STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 252, Complainant,	)	CASE 10409-U-93-2403
vs.	)	DECISION 4691 - PECB
LEWIS COUNTY, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Davies, Roberts and Reid, by Bruce E. Heller, Attorney at Law, represented the union.

Lewis County Prosecuting Attorney, by Eugene Butler, Chief Civil Deputy, represented the employer.

On April 13, 1993, Teamsters Union, Local 252, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Lewis County had discharged Gene Melohn and Kathy Taylor in violation of RCW 41.56.140(1). A hearing was held on July 14, 1993 before Examiner J. Martin Smith. The parties filed briefs to complete the record in this case.

BACKGROUND

Lewis County provides general police, utility and planning services. Warren Dahlin is the chairperson of the three-member board of county commissioners elected by popular vote. David Schilperoort is the director of community services; Cherilynn Reed is manager of senior services activities conducted as part of the Department of Community Services.

Prior to the events at issue in this case, Teamsters Local 252 represented several bargaining units of Lewis County employees,

including the courthouse employees and sheriff's deputies. The union is headquartered in Centralia. Mike Mauermann is a business representative for the union.

On February 25, 1993, Local 252 and Lewis County filed documents to commence representation proceedings before the Commission in four additional bargaining units. Case 10284-E-93-1702 involved employees of the Department of Community Services.[1] The Commission conducted a representation election, by mail ballot.

This case involves two individual employees who were on the eligibility list for the election held by the Commission in the Department of Community Services. Both of them worked as van drivers in the "Dial-A-Ride" program operated by the employer for the benefit of senior citizens and disabled residents. Their cases otherwise do not have much in common, so their situations are set forth separately.

The Gene Melohn Discipline

Gene Melohn worked as a van driver for the employer from November 1990 until March 30, 1993. Some time in late 1992, Melohn became involved in union organizing at the Department of Community Services. Melohn and other employees contacted Teamsters Local 252, which recommended that a meeting of employees be held as soon as possible.

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[1] The other cases processed at that time were:

* Case 10285-E-93-1703, involving employees in the accounting and planning departments. On March 19, 1993, that bargaining unit voted 6 to 0 against representation by the Teamsters.
* Case 10286-E-93-1704, involving administrative service employees. Local 252 was certified as exclusive bargaining representative, based on a cross-check conducted February 25, 1993.
* Case 10287-E-93-1705, involving maintenance and technical employees. Local 252 was certified as exclusive bargaining representative, based on a cross-check conducted February 25, 1993.

A meeting was held in December of 1992, to present information about the Teamsters. One of those attending, Judith Eklund-Meyer, was concerned about Melohn's insinuation that he had "knowledge" of county "secrets" that revealed improper fiscal practices. Eklund-Meyer testified that Melohn had complained generally about low wage rates, scheduling and lack of medical benefits. It bothered her that Melohn offered answers to more of the questions than did the union representatives at the informational meeting.

Melohn became the principal employee involved in soliciting the signatures of other employees on "authorization cards" prior to the filing of the cases with the Commission.[2] Eklund-Meyer testified that she "rarely saw Gene without a [Teamsters] card in his hand".[3] Fellow employee Judith Markle testified that Melohn did not stop with offering one authorization card:[4]

> A. [By Ms. Markle] [Gene Melohn] was very frustrated with my attitude towards the union and not wanting it to come in. I believe Gene made the statement that he had given me a card, as in singular. There was many, many cards. I did not sign any of these cards. They ended up in my garbage can. As time progressed, he just simply got very upset with my attitude. You could see by his facial expressions ... he could not understand why I couldn't see the light.
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> Q. [By Mr. Butler] Did anything escalate at this point?

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[2] It appears that, although the union had a sufficient showing of interest to invoke the "cross-check" procedure in two of the four bargaining units, it did not have a sufficient number of authorization cards to justify use of that procedure in the community services bargaining unit.

[3] The work area occupied by Eklund-Meyer was adjacent to the transportation division.

[4] Markle and Melohn had often had conversations in the past, usually about meals in nearby restaurants. Markle testified of noting a change in Melohn's attitudes when rumors of a union organization drive began, although she placed that in time as the "spring of 1992".

> A. Gene came up to me and very vocally said, "If you would just attend some of these union meetings, you would have a different attitude." He said it very angrily -- this was not just my opinion -- and it had absolutely nothing to do with anything that was going on at the time. I felt like it was a direct attack.
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> [TR., at pages 72-73.]

Markle indicated that Melohn's visits to her desk with authorization cards increased "as the months went by", that Melohn's attitude towards her grew increasingly hostile, and that Melohn continued to make disparaging remarks about department supervisors, such as, "I don't know why the county is putting up with such inept leadership ...." When recalled as a witness, Markle testified of telling Melohn that "I'm not going to sign 'em, I'm not interested, don't give me the [Teamsters] cards...." Markle acknowledged being "fairly emotional", but testified that Melohn was "very persistent" in seeking signatures on authorization cards.

At some point, Cheri Reed instructed the supervisor of transportation functions for the department, Mel Mackey, to correct Melohn's behavior with respect to a number of matters, including objections by one of the Dial-A-Ride drivers that Melohn was "high-pressuring" her to sign an authorization card. Mackey was also to correct Melohn's solicitation of authorization cards during work time and in work areas.[5]

Melohn acknowledged that he openly advocated the union organizing effort, and that he was on the "steering" committee to bring the union to this department. Melohn testified, however, that he merely presented authorization cards to other employees and asked them to vote "Yes" if there was a union election. He said he got considerable "flak" from other employees for distributing the

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[5] Both Reed and Mackey report to Schilperoort. Mackey was not called as a witness at the hearing in this matter.

cards, but that he never threatened people for not signing, nor used obscenities towards negative employees. Melohn also indicated that no one told him during the union campaign that his activities were illegal or inappropriate. Called as a rebuttal witness by the union, fellow employee George Fulgham indicated that he had never known Melohn to "intimidate" people, but that Melohn was well known for being "gregarious" and "talkative".

The record indicates nothing irregular about the initial processing of the representation case. The employer and union had signed an election agreement in which they stipulated the description of an appropriate bargaining unit and a list of eligible voters. That list included Melohn as a regular part-time employee.[6]

Prior to the mailing of the ballots on March 5, 1993, Director Schilperoort took an aggressive role in opposition to the union. He wrote letters to the employees, and called into question their attempt to organize and be represented by Teamsters Local 252.

Eklund-Meyer complained of Melohn's hostile glares at her in the workplace, after it was made clear that she would vote "NO" at the representation election. She told her supervisor, Judy Markle,[7] that she felt unsafe and uncomfortable around Melohn. Reed received a telephone call from Markle's husband on March 17, 1993, stating that his wife was afraid to go to work because of the harassment by Gene Melohn. Although she had planned to be on sick leave that day, Reed drove in to her office and talked to Schilperoort. She also asked Markle, Eklund-Meyer and a third eligible

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[6] The employer has categorized Melohn as a "provisional" employee under its personnel procedures, working less than 69 hours per month (i.e., up to 40% of the 2080-hour work year of a full-time employee), but Commission precedent places the dividing line between "casual" and "regular part-time" at about one-sixth of the full-time work year.

[7] Although referred to as a "supervisor", Markle was an eligible voter in this bargaining unit.

voter (Lucy Gift) to put their discomfort concerning Melohn in writing, and a meeting of these people was set for March 25.

On March 18, 1993, Eklund-Meyer and Markle jointly submitted a memorandum to Reed, detailing their concerns regarding Melohn's behavior. Among their concerns were:

(1) That Melohn was totally disgruntled with his job;

(2) That Markle and Eklund-Meyer had both made it clear to Melohn that they would not sign authorization cards which had been left at their desks;

(3) That Melohn would "badger" them daily to send in their authorization cards;

(4) That a "forged" card with Judy Markle's name on it had been submitted to Teamsters office;

(5) That they had learned from Bob Urvina, a recreation aide, that Melohn had made extremely derogatory remarks about them;

(6) That Melohn's behavior was "unnaturally irrational", and that "subtle harassment" against them had continued until March;

(7) That these occurrences created a hostile and unpleasant working environment, and even individual stress and illness.

On the same day, Lucy Gift wrote a memorandum to Reed, complaining of unsolicited remarks and commentary from Melohn. Most of the comments reported by Gift were to the effect that employees had to be careful not to let Reed hear their complaints; and that the management was "spying" on the employees. Gift detailed several physical symptoms, such as headaches and sleeping problems, that she contended were caused by Melohn and the organizational campaign. Gift testified that Melohn had been a "wonderful person" until September of 1992, when he became very secretive about information that might "get back to Cheri Reed ..." Gift also recalled hearing audible "mumbling" and "grumbling" from Melohn in the transportation and drivers' room.

The tally of ballots was conducted at Olympia on March 19, 1993. That process disclosed that 22 votes were cast for the "No Representation" choice, and 19 votes were cast for the Teamsters, out of 41 ballots cast.[8] Copies of the tally sheet were mailed to the parties, and the union received its copy on March 22, 1993. The union did not file any unfair labor practice charges at that time, nor did it file any objections to employer conduct as improperly affecting the outcome of the election.

Schilperoort showed the letters authorized by Eklund-Meyer, Markle and Gift to the employer's legal counsel and to the board of commissioners.[9] He then prepared to "interview" those employees on March 25th. Those present at the March 25, 1993 meeting were Schilperoort, Reed, Markle, Eklund-Meyer, and Gift. Neither Melohn nor anyone from the union was present.

After the March 25, 1993 meeting, Schilperoort recommended to the commissioners that Melohn's employment be terminated.[10] After discussions with counsel, however, he decided to tell Mel Mackey simply to stop assigning driving to Melohn. This was accomplished on the morning of March 29, 1993.

The Kathy Taylor Discipline

Kathy Taylor worked for the Department of Community Services for five months, from November of 1992 through April 2, 1993. Her

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[8] Thus, a switch of two votes from "no" to "yes" would have changed the result. With 21 votes, Local 252 would have been entitled to certification to represent the employees.

[9] At various points in the record, there are references in testimony or documentary evidence to an ersatz "tax form" which seems to be a joke directed at the Clinton administration, some commentary about a National Enquirer news-magazine, and comments with respect to "the mafia" and "Jimmy Hoffa". The Examiner found that material to have no probative value in this case.

[10] Reed was no longer involved in the employer's action against Melohn at this time. She left on a three-week vacation soon after March 25, 1993.

duties mainly involved driving vans for the Dial-A-Ride program. As a provisional, part-time employee, Taylor worked less than 69 hours per month, on an on-call basis. The number of hours per day that drivers worked varied from 2 to 10 hours, depending upon the route or trip taken.[11] The union characterizes her work record over the five-month period as "exemplary" and, although there is little record made on the point, the employer made no effort to indicate any negative evaluations in her file.

Taylor was aware of an effort to organize a bargaining unit from the first day she worked for the county, in early November 1992. She took no active part in the effort, and made little input into the pro- or anti-union dialogue.[12]

On March 4, 1993, Taylor and other bargaining unit employees received a letter drafted by and signed by Director Schilperoort, stating in pertinent part:

> [Y]ou will be asked to choose to either join the Union or not to join the Union.... I DO NOT believe that the Union is in your best interests for the following reasons:
>
> 1. The County has historically offered and granted the same percentage of salary increase and the same benefit package to Union and non-Union employees alike.
>
> 2. The County Commissioners recently adopted a Personnel Policy and Procedures Manual ....
>
> 3. You are not assured of a salary increase or an increase in work hours simply because you are in the Union.

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[11] The Dial-A-Ride program has no fixed routes or schedules. Drivers take their passengers to medical appointments, grocery shopping, visiting hospitals and the like, on a demand-responsive basis.

[12] That is not to say that Taylor had no opinions about her job. In her testimony in this proceeding, she indicated concern that the management had offered no first aid training to new drivers, that the employer had no personnel and procedures manual, and that she was given little orientation to her duties.

> 4. The Union most likely will require an initiation fee and regular monthly dues payments from you.
>
> 5. The Union might promise you a number of things, such as job security, job promotion, etc. However, the Union cannot assure you of these things due to the fact that these things must be negotiated with County management ....
>
> If the Union is voted in you can expect the following changes:
>
> 1. Union membership will be compulsory.
>
> 2. Union initiation fees and monthly dues will be assessed and collected from you.
>
> 3. The working relationship that we now have will become much more regulated and structured.
>
> I do not view any of these as positive changes for you.
>
> The County operates on a budget. This document is carefully monitored. Thus, for you to believe that you could receive more hours, more pay, more benefits, etc., just by joining the union--you are being sadly misled ....
>
> I would encourage you to VOTE NO UNION on your ballot.
>
> You need to be alert to the fact that you need to vote. Only returned ballots are counted. Thus, a handful of people could determine your future unless you get involved in the process.
>
> Sincerely,
>
> /s/ Dave
>
> Dave Schilperoort
> Director

Taylor did not like the "tone" of Schilperoort's letter, and wondered whether the county commissioners had authorized or approved the letter exactly as he had written it. She wanted Schilperoort to respond in kind, and wrote on March 11, 1993:

> I find your letter of March 4, 1993, both threatening and inappropriate. How dare you use your appointment as a tool of intimidation. The vote to unionize is our right,

> whether it passes or not. Are the commissioners aware of the tone of your letter?
>
> I find it ironic that you would be as concerned about us at this late date, when the vote is already out.
>
> /s/ Kathleen Taylor
> Driver
>
> cc: [sic]
> Reply requested

Schilperoort testified that his only contact with Taylor was the foregoing letter. Schilperoort thought that Taylor's letter was a "sharp" expression of disagreement, but testified that he thought individuals had a right to say these things in a letter.

At the March 25, 1993 meeting concerning Melohn, Schilperoort heard from Lucy Gift that Taylor had made some derogatory remarks about the physical appearance of Cheri Reed.[13] He decided to invite Taylor to his office for a "corrective interview", to discuss her remarks about Cheri Reed.

The interview held on April 3, 1993, was uneventful until the last few moments. Taylor admitted that she had made embarrassing remarks, and she offered to apologize to Reed for the remarks made in February of 1993. The record is in conflict, however, about Taylor's subsequent statements at the April 3 interview. Taylor apparently declined Schilperoort's request that she extend apologies to everyone who may have heard her remarks about Reed. Schilperoort testified:

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[13] Taylor was at the senior center in February, when Reed, Gift and other employees were decorating the facility for a social dance. Taylor saw Reed standing on a ladder, and commented to no one in particular that someone ought to tell this woman that she did not look very attractive in pants. Some testimony indicated that the Taylor's comments were much more graphic and demeaning to Reed. Unbeknownst to Taylor, she was talking about her own supervisor, who she had only met on one prior occasion. Lucy Gift was within earshot when the remark was made.

> Q. [By Mr. Butler] Was there anything about that discussion that was significant to you as a supervisor?
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> A. [By Mr. Schilperoort] The first part of the conversation after the introductions -- I had never met her before -- was that she said something to the effect that her letter was a bit strong. And I said, well, we're not here to discuss your letter, but you need to realize that you are entitled to your opinion and management is entitled to theirs .... She offered to apologize to Cheri. Then she made the statement, do you want me to apologize to the others that heard it in the office and she mentioned names such as Wendy, Renee, Lucy. I said, are you willing to, and then there was a pause and she said, no, you're just trying to intimidate me.
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> And her entire attitude went from being one of conciliatory to aggressive. The first part of the meeting went very well .... [but] her inappropriate response and her aggressiveness that she showed, I saw no reason to continue the meeting any further because I felt like I was dealing with a hostile person at that time, and I didn't want further things said, either by me or by her.
>
> Q. Okay, and so you took the action to terminate her?
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> A. After she left the office, I got up and said the meeting was over.
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> [TR., page 188.]

Reed also became aware of Taylor's "white pants" comment at the March 25 meeting. Reed's original belief was that Taylor had not "made up her mind" about the union election, and she was surprised to learn that Taylor was apparently one of five employees who had announced support for the Teamsters. Reed acknowledged discussing Taylor with Schilperoort after that enlightenment.

After the April 3 meeting with Schilperoort, Taylor went to her work station. In a conversation there, Mackey indicated to Taylor

that he knew nothing of Schilperoort's plans for any discipline against her. Mackey did suggest that Taylor write a letter of apology which Reed would receive after her return from vacation. Mackey gave Taylor driving assignments for the remainder of the day, and Taylor set out on those tasks.

Mackey called Taylor into his office in mid-afternoon on the same day--April 3--and told her that Schilperoort had telephoned him to order that Taylor not be given any further driving assignments. Taylor testified that Mackey acknowledged this was tantamount to being "terminated", and that Mackey admitted feeling some anxiety about Schilperoort's ability and power to fire people.[14] Mackey did not follow through on his promise to write a positive job recommendation for Taylor.

POSITIONS OF THE PARTIES

Teamsters Local 252 asserts that Gene Melohn and Kathy Taylor were discharged from their jobs as van drivers for the Lewis County senior citizens' program in reprisal for union activities that were protected under Chapter 41.56 RCW. It urges that their discharges were as a result of their having expressed support for a union which campaigned to represent employees at Lewis County. As such, the union contends this discipline was in violation of RCW 41.56.140(1), and that the employees ought to be reinstated with full back pay plus interest.

Lewis County argues that Gene Melohn's employment was terminated because of his aggressive and harassing behavior towards female members of its workforce, in addition to other work deficiencies. It urges that Kathy Taylor's discharge followed a meeting with the department director in which she refused to apologize for damaging

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[14] Taylor's testimony at Transcript pages 29-30 stands unrefuted, inasmuch as Mackey was not called as a witness.

remarks made about a supervisor. The employer defends that it waited until the results were known before it took disciplinary action, because of the union election conducted in March of 1993.

DISCUSSION

The Right of Employees to Organize

There is a clear statutory right of public employees covered by the provisions of Chapter 41.56 RCW to organize for the purpose of collective bargaining. Employees are empowered to seek out an established union -- even one that has affiliations at the national level -- or may establish their own association. The pertinent portion of that statute is 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 ...**
>
> [Emphasis by **bold** supplied.]

The enforcement of those rights is through the unfair labor practice provisions of the statute:

> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:
>
> (1) **To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;** ...
>
> [Emphasis by **bold** supplied.]

The Commission is charged with conducting "question concerning representation" proceedings under RCW 41.56.050 through 41.56.100. The filing of a representation petition with the Commission under Chapter 391-25 WAC signals the exercise of the employees' statutory rights. The Commission had handled over 1700 such cases as of December 1993. When such proceedings are commenced, the Commission will conduct an election or cross-check to determine whether a majority of employees have designated a particular organization to represent them in collective bargaining with their employer.[15] The statute and the Commission's procedures and precedents do not differ markedly from the provisions, procedures and precedents developed under the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947. The Commission and the courts of this state have given deference to federal holdings in the area of labor relations, where federal rulings are consistent with Chapter 41.56 RCW. See, Nucleonics Alliance v. PERC, 101 Wn.2d 24 (1984); WPEA v. Highline Community College, 31 Wn.App. 203 (Div. II, 1982).

In City of Olympia, Decision 1208-A (PECB, 1982), the Commission established that an employee fired for no reason but for the fact that he had assisted in a unionization effort is a violation of RCW 41.56.040 and 41.56.140(1). The Commission cited Wright Line, 251 NLRB 1083 (1980), which in turn had relied upon Mt. Healthy City School District v. Doyle, 429 U.S. 274 (1977). This line of cases has applied what has been described as the "but-for" test. More recently, the Supreme Court of the State of Washington rejected the Mt. Healthy approach and the "but for" test in the two cases applying state "anti-discrimination" statutes similar to RCW 41.56.140(1). In both Wilmot v. Kaiser Aluminum, 118 Wn.2d 46

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[15] The Commission's rules call for service of a copy of the petition on the employer, and require the employer to post a notice advising its employees that a petition is being processed by the Commission. Under no circumstances will the employer be told who has signed authorization cards used to establish the showing of interest supporting the petition. See WAC 391-25-070 through -130.

(1991) and Allison v. Seattle Housing Authority, 118 Wn.2d 79 (1991), our Supreme Court instead adopted a **"substantial motivating factor"** test for determining discrimination claims under state law. The new test was embraced in City of Federal Way, Decision 4495, 4496 (PECB, 1993), based on an extensive legal analysis which need not be repeated here.[16] Under the new test, the complainant must establish a prima facie case (i.e., must provide evidence which, if not explained or contradicted, is sufficient to sustain a judgment in its favor). If such a showing is made, the **burden of production shifts** to the employer, to show a lawful basis for its decision (i.e., to produce evidence of non-discriminatory reasons for its actions). The burden of persuasion remains with the complainant, who may respond with evidence showing that the reasons advanced by the employer are pretextual. Even if the employer terminated the employee for multiple reasons, of which only one was discriminatory, the claimant need only show that he or she: (1) Had pursued a statutory right; (2) had been discharged, and (3) there was a causal link between the first two events. Thus, despite some legitimate reasons for the discharge, a violation will be found if the pursuit of statutorily protected rights was **a "substantial factor"** for the discharge.

Of concern to the Supreme Court in both Allison and Wilmot was the legislative intent with respect to discrimination statutes. The Court did not create a new test out of whole cloth, but rather borrowed the "**substantial factor**" test used in tort actions in circumstances where more than one cause resulted in injury or damage.[17] The employer in the Allison case had asserted that a new, lower standard would:

> [Allow] employees [to] abuse the protection that a lower standard of causation will give

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[16] Federal Way, Olympia, and the instant case all involved discharges of employees in connection with a heated unionization campaign.

[17] Allison, 118 Wn.2d at 94.

> them. [The employer] insists that some employees may file discrimination claims to shield themselves from discharge. But that argument ignores the fact that **if the court makes the burden of causation too high, this may encourage employers to fabricate pretexts to discharge employees who have brought discrimination claims or testified against their employers.**

Allison, 118 Wn.2d at 95; [emphasis by **bold** supplied].

Indeed, the Court determined that employees were at a distinct disadvantage in a discrimination case under the "but for" test, because the employee was required to prove causation without the benefit of the employer's knowledge of the reasons for its actions.

> An employee does not have the access to proof that an employer usually has. This holds true for both cases involving retaliation for filing a workers' compensation claim and those involving retaliation for filing a discrimination claim ...

Allison, at page 96.

The change comes in the third step. Now, a complainant need prove only that their union activity was a substantial factor in the decision made by management, when in the past they faced the difficult task of defeating a claim that other reasons advanced by the employer predominated over the unlawful motivation. Without a doubt, the complainant's burden of proof is lower than it had been, and the difficulties have increased for an employer whose actions bear the fingerprints of anti-union animus.

The Discharges at Lewis County

Gene Melohn -

None of the subtleties of union involvement that were present in Federal Way, supra, are present in Gene Melohn's case. He was the

ringleader[18] of the union movement in the Lewis County Department of Community Services, and the employer knew it. Both the testimony of Reed and that of Schilperoort are persuasive that the van drivers and secretaries all looked to Melohn as the leader of the union campaign. Judging from the sharp-edged tone of the witnesses, the Teamster campaign hit a political "nerve" within this department of Lewis County. In Olympia, the discharged union adherent had first made his sympathies known to management when he served as the union's observer at an on-site election conducted by the Commission. Melohn, of course, offered much more day-to-day communication to the management and bargaining unit employees.

As in Olympia, supra, Melohn's prima facie case is bolstered by the timing of the discharge, which occurred within one week after the announcement of the election results. In this case, the discharge came on **the first business day** available for the employer to act after the union's deadline for filing election objections under WAC 391-25-250 had passed.[19]

In a number of cases, the Commission has ruled that a discharge of union adherents occurring soon after an attempt to elect an exclusive representative carries an inference of illegal motivation, where the employer had campaigned actively against the union. Town of Fircrest, Decision 248-A (PECB, 1977); Benton City, Decision 436 (PECB, 1978); City of Asotin, Decision 1978 (PECB, 1984); City of Olympia, supra. This employer's anti-union opinion was openly expressed by Schilperoort's letter of March 4, 1993, where the department head stated: "You are not assured of a salary

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[18] "Ringleader" is defined as "**one who leads others in opposition to authority or law, or in anything deemed objectionable.**" American College Dictionary, (Random House, New York, 1965) p. 1067.

[19] The union could have filed objections to the results of the election up until 5:00 p.m. on Friday, March 26, 1993. Schilperoort reportedly called Mackey at 7:30 a.m. on Monday, March 29, to order termination of Melohn's employment. See Exhibit 5. Schilperoort's testimony at TR. 194 is entirely consistent with that timing.

increase or an increase in work hours simply because you are in the union..." This comment indicates that the part-time van drivers were being targeted by the management as sources of pro-union agitation, inasmuch as the full-time employees in the bargaining unit would not be motivated by the promise of additional work hours. The same letter makes the technically false statement that "union membership will be compulsory",[20] and the tone of the letter was aimed primarily at how bad it would be if the employees had to "join" a union, or had to "pay dues and assessments".

The union's loss in the representation election does not terminate the standing of public employees to file unfair labor practice claims under RCW 41.56.040, et seq. The decision in Chelan-Douglas Mental Health Center, Decision 3886-A (PECB, 1992), includes:

> The Examiner interprets [the supervisors'] 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.

The burden of production must be shifted to the employer, to show that Melohn's activities on behalf of the union were **not a substantial factor** in the employer's decision to discharge him. Put another way, if Melohn's union activities were only an **insignificant factor**, his discipline cannot be remedied by the Commission.

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[20] The statement was false for the very reason enumerated by the department head in his letter. Like all mandatory topics for bargaining, union security clauses are **negotiable** under Chapter 41.56 RCW. Employees would not be obligated to join the union merely because it won the election, but would only be so obligated if the parties negotiated a collective bargaining agreement containing a "union security" clause.

The employer asserts that it based its decision to terminate Melohn's driving assignments on a combination of factors which it adduced at the hearing in this matter. The Examiner reviews those elements below:

*** **Melohn's driving record** was mentioned by the employer in passing. The record shows that he was issued one traffic citation, in August of 1992, but there was no contemporaneous discipline because of that. No other documentation was presented with respect to Melohn's driving record.

Melohn's driving record would, of course, have been relevant so far as a discharge for "cause" would be concerned. The evidence put forth by the employer was not convincing, however.

*** **The Emma Hensel situation** involved Melohn's dealings with a local woman who died in August of 1992, at the age of 104. Separate from his work for this employer, Melohn had done some house repairs and other services for Ms. Hensel. In November of 1992, the senior services program director at Providence Hospital in Chehalis filed a written complaint with Reed, claiming that Melohn had made comments to the hospital staff accusing them of improperly influencing Emma Hensel to change her last will and testament. The hospital official cautioned that Melohn's version of the facts was not correct, and asked Reed to raise this matter with Melohn.

Reed wrote a letter to Melohn about the Emma Hensel situation on November 5, 1992, and believed it to constitute a written warning. Melohn thought his meeting with Reed regarding this matter was very satisfactory, however.[21] There was no written warning adduced from Melohn's personnel file.

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[21] None of the witnesses recalled any reference to the union organizing drive in connection with this meeting.

Melohn subsequently went to talk to the hospital official about the matter, and she was satisfied that "he had no intent to accuse the workers". In a second letter dated November 17, 1992, the hospital official wrote:

> I understand that Gene has been a loyal volunteer for the county and has gone out of his way on many occasions to help people. I appreciate his desire to meet with me and talk over this situation. It was never my intent for Gene to think that he could somehow be held liable at present or at sometime in the future...

A copy of this second letter was sent to Schilperoort. Melohn was not disciplined further with respect to this matter.

Although raised by the employer at the hearing in this case, the Examiner does not credit the Emma Hensel situation as a legitimate basis for the employer's decision to terminate Melohn's employment.

*** **Harassment of fellow employees during the union organizing** was openly advanced by the employer as a basis for its decision to discharge Melohn. No one can contend that the history of unions and union organizing drives in America is a pleasant, artistic, sublime, or inspirational journey. Rather, such events have often been loud and surly, and their history is replete with violence, angry words, and enmities that destroy friendships. Even in the public sector, where the employees help elect the people who later employ them, bringing in a union where there has not been one can be a disturbing and turbulent moment in the life of the community. One of the purposes of the Public Employees' Collective Bargaining Act is to create a regulatory process for peaceful determination of questions concerning representation. RCW 41.56.050 dictates that the Commission "**SHALL be invited to intervene**" in any disagreement about the selection of an exclusive bargaining representative. The procedures of RCW 41.56.060 through 41.56.100 have succeeded in

eliminating the specter of "recognition strikes" and related violence from the dynamics of labor-management relations. The existence of orderly procedures and impartial administration for representation cases does not, however, altogether eliminate the possibility of hard feelings, angry words, and emotions running at a high pitch when a union-organizing effort occurs.

RCW 41.56.040 protects the right of public employees to organize and join unions, but **does not protect threats of reprisal or force, or promises of benefit** made to employees by either unions or managers. RCW 41.56.140(1) and 41.56.150(1) do not inhibit free speech to the degree that raised voices, angry words, and sharp disagreements are universally rendered illegal.

An unfair labor practice violation was found in Metropolitan Park District of Tacoma, Decision 2272 (PECB, 1986), where the employer interrogated an employee to learn the reasons why she had joined a union. Any such interrogation violates the law:

> It has long been recognized that the test for an "interference" violation does not turn on a respondent's motive (or, for that matter, on courtesy, gentleness, or success or failure.) The test is whether the employer conduct reasonably tended to interfere with the free exercise by employees of their right under the collective bargaining statute ....
>
> Decision 2272 at 10.

That is an objective test, which can be used in assessing whether a pro-union employee has illegally harassed an anti-union employee.

Even if one accepts that Melohn's behavior in seeking to obtain employee signatures on union authorization cards was discourteous, rude and ultimately unsuccessful, it is by no means clear that Melohn interfered with the free exercise by Judith Markle, Lucy Gift and Judith Eklund-Meyer of their rights under the statute.

Melohn was hardly in a position to make any promise of benefit that could reasonably have been believed by the other employees. Melohn may have been persistent, but there is no evidence of his having made any threats of reprisal or force towards any of his fellow employees.[22] In fact, Markle, Gift and Eklund-Meyer all voted in the election, as was their statutory right.

Employee conduct directed at other employees can be so hostile and intimidating that an employer is justified in taking disciplinary action, but Melohn's conduct in this case does not rise to the level dealt with by the Commission in Washougal School District Decision 2272 (PECB, 1984). In that case, a custodial employee was reinstated to his former position after a court reversed his termination for an alleged "assault" on the woman who had been the principal of the elementary school where he worked. After reinstatement, the employee engaged in acts of hostility towards teachers at the school, including loud humming, sullen glares, ominous staring, noisy vacuuming, and furniture-bumping. Teachers felt physically threatened by his behavior, which included following several teachers to their homes in his own vehicle, and making obscene and hostile hand gestures toward them. The new principal issued the employee two warnings about his behavior, and he was transferred to another school. Both the Examiner and the Commission ruled in that case that his transfer was an appropriate disciplinary action, and not retaliation for his having used the grievance procedure. In short, the punishment was appropriate despite his exercise of rights guaranteed by RCW 41.56.040.

The standard to be applied here is whether, under the circumstances, the activity of the pro-union employee was reasonably taken by other employees as **interfering with, restraining or**

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[22] The Commission recently held that a bargaining unit employee's invitation to a supervisor to engage in physical combat to settle a grievance was **NOT** protected activity under the statute. City of Pasco, Decision 3804-A (PECB, 1992).

coercing them into forfeiting their rights under the statute. In this case, Lewis County mis-states those rights as including a "right to a non-hostile work environment". The Examiner credits the testimony of Markle and Eklund-Meyer that they felt somewhat fearful of Melohn, because of his activity. Judging from the words which he used, however, the persistence and hostility of Melohn were not in themselves threatening or intimidating, nor did they ever indicate that some physical harm might befall those employees. The Examiner finds no statutory basis in Chapter 41.56 RCW to apply a stricter standard regarding persuasive union solicitation directed to female employees than when directed to male employees.[23] There is no allegation or evidence that Melohn harassed Gift, Eklund-Meyer or Markle as to how to vote in the union election, and they evidently cast their ballots without intimidation.[24]

Markle expressly disclaimed that there was any threat.[25] When pressed to define what "hostile" statements were made to her, Markle quoted Melohn as saying:

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[23] The Examiner is mindful of recent sex discrimination cases such as Ellison v. Brady, 924 F.2d 872 (9th Cir., 1991), where the court ruled that Title VII of the federal Civil Rights Act required that a "reasonable woman" standard be applied in determining whether a hostile work environment affected a female employee's psychological well-being. Such conduct is distinguishable here, where Melohn's remarks to the three women at the worksite were all directed towards a statutory representation election in which all of those involved had equal standing as eligible voters. See, also, Gast v. Department of Labor and Industries, 70 Wn.App. 239 (1993). The appellate court ruled in that case that a female employee could not make out a workers' compensation claim for stress-related illness, where the plaintiff had been subjected to rumors, innuendo and inappropriate commentary by her fellow employees. The court said that such conditions were "unfortunate occurrences in everyday life or all employment in general..."

[24] Much was made of Melohn's rather calm, deliberate demeanor at the hearing. The employer contended that he was yelling and harassing in talking about the union with Markle, Eklund-Meyer and Gift, but there was never an allegation that Melohn even waved a finger at any of those employees. Melohn also had conversations with Cheri Reed and Linda Hughes of Providence Hospital, but neither of them ever mentioned being fearful or uncomfortable in talking to this man.

[25] TR., page 89.

> If you would just come to the [union] meetings, you would understand and you would see the light...
>
> and
>
> If you knew what we were up against, you would be more sympathetic...
>
> [TR., page 85]

Apart from the lack of hostile words in those quotations, there is no evidence here which would take Melohn's conduct out of the range of "occurrences in everyday life or all employment in general".

Eklund-Meyer was most annoyed that Melohn, rather than union officials, answered many of the questions at the union meeting she attended in December of 1992. She was particularly upset about Melohn's comments about how much revenue was being generated by the Dial-A-Ride program. But Eklund-Meyer was neither coerced into attending that the meeting, nor intimidated into **staying away** from discussion of union concerns. Some of her "fears" appear to have been self-induced:

> Q. [By Mr. Butler] What program was he talking about?
>
> A. [By Judith Eklund-Meyer] ... the Dial-A-Ride program.... And he alluded to the fact that he was privilege [sic] to some information that would really shock the rest of us in the room if we knew what he knew.
>
> ...
> So that concerned me. And after that union meeting, I wondered, too, if [Melohn] just thought I was an infiltrator versus the person I was, going to find out about the union. It was very, very apparent that he didn't like being in the same proximity that I was in from his hostile stares, glares, stopping what he was saying ....
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> [TR., page 98]

The actual content of the statements may have been argumentative, but still well short of what reasonably can be characterized as hostile. It was certainly not coercive. At most, Melohn's demeanor was **socially hostile**, but not **physically hostile**. There were no threats, physical or otherwise, and no implications of "consequences" if people voted for "NO REPRESENTATIVE".

In summary, the Examiner concludes that the employer's efforts to show some non-pretextual, non-retaliatory reason for deleting Melohn's name from its list of van drivers has failed. The employer's claim of a poor driving record was not proven, and no discipline had been meted out to Melohn when that alleged misconduct arose. The employer's reference to the Emma Hensel situation proves only an "open-and-closed" incident that bears no relationship to his discharge in March of 1993. Under a Wright Line "but for" analysis, the employer would not have sustained its burden of proof.

The employer's claim that Melohn coerced or threatened female employees fails to indicate behavior beyond that protected by RCW 41.56.040. It certainly fails to provide a defense for the employer under a "substantial motivating factor" analysis reflective of the Wilmot and Allison precedents. Even if the employer had proved that some form of discipline was appropriate for Melohn, as was the case in Washougal School District, supra, the employer did not make a record that it took appropriate steps to correct Melohn's behavior during the time the union organizing campaign was going on at Lewis County. No provision of Chapter 41.56 RCW prevents communication between the employer and the union during representation campaigns, or requires delay of discipline for unprotected conduct until after an election has been held. There is no evidence that the employer made any effort to contact the Commission about the limits of protected organizational activity. There is no indication that the employer contacted the union about the tactics being used by the union's supporter. There was

credible testimony that Schilperoort and Reed asked Mackey to talk to Melohn about "harassing" other employees. Reed testified:

> I went back to Mr. Mackey, because we follow a line of command, and told him that I felt that he needed to remind his employees that they could talk about union on their own time, but not on work time, and even if they were on a break, other employees were not on a break, therefore they would be disrupting their work and talking [sic] up their work time. I also stated this at a staff meeting with all coordinators and support staff in attendance, as well ....
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> [TR., page 152]

Thus, Reed seems to have been more interested at the time in a potentially lawful "no solicitation" rule, than in correction of unprotected "harassment" activity on the part of Melohn. Importantly, the record lacks any evidence that Melohn was even admonished for solicitation on the employer's time, let alone for the remarks now claimed to have been unprotected harassment.[26] In this case, the employer seems to have been more interested in campaigning on its own, and in getting the election behind them, than in dealing with what it now characterizes as offensive and unprotected harassment.[27]

It is unrebutted that, when Melohn called Mackey on March 31, 1993 to find out why he didn't have any driving assignments, Mackey told him that Schilperoort wanted him off the driver list, and that Mackey said, "I don't know what is going on." The only reasonable

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[26] This gap in the record is attributable to the absence of Mackey as a witness in this proceeding. The employer asks the Examiner to take on faith the critical finding that Melohn was **warned about harassing** other employees with respect to signing union authorization cards. The Examiner is unwilling to do so on this record.

[27] The Examiner does not credit the testimony of Bob Urvina about a conversation with Gene Melohn about the union organizational drive and a derogatory reference by Melohn to Markle and Meyer, inasmuch as Urvina testified that "he wasn't really listening". TR., page 63.

conclusion which remains is that, having fended off the union organizing drive, the employer took steps to rid itself of the most visible and persistent supporter of the union.

Kathy Taylor -

Kathy Taylor reacted negatively to Schilperoort's anti-union letter in the days before the representation election, and her written response to the employer made her visible as a union adherent. Cheri Reed, who at first did not know Taylor was supporting the union, later identified her as one of five people she believed were involved with Melohn in getting the Teamsters on the ballot.[28] Taylor's situation is thus sharply distinguished from that of Elizabeth Snyder, one of the dischargees in City of Federal Way, Decision 4495, 4496 (PECB, 1993). The Examiner found there that Snyder worked "in the office of a union supporter", but there was no evidence that she had identified herself to management as a union adherent, or that the management even knew of her position.

Taylor then refused to retreat from her views when called in to an interview with Schilperoort on April 3, 1993.

The Examiner concludes the record is sufficient to support a prima facie case that Taylor's discharge was motivated by her involvement with the union organizing effort at Lewis County.

The employer asserts that Schilperoort lawfully based his decision to terminate Taylor's employment on her "behavior" and "attitude". The gist of the argument is that complaints by Lucy Gift, Cheri Reed, and other employees were communicated to Schilperoort, and that this all took place without regard to the union election. Reed and Gift also complained about the protected union activities of Gene Melohn and, taking the evidence as a whole, the Examiner

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[28] TR. 180, at lines 8-16.

does not find support in the record for a conclusion that the employer had non-discriminatory reasons for discharging Taylor.

Schilperoort had heard Taylor's name mentioned by Lucy Gift at the March 25 meeting, where one of the topics was what to do now that the union election was over and the results were known. Apart from management officials Schilperoort and Reed, all of those attending that meeting were from the anti-union segment within the bargaining unit. In King County, Decision 2955 (PECB, 1988), the Commission considered the responsibilities of an employer that relied too heavily on one-sided information regarding a rather fierce de-certification campaign. There had been a sharp division of pro-union and anti-union groups, and the identified leader of the de-certification effort began keeping a log on the activities of the union shop steward. The de-certification effort failed, but the log was conveyed to a supervisor and subsequently used as the basis for a written warning to the union steward. The fact of having acted on information provided to it did not provide an absolute defense for the employer, and it was found guilty of a violation of RCW 41.56.140(1) by "acting, without normal investigation, upon information put forth under the circumstances here present, and by imposing a written warning upon the union official in deviation from its own normal procedures and standards". The Examiner there ruled that the union steward "could reasonably have believed that the employer was acting at the behest of her opponents on the decertification issue". Like Taylor, the employee in King County had never received any discipline, warning or adverse evaluation as an employee prior to the union campaign. As here, emotions ran high, and sides were chosen. In both cases, the employer was reasonably certain as to who was on each side, and took the position that one side was right and the other side was wrong.

Schilperoort testified that he decided to talk to Taylor on April 3, to "discuss her remarks regarding Cheri Reed". Much was made by the employer that the Dial-A-Ride employees were "at-will" or

provisional employees under current county personnel rules, and were not entitled to progressive discipline such as counseling, oral or written warnings, or suspension. It is difficult for the employer to rely on this categorization of Melohn and Taylor, however, when it had so recently stipulated that those employees were eligible voters in a bargaining unit defined as including "regular part-time" employees of Lewis County. Further, the rights conferred by Chapter 41.56 RCW apply fully to "probationary" employees. Valley General Hospital, Decision 1195-A (PECB, 1981). Finally, Schilperoort's own characterization of the April 3 meeting as a "corrective interview" is at cross-purposes with any claim that van drivers were at-will employees.

Schilperoort testified that Taylor became "hostile", "aggressive" and, in effect, nonconciliatory during their April 3 interview. He pointed to no other feature of her employment as a reason for her discharge, or to any other consideration of lesser discipline which might have been more appropriate. The "smoking gun" comment by Taylor was her statement that she would not apologize to everyone who might have heard the remark she made about Cheri Reed, and that Schilperoort's insistence that she do so was "intimidating". At the most, one might characterize her verbal gesture as an "out-burst". It did not rise to the level of an angry or provocative pronouncement; there was no "shouting match". There was no verbal misconduct of the type described in City of Pasco, supra, and there was certainly no physical threat. This case is more comparable to Wellpinit School District, Decision 4083 (PECB, 1992), where a union president was unlawfully suspended for returning "shouts" to the employer's representative during a grievance meeting, and Wellpinit School District, Decision 3625-A (PECB, 1991), where the Commission affirmed reinstatement of a union president, when it was apparent her discharge was motivated by "highly visible union activities". It was Schilperoort, not Taylor, who terminated the meeting.

The decision to terminate Taylor's employment came on the same day as her meeting with Schilperoort. What took place during that four-hour period of time was not made known, except it is uncontroverted that Schilperoort placed a telephone call to Mackey to effect his decision. Apparently, Schilperoort gave no indication of his personnel reasons for firing Taylor when he talked to Mackey, which was unusual because Mackey was undisputably the supervisor directly responsible for hiring, firing, and discipline of the employees who drove the Dial-A-Ride vans.[29]

There can be little doubt that Kathy Taylor's "attitude" about an apology for her comments about Cheri Reed was not the sole reason for her discharge. Schilperoort relied upon the reports of Reed and Gift, neither of whom was Taylor's immediate supervisor, to determine whether her "attitude" impacted negatively on how she delivered service to Lewis County, yet there was no recommendation from Reed or any other management official as to what action should be taken against Taylor. It is not credible to separate the "attitude" of Kathy Taylor at the April 3 meeting from the recent union campaign and election, with barely a week separating the two events. The evidence produced by the employer would not have been sufficient to sustain its burden of proof under the Wright Line test.

Applying the Wilmot and Allison test, the Examiner concludes that her perceived status as a "provisional" employee and the one verbal confrontation were used as pretexts by the employer to punish Taylor for her exercise of rights protected under the statute. The Examiner finds that Taylor's disagreement with the employer's anti-union letter, and her support for the union were both substantial factors in the employer's decision to discharge her.

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[29] After Taylor testified of Mackey's comments to her, counsel for the employer did not ask her any questions whatever on cross-examination about the comments she attributed to Mackey.

Conclusions

This employer is well aware of the burden traditionally imposed upon the respondent in a "discrimination" case under the Wright Line test. In Lewis County, Decisions 2424, 2424-A (PECB, 1986), this employer successfully defended itself against "discrimination" allegations brought by the same union in connection with two discharges during an organizing drive in another bargaining unit. There are marked distinctions between the evidence supplied by the employer there, where repeated errors by two emergency services dispatchers were well-documented, and the record it made here. Given the adoption of the "substantial factor" test, there is no doubt that the discharges of Gene Melohn and Kathy Taylor were in violation of RCW 41.56.140(1).

FINDINGS OF FACT

1. Lewis County is a political subdivision of the state of Washington, and is a public employer for purposes of RCW 41.56.030(1). David Schilperoort is the director of the community services.

2. Teamsters Union, Local 252 is a labor organization within the meaning of RCW 41.56.030(3).

3. During late 1992 and early 1993, Gene Melohn and Kathy Taylor both held positions as van drivers for the senior services function of the Lewis County Department of Community Services.

4. Melohn actively and persistently solicited the support of other employees for organization of a bargaining unit to be represented by Teamsters Local 252. Among the employees he approached for signatures on authorization cards, Judith

Markle, Judith Eklund-Meyer, and Lucy Gift steadfastly refused to sign authorization cards.

5. In December of 1992, Eklund-Meyer attended a meeting where officials of Teamsters Local 252 spoke to employees in the proposed bargaining unit. Eklund-Meyer was offended by Melohn's remarks that implied he had inside information revealing improper financial conduct by the department, and she complained to Markle.

6. In mid-February of 1993, Kathy Taylor made rude remarks, in the presence and hearing of other county employees, about a woman who was helping to decorate the senior center for a social function. Taylor did not know the person who was the subject of her remarks, and was embarrassed to learn later that the person was Senior Services Director Cherilynn Reed. Although she subsequently became aware that they had been made, Reed did not make an issue of those remarks at that time.

7. On February 25, 1993, Lewis County and Teamsters Local 252 filed documents with the Public Employment Relations Commission to initiate a representation proceeding involving certain employees at the Department of Community Services. Kathy Taylor and Gene Melohn were both stipulated to be eligible voters in the representation election.

8. In the period preceding the election, Schilperoort engaged in an aggressive anti-union campaign, including a March 4, 1993 letter in which Schilperoort incorrectly stated that union membership would become compulsory upon certification of the union as exclusive bargaining representative.

9. On March 11, 1993, Taylor sent a letter to Schilperoort in which she made known her disagreement with the letter he sent

to eligible voters on March 4, 1993. In her letter, Taylor objected to the "threatening" tone of Schilperoort's letter regarding the upcoming union election, and the director's active opposition to unionization.

10. During the period prior to the representation election, Reed held a meeting of 19 to 20 Dial-A-Ride employees, where she gave them her views on whether or not the agency was "making money hand over fist". This was apparently done in response to claims made by Melohn. Other employees in the transportation division asked questions; Melohn asked none. At this meeting, Reed also admonished the assembled employees that they were not to discuss the union election during "work time" and that she, as a manager, could not discuss the union election with any of the employees.

11. During the period prior to the representation election, Markle, Eklund-Meyer and Gift all complained, in writing, about Melohn's attitudes, and his activities in connection with the union organizing effort. Those memoranda were prepared at the invitation of Reed.

12. The Commission conducted the representation election by mail balloting counted on March 22, 1993. The majority of the valid ballots favored the "NO REPRESENTATION" choice on the ballot.

13. Reed held a meeting with Markle, Eklund-Meyer and Gift on March 25, 1993. Schilperoort and Transportation Supervisor Mel Mackey were also in attendance. Melohn's activities and remarks were discussed, and Mackey was asked to talk to Melohn about the complaints made by Markle, Eklund-Meyer and Gift. The rude remarks that Taylor had made about Reed were also discussed, and Reed indicated her belief that Kathy Taylor and three other employees were supporters of the union effort.

14. On March 29, 1993, Schilperoort telephoned Mackey and instructed him that Melohn was not to drive vans for the agency any more. Melohn was informed of this when he called in on March 31, 1993 about the lack of driving assignments to him.

15. Schilperoort called Taylor to his office for a meeting on April 3, 1993. During the course of that meeting, Taylor reminded Schilperoort of her written response to the anti-union letter he had written during the pre-election campaign. After discussion of the rude remarks Taylor had made about Reed, Taylor agreed to apologize personally to Reed. Taylor declined to apologize to other unspecified persons who might have heard those remarks, and asserted that Schilperoort was attempting to intimidate her. Schilperoort terminated the meeting.

16. On April 3, 1993, Schilperoort directed Mackey to terminate Taylor's employment. She was informed the next day that she had been terminated as a Dial-A-Ride driver with the Department of Community Services.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this dispute as per RCW 41.56.040 and .140.

2. At all times pertinent hereto, Kathy Taylor and Gene Melohn were public employees within the meaning of RCW 41.56.020(2).

3. Gene Melohn was engaged in activity protected by RCW 41.56.040 when he solicited signatures of other employees on authorization cards to be used by Teamsters Local 252 in support of a representation proceeding before the Commission under Chapter 391-25 WAC.

4. Kathy Taylor was engaged in activity protected by RCW 41-.56.040 when she made a written response to the anti-union letter issued by employer official David Schilperoort during the pre-election campaign.

5. By its actions to discontinue making driving assignments to Gene Melohn and Kathy Taylor, Lewis County constructively discharged those employees and thereby affected their terms and conditions of employment within the meaning of RCW 41.56.020(4) and RCW 41.56.040.

6. The actions of Lewis County to discharge Gene Melohn and Kathy Taylor were motivated, in substantial part, by discrimination in reprisal for their support of Teamsters Local 252, so that those discharges were unfair labor practices under RCW 41.56.140(1).

ORDER

Lewis County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE and DESIST from:

   a. Interfering with, restraining, coercing and discriminating against employees in the exercise of their right, under Chapter 41.56 RCW, to form, join and support labor organizations, and to seek certification of an exclusive bargaining representative under RCW 41.56.050 et seq.

   b. Discriminating against employees Gene Melohn and Kathy Taylor, and any other employees who have been or may be identified with union organizational efforts under RCW 41.56.040.

2. Take the following affirmative action which the Examiner finds will effectuate the purposes of the Public Employees' Collective Bargaining Act:

a. Reinstate Gene Melohn to employment as a Dial-A-Ride van driver on the roster of the Lewis County Department of Community Services, with all rights and benefits he would have enjoyed but for his unlawful discharge.

b. Make Gene Melohn whole for his loss of wages, by payment to him of back-pay for 69 hours per month at the rate of pay in effect at the time of his discharge, from April of 1993 until the effective date of the unconditional offer of reinstatement made pursuant to this Order.

c. Reinstate Kathy Taylor to employment as a Dial-A-Ride van driver on the roster of the Lewis County Department of Community Services, with all rights and benefits she would have enjoyed but for her unlawful discharge.

d. Make Kathy Taylor whole for her loss of wages, by payment to her of back-pay for 69 hours per month at the rate of pay in effect at the time of his discharge, from April of 1993 until the effective date of the unconditional offer of reinstatement made pursuant to this Order.

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

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

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

Dated at Olympia, Washington, on the 28th day of April, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

J. MARTIN SMITH, Examiner

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX

NOTICE

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

WE WILL not interfere with, restrain, coerce or discriminate against employees in the exercise of their right, under Chapter 41.56 RCW, to form, join and support labor organizations, and to seek certification of an exclusive bargaining representative.

WE WILL NOT discriminate against employees Gene Melohn and Kathy Taylor or any other employees who have been or who may be identified with union organizational efforts under Chapter 41.56 RCW.

WE WILL OFFER immediate and full employment to Gene Melohn as a Dial-A-Ride van driver on the roster of the Lewis County Department of Community Services, with backpay and all rights and benefits that he would have enjoyed but for his unlawful discharge.

WE WILL OFFER immediate and full employment to Kathy Taylor as a Dial-A-Ride van driver on the roster of the Lewis County Department of Community Services, with backpay and all rights and benefits that she would have enjoyed but for her unlawful discharge.

WE WILL NOT threaten employees with reprisal or force, or make promises of benefit, in relation to their exercise or non-exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL NOT retaliate or discriminate against part-time employees of Lewis County because they are involved in the solicitation and attempted organization of a bargaining unit under Chapter 41.56 RCW.

DATED: _____

LEWIS COUNTY DEPARTMENT OF COMMUNITY SERVICES/LEWIS COUNTY

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (206) 753-3444.