STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

HUGH D. WEINREICH, Complainant, vs. INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 9, Respondent.	CASE 7850-U-89-1679 DECISION 3294-A - PECB
HUGH D. WEINREICH, Complainant, vs. PORT OF SEATTLE, Respondent.	CASE 7873-U-89-1687 DECISION 3295-A - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Hugh D. Weinreich appeared pro se.

Michael F. Pozzi, Attorney at Law, appeared on behalf of the respondent union.

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

On March 22, 1989, Hugh D. Weinreich filed complaints with the Public Employment Relations Commission, alleging that International Longshoremen's and Warehousemen's Union, Local 9, had committed unfair labor practices under RCW 41.56.150(2), and that the Port of Seattle had committed unfair labor practices under RCW 41.56.140, by granting "seniority" to four other employees on the basis of their familial and union connections. Following a series of procedural steps detailed below, the complaints were consolidated for hearing before Examiner William A. Lang. A hearing was held

before the Examiner at Seattle, Washington, on March 29, April 24, and May 18, 1990. Post-hearing briefs were filed by the employer and the union on August 6, 1990.

BACKGROUND

The Port of Seattle conducts warehousing and shipping operations at Pier 91 and Pier 106 on the Seattle waterfront. Pier 91 contains a cold storage facility designed to hold fruits and other perishable products at a constant temperature of 34 degrees Fahrenheit. Pier 106 is the larger of the two facilities, and contains a number of warehouses in which cargo is stored for shipment. The number of warehousemen employed by the Port of Seattle on any given day is determined by the number of ships loading and unloading at these two piers.

International Longshoremen's and Warehousemen's Union, Local 9, is the exclusive bargaining representative of warehousemen employed by the Port of Seattle at Pier 91 and Pier 106.

The union and the Port of Seattle have been parties to a series of collective bargaining agreements over a period of many years. The most recent relevant agreement covered the period from July 1, 1986 through June 30, 1989.

The Hiring Hall

The union manages a hiring hall from which employees can be referred to the Port of Seattle and other employers.[1] Three lists are used for determining qualifications and dispatch priorities, as follows:

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[1] The evidence shows the Port of Seattle is the only employer currently using the hiring hall to supply its fluctuating requirements for additional warehousemen.

THE "A" BOARD consists of persons who have worked 1000 hours per year for a minimum of five years within the warehouse industry.

THE "B" BOARD consists of persons who have worked 1000 hours per year for a minimum of two years within the warehouse industry.

THE "C" BOARD consists of persons identified as being qualified, but who do not meet the experience requirements for the "A" or "B" boards.

The hiring hall is operated in accordance with a "Policy Statement For Operating A Joint Dispatch Hall", which creates a standing joint committee of representatives of the union and employers who choose to participate.[2] That joint committee, known as the "J.C.", is comprised of two members of the union's executive board and two members from its "Pegboard Committee", together with an equal number of employer representatives. The J.C. qualifies applicants based on job requirements, and establishes the number of positions that are needed on each of the three lists to fill industry requirements. J.C. decisions on qualifications are final, and are not subject to contractual grievance procedures.

Each applicant for casual employment pays a fee for the hiring hall service, with the amount of the fee established to recover the reasonable cost for its operation. Typically, an individual seeking work as a warehouseman would go to the hiring hall and indicate his availability for assignment by placing a peg in the hole opposite his name on the appropriate board. When an employer determines that it needs workers, it calls the union dispatcher in the late afternoon,[3] stating the number of employees that are to report for work at 8:00 a.m. the following day. The dispatcher completes a form noting the name of the foreman making the request and the location of the warehouse where the work is available. The dispatcher then refers the most qualified persons for each work

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[2] The current policy is dated December 9, 1986.

[3] Calls are usually made around 4:00 p.m.

order, starting with those who are "pegged in" on the "A" board, then moving to those who are "pegged in" on the "B" board, and finally moving to those who are "pegged in" on the "C" board.[4] The most senior warehousemen on each board are eligible for their choice of assignments. When a dispatch order is filled, the least senior employee referred takes a copy of the dispatch form to the job site.

Employees referred from the hiring hall will report for work at the same location each day until notified by the foreman that they are laid off. The employee can then go back to the hiring hall and "peg in" to be eligible for another referral.

The Port of Seattle Workforce

The record indicates that up to 102 employees used by the Port of Seattle in the operation of its warehouses are laid off and recalled from seniority lists administered directly by the employer, without going through the hiring hall. Under the provisions of Section XXI of the 1986-89 collective bargaining agreement between the Port of Seattle and ILWU Local 9, those employees are given seniority rights to shift preference and area assignments, as well as to employment.

When the Port of Seattle needs warehousemen, its foremen recall the necessary number by seniority, first using an "A" list which has 82 names, and then using a "B" list which is set at 20 names. Only when its operational needs exceed the number of warehousemen available from its seniority lists does the Port of Seattle supplement its workforce by utilizing casual warehousemen obtained from the hiring hall operated by ILWU Local 9.

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[4] If additional workers are needed, the dispatcher requests the Washington State Employment Office to supply them, or uses the "Millionaires Club", where unemployed workers congregate hoping for work.

Warehousemen are paid in accordance with a wage schedule set forth in the collective bargaining agreement. For example, the wage schedule in effect as of July 1, 1988 specified:

"A" list warehouseman	7/1/88	$15.75 hour.
"B" list entry	7/1/88	$11.75 to $15.25 hour at three years.
Casuals	7/1/88	$10.25

Being placed on the seniority list at the Port of Seattle is regarded by employees as a very valuable property right, both as the source for available work and as the basis for enhanced wages.

The record indicates that two methods have been used to place employees on the Port of Seattle seniority lists.

Group Expansion of the Seniority Lists -
An agreement was reached in collective bargaining between the employer and union in 1985, providing:

SECTION XXI

SENIORITY

A. Seniority Lists and Casual Employment

1. "A" list - Seniority employees who were employed as of September 4, 1985, shall be "grandfathered" under the conditions provided for in this section.

   The Port shall maintain a total of eighty-two (82) seniority employees on the "A" list including the "grandfathered" employees and new hires.

2. "B" List - Except as provided in this paragraph, there shall be a minimum of 20 employees maintained on the "B" list. However, said minimum shall be reduced by attrition limited to - voluntary termina-

> tions, retirements, death, discharges for cause, and promotions to the "A" list as replacements for those who terminate for any of the preceding reasons. Such attrition shall not include layoffs.
>
> 3. Casual Employment - Casuals may be employed so long as the required manning levels for the "A" and "B" seniority lists are maintained.

The Port of Seattle added 44 names to its seniority lists in 1985, using a specially-created screening process.[5] About 24 former "casual" employees were added to the "A" list, which already contained a "grandfathered" group consisting of 51 employees. About 20 additional employees were placed on the "B" list, which was newly created at that time.

Individual Acquisition of Seniority Rights -
The seniority provisions of the collective bargaining agreement also provide:

> SECTION XXI, SENIORITY
>
> B. Employment, Layoff, and Break in Seniority
>
> 1. Except for the initial acquisition of new hires to fill the "A" list and the "B" list the following shall apply:
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> When an employee has completed a forty-five consecutive calendar day probationary period of employment in casual status, he/she shall be placed on the sen-

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[5] The legitimacy of that screening process was at issue before the Public Employment Relations Commission in Port of Seattle, Decision 2796-A (PECB, 1988) [discrimination allegations advanced by James Morris, dismissed on the basis that the complaint was not timely filed]; and Port of Seattle, Decision 3064-A (PECB, 1989) [discrimination allegations advanced by Gene Minetti, dismissed on the basis that the complainant was not among the applicants eligible for consideration.]

> iority list. Seniority shall prevail both in hiring and layoff. In rare instances it may also be necessary to give due consideration to the capabilities of an individual to perform the work available. Any such instance where a decision is based on the capabilities of an individual to perform the work available, rather than seniority, shall be personally approved by the locally agreed to management representatives. When vacancies occur on the "A" list, they shall be filled on a seniority basis from the "B" list.
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> The management representative designated by the Port to personally approve a decision based on the capabilities of an individual to perform work available shall be the Manager, Marine Operations and\or Manager, Distribution Center.
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> ...
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> 4. "A" list employees shall have seniority over "B" list employees.

There is evidence that the foremen employed by the Port of Seattle are asked to compile lists of the best qualified casual employees, for purposes of considering whether to confer seniority status.[6]

The minutes of an October 18, 1988 special meeting of a Port of Seattle/Local 9 "Labor Relations Committee" contain extensive discussion on whether the Port of Seattle should conduct interviews before putting casual employees on seniority status. The union opposed an interview process, and had called the special meeting to discuss the question. During the course of the meeting, the union complained that there were a lot of good people who were not given

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[6] Joan Black, the employer's assistant general manager for operations, testified that she had requested such lists from time to time. Black stated that decisions on what casuals are to be granted seniority status is a "judgment call between the foreman and the operations manager, which could be Ken Crooker or Garry Richardson".

seniority, because they were not given the opportunity to work more than 45 days on one dispatch. The employer's representatives stated that they were aware of this problem. The union also inquired about an employee who was alleged to have gained seniority by working the 45 days in different areas, and Black agreed to research the incident. It is clear from those minutes that, while the employer has the right to make the choice as to who is granted seniority, the Port of Seattle management is very sensitive to union input. Moreover, it is clear that the Labor Relations Committee has an oversight role in making sure that the terms of the collective bargaining agreement are not violated.

The Disputed Promotions

Marty Arguello and Clem Cortez, Jr. have worked in the warehouse industry on the Seattle waterfront. Arguello's father was on the "grandfathered 'A' list", and was active in Local 9. Cortez is also the son of a long-time ILWU Local 9 member.

On July 28, 1988, Marty Arguello and Clem Cortez, Jr. petitioned the J.C. for "A" board status. The committee rejected their requests.

Marty Arguello and Clem Cortez, Jr. appeared at a Local 9 membership meeting on September 13, 1988, requesting "A" board status. That motion failed, but another motion to re-activate a "Red Board" was discussed and passed.[7] Arguello and Cortez were then placed

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[7] There are references in the record and in the previous decisions to a "red board" or "red list" which was abolished as the result of a settlement agreement made on August 12, 1986 under the procedures of the National Labor Relations Board (NLRB). That agreement sought to end discrimination on the basis of union membership, by merging a "book list" historically limited to union members with a "red list" historically containing non-members with 5 years of experience. For a full discussion of the "red list", see Decision 3064, supra.

on the so-called "Red Board", and were given referral preference above those on the "B" board but not above those on the "A" board.

A dispatch list containing five names was issued from the hiring hall on October 13, 1988. The employees were to report to foreman Edward Trinka at Pier 91 for work as warehousemen. Arguello was dispatched on the basis of his status on the recently re-activated "Red Board". Randy Uecker, Jerry Johnson, Rod Cameron, and Don Sullivan were dispatched from the "B" board at that time. Arguello was given seniority preference over Sullivan on the dispatch list.[8]

The record indicates that Marty Arguello did transmission work on Trinka's car. Arguello claims that he was paid for the job.

Randy Uecker's father, brother, and several uncles were on the seniority list, and had been friends of Trinka since 1974. Uecker played darts with Trinka at a tavern called "Targies", and was a co-owner of a race horse with Trinka and seven others.

Jerry Johnson is related to Ron Johnson, who has worked as a casual employee with the Port of Seattle and has been a union member for 20 years. His brother has also worked for the Port of Seattle.

Rod Cameron's father worked for the Port of Seattle, and was active in the union for many years. Several of Cameron's uncles and a cousin had seniority or were active in Local 9.

After the "favored four" commenced work, Trinka told his superior that four more warehousemen were needed on the seniority list. Erik Thomsen, the employer's superintendent for marine operations for the Pier 91 cold storage facility, testified that he observed

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[8] Arguello, Uecker, Johnson, and Cameron are the subject of this complaint, and are hereinafter referred to as the "favored four". Sullivan was laid off on October 27, 1988, before attaining seniority status.

the "favored four" at Trinka's request, and considered them to be good workers.

The 45th consecutive calendar day of employment for the "favored four" would have occurred on Thanksgiving Day, November 24, 1988. About a month prior to that date, Thomsen and Trinka advised the Labor Relations Committee that they intended to give seniority to the "favored four".

At around noon on Wednesday, November 23, 1988, Thomsen informed Trinka that Superintendent Joe Stuntz of Pier 91 had told him that Pier 106 was laying off their senior warehousemen, and that he must lay off the casual workers from the "B" and "C" boards in order to avoid payment of very expensive standby pay to seniority workers. Both Trinka and Thomsen expressed dismay. The record indicates that there were rumors that the foremen at Pier 106 considered other casual employees with more seniority to be better qualified than the "favored four" and that the foremen would try to prevent them from gaining seniority status. Trinka and Thomsen thought that the layoff was a subterfuge to obstruct their intentions to give seniority to the "favored four", as they would have to be laid off prior to completing the 45 consecutive calendar days required for seniority status.

The record shows that Trinka and Thomsen had telephone discussions on November 23, 1988 with ILWU Local 9 Business Agent John McRae, with Port of Seattle labor relations official John Swanson, and with Stuntz. The subject of discussion was whether they could grant seniority to the "favored four" regardless of the layoff, or at least give them holiday pay for Thanksgiving Day for "humanitarian reasons".[9] The consensus was that the "favored four" could not

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[9] None of the "favored four" had worked sufficient hours during the previous year to qualify for vacation accrual.

be given seniority, and had to be laid off. Thomsen was clear in testimony that he gave Trinka the order to lay off the casuals.

There is a dispute in the evidence as to what was actually done and said to the "favored four" on November 23. It is clear that a number of seniority workers laid off from Pier 106 on November 23 were notified over the weekend that they were recalled to work on Monday, November 28. The seniority warehousemen were returned to Pier 106 on Tuesday, November 29, 1988, and the casual workers were laid off at that time. The record shows that the "favored four" were granted seniority status and placed on the "B" list as of November 27, 1988.

On November 29, 1988, Weinreich and a number of other employees wrote to Port of Seattle official Swanson, objecting to the grant of seniority to the "favored four". The letter asserted that Trinka had laid off "seniority" workers while retaining "casual" employees on November 23, 1988, in violation of Article XXI of the collective bargaining agreement between the employer and Local 9. While that letter acknowledged that the signatory employees lost no income because they were telephoned during the weekend to report for work on the following Monday, they asked Swanson to state the policy with respect to hiring of casuals. Swanson subsequently discussed the matter at a meeting with some members of the union, but no further action was taken and the letter was not considered as a grievance.

On January 4, 1989, Thomsen gave Trinka a written reprimand, admonishing him for failing to follow his instructions to lay off "casual" employees on November 23, 1988. Thomsen ordered Trinka that, in the future, he was to submit the names of those who are to be laid off to Thomsen. Thomsen told Trinka that a failure to follow these instructions would result in discipline.

PROCEDURAL RULINGS

The factual allegations were contained in two letters attached to the complaints. Weinreich complained that the four employees had received "seniority" status to which they were not entitled. The remedies requested were that other persons be made "whole for loss of earnings", and that ILWU Local 9 represent all employees in a fair impartial manner.

The complaint forms and the two letters were reviewed by the Executive Director for the purpose of making a preliminary ruling pursuant to WAC 391-45-110. A letter was issued on April 25, 1989, informing Weinreich that allegations relating to violations of a collective bargaining agreement or personnel policies do not state a cause of action for unfair labor practice proceedings before the Commission. Weinreich was allowed 14 days in which to amend his complaints.

On May 7, 1989, Weinreich filed amended complaints alleging that the four employees named in the amendment were granted "seniority" status because of familial and union connections, with the complicity of the employer. Further, Weinreich alleged that the union had failed to process his grievance alleging violation of the collective bargaining agreement.

On May 16, 1989, the Executive Director advised the parties that a hearing would be held, describing the cause of action as:

> Discriminatory conferral of seniority status on the four named individuals, by preference on the basis of union membership, familial relationships and personal relationships with union officers.

A letter was issued on August 8, 1989, designating Examiner William A. Lang to conduct further proceedings in these matters.

POSITION OF THE PARTIES

Hugh Weinreich alleges that he and others have been discriminated against, because they have remained in "casual" status while the "favored four" were granted seniority in violation of the collective bargaining agreement. The complainant points out that the Port of Seattle asks its foremen for recommendations when it seeks to add names to the seniority list, and that the "favored four" did not appear very high on the recommended lists. Weinreich contends that the "favored four" were given seniority status because they were relatives of union members and/or had other personal or business relationships with Trinka. Weinreich asserts that the union then failed to process his grievance, and that it gave an unlawful "Red Board" preference to Arguello.

According to the Port of Seattle, its cold storage facility at Pier 91 is an onerous place to work, because warehousemen work in cold rooms or out in the weather, because they have to be skilled forklift drivers to perform "loading against ships"[10], and because Trinka is a demanding foreman. The employer claims it had difficulty retaining qualified workers for the facility, and that it therefore had a business need to grant seniority rights to the "favored four" warehousemen. While admitting that Trinka erred in not laying off the "favored four", the employer contends that they gained seniority in accordance with the terms of the collective bargaining agreement. The employer denies that it showed favoritism to the "favored four", contending that they were given seniority because they were good workers who would take assignment to Pier 91. The employer also asserts that the hiring of relatives of union members is not illegal, and that the Commission does not have jurisdiction to remedy contract violations.

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[10] The term "loading against the ship" is used where time is paramount when dealing with perishables.

ILWU Local 9 argues that the letter of November 29, 1988 was not a formal grievance. While admitting that it was not completely diligent in following up on the matter, the union expresses the view that it has been caught in the middle.

DISCUSSION

The Jurisdiction of the Commission

The jurisdiction of the Public Employment Relations Commission in this matter flows from RCW 41.56.140 through .190. RCW 41.56.140 and RCW 41.56.150 prohibit employers and unions, respectively, from interfering with or discriminating with respect to the exercise of employee rights secured by the Public Employees' Collective Bargaining Act.

The Commission does not assert jurisdiction to determine or remedy "violation of contract" allegations through the unfair labor practice provisions of Chapter 41.56 RCW,[11] but it does have both

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[11] City of Walla Walla, Decision 104 (PECB, 1976). RCW 41.56.122 authorizes, and RCW 41.58.020(4) endorses, use of final and binding arbitration to resolve disputes concerning interpretation or application of collective bargaining agreements. Absent arbitration procedures, parties may take "violation of contract" claims to court. Highland School District, Decision 2684 (PECB, 1987), involved the interface between collective bargaining and court rules after a grievance was taken to court. Consistent with this, the Commission does not assert jurisdiction in "duty of fair representation" cases arising exclusively out of disagreements between employees and unions concerning the processing of grievances, Mukilteo School District (Public School Employees), Decision 1381 (PECB, 1982), but employees may pursue such claims in court as third-party beneficiaries to the collective bargaining agreement. If the court finds that a union's breach of its duty of fair representation excuses the employee's failure to exhaust contractual remedies, it will have jurisdiction over the employer to determine and remedy any underlying contract violation.

occasion and authority to consider, interpret, and even apply provisions of collective bargaining agreements in unfair labor practice cases:

(1) In the absence of viable grievance arbitration machinery, the Commission and its Examiners will make the necessary contract interpretation to determine the validity of "waiver by contract" defenses. City of Yakima, Decision 3564 (PECB, 1990);[12]

(2) The Commission and its Examiners must also interpret and apply contract provisions in evaluating "breach of duty of fair representation" allegations involving union discrimination. City of Redmond (Redmond Employees Association), Decision 886 (PECB, 1980);[13] Elma School District (Elma Teachers' Organization), Decision 1349 (EDUC, 1982).[14]

As the Executive Director indicated in his preliminary ruling on the original complaint, if this case only involved a "violation of contract" claim, it would have been dismissed long ago. In this case, the collective bargaining agreement provides the base for assessing whether the union and/or employer have aligned themselves in interest against Weinreich by making, tolerating or defending the award of seniority status to the "favored four" on a basis that is discriminatory in violation of Weinreich's rights under Chapter 41.56 RCW. The Examiner considers the contract in that light. Interpretations of the applicable collective bargaining agreement that are made in this case are only incidental to the determination of alleged violations of RCW 41.56.140 and .150. See: Oak Harbor School District, Decision 2956 (PECB, 1988).

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[12] Deferral to arbitration is ordered, where appropriate, to implement the legislative preference for the use of grievance arbitration procedures. See, Stevens County, Decision 2602 (PECB, 1987).

[13] The Redmond case involved a union aligning itself in interest against a portion of its own bargaining unit.

[14] The Elma case involved an alleged refusal by a union to process the grievance of a non-member.

Weinreich's Standing

The Employer's Motion for Dismissal -

On September 18, 1989, the employer filed a motion to dismiss the complaint. A supporting affidavit of John Swanson, its director of labor relations, states that Weinreich was a member and officer of the union during the time period relevant to these cases. The employer acknowledged that Weinreich was "unhappy that he did not receive a seniority position" at the time involved, but argued that his failure to obtain a position could not be the result of "familial relationships and personal relationships with union officers", as he was a union officer. Further, the employer contended that "the hiring of a person who happens to be a relative or friend of an existing employee is not an unfair labor practice."

The Examiner denied the employer's motion in an order issued on September 25, 1989, stating:

> The employer appears to mis-state the nature of the complaint. A union is not at liberty to use its status as exclusive bargaining representative to advance the interests of union members or the families and friends of union officials to the detriment of either existing employees or other applicants for employment. Even if Weinreich is a union member and/or officer, he would have a cause of action for unfair labor practice proceedings before the Commission if his employment opportunities were in any way reduced or prejudiced by an unlawful conferral of "seniority" status on other employees. This would be true if he were denied employment or suffered reduced employment because others were given undeserved "seniority" status because of their union membership. Similarly, this would be true if he were denied employment or suffered reduced employment because others (including his own friends or relatives) were given undeserved "seniority" status because of their familial and personal relationships with union officials.

> The employer correctly argues that Weinreich lacks standing to file and process a complaint on behalf of other employees or applicants for employment, but he has standing to protect his own rights. The complaint appears to state such a cause of action.

Port of Seattle, Decisions 3294 and 3295 (PECB, 1989).

The Employer's Motion for Reconsideration -

On October 10, 1989, the employer filed a motion for reconsideration, contending that the Examiner did not have the benefit of the Commission's ruling in Port of Seattle, Decision 3064-A, supra, issued four days after the Examiner's order denying the motion.[15] The port argued that the three elements necessary to gain standing in that case should be determinative in this controversy.

The Examiner disagreed with the arguments advanced by the port in support of its motion for reconsideration. In this controversy, the complainant appeared to be eligible for the positions allegedly gained by the "favored four" through familial and union connections. That would factually distinguish the instant case from the Minetti case, so that a hearing was necessary to establish those facts. The Examiner denied the motion on October 12, 1989.

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[15] In dismissing a "discrimination" complaint filed by Gene Minetti in connection with the award of the 44 "seniority" positions in 1985, the Commission outlined a test at page 6 of its decision, to be applied to determine "standing" in such cases:

(1) that the employee was entitled to an ascertainable right or benefit;

(2) that he or she was deprived of the right or benefit; and,

(3) that the deprivation was unlawfully motivated by union activity or lack thereof.

The Commission found that Minetti did not meet lawfully imposed minimum qualifications, and so did not have a right to be considered for the positions.

The Employer's Current "Standing" Arguments -
The employer has nevertheless renewed its arguments that Weinreich lacks standing to file a complaint. The Examiner has reviewed the arguments, and stands by the disposition previously stated.

Weinreich worked for the Port of Seattle from time to time as a "casual" worker referred from the union hiring hall. The record establishes that "casual" warehousemen referred to the Port of Seattle have two expectations in paying the service fee for the dispatch service:

First, that each of them will receive work opportunities based on their qualifications, seniority and interest; and

Second, that if there is opportunity for more steady work by placement on the seniority lists, the decision will be both based on the terms of the collective bargaining agreement and administered in a fair and impartial manner.

This case is of the relatively rare type where union discrimination is alleged, but the principles are not different from more familiar situations. If the employer were to directly discriminate against union members, there can be little doubt that the union and its members would have standing to pursue an unfair labor practice complaint under RCW 41.56.140(1). If the employer were to act directly, to grant a preference on the basis of union membership, or to curry favor with union officials by granting a preference to their friends or family members, any qualified applicant deprived of preference would have standing to pursue an unfair labor practice complaint under RCW 41.56.140(1).

RCW 41.56.150(2) makes it an unfair labor practice for a union to induce an employer to commit an unfair labor practice. Thus, a union would commit an unfair labor practice if it took action directly or indirectly to obtain an employment preference on the basis of union membership. RCW 41.56.150(2). It would be an "interference" unfair labor practice under RCW 41.56.150(1) for

union officials to misuse their status and role to directly or indirectly obtain an employment preference for their friends or family members. See, Port of Seattle, Decision 2796-A, supra.

A union owes a duty of fair representation to all bargaining unit members under RCW 41.56.080 and RCW 41.56.150(4). Thus, a union which tolerates or indirectly supports unlawful employer action against some bargaining unit employees, by refusing to process a grievance or otherwise, will have unlawfully aligned itself in interest against the employees injured by the employer's actions.

Any grant of "seniority" status inherently reduces the work opportunities that will be left over for casual employees. Weinreich and others who remain on the "casual" lists will, in fact, lose work opportunities because of there being more "seniority" workers, and any such employee would have standing to complain of the discrimination against them. Weinreich has filed a timely complaint in this case, and has standing to pursue that charge.

Weinreich's Refusal of Referral to Pier 91

The employer argues that Weinreich was available to be dispatched to Pier 91 on October 13, 1988, but did not accept the opportunity. The employer's argument ignores some key facts, however.

The hiring hall system permitted Weinreich to make the choice which he made on October 13, as a preference available to more senior "casual" warehousemen. The employer would have one believe that the seniority rights at issue here were limited to Pier 91, but that premise is in error. The record establishes that work at Pier 91 is considered more arduous, but that seniority is granted on an employer-wide basis. Along with others on the seniority lists, the "favored four" can be recalled for work whenever and wherever it is available. Their presence on the seniority lists will thus reduce work opportunities for Weinreich at Pier 106.

As a user of the dispatch service, Weinreich had certain expectations about his referral opportunities. Those expectations encompass experience that whenever there was a need to fill vacancies on the seniority lists or to add to them, the practice was to do so on the basis of qualifications and seniority. He also had a right to expect that the union and employer would live up to the provisions of the collective bargaining agreement. Those expectations are ascertainable rights which are granted by virtue of the joint operation of a hiring hall and by the exclusivity of the bargaining relationship. There is no place in this system for decisions based on union membership, or on the personal or family relationships of applicants to union officials.

The employer's argument assumes that an unlawful preference was given by the union in the October 13 referral, and then suggests that Weinreich's missing that opportunity to complain gave the employer license to discriminate against Weinreich in subsequent transactions. In fact, a separate action at issue in this case occurred 45 days after the October 13, 1988 referral, when the "favored four" were given seniority status.

In light of the foregoing, there was no way for Weinreich to anticipate that his legitimate exercise of preference rights on October 13, 1988 would prejudice his right to complain about subsequent events. Weinreich alleges that he was deprived of his ascertainable rights in connection with the "seniority" action, and that the deprivation was based on unlawful discrimination. Weinreich has standing to pursue those claims.

The Standards For Decision in Discrimination Cases

Where discrimination is alleged under RCW 41.56.140(1) or RCW 41.56.150(2), and the respondent defends that it had legitimate reasons for its action, the situation is evaluated under the "dual motivation" standard adopted by the Commission in City of Olympia,

Decision 1208-A (PECB, 1982), citing with approval Wright Line, 251 NLRB 1083 (1980).[16]

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. If the complainant establishes its prima facie case, the burden shifts to the respondent(s), to prove that the same action would have occurred even in the absence of an improper motive. This evidence usually consists of evidence of a "legitimate business purpose".

The Credibility of Witnesses

The demeanor of Trinka, Thomsen and each of the "favored four" on the witness stand in this proceeding, together with examples of their use of identical language in testimony, suggests that they conspired to say the same things, and were willing to perjure themselves.

Both Trinka and Thomsen tried, in almost identical words, to create the impression of complete confusion on November 23, 1988. The Examiner observes that, since Thomsen conferred with union and employer officials in an effort to find a way to grant seniority to the "favored four", it appears the only confusion was over how to bend the rules.

The Examiner found Trinka's testimony on whether the "favored four" were laid off on November 23, 1988 to be deliberately obtuse and evasive. Trinka indicated that he may have told them they "may" be laid off, but to check back in the late afternoon when things settled down. The best evidence indicates that Trinka told them at

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[16] The use of that test was affirmed by the court in Clallam County vs. PERC, 43 Wn.App. 589, 599 (1986).

noon that they were laid off, but that he later changed his mind and rescinded that order.[17] On direct examination, Trinka testified:

> Q. They weren't -- you did not tell them up in the lunchroom that they were laid off?
>
> A. They might have been told early in the day, but there was a lot of confusion that day. When they went home at night, they were not laid off.
>
> Q. You mean they could have been laid off and then you rehired them?
>
> A. No, I couldn't rehire them. Until the person leaves the premises, they're not technically laid off ....

A few minutes later, Trinka changed his testimony:

> Q. My question is did you lay them off anytime during that day?
>
> A. No.

Still later, Trinka recalled:

> Q. You did not tell them they were laid off at anytime?
>
> A. Not to my recollection, no.
>
> Q. Did Erik Thomsen tell you to lay off all casuals on November 23, 1988?
>
> A. There was some discussion on that, about laying them off, and I felt that we'd have to wait until 5:00 o'clock till we find out because we needed quite a few men for the weekend. We needed men for the following Monday ....

(Transcript, Volume I at pages 64-66.)

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[17] On cross-examination, Trinka admitted that foremen lack the authority to recall casual workers from layoff.

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(Transcript, Volume I at pages 64-66.)

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[17] On cross-examination, Trinka admitted that foremen lack the authority to recall casual workers from layoff.

The claim of a known need for men on the following Monday is simply not credible. The record establishes that United Fruit sent a telecopier notice at 5:27 p.m. on November 23, 1988, advising that the ship *Silver Phoenix* was arriving at Pier 91, and could make delivery beginning at 8:00 a.m. on Monday, November 28, 1988 and continuing through November 30. Thomsen testified that he received a telefacsimile message on Friday, November 25, indicating that the pallets from the *Silver Phoenix* would have to be broken down. Because this is labor intensive work, the seniority workers laid off from Pier 106 were recalled to work Monday, November 28. The telephone calls went out to the seniority workers on the weekend, only after Thomsen was made aware that the work would be labor intensive. Obviously, Trinka did not know during the day of November 23, 1988, that they "would need quite a few men on the weekend", because the notices was received later than 5:00 p.m. on that day and on the following Friday, and, then, only by Thomsen.

The Examiner infers that a form of "payola" may have been involved in a gift of a paid airplane trip to Portland, Oregon, given to Trinka by the "favored four". Trinka testified very reluctantly on this subject. He cited that "the value going on seniority is quite high", but thought that a rumored trip to Reno, Nevada, would have been improper, and indicated that he would have turned down such a gift. Trinka was specific in stating that only the "favored four" had contributed, and that it was in appreciation for attaining seniority status. Contradicting Trinka, the "favored four" used almost identical words in testifying that everyone on the pier had contributed to the trip as a "Christmas gift".

Finally, the fact that Thomsen wrote the letter of reprimand to Trinka almost six weeks after the event giving rise to that reprimand creates the impression that the employer and/or its official was "covering-up" once it had become clear that Weinreich and others were unhappy with the situation.

The Examiner finds it necessary and appropriate to discredit the testimony of those witnesses.

The Complainant's Prima Facie Case

The record clearly establishes that several violations of collective bargaining agreement provisions arise out of Trinka's determined actions to give seniority status to the "favored four" regardless of the changed circumstances. The employer's letter reprimanding Trinka admits those violations.

The Examiner concludes that Trinka did, in fact, tell the "favored four" they were laid off on November 23, 1988. Trinka himself admitted that foremen do not possess the authority to "un-ring the bell" so as to rescind an earlier order laying off employees. Trinka made an attempt to avoid this result late in his testimony (i.e., by stating that his layoff order was somehow not final until 5:00 p.m. on November 23, 1988), but that attempt is, at best, weak and without credence. Trinka was ordered to lay off the "favored four", and he did so. No more action was necessary.

In light of the telephone conversations that transpired on November 23, 1988 among employer and union officials, Trinka's violations of Section XXI of the collective bargaining contract show a willingness, if not intent, to violate the law. While the record would not support a finding that Trinka was acting as an agent of the union in this regard, it is clear that he was acting as the agent of the employer in this transaction.

The record establishes that the "favored four" have significant family and personal relationships to Trinka. The "favored four" played darts with him, owned a race horse with him, worked on his automobile, and gave him a gift after the grant of seniority status. Trinka testified that:

> Q. Trip to Reno?
>
> A. Yeah, the guys gave me a trip to Reno, which I didn't want, you know. And it's kind of a thing there, like you, you know, you've been in the union quite a long time. And you know, things go on with guys as a fellowship ....

(Transcript, Volume I at page 83.)

All of these considerations offer an inference of improper motivation by the employer's official, for which the employer must bear responsibility. The fact that the "favored four" were given seniority status notwithstanding earlier advice of senior employer officials supports an inference that the employer was determined to give preference to the "favored four".

McRae was the business manager of the union at the time involved. His signing of the November 29, 1988 letter demonstrates that the union was aware of the contract violation. Yet, the matter was not pursued. At a minimum, the union's acceptance of the contract violations, by inaction, is curious. In light of the evidence of the ties between the "favored four" and union officials, and of the highly questionable grant of a referral preference to Arguello, the more damaging conclusion available from the union's inaction is that its inaction was designed to tolerate and perpetuate an unlawful situation.

Swanson's testimony that the November 29 letter was merely an inquiry, and not a formal grievance, stands in the quicksand of avoidance. Section XI, Step 2 of the collective bargaining agreement specifically states that it is "jointly recognized that the Labor Relations Committee may deal with a variety of issues and complaints". The minutes of that committee indicate that it routinely considered seniority matters that were not the subject of formal grievances. Thomsen consulted Swanson on November 23, before the conferral of seniority on the "favored four", and was

told that the foremen could not violate the collective bargaining agreement. Now, in response to a letter citing specific contract articles which were violated by the conferral of seniority on the "favored four", Swanson testifies that he merely met with some union members and McRae to discuss procedure.

The Examiner concludes that the failure of the employer and union to consider the November 29 complaint alleging specific violations of the contract was more than a simple error or omission. The action was studied and deliberate. Swanson's reply and the union's inaction is further evidence of collusion between the employer and the union. Based on the evidence, the complainant has established his prima facie case.

The Union's Defense

The hiring of new employees is normally considered to be a function reserved to an employer. Where a union undertakes to screen and qualify workers prior to referring them, the union takes on a role and function normally performed in an employer's personnel office. Thus, there is a clear obligation to operate a hiring hall in a nondiscriminatory manner.

In recent cases arising under the National Labor Relations Act, the conferral of job-referral priority solely because of family relationships has been held to constitute an unlawful operation of the hiring hall. Asbestos Workers Local 80, 270 NLRB 1124, enforced 120 LRRM 2328 (4th Circuit, 1985). The case before the Examiner here involves an allegation of conferral of seniority based on family relationships, as well as an allegation that the union, having structured the referral system to achieve a desired result, then acquiesced in a discriminatory employer decision.

In an earlier case involving the same employer and union, the Commission ruled that unfair labor practice violations could be

found under Chapter 41.56 RCW, if an employer and a union agreed to conduct a hiring hall in a manner that discriminated in favor of relatives or friends of employer or union officials. See: Port of Seattle (Morris), supra. Such an arrangement is a misuse of the status and authority conferred by the statute on the union as exclusive bargaining representative.

The referral of Arguello, who is one of the "favored four", requires particular scrutiny. Arguello was referred out of seniority order on October 13, 1988, because he had been placed on a so-called "Red Board". The Joint Dispatch rules do not mention the establishment of a "Red Board". The rules are created with the concurrence of the employers who are invited to send representatives. The "J.C." refused to confer special status on Arguello in September, 1988. Under the Joint Dispatch Rules, the "J.C." is the sole determiner of who is to be placed on the boards. Their decision is not grievable. Yet, at a meeting held without prior notice to its own members or to the Port of Seattle or other employers, the local union effectively amended the Joint Dispatch Rules by creating the "Red Board". Such an amendment appears highly irregular, and in violation of both the hiring hall rules and the provisions in Section XXI of the collective bargaining agreement which establishes the "A", "B" and "C" boards for referral. The union has not provided an adequate defense for its actions in this regard.

The union is not chargeable directly for Trinka's actions, and it attempted to show, by various witnesses, that no formal grievance was before it to process. The collective bargaining agreement does contain a formal grievance procedure, as follows:

SECTION XI
GRIEVANCE PROCEDURE

A. A four step grievance procedure is established follows:

> Step 1. Shop Steward and Superintendent - Prior to consideration by the Labor Relations Committee, any dispute must have been reviewed and discussed by the shop steward and superintendent (or assistant superintendent) of the facility. If no agreement is reached, the dispute may then go before the Labor Relations Committee for their interpretation and decision. In no event may these parties change the intent of this agreement or its appendices.
>
> Step 2. Labor Relations Committee - A Labor Relations Committee of three (3) members selected by the Union and three (3) members selected by the Port shall meet and interpret this agreement or its appendices when any dispute arises. It is jointly recognized that the Labor Relations Committee may deal with a variety of issues and complaints. However, if a grievance is to progress beyond Step 2, the following qualifying conditions must be met:
>
> (1) The grievance must be submitted in writing by the charging party (from the union to the Port or vice versa) within fifteen (15) calendar days (except as provided in Section XXI E.6.) from the date of the incident that precipitated the grievance.
>
> (2) The written statement of the grievance shall specifically stipulate the provision\provisions of the labor agreement which has\have been allegedly violated. ...

The argument ignores the fact that the November 29 letter did allege violations of the contract. Further, it ignores the fact that Step 2 of the contractual grievance procedure empowers the Labor Relations Committee to investigate any matter of concern.

In this case, the union did not merely ignore a complaint on a subject matter routinely considered at meetings of the Labor Relations Committee. It constructed an elaborate explanation for its inaction. At the end of its argument, the union indirectly observes that a challenge to the granting of seniority by "mistake"

would have required the union to grieve against the four individuals who gained seniority status by working 45 days. The union would have the Examiner accept that there is no obligation on the part of the union to grieve on behalf of bargaining unit members who are denied opportunities by a seniority mistake. All systems for "seniority" preference inherently pit one employee against another where an error is claimed. The argument is not credible.

The Examiner concludes that the union has not sustained its burden of proof under the Wright Line analysis. To the contrary, the record in this case indicates that the union actively participated in what developed into a discriminatory conferral of seniority, by creating the "Red Board". The union then engaged in an admitted lack of diligence in pursuing the complaints signed by a dozen of its members, including the complainant in this controversy.

The Employer's Defense

In support of its claim of "legitimate business reasons", the employer produced elaborate testimony regarding the difficulty in working at Pier 91, and the willingness and competence of the "favored four" to work under Trinka. The record shows a reluctance among warehousemen to be assigned to Pier 91, because of working "against the ship" and handling perishable cargo in a cold storage facility or outdoors in the weather. The warehousemen must be proficient using forklifts. Trinka was portrayed as onerous to work with. The port argues that there was difficulty obtaining sufficient manpower and, therefore, it needed to enlarge the number of warehousemen available and competent to work Pier 91.

There are two major flaws in what at first seems to be a plausible defense. The first is that the seniority lists are employer-wide; the second is that the record shows the "favored four" were not the most experienced or senior.

Seniority is not limited to Pier 91 under the contract between the employer and Local 9. Contradicting the employer's evidence and theory, it is possible that the "favored four" might never work at Pier 91 if those ahead of them on the seniority list take the work opportunities at that facility.

The record shows determinations about adding seniority warehousemen was historically a judgment call by the foremen and the operations manager. Instead of checking the qualifications of the more senior casuals recommended by various foremen, as had been the practice, and then basing the selection on objective factors, the record shows that the employer, acting through Trinka, used other criteria such as personal and familial relationships. There is no explanation why Trinka and Thomsen were making decisions by themselves, without consulting other foremen or the operations manager.

If the employer had a legitimate business interest, as it claims, then it could have followed any number of avenues available to it under the collective bargaining agreement to augment its manpower requirements at Pier 91:

First, there is no evidence in the record that the employer attempted to fill its so-called manpower needs by utilizing the provisions under Section XXI. B1, which enables the port "in rare instances" to give due consideration to the capabilities of an individual to do the work available rather than seniority. This proviso is an exception to the provision granting casuals seniority after 45 consecutive days employment. The fact that the employer did not utilize that exception raises an inference that the "favored four" did not qualify for this rare exception.

Second, the port and union apparently ignored the opportunities also available to them under Section XXI. E. and F:

> E. Specialty and Foreman Jobs for "A" List Employees
>
> 1. In selecting employees for specialty jobs, as designated in the working rules

> supplementing this agreement, seniority, competency, efficiency, and future value to the Port will be given due consideration.
>
> ...
>
> 3. The Port will identify its selection of the senior qualified candidate for a specialty job to fill such assignment to assure that the decision is mutually agreeable. If no agreement is reached, the matter will be processed as a grievance under SECTION XI of this Agreement.
>
> ...
>
> F. Area Assignments - By mutual agreement, the Port and the Union may designate certain areas for employee assignments. This would be for the purpose of facilitating a regularly assigned workforce for improvement of specialized customer service.
>
> Except as provided herein, such assignments shall be on a bid basis and the same selection criteria shall be on the same basis as for specialty jobs .... Also by mutual agreement the Terminal 91 fruit operation shall be considered as an area assignment to be on a bid basis when manpower is required.

If the employer was truly short of the necessary manpower, it could have simply identified the senior qualified candidates to fill these specialty assignments. By mutual agreement, the port and the union had already considered Terminal 91 as an area assignment "to be on a bid basis when manpower is required". The employer's failure to invoke the bid procedure reinforces the conclusion that its business need in this instance was manufactured.

The employer's assertion that the decision to place the "favored four" on seniority was made by Thomsen, who was not aware of the family and personal relations to other union members, is not creditable. The record shows it was Trinka that told Thomsen that four more "seniority" warehousemen were needed, and that Thomsen observed the "favored four" at the urging of Trinka. It was Trinka

who expressed unhappiness when Thomsen gave instructions to lay off the casual workers. Trinka and Thomsen acted together in attempting, by various conversations, to circumvent the contract. The record makes it abundantly clear that they acted in concert with other employer and union officials to violate the collective bargaining agreement. While both talked of a conspiracy by the foremen at Pier 106 to prevent the granting of seniority to the "favored four", the facts show that the conspiracy was their own. At the bottom line, the record shows that Thomsen gave a direct order to lay off the "favored four" and that Trinka was disciplined for disobeying that order. There is no basis to conclude that Trinka was acting upon a decision made independently by Thomsen.

The record is clear that Trinka was improperly motivated by union "fellowship" and past loyalties to give seniority to the "favored four". Trinka acted in the capacity of a port official, and was aided and abetted by his superiors with the acquiescence of union officials. The contract violations are evidence of the discriminatory conferral of seniority.

In United States Postal Service and Arizona Rural Letter Carriers' Association and Robert E. Loftgreen, 272 NLRB 93 (1984), the National Labor Relations Board held that the employer's acquiescing in a union shop steward's vigorous pursuit of a job for his daughter and failure to process a grievance of a unit member to retain the same job was a union inducement of an employer to discriminate in violation of Section 8(b)(2). Similarly, in Emplo Inc., 235 NLRB 918 (1978), the Board held that a business agent's appointment, for personal reasons, of his son-in-law to be unit steward was also a violation.[18]

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[18] As steward, he was given superseniority over two others who, as a consequence, suffered a more erratic work pattern. The companion case against the employer was dismissed, because the evidence did not show it was abetting the union's unlawful conduct.

The employer contends that, even if illegal, the grant of seniority to the "favored four" would not diminish the work opportunities of Weinreich, because four others would have been selected. The contention begs the question, and is speculative. Some other set of four individuals, which could have included Weinreich, would have been referred from the hiring hall and then have worked the 45 days required to attain seniority status. There is some evidence that Weinreich was high on some of the foremen's recommended lists. But for the illegal action, he potentially could have been selected. In the meantime, a violation of the collective bargaining agreement has diminished the opportunity for "casual" work until corrected.

The Examiner finds that the employer has not met its burden of proof under the Wright Line analysis.

REMEDY

The union helped to set up the situation by giving one of the "favored four" an unlawful preference for referral. The record is clear that the Port of Seattle discriminatorily granted seniority to the "favored four". The union's failure to pursue Weinreich's claim that the employer acted in violation of the collective bargaining agreement establishes its toleration of and collusion in the employer's unlawful actions. It is necessary and proper to restore the status quo ante for Weinreich.

Marty Arguello and the "Red List"

The union is ordered to abolish the "Red List" from which Arguello was referred, and to make all future referrals in conformity with the standards imposed by the joint operating agreement and Chapters 41.56 and 53.18 RCW. Weinreich will benefit (along with all other "casual" employees) from the future operation of the hiring hall

without a giving of preferences based on union membership or familial or personal relationships with union officials.

It follows that the conferral of "seniority" on Arguello was tainted from the outset of the referral, and must be voided regardless of any employer action. After being stripped of his seniority rights, Arguello shall not be eligible for conferral of seniority status for a period equal to the number of months in which he enjoyed the benefits of the seniority status illegally conferred upon him. Weinreich will benefit (along with other employees) from having Arguello removed from the competition for seniority positions for a period equal to that when he was prejudiced by Arguello's unlawful seniority status.

Unlawful Conferral of Seniority

The employer, through Trinka, was guilty of discrimination in the conferral of seniority upon all of the "favored four". Therefore, the conferral of seniority status on Randy Uecker, Jerry Johnson and Rod Cameron must also be voided. They will be removed from the seniority lists, and each of them shall not be eligible for conferral of seniority status for a period equal to the number of months in which he enjoyed the benefits of the seniority status illegally conferred upon him. Weinreich will benefit (along with other employees) from having Uecker, Johnson and Cameron removed from the competition for seniority positions for a period equal to that when he was prejudiced by their unlawful seniority status.

Back Pay Order for Weinreich

Under the circumstances of these cases, no back pay order is issued for the period between the unlawful referral and the conferral of seniority status upon the "favored four". Weinreich had the opportunity to be referred to the Port of Seattle on October 13, 1988 for work at Pier 91, and he exercised his preferential rights

to waive that work opportunity. Thus, he is not entitled to back pay for the period worked by the "favored four" as "casual" employees under that referral.[19]

As a result of the union's illegal referral of Arguello, the employer's discriminatory actions in granting seniority to Arguello and the union's unlawful tolerance and collusion, Weinreich is entitled to a back pay remedy for the unlawful discrimination against him on and after November 23, 1988. The amount of back pay will be calculated as a pro rata share of the total hours worked by Marty Arguello for the Port of Seattle during the period that Arguello was on seniority status. The total hours shall be divided by the total number of casuals senior to Weinreich plus one. The resulting number of hours shall be multiplied by the hourly wage rate(s) earned by Weinreich during the period(s) in question. This amount will represent the pro-rata amount of pay lost by Weinreich for the period in question.

As a result of the employer's discriminatory actions, through Trinka, in granting seniority to Uecker, Johnson and Cameron, and the union's unlawful tolerance and collusion, Weinreich is entitled to an additional back pay remedy for the unlawful discrimination against him on and after November 23, 1988. The amount of back pay due under this paragraph will be calculated as a pro-rata share of the total hours worked by Randy Uecker, Jerry Johnson and Rod Cameron for the Port of Seattle during the period that they were on seniority status. The total hours shall be divided by the total number of casuals senior to Weinreich plus one. The resulting number of hours shall be multiplied by the hourly wage rate(s) earned by Weinreich during the period(s) in question. This amount

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[19] There may have been a specific discriminatee who should have been referred in place of Arguello, but that person has not come forward as a complainant before the Commission. Weinreich's standing to pursue discrimination against him is not a basis for awarding back pay to an unknown stranger to these proceedings.

will represent the pro-rata amount of pay lost by Weinreich for the period in question.

The union and employer will be held jointly and severably liable for the back pay to be awarded to Weinreich.

FINDINGS OF FACT

Based on the entire record, the observation of the demeanor of the witnesses, contradictions in the testimony, and the careful considerations of post-hearing briefs filed by the union and employer, the Examiner makes the following:

1. The Port of Seattle is a port district operated under Title 53 RCW and is an employer within the meaning of Chapter 53.18 RCW and Chapter 41.56 RCW. The employer conducts warehousing and shipping operations at Pier 91 and Pier 106 on the Seattle waterfront. Pier 91 contains a cold storage facility designed to hold fruits and other perishables. Pier 106 contains a number of warehouses in which cargo is stored.

2. International Longshoremen's and Warehousemen's Union, Local 9, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of warehouse employees of the Port of Seattle.

3. The Port of Seattle and the ILWU Local 9 were parties to a collective bargaining agreement effective from July 1, 1986 through June 30, 1989. The Port of Seattle fills most of its manpower requirements through Section XXI of the collective bargaining agreement, which creates a seniority system of layoff and recall from an "A" list containing 82 names and a "B" list containing 20 names. The most senior warehousemen on the "A" list have the highest preference for employment, and

all of those on the "A" list have seniority preference over those on the "B" list. The seniority lists are port-wide.

4. The Port of Seattle has a historical and ongoing practice of using the hiring hall operated by ILWU Local 9 as the source of "casual" employees. Prior to and at the time of the filing of the instant complaint, ILWU Local 9 operated the hiring hall in accordance with a "Policy Statement For Operating A Joint Dispatch Hall", which creates a joint committee of representatives of the union and employers who choose to participate. The Joint Committee, known as the "J.C.", is comprised of two members from the union's executive board and two members from the "Pegboard Committee", together with an equal number of employer representatives.

5. Under the terms of the collective bargaining agreement, the Port of Seattle may also fill special manpower requirements utilizing provisions which enable the employer "in rare instances" to give consideration to capabilities, rather than seniority, as an exception to the provision which enables dispatched warehousemen to obtain seniority status after 45 consecutive days referral. Subsection E. and F. permit the port to select employees for specialty or area assignments based on seniority, competency, efficiency, and future value to the port. Pier 91 is specifically noted as "an area assignment to be on a bid basis when manpower is required".

6. Under the policy statement, the dispatch system is organized into three lists for determining qualifications for referral: The "A" board consists of those persons who have worked 1000 hours per year for a minimum of five years in the warehouse industry; the "B" board for those persons working 1000 hours for a minimum of two years; and the "C" board who are identified as qualified but do not qualify for the "A" or "B" boards.

7. Under Section XXI of the collective bargaining agreement, warehousemen dispatched from the hiring hall may obtain seniority status if they work 45 consecutive days in a single assignment. The gaining of seniority is a valuable property right because it gives work preference and salary enhancement. When the Port of Seattle desires to add warehousemen to its seniority lists, it seeks recommendations from the various foremen. The foremen are asked to submit the names of the best qualified and experienced workers. The operations manager makes the selection.

8. Warehousemen utilizing the hiring hall pay a fee for that service, with the expectation that decisions on referrals and decisions on the subsequent gaining of seniority will be objectively based on qualifications and seniority. Employees also expect that the provisions of the collective bargaining agreement will be impartially administered and enforced.

9. Hugh D. Weinreich is a public employee within the meaning of RCW 41.56.030(2) who has from time to time been employed as a casual warehouseman by the Port of Seattle. Weinreich was qualified and available to obtain "seniority" status at the Port of Seattle in November of 1988.

10. On July 28, 1988, Marty Arguello and Clem Cortez, Jr., both sons of long-standing members of the union, petitioned the "J.C." for "A" board status and were turned down.

11. On September 13, 1988, the ILWU Local 9 membership voted not to place Arguello and Cortez on the "A" board because the membership was uncertain whether they had the right to overrule the J.C. The membership of Local 9 nevertheless voted to re-activate a "Red Board" for the placement of Arguello and Cortez, in order to give them referral preference over those on the "B" board. The "Red Board" is not part of

the Joint Dispatch policy statement and was abolished by a settlement agreement with the National Labor Relations Board on August 12, 1986.

12. On October 13, 1988, Arguello, Randy Uecker, Jerry Johnson, Rod Cameron, and Don Sullivan were dispatched to Pier 91 to report to Foreman Ed Trinka. Arguello was given seniority preference ahead of Sullivan, who was later laid off on October 27. Arguello, Uecker, Johnson, and Cameron were friends of Trinka, had business relations with him, and had substantial familial connections to members and officers of Local 9.

13. Trinka and Eric Thomsen, the employer's superintendent for marine operations, formed a plan early in November, 1988 to confer seniority status on Arguello, Uecker, Johnson, and Cameron, utilizing the provisions of Section XXI of the collective bargaining agreement.

14. Arguello, Uecker, Johnson, and Cameron had worked 44 consecutive days at Pier 91 as of November 23, 1988. On that date, Thomsen was instructed by Joe Stuntz, the superintendent of Pier 91, to lay off all casual employees including Arguello, Uecker, Johnson, and Cameron.

15. Thomsen and Trinka placed telephone calls to ILWU Local 9 Business Agent John McRae, to the employer's labor relations official, John Swanson, and to Stuntz, all for the purpose of attempting to confer seniority status or other benefit on Arguello, Uecker, Johnson, and Cameron. Thomsen was told that he had to lay them off, and he ordered Trinka to do so.

16. Trinka notified Arguello, Uecker, Johnson, and Cameron that they were laid off, but later rescinded that order without authority to do so. Foremen do not have authority to recall

casuals after they are laid off, but must make manpower requests through the hiring hall dispatcher.

17. Arguello, Uecker, Johnson, and Cameron were placed on the seniority list on November 27, 1988, in violation of the collective bargaining agreement. In appreciation for gaining seniority, the four employees gave Trinka a gift of a paid airplane trip to Portland, Oregon.

18. On November 29, 1988, Weinreich and a number of other employees, including McRae, delivered a letter to Swanson, objecting to the grant of seniority on Arguello, Uecker, Johnson, and Cameron and citing violations of specific sections of the collective bargaining agreement. Swanson subsequently met with some union members to discuss policy on gaining seniority.

19. The Port of Seattle and the union routinely discuss seniority problems when they occur using the Labor Relations Committee created under Section XI, Grievance Procedure. This committee is composed of equal representation of union and port officials and is charged with reviewing grievances and a variety of other complaints or issues. The committee functions in an oversight role making sure that the terms of the collective bargaining agreement are not violated. In this case, however, neither the union nor the port considered or acted upon the November 29, 1988 letter as a grievance, or discussed violations of the contract.

20. Weinreich has filed a timely amended complaint alleging that the Port of Seattle and ILWU Local 9 have conspired to place Arguello, Uecker, Johnson, and Cameron on seniority status because of familial and personal relationships to Trinka and other union officers and members.

CONCLUSIONS OF LAW

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

2. Hugh D. Weinreich has standing to pursue a complaint under RCW 41.56.140 through .190 that his rights and work opportunities as a casual employee of the Port of Seattle have been diminished or adversely affected by the unlawful conferral of seniority status upon Arguello, Uecker, Johnson, and/or Cameron.

3. Hugh D. Weinreich has established a prima facie case sufficient to support an inference that the conferral of seniority status upon Arguello, Uecker, Johnson, and/or Cameron by the Port of Seattle was discriminatory based on familial and personal relationships to union members and officials, in violation of RCW 41.56.140(1).

4. Hugh D. Weinreich has established a prima facie case sufficient to support an inference that the conferral of seniority status upon Arguello was based upon a discriminatory referral by the union based on familial and personal relationships to union members and officials, and that the failure of the union to pursue the grievance of Weinreich and others similarly situated to challenge the conferral of seniority status upon Arguello, Uecker, Johnson, and/or Cameron by the Port of Seattle was discriminatory based on familial and personal relationships to union members and officials, in violation of RCW 41.56.150(1), (2) and (4).

5. The Port of Seattle has not sustained its claim of a legitimate business reason for its actions in regard to the conferral of seniority status upon Arguello, Uecker, Johnson, and/or Cameron, and therefore has violated RCW 41.56.140(1) and (2)

by discriminatorily hiring warehousemen based on familial and personal relationships.

6. By its conferral of a hiring preference upon Marty Arguello on the basis of familial and personal relationships to union members and officials, and by its failure to pursue the violations of the collective bargaining agreement on behalf of Hugh Weinreich and others similarly situated, ILWU Local 9 has violated RCW 41.56.150(1), (2) and (4).

ORDER

1. (DECISION 3685 - PECB) International Longshoremen's and Warehousemen's Union, Local 9, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

   A. CEASE AND DESIST from:

      i. Making or maintaining any agreement with the Port of Seattle or any other public employer to give an employment preference based on familial and/or personal relationships with members or officers of the union.

      ii. Conferring special privilege or seniority status by means of a "Red Board" or any other method.

      iii. Failing to investigate and give good faith processing to the grievances of members of the Port of Seattle bargaining unit for which it is exclusive bargaining representative, based on familial and/or personal relationships with members or officers of the union.

iv. In any other manner interfering with, restraining or coercing public employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

i. In conjunction with the Port of Seattle, delete the names of Marty Arguello, Randy Uecker, Jerry Johnson, and Rod Cameron from the seniority lists of the Port of Seattle and enforce a bar on acquisition of seniority status by Arguello, Uecker, Johnson, and Cameron until such time as they shall have been off the seniority list for a period equal to the time they were unlawfully given seniority status.

ii. Make Hugh D. Weinreich whole for the discrimination against him, by paying him back pay in the manner prescribed in the section herein entitled "Remedy" for the period that Arguello, Uecker, Johnson, and Cameron enjoyed the benefits of seniority status.

iii. Post, in conspicuous places on the employer's premises where union notices to employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall be duly signed by an authorized representative of ILWU Local 9, and shall remain posted for 60 days. Reasonable steps shall be taken by ILWU Local 9 to ensure that such notices are not removed, altered, defaced, or covered by other material.

iv. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

v. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

2. (DECISION 3686 - PECB) The Port of Seattle, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

A. CEASE AND DESIST from:

i. Agreeing with respondent union to give preference to employees for employment based on familial and personal relationships with members of the respondent union.

ii. Interfering with, restraining, coercing, or discriminating for or against its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

i. In conjunction with respondent union, make whole Hugh D. Weinreich in the manner prescribed in the section herein entitled "Remedy" by paying him back pay for the period of time for which he was discriminated.

ii. Remove the names of Marty Arguello, Randy Uecker, Jerry Johnson, and Rod Cameron from respondent's seniority lists. These employees shall not be eligible for placement or selection for placement on said lists for a period of months equal to the number of months between November 27, 1988 and the date of this Order.

iii. 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 B". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

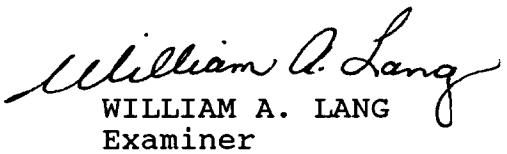
iv. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

v. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what

steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

Dated at Olympia, Washington on the 16th day of January, 1991.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



WILLIAM A. LANG
Examiner

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

"Appendix A"

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT agree with the PORT OF SEATTLE to give employment preference on the basis of union membership, familial relationships and personal relationships with union officers.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL, together with the PORT OF SEATTLE, pay back wages to Hugh D. Weinreich who was not selected for the "A" or "B" seniority lists and who was available for work.

WE WILL, together with the PORT OF SEATTLE, remove Marty Arguello, Randy Uecker, John Johnson and Rod Cameron from the "A" or "B" seniority lists. These employees will not be eligible for placement on said seniority lists for a period of time equal to the number of months on which they were illegally placed on said lists.

DATED: _____

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 9

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

"Appendix B"

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT agree with the INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 9, to give employment preference on the basis of union membership, familial relationships and personal relationships with union officers.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL, together with the INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 9, pay back wages to Hugh D. Weinreich who was not selected for the "A" or "B" seniority lists and who was available for work.

WE WILL, together with the INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 9, remove Marty Arguello, Randy Uecker, John Johnson, and Rod Cameron from the "A" or "B" seniority lists. These employees will not be eligible for placement on said seniority lists for a period of time equal to the number of months on which they were illegally placed on said lists.

DATED: _____

PORT OF SEATTLE

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza FJ-61, Olympia, Washington 98504. Telephone: (206) 753-3444.