

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

R. PAUL GLASSEN,)	
)	
Complainant,)	CASE 9148-U-91-2023
)	
vs.)	DECISION 3886-A - PECB
)	
CHELAN-DOUGLAS MENTAL)	FINDINGS OF FACT,
HEALTH CENTER,)	CONCLUSIONS OF LAW,
)	AND ORDER
Respondent.)	
)	
)	
)	

R. Paul Glassen, appeared pro se.

Heller, Ehrman, White & McAuliffe, by Otto G. Klein, III,
Attorney at Law, appeared on behalf of the respondent.

On May 2, 1991, R. Paul Glassen filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Chelan-Douglas Mental Health Center (employer) had violated his rights as a "public employee" under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. A preliminary ruling, issued pursuant to WAC 391-45-110 on May 2, 1991, found that the complaint stated a cause of action under RCW 41.56.140, and assigned the undersigned as Examiner. A notice was issued, setting August 14, 1992 as the date for a hearing in the matter, and setting August 8, 1991 as the date for the filing of the employer's answer. An amended notice of hearing issued on July 18, 1991, changed the hearing date to September 5, 1991, but did not change the due date for the answer.

On July 26, 1991, Glassen filed two additional documents with the Commission concerning the above-captioned matter:

1. An amended complaint alleging that the employer had engaged in further interference and discrimination in retaliation for his filing of the original complaint. Glassen indicated that

his employment with Chelan-Douglas Mental Health Center had been terminated, effective July 2, 1991.

2. A "motion for judgment" which asked that a judgment be issued finding the employer guilty of an unfair labor practice. Glassen argued that the employer had illegally disciplined him for ignoring a prohibition against discussing a collective bargaining agreement on "company" [sic] time. As remedies, Glassen requested acknowledgement of the discriminatory practices and reinstatement.

The employer did not file an answer by the August 8, 1991 date established by the original notice of hearing.

The Executive Director issued a preliminary ruling on the amended complaint on August 20, 1991, pursuant to WAC 391-45-110. The amended complaint was found to state a cause of action on allegations of escalated interference and discrimination against Glassen, culminating in his discharge from employment.

Also on August 20, 1991, the Examiner denied the "motion for judgment" Glassen filed on July 26, 1991. It was concluded that this case did not meet the requirements for a "summary judgment" under WAC 391-08-230, because the moving party had not shown that there were no genuine issues as to any of the material facts.

Considering that amendment of the complaint gave rise to a right of the respondent to answer, the undersigned Examiner issued a notice on August 28, 1991, setting aside the September 5, 1991 hearing date that had been previously established.

Also on August 28, 1991, Glassen filed a "motion for a default judgment", based on the failure of the employer to file an answer to the original complaint.

On September 12, 1991, the undersigned Examiner issued another notice, setting hearing on the matter for October 24 and 25, 1991.

October 9, 1991 was specified as the new date for filing of an answer.¹

Also on September 12, 1991, Otto G. Klein was substituted for Duane Wilson as the representative of the employer.² Klein responded to all motions and inquiries after that date.

On September 20, 1991, the Examiner directed the employer to make a showing of good cause as to why the answer to the original complaint had not been filed in a timely manner, and as to why a default judgment should not be entered. The employer responded on September 30, 1991. Based upon that response, the Examiner denied the motion for a default judgment by a formal order issued on October 17, 1991.³

A hearing before the Examiner was held in Wenatchee, Washington, on October 24 and 25, 1991; on December 18 and 19, 1991; and on January 28 and 29, 1992. The parties filed post-hearing briefs, the last of which was not received until June 24, 1992.⁴

¹ Those actions were necessary to maintain orderly administrative processing of the case, and did not constitute a ruling on the motion then at hand.

² Wilson had been retained by the employer as its consultant during the organizational campaign and, as detailed below, had some involvement in the events leading to Glassen's discharge. Wilson was involved in the processing of this unfair labor practice case up to this time.

³ Decision 3886 (PECB, 1991).

⁴ The parties originally agreed to submit briefs on April 17, 1992. At Glassen's request, and with the consent of the employer's attorney, the due date was extended to May 12, 1992. Again at Glassen's request, but over the employer's objection, the due date for the briefs was extended to June 19, 1992. By stipulation of the parties, the briefs were actually filed on June 24, 1992.

BACKGROUND

The Chelan-Douglas Mental Health Center is a community-based mental health facility which serves the north-central portion of the state of Washington. The employer's main office is located in Wenatchee (in Chelan County), and it has an office in East Wenatchee (in Douglas County). The agency provides various counseling services, including crisis intervention, mental health evaluations, and mental health counseling, for residents of the two counties. The operation is divided into five departments: Administration, initial services, outpatient services, community support services, and medical services. Each department is supervised by a "director" who, in turn, reports to Executive Director Laszlo Dezsofi. Along with the department directors, the executive director, the business manager and the personnel manager together constitute a management committee which meets regularly, to share information and to formulate agency policy.

Glassen's Hiring and Early Work Record

Paul Glassen was hired by the employer on December 18, 1989, as a "County Designated Mental Health Professional / Mental Health Specialist" (CDMHP) in the agency's "Initial Services Program".⁵ That department's staff do evaluations and counseling, with the immediate goal of stabilizing crisis. Once that goal has been met, clients are referred to other departments within the agency, for further treatment or referral as appropriate.

A written job description established the qualifications and expectations for Glassen's position at the agency. Sections of that job description relevant to the issues herein include:

⁵ During the course of events recounted here, the department was renamed "Crises Services".

I. SUMMARY

Provides initial assessment and treatment of persons seeking mental health services, or in need of emergency mental health treatment. Includes: involuntary treatment services, crisis counseling and stabilization of acutely mentally ill persons, outpatient services for Mental Health Center clients.

II. QUALIFICATIONS

MSW, or Master's Degree in counseling or social science with two years experience with mentally ill individuals desired (must qualify as a mental health professional according to WAC 275-55-020).

...

V. GENERAL EXPECTATIONS:

Initial face-to-face and telephone assessment, treatment, and referral of persons seeking assistance at the Mental Health Center.

Crisis intervention and emergency mental health services at the Mental Health Center and in Chelan and Douglas counties, including involuntary treatment services (implements the intent, conditions, and mandates of RCWs 71.05 and 71.34; and WACs 275-54, 55, 56).

Capacity [sic] to work appropriately and professionally with clients, community agencies, the general public and with Mental Health Center staffs.

Maintains confidentiality of client records according to WAC 275-56-240 and RCW 71.05.390.

Has a valid Washington State vehicle operator's license, and the use of a personal vehicle for work related duties if necessary.

Maintains an average of 50% client contact hours in work.

Is primary therapist for a limited caseload.

Participates in appropriate educational and professional training.

VI. WORK PERFORMED:

Crisis counseling, including appropriate follow-up treatment or referral for services.

Counseling or psychotherapy with ongoing clients.

Work at the Mental Health Center on average of four days per week, and provides 24 hour crisis services six week nights and two

weekend days each 28 day period as scheduled by the Initial Services Director.

Completes necessary documentation, reports, and paperwork for clients and client contacts.

Performs other duties as assigned by the Initial Services Director.

Upon his hiring, this job description was signed by Glassen and his immediate supervisor, Director of Initial Services Mark Weick.

On June 17, 1990, Glassen received an evaluation of his work from Weick. On a scale of 1 to 4, Glassen received the highest possible rating of "4" in two areas: "WORK RELATIONSHIPS WITH CO-WORKERS/-OTHER DEPTS." and "WORK RELATIONSHIPS WITH PUBLIC".⁶ Glassen received a "3" rating on each of other performance criteria.

Events During Union Organizing Campaign

On November 5, 1990, Teamsters Union, Local 760, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking certification as exclusive bargaining representative of the non-supervisory employees of the Chelan-Douglas Mental Health Center.⁷

⁶ Comments on the areas where Glassen received the highest possible ratings were:

Demonstrates exceptional skill in working with all co-workers. Cooperative, courteous, and understanding, even in difficult situations. Always attempts to solve problems.

and:

Demonstrates exceptional skills in working with all individuals. Cooperative, courteous, and understanding, even in difficult situations. Provides assistance when appropriate.

⁷ Case 8881-E-90-1484.

On November 8, 1990, Glassen received a letter of commendation from Weick:

I wish to commend your fine presentation to the reserve law enforcement training group on November 6, 1990. Your manner was consistently engaging and highly professional, and the material was clear, understandable and well received by those attending.

Considering the short time your [sic] met with this group, and the topic of identifying and responding to mentally ill persons I'm not sure a more appropriate, understandable program could be presented.

I hope you will consider similar presentations to this and other groups. I feel you have made an excellent contribution to the community and mental health.

Please accept my thanks and appreciation.

On December 12, 1990, Glassen was called into the office of Executive Director Dezsofi. Weick and another department director, William Murray, were also present. Glassen was accused of "union organizing on company time" [sic], and he was warned of possible disciplinary action if this behavior was repeated. Upon inquiry, Glassen was informed that there had been a complaint from another employee concerning his having discussed the union on company [sic] time, but Glassen was not given any particulars or the name of the person who had allegedly made the complaint.⁸

Later in the day on December 12, two memos were distributed via staff mail boxes to all members of the employer's staff:

⁸ During the hearing, the complaining employee was identified as Stephanie Ludeman. She later testified to having an anti-union bias, resulting from the murder of an uncle who was "high up in a union" in Nebraska. As a result of that bias, she had been "pretty shaken up" by Glassen's comments about the union organizing effort, and she reported Glassen to her supervisor, William Murray.

Reminder

As a result of complaints made this note is a reminder that under the law staff have a legal right to organize as a collective bargaining unit, however, this must not occur on company [sic] time.

If you have questions about what you may or may not do you can contact the Public Employment Relations Commission of the State of Washington, in Spokane, at (509) 456-2922.

and:

MEMO

A meeting will be held on Thursday, December 18, 1990, at 09:00 am concerning any questions you may have about the proposed bargaining unit election. Management will be available to present its position in this matter.

Attendance is voluntary.

In addition to the December 12, 1992 meeting, Glassen recounted episodes which he regarded as evidence that he had been identified as a union supporter, and as evidence that he subsequently was harassed and discriminated against as a result of that perception.

One example concerned an October 22, 1990 meeting at which agency employees were invited to discuss organizing with officials from Teamsters Local 760. Glassen recounted that one of the agency supervisors, Joe Adair, attended that meeting.⁹ Glassen alleged that management's belief that he was a union supporter resulted from Adair having noted who was in attendance at the union meeting.

The second example involved Glassen's enrollment in a continuing education program in child specialist training at the University of

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Adair testified that he had received an invitation to the meeting, that he checked with union officials upon entering the meeting room, and that the union gave him permission to stay and listen to what was discussed.

Washington. Prior to the "warning" about organizing, Glassen had applied to the employer for financial assistance to enable him to attend that training. On December 20, 1990, eight days after the "warning", Glassen received the following letter from Weick:

I regret that you and I have been unable to agree regarding Mental Health Center support for your participation in the child specialist training [sic] program at the University of Washington. Despite my initial assertion to you of this possibility if you were to agree to work at Chelan-Douglas Mental Health Center for at least one additional year following completion of this training, and a second attempt to ascertain your agreement with these terms, you have continued to refuse to agree, and persist, it seem, [sic] in insisting you are treated unfairly here.

I have sought to arrange financial support by the agency despite your having enrolled in this course without seeking my prior approval based on a written request for training according to agency policy and procedure. It is also highly unusual for employees to be granted such approval before they have completed one year of service, except in cases where they are directed to attend by their supervisor.

This situation has increasingly troubled me not only for the above reasons. You first mentioned a vague interest in the child specialist program to me briefly only one month before the first session, underscoring to me that it appeared unlikely you would enroll. Two weeks later, and two weeks prior to the first session, you unexpectedly announced to me that you had enrolled, and that you expected myself and your colleagues to adjust the CDMPH on-call schedule so your on-call would not conflict with scheduled program dates. Your colleagues and I have supported you in this, despite whatever discomfort we may have suffered by your unexpected request and failure to arrange for this in a timely manner. Overall you have been granted extraordinary consideration in allowing this time off. Additionally, in both instances where I have addressed financial support under the condition of normal agency expectations regarding continuing service in return for such con-

sideration, have not expressed willingness to accept these terms in any way. On both occasions you maintained a consistent adversarial demeanor and you persistently expressed anger, alarm, and hostility toward the agency its policies, and its treatment of you. You insisted you are paid inadequately, received too few benefits, that your professional growth is being ignored, and that you have been inappropriately disciplined for behavior you deny. I must clearly state, as I have expressed to you, my entire disagreement with you in all of this. [Emphasis in original.]

You have also emphasized that this training is of such value to the agency, that it is a priority for your training. I agree that this training is of value, however it is not a priority, or essential, for CDMPH now, or in future plans, or for Initial Services role in the agency or services to the community.

I have exercised extreme patience and support regarding your interest in this matter. At this time, upon reviewing the foregoing, I see no reason to continue, and I am terminating any further consideration of mental health center financial support to you for child specialist training.

This denial of requested funding for training is alleged by Glassen to have been in reprisal for the union organizing activity.

Notwithstanding the pending representation petition, and less than a month before the scheduled election, the employer implemented salary changes for its employees on January 1, 1991. Glassen received a "cost of living allowance" and his classification was changed from a "CDMHP(4)" to "CP3(3)", resulting in a salary rate change from \$2068.18 to \$2150.69, a \$70.51 increase. Putting his focus on differences of pay increases among the employees,¹⁰ rather

¹⁰ Marlene Ruler received a "cost of living allowance" and a "re-evaluation of existing job" which resulted in a change from CDMHP(4) to CP3(5), an increase of \$266.49; William Kauffold received a "cost of living allowance" and a "re-evaluation of existing job" increase, changing him from a CDMHP(3) to CP3(2), and changing his salary from \$1977.27 to \$2058.70, an increase of \$81.43.

than on the impropriety of granting any wage increases in this time frame, Glassen has alleged that the wage increases granted after the December 12, 1990 meeting also illustrate a continuing pattern of discrimination to which he believed he was being subjected.

On January 25, 1991, the Commission conducted a representation election in the proposed bargaining unit which would have included Glassen. Fourteen ballots were cast for "no representation", while six ballots were cast for representation by Teamsters Local 760. Two challenged ballots did not affect the outcome, and were not counted. No objections were filed, and a certification was issued routinely, indicating that no exclusive bargaining representative had been chosen.

Probation Notice and Resulting Grievance Proceedings

On February 22, 1991, Weick presented Glassen with a "probation notice", as follows:

Notice of Disciplinary Action

I am extremely dismayed by growing overwhelming evidence of your apparent continuing disregard for appropriate policies, procedures, and established practices and expectations in your role as a County Designated Mental Health Professional at Chelan-Douglas Mental Health Center. Continuing, increasing, unacceptable deficiencies in completion of paperwork and documentation of services, submission of paperwork and failure to observe procedures and provisions of services have come to my attention during routine review, and have been frankly asserted to me by agency managers and staff.

In addition, managers and numerous agency staff have expressed continuing displeasure in their working relationships with you. Most commonly they complain that you behave and relate in an evasive, manipulative manner, and are difficult to work with. My own experience with you, particularly of late, leaves me concerned regarding your clear inability and

unwillingness to relate or communicate effectively, particularly in instances of conflict or disagreement. Too frequently you clearly are unwilling to actively acknowledge or appraise issues or concerns presented to you by others regarding yourself, or your work, or requests for attention to appropriate work practices. The foregoing is especially alarming to me because I have continually informed you verbally and in writing regarding these practices, and I have personally advised you regarding your failures to do so, and asked that you correct your work to accordance with established practices, policies and procedures, and my requests.

I am convinced these advisements, and my attempt to work with collaboratively and supportively have clearly had little impact on your work practices, and that you personally are not interested or committed to agency policies or procedures.

At this time, I am directing you to minimally do the following:

- 1) complete and fill out all paperwork appropriately, adequately, and completely as you have been directed to do.
- 2) submit all paperwork, complete, in a timely manner for processing and record-keeping by administrative staff.
- 3) attend all scheduled meetings on time, and make attendance a priority, except in the case of appropriate response to emergency service requests.
- 4) respond immediately, and in a responsible, professional manner to all requests for emergency services and intervention when first up, or as required as backup.
- 5) prepare a list of all current clients for review at weekly scheduled supervision.
- 6) in staff meetings and supervision, attend to and respond empathetically and collaboratively to the statements of others and toward effective program utilization and service delivery.
- 7) effectively implement all advisements regarding policy, procedure, and established and expected practice.
- 8) follow all policies and procedures, and established practice relating to service delivery, including, but not restricted to: acute treatment services; formal

client enrollment, and referral for services.

- 9) work and relate in a helpful, understanding, collaborative manner with all agency staff. As is expected of a mental health professional.

I expect immediate and continuing compliance with the above condition, and any other recommendations or requirements by myself regarding your performance and contact [conduct] as an employee of Chelan-Douglas Mental Health Center. As well, I expect to see clear progress in all forementioned [sic] problem areas.

This probation is in effect for six months from this date.

[Emphasis in original.]

Weick wrote a contemporaneous note describing the meeting at which he placed Glassen on probation, as follows:¹¹

Gave Paul letter of probation outlining unacceptable deficiencies he had been repeatedly advised about, that he said he would take care of, which had worsened. Advised I was dismayed, angry with his performance. Unit directors state their staff complain he's hard to work with. Staff complain he "always has an excuse", discounts, redefines, doesn't give direct or appropriate responses. I became angry with him when he continued to behave in the forgoing manner. Advised I was so angry I couldn't go on. I would go over my reasons for probation in detail Monday or Tuesday. Excused.

¹¹ In anticipation of the hearing in this matter, Weick consolidated his notes in two documents which have been admitted in evidence as Exhibits 51 and 52. The Examiner is cognizant of the inherent bias of documents prepared in contemplation of litigation, and these exhibits have been used primarily to document the frequency and content of interactions between Glassen and Weick during the period at issue in this proceeding.

The employer's personnel policies contain an agency grievance procedure,¹² and Glassen implemented that procedure on February 25, 1991. In a grievance letter to Dezsofi he stated:

For over two months I have been upset by problems the administrative support staff have helped me identify in the flow of my caseload and its charting. I have worked to eliminate these problems to ensure all cases have correct status, (eg., emergency vs. open), and documentation. This is a great personal concern to me because, as always throughout my community mental health career, I maintain very high direct service productivity. The gap between the support staff concern and my manager's indifference that so misled me is inexplicable.

My grievance regards the probationary letter I received Friday, 2/22/91, and the behavior of my manager in presenting the letter. I felt humiliated by his harassing, intimidating, raised voice attack. It was audible to several co-workers through a closed door. This kind of behavior is unfortunately all too common and familiar to those who work for him and with him. It violates personnel

¹²

The provisions of that grievance procedure are:

3.12 Employee Grievance Procedure

1. The aggrieved employee shall present his/her grievance to his/her immediate supervisor in writing. (Appendix No. 34)

2. The supervisor shall arrange a meeting between him/herself and the aggrieved employee within five working days for purposes of resolving the matter. Both parties shall have the right to have one other person present during this meeting.

3. If the grievance remains unsettled, the employee may appeal his/her case to the Executive Director within five working days of the last meeting.

4. The Executive Director shall appoint a Grievance Committee Composed of three non-interested persons from the clinical staff, support staff and management. Membership on the Committee shall be approved by the aggrieved employee, respondent, and the Executive Director. The Committee shall meet to resolve the grievance within five days of the appeal.

5. In cases of grievances concerning clinical practice, the Agency's Management Team shall serve as the Grievance Committee - excluding the respondent.

6. The decision of the Grievance Committee shall be final.

policy regarding professional conduct of employees as well as individual courtesy.

This grievance also addresses the inaccurate broad brush indictment of multiple aspects of my performance in the probationary letter. The letter criticizes my clinical skills, emergency response, peer relations, etc., etc. while being devoid of specific examples to which I could respond or take corrective action were they true.

I respectfully [sic] request either a withdrawal of the probation or a full investigation of all allegations. I am confident that my value to the agency and my professionalism will be vindicated and the injustice of the probation revealed.

To avoid a recurrence of the verbal abuse I request that not only any grievance hearing (as set forth in the personnel manual) but all subsequent individual exchanges between my supervisor and myself be in the presence of a colleague.

Thank you for your attention to this matter. I deeply regret its necessity.

Dezsofi responded immediately with the following memo to Glassen:

This is in repance [sic] to your grievance letter filed with the agency on 02-23-91.

According to our Policy and Procedures Manual, the first step in the grievance process is a meeting between you and your supervisor. Both of you may have another person present during this meeting. The meeting should take place on or before March 4, 1991.

I personally think that this meeting is very important in clearly identifying the issues that caused the disciplinary action and subsequent grievance. It seems to me that you and Mark are addressing many different issues in your letters.

If the grievance remains unsettled, I will appoint a Grievance Committee in accordance with agency procedures. In actual practice every employee's name, except mine, is placed in a basket and membership on the Grievance Committee is randomly selected from clinical and support staffs as well as administration. Marilyn Northrup will coordinate this process.

Please contact me if you have any questions.

As called for by paragraph 2 of the agency procedure, a meeting was held between Glassen and Weick. That meeting did not resolve the issues, and the grievance was advanced to the next step of the procedure. Dezsofi appointed a grievance committee consisting of three staff persons. Glassen was consulted about the employees who were to be appointed to the grievance committee, and he agreed to those who had been selected.

On February 27, 1991, Weick placed a disciplinary notice in Glassen's personnel file, as follows:

Notice of Disciplinary Action

TO: Paul Glassen
CLASSIFICATION: County Designated Mental
Health Professional
SUPERVISOR: Mark Weick, MEd
/X/ Reprimand

Paul declined to participate in scheduled supervision with myself today.

On March 6, 1991, Dezsofi sent the three members selected to serve on the grievance committee a memo, as follows:

TO: Carla Bennett, MSW
Rich Jensen, MHA
Janeen West
SUBJECT: Grievance filed by Paul Glassen on
02-25-91.

Thank you for accepting the responsibility of membership on the Grievance Committee. Your tasks are as follows:

1. Arrange a meeting of the three Committee Members on or before March 11, 1991.
2. Elect a chairperson to conduct this meeting and/or other future meetings.
3. Develop an agenda and a meeting schedule.

4. Review the probationary letter, Paul's grievance letter and/or supporting material.
5. Interview Mark, Paul and/or other interested parties.
6. Make a decision regarding the appropriateness or inappropriateness of the disciplinary action.
7. Inform me by Memo, within 30 days, about your decision in this matter and/or any other recommendations you wish to make.

It appears that the grievance committee proceeded as outlined in Dezsofi's memo.¹³ The grievance committee submitted its report to Dezsofi on March 18, 1991, as follows:

Enclosed are our decisions and recommendations. In addition, we offer two suggestions.

We feel we can address the issue of Paul Glassen's deficient paperwork. We cannot adequately address work style issues because we find them too subjective. The committee believes a conflict of personality and style of communication exists between Mark and Paul and has lead to an unhealthy working relationship.

DECISION:

1. Probation shall remain in effect for the remainder of the six month period.
2. That the Notice of Disciplinary Action shall include:
 - 1) complete and fill out paperwork appropriately, adequately, and completely as you have been directed to do;

¹³

In the statement of facts attached to his complaint, Glassen wrote concerning the grievance procedure:

... Amazingly, this time the Executive Director Laszlo Dezsofi, even stuck to the letter of the personnel manual rules having my manager hold a Grievance Hearing of a grievance against himself (!). Upon appeal of this bogus Hearing a Grievance Committee was formed. It made a perfunctory investigation with tied hands as indicated above by the limits set on its interviewing. ... [sic]

- 2) submit all paperwork, complete, in a timely manner for processing and record-keeping by administrative staff;
- 3) attend all scheduled meetings on time, and make attendance a priority, except in the case of appropriate response to emergency service requests;
- 4) respond immediately, and in a responsible, professional manner to all requests for emergency services and intervention when first up, or as required as backup;
- 5) prepare a list of all current clients for review at weekly scheduled supervision;
- 6) effectively implement all advisements regarding policy, procedure, and established and expected practice;
- 7) follow all policies and procedures, and established practice relating to service delivery, including, but not restricted to, emergency crises response and stabilization services; acute treatment services; formal client enrollment; and referral for services.

Specific revisions will need to be obtained from Administrative Staff. Items 6 and 9 will be omitted, along with deletion of the first three paragraphs under "Reasons".

2. An impartial supervisor be appointed (such as Joe Adair). This person would provide supervision for Paul the remainder of his probation and will focus on assistance and monitoring Paul's progress on correcting deficiencies of his paperwork. (This does not include clinical supervision). A list will be provided by Administrative Staff on a regular basis for monitoring of Paul's needed corrections.
3. We also feel that in the future it would aid the grievance process by having a specific formal written reprimand before a probationary letter is issued. This would help eliminate subjectivity in the grievance committee. The formal written reprimand should have specific problems,

corrective action needed and a time frame. This would be reviewed between supervisor and employee before probation is considered.

SUGGESTION:

Administrative/support staff had been aware of Paul's paperwork deficiencies for almost a year, and notified appropriate personnel of the same. We suggest the Resource Manager work with the Administrative Staff to uncover and follow-up paperwork problems.

Perhaps a mediator/counselor from outside the agency could be requested to help improve communications between Mark and Paul.

[Emphasis in original.]

After receiving the report of the committee, Dezsofi sent Weick and Glassen the following memo:

The Grievance Committee has completed its task and made its decision. I will make certain that the Committee's decisions are carried out.

The Committee has also offered a non-binding suggestion as follows: "Perhaps a mediator/counselor from outside the agency could be requested to help improve communication between Mark and Paul".

I decided to follow up on this suggestion and arranged a one hour interview time for Mark and Paul with our consultant, Duane Wilson. He will be here on Tuesday, March 26, 1991 from 4:00 to 6:00 pm. Mark and Paul will have to decide how to divide this time between them.

I will make my final decision in this matter, i.e. what can be done to improve communication, after reviewing Mr. Wilson's recommendations.

Glassen met with Wilson on March 26, 1991, but the issues raised in the grievance were not resolved to Glassen's satisfaction. Glassen told Wilson of his intention to file unfair labor practice charges with the Commission.

Following the grievance committee's specific recommendation, Glassen was assigned to work with Joe Adair, the supervisor of the agency's outpatient department. Adair communicated guidelines for their relationship in a March 28, 1991 memo to Glassen, as follows:

As a result of the grievance committee's findings I have been asked to provide supervision for the remainder of your probation. As I understand, my task will be solely to focus on assisting and monitoring your progress on correcting deficiencies in your paperwork.

It is also my understanding that specific areas of deficiency were:

- 1) Insuring all paperwork was completed, both
 - A) appropriately;
 - B) adequately; and
 - C) completely.
- 2) Submitting all paperwork in a timely manner.

I would appreciate it if you could give me several open slots so we can schedule a time to discuss my expectations and how I will monitor the corrective action.

Also, please have a current list of all your open cases.

Glassen and Adair began the probation/correction process with a meeting held on April 19, 1991.

Other Employment Problems

Problems With Administration of "Leave" Rights -

Glassen described a situation where a leave request for a doctor's appointment during this time frame was returned to him with a statement indicating that he should use sick leave, rather than personal leave, for such requests. Glassen asserts that this response was inconsistent with his discussions with the agency's personnel manager, and that he was told other employees had used any form of leave time for medical appointments.

Glassen also described the failure of Weick to sign and return a leave request submitted on April 5, 1991, for a meeting of his continuing education program. Instead of approving the leave, Glassen was told that he would have to arrange coverage by a co-worker, for the day requested.¹⁴

Second Disciplinary Notice -

On April 10, 1991, Glassen received a "Notice of Disciplinary Action" titled "REPRIMAND" from Weick, as follows:

As I informed you last week during supervision, your client service hours for December, 1990; January; and February, 1991, have been seriously deficient (Dec. 39.5 hrs/32%; Jan. 56.5 hrs/46.7%; Feb. 30 hrs/36.8%). At that time I clearly indicated to you that this was a serious problem. At this time I have been appraised of your performance for March, 1991, which again is seriously deficient (53 hrs/34.9%). I insist you take steps to immediately remedy this pattern of unacceptable client service hours. Continuing unacceptable performance may lead to further disciplinary action.

The Ongoing "Leave" Issue -

On April 18, 1991, Glassen had sent Weick the following memo concerning the "leave" issue:

This note is to confirm our conversation of the other day. I wish to clarify that it is your intention to deny me authorization of leave for 4/19/91 as requested on 4/5/91.

Since being employed 12/18/90 [sic] I have an accumulated vacation leave of 128.0 hrs. I have requested the use of 8 of those

¹⁴ Weick replied by a small, handwritten note, saying: "Since you're first up I'd prefer you trade with someone in this instance." Glassen responded on a similar note, saying: "My certificate program was scheduled months before this "1st up" allowing plenty of time to not schedule me 1st up on top of it."

hours to attend the Certificate Program on Children's Mental. This is a weekly attendance the schedule for which I supplied Mark last fall.

Mark has asked me to find some one to cover for me. Leave is a benefit of employment as surely as compensation. Scheduling coverage during an employees's leave is a managerial responsibility. I have no authority to ask someone to work for me while I am on leave.

Denial of leave so as to impede the completion of my certificate program is a serious, discriminatory treatment and breach of legal obligations and terms of my employment by the agency.

In the weeks that followed, Dezsofi issued two memos concerning personal leave. The first of those, issued on April 23, 1991, related the origins of the benefit through actions of the boards of commissioners of Chelan and Douglas counties, as follows:

It has come to my attention recently that there is some confusion about the appropriate use of personal time. Apparently, the confusion led to some inconsistency in interpretation by different departments.

Personal leave was a controversial issue in 1983. The staff wanted one full day of leave per month for "mental health break", i.e. stress reduction. The County Commissioners opposed this but worked out a compromise by a 2:1 vote as follows:

1. Time was reduced to 4 hrs./month
2. Time was to be approved by supervision
3. Leave was to be used for unusual appointments and errands such as sick leave and vacation leave, etc. Examples: appointment with attorney, building contractor, accountant, etc.

The commissioners agreed to this formula because they believed that employees will spend up to four hours per month running errands during work hours, anyway. This is why they also decided that this leave will not be "cumulative" and used or not used for this purpose(s) every month.

Please use personal leave time in accordance with original intent.

Dezsofi's memo about the personal leave benefit was sent to all employees of the employer.

Threat of Discharge -

Glassen was called into the executive director's office on April 24, 1991, while Adair's corrective efforts were ongoing, and was told that there was no guarantee that he would remain employed for the full length of his disciplinary probation.

The Unfair Labor Practice Charges -

Glassen filed the first of his unfair labor practice complaints on May 2, 1991. The statement of facts accompanying that charge described continuing strife between himself and management during the month following the "mediation" session with Wilson, as follows:

... additional reprimands some undated alleging [sic] performance deficiencies back to months before the issuance of the reprimand, the very months covered in this complaint ... [Emphasis in original.]

Alleged Surveillance and/or Intimidation -

On May 2, 1991, just after he filed his unfair labor practice complaint with the Commission, Glassen was guest-teaching a class at the local community college. During Glassen's lecture, agency supervisor Joe Adair came into the classroom and sat through part of the lecture. Glassen testified that he felt intimidated by the presence of an agency supervisor in a classroom where he was teaching.¹⁵

¹⁵ Adair testified that he was also scheduled to be a guest lecturer for that same class, and that he had mistakenly shown up a week early for his appearance. Upon discovering his mistake, he departed.

Return to the "Leave" Issue -

On May 3, 1991, Dezsofi issued a memorandum to "correct" the interpretation of personal leave set forth in his earlier memo:

Due to an error [the April 23] memo conveys the exact opposite of what I was attempting to state. Paragraph numbered "3" should read:

"Personal leave was to be used for unusual appointments such as appointment with attorney, building contractor, accountant, etc., and not used for sick leave and vacation leave."

Again, copies of that memo were distributed to all employees of the employer.

The Probation / Corrective Efforts

In April, Adair and Glassen met to begin the records review process which was to include Adair's commenting on how completely and adequately files and client documentation forms were completed. On May 6, 1991, Adair sent Glassen the following memo proposing weekly reviews of Glassen's paperwork:

As we discussed on 4/19/91 I shared with you my plan in respect to my role as outlined in the committee's response dated 3/18/91.

To ensure an understanding I would like to list a process I will be using.

On a weekly basis I will review from two (2) to five (5) files of clients from the previous week.

I will provide you with a listing of discrepancies I find or suggestions I will make in regard to your charting.

I would expect that the corrections will be made within one (1) week.

As time progresses and older charts are corrected I will only need to review more recent progress notes or new files.

I will provide you with a weekly summary indications my assessment as to:

- 1) files being corrected in a timely manner
- 2) the number of errors being noted
- 3) the severity of errors being noted

If you are in doubt about any part of this memo or the expectations please come and see me.

Also, if you are unclear about any of the notations regarding files or are unable to make the appropriate corrections I would ask that you speak with me at the earliest convenience so I might explain any confusion.

I will also be providing copies of my notes or correspondence to Laszlo.

Adair did indeed review Glassen's files, and he gave Glassen documented feedback in the form of handwritten notes.

In May, Glassen received 10 review memos. Generally, Adair was very specific in his comments and found much to critique in Glassen's work. For example, on one file he noted that there had been 25 acute sessions for a single client.¹⁶ In his review, Adair frequently added editorial comments as to who required the specific documentation that had not been completed, and also included positive feedback when previously noted errors had been corrected. A file review memo issued by Adair on May 16, 1992, read as follows:

WEEKLY RANDOM REVIEW OF PAPERWORK

Attached are copies of my notes regarding reviews of the following cases:

...

¹⁶ Reflecting a criticism often raised by Weick; this was 20 sessions beyond the agency standard.

I received your note of 5/9/91 and understand the issue with busy schedules [sic] that specifically is the reason I have gone to the format of my reviewing files and providing you with copies of my notes for you to follow up.

Unfortunately, we are all under the same time frame commitments.

Review of weekly client scheduling forms shows that during this week of May 6 - 10 you had this following amount of time available for paperwork:

- No shows - 2 hours
- Cancellations - 1 hour
- Nonscheduled time - 7 hours
- 1st up day 5/9 - 3 hours available

My suggestion is to block out times during your regular days for paperwork and to make sure you use no-show and cancellation times also for paperwork.

Review Summary:

- Newer progress notes improving.
- Two files that had previously been reviewed - errors not corrected.
- New case opened ... significant number of errors in completion of paperwork and ensuring supervisory sign off and getting it to staffing.
- Errors need to be corrected.
- ... is now 2 weeks since 1st review without corrections made.

Attached to Adair's memo were 11 handwritten pages of comments on specific entries on client files, including comments on failures to correct earlier noted deficiencies.¹⁷

Glassen complained at great length about Adair's reviews, with the crux of his concern being that they were **after the fact**. This was emphasized twice by underlining in a rebuttal statement Glassen

¹⁷

For example, a file initially reviewed on May 2, 1991 was reviewed again on May 14, 1991. Seven problems noted in the earlier memo had not been corrected as of the later memo.

prepared to one of Adair's reviews. Glassen did not, however, deny the specific documentation provided by Adair in those reviews.

On May 24, 1991, Adair supplied Glassen and Dezsofi with a summary of his findings up to that time, as follows:

The purpose of this memo is to provide you with an update on my review process in respect to Paul Glassen's paperwork.

I have been reviewing files since 5/2/91. In general my findings are:

1. Some of Paul's open files are old and some corrective action cannot be made because of length of time. I have made specific suggestions in which updates or addendum may be appropriate.

One file that had been re-reviewed has had the correctable errors fixed. More files will be re-reviewed and a better determination will be made if corrective action is being taken.

2. Progress notes have improved in the last couple of weeks. Department code is now being marked correctly and priority codes (if clear in the intake) are also being marked correctly.

3. Clients seen on emergency basis are still being seen more than 5 visits without being opened appropriately.

4. Paperwork is still not being done in a timely manner.

- One file the QR was due on 5/14 but was not in the file by 5/20.

- One file the intake date was 4/10/91 but the intake was not signed by the supervisor and did not have a psy/soc history or treatment plan even though the file is over 30 days old.

I have major concern that paperwork is not a priority and thus is continuing not to be done in a timely fashion for new files.

On a progress note dated May 23, 1991 and reviewed May 30, 1991, Glassen wrote the following rebuttal:

Perhaps, Joe, you do not understand that this is an Initial Services form done on a crisis response outreach to the Chelan County Regional Jail at 3am upon request of the Wenatchee Police Department. (All of this information is available on the form.)

Referral to CS is planned disposition if the individual comes in for additional services as encouraged to do. We don't take applications for service, nor request a prisoner newly arrested to sign releases during a 3am crisis intervention.

Therefore there is no reason for the items you call for: I.S. sheet in staffing basket, application for service, releases. You either have a poor understanding at [sic] what goes on in crises response since it is not your department or you are eager to fabricate deficiencies on my part or both.

Adair also summarized his findings in a May 31, 1991 memo, copies of which were supplied to Glassen and Dezsofi. That memo included the following:

... Review of weekly client scheduling forms shows that during the week of May 20 through May 24 you had the following amount of time available for paperwork:

- No shows - 3 hours
- Cancellations - 6 hours
- Non scheduled time - 1 hour
- 1st up day hours available for paperwork - 3 hours.

Review summary:

- Errors or omissions previously pointed out in on going cases have not been corrected even though clients have been seen since the last review notes. This is significantly important because two of the files are Title XIX and lack a statement confirming medical necessity.
- One file has been open over 30 days and still very incomplete. This file was previously reviewed and there has been two weeks intervening since the last review.
- Emergency services are being billed against non-registered clients yet one is

an active client and one client was recently closed. Both are registered with file numbers.

- One file was referred to CSS but the file was not placed in the staffing basket for staffing and assignment.

In general progress notes have improved and a couple of the files have had some errors or omissions corrected. But there are still numerous errors to be found. In some instances these notes represent the 3rd request to correct certain deficiencies. On May 16th I suggested that you block out time in your schedule for paperwork to provide the time necessary to bring your files up to date. It appears the suggestion was not taken.

The correspondence served as a cover letter for six pages of handwritten notes commenting and criticizing Glassen's client files.¹⁸ The May 31, 1991 memo was Adair's last evaluation of Glassen's work.

Interpersonal Relationships with Other Staff

An example of Glassen's relationships with other agency staff as of May, 1991, is a memo directed to Weick by another non-supervisory employee of the employer:

I am writing this letter, per your request to document the events of 5-23-91 involving Paul Glassen and myself.

I arrived at the office at 8 am. I was scheduled first up, with Paul as second. A client Paul had seen less than eighteen hours before had been "left over" for me to evaluate for an

¹⁸

Those notes are dated:

- 1) reviewed 5/30/91 prior review dates 5/14, 5/2/91
- 2) reviewed 5/30/91
- 3) reviewed 5/30/91
- 4) reviewed 5/30/91 prior review dates 5/8, 5/14/91
- 5) reviewed 5/30/91
- 6) reviewed 5/30/91 prior review dates 5/13/91

involuntary hold, there was two crises calls and all the other CCMPs were out of the office.

Paul declined to assist me, saying he had client [sic] all morning. At 10:30 am he mentioned his 8, 9, and 10 am clients had canceled. I confronted him why hadn't he told me earlier so we could share the crises evaluation. He did not respond directly. He did say he couldn't help because his 11 am client was coming in. He did have time to harangue me with the faults and flaws of the Mental Health Center policies, procedures and management style, interfering with the completion of my paperwork. **He also advised me that he keeps people in his case load longer than the allowed number of emergency units because "crises work is to [sic] hard to do all day. After you've seen a client a few times it much less stressful."**

[Emphasis by bold supplied.]

The author of that memo, Cherie Coutch, was an experienced psychiatric registered nurse on the employer's staff.

Termination of Glassen's Employment

On May 28, 1991, Weick sent the following letter to Director Dezsofi:

I have had five scheduled supervisions with Paul Glassen since the meeting on April 21 between the three of us; on April 24, May 1, and May 8, May 14, and on May 28 (Paul had May 21 off due to scheduled changes). Regrettably I was not able to meet with Paul on May 14 because of crisis response 1st up duties, and sadly on May 28 he states that he forgot to schedule supervision and did not appear at my office.

During the April 24 supervision Paul continued to consistently resist supervisory statements, as he has for over two months now. I did clearly outline guidelines and suggestions for supervision at that meeting, however

Paul didn't acknowledge or state acceptance to this.

On May 1, I reviewed Paul's most recent client list, current ITA evaluations, and ITA assessments and policies. I reminded Paul to submit his initial services forms to Barb (especially from the prior day). Paul had failed to do so as added. Although agreeable to my request, he displayed no acknowledgement of the problem to me. I also noted my awareness of Paul's emotional distress at the agency retreat the morning of April 26, but we had no discussion. Paul's attitude, demeanor, and conduct appeared cooperative, although reserved and cautious regarding my requests for needed improvements in his performance.

On May 8, I reviewed current clients with Paul, and recommended a client not receive medications from the Mental health Center, but a general physician. Regarding incomplete paperwork, Paul stated he was confused as to what papers to complete on an LRA revocation, and I reclarified our procedure regarding this.

In brief, during two of the five scheduled supervisions Paul has presented a less challenging and defensive attitude. However, his reluctance to review cases as openly as I would hope, his tendency to excuse rather than show ownership of his problems in his manner and responses, and his continuing lack of attention regarding policies, procedures, and meetings and deadlines remains troubling for me. I remain seriously concerned regarding Paul's performance and difficulty with supervision generally.

[Emphasis in original.]

On May 31, 1991, Dezsofi, Weick and a new department manager, Bobby Morrison, presented Glassen with another written warning:

I found Wednesday's meeting incredibly unsatisfactory and frustrating. We got nowhere and there was no closure. In our work we need to communicate, and we want to go the extra mile with you. We will give you one more chance.

We are going to review the goals established for your probation, and set later by

myself and Mark during the probationary period. We would like you to tell us how you have responded to reach these goals, where and how you have made progress, and what you have in mind to improve in light of your goals. If you think you're going to do better, we'll work with you. If you don't make adequate progress in each and every one of them you may be terminated from employment.

Testifying concerning that meeting, Dezsofi related a specific proposal from him and Joe Adair to help Glassen address the continuing documentation and paperwork problems, to which Glassen retorted with: "I have done all I'm going to do".

On June 6, 1991, Weick presented Glassen with the following memo:

Laszlo has scheduled a hearing on Tuesday, June 11, 1991, at 11 AM to determine if you will be terminated as an employee of Chelan-Douglas Mental Health Center.

At this time we have passed the third month of your six month probationary period. When you were put on probation, you were given a list of specific areas in which your performance needs to improve. During this period both myself and other managers have taken extraordinary measures to assure there wasn't something in the way of us communicating effectively, and to assist you in reaching the goals identified in your probation. To this end I have attempted to work with you in a straight-forward manner at our weekly scheduled supervisions. I and the management team supported the grievance committee's recommendation that Joe Adair supervise your paperwork during the probationary period. More recently, you, Laszlo and myself met on April 24, and again on May 28, in an attempt to assist you in making progress on your probation. When the May 28 meeting degenerated, with you refusing to accept any criticism or take any responsibility, we scheduled an additional meeting. As such, on May 31, you and I, Laszlo, Joe and Bob Morrison met, again the meeting was frustrating and unproductive. [Emphasis in original.]

At this time I find your cooperation and progress toward the goals of your probation unsatisfactory. You have refused to cooperate during our supervision; refusing to attend supervision, failed to cooperate with or acknowledge by supervision when you appeared, and failed to attend supervision as scheduled. Likewise you have not shown adequate improvement in you paperwork as a result of supervision with Joe Adair, and have refused to accept or cooperate with his guidance in this area. At recently scheduled meetings you have not demonstrated any willingness or capacity to work with myself or other managers toward the goals of your probation. I have received further complaints from center staff regarding your failure to either follow through or pick up collaboratively with clients. At this time it appears clear to us that you are unable to take supervision, are unable to effectively work on improving your conduct, and that further continuation of your probation is futile.

You have previously stated that you are being discriminate against, and harassed. Despite my emphasis and re-emphasis that this is in no way true, you continue to insist that every action or inaction on my or other manager's part is the result of such harassment. I want to again reaffirm consideration regarding yourself. I have made every effort to try and work effectively with you, other managers have as well. When Joe concluded that you still have substantial paperwork problems, you called him a "hatchet man". I am convinced that I, and the other managers have shown extraordinary tolerance and support to you during your employment here. It is only with great reluctance that I have concluded that further attempts to assist you toward satisfactory compliance with the agency's goals, policies, and expectations are unwise, and I have therefore recommended the termination of your employment with the agency.

You may have a representative accompany you at this hearing, please notify Laszlo or myself by 4PM, Friday, June 7, as to who you wish to be present if you desire to have someone there.

At the June 11 meeting, the fact of Glassen's not having been able to obtain legal counsel was discussed. At Glassen's request, the hearing was postponed until after Glassen's vacation,¹⁹ to afford him an opportunity to secure representation.

The "termination hearing" occurred on July 1, 1991. Those present were Glassen, Dezsofi, Weick and management consultant Wilson. Glassen was not represented by counsel. Acting as chair of the hearing, Dezsofi took testimony from those present and announced that he would issue a decision within 48 hours thereafter.

On the next day, July 2, 1991, Dezsofi sent a letter to Glassen, as follows:

On June 11th a hearing was scheduled to review circumstances leading to your being placed on probation and Mark Weick's recommendation that your services be terminated. You were given advance notice of the hearing along with a letter from Mark giving reasons for terminating your services.

At your request that hearing was postponed to July 1, 1991 to allow you time to secure legal counsel, and to take your nearly two weeks of vacation prior to the hearing. Apparently you subsequently chose not to be represented at the July 1 hearing, as no one attended the hearing with you.

During the July 1 hearing you were given ample opportunity to cross-examine and rebut Joe Adair's and Mark Weick's testimony. At the outset of the hearing, I swore in all parties to try to ensure a fair and impartial hearing.

After reviewing the circumstances giving rise to this situation, and after reviewing testimony by Mark, Joe, and your statements in rebuttal, and after giving due consideration to your comments, I have concluded that adequate reasons exist for terminating your employment. You have been given every reasonable opportunity to improve, yet you refused

¹⁹

Glassen's vacation was scheduled for June 17 - 27, 1991.

to cooperate with Joe and Mark to improve the problems giving rise to your probation. You have been given the benefit of the doubt by all parties concerned. The Grievance Committee essentially supported Mark's position, but gave you the benefit of the doubt by recommending that Joe Adair be assigned to monitor your paper work. Joe also testified that you continued to submit reports and records in an untimely manner, including some files that were over thirty days late. Mark testified that you failed to attend critical meetings, were uncooperative, had a poor work record, and continued to make the same kinds of errors that led to your being placed on probation.

Given your poor attitude toward management in general, and Mark Weick specifically, and given your refusal to cooperate with management to improve the quality of your work, I have no alternative but to support Mark Weick's recommendation to terminate your services. Therefore, you are officially relieved of your duties, effective 5:00p.m. today, July 2, 1991.

In conclusion, I and the other members of the management staff fully support Mark's managerial decisions throughout this matter. I regret that you chose not to cooperate with management.

Glassen's employment was thereupon terminated. As noted above, the legitimacy of that discharge was brought before the Commission by Glassen's amended complaint charging unfair labor practices.

POSITIONS OF THE PARTIES

Paul Glassen argues that the employer's reactions to his work were "highly different" before and after he engaged in protected activity. He alleges that he had only positive documentation in his personnel files prior to the December 12, 1990 "warning" meeting, that the employer has "been unable to provide one single shred of bona fide documentation" of performance deficiencies prior to the union campaign and election, and that subsequent personnel

and disciplinary actions initiated against him were retaliatory. Glassen contends that similar actions were not taken against employees who had been uninvolved in protected activity, and that the employer's probation, discipline and discharge actions would not have been taken in the absence of his activity protected by the collective bargaining statute.

The employer argues that Glassen failed to establish that his protected activities were a substantial or motivating factor in the employer's discipline and subsequent discharge of Glassen. It asserts that Glassen has not established that he was, in fact, engaged in any protected activity during the union organizing campaign; or that filing of his unfair labor practice complaint was a motivating factor in the employer's reactions to Glassen's work. Finally, the employer asserts that, even if the complainant did establish a *prima facie* case, the employer has proven that Glassen's employment would have been terminated in any event.

DISCUSSION

A union organizing campaign occurred among the employees of Chelan-Douglas Mental Health Center in late 1990 and early 1991. In seeking to organize, the employees of this public employer were asserting rights secured by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, as follows:

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

An employer commits an unfair labor practice, in violation of RCW 41.56.140(1), if it interferes with, restrains, or coerces its employees in the exercise of their rights guaranteed by Chapter 41.56 RCW.

Standards for Determining "Dual Motive Discharges"

In deciding disputes where an employee alleges that the reasons advanced by an employer for a discharge were pretextual (and that participation in protected activities formed the basis for the employer's decision), and the employer contends that it had legitimate reasons for the disputed termination, the Commission applies a two-stage analysis adopted in City of Olympia, Decision 1208-A (PECB, 1982), citing with approval Wright Line, 251 NLRB 1083 (1980).²⁰

The burden of proof is placed initially on the complainant, to make a *prima facie* showing that protected union activities could have been a motivating factor in the employer's decision.²¹

If the employee is successful in making such a *prima facie* showing, then the burden is shifted to the employer, to establish that the same action would have been taken without regard to the employee's protected conduct.

²⁰ See, also, Clallam County, Decision 1405-A (PECB, 1982), affirmed, 43 Wn.App. 589 (Division II, 1986).

²¹ This includes proving that the employee was engaged in protected activity and that the employer knew of that activity, so as to infer that protected conduct was a substantial or motivating factor in the decision to discharge. City of Asotin, Decision 1978 (PECB, 1984). See, also, City of Bellevue, Decision 2096 (PECB, 1984).

Applying the Dual Motive Test - The *Prima Facie* Case

This employer took an active role during the union organizing campaign, seeking to discourage union representation among its employees. This was shown by its hiring of Duane Wilson as a special consultant, and by the evidence concerning Wilson's role and conduct during the processing of the representation case. For example, in response to a question concerning what Wilson was supposed to do at the December 18, 1990 meeting, Dezsofi replied:

His agenda was to find out if the problems, whatever led to the filing for the election, could be resolved. He read our policies and procedures -- procedure manuals. He was impressed with our salaries, fringe benefits, and he couldn't figure out what the problem was.

The accounts of the employee meeting conducted by Wilson on December 18, 1991 also evidence that the employer was actively engaged in the campaign. While employers may take part in election campaigns under Chapter 41.56 RCW, as long as they do not intimidate or coerce employees in the free exercise of their statutory rights, the evidence clearly establishes that this employer was not in a passive mode.

It has never been claimed or established that Glassen was one of the instigators or leaders of the union's organizing activity. Rather, it appears from the evidence that Glassen was actually only "discussing" the union, and that he was not "organizing" on behalf of the union in the classical sense of the term. That is not fatal to Glassen's unfair labor practice claim, however, as there is ample evidence that the employer **believed** that Glassen was involved in the union activity.

When it became aware, through the complaint of another employee, that Glassen had discussed the union organizing drive, the employer

acted in a manner specifically designed to intimidate Glassen. Its reaction was clearly prohibited under the statute:

It is a fundamental principle of modern labor law that employees are engaged in protected activity under the statute when they are participating in a union organization effort.

Valley General Hospital, Decision 1195-A (PECB, 1981).²²

Glassen was called into the office on December 12, 1990, and was given a "dressing down" for his participation in the protected activity. Since both the memo establishing the "no solicitation rule" and the employee-management meeting to discuss that rule occurred **after** December 12, it was not reasonable for the employer to have expected that Glassen should have known that casual discussion of a union would violate some employer rule.²³ Thus, it is evident from this over-reaction of the employer's supervisory staff that an anti-union attitude existed among them.

Individual supervisory animus toward union organizing was also shown in Weick's testimony. Concerning the accusation that Glassen had been organizing "on company time", Weick reacted as if Glassen was being accused of something unacceptable, or even reprehensible. In examining Weick, Glassen asked:

You had no reason to think that I was union organizing or doing anything else that he (Murray) suggested, discussing union activity on company time?

Weick replied:

²² See, also, Lewis County, Decision 2424 (PECB, 1991); affirmed Decision 2424-A (PECB, 1991).

²³ The employee who complained concerning Glassen's discussion of union activity was also reacting in an atypical manner. Glassen would have had no way of knowing that she equated union organizing with a death in her family.

No. To tell the truth, I was shocked and I didn't believe it initially. I questioned whether the complaint was valid, myself.

Transcript Volume 1, page 50.

Later, Weick testified:

And with other managers, I was very clear in any meetings we had that I felt you [Glassen] were not from the union, as I advocated for you many, many times, more than you probably can imagine.

Transcript Volume 2, page 83.

The Examiner interprets Weick's comments as indicating that he considered it "good" to not advocate for the union, and "bad" to be in favor of the employees organizing. Certainly any individual has a right to make their own value judgment on unionization, but a department supervisor acting out such a judgment in an official capacity clearly has the potential for intimidation and coercion.

Taking the record as a whole, and particularly considering the timing and the surrounding attitudes, the disciplinary action and subsequent discharge instituted by the employer can be arguably connected with the complainant's alleged organizing activities and his subsequent filing of unfair labor practice charges. Circumstantially, the probation and discharge could be judged to be the reactions of an employer opposed to union organizing, by singling out one employee as an "example". The complainant has thus made a *prima facie* showing sufficient to support an inference that protected conduct was a motivating factor in the employer's decisions, and has established union animus as a potential motive for the discharge. The burden of proof is thus shifted to the employer in this case, to establish the legitimacy of its actions (*i.e.*, that its actions would have occurred regardless of Glassen's protected activity.) Washougal School District, Decision 2055-A (PECB, 1985).

Applying the Dual Motive Test - The Employer's Case

In response to the burden of proving that Glassen's employment would have been terminated regardless of his organizing activities, the employer argues that Glassen was disciplined, placed on probation, and eventually discharged, because of documented work deficiencies. Two areas of his professional responsibility were of particular concern, as described below.

The first of the problems concerns providing unauthorized services to agency clientele. The employer's "Medicaid" contract with the State of Washington provides much of the funding for the employer's operations. That contract specifies that clients are to be limited to five counseling sessions per "acute episode", after which an "intake evaluation" must be performed to "open" a case. If more than five counseling sessions are provided without the intake procedures being completed, then the agency must pay back monies billed to and paid by the State.

The second of the problems concerns Glassen's failure to conform to the expectancies of a bureaucratic organization, particularly with regard to the documentation of work and completion of paperwork that was a required part of his job.

Evidence of Glassen's Deficiencies -

The employer documented that, as early as February, 1990, Glassen was perceived as having difficulty in limiting his caseload, and that he repeatedly saw clients for more than the five sessions allowed by the state funding formula without "opening a case". Glassen's failure to complete required case forms was consistently mentioned and documented by Weick as a continuing problem.

The frequency with which these specific deficiencies were discussed appears to be significant, even if the overall frequency of contact between Glassen and Weick does not otherwise appear to have been

abnormal.²⁴ Viewed from Weick's perspective, as listed in his consolidated notes in evidence as Exhibits 51 and 52,²⁵ the relevant meetings were:

2/14/90 Individual Supervision: Reviewed limiting cases, referral options, and acute treatment options.

2/21/90 Individual Supervision: Advised to discontinue seeing acute clients over five sessions. Our contract with the State of Washington, allows only five sessions per "acute episode". Persons seen over five sessions must be opened by completing an Intake Evaluation. Our Medicaid contract will pay for no more than [sic] hours of emergency service each year.

3/20/90 Initial Services Meeting: Advised all staff that they were not providing enough or all required information on applications for service. It is essential to designate what services you are referring a person for.

5/2/90 Individual Supervision: Advised to schedule no clients when "first up" for crisis/emergency services at the Mental Health Center.

5/2/90 Initial Services Meeting: Advised staff to not schedule clients for days that are first up for crisis/emergency services at the Mental Health Center.

7/25/90 Individual Supervision: Reviewed current acute clients. Reviewed Intake procedures. Advised to "notify office staff" when doing an unscheduled intake. ...

8/28/90 Initial Services Meeting: Advised all staff that there were instances where Title XIX (Medicaid) clients had been seen six or seven sessions for emergency services Title XIX pays only five hours per year, and we still have to pay this money back. Instructed all staff to see clients only at most five times for emergency services. Beyond five sessions client must have had an Intake for us to bill for further services. All staff must do Intake in this case if they/we are to continue to provide any services.

8/25/90 Individual Supervision: Reviewed two memos of the same date (9/5/90) regarding absences from scheduled meetings, and attending daily case review

²⁴ The period covered by Weick's notes overlaps the period in which Glassen was involved in transactions with other individuals, as indicated above. It apparently was an expectation of this employer that its staff therapists would meet frequently with their supervisors to review cases.

²⁵ Although the weight to be given this evidence would have to be evaluated in terms of its authorship and timing in the event of the facts being controverted, it was never rebutted by the complainant in this case.

first thing in the morning. Paul had been chronically late to both.

9/11/90 Initial Services Meeting: Reviewed above noted memos with all staff.

9/27/90 Individual Supervision: Reviewed "crises stabilization" focus and role of unit. Advised we must always provide "immediate crisis response." The primary responsibility for this with the first up or on call CDMHP.

10/2/90 Initial Services Meeting: Advised staff that "ITA" paperwork must be turned in "priority" ("immediately").

10/3/90 Individual Supervision: Reviewed procedure for immediate filing of all ITA documents (had not been turning these in for two to three days after detention, RCW 71.05, requires filing within "next judicial day").

10/9/90 Initial Services Meeting: Advised staff to pursue a "go and look" attitude toward requests for crisis or ITA services. Exceptions to initiating face to face contact or intervention could be:

1. This situation clearly does not involve ITA or mental health issues.
2. The request is not made by the client.
3. The situation is obviously not a crisis or emergency.

10/10/90 Individual Supervision: Reviewed and advised Paul regarding the necessity of making the 8:30 a.m. daily case review meeting.

11/10/90 Initial Services Meeting: Reminded staff of the requirement to provide the accurate client name, date of birth, and other necessary information on initial services documents.

11/28/90 Individual Supervision: Advised Paul regarding necessary information he must provide on each "Application for Service." (Paul remained chronically inadequate).

12/3/90 Individual Supervision: Advised Paul that Quarterly reviews missing from June and September, must be completed immediately. Paul received a memo from Marilyn Northrup regarding this.

12/11/90 Initial Services/Administrative Services joint meeting:

1. Assessed Initial Services provision of immediate emergency services and how receptionist can handle request. Effectively clarified procedure.
2. Administrative staff reviewed a large number of Title XIX cases that had been seen for more than five sessions without an Intake having been done. This presented a significant financial loss to the Center, as we will have to pay back several thousand dollars to the state. (All these cases were Paul's).
3. Janeen covered EAP procedures.

12/19/90 Individual Supervision: I advised Paul regarding the correct state definition for "Priority Status", Paul had not been following these criteria ade-

quately or effectively in providing services or requests for service.

12/20/90 I gave Paul a letter regarding his failure to respond to my request for a year's commitment to remain an employee in exchange for agency funding of his Children's Specialist Program. I had met with him on two separate occasions and Paul had been "unwilling to respond" (instead choosing to engage in "tirades.")

2/12/91 Individual Supervision: Reviewed continuing extensive paperwork problems and necessity for correction of current practice. Reviewed his failure to reduce the number of clients on his caseload as he had previously indicated he would. Discussed his continual inaccuracy in assessing client "priority", reviewed the problems.

2/13/91 Individual Supervision: Advised to complete a "statement of fact" and "Pre admission screening" packet on a voluntary hospitalization per agency policy and unit practice. Paul had only completed an initial services form. Reviewed Paul's inappropriate handling of an Employee Assistance Plan referral according to unit procedure. Reaffirmed the practice and procedures, the information packet given to Paul regarding EAP procedure covered prior by Janeen West. Advised Paul to complete the EAP evaluation of the client, and then refer. He had simply "dropped" an entire case on Joe Adair.

3/6/91: Attempted to discuss probation - received no sense of resolution or acceptance of problem from Paul. Went over long standing deficiencies in fee exception forms.

4/3/91 Paul 15 minutes late. Blamed misinformation from Gail Camden for not being at Dr. Boydston's supervision. Advised to be at East Wenatchee, not Miller Street, when scheduled there (had not). Asked Paul if he knew where charts for his clients that had been in my office were (not accusatory). Paul became offended, denied any knowledge, said something to the notion, "are you inferring I took them?" (Alarm). Went over Beauchamp quality assurance problems - his response unacceptable. Session degenerated as Paul denied any responsibility and demanded specific information about charges and staff. I eventually went down my list of charts by person, date document, etc. that was not complete. He slowly restated back to me everything I said to him, and requested that I repeat everything I stated at least one time, sometimes twice. At times he was antagonistic, or I felt clearly "baited and badgered" by him. He was demanding. he said "all this started December 12, didn't it, Mark?" to me 2 times. I clarified what had transpired during the meeting that day. We covered numerous points. Paul was contentious, demanding and hostile. Paul insisted there was going to be a PERC hearing April 10 or 12. The session seemed entirely ineffectual despite my best efforts. I felt he had simply elected to badger me the whole time.

4/10/91 Paul late - 15 minutes. Saw client. Gave notice of disciplinary action in service hours; went over. He became agitated, contentious and demanding. He again attempted to have me reiterate everything

ponderously. I advised him I wouldn't do this. Paul contended I had problems with other staff like with him, and that another supervisor was investigating my effect on the unit. I asked Paul if he felt I was harassing him at one point. He responded "yes, you are harassing he [sic]." Paul said he was uncomfortable without another person there, with the door closed. He said he was going to leave, as Laszlo [sic] told him he could. And did. I did nothing inappropriate during this session. Again, I simply felt frustrated with Paul's provocations, lack of candor.²⁶

4/24/91 I went over my expectations of Paul; my impressions of him and what I felt his major problems were. All this very candidly and cogently, without hostility. Also advised regarding my problems with him. I received unsatisfactory responses. I ended the session when Paul stated the current situation is unacceptable, this supervision was unacceptable. Clarified to him that I had always strongly supported and advocated for him. That I had not discriminated or denied anything. He bitterly complained he was not treated equitably.

5/1/91 Went over current clients, recent ITA's. Reviewed his having become emotionally disturbed during retreat. Continued to redefine, and give over detailed, rambling response. I offered to clarify regarding him becoming upset. I tried to be supportive, positive. We dealt with nothing important.

5/8/91 Went over current clients. Noted to complete form correctly that he had not. Made excuses.

5/28/91 Paul did not appear for scheduled supervision. He claimed to not have known or have scheduled

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Putting this in context with the finding of animus made above, the Examiner notes that Glassen raised the subject of his alleged organizing activity in a note to Weick dated April 14, 1991, replying to the April 10 meeting:

I will not be subjected in supervision to innuendoes or accusations of theft or lying.

In our last supervision of 4-10-91 your (sic) repeatedly insisted I had told you something other than what I had been told by Marilyn Northrup. Without using the particular word, that is an accusation of lying.

In the previous supervision you claimed files were missing from your office and asked me what I knew about it. Again without using the word, that is an insinuation of theft.

It is worth recalling that it was another unfounded, unsupported allegation (of **union organizing on company time**) that began the months of discriminatory treatment and harassment of which the two instances above are recent examples. [Emphasis supplied.]

it. He admitted he had forgotten. I advised him this was unacceptable.

[Emphasis by underline in original; emphasis by **bold** supplied.]

The February 22, 1991 notice of disciplinary probation had focused on: "Continuing, increasing, unacceptable deficiencies in completion of paperwork, documentation of services, submission of paperwork and failure to observe procedures and provisions of service ...".

Weick's concerns about paperwork completion were affirmed by the three agency employees designated as the grievance committee for Glassen's grievance.²⁷ In fact, the grievance committee concurred with seven of the nine conditions originally imposed by Weick,²⁸ and it reiterated the existence of problems regarding: Completion of paperwork, timeliness, attendance, staffing, and implementation of agency policy. Underlining its concern about Glassen's paperwork problems, the grievance committee recommended that Glassen be provided with "an impartial supervisor" to specifically focus on assistance and monitoring progress on correcting deficiencies of his paperwork.

²⁷ Although he did not concur with the ultimate result of that process, it is to be remembered that Glassen had earlier concurred with the list of persons appointed to that committee.

²⁸ The two conditions omitted by the committee were the most subjective of the original list of nine:

Item 6 - "in staff meetings and supervision, attend to and respond empathetically and collaboratively to the statements of others and toward effective program utilization and service delivery"; and

Item 9 - "work and relate in a helpful, understanding, collaborative manner with all agency staff. As is expected of a mental health professional."

Glassen met with Joe Adair, the supervisor specifically recommended by the grievance committee as a person who could provide Glassen with the appropriate guidance. As described above, Adair encountered his own set of problems with Glassen.

Glassen's Approach to Issues -

Glassen consistently argued that his employment difficulties arose as a reaction to his original on-the-job discussion about organizing or his subsequent filing of unfair labor practice charges. He contended that he had been discriminated against as a part of a generalized management conspiracy, presumably to single him out as an example as a union organizer. In this argument however, Glassen fails to effectively negate or deny the employer's substantive charges concerning his work product.

Glassen's February 25, 1991 grievance letter admitted that he had a significant problem with documentation and agency procedure:²⁹

For over two months I have been upset by problems the administrative support staff have helped me identify in the flow of my caseload and its charting. I have worked to eliminate these problems to ensure all cases have correct status, (eg., emergency vs open), and **documentation**. This is a great personal concern to me because, as always throughout my community mental health career, I maintain very high direct service productivity. The gap between the support staff concern and my **manager's indifference** that so mislead [sic] me is inexplicable.

[Emphasis by **bold** supplied.]

In a similar manner, Glassen's subsequent written statements continuously failed to deny any of the problems documented with his work. He frequently defended himself, as above, by arguing that

²⁹

The full text of the letter is quoted above.

documented problems were someone else's responsibility or that they were a part of a pattern of management discrimination.

While again acknowledging the self-serving nature of notes prepared by one party to an emotional exchange, the Examiner notes that much of Glassen's behavior, and particularly the "avoidance" approach described by Weick in his notes, was also observed by the Examiner at the hearing. In a specific instance, when the Examiner was attempting to determine which employer documents Glassen wanted brought into the hearing, Glassen exhibited the same communication "style" noted in Weick's documentation, including frustration and a refusal to respond. When asked a direct question, he frequently would repeat the question several times, appearing to be avoiding answering. When asking questions, he often would not react to a response, or would avoid a response when he did not get the response that he wanted or expected. He would continue to ask the same question repeatedly. Usually the repeated question, the "demand" for the "right" answer, included an increase in volume and visible frustration on Glassen's part.

The Procedural Steps Taken by the Employer-

Past Commission decisions have analyzed factual patterns to determine whether unlawful discrimination had been committed. In City of Olympia, supra, the burden of proof was shifted to the employer on the basis of evidence showing that employee involved there was clearly identified as a union sympathizer, that employer agents had made anti-union statements to employees, and that the complainant's discharge had occurred one week after he had served as a union observer in an unsuccessful representation election. The employer's citation of "an attitude problem" was judged to be pretextual. The evidence there showed that there had been no previous complaints about the employee's work quality or productivity, and that the employer had not followed its own established personnel resolutions in effecting the discharge. Thus, the employer in Olympia failed to overcome the inference that the

discharge had been motivated by the employer's anti-union sentiment.

In Lewis County, Decision 2424-A (PECB, 1986), the burden of proof had been shifted to the employer on the basis of the timing of two discharges in relation to a union organizing drive. In evaluating the circumstances which gave rise to the discharges, and rejecting the claim of a retaliatory discharge, the Examiner stated:

There is no credible evidence that the [complaints about dispatching errors] were based on any anti-union animus, or that they were aggravated by any management activity intended to frustrate the union's organizing campaign. ... This is not a "just cause" proceeding. Regardless of whether the respondent's personnel practices leading up to the discharge decision might be regarded as questionable, the issue before the Commission is confined narrowly to the allegation that the employer discharged the two employees to thwart a unionization effort. As noted in City of Bellevue, Decision 2096 (PECB, 1984):

Nevertheless, absent showing of anti-union motivation, an employer may discharge an employee for a good reason, a bad reason, or no reason at all without running afoul of the collective bargaining statute.

See also: Clothing Workers vs NLRB, 564 F.2d 434, 440 (CA, DC, 1977).

In this case, respondent has sustained its burden of proof that the discharges ... were motivated by legitimate business concerns arising from clientele dissatisfaction with the services being provided by the communications department.

Thus, although it was noted that the employer in Lewis County had "utterly failed to use any form of progressive discipline", that was not fatal to the employer's defense.

Of interest here, the instant case is distinguished from both Lewis County and Olympia, on the basis that the Chelan-Douglas Mental Health agency did follow its established personnel practices. An employer which both has and follows consistent policies and procedures may have greater likelihood of meeting its burden in cases of this type. For example, in City of Seattle, Decision 3198 (PECB, 1989), the Examiner shifted the burden to the employer on the basis of the employee's recent grievance activity, but then concluded that the employer had enforced a consistent and long-standing policy in disciplining the alleged discriminatee. The employer had made a business decision within the normal course of its operations, and would have issued the disciplinary warning even in the absence of the complainant's protected conduct.

A recent case which even more closely illustrates a fact pattern paralleling the instant case is Clallam County, Decision 4011 (PECB, 1992). Comparable to the instant case, the complainant in Clallam was discharged for problems related to competency and failure to complete required paperwork. If anything, the evidence of employer union animus in Clallam was much stronger than in the instant case.³⁰ The union there would have had the employer's documentation of "derelict" files discounted as pretextual and contrived, but that employer produced documentation of incident after incident where the dischargee was disorganized or had evaded his responsibility. Regardless of the high visibility of the complainant's protected activities and the evidence of employer

³⁰ The union there had made a prima facie showing, under the principles of Wright Line, that supported an inference not only of animus, but that, in fact, the protected activity of the complainant was a motivating factor in the employer's decision to discharge. The employee involved had been a union officer, and a member of the union's negotiating team during a period of particularly rancorous negotiations. The union had initiated a failed petition drive to repeal a county commission resolution, and there had been much press coverage involving the alleged discriminatee, by name.

animus, it was clear to the Examiner in Clallam that such facts would not shield the employee from the consequences of his failure to complete his job responsibilities in an acceptable fashion.

In comparison to the above-cited cases, Glassen held no union office and was not involved in the union organizing effort except as a member of the potential bargaining unit. Apparently, neither management nor other employees viewed Glassen as either a leader or a "pivotal" player in the organizing effort. In fact, it was unclear to Glassen's immediate supervisor if Glassen even supported unionization. Therefore, the connection between the employer's evident anti-union sentiments and its overreaction to Glassen's "union organizing on work time" is somewhat tenuous at best. Glassen's claims that he was singled out as a union supporter (*i.e.*, by being spotted by a "management spy" at a union meeting, and by being "harassed" by that same supervisor while on an outside teaching assignment), begs the question as to why Glassen was singled out for discipline or harassment for union activity. It appears that no other employee was threatened or discriminated against in connection with the union activity.

Similar to the situation in Clallam, the record in this case is replete with documentation showing that Glassen was unable or unwilling to meet the employer's job performance standards. Apart from the documentation by his supervisor,³¹ Glassen's shortcomings were known and acknowledged by other agency employees. This was evidenced by the recommendations of the grievance committee, by the complaint of Glassen's co-worker, and by the work done by Joe Adair in the two month critique of Glassen's work.

³¹ In Glassen's defense, it is also apparent that Weick also had a problem in separating his subjective reactions from his objective evaluations. This resulted in the appointment of another supervisor, to critique Glassen's work and develop a plan to correct the deficiencies.

For his part, Glassen was not willing to put much effort into amending his ways. Adair's report showing Glassen's failure to correct earlier noted documentation deficiencies is particularly persuasive evidence that he would not, or could not, function within the reporting and documentation policies and procedures of this employer. It appears possible that no amount of documentation would ever have convinced Glassen that the employer's response was factual, and not subjective or discriminatory.

An employer's attitude of union animus, and even its interference in employee activities protected by statute, do not shield an employee from a poor work record. Countering the charge of discriminatory enforcement is the fact that the employer followed its own personnel policies to the letter, including establishing a special, remedial supervision of Glassen's work, as recommended by the grievance committee. Glassen's inability to work successfully with that supervisor finally led management to cut short his probation, and to terminate his employment. The record made in this case fully supports the conclusion that the decision was made based upon good business practice. Glassen could not meet the established standards for the position he was hired to fill, and he was unable to change his work performance to meet the employer's established standards. It is clear from this record that the employer would have made the decision to discipline and then discharge Glassen regardless of the union's organizing or Glassen's involvement in that effort, and that he was lawfully discharged.

Other "Discrimination" Claims -

Other lines of evidence that Glassen played out, in an effort to show a pattern of discrimination, simply lead nowhere. The claimed inequities in salary increases were not tied to other employees' support for or opposition to the union, so as to establish a broader pattern of discrimination on the basis of union activity or lack thereof. Glassen's claims concerning the denial of his request for financial support for the outside continuing education

program must be considered in light of his apparent unwillingness to commit to a long-term employment relationship with this employer, as well as the inapplicability of the requested training to Glassen's current assignment. Management's refusal of Glassen's request to have witnesses present whenever he met with his immediate supervisor must be viewed in light of the ongoing expectancy that employees of this employer have frequent discussions of cases with their supervisors, the non-disciplinary nature of many such meetings,³² and the employer's insertion of a different supervisor into the situation when that was recommended by the grievance committee. The "harassment" claim concerning the class in which Glassen was guest-lecturing never involved any actual conversation between Glassen and Adair; there was no disruption of the class, and Glassen's perceptions of the situation were controverted with explanation of a simple scheduling error. Even if the employer's memos on the subject evidence a certain ineptitude on its part, the argument over the use of professional leave for doctor's appointments apparently resulted in the application of a uniform policy to all employees, consistent with what was believed to be the historical antecedents of the personal leave benefit. Other than to illustrate that there were ongoing conflicts of a type that often occur between an employee and employer personnel policies, Glassen failed to substantiate that these incidents were either related to his protected activities, or were pretextual.

³² The right to union representation in "investigatory" meetings does not extend to each and every interaction between employees and their supervisors. See, City of Seattle, Decision 3593-A (PECB, 1991), citing NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1975):

FINDINGS OF FACT

1. The Chelan-Douglas Mental Health Center is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1). At all times relevant to this case, Executive Director Laszlo Dezsofi and Initial Services Department Director Mark Weick were administrative officials of the employer, and the employer had in effect a grievance procedure which could be invoked by individual employees of the agency.
2. R. Paul Glassen was a non-supervisory employee of the Chelan-Douglas Mental Health Center. He was hired in December of 1989, as a "County Designated Mental Health Professional/Mental Health Specialist. Under an established job description, Glassen was responsible for crisis assessment and initial crisis counseling.
3. On November 5, 1990, Teamster Union, Local 760, filed a petition for investigation of a question concerning representation with the Public Employment Relations Commission, seeking to represent the non-supervisory employees of the Chelan-Douglas Mental Health Center. Glassen was not a leader of that organizational effort.
4. On an unspecified date, Glassen engaged in discussion of the union with another employee of the Mental Health Center. That conversation occurred on the employer's premises, during work hours. Glassen's mention of the union became known to the employer through a complaint from that employee.
5. On December 12, 1990, while the union's representation petition was pending before the Commission, Glassen was reprimanded for "union organizing on company time".

6. Prior to December 20, 1990, Glassen enrolled, on his own volition, in a continuing education program at the University of Washington. The specific subject of that training was not directly related to Glassen's work with this employer. Glassen nevertheless requested financial assistance from the employer for his expenses related to the training. In response, the employer inquired as to Glassen's commitment to long-term employment with the employer, but Glassen apparently declined to make such a commitment.
7. On December 20, 1990, the employer refused Glassen's request for financial support for his specialist training at the University of Washington.
8. On January 1, 1991, while the union's representation petition was pending before the Commission, the employer unilaterally granted pay increases to all non-supervisory employees in the department in which Glassen was employed, including Glassen. Glassen disputed the accuracy of his pay increase.
9. At a representation election held by the Commission on January 25, 1991, the majority of votes cast favored "no representation". The union did not file objections to the election.
10. On February 22, 1991, the employer placed Glassen on probation for a six-month period, citing problems with his attendance, professional behavior, implementation of agency policy, and failure to complete work documentation required to receive funding from appropriate governmental agencies.
11. On February 25, 1991, Glassen filed a grievance under the procedures previously established by the employer, alleging verbal abuse, and requesting a full investigation of the criticisms of his clinical skills, emergency responses and peer relationships as contained in the probation notice.

12. Glassen's grievance was processed in accordance with the previously established grievance procedure, and he participated in the designation of a three-person grievance committee composed of personnel from within the agency staff.
13. On March 18, 1991, the three-person grievance committee affirmed the imposition of the six-month probation on Glassen, with comments related to needs for improvement in appropriate and timely completion of paperwork, peer relationships, and compliance with agency policy and procedure. The committee recommended assignment of a different supervisor, and named a specific person, Joe Adair, to document and assist in correcting deficiencies in Glassen's paperwork and record keeping. Adair was, in fact, assigned thereafter to work with Glassen.
14. During April of 1991, the employer turned down Glassen's request to use several hours of "professional leave" for a doctor's appointment, stating that the absence should be charged to available "sick leave". There followed two memos to the entire agency staff, stating and then correcting the procedures for professional leave.
15. On May 2, 1991, Glassen filed the initial complaint charging unfair labor practices in this matter, alleging discrimination based upon his alleged protected activities.
16. As of May 31, 1991, Weick had documented 15 separate occasions, dating back to February 14, 1990, when he communicated to Glassen, either orally or in writing, deficiencies in the timely completion of paperwork or that he was continuing to see initial clients beyond agency standards. Such problems were also discussed in department meetings.
17. On a weekly basis during May of 1991, Adair reviewed and re-reviewed a total of 15 of Glassen's client files. These

critiques were consistently negative concerning timely completion of paperwork and adherence to agency reporting standards. The documentation noted that frequently problems commented on in earlier reviews were not later corrected.

18. On July 1, 1991, Glassen's employment with the employer was terminated by his discharge.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapters 41.56 RCW and 391-45 WAC.
2. As an employee of the Chelan-Douglas Mental Center, J. Paul Glassen was a public employee within the meaning of RCW 41.56.030(2), and was therefore entitled to the protections of Chapter 41.56 RCW.
3. As described in the foregoing findings of fact, the evidence of record in this case sufficiently establishes a *prima facie* case to support an inference that the employer presented an attitude of union animus when dealing with its employees, so that its actions taken against J. Paul Glassen could have been motivated to discriminate against Glassen in reprisal for the exercise of rights protected by Chapter 41.56 RCW.
4. As described in the foregoing findings of fact, the evidence of record in this case establishes that the employer had good and legitimate business reasons for its scrutiny and criticism of the work performance of J. Paul Glassen, as well as for its discipline and subsequent discharge of the complainant, so that those actions did not constitute an unfair labor practice under RCW 41.56.140(1).

ORDER

The complaint charging unfair labor practices filed in this matter shall be, and hereby is, DISMISSED.

ENTERED at Olympia, Washington, on the 1st day of December, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, reading "Walter M. Stuteville".

WALTER M. STUTEVILLE, Examiner

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