STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF EMTs and PARAMEDICS,	)	
Complainant,	)	CASE 13514-U-97-3300
vs.	)	DECISION 6673-A - PECB
GRANT COUNTY PUBLIC HOSPITAL DISTRICT 1,	)	
Respondent.	)	DECISION OF COMMISSION

David Marmorstein, Attorney at Law, appeared on behalf of the complainant.

William W. Treverton, Attorney at Law, appeared on behalf of the respondent.

This case comes before the Commission on an appeal filed by the International Association of EMT's and Paramedics, seeking to overturn a dismissal of its unfair labor practice complaint issued by Examiner Kenneth J. Latsch on April 30, 1999.[1] We affirm.

BACKGROUND

Grant County Public Hospital District 1, doing business as Samaritan Hospital (employer), operates an ambulance and paramedic service. During the period relevant to these proceedings, Keith Baldwin was the superintendent of Public Hospital District 1 and

[1] Grant County Hospital, Decision 6673 (PECB, 1999).

administrator of Samaritan Hospital, Bonnie Polhamus was the Personnel Director, and Corbin Moberg served as the director of Samaritan Ambulance.

The International Association of EMT's and Paramedics (union) is the exclusive bargaining representative of the paramedics employed in the ambulance and paramedic service. Negotiations began in early September of 1997 toward an initial collective bargaining agreement between the parties,[2] but no collective bargaining agreement had been negotiated at the time of the hearing in this case.

On October 31, 1997, the union filed an unfair labor practice complaint with the Commission, alleging that the employer discriminated against employees for protected activities. The union filed amendments to its complaint on December 1, 1997, and on February 2, 1998. The allegations involve employer actions concerning three paramedics, including the following:

- Kim Christensen was terminated on December 22, 1997, with a final effective date after a Loudermill hearing on January 14, 1998.

- Sonya Solberg was suspended for insubordination in September of 1997 following a disagreement with Moberg about the transport of a patient.

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[2] Notice is taken of the Commission's docket records for Case 12947-E-97-2168. On January 29, 1997, the union filed a petition with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of the paramedics employed in the employer's ambulance service. On June 19, 1997, the union was certified to represent a bargaining unit of emergency medical service personnel.

- Joseph Horkavy was hired from the outside on October 6, 1997, to fill a full-time position, and part-time bargaining unit employees who had applied for the position were passed over.

The facts are fully set forth in the Examiner's opinion, and will only briefly be repeated here. The union alleged that the employer's actions were taken due to union animus of the employer.

Examiner Kenneth J. Latsch held a hearing, and issued Findings of Fact, Conclusions of Law, and Order on April 30, 1999. The Examiner found that the union failed to sustain its burden of proof to establish a prima facie case that any of the challenged employer's actions were substantially motivated by the exercise of rights protected by Chapter 41.56 RCW. The complaint was dismissed. The union appealed, thus bringing the case before the Commission.

POSITIONS OF THE PARTIES

The union argues that Christensen's union activity was a substantial motivating factor in his termination, that the evidence fails to support the Examiner's decision in regard to Solberg, and that the hiring of Horkavy was motivated by an effort to disallow bargaining unit members an opportunity to advance. The union argues that the delay in reaching the decision offended constitutional due process and procedural requirements for swift adjudication, that the delay resulted in inaccurate and prejudicial factual findings, and that the delay nullified the purpose of the hearing. The union contends the Examiner's decision was based on erroneous findings, and that testimony not addressed in the Examiner's order evidences that union animus.

The employer argues that the union failed to prove a causal connection between Christensen's union activity and his discharge. It asserts that it met its burden to articulate sufficient reasons for its actions even if the union did establish a prima facie case. It argues that it had compelling and genuine business needs to terminate Christensen because of his misconduct including inappropriate and offensive sexual harassment of Stephanie Hiatt. The employer argues that the union failed to prove a causal connection between Solberg's union activity and her disciplinary action, and that she was suspended for valid business reasons. The employer contends that the union failed to prove that bargaining unit employees had any right to the job given Horkavy, or that there was any discriminatory motive involved in its decision to hire Horkavy.

DISCUSSION

The Legal Standards

Chapter 41.56 RCW prohibits employers from interfering with or discriminating against the exercise of the rights secured by the collective bargaining statute:

> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly, **interfere with, restrain, coerce, or discriminate against any public employee** or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

[Emphasis by **bold** supplied.]

Enforcement of those statutory rights is through the unfair labor practice provisions of Chapter 41.56 RCW:

> 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;**
>
> (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.
>
> [Emphasis by **bold** supplied.]

Authority to hear, determine and remedy unfair labor practices is vested in the Commission by RCW 41.56.160.

A discrimination violation occurs under Chapter 41.56 RCW when an employer takes action which is substantially motivated as a reprisal against the exercise of rights protected by Chapter 41.56 RCW. See, Educational Service District 114, Decision 4361-A (PECB, 1994) and Mansfield School District, Decision 5238-A and 5239-A (EDUC, 1996).

The Supreme Court of the State of Washington has established the standard of proof for "discrimination" cases. Wilmot v. Kaiser Aluminum, 118 Wn.2d 46 (1991); Allison v. Seattle Housing Authority, 118 Wn.2d 79 (1991). A complainant has the burden to establish a prima facie case of discrimination, including that: (1) the employee has participated in protected activity or communicated to the employer an intent to do so; (2) the employee has been deprived of some ascertainable right, benefit or status; and (3) there is a causal connection between those events. If that burden

is met, the employer has the opportunity to articulate legitimate, nonretaliatory 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 done by showing that: (1) the reasons given by the employer were pretextual; or (2) union animus was nevertheless a substantial motivating factor behind the employer's action.

Application of Legal Standards - Kimball Christensen

Christensen's union activity was undisputed. He took a lead role in the union organizing campaign, which started in November of 1996, and he participated in a Commission hearing on the representation case around April of 1997. He continued to take an active role after the union was certified as exclusive bargaining representative, and he was a member of the negotiating team. He clearly exercised protected rights. Whether there was a causal connection between that protected activity and his discharge is another matter.

Credibility of Witnesses -

The Examiner's conclusions in regard to the discrimination allegations against Christensen rested in large part upon the credibility of Stephanie Hiatt, and the credibility of the employer witnesses who testified as to the reasons Christensen was discharged. Christensen denied Hiatt's version of what had taken place. As the Commission has previously noted:

> We attach considerable weight to the factual findings and inferences therefrom made by our Examiners. They have had the opportunity to personally observe the demeanor of the witnesses. The inflection of the voice, the

> coloring of the face, and perhaps the sweating of the palms, are circumstances that we, as Commission members are prevented from perceiving through the opaque screen of a cold record. This deference, while not slavishly observed on every appeal, is even more appropriate of a "fact oriented" appeal ...

City of Pasco, Decision 3307-A (PECB, 1990), citing Asotin County Housing Authority, Decision 2471-A (PECB, 1987); Educational Service District 114, Decision 4361-A (PECB, 1994).

We have thoroughly reviewed the record and find nothing to indicate the Examiner made an incorrect judgment on witness credibility.

The union contended that Hiatt's testimony was contradictory and unreliable, but we find it reliable. Her testimony was supported by Polhamus and Baldwin, whose testimony indicates that reports made by Hiatt to each of them were consistent with one another. The reports made by Hiatt to Polhamus and Baldwin were also consistent, to a great degree, with Hiatt's testimony at the hearing in this proceeding.

In addition, the parts of Hiatt's testimony that the union cites as inconsistent actually lend substance to her credibility. For instance, her responses to the names Christie Dirks and Cathy Dirks are responses of a witness telling the truth. To the question about "Christie Dirks," she said, "I think I've heard the name," but to the question about "Cathy Dirks", she explained the woman was a good friend. Only different testimony to the same name would have been inconsistent.

The union's arguments in relation to Hiatt's testimony about the water fountain incident, Christensen using foul language, and whether her parents were supportive of her career choice fail for the same reason. The union identified no genuine inconsistency.

Its arguments only show that Hiatt used slightly different words to describe events or to answer the particular questions put to her, as anyone would. For instance, the union cites as contradictory a statement by Hiatt that an alleged touching by Christensen in October or November of 1998 was offensive, since Hiatt was clearly an equal or an instigator of physical contact almost at the same time. We find no contradiction in Hiatt's testimony or her actions, since touching on the job is clearly different from personal relationships off the job, and the specific time frame of the two occurrences was unclear.

Errors De Minimis -

The union argues the record lacks evidentiary support for many of the Examiner's findings in regard to Christensen. We find, however, any errors were de minimis and do not affect the ultimate decision in the case. For instance, the Examiner's decision shows Hiatt as asking Christensen to keep their relationship professional. The fact the decision was mutual does not negate what Hiatt said to Christensen. The union argues the Examiner incorrectly found that Hiatt approached Moberg on December 22, 1998, and told him of matters that led to Christensen's termination. The fact that she approached Moberg from a concern about her "suspension" by Christensen does not negate what she told Moberg in the course of the conversation describing other incidents. The union claims the record lacks support for the finding that the "Rider" program included mostly riders who were local residents with an interest in the emergency medical field. While the only evidence in the record relates to Hiatt's participation, the error (or too-broad inference) is not critical to the result of this case.

Lack of Union Animus -

The union argues that the record establishes union animus on the part of the employer. We do not agree.

Regarding the October 14, 1997, letter from Corbin Moberg to Kim Christensen, we find nothing in the letter that indicates any union animus. The letter concerns the employer's attempts to correct Christensen's job performance.

Richard Combs, a paramedic, testified that Christensen tried to avoid talking about the union. In reference to his conversations with Christensen, Combs testified, "It was more ... how things were going in the department and what his opinion was, how things could be handled better". Combs testified that he approached Moberg with concerns, and that Moberg asked him to document his or others' concerns about the work environment. While Combs testified Christensen was targeted because of outspoken differences, and that there were other medics who were not reprimanded "for any like occurrences", he admitted he could not identify the reason he felt Christensen was targeted. He "simply did not know." Tr. pp. 93-97. The union refers us to certain transcript pages of Combs' testimony, but the closest references to union animus among them are to "a lot of fighting and bickering" between the "new director" and "new union". Combs referred to his feelings of not belonging with the group, and he testified, "The only rapport I had with anybody in the department was [Moberg]". (Tr. p. 86). We are unable to infer any employer union animus from Combs' testimony.

Combs' October 13, 1997, letter to Moberg only indicates Combs' own thoughts about Christensen. Combs stated his opinion that Christensen's calling the boss a liar and using the employer's property for union meetings "to broadcast his opinions to fellow employees" seemed unprofessional. Combs referred to Christensen attacking management and attempting to sway his attitude toward the employer negatively. The fact of a strong difference of opinion among the employees is insufficient to persuade us of union animus on the part of the employer.

The union misstates the evidence with regard to the testimony of Trudy Foreman. She was employed by this employer for about six years until she left in February of 1997, but then participated in an orientation with a private ambulance service in early December 1997. At that time she talked with Greg Moser, who is employed by both the private ambulance and Samaritan Ambulance, and Moser told her Christensen was going to be fired at the end of December. The union argues that her testimony demonstrates union animus, and that the conversation preceded the employer's discovery of any of the facts surrounding the allegations toward Christensen. Christensen had been warned about his work performance prior to early December, however, and the conversation indicates nothing that could be construed as union animus on the part of the employer.

Combs testified that Moberg initiated a termination action against him, and that Corbin was aware Combs did not support the union. (Tr., p. 97) While he signed an authorization card the day before he had a disciplinary problem, he did not testify that Moberg knew that he had signed the card (Tr., p. 103). This testimony tends to support a finding that union activists were not singled out.

Application of Legal Standards - Sonya Solberg

The record established that Solberg engaged in protected activity by being a known and active supporter of the union. The union argues that Moberg did not have authority to give orders to Solberg, but if such authority was present, the evidence fails to establish an order was given. The union's arguments are inapposite to the issue. This is not a "just cause" arbitration or a grievance. Whether Moberg had the authority to give an order and whether an order was given does not need to enter into a consideration of the prima facie case. The employer's reasons for suspending Solberg are not important to determining whether the

union has made out a prima facie case of discrimination. The union bore the burden to show that the discipline of Solberg was due to union activity, and we find nothing in the record that ties her suspension to her union support.

The union cites the testimony of Trudy Foreman as showing employer union animus against Sonya Solberg. Foreman testified that Moser told her Sonya was going to be fired before the end of January. The union claims the conversation preceded the employer's discovery of any of the facts surrounding the allegations toward Solberg. The union, however, again misstates the evidence. There is nothing in the record about Solberg actually being fired in January, so we cannot attribute a hearsay comment about an impending termination to any actual employer intent. The record does indicate Solberg had been given a "last chance warning" on September 23 of 1997, regarding her work performance. Therefore, work performance problems were probably the reason for rumors of an impending termination. Foreman's testimony does not show union animus against Solberg.

Application of Legal Standards - Joseph Horkavy

In regard to the hiring of Joseph Horkavy, the union argues the opening should have been filled by a bargaining unit member. Horkavy and Moberg were friends prior to Horkavy's employment, but that is not per se an indication of anti-union animus. The union points to no evidence, and we find none, that indicates Horkavy's hiring was done in an effort to disallow bargaining unit members an opportunity to advance, or that it was done out of an anti-union motivation. Most importantly, however, the employer had the authority to do what it did in hiring Horkavy. The parties had not signed a collective bargaining agreement, which might have contained seniority provisions.

The union argues about other findings made by the Examiner, but we again find they are not critical to the issues in the case. We note the union has not taken issue with the Examiner's Findings of Fact, but only with the discussion portion of the decision.

Conclusions on Causal Connection

Union animus may be inferred from a wide variety of behavior. In Mansfield School District, Decision 5238-A and 5239-A (EDUC, 1996), the superintendent of schools exhibited strong anti-union sentiments through statements made to a union activist, as well as remarks made to his secretary and another bargaining unit member. A pattern of union animus was also indicated by the record in an earlier unfair labor practice proceeding involving that employer. In City of Winlock, Decision 4784-A (PECB, 1995), union animus was found partly because of the employer's vigorous opposition to a representation case, and in anti-union statements of employer representatives.

This case is comparable to Seattle School District, Decision 5237-B (EDUC, 1996), affirmed, King County Superior Court, WPERR CD-869 (1997), where the Commission dismissed an unfair labor practice complaint because of the lack of union animus on the part of the employer. In that case, there were no anti-union statements to the complainant or anyone else, there was no vigorous opposition to a union organizing effort, and no evidence of anti-union sentiments was put forth. Similarly in Mukilteo School District, Decision 5899-A (PECB, 1997), the complainant provided no showing that the employer expressed anti-union sentiments to him or anyone else, and the record contained nothing to show the employer had a sentiment against unions or against union activity that would cause it to retaliate against someone.

While there is some indication in the record that the employer-union relationship was adversarial in the case at hand, the record contains no statements by employer representatives that would indicate the kinds of union animus found in other cases. The union here has failed to establish a prima facie case of discrimination. It is therefore not necessary to engage in detailed analysis of the reasons articulated by the employer for its actions, to evaluate the evidence for potential pretexts, or to implement the "substantial motivating factor" test.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued in the above-captioned matter on April 30, 1999, by Examiner Kenneth J. Latsch, are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law, and Order of the Commission.

Issued at Olympia, Washington, on the 14th day of December, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

SAM KINVILLE, Commissioner

JOSEPH W. DUFFY, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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RECORD OF SERVICE

THE ATTACHED DOCUMENT, IDENTIFIED AS: DECISION 6673-A - PECB HAS BEEN SERVED BY THE PUBLIC EMPLOYMENT RELATIONS COMMISSION BY DEPOSIT IN THE UNITED STATES MAIL, ON THE DATE ISSUED INDICATED BELOW, POSTAGE PREPAID, ADDRESSED TO THE PARTIES AND THEIR REPRESENTATIVES LISTED IN THE DOCKET RECORDS OF THE COMMISSION AS INDICATED BELOW:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ BETTY PASSMORE

CASE NUMBER: 13514-U-97-03300 FILED: 10/31/1997 ISSUED: 12/14/1999

FILED BY: PARTY 2 DISPUTE: ER MULTIPLE ULP DETAILS: Disciplined for engaging in protected activity.

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