

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

PUBLIC PROFESSIONAL AND MAINTENANCE ) EMPLOYEES, LOCAL 2003, ) Complainant, ) and ) BLACK HAWK COUNTY, ) Respondent. )	) CASE NO. 8216 )
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PUBLIC EMPLOYMENT  
RELATIONS BOARD

DECISION ON APPEAL

Now pending before the Board is the Public Professional and Maintenance Employees, Local 2003's (PPME) appeal of a proposed decision and order issued by an administrative law judge (ALJ) of the Public Employment Relations Board (the Board or PERB) concerning a prohibited practice complaint filed by PPME against Black Hawk County (the County) pursuant to Iowa Code § 20.11. The ALJ concluded that PPME had failed to establish the County's commission of a prohibited practice, and PPME timely appealed to the Board pursuant to PERB rules.

Pursuant to PERB subrule 621-9.2(3), the Board has heard the case upon the record submitted before the ALJ. Both parties filed briefs on appeal. Pursuant to Iowa Code § 17A.15(3), in this appeal, the Board possesses all powers it would have possessed had it elected, pursuant to PERB rule 621-2.1, to preside at the evidentiary hearing in place of the ALJ.

Based upon its review of the record before the ALJ, and having considered the parties' briefs, the Board DISMISSES PPME's prohibited practice complaint and states as follows:

FINDINGS OF FACT

The ALJ's findings of fact, as set forth in the proposed decision and order attached as "Appendix A", are fully supported by the record, and the Board adopts them as its own.

CONCLUSIONS OF LAW

The ALJ's conclusions of law, as set out in Appendix A, are correct, and the Board adopts them as its own.

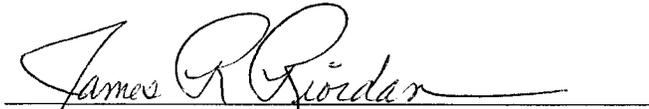
Having adopted the ALJ's findings and conclusions, it follows that the Board concurs in the result reached by the ALJ.

ORDER

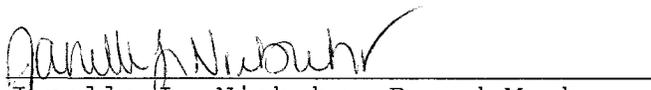
The prohibited practice complaint of PPME is DISMISSED.

DATED at Des Moines, Iowa, this 17th day of April, 2012.

PUBLIC EMPLOYMENT RELATIONS BOARD

  
James R. Riordan, Chair

  
Neil A. Barrick, Board Member

  
Janelle L. Niebuhr, Board Member

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**APPENDIX A**

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC PROFESSIONAL AND MAINTENANCE	)	
EMPLOYEES, LOCAL 2003,	)	
Complainant,	)	
	)	
and	)	CASE NO. 8216
	)	
BLACK HAWK COUNTY,	)	
Respondent.	)	

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PROPOSED DECISION AND ORDER

This is a prohibited practice proceeding commenced by Complainant Public Professional and Maintenance Employees, Local 2003 (PPME) pursuant to Iowa Code section 20.11 and PERB rule 621 IAC 3.1(20). PPME's complaint alleges that Respondent Black Hawk County committed prohibited practices within the meaning of Iowa Code sections 20.10(2)(a), (b), (c) and (d) when it discharged Helida Vaala in retaliation for her activities as a PPME officer and activist and for the purpose of intimidating employees during their collective negotiations with the County. The County denied its commission of any prohibited practice, asserting that Vaala's discharge was for legitimate reasons unrelated to her union activities.

Pursuant to notice, an evidentiary hearing on the complaint was held before the administrative law judge in Waterloo, Iowa, on February 9, 2011. PPME was represented by Joe Rasmussen and the County by David J. Mason. Both parties submitted post-hearing briefs, the last of which was filed March 30, 2011.

## FINDINGS OF FACT

Black Hawk County is a public employer within the meaning of Iowa Code section 20.3(10) and PPME is an employee organization within the meaning of section 20.3(4). PPME has been certified since 1975 as the exclusive bargaining representative for a bargaining unit of certain County employees at the County's health center and care facility.

In 1982 Helida Vaala was hired as a Certified Nursing Assistant (CNA)—a position within the PPME-represented unit—at Country View, the County-operated care facility in Waterloo. Although the record is not specific as to dates, in the ensuing years Vaala also served as a Country View Developmental Aide, Recreation Aide and, ultimately, Recreation Assistant—the bargaining unit position she occupied at the time of her discharge in December, 2009.

In 1994 Vaala became an active participant in PPME and actively involved in its dealings with the County. At various times not fully detailed in the record she served as a PPME steward, chairperson, member of its executive board, safety committee and bargaining team and as a PPME participant on a joint labor-management committee. During her tenure as a PPME representative she successfully recruited approximately 70 new members. Between 1996 and 2007, presumably while serving as a PPME steward, she presented not less than 70 employee grievances

to management on behalf of other unit employees and represented those employees on behalf of PPME at various steps of the parties' contractual grievance procedure.

Vaala was successful at resolving between 20 and 30 of those grievances at step 1 or 2 of the grievance procedure. She testified without contradiction that representatives of management knew she would notice and grieve violations of the collective agreement, that management representatives were unhappy when she represented a grievant, and that although she was respectful when representing employees, management had on at least two instances treated her rudely and asked her to leave while she was representing others.

While the record suggests that Vaala has not acted as a PPME steward since 2007, she continued to serve on (at least) its bargaining team until the time of her discharge.

In 2003, while serving as a Recreation Aide on Country View's Willow Wood 2 unit, Vaala and a coworker were both disciplined as a result of cross-complaints they had lodged against each other alleging workplace harassment. An investigation of the complaints by June Watkins, the County's Human Resources Director, resulted in her finding that "the frequent and on-going conflict between [Vaala and the other employee, a Willow Wood 2 charge nurse] has created a hostile and offensive working environment for all staff who work on Willow Wood 2. It is also my determination that

[Vaala and the other employee] have contributed equally to creating the unproductive and adverse working environment on Willow Wood 2." Watkins recommended that both Vaala and the other employee be disciplined and Country View's Administrator adopted those recommendations. Vaala was warned that if she did not refrain from inappropriate and unacceptable workplace behavior and make "immediate and permanent efforts to treat your co-workers with civility and respect" she would be subject to further discipline up to and including termination. Vaala and the other employee were both reassigned to different Country View units and were restricted from working on the same unit again. Both were also required to attend one-on-one educational sessions on anger management and conflict resolution with an anger management specialist retained by Country View. Vaala's grievance challenging these disciplinary actions was denied by management, and there is nothing in the record to indicate that the matter was advanced to arbitration.<sup>1</sup>

In addition to representing other employees in grievance proceedings, Vaala filed 11 grievances during her employment with the County which involved her personally. One of those, concerning a 2006 pay dispute, proceeded to arbitration and

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<sup>1</sup> The report of Watkins' 2003 investigation indicates that no record of prior disciplinary action against Vaala appeared in her personnel file at that time. Vaala, however, testified that she had been suspended as a disciplinary measure sometime before she became active in the union, but that the suspension had been reduced by a grievance arbitrator.

resulted in a 2007 award requiring that Vaala and another employee be compensated at four times their straight-time pay rate for certain overtime hours they had worked on a recognized holiday. In 2009, the County's initial proposal for a successor collective bargaining agreement addressed the topic of pay for overtime hours worked on a holiday by proposing language specifying that under no circumstances could such pay exceed two-and-one-half times the employee's straight-time rate. The record does not reflect whether the County persisted with this proposal or secured any change in the existing contractual provisions.

Although the record is short on details, in late 2007 or early 2008 Country View management began a reorganization of sorts, apparently with a goal of attaining a new licensure status for a unit housing people with severe mental illnesses. While individuals with mental illnesses, as well as those suffering from dementia, already resided in the Willow Wood unit, the reorganization contemplated a formalized splitting of those populations into two units - "Willow Wood" and the new "Arbor" unit.<sup>2</sup>

Country View's Administrator at the time thought that Vaala's involvement in the implementation of the reorganization, and thereafter as a member of the Arbor unit staff, would be

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<sup>2</sup> The record is not consistent concerning which portion of the resident population resided in what unit, some evidence indicating that the residents with dementia occupied the Arbor unit, while other evidence suggests that those individuals resided on Willow Wood.

beneficial. He contacted the County's human resources department to discuss whether the terms of Vaala's 2003 disciplinary action precluded her return to Willow Wood. Because the other employee involved in the 2003 conflict was no longer employed by the County and because most of the other employees on the unit had changed since then, Watkins agreed to Vaala's reassignment and she was transferred back to Willow Wood in late February, 2008.

The reorganization also included the creation of the new management position of Director of Behavioral Health Services, the duties of which included oversight of Country View's recreation/social services department. Nathan Schutt, previously a caseworker in the County's social services department, was hired to fill the new position and began his work at Country View in January, 2009.

Prior to the reorganization, the primary focus of the CNAs had been to provide direct medical and nursing care to the residents, while residents' recreational and social activities had been the province of Country View's recreation staff, which included Vaala. Part of the reorganization plan was to increase the involvement of the direct-care staff in the residents' recreational activities. Vaala was part of the effort to develop resident activities that the CNAs and other direct-care staff could provide, with Vaala's coaching. In June 2009, Schutt began meeting as a team with a number of staff members, including Vaala

and the Recreation Director (Vaala's direct supervisor), in order to plan and discuss the expansion of the role of the CNAs and the development of their skills and involvement in resident recreational activities. Because of her experience and position as a Recreation Assistant, Vaala was tasked with working to develop the CNAs in this new (for them) area.

Vaala began to work to involve the CNAs, and familiarized them with the recreational calendar she maintained. From the initiation of the CNAs' recreational involvement in mid-June 2009 until Vaala left on vacation June 26, she felt that things were running well. At some point, however, Schutt began to receive complaints about Vaala from members of the direct-care staff. Generally, staff complained that they were being given insufficient information and direction by Vaala in connection with recreational activities, and that the information she did convey was communicated in an abrupt, rude and unhelpful manner.

Schutt used the periodic planning team meetings to stress the importance of communication and to emphasize to Vaala the need for her to clearly and fully communicate with the CNAs and other staff involved in resident activities.

But complaints about Vaala continued. Most that Schutt received were lodged by CNAs, but some came from others, such as a social worker and registered nurse, who complained of how Vaala talked to and dealt with the CNAs. Most complaints were from

staff on the shift Vaala worked, but members of other shifts also complained of not receiving adequate direction or instruction in what they were to do.

The planning team continued to meet, and tried to address the issues raised by the complaints about Vaala. Vaala consistently indicated that the problem really was that the CNAs simply did not want to be involved in recreational activities, and that they were doing what they could to create problems with their assumption of such duties. Schutt and Vaala implemented some strategies, including increasing the volume of written instructions and procedures, which Schutt hoped would reveal whether the problem was a lack of effective direction or whether it was due to the unwillingness of the direct-care staff to assume resident activity duties.

The situation did not improve, however, and complaints which focused on communication issues and Vaala's purported lack of interpersonal skills in dealing with other staff members continued. Schutt came to believe that the root of the complaints was the manner in which Vaala directed and interacted with the direct-care staff, rather than the staff's resistance to increased involvement in resident activities.

The original goal had been for the CNAs to have assumed responsibility for recreational activities on the Willow Wood unit sometime in September, 2009, but this did not occur, due at least

in part to the communication difficulties and hostility which had developed between Vaala and the direct-care staff.

Schutt met at least bi-weekly with Vaala, and more frequently if individual complaints or events had come to his attention, but did not perceive improvement in the communication and relations between Vaala and the direct-care staff. He felt that residents were adversely affected because their activities were not being conducted as they would have been but for the problems between Vaala and staff. At least one employee referred to the situation as a hostile working environment.

Complaints continued that Vaala did not communicate with direct-care staff concerning activities, and that when asked questions she would ignore the inquiry or would simply tell staff to go look at the activities calendar. Schutt came to view Vaala's attitude as uncooperative.

The frustrations other employees were feeling about their interactions with Vaala continued, and appear to have taken a new turn on November 4, 2009. That morning Vaala was going to take a number of residents on a shopping excursion. While she and other staff were preparing and assisting the participants, a CNA asked Vaala about recreational activities for the residents who are not going shopping. Vaala phoned Schutt to inform him what the CNA had asked, apparently frustrated by the question because,

according to Vaala, the CNA had asked the same question weeks earlier.

As preparations for the group's departure continued, a verbal exchange took place between Vaala and another CNA about whether a particular resident should walk or use a wheelchair to reach the group's departure point for the excursion. Vaala offered the resident a wheelchair while the aide felt that walking would be good for the resident, who walked that far every day, and that it would further the goal of promoting the resident's independence. Vaala made a comment to the resident to the effect that she (Vaala) had a wheelchair for the resident, but that the aide "doesn't want you to have it."

A short time later, Schutt was summoned to one of the nurses' offices in the patient care area and found a substantial group of the Willow Wood and Arbor staff there, including a RN Unit Manager, a LPN, and a number of other direct-care staff. The assembled staff voiced complaints about how Vaala was treating and interacting with them and expressed the desire that their continuing issues with Vaala be addressed formally.

Schutt asked those in attendance to put their concerns in writing and, when she returned from the shopping trip, also asked Vaala to provide a written statement. Schutt contacted the County's human resources office and referred the matter, together

with Vaala's statement and the nine statements he had received from staff, to Human Resources Director Watkins.

Following the referral to Watkins, Vaala was suspended pending an investigation into the complaints received from the staff. In accordance with the County's existing policy, Watkins conducted an investigation which included review of the written statements Schutt had received on November 4, personal interviews with Schutt, four of the direct-care staff who had provided statements on November 4, the Director of Recreation and Vaala herself. Watkins explored not only the events of November 4 but also the underlying issues raised by the staff's complaints. Watkins' investigation also included a review of (at least) Vaala's most-recent performance evaluation as well as records concerning her 2003 disciplinary transfer, including the investigatory report Watkins had produced at that time.

On December 10, Watkins submitted a 14-page report of her investigation to County View's Administrator and the Chair of County View's Board, with copies to the County's Board of Supervisors, an Assistant County Attorney and another individual whose position is not identified in the record. In her report Watkins summarized seven of the written statements collected by Schutt on November 4,<sup>3</sup> the interviews she had conducted in the

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<sup>3</sup> Two of the nine statements were unsigned, and were not summarized in Watkin's report.

course of her investigation and background information concerning Vaala's employment with the County, including her 2003 discipline.

Watkins found that the complaining staff felt that Vaala was not providing the guidance and communication they needed, which interfered with their ability to perform their duties and created unnecessary tension in the work place. Watkins also found that some staff were intimidated by Vaala and felt that she had created a hostile work environment for them. Watkins concluded that Vaala's interactions with other staff had violated work rules which required, among other things, courteous and professional interactions with fellow employees, patient, respectful and considerate treatment of others, and helpfulness and openness in communications with coworkers, as well as rules which prohibited interference with the work of others, rudeness, and the creation of a hostile or intimidating work environment.

Watkins concluded that a gap existed between what Vaala perceived to be appropriate behavior and what her supervisors and coworkers expected of her. Noting that her 2003 discipline had also been due to ongoing conflict and hostility with a coworker which adversely affected the working environment of others, Watkins concluded that Vaala appeared to be unable or unwilling to interact with coworkers in a courteous, helpful and professional manner. She consequently recommended that Vaala's employment be terminated.

At the time Watkins' recommendation was made, negotiations for a successor collective bargaining agreement between the County and PPME were ongoing. Watkins was aware of Vaala's union activism, but it played no role in her recommendation that Vaala be discharged.

Although the record does not reveal precisely who made the ultimate decision on behalf of the County, Vaala was provided with written notice of the termination of her employment, signed by the Director of Recreation, on December 15, 2009. The notice listed the rules/policies the County had concluded Vaala had violated, and summarized the reasons for her termination as:

Your inability or unwillingness to interact and communicate with co-workers in a courteous, helpful, and professional manner, which has interfered with their ability to perform their duties and has created unnecessary tension and an intimidating and hostile work environment on the station. You have previously received discipline for similar behavior and attended counseling for anger management and conflict resolution, but have not corrected the behavior.

Vaala filed a grievance on December 17, 2009, alleging that she had been discharged without cause in violation of a number of provisions of the collective bargaining agreement between PPME and the County. The record does not reveal what actions, if any, were taken by any party in connection with that grievance.

The instant prohibited practice complaint was mailed to PERB, postmarked March 10, 2010, and is deemed to have been filed that date pursuant to Iowa Code section 17A.12(9).

## CONCLUSIONS OF LAW

PPME's complaint alleges the County's commission of prohibited practices within the meaning of Iowa Code sections 20.10(2)(a), (b), (c) and (d). At the time of the alleged violations, those sections provided:

### **20.10 Prohibited practices .**

2. It shall be a prohibited practice for a public employer or the employer's designated representative willfully to:

a. Interfere with, restrain or coerce public employees in the exercise of rights granted by this chapter.

b. Dominate or interfere in the administration of any employee organization.

c. Encourage or discourage membership in any employee organization, committee or association by discrimination in hiring, tenure, or other terms or conditions of employment.

d. Discharge or discriminate against a public employee because the employee has filed an affidavit, petition or complaint or given any information or testimony under this chapter, or because the employee has formed, joined or chosen to be represented by any employee organization.

Although alleging the County's unlawful domination or interference with the administration of an employee organization, in its brief PPME does not repeat this claim or so much as cite section 20.10(2)(b). That section does not appear to have been extensively discussed in prior PERB decisions, but is similar to section 8(a)(2) of the National Labor Relations Act, 29 U.S.C. § 158(a)(2). Federal decisions construing section 8(a)(2) of the federal statute are thus illuminating and instructive on the

meaning of Iowa Code section 20.10(2)(b). See *City of Davenport v. PERB*, 264 N.W.2d 307, 313 (Iowa 1978). Those federal decisions are neither conclusive nor compulsory, but they nonetheless constitute persuasive authority. *Id.*; *Mount Pleasant Community School District v. PERB*, 343 N.W.2d 472, 480 (Iowa 1984).

The primary purpose of section 8(a)(2) of the NLRA was to eradicate company unionism, the practice whereby employers would establish and control in-house labor organizations in order to prevent organization by autonomous unions. See generally HARDIN, *THE DEVELOPING LABOR LAW*, pp. 391-439 (4<sup>th</sup> ed. 2001). Generally speaking, prohibited "domination" exists when the organization is controlled or directed by the employer, rather than by the employees. "Interference" is found when the employer does not, in the eyes of the employees, control the employee organization but nonetheless exercises some lesser form of influence in the determination of union policy. *Id.*; see also GORMAN, *LABOR LAW UNIONIZATION AND COLLECTIVE BARGAINING*, pp. 195-208 (1976).

Here there is no evidence which even suggests the County's domination of or interference with the administration of PPME or any other employee organization. PPME has accordingly failed to establish the County's commission of a prohibited practice within the meaning of section 20.10(2)(b).

PPME's complaint further alleges that the County discharged Vaala in retaliation for participation in protected activities,

that this discrimination constituted prohibited practices under sections 20.10(2)(c) and (d) and accordingly interfered with, restrained or coerced public employees in the exercise of their chapter 20 rights in violation of section 20.10(2)(a). The parties agree that in analyzing cases of alleged employer discrimination motivated by a desire to encourage or discourage union membership, or to retaliate for employees having engaged in protected activities, PERB applies the approach adopted by the NLRB in *NLRB v. Wright Line*, 251 NLRB 1083 (1980), and later upheld by the U.S. Supreme Court in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 103 S.Ct. 2469, 76 L.Ed.2d 667 (1983).

Under *Wright Line* the initial focus is on the elements of the *prima facie* case, that is, the existence of protected activity, knowledge of that activity by the employer, and union animus. Proof of these elements warrants at least an inference that protected conduct was a motivating factor in the adverse personnel action and that a violation of the statute has occurred. The employer may rebut the *prima facie* case by showing that prohibited motivation played no part in its actions. If the employer cannot rebut the *prima facie* case, it must demonstrate that the same personnel action would have taken place for legitimate reasons regardless of the protected activity. See, e.g., *Transportation*

*Management Corp., supra; PPME Local 2003 and Black Hawk County, 04 PERB 6664.*

In the present case, PPME has established the existence of protected activity (Vaala's advocacy on behalf of unit employees as a steward and union activist, as well as her filing of individual grievances), and the County's knowledge of that activity is not in dispute. The issue thus becomes whether PPME established the element of union animus and made a *prima facie* case.

In *W.F. Bolin Co. v. NLRB*, 70 F.3d 863 (6<sup>th</sup> Cir. 1995), the Court noted:

Improper employer motivation may be inferred from circumstantial as well as direct evidence. *NLRB v. Link-Belt Co.*, 311 U.S. 584, 602 (1941); *Birch Run Welding*, 761 U.S. at 1179. Discriminatory motivation may reasonably be inferred from a variety of factors, such as the company's expressed hostility towards unionization combined with knowledge of the employees' union activities; inconsistencies between the proffered reason for discharge and other actions of the employer; disparate treatment of certain employees compared to other employees with similar work records or offenses; a company's deviation from past practices in implementing the discharge; and proximity in time between the employees' union activities and their discharge. *Turnbull Cone Baking Co. v. NLRB*, 778 F.2d 292, 297 (6<sup>th</sup> Cir. 1985), *cert. denied*, 476 U.S. 1159 (1986) (citing *NLRB v. E.I. DuPont DeNemours*, 750 F.2d 524, 529 (6<sup>th</sup> Cir. 1984)).

In the final analysis, employer motive (*i.e.*, the presence or absence of union animus) is a question of fact. *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C.Cir. 1987); *Ida County*, 95 PERB 5037;

*State of Iowa*, 04 PERB 6673. Here, the record is insufficient to establish union animus on the County's part.

There is no evidence of express hostility by the County toward unionization generally or PPME specifically. Nor has there been a showing that the County's proffered reason for Vaala's discharge—her perceived inability or unwillingness to deal with coworkers in a courteous, helpful and professional manner—is inconsistent with any of its other actions. And while PPME suggests that Vaala was treated differently than any other employees due to her leadership role in the union, there is no evidence of similarly situated employees and their treatment by the County which would support such a finding of disparate treatment.

The timing of Vaala's discharge in relation to her protected activities does not persuasively support a finding of union animus on the part of the County. Vaala's only apparent involvement in protected activity since 2007 was her membership on PPME's bargaining team. It appears that she had been much more involved and active as a union official prior to 2008, when she served as a PPME steward. But even if the timing of the County's action in relation to Vaala's involvement in the ongoing 2009 negotiations was to be viewed as somewhat probative of union animus, such timing alone, without other evidence of hostility, would not be

sufficient to establish its existence. See *AFSCME and State of Iowa*, 04 PERB 6673.

Vaala testified that management had twice been rude to her and asked her to leave meetings concerning other employees' grievances, and PPME suggests that this evinces union animus on the County's part. Even crediting Vaala's testimony concerning those pre-2008 events, they are not sufficient to establish the existence of union animus. Vaala represented employees in not less than 70 grievance proceedings. That County representatives treated her in a manner she perceived as rude in two of those instances is not particularly surprising considering the nature of grievance proceedings generally, their potential for adversarial confrontation, and Vaala's persistent nature. The fact that conflict arose in a relatively small number of cases is no more indicative of union animus than it is of any other reason why people become angry or rude with others, such as the perceived unreasonableness of or personal dislike for the other person.

PPME also suggests that the County's 2009 bargaining proposal to limit holiday overtime compensation to a maximum of two-and-one-half times an employee's straight-time rate evinces the County's union animus. While one can readily presume that the County's proposal was in response to the grievance arbitration where Vaala and another employee were awarded four times their normal rate of pay, this is no more indicative of union animus

than it is of the normal course of collective bargaining. Parties can be expected to make bargaining proposals which are designed to address what they perceive to be a problem with an existing contractual provision, especially one which has been revealed by a grievance and subsequent arbitration award.

The main thrust of PPME's argument is that the County's union animus is demonstrated by its termination of this union activist and leader without just or proper cause. PPME emphasizes a number of points relevant to a just-cause determination, including that Vaala received a satisfactory performance evaluation for the period ending February 28, 2009; that management could have addressed the conflict and communication difficulties in the work site in other, better ways; that management could have better discussed concerns with Vaala and provided her with specific warning; that the rule violations found by the County were unsubstantiated and the disciplinary notice thus flawed, and that it could have implemented lesser sanctions than discharge had it determined that discipline was necessary.

This is not, however, the arbitration of an employee grievance under a "just cause for discipline" provision of a collective bargaining agreement. The inquiry here is not whether the County can establish the existence of just cause for Vaala's termination, but whether PPME can establish union animus

warranting the inference that the termination was motivated by Vaala's protected conduct.

That employers may at times discipline employees in ways or for reasons which do not amount to just cause in the eyes of arbitrators or other neutral decision-makers is undeniable. But it is equally clear that not all discipline which is unsupported by just cause is due to the employer's union animus. Consequently, even if the record here is viewed as sufficient to show that the County did not have just cause to terminate Vaala's employment, it would not necessarily establish the element of union animus.

But even assuming, without deciding, that an employer's discipline of a union activist may be so plainly arbitrary, capricious, illogical, unreasonable, irrational or otherwise without just cause that it may be probative of union animus under the circumstances of a particular case, no finding of union animus is warranted under the circumstances of this case.

Here, Schutt made reasonable efforts to determine the cause of the complaints from Vaala's coworkers. When he formed the view that Vaala's method of interacting with the direct-care staff was at the root of the problem (rather than the staff's resistance to their involvement in resident activities) he took steps to improve the situation, including meeting regularly with Vaala and emphasizing to her the need for clear and open communications.

When the staff continued to lodge complaints and sought formal action by management, the County conducted an investigation which included personal interviews with many of those involved, as well as a review of their written statements and Vaala's employment history.

There is testimony in the record which supports Vaala's claim that the complaints about her were motivated not by her interactions with others, but by the direct-care staff's desire to avoid the new resident-activity duties. Reasonable minds might differ as to whether "just cause" for Vaala's termination existed or not. But even if one were to conclude that the County did not have just cause to impose the discipline it did, under the totality of the circumstances the County's action cannot be viewed as so arbitrary, precipitous, unreasonable or otherwise lacking legitimate reason that it warrants a finding of union animus on the County's part.

Because PPME has not established the element of union animus, it has not established a *prima facie* case under the *Wright Line* analysis and has thus failed to support an inference that Vaala's protected conduct was a motivating factor in her discharge. The ALJ thus necessarily concludes that PPME has failed to establish the County's commission of the prohibited practices alleged in the complaint, and proposes the entry of the following:

ORDER

