. White had terminated Kennedy in April, 1985.

10. Although the union had made no formal communication to White as to its organizing activities, due to the circumstances of the layoffs of Kennedy and Bonaparte, and the proximity of all of the employees to the administrator, it is more likely than not that Administrator White knew or had reason to know about the union organizing effort prior to the decision to eliminate the maintenance crew as a department.

11. The layoffs of Kennedy and Bonaparte were motivated at least in part by discrimination against them for their protected conduct. The evidence failed to show that economic reasons or disciplinary reasons were sufficient to lay off both Kennedy and Bonaparte while retaining the least skilled and junior employee, Ketchersid, in violation of the employer's own personnel policies.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter under RCW 41.46.

2. The complainant has met its burden, which is to establish a prima facie case that the layoffs or terminations of Kennedy

and Bonaparte were motivated in reprisal for their exercise of rights protected by RCW 41.56.040(1) and (2) and RCW 41.56.140(1).

3. The Asotin County Housing Authority has interfered with, restrained and coerced employees in the exercise of their rights guaranteed by RCW 41.56.040 and has engaged in unfair labor practices within the meaning of RCW 41.56.140(1).

From the foregoing findings of fact and conclusions of law, the examiner now makes the following:

ORDER

IT IS ORDERED that the respondent, Asotin County Housing Authority, its officers and agents, shall immediately:

1. Cease and desist from interfering with the exercise of the rights of employees to engage in protected and concerted activities as detailed in RCW 41.56.040.

2. Take the following affirmative actions:

   A. Offer employee Roy Kennedy immediate and full re-instatement to his former position of maintenance mechanic with full back pay plus interest, to August 15, 1985, computed in accordance with WAC 391-45-410.

   B. Offer employee Mike Bonaparte immediate and full re-instatement to his former position of maintenance laborer, with full back pay plus interest, to August 15, 1985, computed in accordance with WAC 391-45-410.

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 A". Such notices shall, after being duly signed by an authorized representative of the Asotin County Housing Authority, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the Asotin County Housing Authority to ensure that said notices are not removed, altered, defaced or covered by other material.

D. Notify the Executive Director of the Commission, in writing, within thirty (30) days following the date of this order, as to what steps have been taken to comply herewith and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Spokane, Washington, this 28 day of October, 1986.
ISSUED at Olympia, Washington, this 30th day of October, 1986.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION

J. MARTIN SMITH
Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-35-350.

Appendix "A"

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 interfere with, restrain or coerce employees in the exercise of their right to organize and designate representatives of their own choosing for the purposes of collective bargaining.

WE WILL NOT interfere with the exercise of the rights of employees to engage in activities protected by RCW 41.56.040.

WE WILL NOT interfere with, restrain or coerce employees Roy Kennedy and Michael Bonaparte in the exercise of their right to organize and designate representatives of their own choosing, as detailed in RCW 41.56.040.

WE WILL offer employee Roy Kennedy immediate and full reinstatement to his former position of Maintenance Mechanic with full backpay plus interest, in accord with WAC 391-45-410.

WE WILL offer employee Michael Bonaparte immediate and full reinstatement to his former position of Maintenance Laborer with full backpay plus interest, in accord with WAC 391-45-410.

DATED: _____

ASOTIN COUNTY HOUSING AUTHORITY

BY: _____
AUTHORIZED REPRESENTATIVE

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 other material. Any questions concerning this notice or compliance with its provisions maybe directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98503, (206) 753-3444.