Pasco Housing Authority, Decision 6248 (PECB, 1998)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 839, Complainant, vs. PASCO HOUSING AUTHORITY, Respondent,	)	CASE 12581-U-96-2992 DECISION 6248 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Davies, Roberts & Reid, by David W. Ballew, Attorney at Law, appeared for the complainant.

Menke, Jackson, Beyer & Elofson, by G. Scott Beyer, Attorney at Law, appeared for the respondent.

On July 1, 1996, Teamsters Union, Local 839 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the Pasco Housing Authority (employer) had violated RCW 41.56.140(1). Specifically, the union alleged that bargaining unit member Lydia Rocha has been discriminated against for engaging in protected union activities. A hearing was held at Pasco, Washington, on December 17, 1996, before Examiner Rex L. Lacy. The parties filed post-hearing briefs.

BACKGROUND

Pasco Housing Authority maintains and operates low-income rental housing in the city of Pasco and surrounding Franklin County, Washington. The employer has a five person board of commissioners, of which three are appointed by the City of Pasco and two are appointed by Franklin County. During the period relevant to this

proceeding, the day-to-day operations were under the direction of Executive Director Bobbie Littrell.

Teamsters Union, Local 839 is the exclusive bargaining representative of the employees in a bargaining unit described in a Commission certification as:

> All full-time and regular part-time clerical, maintenance, inspectors, janitors, and laborers of the Pasco Housing Authority, excluding supervisors, confidential, and all other employees.

Pasco Housing Authority, Decision 5234 (PECB, 1995).

The parties commenced negotiations for an initial collective bargaining agreement in September of 1995. When the hearing was held in this matter some 15 months later, they still had not reached an agreement.

Lydia Rocha commenced her employment with this employer on June 15, 1981. She initially held a "rental clerk" position, and served as the receptionist in the employer's office. She performed routine office-clerical duties until she received on-the-job training for, and was formally promoted to, a "case manager" position in 1983. Rocha's duties and responsibilities as a case manager included overseeing the maintenance and rental of approximately 300 housing units owned by the employer. There is no indication of problems with Rocha's work for several years thereafter. The record indicates there was some criticism of Rocha's performance later, beginning with an audit report received by the employer in August of 1993.

On September 3, 1993, the Washington State Council of County and City Employees (WSCCCE) filed a representation petition with the Commission, seeking certification for essentially the same unit as is now represented by Teamsters Union, Local 839. After the WSCCCE

was certified as exclusive bargaining representative,[1] Rocha served as president of the local organization for that union, and served as a member of that union's bargaining team.

In early 1994, Rocha began having problems with her vision. Rocha was provided with adaptive equipment, her caseload was reduced, and Clerk/Receptionist Adella Salinas was promoted to a newly-created case manager position to take over some of Rocha's caseload. Salinas was assigned to oversee rental units for elderly and handicapped tenants, while Rocha continued to handle multi-family units.[2] Nevertheless, the record indicates ongoing concerns about Rocha's performance since that time.

Concurrent as to its timing, but separate in substance, Joe Garza was hired in 1994 as case manager for the "Section 8" program. Rental units owned by private citizens are maintained and administered by the public employer under that program.

The WSCCCE and the employer did not reach an agreement through their collective bargaining. That bargaining relationship ended when the WSCCCE disclaimed its bargaining rights, on or about March 13, 1995.

On June 26, 1995, Teamsters Union, Local 839 filed a petition seeking certification as exclusive bargaining representative of this bargaining unit. After Local 839 was certified as exclusive bargaining representative,[3] the union notified the employer that Rocha was the union's shop steward. Along with another employee,

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[1] Pasco Housing Authority, Decision 4592 (PECB, 1994).

[2] Rocha and Salinas continued to share clerk/receptionist duties, such as answering the telephone, greeting visitors, and providing clerical support.

[3] Pasco Housing Authority, Decision 5234 (PECB, 1995).

Allen Kvamme, Rocha also served on the negotiating team for Local 839.

In January of 1996, the employer announced it was considering a layoff of several positions due to financial reasons. One of the possibilities being considered was the elimination of one case manager position.

On April 12, 1996, the employer announced that four employees would be laid off to meet a budget shortfall. Rocha and three other employees (a clerk/receptionist, a maintenance assistant, and a maintenance repair employee) were notified they were being laid off. Rocha's layoff was effective June 28, 1996. The complaint to initiate this unfair labor practice proceeding was filed on July 1, 1996.

On October 25, 1996, the employer notified Rocha that it had secured a one-year federal grant which allowed the employer to hire additional staff in the Section 8 program. The employer offered Rocha her choice of a full-time position or a part-time position. On November 4, 1996, Rocha declined to accept either of the positions offered to her.

On November 18, 1996, the employer renewed it's offer of a position in the Section 8 program. Rocha also declined that offer.

POSITIONS OF THE PARTIES

The union contends that Rocha was involved in protected activities as a shop steward and member of the union's negotiating team, that she was the most visible union supporter, that she was the most senior employee in the case manager classification, and that the reasons given by the employer for her layoff are pretexts to cover up the employer's anti-union animus. It urges that Rocha's

selection for layoff discriminated against her because of her protected union activities.

Although it acknowledges that Rocha was a union representative, the employer contends she was not a particularly visible union activist, that the employer took a neutral position with respect to the union, that there was a positive relationship between the employer and Local 839, that the layoff was due to a budgetary shortfall, and that Rocha was selected for layoff because of her declining job performance since 1993. The employer also points out that Rocha was offered a full-time job when funding became available, and that she twice declined to accept that offer.

DISCUSSION

The Public Employees Collective Bargaining Act, Chapter 41.56 RCW, sets forth the rights and obligations of these parties:

> RCW 41.56.030(4) DEFINITIONS.
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> ...
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> (4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.
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> ...
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> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly, inter-

> fere 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.
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> ...
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> 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. ...

The Commission is authorized to determine and remedy unfair labor practices. RCW 41.56.160.

Standards for Determination of Dispute

To establish an unlawful "interference" with protected rights, a complainant need only show that a party engaged in conduct which employees reasonably perceived as a threat of reprisal or force or promise of benefit associated with their union activity. The actual intent and actual effect are not factor. City of Seattle, Decision 3066 (PECB, 1989), affirmed Decision 3066-A (PECB, 1989).

To establish an unlawful "discrimination" with protected rights, a complainant must satisfy a higher standard of proof. In Wilmot v. Kaiser Aluminum, 118 Wn.2d 46 (1991) and Allison v. Seattle Housing Authority, 118 Wn.2d 79 (1991), the Supreme Court of the State of Washington adopted a "substantial motivating factor" test for the determination of causation under two anti-discrimination statutes which parallel RCW 41.56.140(1) and (3). The Commission embraced that new test in Educational Service District 114, Decision 4631-A

(PECB, 1994), where it ruled that the discharges of two employees were motivated in substantial part by their union activity.[4]

The burden of proof does not shift under the "substantial motivating factor" test. The complainant must still make out a prima facie case of discrimination, but the employer then only has a burden of production to articulate non-discriminatory reasons for its actions. The burden remains on the complainant to prove, by a preponderance of the evidence, that the disputed action was in retaliation for the employee's exercise of statutory rights. That may be accomplished by: (1) Demonstrating that the reasons asserted by the employer were pretextual; or (2) demonstrating that, notwithstanding the reasons asserted by the employer, union animus was a substantial motivating factor behind the employer's action. Thus, Washington law continues to require a higher standard of proof to establish employer "discrimination" than is required for an "interference" violation, but that standard is not as high as in the past.

The Prima Facie Case

Under the Wilmot/Allison test, the first step in the processing of a "discrimination" claim is for the injured party to make out a prima facie case showing a retaliatory action:

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[4] Previously, the Commission had followed National Labor Relations Board (NLRB) precedent which shifted the burden of proof in a two-stage analysis. City of Olympia, Decision 1208-A (PECB, 1982), citing Wright Line, 251 NLRB 1083 (1980) in which the NLRB had relied upon Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1977). Under that formula, the union or employee initially had the burden to establish a prima facie case; if that was accomplished, the employer had the burden to establish valid reasons for its action. In Wilmot and Allison, our Supreme Court rejected reliance upon Mt. Healthy in discrimination cases under state law.

> [I]n establishing the prima facie case, the employee need not attempt to prove the employer's sole motivation was retaliation or discrimination based on the worker's exercise of [protected rights]. Instead, the employee must produce evidence that pursuit of a [protected right] was a cause of the firing, and may do so by circumstantial evidence ....

Wilmot, at page 70.

To establish a prima facie case of discrimination, a complainant need only show:

> 1. The exercise of a statutorily protected right, or communicating to the employer an intent to do so;
> 2. That he or she was deprived of some ascertainable right, status or benefit; and
> 3. That there was a causal connection between the exercise of the legal right and the discriminatory action.

Mukilteo School District, Decision 5899-A (PECB, 1997).

The focus on circumstantial evidence recognizes that employers are not in the habit of announcing retaliatory motives. Wilmot and Allison, supra.

Union Activity and Visibility -

A finding of employer intent inherently requires proof that the employer had the knowledge necessary to form such an intent. A connection may be difficult to establish where the alleged discriminatee has not been visible as a union activist.[5] A prima facie case is easily made, however, where an alleged discriminatee is clearly identified as a union supporter or has previously confronted the arguments to the contrary in this case, the union

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[5] See, West Valley School District, Decision 1179 (PECB, 1981), affirmed Decision 1179-A (PECB, 1981); Port of Bellingham, Decision 5640 (PECB, 1996).

has proved that Rocha was highly visible in the representation efforts of bo management on employment-related issues.[6]

Despite the employer's the employer's arguments to the contrary in this case, the union has proved that Rocha was highly visible in the representation efforts of both the WSCCCE and Local 839. The evidence is clear that Rocha served as local president for the WSCCCE, and as a member of that union's negotiating team. The evidence is also clear that Rocha served as shop steward and as a bargaining team member for Local 839.[7] The record clearly supports an inference that the employer could have imputed union sympathies to Rocha.

Discriminatory Action -
Rocha has been deprived of her job. The second component of the prima facie case has thus been met.

Causal Connection -
The employer asserts that it had an amicable relationship with the union, but the evidence contradicts that statement. The parties negotiated for a prolonged period with Rocha participating as a member of the union's bargaining team, but did not reach an

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[6] In City of Olympia, supra, the employee was the union's observer at a representation election; in Valley General Hospital, Decision 1195-A (PECB, 1981), the employee had filed grievances challenging the employer on various issues; in Wellpinit School District, Decision 3625 (PECB, 1990), the employees were union officers who had represented individual employees and the bargaining unit before the school board.

[7] She even continued to serve on the union's negotiating team after she was laid off.

agreement.[8] On September 11, 1996, the employer published a memo to all employees titled "Representation Facts", stating:

> It has been over a year since negotiations began between the Teamsters and the Authority.
>
> At the last negotiations meeting, the Teamster Representative reported to the Authority that he did not believe the Teamsters represents the majority of the employees at this time.
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> ...
> The Authority's history has proven to provide wage increases yearly for their employees, wage increases authorized by the Board without the involvement of union representation amount to 4.0% in 1992 and 5.5% in 1993. Up until the budget deficits, employees medical benefit was paid 100% without the need for union representation. The Authority wages are at or above what is required by HUD and comparable to wages within the industry and surrounding public agencies.
>
> In proposals to date:
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> - The Teamsters have not addressed any wage increase in their proposed contract.
> - The Teamsters have proposed a closed shop, which means every employee must pay Union dues. Employees who do not wish to join the Union or pay Union dues cannot retain their employment with the Authority.
> - Union dues amount to approximately $20 per month or $240 per year per employee.
> - For the negotiations alone, the Authority has paid $13,000 for representation costs. This amount would be equivalent to:

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[8] While they are not explicit requirements, the 60-day period of notice required by Section 8(d) of the National Labor Relations Act (NLRA) and the 60-day contract bar "insulated" periods established under both the NLRA and RCW 41.56.070 all conform to a general expectancy that an employer and union should be able to negotiate a collective bargaining agreement in a two-month period of time. The negotiations between this employer and Local 839 had gone on for about 9 months.

- ♦ a 3.0% raise for every employee which amounts to $10,000/year; plus
- ♦ Authority paying 100% of medical insurance coverage. Current employee out-of-pocket deductions represent $3,000/year.

- ▸ The Board recognizes the employee's [sic] desire to be involved in decisions affecting their employment and suggest [sic] the employees consider an employee committee who can meet with Management and Board to provide employee input on issues.
- ▸ Authority employees are now eligible to vote for decertification of union representation. The Board urges you to consider the benefits of union representation and exercise your right to vote for continued representation or decertification.

The union responded to that memo by filing an unfair labor practice complaint, and that proceeding resulted in rulings by an Examiner and the Commission that the employer committed unfair labor practices. Pasco Housing Authority, Decision 5927 (PECB, 1997), affirmed Decision 5927-A (PECB, 1997). While the employer's memorandum was issued after Rocha was laid-off, it is germane to this case as evidence that the employer harbored an anti-union animus.

Finally, during the course of Rocha's last evaluation, Cichocki told Rocha that the employer was only interested in keeping "team players". Such terminology has been interpreted in past Commission decisions as an expression of anti-union animus. Town of Fircrest, Decision 248 (PECB, 1977); Educational Service District 114, Decision 4361 (PECB, 1993); Port of Tacoma, Decision 4626 (PECB, 1994) affirmed Decision 4626-A (PECB, 1995). Cichocki's choice of words is found to have conveyed a meaning that Rocha was not a team player because of her union activities.

The Examiner concludes that the union has sustained its burden to establish a prima facie case that the employer's actions were discriminatory. The burden of production is thus shifted to the employer in this case.

Employer's Articulation of Reasons

The employer asserts it had a budget shortfall, and that it selected Rocha for layoff because of her declining work performance since 1993.[9] Neither of those reasons is inherently illegal.

Substantial Factor Analysis

The Budget Shortfall -
The employer presented evidence that its financial condition has eroded since 1991, and that its actual deficit had climbed to $117,000 by 1996. The employer's budgeting process indicated that the agency would amass another $59,000 deficit in 1996. The deficits had seriously reduced the employer's cash reserves and, because of that erosion, the board of commissioners chose to reduce payroll costs by eliminating four positions. The layoffs were made in all areas of the employer's workforce. Cosmetically, there is no evidence that the layoffs were for any reason other than the budget shortfall.

The Selection of Employees for Layoff -
The employer has a personnel policy covering the issue of layoff of employees. Section 18.3 of that policy reads as follows:

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[9] Rocha has a condition called macular degeneration of the retina, a disease in which the blood vessels in her eyes leak blood into the retinas, causing blind spots. Rocha has had three operations since March of 1994, to improve her vision. Her eyesight now prevents Rocha from having a Washington State drivers license or operating a motor vehicle.

> The Housing Authority may lay off employees where there are changes in the duties, reorganization of work or positions, a position of service is abolished, there is a lack of work or shortage of funding or for other legitimate business reasons, including termination of the at will employment status.
>
> 18.3.1 Whenever a layoff is anticipated, employees whose jobs may be affected will be notified of the situation and options available as soon as possible to allow time to make necessary arrangements.
>
> 18.3.2 Temporary employees performing similar work will be laid off first.
>
> 18.3.3 **Job performance**, qualification, **and length of service** of regular employees will be considered in making layoff decisions. The layoff decision is at the discretion of the employer.
>
> 18.3.4 Options such as part-time work schedules, job sharing, and voluntary time and/or pay reductions may also be explored, at the discretion of the Executive Director.
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> [Emphasis by **bold** supplied.]

The evidence establishes that Rocha was the most senior employee in the case manager classification, so the employer's own personnel policy points out a need to question the selection of Rocha for layoff. When that is done, the evidence concerning Rocha's work performance is far from compelling.

There is no question that Rocha suffers from an illness which limits her eyesight. In order to accommodate that disability, however, the employer had previously:

- Paid the fares for Rocha to use taxis for her visits to the rental units for which she was responsible;
- Provided Rocha with a CCTV, a large-display hand calculator, and computer software which allowed her to read communications and input data into the computer she used to make her reports.

Even if those accommodations were made because of the Americans with Disabilities Act (ADA) or other laws that require employers to assist employees who desire to continue on their jobs, they appear to have made it possible for Rocha to perform her responsibilities as a case manager. The employer has not claimed or proved that Rocha's eyesight problem has deteriorated beyond the limits of the reasonable accommodations it has already provided.

The employer's evaluation process involves having the employee's immediate supervisor assign numerical scores to a series of 18 criteria. Additionally, five goals and responsibilities are discussed with the employee, and scored. Altogether, the process makes observations on about 30 factors. The numerical scores are totaled and compared to a scale that determines the level of performance, as follows:

Scores of 20-39 are termed "unsatisfactory"
Scores of 40-59 are termed "fair"
Scores of 60-79 are termed "good"
Scores of 80-89 are termed "very good"
Scores of 90-100 are termed "excellent"

Rocha had received an acceptable evaluation from then-Director Robert Sandoval in 1993. Responding to Rocha's complaint during her 1993 evaluation review that her caseload was too large, the employer took steps to split her caseload in 1994. Rocha retained responsibility for approximately half of the rentals; the remainder was assigned to another case manager, Adella Salinas. Rocha was upset about the division of her caseload, however, and she filed a discrimination and harassment complaint against Sandoval. That complaint was dismissed after a hearing.

Sandoval's evaluation of Rocha for the period ending June 1994, indicated a need for improvement in several areas. Sandoval initially scored Rocha's performance as "fair", but that was

upgraded to "good" after the evaluation was reviewed with Rocha. Sandoval then left the director position in June of 1995.

Littrell was promoted to the director position in 1995, and the employer suspended employee evaluations for a time thereafter. Accordingly, Littrell's first evaluation of Rocha was in January of 1996, and covered the period from June of 1994 to June of 1995. Littrell indicated that Rocha needed improvement in 8 of the 30 performance factors, and she scheduled Rocha for another evaluation in six months.

The extra evaluation of Rocha covered the period from June to December of 1995. That evaluation indicated Rocha had not made any improvement in her performance.

Rocha was evaluated by Finance Director Sonia Cichocki for the period from December of 1995 through June of 1996. Cichocki concurred with Littrell's evaluation, and recommended that Rocha was the case manager who should be laid off. Cichocki claimed to have considered Rocha's length of service in making that decision.

Pretexts -

The evidence discloses loopholes in the employer's "evaluation" defense. Littrell initially testified that all of the case managers were evaluated before the layoff, but she admitted under cross-examination that Salinas was not scheduled for an additional (six-month) evaluation when her point total was similar to Rocha's, and that Garza was not evaluated. Moreover, the explanations given for those deviations do not ring true:

- Littrell explained that Salinas was new to the case manager position, and was still learning the requirements of the position, but that is commonly a cause for greater (not less) employer scrutiny.

- Littrell testified that Garza worked in the Section 8 program which was not included in the layoff decision, but Garza was the least-senior employee in the case manager classification and it was necessary to send him to training classes to obtain certification before he took over a portion of Rocha's caseload. At the same time, Rocha was denied training to accomplish a re-certification required for her job.
- The last evaluation of Rocha was performed by an official who had only recently been assigned to evaluate the case managers, and only Rocha was evaluated. Cichocki assigned a lower point total to Rocha than either Littrell or Sandoval, and then recommended Rocha for layoff without having evaluated the other employees in the classification.

Rather than demonstrating implementation of an established and consistent system, these variances discredit the employer's "evaluation" defense and support a conclusion that Cichocki carried out a pre-determined decision to lay off Rocha.

Motivation -

Cichocki's use of the "team player" terminology in her evaluation of Rocha just prior to the layoff serves to complete the picture. It is easily inferred that Rocha, a visible union supporter, was not viewed as a team player. Instead, she was selected for layoff regardless of her work performance.

The testimony in this case also belies the employer's assertions of it's innocence. The record clearly suggests: The determination to lay off Rocha was made before any evaluation was ever done; the reasons given for Rocha's layoff were pretextual; and that Rocha was discriminated against for her union activities. Thus, the

Examiner concludes that the employer's anti-union animus was a substantial motivating factor in Rocha's discriminatory lay-off.

REMEDY

The Commission's orders are "remedial" in nature, designed to put injured parties back in the same position they would have occupied had there been no violation of the law. For discriminatees, that usually takes the form of reinstatement with back pay for time and benefits lost. In this case, the union requests that Rocha be reinstated to her position as a case worker, and that she be made whole for the wages and benefits lost due to the discriminatory layoff. However, such a remedy overlooks the fact that Rocha twice declined offers of re-employment in a position she was qualified to fill. See, Town of Fircrest, Decision 248-A (PECB, 1977), where the Commission denied a back-pay remedy to an employee who failed to mitigate his damages after a discriminatory discharge. In this case, Rocha's position on the employer's re-employment offer was set forth in her letter to the employer dated November 4, 1996, as follows:

> I do not believe there is any way I could work for the Housing Authority with a pending lawsuit in Superior Court, a complaint before PERC, and an internal investigation by H.U.D. Additionally, I do not meet the minimum qualifications listed on the job description.

Rocha's refusal to accept re-employment constitutes a voluntary resignation effective on the date she notified the employer that she would not accept either position that was offered to her. Thus, Rocha is only entitled to back pay for the period from June 28, 1996 to November 4, 1996, with the usual offsets for unemployment compensation received and any earnings she had during that period. Additionally, she is entitled to any benefits that she would normally have received in that period.

FINDINGS OF FACT

1. The Pasco Housing Authority, a "public employer" within the meaning of RCW 41.56.030(1), maintains and operates rental housing for low-income and other qualified residents in the city of Pasco and throughout Franklin County, Washington. At the times relevant to this matter, Bobbie Littrell was the employer's executive director and Sandra Cichocki was a supervisory employee acting on behalf of the employer.

2. Teamsters Union, Local 839, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the certified exclusive bargaining representative of:

> All full-time and regular part-time clerical, maintenance, inspectors, janitors, and laborers of the Pasco Housing Authority, excluding supervisors, confidential, and all other employees.

3. Since September of 1995, the employer and Local 839 have been engaged in negotiations for their initial collective bargaining agreement. At the time of the hearing in this case, their efforts had not been fruitful.

4. Lydia Rocha was employed by the employer from June 15, 1981 to June 28, 1996, first as a rental clerk, and then as a case manager from 1983 to the end of her employment. Rocha was responsible for overseeing the rental of as many as 300 housing units.

5. Rocha was known to the employer as a union activist. She served as shop steward and as a bargaining team member for Local 839, and had previously held office as local president and as a bargaining team member for the organization which

preceded Local 839 as exclusive bargaining representative of this employer's employees.

6. Although Rocha had developed a medical condition affecting her eyesight, the employer had provided accommodations for her disability since 1994, and there is no evidence in this record that Rocha's eyesight had deteriorated to a level that could no longer be accommodated.

7. In January of 1996, the employer announced that it was considering the layoff of several positions, including one case manager, due to a financial shortfall. The existence of that financial shortfall is not disputed in this proceeding.

8. In January of 1996, Rocha was given low ratings by Littrell on a performance evaluation for the period from June of 1994 through June of 1995, and was notified that she would be subjected to an extra "six months" performance evaluation because of the low ratings. Another employee in the same classification who received a similar evaluation score in January of 1996 was not subjected to a similar extra evaluation.

9. The next evaluation of Rocha was made by Cichocki, who was new to her job and had not evaluated the other employees in the same classification. During the course of that evaluation, Cichocki informed Rocha that the employer was only interested in retaining "team players", which Rocha reasonably understood as related to her union activity. Cichocki then recommended that Rocha be the employee laid off from the case manager classification, notwithstanding that the two other employees in that classification each had less seniority than Rocha and one of those employees would require training to take over Rocha's caseload.

10. The employer terminated Rocha's employment effective June 28, 1996, describing its action as a layoff for lack of funds.

11. On October 25, 1996, the employer offered Rocha her choice of a full-time position or a part-time position, based on its having received federal grant funding.

12. On November 4, 1996, Rocha declined the employer's offer of re-employment, citing several litigations she was pursuing against the employer, including this proceeding.

13. On November 18, 1996, the employer renewed its re-employment offer to Rocha.

14. Rocha declined the employer's November 18, 1996 offer of re-employment, stating that she had secured other employment.

15. The union has sustained its burden of proof to establish that the reasons given by the employer for selecting Lydia Rocha for layoff were pretexts designed to conceal its anti-union animus, and that Rocha's union activities were a substantial motivating factor in the employer's layoff decision.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By its selection of Lydia Rocha for layoff effective June 28, 1996, the Pasco Housing Authority discriminated against Rocha for her participation in union activities protected by Chapter 41.56 RCW, and so committed unfair labor practices in violation of RCW 41.56.140(1).

ORDER

The Pasco Housing Authority, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Using pretextual reasons for selecting known union supporters for layoff; and

   b. In any manner interfering with, restraining, coercing or discriminating against its employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

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

   a. Make Lydia Rocha whole for lost wages and benefits for the period from June 28, 1996 to November 4, 1996, by payment to her of back pay at the rate of pay in effect for her as a "case manager" immediately prior to June 28, 1996, computed in accordance with WAC 391-45-410.

   b. 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.

c. Read the notice attached hereto at the regular public meeting of the Board of Commissioners of the Pasco Housing Authority which next follows the receipt of this decision, and permanently append a copy of the attached notice to the official minutes of the meeting where the notice is read as required by this paragraph.

d. 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.

e. 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 the preceding paragraph.

Issued at Olympia, Washington on the 6th day of April, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

REX L. LACY, 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.

APPENDIX

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL, compensate Lydia Rocha for the period of time from June 28, 1996 to November 4, 1996, less any other compensation she received from other employment and any unemployment compensation from the State of Washington.

DATED: _____

PASCO HOUSING AUTHORITY

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: (360) 753-3444.