

Grant County Hospital, Decision 6673 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| INTERNATIONAL ASSOCIATION OF EMTs |) | |
| and PARAMEDICS, |) | |
| |) | |
| Complainant, |) | CASE 13514-U-97-3300 |
| |) | |
| vs. |) | DECISION 6673 - PECB |
| |) | |
| GRANT COUNTY PUBLIC HOSPITAL |) | FINDINGS OF FACT, |
| DISTRICT 1, |) | CONCLUSIONS OF LAW, |
| |) | AND ORDER |
| Respondent. |) | |
| |) | |
| |) | |
| |) | |

Sally F. La Macchia, Attorney at Law, appeared on behalf of the complainant.

James M. Conner, Labor Consultant, appeared on behalf of the respondent.

On October 31, 1997, International Association of EMTs and Paramedics filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC, naming the Grant County Public Hospital District as respondent. A hearing was conducted on March 18 and 19, 1998, in Moses Lake, Washington, before Examiner Kenneth J. Latsch. The parties submitted briefs.

This case concerns a series of employer actions during a period when the union was conducting an organizing campaign. The preliminary ruling issued by the Executive Director under WAC 391-45-110 characterized the cause of action as:

Employer interference with the internal affairs of the union, and employer discrimination against bargaining unit employees Solberg

and Christensen because of their participation in union activities protected by Chapter 41.56 RCW.

On the basis of the evidence introduced at the hearing,¹ the Examiner dismisses the complaint on its merits.

BACKGROUND

Grant County Public Hospital District 1 (employer) provides health care services in the vicinity of Moses Lake, Washington, including the operation of Samaritan Hospital. At all times pertinent, Keith Baldwin was the employer's superintendent and hospital administrator, and Bonnie Polhamus was the employer's director of personnel.

Of primary importance to these proceedings, the employer operates an ambulance and paramedic service which is based in a local fire station, but is under the overall direction of hospital personnel. Corbin Moberg was responsible for day-to-day operations of the ambulance service.

The International Association of EMT's and Paramedics (union) filed a petition with the Commission under Chapter 391-25 WAC on January 29, 1997,² seeking certification as exclusive bargaining represen-

¹ At the preliminary ruling stage of proceedings under WAC 391-45-110, all of the facts alleged in a complaint are assumed to be true and provable and the question is limited to whether the complaint states a cause of action for further proceedings before the Commission. After a hearing, an Examiner decides the dispute on the basis of the evidence and arguments advanced by the parties.

² Notice is taken of the Commission's docket records for Case 12947-E-97-2168.

tative of the paramedics employed in the employer's ambulance service. On June 19, 1997, the union was certified to represent a bargaining unit described as:

All full-time and regular part-time emergency medical service personnel who are employed by Grant County Public Hospital District #1 as defined in RCW 18.71.200, excluding confidential employees, supervisors, and all other employees of the employer.

Grant County Public Hospital District 1, Decision 5959 (PECB, 1997).

The employer has collective bargaining relationships with other labor organizations, none of which has any involvement with this proceeding.

Events leading to this unfair labor practice case involve Kimball Christiansen, Sonya Solberg, and Joseph Horkavy. Because of the unique aspects of each set of circumstances, the individual claims are analyzed separately.

Kimball Christiansen

Kimball Christiansen has worked in the emergency medical services field for approximately 17 years. For the most part, Christiansen has served as a paramedic. Christiansen's family moved to Moses Lake in 1967, and he spent a good deal of his youth there. Christiansen left Moses Lake to pursue his career in emergency medicine, but returned to take a position with this employer.

In January 1996, Christiansen began employment with this employer, as a paramedic. During his service as a paramedic, Christiansen performed the normal range of duties associated with that position. Christiansen often served as Officer in Charge (OIC) of a particu-

lar work shift. In that capacity, he was responsible for the paramedics working on shift with him, and had authority to direct specific emergency treatment protocols as necessary. The record indicates that Christiansen was a capable employee, and he was not subject to disciplinary action in the first year of his employment with the hospital.

Protected Activity and Personnel Issues -

In November 1996, Christiansen became involved in the organizing campaign undertaken by the union. The record does not disclose specifics, but Christiansen testified generally that he took a "lead role" in organizing the new bargaining unit. Christiansen further testified that his pro-union sentiments were well-known, and that he never did anything to hide his support for the union.

The first of several incidents involving Christiansen occurred on the same day the union filed its representation petition, January 29, 1997. The employer suspended Christiansen on that day, citing a questionable patient care decision concerning a patient suffering from possible smoke inhalation.

The union's representation petition led to a hearing held on April 10, 1997, concerning the propriety of the proposed bargaining unit. Christiansen appeared at the hearing as a witness for the union. The parties later resolved their differences without need for a decision on the matters addressed at the hearing.

In preliminary discussions held in August of 1997, the parties explored the concept of a 24-hour shift structure. Both parties were interested in reaching a quick agreement on a shift schedule, and this issue was discussed before the start of formal negotiations on an initial contract. As a result of those initial discussions, the employer put forth a proposal for a 24-hour

schedule which was presented to the union membership for approval. The employees did not agree with the proposed shift alignment, and rejected the employer's proposed schedule. The issue was then made part of the negotiations when the parties began work on an initial collective bargaining agreement in September 1997. Christiansen was a member of the union's bargaining team.

Christiansen was involved in a series of personnel disputes with the employer after the January 29, 1997 suspension:

- On June 4, 1997, Christiansen received a "verbal counseling" memorandum dealing with a mistake he made in the administration of a specific drug to a cardiac patient.
- On September 10, 1997, Christiansen received a "personnel conferencing memorandum" directing him to complete his medical records in a timely fashion.
- On September 17, 1997, Christiansen received another "personnel conferencing memorandum" concerning his not maintaining his medical records in the prescribed manner.
- On October 14, 1997, Ambulance Director Moberg sent a memo to Christiansen, detailing three problems: (1) Patient care; (2) completion of assigned tasks, and (3) certain conversations Christiansen had with fellow employees. Moberg was very concerned about the tone of the conversations, and expressed his concerns as follows:

A third area of concern revolves around conversations you have had while on duty at Samaritan Ambulance. This area is probably one of the most serious of all. I have received a letter from a current employee who has had conversations with you. These conversations included derogatory statements about Samaritan Hospital, Keith Baldwin, and myself. These conversations led them [sic] employee to

believe you were attempting to sway his opinions regarding the Hospital and it's [sic] leadership....

Those incidents overlapped the onset of collective bargaining negotiations between the parties.

Interactions with Stephanie Hiatt -

During his service with the hospital, Christiansen participated in a "rider" program in which volunteers from the community accompanied paramedics on emergency responses and assisted, where appropriate. The record indicates that most of the riders were local residents with an interest in the emergency medical field, and they used this experience to help prepare themselves for a career as paramedics.

Beginning in April 1997, Stephanie Hiatt participated in the "rider" program as a volunteer. A student at a local community college, Hiatt was very interested in emergency medicine. The record indicates that her family was opposed to her participation in the rider program because of her frail health, but Hiatt continued as a volunteer. Hiatt was assigned to ride with Christiansen shortly after she joined the volunteer program in April 1997, and she testified that she spent approximately 80 percent of her volunteer service teamed with Christiansen.

Hiatt became concerned about certain aspects of Christiansen's behavior. Hiatt testified that Christiansen used profanity regularly and, even though she several times asked him to stop, he continued to use vulgarities. The record reveals that Hiatt did not, at that time, complain to any management official about Christiansen's use of offensive language.

In October 1997, Hiatt and Christiansen were involved in several incidents that had a direct bearing on these proceedings:

- In the first incident, Hiatt was at the fire station in her capacity as a volunteer. Hiatt testified that while she was bending over a drinking fountain, Christiansen grabbed her buttocks. When she protested, Christiansen appeared nonchalant about the situation, and he did not apologize to her.
- Several weeks later, while Christiansen and Hiatt were en route on an emergency call, Christiansen asked Hiatt if she wanted to become a member of the "code 3 club". Hiatt asked what that meant, and Christiansen explained that "code 3 club" members had sexual relations in the medic van while on the way to an emergency. Hiatt told Christiansen that such suggestions were inappropriate, and he did not ask about it further.
- Hiatt and Christiansen began a dating relationship in November of 1997, but Hiatt became uncomfortable about the direction the relationship was taking. She asked Christiansen to keep their relationship on a professional basis, and Christiansen agreed. They then refrained from any social activities.
- On December 18, 1997, Christiansen swore at Hiatt while she was restocking one of the medic vans with supplies. Later the same evening, Hiatt received a telephone call from her parents, who evidently were concerned that she was spending too much time at the fire station and wanted to come by to pick her up. When he learned that Hiatt's parents were going to come for her, Christiansen again used profanity and was visibly upset.
- On December 19, 1997, Christiansen told Hiatt that she could no longer ride with him on emergency calls.

Hiatt approached Moberg on December 22, 1997, and told him about Christiansen's use of profanity, the inappropriate touching, the invitation to join the "code 3 club", and his decision to remove her as his "rider". Moberg told Hiatt that he would refer the matter to Polhamus.

Hiatt and Moberg met with Polhamus later the same day, and Hiatt repeated her allegations about Christiansen's behavior. During the course of that meeting, Polhamus told Hiatt that Christiansen would be disciplined for his conduct.

After the meeting between Polhamus, Moberg and Hiatt, Moberg contacted Christiansen and told him to come in for an evening meeting. Moberg told Christiansen that he should consider bringing a union representative to the meeting, but did not tell Christiansen that the meeting would be disciplinary in nature. Christiansen met with his union representative and private attorney prior to the meeting, and learned why the meeting was set.

At the meeting, Moberg informed Christiansen that his actions toward Hiatt were unacceptable and that he was terminated from employment immediately. Moberg also gave Christiansen the following letter:

We have recently discussed and investigated a case of misconduct regarding your actions while at Samaritan Healthcare. These acts are intolerable and as a result, you are terminated from Samaritan Healthcare. This termination is effective today.

Christiansen turned in his equipment the next day, and waited for the employer to inform him of when he would participate in a meeting with hospital administrators.

In the early part of January 1998, Hiatt met with Hospital Administrator Keith Baldwin to discuss the situation with Christiansen. Baldwin appeared to be aware of the circumstances surrounding Hiatt's difficulties with Christiansen, and Baldwin told her that he would be meeting with Christiansen in the near future.

On January 14, 1998, Baldwin met with Christiansen for a "Loudermill" process.³ Baldwin testified that the meeting followed normal procedures, and that Christiansen was allowed to give his side of the story. As a result of the meeting, Baldwin decided that termination of Christiansen's employment was the appropriate sanction.

Sonya Solberg

Sonya Solberg served as a paramedic in the employer's emergency service since February 1996. The record indicates that she had a good employment relationship until mid-1997.

Protected Activity -

Solberg was aware of the unionization effort, but she did not serve as a union officer or as a member of the union's bargaining team. Nevertheless, Solberg testified that her relationship with Ambulance Director Moberg deteriorated shortly after the paramedics rejected the employer's proposed 24-hour shift alignment, in August 1997. Solberg testified that Moberg approached her after the vote and questioned her as to why the employer's plan was not accepted. Solberg stated that she was not aware of any concerns other than

³ This was a due process hearing required under the federal constitution, rather than any requirement of the state collective bargaining law. See, Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

her own, and the conversation stopped at that point. Solberg testified that Moberg was more distant and withdrawn after that conversation took place.

Interaction with Moberg -

Solberg had a substantial disagreement with Ambulance Director Moberg, in September 1997, concerning the transport of a patient from Moses Lake to Spokane, Washington. On the day in question, Solberg was "Officer in Charge" for her work shift; Moberg was on duty that day as a paramedic.⁴ An emergency call came in, and Solberg responded. The patient was in very poor condition, and there was a discussion as to whether the patient should be transported to Spokane for specialized treatment.

Solberg and Moberg disagreed over the propriety of transporting the patient. Solberg believed the patient should not be transported, because of the type of medication that was being administered and because of the patient's general condition; Moberg believed the patient was stable enough for transport.

Apart from disagreeing about the appropriate course of action concerning the patient, Moberg and Solberg disagreed over who was in charge of the situation. Solberg believed that she was in charge, because she was "Officer in Charge" for that particular work shift. Following this line of logic, Solberg believed that she should have had the final say as to how the patient should be transported. Moberg disagreed and believed that he retained final authority to determine the treatment issue because he was the ambulance director. Moberg told Solberg that the patient should be transported to Spokane. Moberg testified that his directive to

⁴ Apparently, there was a staffing problem, and Moberg made himself available to work that day as a medic.

Solberg was in the form of a direct order. Solberg disagreed, and the patient transport was carried out by other paramedics.

Moberg discussed the situation with Solberg on September 22, 1997. On September 23, 1997, Moberg sent Solberg a letter explaining that she was suspended for two work shifts, that she had to attend classes on the administration of medicine, and that she was on her "last chance" to correct behavior before termination.

Solberg subsequently went to the class as directed. Solberg testified that she explained her evaluation of the patient's condition to a physician conducting the class, and that the physician agreed with her analysis. The physician contacted hospital administration about the situation, but Solberg's discipline was not changed.

Joseph Horkavy

Joseph Horkavy had worked with Ambulance Director Moberg at an ambulance service in Wyoming, and Moberg was aware of Horkavy's skills and training, including experience in mechanical repairs. On October 6, 1997, Moberg hired Horkavy as a full-time paramedic. Several part-time bargaining unit employees had applied for the full-time position, but were not selected.

At the time Horkavy was hired, he had not received certification to work as a paramedic. Horkavy worked under an "interim certification" while reciprocity issues were worked out between licensing agencies in Washington and Wyoming. His final certification was issued in December 1997.

Horkavy took a 30-day leave of absence beginning in December 1997. On January 7, 1998, Horkavy informed the employer that he would not

return from the leave of absence, and he resigned his employment with the hospital.

POSITIONS OF THE PARTIES

The union argues that the employer violated RCW 41.56.140(1) by its treatment of Kimball Christiansen, Sonya Solberg, and Joseph Horkavy. The union contends that Christiansen was dismissed from employment because of his union activities, that Solberg was suspended because of her support of the union, and that the employer unlawfully bypassed bargaining unit members to hire Joseph Horkavy because of hostility to the union and its bargaining efforts. The union points out that all of these actions took place in the context of a newly-certified collective bargaining relationship, and it contends the employer's actions were aimed at suppressing the union's support among bargaining unit employees. As a remedy, the union asks that the employer be ordered to rescind Christiansen's termination and reinstate him with full back pay; to rescind Solberg's suspension and provide her with full back pay; and to require the employer to choose a bargaining unit employee for the position that Horkavy held.

The employer argues that it did not commit any unfair labor practices in the series of events at issue in this case. The employer admits it was fully aware of the union's organizing efforts, and that collective bargaining negotiations were ongoing during the time period covered by this unfair labor practice complaint, but the employer maintains that its actions were motivated by legitimate business concerns and did not have anything to do with the union's activities. The employer asks that the complaint be dismissed.

DISCUSSIONApplicable Legal Standards

The Public Employment Relations Commission is responsible for the prevention of unfair labor practices defined in RCW 41.56.140, as follows:

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;

(2) To control, dominate or interfere with a bargaining representative;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining.

RCW 41.56.140.

An "interference" violation occurs under RCW 41.56.140(1) when a public employee reasonably perceives the employer's actions as a threat of reprisal or force or promise of benefit associated with the employee's union activity. See: City of Pasco, Decision 3804-A (PECB, 1992); City of Seattle, Decision 3566-A (PECB, 1991); City of Seattle, Decision 3066-A (PECB, 1988).

A "discrimination" violation under RCW 41.56.140(1) involves intentional action by an employer based on protected union activity, and so requires a higher standard of proof than an "interference" violation. In Educational Service District 114, Decision 4361-A (PECB, 1994) and City of Federal Way, Decision 4088-A (PECB, 1995), the Commission adopted the "substantial motivating factor" test set forth in Wilmot v. Kaiser Aluminum, 118

Wn.2d 46 (1991). That test may be seen as favorable to employees,⁵ but the Wilmot analysis does not guarantee that an unfair labor practice complainant will prevail just because a complaint has been filed.

To be successful, a complainant must at least establish a *prima facie* case that discrimination has taken place. Thus, a complainant must show:

1. That the employee exercised a right protected by the collective bargaining statute, or communicated to the employer an intent to do so;
2. That the employee was discriminatorily deprived of some ascertainable right, benefit or status; and
3. That there was a causal connection between the exercise of the legal right and the discriminatory action.

See: Port of Tacoma, Decision 4626-A (PECB, 1995). Therefore, a showing that the employer's disputed personnel action was conscious and deliberate is essential to such a finding. Town of Steilacoom, Decision 6213 (PECB, 1998).

Application of Standards to the Facts Presented

While each of the three factual situations have unique components, they all took place in the context of a union's efforts to organize the employer's workforce and to start the collective bargaining

⁵ Prior to adopting the "substantial motivating factor" test, the Commission relied on the burden-shifting test set forth in Wright Line, 251 NLRB 1083 (1980). Cases decided under the Wright Line analysis gave more weight to an employer's business reasons for adverse actions against an employee.

process. The employer was well aware of the union's efforts, and never disputed its knowledge of union activities. The question for determination is whether the complainant has provided the necessary causal link between the events described in the background section, above, to an employer intent to take such action in a retaliatory or discriminatory manner.

Kimball Christiansen -

In the case of Christiansen, the union clearly established that he was active in the union organization effort, and that he participated in the union's initial bargaining efforts. Christiansen was an outspoken union supporter, and he made his pro-union views known to several management officials.

The union has not established that Christiansen's termination arose because of his union activities. Separate and apart from the alleged errors and record keeping deficiencies and even from his use of foul language (any or all of which might be regarded as elements of a routine or troubled employment record), nothing in the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, establishes or protects any right of public employees to engage in sexual harassment. The discharge of Christiansen closely followed the employer learning of his inappropriate touching of Hiatt, his inappropriate solicitation of a sexual relationship with Hiatt, and his termination of Hiatt's status with the employer after she displeased him.

Even if the Examiner were to conclude that Christiansen's union activity were somehow sufficient to sustain a *prima facie* case of discrimination, that would merely shift the burden, under Wilmot, supra, to articulate lawful reasons for its actions. In this case, the employer has presented a compelling case that it had to take action because of Christiansen's inappropriate behavior on the job,

and that its decision was based on genuine business concerns related to Christiansen's inappropriate interactions with volunteer Stephanie Hiatt. That said, the record in this case could not sustain a conclusion that Christiansen's union affiliation played any motivating role, let alone that it was a "substantial" motivating factor, in the final decision to terminate Christiansen's employment.

Sonya Solberg -

Although the record indicates that Solberg was not a union officer or negotiator, she was, like Christiansen, openly supportive of the union's efforts to organize and then bargain with the employer. The union presented enough to establish that Solberg was known to the employer as an active supporter of the union at the time of the disputed personnel action.

Much of the union's argument concerning Solberg depends on a leap of logic. The union argues that Moberg discriminatorily suspended Solberg because the union had recently voted down a shift schedule that Moberg supported. The record does not allow the Examiner to make such a leap of logic, but there is no direct evidence of such a causal connection. On the other hand, the employer presented substantial evidence that Solberg's suspension arose because of a genuine dispute about the appropriate chain of command, and who would be responsible for the decision to transport a patient from Moses Lake to Spokane. While it is tempting to second-guess Moberg's reasoning about that transfer, the Examiner's focus must remain on whether Moberg acted out of his supervisory concerns or because of a discriminatory intent. The record does not support a finding that Solberg's support of the union or the rejection of the proposed shift schedule constituted any part of Moberg's motivation in regard to the later, and quite distinct, patient transport

issue. The allegation concerning Solberg's suspension must be dismissed.

Joseph Horkavy -

Moberg's decision to hire Joseph Horkavy to a full-time position was clearly at the expense of several part-time bargaining unit members who had applied for the full-time position. Like the allegations surrounding Christiansen's discharge and Solberg's suspension, the union would need to establish that Moberg intentionally overlooked the bargaining unit members with the intention to discriminate against them when he hired Horkavy.

While it is clear that there had been an organizing drive and that the employer and union were in the process of negotiating a first contract, the evidence falls short of establishing that the applicants from within the bargaining unit had any right to the job, or even any right to consideration in advance of candidates from outside of the bargaining unit. Seniority rights are exclusively a product of contract negotiations, and the parties had not signed their first contract. The record simply does not support a conclusion that there was any causal connection between the union activity and the hiring decision. At best, the complainant showed that Moberg had several possible candidates to choose from when he decided to hire Horkavy. The complainant has not made a *prima facie* case that there was any connection between Moberg's decision to hire Horkavy and any detrimental effects on bargaining unit members.

Even if the context of the organizing drive and negotiations for a first contract were taken as sufficient to state a *prima facie* case, the employer articulated lawful reasons for its decision. It is clear that Horkavy had relevant experience. Moberg believed

that Horkavy had unique skills to offer, and that Horkavy was the best choice available for the position.

FINDINGS OF FACT

1. Grant County Hospital District 1 (employer) is a "public employer" within the meaning of RCW 41.56.030(1). Keith Baldwin serves as hospital district superintendent, Bonnie Polhamus serves as the director of personnel and Corbin Moberg serves as ambulance director.
2. International Association of EMT's and Paramedics (union), a "bargaining representative" within the meaning of RCW 41.56-.030(3), initiated an organizing drive in the autumn of 1996 among employees of Grant County Public Hospital District 1.
3. The union has been certified as the exclusive bargaining representative of a bargaining unit described as:

All full-time and regular part-time emergency medical service personnel who are employed by Grant County Public Hospital District 1 as defined in RCW 18.71.200, excluding confidential employees, supervisors, and all other employees of the employer.

The union acquired that status following an organizing drive that began in the autumn of 1996.

4. In August 1997, the union and employer entered preliminary discussions for an initial collective bargaining agreement. The parties were interested in establishing a 24-hour shift schedule even before a complete contract could be negotiated, the employer proposed a specific 24-hour shift structure, and

the union brought the matter to a vote of the bargaining unit, but the proposal was rejected. Collective bargaining negotiations for a full contract began in September 1997.

5. Kimball Christiansen was hired by the employer in January 1996, as a paramedic. Christiansen became involved in the union's organization efforts in November of 1996, he appeared on behalf of the union at a hearing conducted by the Commission in April of 1997, and he served as a member of the union's bargaining team.
6. During the period for which this complaint is timely, Christiansen was the subject of several personnel actions by the employer, including a "verbal counseling" memorandum issued on June 4, 1997 (citing a mistake he made in administering a drug to a cardiac patient), a "personnel conferencing memorandum issued on September 10, 1997 (directing him to complete required medical records in a timely manner), another "personnel conferencing memorandum" issued on September 17, 1997 (also concerning the medical records issue), and a memo issued to him on October 14, 1997 (concerning his having set an inappropriate tone for work with other paramedics).
7. As part of his regular duties, Christiansen participated in a "rider" program wherein community volunteers accompanied paramedics on emergency calls. Beginning in April 1997, Stephanie Hiatt volunteered as a "rider" and was assigned to work with Christiansen.
8. Hiatt became concerned about Christiansen's repeated use of profanity, and asked Christiansen to cease using profanity in her presence, but she did not immediately report her concerns

about Christiansen's use of profanity to Ambulance Director Moberg or any other management official.

9. During or about October 1997, Christiansen touched Hiatt in an inappropriate manner while both were on duty, and later invited Hiatt to have sexual relations with him while they were en route to an emergency call.
10. Christiansen and Hiatt commenced a dating relationship during or about November 1997, but Hiatt became concerned about the direction that relationship was taking, and asked to end the social contact. They refrained from any further social activities.
11. On December 18, 1997, Christiansen used profanity when addressing Hiatt about restocking the medic van, and again after learning that Hiatt's parents were going to pick her up at the fire station at the end of that work shift. He also informed Hiatt on that occasion that she could no longer serve as his volunteer rider.
12. On December 22, 1997, Hiatt informed Ambulance Director Moberg of her interactions with Christiansen, including his continued use of profanity after she asked him to stop, the incident involving the inappropriate touching, and his invitation to have sexual relations. Hiatt and Moberg later met with Personnel Director Polhamus.
13. After the meeting with Polhamus, Moberg summoned Christiansen for a meeting, and informed Christiansen of his right to have union representation. Christiansen was accompanied at the meeting by a union representative. At the meeting, Moberg notified Christiansen of the immediate termination of his

employment, based on his performance as a paramedic and his inappropriate interactions with Stephanie Hiatt.

14. On January 14, 1998, Hospital Director Baldwin conducted a due process hearing. Christiansen was accompanied by a union representative. Baldwin did not reverse the decision to terminate Christiansen's employment.
15. Sonya Solberg was hired as a paramedic in February 1996. She was aware of the union's organization efforts, and supported the union's attempt to form a bargaining unit, but she was not an officer or leader of the union.
16. Solberg was suspended for insubordination in September 1997, following a disagreement with Ambulance Director Moberg about the propriety of transporting a patient from Moses Lake to Spokane, Washington. On the day in question, Solberg was serving as the Officer in Charge (OIC), and claimed authority to make final determinations on patient care issues. Moberg was working as a paramedic on that shift, because of staffing problems, and asserted authority to overrule Solberg's decision, based on his authority as director of the ambulance service. After Solberg refused Moberg's order and he had to assign other employees to transport the patient, Moberg suspended Solberg without pay.
17. On October 6, 1997, Moberg hired Joseph Horkavy as a full-time paramedic position. In making that decision, Moberg was aware of Horkavy's training and skills as a paramedic, based on Moberg and Horkavy having worked together while employed by another employer in Wyoming. In addition, Moberg was aware that Horkavy had experience in mechanical repairs, and could assist in the upkeep of the medic vans.

18. When the employer hired Horkavy, it passed over several part-time employees who were within the bargaining unit represented by the union and who had applied for the full-time position, but had no contractual right to the position.

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. The union has failed to sustain its burden of proof to establish a *prima facie* case that the employer's action to discharge Kimball Christiansen was substantially motivated by the exercise of rights protected by Chapter 41.56 RCW, and the employer has in any case articulated lawful reasons for its actions, related to Christiansen's inappropriate interactions with Stephanie Hiatt, so that no violation of RCW 41.56.140(1) is established in regard to Christiansen.
3. The union has failed to sustain its burden of proof to establish a *prima facie* case that the employer's action to suspend Sonya Solberg was substantially motivated by the exercise of rights protected by Chapter 41.56 RCW, and the employer has in any case articulated lawful reasons for its actions, related to Solberg's insubordinate behavior towards her immediate supervisor, so that no violation of RCW 41.56.140(1) is established in regard to Solberg.
4. The union has failed to sustain its burden of proof to establish a *prima facie* case that the employer's action of passing over applicants from within the bargaining unit when it hired Joseph Horkavy was substantially motivated by the exercise of rights protected by Chapter 41.56 RCW, and the

employer has in any case articulated lawful reasons for its actions, related to Horkavy's qualifications and experience, so that no violation of RCW 41.56.140(1) is established in regard to the hiring of Horkavy.

ORDER

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

Issued at Olympia, Washington this 30th day of April, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KENNETH J. LATSCH, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.