STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CHARLES WICKLANDER, Complainant,	)	CASE 10826-U-93-2515
vs.	)	DECISION 4860-A - PECB
CITY OF PASCO, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Charles Wicklander, appeared pro se.

Greg A. Rubstello, appeared on behalf of the employer.

On December 9, 1993, Charles Wicklander filed a complaint charging unfair labor practices with the Public Employment Relations Commission. Wicklander alleged the City of Pasco had discriminated against him and interfered with rights granted by Chapter 41.56 RCW. Specifically, the complaint alleged the employer and Wicklander's union, the International Union of Operating Engineers, Local 280, had jointly interviewed employees about a confrontation between Wicklander and his acting foreman, that the employer asked about Wicklander's actions as shop steward in the interviews, and that Wicklander was reprimanded by the employer and removed from the union's negotiating team as a result of the interviews.

In the preliminary ruling process, conducted pursuant to WAC 391-45-110,[1] all allegations against the employer were dismissed except the allegation that the employer interrogated employees about

[1] All of the facts alleged in the complaint are assumed to be true and provable; the question is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

Wicklander's actions as a shop steward.[2] Wicklander did not appeal the dismissals. Pamela G. Bradburn was designated as Examiner to conduct further proceedings in the matter pursuant to Chapter 391-45 WAC. A hearing was held before the Examiner in Pasco, Washington, on February 8, March 20, and March 21, 1995. Both parties filed briefs on June 12, 1995.

BACKGROUND

Parties to the Dispute

The events relevant to this matter occurred during mid-1993, when the following people held the listed positions. Jim Ajax was public works director for the City of Pasco. Larry Johnston was a business representative of the International Union of Operating Engineers, Local 280, the exclusive bargaining representative of a bargaining unit of employees working in the employer's departments of public works, and parks and recreation. Charles Wicklander was employed as a heavy equipment operator in the street division of the employer's public works department.

Wicklander had been the union's chief shop steward from August 1, 1990, until an unknown date; he took office again as a shop steward in October 1992 and served until June 27, 1994. On March 29, 1993, Public Works employee Lorraine Reynolds was elected as the union's chief shop steward.

The complaint focuses on a series of interviews on June 23, 1993, of public works employees other than Wicklander. The employer and union jointly conducted the interviews. On July 1, 1993, the

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[2] The facts were not sufficiently detailed to state a cause of action other than for employer interference related to the June 23, 1993 interviews. Decision 4860 (PECB, 1994).

employer reprimanded Wicklander for one of the incidents discussed in the interviews. The employer's questions during the interviews, not the merits of that reprimand, are at issue in this proceeding.

Procedural Issues

A number of procedural issues required rulings during the hearing by the Examiner.

At Wicklander's request, witnesses were sequestered except for one person who remained to assist each party's representative: former Public Works Director Ajax assisted the employer's counsel; union official Larry Johnston assisted the union's counsel, who was present solely to represent the interests of union officials, and Wicklander was assisted by his wife Mary Wicklander.

The employer moved to dismiss the complaint after Wicklander's opening statement, and repeated its motion after the close of Wicklander's case. The Examiner denied each motion.

Several issues arose regarding the admissibility of internal union documents. Wicklander sought to introduce Johnston's notes of the June 23, 1993 interviews[3] and asked the Examiner to subpoena union documents relating to several local union meetings, including sign-in sheets, minutes, and notes of the meetings. The union objected on the grounds that such documents dealt with internal union matters that should not be disclosed to the employer, as would be required if they were admitted. The Examiner issued a subpoena requiring the documents to be submitted for her in camera review. She stated she would obscure any part of Johnston's notes that revealed internal union matters and transmit to Wicklander any documents dealing with shop steward and negotiating committee elections. The union complied, and the Examiner found that the

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[3] Wicklander did not receive a copy of these notes until the first day of hearing.

notes could be admitted as evidence since they did not reveal internal union matters, and none of the subpoenaed documents mentioned elections for shop stewards or negotiating teams. Wicklander proffered Johnston's notes at a later point during the hearing and they were admitted.

Disputes Over Scope of Hearing

In the first of several disagreements over the substantive scope of the hearing, the employer objected to questions Wicklander asked about whether, after the June 23, 1993 interviews, the union reversed an earlier decision that the shop stewards would constitute its next negotiating team. The Examiner interpreted the preliminary ruling as permitting Wicklander to attempt to make a connection between the June 23, 1993 interviews and any change in the union's negotiating committee, and overruled the objection.[4]

Second, Wicklander moved on the third day of hearing to add the union as a respondent in his case against the employer.[5] Wicklander based his motion on his allegation that Johnston's notes of the June 23, 1993 interviews were new evidence of union discrimination unavailable to him when the separate complaint against the union was dismissed. The Examiner denied the motion, reasoning

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[4] Decision 4860 (PECB, 1995) provides, in pertinent part:

> Paragraph 7 of the complaint, which alleges that the employer interrogated certain employees as to Wicklander's status as a union steward during the course of a June 23, 1993 meeting, is found to state a cause of action for employer interference with internal union affairs ...

[5] Wicklander had filed a separate complaint against the union contemporaneously with the complaint against the employer. The complaint against the union was dismissed because the statement of facts had not been detailed enough to state a cause of action for collusion with the employer or for union discrimination. City of Pasco, Decision 4859 (PECB, 1994).

that Wicklander had alleged the substance of Johnston's notes in his complaint against the employer even though he had not seen them; consequently, Johnston's notes were not new evidence. The Examiner also noted the six month statute of limitations had long since run for any improper acts of the union in June, 1993.

Third, in response to an employer objection to Wicklander's attempt to enquire into the merits of his July 1, 1993 reprimand, the Examiner excluded any such testimony because the allegations in the complaint against the employer regarding the reprimand had been dismissed in the preliminary ruling process.

Source of the Dispute

As of June, 1993, Wicklander had filed a number of grievances, many over safety-related issues. Wicklander clashed frequently with superintendent Marvin Ricard over these grievances and other matters. Apparently by reason of being a shop steward, Wicklander also participated in public works labor-management meetings as a representative of the street division.

Selection of Union Negotiating Team -

The collective bargaining agreement between the employer and the union was to expire December 31, 1993. The members of the union's negotiating team historically were the single shop steward from the parks and recreation department, the chief shop steward, and one of several shop stewards from the public works department.

The upcoming negotiations were discussed at a March 29, 1993 union meeting, but witnesses disagreed on whether the membership of the union team was decided at that meeting.[6]

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[6] This is important because Wicklander contended the membership of the negotiating team was changed at a later meeting, resulting in his removal.

* Johnston, who had just returned to the position of business representative after ten years as an international union representative, testified he acknowledged the past practice and said he would likely follow it; he had no recollection of any vote on the makeup of the team occurring at the meeting.

* Wicklander was the only witness who clearly recalled a negotiating team of shop stewards being elected by a voice vote at that meeting.

* Wayne Tikka, a bargaining unit member since July 1990, thought he had heard there was an election of shop stewards as a negotiating team at the meeting; he did not believe he had attended the meeting.

* Kristi Odle, employed since June 1992 in the wastewater treatment division of the public works department, had heard a negotiating team was named after she left that meeting.

* Mary Wicklander had been told by her husband in early 1993 that he had been elected a member of the negotiating team.

* Ray Wilson, who had begun working in the street division on March 15, 1993, recalled the election of representatives from the street, parks, and wastewater treatment divisions to the negotiating team, but was not certain when it occurred.[7]

* Reynolds had no recollection of selecting a negotiating team at that meeting, perhaps because she was so surprised to have been chosen chief shop steward.

* The remaining witnesses had extremely unclear recollections of events at that union meeting.

The Examiner concludes it is more likely than not that Johnston indicated his intention to follow the past practice of a negotiating team made up of stewards, and that some employees interpreted that as a selection or a designation.

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[7] Wilson testified the single election occurred some three to four months after his employment, when it was hot outside, and during the painting season which usually began mid-May and continued until the rains began.

It is undisputed that a negotiating team was elected at an August 18, 1993 union meeting and that Wicklander was designated as an alternate rather than a member. Johnston explained he scheduled a formal negotiating team election for several reasons: Reynolds and the parks foreman told him they wanted to give employees in their divisions an opportunity to choose someone other than themselves because of their positions as foremen; Odle had told him she was interested in participating on the bargaining committee and objected to his designating its members, and he received calls from at least two bargaining unit members who objected to Wicklander being on the negotiating team.[8] At the advice of the union's elected business manager, Johnston scheduled a formal election by secret ballot for the negotiating team. Bargaining unit member Bruce Trescott believed the employees decided they wanted to change their negotiating committee a little. Wilson stated the employees had talked among themselves and decided they did not wish to have Wicklander as their representative on the negotiating team. Reynolds thought Wicklander was probably the only shop steward not selected for the negotiating team.

Intervening Incidents Involving Wicklander -
Between the March 29 and August 18, 1993 union meetings, several incidents involving Wicklander occurred in the workplace. Only the timing of these incidents is relevant to this proceeding.

The first incident occurred on June 15, 1993, between Wicklander and superintendent Ricard. As a result, Wicklander met with the employer's personnel officer Webster Jackson and chief steward Reynolds. Later the same day, Jackson questioned several employees about the incident; one of those employees was Charles Lindsey. The next day, the second incident occurred between Wicklander and

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[8] Johnston could not remember whether he received these calls before or after the June 23, 1993 interviews.

acting foreman Lindsey in the workplace and during work time. This incident was observed by some bargaining unit members.

Within several days after the two incidents, public works director Ajax was separately contacted by Wicklander, Lindsey, and Ricard; each told him something had to be done. Ajax asked two witnesses to the second incident whether it was isolated or symptomatic of a larger problem he should know about, and they both said it was the latter. These comments increased the impact of concerns two other people shared with Ajax about Wicklander: just prior to these incidents, an employee had told Ajax there was a possibility Wicklander might bring a weapon to the workplace, and Reynolds told Ajax immediately after the two incidents that Wicklander was losing perspective and something awful could happen.

As a result, Ajax scheduled a series of interviews with public works employees who shared lunchroom and locker room facilities with Wicklander; Wicklander himself was not interviewed. Ajax's intention was to explore the extent and cause of the problems in public works that seemed to stem from Wicklander. Ajax invited union business representative Johnston to attend the interviews, and they agreed chief shop steward Reynolds would also attend. Like Ajax, Johnston and Reynolds saw the interviews as dealing with both the specific incidents involving Wicklander and the broader problem in public works.

The individual interviews occurred in a supervisor's office with Ajax sitting behind a desk. Johnston's contemporaneous notes indicate that Wicklander's behavior as shop steward was mentioned by nine of the ten employees who were separately interviewed on June 23, 1993. Whether any of these comments were invited by the employer lies at the heart of this case.

Johnston's notes do not attribute questions to participants, or indicate who initiated discussion of a topic, except for the first

interview where the notes state: "Who is causing discord at Shop {Ajax.}". Ajax testified he asked each employee about what was really going on in the workplace and whether there were problems there. Ajax specifically denied asking any questions about Wicklander's performance as a shop steward. Ajax and Johnston agreed Johnston's questions related to safety issues, especially whether employees felt comfortable approaching supervisors about safety problems.

Reynolds and Johnston agreed it was Reynolds who asked the first several employees about Wicklander's performance as a shop steward.[9] Johnston then privately cautioned her not to repeat the question in later interviews because he did not want to get into that subject in these interviews. Reynolds and Johnston both testified that in interviews after Johnston's caution of Reynolds, comments about Wicklander's behavior as a shop steward were mostly volunteered by the employees. Ajax saw the volunteered comments about Wicklander's shop steward activities as related to the subject of safety, which was a topic of questioning in each interview.[10] The tenor of the individual comments was that Wicklander made mountains out of molehills on safety matters, that he carried issues farther than seemed reasonable, that he appeared to be using his shop steward position to advance his own agenda or for personal vendettas, that this behavior made employees very uncomfortable working with him, and that they were reluctant to take safety or other union issues to him.

Ajax, Johnston, and Reynolds agreed that Johnston interrupted a question Ajax asked in one of the interviews, saying that was a

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[9] Reynolds saw all the disputes between Wicklander and superintendent Ricard as safety related.

[10] The record is very clear that most of Wicklander's many protests and grievances related to safety matters.

matter for Johnston to inquire about.[11] Reynolds thought the question Ajax began to ask was about Wicklander's shop steward status. Johnston recalled in the fourth, fifth, or sixth interview, Ajax asked something like: "Do you feel comfortable going to your steward in matters of--." At that point, Johnston interrupted and said that was not an appropriate question for Ajax to ask, and he apologized. Ajax testified that when he had finished his own questions in the fourth or fifth interview, he started to ask a question Johnston had used as his own first question in prior interviews, which was whether the employee felt comfortable going to his or her immediate supervisor.[12] Johnston had immediately interrupted the question, and Ajax apologized. Ajax was interested in this issue because employees had told him they feared being disciplined if they did something that turned out to be unsafe. Johnston's notes show that the fourth, fifth, and sixth employees interviewed all commented on the topic of approaching a foreman or supervisor or superintendent on safety issues before they commented on Wicklander's performance as a shop steward. Neither the fourth nor the fifth employee interviewed could remember anyone asking them questions about Wicklander as a shop steward; the sixth employee interviewed was not called as a witness. None of the interviewed employees who testified recalled Ajax asking a question about Wicklander as a shop steward; the closest any came was Bruce Trescott, who said if he had to guess he would guess that Ajax asked about steward status because Ajax was the one organizing the meeting.

Ajax, Johnston, and Reynolds all testified forthrightly and in detail on this subject. The Examiner concludes that Ajax, Johnston, and Reynolds are all believable, and that even if

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[11] This is not reflected in Johnston's notes of the interviews.

[12] Most of the employees interviewed had a bargaining unit member for an immediate supervisor.

Johnston and Reynolds are correct and the interrupted question was about feeling comfortable approaching the shop steward rather than the supervisor, the interrupted question had no apparent impact on the employee who heard it.

POSITIONS OF THE PARTIES

Wicklander asserts he had filed "whistleblower" complaints involving safety and sexual harassment, which were investigated by Jackson and Ajax, and the employer later attempted to conceal the existence of the complaints and its investigation of them. Wicklander disputes the employer's claim that the June 23, 1993 interviews were aimed at collecting information about the incident between him and Charles Lindsey, noting that few of the employees interviewed witnessed the incident. Wicklander contends the true purpose of the interviews was to collect damaging statements about him and harm him within his union, and the employer promised the employees confidentiality to encourage such comments. Wicklander argues his later exclusion from the negotiating team proves the employer's interference was effective.

The employer argues Wicklander failed to elicit any evidence that it questioned any employee about Wicklander's union activities during the interviews. The employer further asserts that Wicklander produced no evidence that any employee other than himself felt encouraged, intimidated, or coerced by the employer regarding statements made during the June 23, 1993 interviews or in the later selection of a union negotiating team. Because of this failure of proof, the employer asserts the Examiner should have granted its motion to dismiss at the close of Wicklander's case. The employer further contends no interference violation can be based on Wicklander's testimony that he felt his rights had been interfered with, because Wicklander's belief was unreasonable and based on a misunderstanding of the facts. In its brief, the employer contends

the Examiner's ruling on its second motion to dismiss added an additional issue, whether the employer interfered with Wicklander's rights by its presence at a meeting during which employees were questioned by the union about Wicklander's union activities. On this issue, the employer asserted that no employee had been intimidated by Ajax's presence during the June 23, 1993 interviews.

DISCUSSION

Appropriate Legal Standard

The Commission recently said "[A]n interference violation occurs under RCW 41.56.140 (1) when an employee could reasonably perceive the employer's actions as a threat of reprisal or force or promise of benefit associated with their union activity." Port of Tacoma, Decisions 4626-A, 4627-A (PECB, 1995). This determination is not based on the actual feelings of particular employees, but on whether a fictional employee in the same circumstances could reasonably see the employer's actions as discouraging his or her union activities.

It is also clear that an employer's innocent intentions when engaging in the questioned actions are legally irrelevant. City of Seattle, Decision 3066 (PECB, 1988), affirmed Decision 3066-A (PECB, 1989).

The Commission has recently affirmed its adherence to a single standard for evaluating evidence that applies to all complainants, regardless of whether they represent themselves or are represented by counsel. Seattle School District, Decision 4917-A (EDUC, 1995).

Motions to Dismiss

The employer moved for dismissal after Wicklander's opening statement, arguing Wicklander had failed to state he was going to present facts that would substantiate the allegations of his complaint. The employer's second motion, made after Wicklander finished presenting his case, argued he had presented no firm evidence that Ajax had asked any questions during the June 23, 1993 interviews about Wicklander's shop steward status.

Wicklander appeared pro se in this proceeding. He was necessarily handicapped by his lack of legal training and experience and, in the circumstances of this case, by the fact he was questioning witnesses about events at interviews in which he did not participate. The Commission has recognized Examiners bear a heavy burden when hearing cases presented by parties representing themselves.

> The complainant appeared pro se in this proceeding. While Minetti showed a fair degree of skill, we recognize that he is not an attorney, and that he has had no formal training in the law. The record shows that the Examiner gave Minetti every consideration, overruling most of the objections asserted by the employer and union, making suggestions helpful to Minetti's presentation of the case, and allowing Minetti to pursue evidence where relevancy was not readily apparent. We approve the Examiner's conduct of the hearing in a case such as this, where the complainant is appearing pro se.

Port of Seattle, Decisions 3064-A, 3065-A (PECB, 1989).

Although they purport to present evidentiary issues, motions to dismiss a pro se complainant's case in the middle of a hearing necessarily involve procedural questions. This is so because pro se complainants may not thoroughly understand the conventions of trial or administrative procedure; pro se complainants may not be aware of their ability to call management officials as their

witnesses, and pro se complainants may expect to present part of their case through cross-examination of the employer's witnesses. Accordingly, the Examiner concluded it was inappropriate to weigh the totality of Wicklander's case until after the hearing was completed, and denied both employer motions to dismiss. The Examiner's opinion has not changed.

The employer now objects to an aspect of the Examiner's denial of its second motion to dismiss, which it sees as adding an issue not raised by the complaint. The employer phrases the added issue as:

> Whether or not the employer interfered with the exercise of union rights under Chapter 41.56 by its mere presence at the June 23rd meeting if questions were asked by the Union Representatives that concerned the Complainant's Shop Steward's union activities?
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> Employer's brief, page 2.

Because parties to Commission proceedings lack access to the type of discovery available in civil litigations, the evidence elicited at hearing may diverge from, and sustain theories different from, those specified in the complaint. If a respondent believes itself prejudiced by such a divergence, it may request a continuance.

The employer did not make such a request in this case after the ruling which it sees as adding this issue, nor did it raise an objection on the record. In the circumstances of this case, the Examiner considers this alleged additional issue as proceeding naturally from the issue that was referred to hearing.[13] The Examiner concludes no procedural impropriety, or prejudice to the employer, resulted from the wording of her denial of the employer's second motion to dismiss.

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[13] A parallel concept in criminal law is the "lesser included offense" (e.g., breaking and entering would be a lesser included offense of burglary).

Analysis of Interference Claim

Wicklander draws several conclusions from his contention that the employer's true purpose in conducting the June 23, 1993 interviews was broader than merely inquiring about the incident between Wicklander and acting foreman Lindsey. Wicklander has proven this contention, since Ajax testified he was interested in finding out whether there was a serious problem in the workforce of public works and, if so, from whom it proceeded. But that proof does not extend as far as Wicklander takes it. Wicklander's second claim is that the employer falsified its purpose; there is no evidence in the record that the employer ever said the June 23, 1993 interviews were limited to the Wicklander-Lindsey incident. Wicklander's next negative conclusion drawn from the employer's broader purpose is that the employer intended to inquire about his performance as union shop steward for the street division. As discussed above, the most that can be said with certainty from the record is that Ajax may have begun to ask about Wicklander's shop steward status in one of the ten interviews; if that occurred, whichever employee was involved had no recollection of Ajax's attempted questioning.

As additional support for his conclusion that the employer's purpose was unlawful, Wicklander's complaint alleged the employer promised interviewed employees that their responses would be kept confidential; there is no evidence in the record to sustain this allegation because it was never mentioned during the hearing.

What Wicklander has proven is that an employer official heard bargaining unit members, either spontaneously or in response to a union representative's question, give their opinions about Wicklander's handling of issues in his role as shop steward. Whether the employer interferes with employee rights by listening to bargaining unit members discuss such a topic in the presence of

their union representatives appears to be a case of first impression for the Commission.

The employer in Port of Tacoma, Decisions 4626-A, 4627-A (PECB, 1995), had pressured at least two bargaining unit members to drop their opposition to a contract addendum that was before the union for ratification. The conversations could not be considered violations because they occurred more than six months before the unfair labor practice complaint was filed, but they were evidence of union animus supporting discrimination violations. Similarly, in City of Seattle, Decision 2230 (PECB, 1985), a supervisor suggested two years before the complaint was filed that a bargaining unit member ask about a slate of candidates for union office who would oppose an outside business representative the supervisor disliked. The Examiner concluded the alleged conduct could have violated the law but dismissed the complaint because the union presented no evidence of similar activities by the supervisor during the six months before the complaint was filed.

National Labor Relations Board decisions on this subject are compatible with Commission precedent. In Hoover, Inc., 240 NLRB 593 (1979), the employer was found to have unlawfully assisted the union when it suggested an employee to serve as shop steward and, in the presence of the union representative, persuaded that employee to sign a membership card and become shop steward. On the other hand, it appears the employer must actually affect the employees' choice to commit this type of violation. In Mark Hopkins Hotel, 246 NLRB 931 (1979), employees asked a low-level supervisor (who was also a union member) about possible candidates for shop steward. The supervisor/member said anyone could run, said it wasn't necessary to have a shop steward, and suggested two names. The eventual candidate had not been suggested by the supervisor, ran unopposed, and filed a charge after winning. No violation was found, for a number of reasons. The employees were searching for other people because they did not like the eventual

candidate and their approach to the supervisor became a joint effort to find alternatives. The supervisor was merely reciting facts the other employees knew, and had a right as a union member to express his opinion, particularly when that opinion was elicited by the employees. Finally, the Board noted that the eventual candidate was elected shop steward despite the supervisor's comments.

In summary, violations were found in the cases discussed above when an employer official found a candidate or told bargaining unit members how to vote, or who to support, in upcoming union elections. No violation was found where an employer official answered employee questions about an upcoming election accurately and objectively, and emphasized their right to their own choice in the matter.

The facts of this case fall far short of those in which violations have been found. There is no evidence Ajax suggested Wicklander should be replaced as shop steward, and there is no firm evidence Ajax even questioned Wicklander's conduct in his capacity as shop steward.[14] The Examiner concludes the evidence does not support the allegation of employer interference in internal union affairs.[15]

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[14] The Examiner notes that, in the circumstances of this case, the employer could have had a business justification for inquiring into Wicklander's behavior as shop steward to the extent that it affected his work performance and the work performance of other employees.

[15] This conclusion has an impact beyond its effect in this case. City of Pasco, Decision 4859 (PECB, 1994), which dismissed Wicklander's complaint against the union, stated that Wicklander had not timely replied to an invitation for details supporting what appeared to be an allegation the union and employer had colluded against him. During the process of preparing this decision, a timely response from Wicklander was discovered in the file of his case against the employer. The response, if timely processed, would have barely stated a collusion

The Examiner concludes Wicklander has failed to prove the employer interfered with rights protected by Chapter 41.56 RCW when it questioned his fellow employees on June 23, 1993.

FINDINGS OF FACT

1. The City of Pasco is a public employer within the meaning of RCW 41.56.030 (1).

2. International Union of Operating Engineers, Local 280, is a bargaining representative within the meaning of RCW 41.56.030 (3), and is the exclusive bargaining representative of an appropriate bargaining unit of employees working in the employer's public works department.

3. Charles Wicklander was, at the relevant time, an employee of the employer, a member of the bargaining unit represented by the union, and one of the union's shop stewards. Wicklander had filed many grievances and other complaints, primarily dealing with safety matters.

4. At a union meeting in March, 1993, a discussion occurred about the union's practice of having shop stewards be its negotiating team, but a negotiating team was not designated or selected.

5. Two workplace incidents occurred in mid-June 1993, the first involving Wicklander and a superintendent, and the second

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claim against the union. No relief is available at this time for several reasons. Collusion requires an unlawfully acting partner, and the discussion above concludes the employer did not violate the law. In addition, a lack of a timely appeal may deprive the Commission of any jurisdiction to correct any mistake in Wicklander's claim against the union.

involving Wicklander and an acting foreman. All three individuals involved in the incidents demanded Public Works Director James Ajax do something. Chief shop steward Lorraine Reynolds told Ajax she felt Wicklander was losing perspective and something awful could happen. Another bargaining unit member had previously warned Ajax that Wicklander might bring a weapon to work.

6. Ajax scheduled individual interviews with ten of Wicklander's fellow employees and invited union Business Representative Larry Johnston to attend. At Johnston's request, Reynolds also attended. Ajax's purpose for the interviews was to determine whether a serious problem existed within the public works workforce and, if so, who was the source. Johnston was concerned to discover whether employees felt comfortable raising safety issues with their supervisors. Wicklander was not interviewed.

7. Nine of the ten employees interviewed commented on Wicklander's behavior as a shop steward. Ajax did not question employees about Wicklander's behavior as a shop steward. Reynolds asked the first several employees about it, but dropped the question after Johnston privately cautioned her. From that point on, employees volunteered comments which included that Wicklander made mountains out of molehills on issues (primarily involving safety), that he pursued issues farther than seemed reasonable, that he seemed to use the union to advance his own agenda, and that this made them reluctant to take union issues to him.

8. A union bargaining team was formally elected by secret ballot at a union meeting held on August 18, 1993. Wicklander was designated as an alternate rather than selected for the team,

and was the only shop steward not chosen for the negotiating team.

CONCLUSIONS OF LAW

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

2. The record fails to establish that the employer questioned bargaining unit employees about Charles Wicklander's shop steward activities, that the employer affected the decision by bargaining unit members to remove Wicklander from their negotiating team, and that the employer interfered with employees' exercise of rights protected by Chapter 41.56 RCW.

ORDER

The complaint charging unfair labor practices filed in the above-entitled matter is DISMISSED.

Dated at Olympia, Washington, on the 14th day of September, 1995.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Pamela G. Bradburn

PAMELA G. BRADBURN, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.