STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GENE MINETTI, Complainant, vs. PORT OF SEATTLE, Respondent.	)	CASE NOS. 6201-U-86-1179 6214-U-86-1182 DECISION 3064-A - PECB
GENE MINETTI, Complainant, vs. INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 9, Respondent.	)	CASE NOS. 6202-U-86-1180 6215-U-86-1183 DECISION 3065-A - PECB DECISION OF COMMISSION

Gene Minetti, appeared pro se.

Bogle and Gates, by Peter M. Anderson, Attorney at Law, appeared on behalf of the respondent, Port of Seattle.

Michael F. Pozzi, Attorney at Law, appeared on behalf of the respondent, International Longshoremen's and Warehousemen's Union, Local 9.

The Port of Seattle and International Longshoremen's and Warehousemen's Union, Local 9, both seek the review of an Examiner's decision holding, inter alia, that the employer and union both committed unfair labor practices during the process of filling 44 new "seniority" positions in the employer's workforce.

BACKGROUND

Gene Minetti presented evidence that, for many years, the union had operated a discriminatory hiring hall in which union members were dispatched for "casual" work with various employers, in preference to individuals who were not union members. The Port of Seattle obtained "casual" laborers from that hiring hall from time to time, but only for its warehouse operation.

The record establishes that, during or about 1985, the Port of Seattle was experiencing economic difficulty with its warehouse operation. The employer believed its labor costs in its warehouse operation were too high, and it made a proposal to the union in collective bargaining for a three-tiered wage structure, with "casual" laborers occupying the lowest tier. After negotiations, the union agreed to a three-tiered wage structure, with the employer agreeing, as a quid pro quo, to add 44 new "seniority" positions to the higher paid tiers, which are known as the "A" and "B" lists.

Bargaining unit members were informed of the three-tiered wage plan and the new "seniority" positions in late July, 1985. They were told that the employer was establishing an applicant pool with a qualifying criterion of 160 hours of employment at the Port of Seattle during the most recent 13-month period. Union members were told that "most of them would be taken care of based on the fact they had the qualifying hours."[1] There was vocal opposition to the three-tiered wage structure from some union members, but the agreement was approved. The employer and union entered into a "Revised Supplemental Agreement" in September of 1985, which amended their collective bargaining agreement to reflect the three-tiered wage plan and the new "seniority" positions.

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[1] Transcript at 499. (Testimony of union official McRae).

Witnesses for the employer testified that the 160-hour qualifying threshold was set because the employer wanted a manageable number of applications, and was concerned that it would be inundated with applications if candidacy requirements were non-existent or too broad. After considering several configurations, the employer decided to only consider the applications of persons who had worked 160 hours for the Port of Seattle between July 1, 1984 and August 8, 1985.

The employer identified 102 persons who met the 160-hour threshold. Of those, 50 were union members and 52 were not. Minetti had worked only 48 hours for the Port of Seattle during the period and, therefore, was not invited to submit an application.

The employer set up a selection committee and selection process. The committee consisted of six foremen (who were acquainted with the work habits of the applicants) and three Port of Seattle management officials. The selection committee was instructed to use a numerical rating system to rate the candidates on the basis of several factors, including work, productivity, dependability, cooperation, initiative, and the amount of work experience with the Port of Seattle. The selection committee was instructed not to consider race, sex, union membership or lack thereof, or familial relationships.

In September, 1985, the candidates with the highest scores were selected to fill the 44 new seniority positions. Minetti filed the unfair labor practice charges in these cases in January and February of 1986.

In August of 1986, nearly a year after the "seniority" positions were filled, Minetti filed unfair labor practice charges with the National Labor Relations Board (NLRB), alleging that the union had engaged in discriminatory referral practices. That dispute was settled the following month.

Minetti argued in these proceeding, and the Examiner found, that the entire selection process for the 44 "seniority" positions was flawed because the 160-hour threshold perpetuated a prior practice of unlawful discrimination in favor of union members. In other words, applicants who were not union members had more difficulty obtaining work with the Port of Seattle, and, therefore, had more difficulty meeting the 160-hour requirement. The fact that prior work experience (in terms of hours with the Port of Seattle) was considered in the final selections for the 44 "seniority" positions was also found to have perpetuated the past discrimination in favor of union members. The Examiner found that the employer knew or should have known of the union's operation of a discriminatory hiring hall, and that the employer established the experience criterion in collusion with the union, for the purpose benefitting union membership. By way of remedy, the Examiner awarded back pay with interest and up to five years' front pay to Minetti and others similarly situated.

On appeal to the Commission, the employer and the union raise a number of issues with respect to both liability and the remedy imposed by the Examiner. With respect to liability, the employer and/or the union contend that the Examiner considered evidence and made findings that went beyond the scope of the complaint, that she considered evidence and made findings that concern events more than six months prior to the date the complaints were filed,[2] and that she made findings on matters that were not properly placed in the record. The respondents argue that the evidence does not support the conclusion that the 160-hour threshold was discriminatory, that the 160-hour threshold was established collusively with an illegal purpose, or that the final selection process was in any way discriminatory or collusive. The employer and union also object vigorously to the remedy ordered by the Examiner.

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[2] Reliance is placed on the six-month "statute of limitations" set forth in RCW 41.56.160.

Minetti urges us to sustain the Examiner's ruling. He has not appealed any of the Examiner's findings adverse to him.[3]

DISCUSSION

Proof of a pattern or practice of unlawful discrimination, coupled with proof of unlawful intent, can be a difficult proposition for a complainant in an unfair labor practice case. Rarely does a party charged with such misconduct admit the discrimination or broadcast its misdeed. The charging party must rely mostly on circumstantial evidence to prove its case -- evidence from which the Commission can infer that unlawful conduct took place. The problem is no less difficult in a case such as the one at hand, where the complaint is of perpetuation of prior unlawful discrimination, rather than of the discriminatory practice itself.

The complainant appeared pro se in this proceeding. While Minetti showed a fair degree of skill, we recognize that he is not an attorney, and that he has had no formal training in the law. The record shows that the Examiner gave Minetti every consideration, overruling most of the objections asserted by the employer and union, making suggestions helpful to Minetti's presentation of the case, and allowing Minetti to pursue evidence where relevancy was not readily apparent. We approve the Examiner's conduct of the hearing in a case such as this, where the claimant is appearing pro se. Nevertheless, the decision can rest only upon the evidence actually in the record. RCW 34.04.090(7); RCW 34.05.461(4). With respect to the evaluation of the evidence, no greater consideration

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[3] The Examiner found Minetti did not prove that the 160-hour threshold was calculated to discriminate against Minetti personally. The Examiner also dismissed Minetti's charges concerning preferences given to friends and relatives, and Minetti's claim that he was discriminated against for filing unfair labor practice charges.

can be given to a pro se litigant than to a party represented by experienced counsel.

This case is of a type where, if any part of the whole is lacking, the entire case fails. To have standing to file and process a "discrimination" complaint before the Public Employment Relations Commission, an individual must establish: (1) That he or she is or was entitled to an ascertainable right or benefit; (2) that he or she has been deprived of that right or benefit; and (3) that the deprivation was unlawfully motivated by his or her union activity or lack thereof. The Examiner's decision reflects careful research, deliberation, and craftsmanship in which numerous complex issues were considered and addressed. We, too, have reviewed each issue. After careful examination of the record, we find that one of the factual underpinnings of Minetti's case -- one of many needed to weave the evidentiary threads to a final conclusion -- is lacking. Specifically, we find, for reasons set forth below, that a case has not been made that the 160-hour threshold used to create the final applicant pool either discriminated in favor of union members or perpetuated a prior practice of discrimination in favor of union members. Since we are finding that the 160-hour threshold was lawful, and since Minetti had not accumulated sufficient hours to meet that threshold, Minetti lacks standing to pursue the allegation that the final selection process was dicriminatory. Our conclusion on this point obviates the need for us to make findings and conclusions as to several of the respondents' other arguments in their petitions for review.

The Standards for Decision

Where discrimination is charged under RCW 41.56.140(1) and RCW 41.56.150(2), we evaluate the evidence according to the test set forth by the NLRB in Wright Line, Inc., 251 NLRB 150 (1980), enforced, 662 F.2d 899 (1st Cir. 1981), as adopted by this Commission in City of Olympia, Decision 1208-A (PECB, 1982), and by the

courts of this state in Clallam County vs. PERC, 43 Wn.App. 589, 599 (1986).

Under the Wright Line analysis, the complainant initially has the burden of making a prima facie showing sufficient to support an inference that union discrimination was a motivating factor in the decision or action being challenged. A prima facie case is one in which the complainant has produced "evidence sufficient to render reasonable a conclusion in favor of the allegation he asserts." Blacks Law Dictionary at 1071 (5th ed. 1979).

If, and only if, the complainant succeeds in making the required prima facie case, the burden then shifts to the respondent(s) to prove that the same action would have occurred even in the absence of an improper motive. The principal method for a respondent to sustain its burden (and so to defeat the complainant's prima facie case) is through the presentation of persuasive evidence that the same action would have been taken even in the absence of an improper motive. This evidence frequently consists of evidence of a "legitimate business purpose".[4]

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[4] Evidence or consideration of a "legitimate business purpose" is occasionally disallowed where the conduct at issue was "inherently destructive" of employee rights. 1 Morris, The Developing Labor Law, 188 (2nd ed. 1983). The kind of action that is "inherently destructive" has eluded an easy definition, but case precedent indicates that conduct is "inherently destructive" when it produces the "inescapable" conclusion that the employer both foresaw and intended the illegal effect. See, NLRB v. Erie Resistor Corp., 373 U.S. 221, 228 (1963), where the Court recognized that there are often a number of motives for conduct, and that the NLRB's ultimate task is to balance one motive against another, by weighing employee rights against the legitimate business ends sought to be accomplished. We are not persuaded that the facts of the case at hand raise the specter of conduct "inherently destructive" of employee rights; hence, we will not consider this exception further.

In this case, Minetti was excluded from consideration for the 44 new "seniority" positions by a 160-hour minimum work experience requirement that was applied in selecting the final pool of applicants. Thus, the impropriety of that 160-hour threshold must be established before we can consider the other elements of Minetti's case:

(1) To establish employer liability, Minetti must first present facts sufficient for us to infer that:

(a) The union operated an illegal hiring hall that discriminated against workers who were not members of the union;[5]

(b) The employer's 160-hour threshold perpetuated this pattern of discrimination against Minetti; and

(c) The employer's desire to favor the union was a motivating factor in establishing the 160-hour threshold.

(2) To secure union liability, Minetti also must demonstrate the union's complicity with respect to the 160-hour threshold.

The burden of proof may be sustained by direct or circumstantial evidence. For example, the second requirement, above, might be

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[5] The respondents advance procedural arguments as to this particular issue.

First, the respondents argue that the entire issue we discuss here goes beyond the scope of the complaint. We agree that it is unclear whether Minetti's complaint, as interpreted by the Executive Director's preliminary ruling, alleges that the filling of the 44 seniority positions was "tainted" by the union's previous operation of an unlawful, discriminatory hiring hall. Since the Examiner addressed and ruled upon this important question (and ruled against Minetti on the other charges he made), we will assume, without deciding, that the issue was properly framed by the pleadings, the preliminary ruling, and/or the scope of the evidence presented at hearing.

Second, the respondents argue that the issue is barred by the six-month statute of limitations, RCW 41.56.160, and specifically contend that the operation of a discriminatory hiring hall, and effects thereof, do not give rise to a "continuing violation" that avoids the limitation period of the statute. We are inclined to disagree with the respondents on this point although, again, we need not specifically decide the question.

demonstrated statistically -- such as by evidence showing that a disproportionate number of union members met this threshold. Similarly, the third requirement does not require direct proof of an illegal motive; if the employer's action could "naturally and foreseeably have an adverse effect on employee rights, . . . [a labor board] may infer" a discriminatory purpose or effect. 1 Morris, The Developing Labor Law, 187 (2nd. ed. 1983). Accord, Radio Officers Union v. NLRB, 347 U.S. 17, 44-5 (1954).

The Hiring Hall

In a leading case, Local 17, Teamsters v. NLRB, 365 U.S. 667 (1961), the Court ruled that exclusive hiring hall arrangements are not a per se violation of Section 8(a)(3) of the National Labor Relations Act (NLRA). Justice Douglas, writing for the majority, observed that "[i]t may be that the very existence of the hiring hall encourages union membership. We may assume that it does." Id., at 675. But, he wrote, that "the only encouragement or discouragement of union membership banned by the Act is that which is 'accomplished by discrimination.'" Id., at 675. We conclude likewise under our own statutes.

We also follow the federal precedent that a union hiring hall referral system is illegal when union members are dispatched in preference to job seekers who are not union members. 1 Morris, The Developing Labor Law, supra, at 1399. It follows that the employer may not knowingly (or with reason to know) condone or participate in the union's illegal practices. See, Panscape Corp., 231 NLRB 693 (1977); enforced, 607 F.2d 198 (7th Cir. 1979). Employer liability thus will be based on the general principles of discrimination set forth above.

There is some evidence in this case that the union dispatched union members in preference to non-members during the time period relevant to his case. Approximately a year after the employer

began the process of filling the 44 seniority positions, Minetti filed charges with the NLRB concerning the union's hiring hall practices. A settlement followed, in which the union agreed not to discriminate, but in which it expressly refused to admit liability, and Minetti agreed to withdraw his charges. We agree with the respondents that the settlement agreement, because of its terms, is not probative on this issue.[6] The testimony at hearing is probative, however, and that testimony arguably constitutes a prima facie showing of a hiring hall practice on the part of the union that meets nearly all tests of illegality.[7] Because the next item we discuss goes against Minetti, however, we need not make an ultimate determination on the hiring hall.

Perpetuation of Prior Discrimination

This inquiry requires us to determine whether discriminatory dispatch practices adversely affected the discriminatees with respect to the creation of the 160-hour threshold. To make a case, Minetti should present statistical evidence showing the 160-hour

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[6] Because we are not considering the settlement in this case, we need not decide whether the Examiner violated the administrative rule for official notice, RCW 34.04.100, or whether an adverse inference against the employer arises from the settlement agreement, since the Port of Seattle was not a party to it. We also need not decide whether the principles of collateral estoppel and res judicata, can be applied to the union based on evidence received by the Commission in a prior case, Port of Seattle (James Morris), Decision 2796, 2796-A (PECB, 1987), where the union was not a party to that proceeding. We also note that no findings adverse to the Port of Seattle were part of the Commission's final decision in that case.

[7] The respondents argue that there is no evidence the Port used the union hiring hall exclusively, and exclusive use is a requirement for an illegal arrangement. See 2 Morris, The Developing Labor Law, 1402 (2nd ed. 1983). They also point out that the Port was only one user of the hiring hall. A number of private employers, over whom we lack jurisdiction, also used the hiring hall.

threshold disproportionately benefitted union members. Probative evidence could include a showing that the ratio of union to non-union workers who met the 160-hour threshold exceeded the ratio of union to non-member workers on the dispatch list during the period in question. Evidence showing the total number of dispatch hours accorded union workers and non-union workers during the period in question also would be relevant.

To Minetti's detriment, the only evidence in this category was that approximately one-half of the casuals who met the 160-hour requirement were union members, and the other half were not. Standing alone, this does not suggest a discriminatory effect. Without evidence that this approximately 50-50 ratio was disproportionate to the ratio of union and non-union casuals on the dispatch list, we cannot infer discriminatory effect. In fact, our examination of the record reveals no information as to whether the union's preferential treatment to members resulted in diminished work opportunity for non-members.

Minetti alleged in a brief that he would have acquired the requisite hours had he known that a 160-hour threshold was going to be established in the future. This suggests that he - and not the union - had a fair degree of control over the number of hours he could work at the Port of Seattle. We have no evidence of the ease or lack of ease with which workers who were not union members could accumulate hours. During Minetti's cross-examination of John McRae, the union business agent, McRae maintained that, in spite of the union dispatching union members ahead of non-member workers, the people who were not union members were not adversely affected. Minetti continued to pursue a course of hypothetical questioning designed to elicit an admission from McRae that this conclusion was faulty. Unfortunately, Minetti suddenly dropped the line of questioning, leaving with us no evidence in his favor. Thus, the kind of evidence that would be helpful in a case such as this is lacking.

Importantly, and fatal to Minetti's case, is the reality that there were more than enough non-member workers eligible under the 160-hour requirement to have filled all of the 44 positions available. There is no indication that any of those non-member workers were any more or less a discriminatee than Minetti and others who did not meet the 160-hour requirement. In theory, therefore, the Port of Seattle could have filled all 44 vacant positions without giving any to union members who were the supposed beneficiaries of the past discrimination.[8] Finally, the Port of Seattle could have filled all 44 vacant positions with non-member workers who had met the 160-hour threshold, without needing to enlarge the list to bring Minetti and others who had only 48 hours into consideration. Accordingly, we find that the complainant has not made a prima facie showing on this critical aspect of his case.

The Existence of an Unlawful Motive

Because Minetti's case fails on the previous point, we need not decide this question. We will comment briefly on the evidence, however.

Sam Moss, a Port of Seattle employee with no apparent bias, testified that the employer's labor relations director, Larry Wheeler, stated at a meeting Moss attended with John McRae that, "Union members were given preferential treatment."[9] Wheeler and McRae denied that such a statement was made. Oddly, the meeting occurred because both Moss and McRae wanted Wheeler to reconsider the application of one Gary Ryder, a union member who did not make the final cut. Thus, the purpose of the meeting is inconsistent with an inference that the union, at least, wanted to process to

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[8] Such a hiring decision would, of course, have to be free of discrimination against the union member applicants on the basis of their union activity.

[9] Transcript at page 94 (Testimony of Moss).

favor its own members. Admittedly, however, this purpose is not inconsistent with an improper employer motive -- if the employer was trying to curry favor with the union.[10] If we were to decide this issue, we would be inclined to find that Minetti made a prima facie showing of the employer's improper motive, (i.e., without considering the employer's rebuttal).[11] We would not, however, extend this finding to implicate the union.[12]

Evidence Pertaining to the Respondents' Burden

Even if we were to conclude that Minetti had made a prima facie case as to the 160-hour threshold, we would be compelled to find that the employer met its burden of showing a legitimate business justification for setting that threshold. In the private sector, it normally is lawful for an employer to consider, when filling

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[10] As can be implied from our legal analysis, discriminatory intent need not translate into discriminatory fact. One may desire or even intend to undertake unlawful conduct, but may not actually attempt, or succeed, in doing so.

[11] Other evidence we have considered is not persuasive. Specifically, the preamble to the Revised Supplement Agreement speaks of giving job opportunities to "union members", but the agreement itself does not preclude the same benefit to casual employees who were not union members. The language strikes us as an unfortunate choice of words (given the dispute to follow), made to add some window dressing to the agreement.

[12] McRae's statement at the union ratification meeting, to the effect that union members would have a "good chance" of meeting the "fair" 160-hour threshold criterion, does not allow us to draw any inferences one way or another. It easily could be viewed as a bit of puffery, designed to sell an agreement that had been met with some opposition.

Bear in mind that this is not a case to establish the union's liability for operating a discriminatory hiring hall. Rather, to make a case against the union, the complainant must establish the union's complicity in at least some part of the process used to select the 44 seniority employees and that the process itself was discriminatory and was intended to be so.

permanent positions, experience gained with that employer, even when the employer has made use of an exclusive union hiring hall. See 2 Morris, The Developing Labor Law, 1399 (2nd ed. 1983). In this case, the employer presented considerable testimony as to how and why the 160-hour threshold was established. Specifically, it wanted a threshold criterion that would give it an ample, but not overly large applicant pool. It desired applicants with Port of Seattle experience (as opposed to experience with other employers on the waterfront), so that it would have reliable basis for evaluating the applicants' work habits. It also wanted the applicants to have knowledge of the Port of Seattle warehouse operation, and wanted to ensure that sufficient numbers of minorities would be selected. All of this constitutes a logical and legitimate justification for establishing the threshold at the point that it did.

The dates from which the required hours were computed were also logical. The ending date reflected the most recent Port of Seattle payroll information available,[13] while the beginning date for the period was driven by the size of the pool to be considered.

Minetti's Standing to Proceed on Behalf of Others

Minetti alleged, and the Examiner found, that the final selection process discriminated in favor of union members. The Examiner thus ordered remedies favoring employees other than Minetti.

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[13] That ending date was just prior to Minettii's return from California. Contrary to Minetti's claim that the Port of Seattle knew of his return, and established its cut-off date to make sure he would not be eligible, the Port of Seattle official responsible for the cut-off date decision testified that he did not know anything about Minetti's return from California. Bear in mind, also, that all of this occurred nearly a year before Minetti filed unfair labor practice charges with the NLRB.

Even assuming the Examiner's findings of fact and conclusions of law relating to discrimination affecting employees other than Minetti were correct, Minetti lacks standing to pursue a remedy on behalf of either himself or others. Since he had only 48 hours of Port of Seattle work experience during the relevant time period, Minetti did not make it through the legitimate 160-hour work requirement used to screen applicants. Thus, he was not deprived of anything to which he was entitled when he was excluded from consideration for the 44 positions at issue here. Only a person qualifying for consideration for those positions could have been a "victim" of discrimination, with the consequent standing to complain. No such person has come forth in a timely manner to do so. Accordingly, the Examiner's decision and remedies favoring other potential discriminatees must be reversed, along with dismissal of Minetti's complaint.

AMENDED FINDINGS OF FACT

1. The Port of Seattle is a "public employer" within the meaning of RCW 41.56.030(1). At the time in question, it was represented for purposes of collective bargaining negotiations by Larry Wheeler.

2. International Longshoremen's and Warehousemen's Union, Local 9 (ILWU), is a "bargaining representative" within the meaning of RCW 41.56.030(3). Its business agent is John McRae.

3. The Port of Seattle recognizes Local 9 as the exclusive bargaining representative of a bargaining unit of its warehouse employees.

4. The Port of Seattle and Local 9 have been parties to collective bargaining agreements which include union security provisions. The contract at issue in this proceeding was

negotiated prior to the effective date of RCW 53.18.015. It requires a newly hired employee to join the union within 60 days of employment or be discharged. To obtain seniority under that collective bargaining agreement, a warehouseman had to work 60 consecutive days with the employer.

5. Gene Minetti has worked from time to time since at least 1980 as a "casual" warehouseman for various employers on the Seattle waterfront. He was not a member of Local 9.

6. ILWU Local 9 operates a hiring hall which the Port of Seattle uses to obtain casual warehousemen. Prior to September, 1986, the ILWU maintained two separate lists of employees, and dispatched union members in a manner different from the treatment accorded to persons who were not union members.

7. In 1985, the Port of Seattle and ILWU Local 9 negotiated a Revised Supplemental Agreement to their collective bargaining agreement. The revision called for the Port to add 44 new seniority employees to its roster and to reduce the wage rate of casual warehousemen from a range of $14.95 through $15.25 to a flat $10.00 per hour. The Port was eager to institute a reduced, flat rate for the casual warehousemen. McRae reported to the union membership that the application qualifications for the new seniority positions would offer union members a good chance of being considered because of the "fair" qualifying hour requirement.

8. To be invited to apply to be considered for one of the new seniority positions, a warehouseman had to have worked a minimum of 160 hours for the Port of Seattle within the period of July 1, 1984, through August 9, 1985. No evidence was presented that the 160-hour threshold established by the Port of Seattle was intended to, or in fact gave, disproportionate preference to union members or otherwise perpetuated a pattern

of discrimination stemming from the previous operation of the union's hiring hall. The ending date of that period was chosen because it corresponded to the most recent Port of Seattle payroll period. The beginning date of that period was chosen to provide the Port of Seattle a manageable number of applicants to be considered, consistent with affirmative action considerations.

9. Among those deemed eligible to apply for the 44 positions were approximately 50 persons who were members of the union and approximately 52 persons who were not union members.

10. Minetti had worked 48 hours for the Port of Seattle during the relevant time period, and thus did not meet the 160-hour threshold requirement. He therefore was not considered for the 44 positions at issue.

AMENDED CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over the complaints of discrimination due to lack of union membership pursuant to RCW 41.56.

2. The Public Employment Relations Commission does not have jurisdiction over the complaints of racial or sexual discrimination.

3. The complainant, Gene Minetti, has not met his burden of proof to show that the 160-hour threshold requirement imposed by the Port of Seattle for the 44 seniority positions filled in 1985 was discriminatory, or that it perpetuated a pattern of illegal discrimination against workers who were not members of ILWU Local 9.

4. The complainant has not met his burden of proof to show that he was entitled to be considered for employment in any of the 44 seniority positions filled by the Port of Seattle in 1985, and so lacks standing to further contest the selection process used by the Port of Seattle in the filling of those positions under RCW 41.56.140(1) and RCW 41.56.150.

5. The complainant has not met its burden of proof to show that the Port of Seattle and/or Local 9 has discriminated against him in violation of RCW 41.56.140(3) because he filed or processed unfair labor practice complaints before the Public Employment Relations Commission.

6. The complainant has not met its burden of proof to show that the Port of Seattle and/or Local 9 discriminated against him in violation of RCW 41.56.140(1) with respect to a showing of favor towards employees who were related to officials of the employer or the union.

7. The complainant has not met its burden of proof to show that the cut-off date of August 9, 1985, to calculate work experience with the Port of Seattle, was chosen specifically to discriminate against him in violation of RCW 41.56.140(1).

Upon the basis of the above and foregoing amended findings of fact and amended conclusions of law, the Public Employment Relations Commission makes and enters the following:

AMENDED ORDER

1. The complaints charging unfair labor practices filed in the above-entitled matter against the Port of Seattle, Case Nos. 6201-U-86-1179 and 6214-U-86-1182, are dismissed.

2. The complaints charging unfair labor practices filed in the above-entitled matter against International Longshoremen's and Warehousemen's Union Local 9, Case Nos. 6202-U-86-1180 and 6215-U-86-1183, are dismissed.

DATED at Olympia, Washington, this 29th day of September, 1989.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JANE R. WILKINSON, Chairman

MARK C. ENDRESEN, Commissioner

JOSEPH F. QUINN, Commissioner