STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF REARDAN-EDWALL, Complainant,	)	CASE 12593-U-96-2997
vs.	)	DECISION 6205-A - PECB
REARDAN-EDWALL SCHOOL DISTRICT, Respondent.	)	DECISION OF COMMISSION

Eric T. Nordlof, Attorney at Law, appeared on behalf of the complainant.

Jeffrey J. Thimsen, Attorney at Law, appeared on behalf of the respondent.

This case comes before the Commission on a petition for review filed by Public School Employees of Reardan-Edwall, seeking to overturn a decision issued by Examiner Kathleen O. Erskine.[1]

BACKGROUND

Public School Employees of Reardan-Edwall (PSE) is currently the exclusive bargaining representative of classified employees of the Reardan-Edwall School District (employer), but that bargaining relationship is of recent origin.[2] During the time pertinent to

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[1] Reardan-Edwall School District, Decisions 6205 and 6206 (PECB, 1998).

[2] From about 1984 to 1994, the employees were represented by the Classified Public Employees Association/WEA. Reardan-Edwall School District, Decision 2005 (PECB, 1984). That organization is not party to this case.

this case, Tom Crowley was superintendent of schools, Bev Bucher was the transportation supervisor, and Clayton Kenney was the head bus mechanic.[3]

Susan Leonetti was hired by the employer in 1989, as a substitute bus driver. She became a regular route bus driver in March of 1990. Leonetti was active in union activities on behalf of the former exclusive bargaining representative.

The Commission conducted a representation election in the wall-to-wall classified bargaining unit in June, 1994. A tie vote resulted in a certification of "no representative" on June 23, 1994.[4]

In the spring of 1995, PSE began an organizing campaign among the employer's classified employees, including the school bus drivers.

A draft of a policy on "Substance Abuse", identified as Policy 8110, was read for the first time at a regular meeting of the employer's board of directors held on June 20, 1995.

PSE filed a representation petition with the Commission on July 10, 1995. Another organization filed a representation petition for a different bargaining unit on July 21, 1995. A hearing was set to make a determination on the appropriate bargaining unit(s).

A second reading of Policy 8110 took place at the July 25, 1995 board meeting. The board adopted Policy 8110 at its August 15, 1995 meeting, to become effective January 1, 1996.

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[3] Kenney's job description states, in part: "Perform emergency duties of transportation supervisor during his/her absence."

[4] Reardan-Edwall School District, Decision 4754 (PECB, 1994).

Leonetti became involved in the PSE organizing campaign during the autumn of 1995. She worked on the campaign with Dave Foxworth, a bus driver who had been a leader of the local CPEA/WEA organization and who was active in organizing on behalf of PSE.[5] Leonetti talked with other drivers, circulated authorization cards, attended meetings, passed out literature, talked with other drivers about union issues, and wore a pin indicating her support for PSE.

On October 9, 1995, Superintendent Crowley issued a letter of reprimand to Leonetti, accusing her of causing a preventable accident. Crowley claimed she did not set the brake on her bus, causing it to roll backwards down a 35-foot embankment. The attorney for PSE, Eric Nordlof, wrote to Crowley on October 25, 1995, contesting the reprimand given to Leonetti. In essence, he stated that the employer's version of events was not accurate, and that he was disturbed by Crowley's willingness to find fault with Leonetti without a thorough exploration of alternative explanations. Nordlof sought to have the reprimand withdrawn, and asked that his letter be included in Leonetti's personnel file if Crowley was unwilling to withdraw the reprimand. By memo to Leonetti of November 27, 1995, Crowley refused to withdraw the reprimand and stated he would place Nordlof's letter in her file in response to the reprimand if she wished. By letter of December 19, 1995, Leonetti requested that Nordlof's letter be placed in her file.

A Commission staff member held a hearing on the representation petitions on December 8, 1995. Superintendent Crowley was present on behalf of the employer. Attendees for PSE included Foxworth and Leonetti.

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[5] Foxworth was the person who polled employees regarding which union they wanted, contacted PSE regarding representation, and was the employee most active in organizing the local chapter.

In December of 1995, bus driver employees attended a meeting held by the employer concerning Policy 8110. At that meeting, Leonetti received a copy of the policy, and signed a document acknowledging that she could be required to take alcohol and drug tests.

On January 1, 1996, the employer implemented Policy 8110 for its transportation employees. That policy states, in pertinent part:

> SECTION II Definitions:
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> ...
> **Refusal to submit** (to an alcohol or controlled substance test) **occurs when an employee:**
>
> 1. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing:
>
> 2. Fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing; or
>
> 3. Engages in conduct that clearly obstructs the testing process.
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> ...
> SECTION III Prohibited Alcohol and Controlled Substance-related Conduct.
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> ...
> **The following activities are prohibited** for all District employees. **Engaging in such conduct shall result in appropriate corrective action up to and including termination of employment. ...**
>
> Prohibited conduct includes:
>
> ...
> 5. **Refusing to submit** to an alcohol or controlled substances test required by post-accident, random, reasonable suspicion or follow-up testing requirements. ...
>
> ...

SECTION IV Testing Circumstances

...
Random Testing
The District will participate in the testing consortium of Cascade Transportation Services.

...
3. Process

...
b. The selection of employees for random alcohol and controlled substance testing shall be made by a scientifically valid method. Under the selection process used, each employee shall have an equal chance of being tested each time selections are made.

c. The District shall ensure that employees selected for random alcohol and substance abuse tests proceed immediately to the testing site upon notification of being selected, unless the employee is performing a safety-sensitive function, in which case the driver will cease performing the function and proceed to testing as soon as possible. ...

...
SECTION VI Test Results and Consequences

A. Alcohol tests

...
3. Results of alcohol concentration of 0.04 or refusal to be tested:
a. The employee will be removed from performing any safety-sensitive function and placed on suspension from work without pay pending the outcome of an investigation. Disciplinary action up to and including discharge may occur.

[Emphasis by **bold** supplied.]

The policy provided for disciplinary action, up to and including discharge, for any employee who tested positive on a drug test and/or showed blood alcohol concentrations between 0.02 and 0.04.

On March 4, 1996, Leonetti submitted a resignation as a regular route driver effective March 22, 1996. In that letter, Leonetti requested to remain on the list as a substitute bus driver.

On March 19, 1996, Leonetti withdrew her resignation. The employer accepted that action, and she continued as a regular route driver.

On May 29, 1996, Crowley informed Leonetti that she would not be rehired for the next school year. Reasons stated by Crowley for that "non-renewal" were that there had been many complaints from parents, and that the primary reason was her inability to control and discipline the students on the bus. Leonetti testified that she was told, during that discussion, that she was not a team player, and that she was costing the employer votes.[6]

At around 8:00 a.m. on May 30, 1996, Kenney informed Leonetti that she was scheduled for a random drug test that day.[7] The test was to be administered in Davenport, Washington (which is about 12 to 13 miles west of Reardan). Leonetti told Kenny that she could not go that day, because she had appointments and errands in Spokane (which is about 20 to 22 miles east of Reardan) and "in the valley" (referring to an area east of Spokane).[8]

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[6] The latter was in reference to Leonetti's attendance and presentation at a school board meeting.

[7] Kenney, who is the head bus mechanic, had been selected for a drug and alcohol test on May 6, 1996, but was absent from work on that day. The precise reasons for this absence need not be resolved. Crowley testified in this proceeding that Kenney was absent on that particular day, and that conforms with an interrogatory filed in Lincoln County Superior Court, where Crowley stated "Clayton Kenney was selected to be notified on May 6, 1996, but was absent from work on that day". Leonetti testified that Bucher said there had been an emergency.

[8] Notice is taken of the Reardan-Davenport and Reardan-Spokane mileage shown on the official state highway map.

When Leonetti arrived to prepare her bus at around 2:00 p.m. that same afternoon, Kenney advised her to report to Bucher. Leonetti asked Dave Foxworth to go with her. Bucher handed Leonetti a letter written by Superintendent Crowley, dated May 30, 1996, which stated as follows:

> This morning at the end of your morning bus route, you were informed that you had been selected for random drug and alcohol testing and needed to proceed to the Davenport Clinic for the testing. You did not submit to the test. According to Board Policy 8110 Section 3, you may be terminated from employment for refusing to submit to the testing. We are, therefore, immediately terminating you from employment. We have employed a substitute bus driver to replace you, starting with the afternoon run today.
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> ...
>
> As you know, we were not planning to renew your contract for next year. Your nonsubmission to the testing today, along with the termination that has resulted, has superseded that action. You are terminated effective immediately, as opposed to nonrenewed at the end of this school year.

There was some discussion, after which Leonetti left the employer's premises.

The next day, May 31, 1996, Leonetti went to Spokane for a drug test, the result of which was negative. She also had an interview with Cascade Counseling Services, an employee assistance program. That interview resulted in a statement that no chemical dependency or abuse could be diagnosed at that time.

On or after May 31, 1996, the parties would have received a decision issued by the Commission's Executive Director on May 30, 1996, in which appropriate bargaining units were described and elections were ordered. One of those bargaining units was described as:

> All full-time and regular part-time employees of the Reardan-Edwall School District performing school bus driving, groundskeeping, and mechanic work, excluding the superintendent, confidential employees, and all other employees of the employer.

Reardan-Edwall School District, Decision 5549 (PECB, 1996).

The Commission staff proceeded with arrangements for conducting a representation election in that bargaining unit.

On July 12, 1996, the union filed the complaint charging unfair labor practices in this case, alleging that the employer interfered with employee rights and discriminated against Leonetti, by targeting her for discharge because of her role in union organizing, and because she used the union to challenge the reprimand issued to her. The union alleged that Leonetti was treated differently than Kenney, "a known management sympathizer", who was allowed to reschedule his test. The union also alleged that the employer unilaterally adopted the substance abuse policy without notice to the union, and thereby refused to bargain in violation of RCW 41.56.140(4). The union sought an order directing that Policy 8110 be rescinded, that Leonetti be reinstated and her personnel records expunged, and that Leonetti be made whole.

A tally of ballots issued on July 23, 1996 indicated that PSE had prevailed in the representation election for the bus driver / groundskeeping / mechanic bargaining unit. PSE was certified as exclusive bargaining representative of that bargaining unit on July 31, 1996.[9]

On October 18, 1996, the union filed another complaint charging unfair labor practices, alleging that the employer conditioned its continued participation in collective bargaining negotiations on

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[9] Reardan-Edwall School District, Decision 5549-A (PECB, 1996).

the resolution of an issue of whether the transportation supervisor should be included in the bargaining unit. That complaint was docketed as Case 12767-U-96-3069.

The unfair labor practice cases were consolidated for hearing before Examiner Kathleen O. Erskine, who issued a decision on February 9, 1998. The Examiner dismissed the complaint in this case, ruling that: (1) It was untimely as to the employer's adoption and implementation of Policy 8110; and (2) PSE failed to sustain its burden of proof that the discharges of Leonetti were substantially motivated by Leonetti's union activity. In Case 12767-U-96-3069, the Examiner found the employer had unlawfully pre-conditioned bargaining on the resolution of a unit determination issue which was not a mandatory subject of bargaining, and unlawfully terminated negotiations upon the refusal of the union to make concessions on that unit determination issue, each in violation of RCW 41.56.140(4) and (1).

The union petitioned for review of the Examiner's rulings in Case 12593-U-96-2997, thus bringing this case before the Commission.[10]

POSITIONS OF THE PARTIES

The union argues that the Examiner's decision is flawed in three major areas: (1) The Examiner failed to apply an "interference" analysis to the facts and ignored evidence of the impact of Leonetti's termination on other bus drivers; (2) the Examiner failed to consider that the employer did not suspend Leonetti and

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[10] The employer did not petition for review of the Examiner's ruling in Case 12767-U-96-3069 and, in fact, tendered compliance with the remedial order issued by the Examiner in that case. Accordingly, the portions of the consolidated record dealing with the insistence upon unit concessions are not before the Commission at this time.

make an investigation, as required by its own drug/alcohol testing policy; and (3) the Examiner failed to properly weigh the testimony of two disinterested witnesses who directly contradicted employer testimony regarding Leonetti's bus driving performance and student management abilities. In addition, the union asserts the Examiner ignored the timing of the union's organizing drive, which had been under way for nearly a year before the major events of these cases occurred. The union asks the Commission to reinstate Leonetti.

The employer argues that the record does not support an interference charge. It asserts that it should be excused from strict compliance with its drug testing policy, because Leonetti's admitted failure to report for the drug test made an investigation unnecessary. The employer notes that Leonetti's discharge occurred six months after the hearing and prior to receipt of the decision on the representation cases, and argues that the timing cannot suggest the discharge was based on Leonetti's union activity. The employer supports the Examiner's decision.

DISCUSSION

The Timeliness of the Refusal to Bargain Allegation

The union petitioned for review of Paragraph 2 of the Conclusions of Law, where the Examiner ruled that the complaint filed on July 12, 1996, was untimely as to the unilateral implementation of the substance abuse policy on January 1, 1996. The union did not, however, address this issue in its brief to the Commission.

RCW 41.56.160(1) requires that unfair labor practice complaints be filed within six months of the alleged violation. The Commission has routinely dismissed complaints or allegations on the basis of

untimeliness.[11] The Commission has uniformly held that the six-month period set forth in RCW 41.56.160 begins to run with the date of notice or constructive notice of the complained-of action. See, Emergency Dispatch Center, Decision 3255-B and 3255 (PECB, 1990). Timeliness of unfair labor practices complaints is generally measured as six months following the actual implementation of a unilateral change.[12] In the case at hand, the complaint filed on July 12 sought to challenge a substance abuse policy which had been implemented on January 1 of the same year, with advance notice to the employees. The complaint was untimely under RCW 41.56.160. We affirm Paragraph 2 of the Conclusions of Law.

Legal Standard for Discrimination Claims

Chapter 41.56 RCW prohibits interference with or discrimination against the exercise of collective bargaining rights:

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

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

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[11] See, e.g., City of Seattle, Decision 5852-C (PECB, 1998); King County, Decision 6189 (PECB, 1998); Soap Lake School District, Decision 6194 (PECB, 1998); Seattle School District, Decision 6261 (EDUC, 1998).

[12] See, e.g., Washington Public Power Supply System, Decision 6058-A (PECB, 1998).

> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:
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> (1) **To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;**
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> (2) To control, dominate or interfere with a bargaining representative;
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> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
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> (4) To refuse to engage in collective bargaining.
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> [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 (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) and 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 a prima facie case is made out, 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 Standard

The Prima Facie Case - Exercise of Protected Right -
In this case, Leonetti engaged in activities protected by RCW 41.56.040. She worked with Dave Foxworth on the union organizing campaign, circulated authorization cards, attended meetings, passed out literature, wore a union pin on her coat, and talked with other drivers about union issues.

Employer knowledge of Leonetti's union activities is essentially undisputed. Her alignment with the union was clearly made known to the employer by the letter from the union's attorney, challenging the reprimand given to Leonetti. The record shows that Superintendent Crowley, who signed both of the letters terminating Leonetti's employment, was clearly aware of Leonetti's union activities.

The complainant satisfied this first element of the prima facie case.

The Prima Facie Case - Deprivation -
On May 29, 1996, Leonetti was informed that her employment was to be terminated at the end of the 1995-1996 school year. On May 30, 1996, Leonetti was discharged, effective immediately. The complainant satisfied this element of the prima facie case.

The Prima Facie Case - Causal Connection -
Employer knowledge of union activity is not, standing alone, sufficient to find a causal connection between union activity and

adverse action. In previous cases where the Commission has found a causal connection, there has generally been evidence of employer anti-union animus. Examples are:

- In Mansfield School District, Decision 5238-A and 5239-A (EDUC, 1996), the superintendent of schools exhibited strong anti-union sentiments through statements to a union activist in which he indicated that he saw her as the union, and that he would break her in order to break the union. Remarks made by the same employer official to his secretary, to the effect that he and his wife were not in favor of unions, and to another bargaining unit member, to the effect that unions were unimportant and a barrier to direct dealing with individuals, supported a finding of anti-union animus. In that case, too, there had been a pattern of anti-union animus indicated by the record in an earlier unfair labor practice proceeding.

- In City of Winlock, Decision 4783-A (PECB, 1995), anti-union animus was inferred where the employer vigorously opposed a representation petition, an employer official told a union adherent, "you're making [the mayor] crazy with this union thing", the employer complained of "union problems", and testimony that the employer was "dealing with the union matter" indicated a negative reaction to employees' exercise of protected activity.

- In City of Federal Way, Decision 4088-A (PECB, 1993), affirmed, Decision 4088-B (PECB, 1994), an employer's letters to employees as part of a vigorous anti-union campaign leading up to an election campaign showed anti-union animus.

- In Educational Service District 114, supra, the employer engaged employees in discussions about the need for a union, the employer commented to a union activist that she had become a "rebel", and the employer warned an employee that there

would be adverse employment consequences if he persisted in union activity.

While anti-union animus is inferred from a wide variety of employer behavior in discriminatory discharge cases, we do not find evidence in this case of the anti-union animus found in previous cases.

The "Team Player" Remark -
The strongest accusation of anti-union animus comes from Leonetti's testimony that, during her May 29 discussion with Crowley regarding the nonrenewal, Crowley commented that she was not a team player and made a negative reference to her having spoken up at a school board meeting. Without more, however, we find this comment insufficient to support a causal connection.

This case is distinguishable from Port of Tacoma, Decision 4626-A (PECB, 1995), where an employer's emphasis on "team building" was suspect as a guise to weed out union activists. Anti-union animus was evident in that case, however, and the employer had changed an interviewing procedure after a year of visible union activity of the complainants. No such facts exist here.

This case is similar to Seattle School District, Decision 5237-B (PECB, 1996), affirmed, Superior Court for King County (No. 96-2-17727-O KNT, 1997), where there was no evidence of vigorous employer opposition to a union organizing effort, and the Commission found no causal connection between a teacher's protected activity and his later nonrenewal. See, also, Mukilteo School District, Decision 5899-A (PECB, 1997), where the Commission found a complainant failed to establish a prima facie case. The alleged discriminatory act in that case involved a telephone call between a prospective employer and a former employer, during which the former employer stated that the complainant was not eligible for rehire. The record in that case contained no showing that the former employer harbored or expressed anti-union sentiments that

would cause it to retaliate against an employee or former employee who engaged in protected activity. We reach a similar conclusion from the absence of evidence of anti-union animus in this case.

Timing of Events Inconclusive -
While the timing of adverse actions in relation to protected union activity can serve as circumstantial evidence of a causal connection,[13] we are unable to find such a causal connection in this case.

- Leonetti had exercised her protected rights on behalf of the former exclusive bargaining representative prior to 1994, when an election resulted in a certification of no representative. The employer did not take any action against her at that time, or during the hiatus between periods of union activity.

- The record indicates Leonetti could have been active in organizing on behalf of PSE as early as May of 1995, and that she was clearly supporting PSE by August of 1995. Other than attending the representation case hearing on behalf of PSE in December of 1995, those activities are comparable to her activities on behalf of the former exclusive bargaining representative. Again, the employer did not take any action against her at that time, and it even permitted her to withdraw her resignation in March of 1996.

- It was not until May of 1996 that Leonetti was told she would not be rehired for the next school year, and that she was summarily discharged after failing to take the random test.

The prolonged sequence of events described here clearly distinguishes this case from Mansfield School District, supra, where a

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[13] City of Winlock, Decision 4784-A (PECB, 1995). See, also, Mansfield School District, Decision 5238-A and 5239-A (EDUC, 1996), and Kennewick School District, Decision 5632-A (PECB, 1996).

finding of a causal connection was partially based on the employer having acted at the first opportunity after protected activity occurred (i.e., at the annual cycle for nonrenewal of teacher contracts).[14] School district classified employees, such as Leonetti, are not subject to the "probable cause", "nonrenewal" and "hearing officer" arrangements established for certificated employees in RCW 28A.400. There is no particular reason for the employer to have acted against Leonetti at this time.[15]

Surrounding Circumstances -
Employees Dave Foxworth, Vickie Larsen, and Joan Dawley were all union activists before, during or after the period that Leonetti engaged in union activity on behalf of PSE. The fact that other employees who were involved in union activity on behalf of PSE were not discharged or subjected to any other actionable deprivation supports an inference that there was not a causal connection between Leonetti's union activity and her discharges.

Various employees testified that management had a negative attitude toward the union, but their testimony was nonspecific. Any mention of a connection between Leonetti's discharges and her union activity was unclear and vague. The employer's management was not quoted as having said, or cited as having done, anything that could support the finding of a causal connection.

Alleged Favoritism Toward Kenney -
Kenney apparently conveyed anti-union feelings to other bargaining unit members, and it is clear that he did not submit to a random

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[14] The finding of a causal connection in that case was also supported by evidence of strong expressions of anti-union animus on the part of the employer.

[15] There was a reference in the employer's May 30 discharge letter to Leonetti's "contract", but no document resembling an annual employment contract was offered or admitted in evidence in this record.

test when it was time for him to do so. PSE alleges that there was disparate treatment as between Kenney and Leonetti, but the evidence does not sustain that claim. The record contains strong evidence that Kenney was not at work on the day his name first came up for random testing, and that postponement of his test until the next testing date was consistent with the policy. Even if we accept that Kenney had anti-union feelings, we find no basis to infer from the record that Kenney had any influence in the management decisions taken in regard to Leonetti.

Other Analysis Unnecessary

Since the complainant has failed to establish a prima facie case of discrimination, the employer has no burden to produce evidence of a legitimate, non-retaliatory motive for its actions. It is also not necessary for the Commission to engage in a 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 in this case.

The Interference Claim

The finding of a "discrimination" violation under RCW 41.56.040 and RCW 41.56.140(1) carries with it a derivative "interference" violation under RCW 41.56.140(1). Since no finding of a discrimination violation is made in this case, no derivative interference violation is found either.[16]

To establish an "interference" violation under RCW 41.56.140(1) independent from an alleged "discrimination", a complainant needs to establish that a party engaged in separate conduct which

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[16] See, Lake Washington Technical College, Decision 4721-A (PECB, 1995), where no derivative interference violation was found on a refusal to bargain claim because the union had waived bargaining rights by inaction.

employees could reasonably perceive as a threat of reprisal or force or promise of benefit associated with their union activity. City of Seattle, Decision 3066 (PECB, 1989), affirmed, Decision 3066-A (PECB, 1989). See, also, City of Pasco, Decision 3804-A (PECB, 1992), and cases cited therein.

PSE claims the Examiner failed to apply an independent "interference" analysis to the facts, but it only asserts that other bus drivers concluded that Leonetti was discharged because of her union activity.[17] PSE misstates the law. Independent interference violations cannot attach to facts where a "discrimination" claim is dismissed under the test established in Wilmot and Allison. Since the Commission has concluded that allegations of discrimination should be dismissed, we make no findings in regard to interference claims arising out of the same facts.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law, and Order issued by Examiner Kathleen O. Erskine in the above-captioned matter on February 9, 1998, are AFFIRMED, with the exception to Paragraph 3 of the Conclusions of Law, which is revised to read as follows:

3. The complainant has failed to make a prima facie showing of a causal connection between the exercise of Leonetti's protected rights under Chapter 41.56 RCW and the employer's discharges

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[17] PSE claims that the error is particularly glaring in light of the Examiner's finding that PSE had proved its prima facie case of discrimination, but that argument is unavailing because of our conclusion that the union did not make out a prima facie case.

of Susan Leonetti on May 29, 1996 and/or May 30, 1996, and has not established any violation of RCW 41.56.140(1) with respect to those discharges.

Issued at Olympia, Washington, on the 29th day of September, 1998.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

SAM KINVILLE, Commissioner

JOSEPH W. DUFFY, Commissioner