STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| LINDA SCHWILKE, Complainant, | ) | CASE 12566-U-96-2987 |
| vs. | ) | DECISION 5809-A - PECB |
| NORTH VALLEY HOSPITAL, Respondent. | ) | DECISION OF COMMISSION |

Linda Schwilke appeared pro se.

Callaway and Howe, by Michael Howe, Attorney at Law, appeared on behalf of the employer at the hearing. Menke, Jackson, Beyer & Elofson, by Anthony F. Menke, Attorney at Law, appeared on the petition for review.

This case comes before the Commission on a petition for review filed by North Valley Hospital, seeking to overturn a decision issued by Examiner William A. Lang.[1]

## BACKGROUND

The North Valley Hospital and Nursing Home (employer) is operated by a public hospital district, which is a public employer covered by Chapter 41.56 RCW.

Linda Schwilke was an employee of the employer, working part-time in medical records and part-time as a ward clerk.

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[1] North Valley Hospital, Decision 5809 (PECB, 1997).

On April 19, 1996, the Public Employment Relations Commission issued a notice in Case 12371-E-96-2064,[2] indicating that an election was to be conducted, by secret mail ballot, among the employees in a bargaining unit described as:

> All full-time and regular part-time employees of the North Valley Hospital and Nursing Home, excluding doctors, registered nurses, management, supervisors, confidential employees, and all other employees.

The purpose of the election was to determine whether the employees in the described bargaining unit wished to be represented for the purposes of collective bargaining by United Food and Commercial Workers Local 1001. The notices posted by the employer and mailed to the employees contained the following:

> Inquiries concerning this notice and election should be directed to: Sally Iverson, Public Employment Relations Commission, 603 Evergreen Plaza Building, P.O. Box 40919, Olympia, WA 98504-0919. Telephone (360) 664-3135.

Those notices were in the form customarily issued by the Commission in representation proceedings under Chapter 391-25 WAC.

On April 24, 1996, Schwilke heard that an employee had not received an election ballot. Using her personal credit card, Schwilke telephoned the number on the Commission's notice, and left a voicemail message informing Sally Iverson that the employee did not receive a ballot. The call took one minute to make. A co-worker overheard Schwilke, and told her of another employee who did not receive a ballot. Using her personal credit card, Schwilke again

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[2] Notice is taken of the Commission's records for the cited case.

called the number on the notice. Schwilke left another voicemail message for Iverson, to the effect that the second employee did not receive a ballot. That call took two minutes to make.

Iverson telephoned Susan Cutler, the employer's human resource director, twice on April 24, 1996. They discussed the inquiries received by the Commission from a "Linda" as to the eligibility of other employees to vote.

On April 25, 1996, Cutler contacted the two employees who were the subjects of the messages Schwilke left for Iverson. Cutler informed them that they were not eligible to vote. In response to Cutler's questioning, both employees told Cutler they did not know why Schwilke had made the calls about them.

Medical Records Supervisor Terry Long met with Schwilke on April 25, 1996, and told Schwilke to refrain from making calls regarding union matters on the employer's time. Schwilke telephoned Cutler, and requested a meeting.

On the following day, Long documented the warning she had given to Schwilke, as follows:

> This is a written account of a verbal warning given by Terry Long, Medical Records Supervisor to Linda Schwilke, Medical Records Transriptionist.
>
> **I spoke with Linda on 4/25/96 regarding her use of time in the Medical Records Department in areas of political type activities taking place presently within the hospital. In particular, I spoke with her about her use of time and phone calling PERC over union related issues on 4/24/96.** I was told by administration that she had placed at least

> two calls to PERC on 4/24 in an attempt to represent fellow employees about ballots. I was asked if these were long-distance calls made on our phone and how much time was spent doing this activity. When I asked Linda about this, she said she had used her own calling card but that the two calls she made were here at work. **I asked her to refrain from placing such calls in the future** and that I know Oroville activities and civic duties are important to her but that she needs to refrain from doing these things on company time, and as an example, I slated the incident wherein Dr. Lamb had called her one day and talked for at least 20 minutes about the Oroville Clinic. Even though Dr. Lamb was the one who instigated the call, I felt this was infringing on Linda's time and made her aware of that. She stated she felt that all of this was a "moot point" because she was resigning her position in Medical Records soon anyway. She went onto say she would talk to Don, Ron, and Sue about this issue I addressed with her. She then called Sue to have a meeting with them that day.

[Emphasis by **bold** supplied.]

Cutler, the hospital administrator, and Long's supervisor met with Schwilke on April 25, 1996. Among the matters discussed was the issue of Schwilke's telephone calls to the Commission. Schwilke confirmed that she had made the calls and that the two employees had not asked her to make the calls on their behalf. Cutler told Schwilke that a Commission staff person said she should address any concerns about the election to her employer rather than the Commission.

On April 26, 1996, Schwilke turned in a resignation of the medical records position. She also gave notice that she would leave her ward clerk position at the end of May.

On June 24, 1996, Schwilke filed a complaint charging unfair labor practices with the Commission, alleging that the employer interfered with employee rights in violation of RCW 41.56.140(1), by harassing her for contacting the Commission.[3] Schwilke alleged she was so upset with the employer's actions on April 25, 1996, that she handed in her resignation from Medical Records the next day, and resigned her ward clerk position soon thereafter. As a remedy, Schwilke sought back pay.

Examiner Lang held a hearing on November 13, 1996, and issued his Findings of Fact, Conclusions of Law and Order on January 22, 1997. The Examiner found that Schwilke's protected activity in telephoning the Commission was a substantial factor in the employer's decision to reprimand her, and that the employer committed an unfair labor practice in violation of RCW 41.56.140(1). The Examiner found that the employer unlawfully invoked the Commission and its election processes as a basis for its reprimand. The Examiner ordered the employer to remove the warning from Schwilke's file, offer her full reinstatement, and make her whole with back pay and benefits for the period from the effective dates of her resignations to the effective date of the unconditional offer of reinstatement. On February 6, 1997, the employer filed a petition for review, thus bringing the case before the Commission.

## POSITIONS OF THE PARTIES

The employer argues that there was only a warning and a resignation in this case. Since there was no discharge, the employer contends

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[3] By the time the complaint was filed, the union had won the representation election. Notice is taken of the tally of ballots issued in Case 12371-E-96-2064 on May 6, 1996.

the Examiner erred in the application of the substantial factor test. The employer argues that the Examiner's decision ignores other work problems that the employer discussed with Schwilke. The employer contends that Schwilke was not engaged in protected activity, because Schwilke had no official capacity on behalf of the union, had not been asked by the other employees to make the calls to the Commission, and had no authority to make the calls. The employer assigns error to numerous statements within the Examiner's decision, to the Findings of Fact, and to the Conclusions of Law. The employer asks the Commission to reverse the order, deny the remedies and dismiss the complaint.

Schwilke argues that she heard two employees were concerned about balloting issues in the election and that she took it upon herself to call the Commission. Schwilke contends the total time spent in the conversations and telephone calls was less than 10 minutes, and that the time should be considered as break time. Schwilke argues that a warning can create an environment so hostile that a person would resign, and she urges the Commission to uphold the Examiner's decision.

## DISCUSSION

### Applicable Legal Standards

Chapter 41.56 RCW prohibits employers from interfering with or discriminating against public employees who exercise the collective bargaining rights secured by the 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.
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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:

> 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.]

RCW 41.56.160 authorizes the Commission to determine and remedy unfair labor practices.

The Supreme Court of the State of Washington has clearly 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 discrimination violation occurs when: (1) The employee exercised a right protected by the collective bargaining statute, or communicated to the employer an intent to do so; (2) the employee was discriminatorily deprived of some

ascertainable right, benefit or status; and (3) there was a causal connection between the exercise of the legal right and the discriminatory action. Educational Service District 114, Decision 4361-A (PECB, 1994) and Mansfield School District, Decision 5238-A and 5239-A (EDUC, 1996).

A complainant has the burden to establish a prima facie case of discrimination. 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 employer 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. Educational Service District 114, supra.

## The Prima Facie Case

Exercise of a Right -

On April 24, 1996, Schwilke made two telephone calls to the Public Employment Relation Commission, in response to an official notice issued by the Commission. The purpose of the calls was to notify the Commission of questions about the eligibility of two employees to vote in the representation election then being conducted by mail ballot.

The employer argues that Schwilke was not engaged in protected activity at that time, because the employees she named had not requested her to make the calls, and she had no official capacity as a union representative. The argument is without merit. Schwilke was employed within a bargaining unit that was the subject

of an active representation proceeding. The election which was taking place at the time directly invoked RCW 41.56.040, which expressly prohibits interference, restraint, coercion or discrimination on the part of an employer against "any public employee" in the free exercise of their right to organize. See, City of Bellevue, Decisions 4242, 4243, 4244 and 4245 (PECB, 1992) where, in dismissing unfair labor practice complaints filed by four unrepresented individuals who claimed harassment by their employer, the Executive Director made a strong statement that a cause of action would have been found to exist if the employees had been in the process of organizing for the purposes of representation.[4] In the case at hand, the telephone calls were clearly protected activity,[5] both under RCW 41.56.040 and in the context of the representation proceedings then being conducted under RCW 41.56.050 through .070.

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[4] Section 7 of the National Labor Relations Act uses the term "concerted activity" to describe a situation where one employee is called on to represent other employees, and debates have arisen about the scope of that term. Meyers Industries, 268 NLRB 493 (1984), rev'd sub nom. Prill v. NLRB, 755 F.2d 941 (CA DC), cert. denied, 474 U.S. 971 (1985), decision on remand sub nom. Meyers Industries, 281 NLRB 881 (1986), aff'd sub nom. Prill v. NLRB, 835 F.2d 1481 (CA DC, 1987), cert. denied sub nom. Meyers Industries v. NLRB, 487 U.S. 1205 (1988). The absence of "concerted activities" language from Chapter 41.56 RCW has significance in regard to activity outside of the organizing and collective bargaining context. In City of Seattle, Decision 489, affirmed, Decision 489-A (PECB, 1978), an employee's individual action in protesting employment conditions outside of the collective bargaining context was not a protected activity under the state statute. See, also, Educational Service District 114, supra.

[5] See, Sahara Las Vegas Corp., 297 NLRB 726 (1990) where a phone call to the NLRB and resorting to the Board's processes were protected activity under the NLRA.

Discriminatory Deprivation -

On the day following Schwilke's telephone calls to the Commission, her supervisor directed her to refrain from placing such calls in the future.[6] At a meeting held soon thereafter, senior management officials criticized Schwilke for making the calls, and told Schwilke that a Commission staff person said she should have directed the employees' election concerns to the employer. Since any employee has a right to contact the Commission about perceived irregularities in representation election procedures, as part of their free exercise of the right to organize for the purpose of collective bargaining under RCW 41.56.040, Schwilke was deprived of her right to be free from interference, restraint, coercion or discrimination under the statute.

Causal Connection -

Direct evidence of a causal connection is shown by the employer's written documentation of the "verbal warning". The employer's warning to Schwilke was made in the context of Schwilke's "use of time ... in areas of political type activities taking place presently within the hospital", which we interpret as a thinly-veiled reference to the union organizing campaign. The warning was attributed to the supervisor having been "told by administration that she had placed at least two calls to PERC on 4/24 in an attempt to represent fellow employees about ballots". In the supervisor's own words, the purpose of the meeting "in particular" was to discuss Schwilke's "use of time and phone calling PERC over union related issues on 4/24/96".

A causal connection is also evidenced by the discussion between Schwilke and the employer officials on April 25, 1996. The

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[6] The supervisor documented her meeting with Schwilke in a written statement titled "verbal warning".

employer directly invoked the Commission by telling Schwilke that Commission staff had said she should contact the employer with election concerns instead of the Commission. The causal connection between Schwilke's union activity and the employer's actions is thus abundantly clear in this case.

The timing of adverse actions in relation to protected union activity can serve as circumstantial evidence of a causal connection between protected activity and adverse action. City of Winlock, Decision 4784-A (PECB, 1995). See, also, Mansfield School District, supra. The fact of an investigation into Schwilke's actions, the supervisor's "verbal warning", and the statements of employer officials' that she was not to call the Commission, all followed Schwilke's telephone calls by one day, and collectively provides additional basis for finding a causal connection between the protected activity and the discriminatory deprivation.

The complainant established a prima facie case of discrimination in this case. The Examiner properly considered the reasons which the employer articulated for its actions.

## The Employer's Burden of Production

The employer cites various arguments in favor of its position, and we discuss them separately:

- The employer argues that application of the substantial factor test is erroneous, because there was no discharge. That test is used whenever discrimination is alleged. The Commission adopted the substantial factor test in Educational Service District, supra, which involved refusal to rehire issues. It has subsequently been applied to cases involving actions other

than discharges. See, e.g., Port of Tacoma, Decision 4626-A (PECB, 1995) (denial of promotion); Mansfield School District, Decision 5238-A (PECB, 1996) (layoff and change of work assignment); and Kennewick School District, Decision 5632-A (PECB, 1996) (reprimand and performance evaluation). Both the Commission and the National Labor Relations Board have always considered discharge to be only one of many potential discriminatory actions of the employer. See, Spokane Transit Authority, Decision 2078-A (PECB, 1985) (demotion); Harris-Teeter Super Markets, 307 NLRB 1075 (1992) (warning letters); and B.C. Lawson Drayage, Inc., 299 NLRB 810 (1990) (warning letters).

- The employer argues that Schwilke's resignation should not be considered a constructive discharge, and cites Molsness v. City of Walla Walla, No. 14197-7-III, Court of Appeals, Division Three (1996) for the proposition that an employee's voluntary resignation defeats a claim for wrongful termination. We find the cited case inapposite, however: first, our statutory mandate does not include deciding whether a wrongful termination occurred; second, whether Schwilke's resignation is to be considered a constructive discharge does not affect the issue of whether an unfair labor practice occurred, since the employer's adverse action occurred prior to Schwilke's submission of her resignation. While Schwilke gave notice of her resignation from the ward clerk position over a month in advance, suggesting a lack of urgency on her part, the fact that she immediately resigned from the medical records position under a cloud of turmoil related to her telephone calls to the Commission strongly supports a finding that the employer's warning about the calls led to her resignation from that position.

- The employer contends that Schwilke had been looking for another job since January of 1996, and it cites the April 24 date on her resignation letter as a basis for arguing that she drafted her resignation prior to the warnings.[7] Those facts were contested by Schwilke, who testified that she actually wrote the resignation letter after the meeting with her supervisor, and that the date on the document is incorrect. The critical (and undisputed) fact is that Schwilke submitted her resignation for the medical records position on April 26, 1996, which was after the employer's adverse action. A reasonable inference can be made that Schwilke's intention to resign from that position only matured when she actually turned in her resignation.

- The employer argues that the immediate supervisor's action was not a reprimand, as characterized in the Examiner's decision. The terms used to describe the employer's action are not material in this case. It is undisputed that Schwilke's supervisor discussed work matters with her, including her calls to the Commission. Any number of terms could characterize that type of communication in the employment arena, including "corrective interview", "warning" or "reprimand". Regardless of whether Schwilke was "asked", "requested", "directed" or "warned" to "refrain from placing [calls to the Commission] in the future...", it is clear that the purpose of the employer's action was to cause a change in her behavior on the job. In Kennewick School District, Decision 5632-A (PECB,

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[7] The employer claims in its brief that Schwilke submitted her written resignation "before any meeting" and "prior to the verbal warning". A date stamp visible on the document appears to indicate April 26, however, and the employer's answer asserted that the document was received on April 26, 1996.

1996), a "letter of reprimand" similarly directed a cook not to engage in certain conduct related to her job.[8] In both cases, the exchanges and/or documents were intended to influence the employee. There is no difference in the effect between the employer's "reprimand" in Kennewick School District and the "verbal warning" in this case.

- The employer contends that the Examiner's decision does not address other work problems that were discussed at the meetings with Schwilke. The employer argues that the issue of the calls to the Commission was a minor part of discussions with Schwilke that included misuse of work time and other personal phone calls. The document speaks for itself, however. In her written account of the verbal warning, Schwilke's supervisor stated, near the beginning, "**In particular, I spoke with her about her use of time and phone calling PERC over union related issues on 4/24/96.**" It is clear that the calls to the Commission were a major part of the meeting between Schwilke and her supervisor, and we infer that such a meeting would not have occurred had it not been for the telephone calls Schwilke placed to the Commission. Even if those calls played less of a role in the meeting involving Cutler, the administrator, and Long's supervisor, they were among the discussion topics at the second meeting. The fact other matters were discussed with Schwilke does not in any way diminish the significance of the prohibition of making calls

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[8] We concluded in Kennewick School District that the employee's previous filing of a grievance was a substantial factor in the employer's actions of investigating and reprimanding a cook for giving away ice cream bars to students and giving leftover lettuce to employees.

to the Commission, or the adverse action (in the form of a warning) which had already occurred.

- The employer argues that Schwilke's telephone calls to the Commission were made during work time. By any standard, those calls took minimal time. Had the employer only been concerned about the time taken, and not about union activity, it would have been consistent for the supervisor to more closely confine her admonition to the use of work time. The tone of the supervisor's documentation of the warning reveals a broader target, however, with mention of "areas of political type activities taking place presently within the hospital" and "union-related issues". The supervisor asked Schwilke to "refrain from making **such** calls in the future". The record provides a basis for inferring that the employer's warning was not so much directed at the time taken to make the calls, as it was at the subject of the exchange.

- The employer argues that it had not designated break time when Schwilke's telephone calls to the Commission were made. Regardless of whether they were authorized by the employer, Schwilke's calls were to exercise a right under state law. The Commission performs a state function in the conduct of representation elections under Chapters 41.56 RCW and 391-25 WAC, and the official notice issued by the Commission invited such calls. If the employer had some problem with the terms of the official notice, it could have asked the Commission for an amendment of the notice. It did not do so.

- The employer claims that a Commission staff member told Cutler to advise Schwilke not to call the Commission. The Examiner discredited Cutler's testimony on this issue as hearsay. The

employer has the burden of proof on such a defense, but relies here on an unverifiable discussion with a Commission staff member.[9] While no testimony directly rebuts Cutler's testimony, we find multiple reasons to support the Examiner's conclusion on this issue.

First, the election notices issued in the representation case clearly stated:

> Inquiries concerning this notice and election should be directed to: Sally Iverson, Public Employment Relations Commission 603 Evergreen Plaza Building, P.O. Box 40919, Olympia, WA 98504-0919. Telephone (360) 664-3135.

The notices contained no limitation on who was entitled to place calls to the agency.

Second, the employer's claim is directly in contravention of Commission rules which expressly prohibit parties from involving the Commission and its processes in their election campaigns. The claimed advice would also have been in direct contravention of standards of conduct which were familiar to the Commission staff.[10]

Third, there were components of the investigation leading up to the warning which clearly were not suggested or sanctioned by the claimed advice of an agency staff member. The inquiries to the employees, on whose behalf Schwilke made the calls, regarding whether they authorized the calls to be made,

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[9] Employers and unions alike are on notice that they must prove their claims without the testimony of agency staff members. WAC 391-08-310 protects the impartiality of the agency and its processes, by precluding any party from calling an agency staff member as a witness in any proceeding.

[10] WAC 391-25-470(1)(b) and 391-25-490(1)(b).

suggest the employer had motivations for acting unrelated to any possible Commission advice.[11] The actions thus support an inference that the employer's investigation and warning to Schwilke were based upon union animus, rather than upon anything said by a Commission staff member.

Fourth, the first supervisory warning does not support the claim that Commission staff told Cutler to advise Schwilke to refrain from calling the Commission. If the supervisor had actually been carrying out a request from the agency, attribution of the warning to the Commission or its staff would have been likely. The written account of the warning invokes the authority of the employer's administration, not of the Commission. It was only at the next meeting between Schwilke and three employer officials when Cutler used the Commission staff as a basis for telling Schwilke to refrain from placing calls to the Commission.

Fifth, Cutler may have misinterpreted or misunderstood a discussion about who was the "Linda" who had called the Commission. The employer must bear responsibility for any such misinterpretation or misunderstanding.[12]

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[11] Although not directly before the Commission for a determination or remedy in this case, Cutler's "investigation" consisting of questioning the employees named by Schwilke would have been a basis for overturning the election upon timely objections filed by the union, or upon finding an interference violation on the basis of a timely unfair labor practice complaint filed by the union or the employees. Schwilke has no legal standing to pursue a remedy on behalf of others, however.

[12] Cutler testified of some conversation with Iverson about the "Linda" who had called the Commission. The employer challenged the Examiner's statement that the discussion was "so that [Iverson] could return her telephone calls". We modify this discussion to focus on the fact of the conversation, rather than its purpose.

- The employer takes issue with paragraph 4 of the Examiner's Conclusions of Law, arguing that it did not invoke the Commission and its election processes as the basis for its warning to Schwilke. The warning to Schwilke to refrain from calling the Commission was repeated at the meeting between Schwilke and the three employer officials. At that meeting, the employer told Schwilke that the Commission staff asked that Schwilke be warned. The employer thus clearly invoked the Commission and its election processes as the basis for telling Schwilke she should not call the Commission.

The employer asserts error in numerous parts of the Examiner's decision, takes issue with terms used, claims that evidence is lacking, and argues that the discussion is incomplete or self-serving. For example, it contests the Examiner's use of "interrogated" with regard to the investigation conducted after Iverson called in response to Schwilke's messages. Upon careful review of the record, we find that the terms used are appropriate or any errors are harmless and do not detract from the relevant facts.

## Substantial Factor Analysis

Based upon our review of the record, we find sufficient evidence to support the Examiner's conclusion that the reasons asserted by the employer for its "warning" to Schwilke are pretexts designed to conceal a true motivation of anti-union animus. As noted above, many of those reasons are inconsistent with the employer's own claims and actions.

We also conclude that Schwilke's protected activity was a substantial factor motivating the employer to warn Schwilke against placing calls to the Commission in the future. The fact that her

supervisor met with Schwilke on the day following the telephone calls to the Commission, and "[i]n particular" spoke with Schwilke about "her use of time and phone calling PERC over union related issues on 4/24/96" clearly shows that Schwilke's protected activity was a substantial factor in the warning. Our conclusion is supported by the warning having been directed at ***communication with the Commission***, which is closely related to the exercise of rights under the statute.

The Interference Allegation

The burden of proving unlawful interference with the exercise of rights protected by Chapter 41.56 RCW rests with the complaining party, but the test is different from that applied to discrimination claims. An interference violation will be found when an employee could reasonably perceive the employer's actions as a threat of reprisal or force or promise of benefit associated with the union activity of that employee or of other employees.[13] A showing that the employer acted with intent or motivation to interfere is not required. Nor is it necessary to show that the employees concerned were actually interfered with or coerced. It is not even necessary to show anti-union animus for an interference charge to prevail. Clallam County v. Public Employment Relations Commission, 43 Wn.App. 589 (Division II, 1986).

In Kennewick School District, supra, we relied on timing and other circumstantial evidence to infer that employees could reasonably

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[13] See, City of Seattle, Decision 3066-A (PECB, 1988); City of Seattle, Decision 3566-A (PECB, 1991); City of Pasco, Decision 3804-A (PECB, 1992); Port of Tacoma, Decisions 4626-A and 4627-A (PECB, 1995); King County, Decision 4893-A (PECB, 1995); Mansfield School District, Decision 5238-A (EDUC, 1996); and Kennewick School District, Decision 5632-A (PECB, 1996).

perceive that the employer's investigation and reprimand of a union leader were the result of the employee's union activity and her filing of a grievance. In this case, we rely on direct evidence to conclude that employees could reasonably perceive the "warnings" given to Schwilke on April 25, 1996 as a threat associated with her protected activity in the form of the telephone calls to the Commission. Therefore, we find an independent interference violation, and amend the Conclusions of Law accordingly.

## Remedies

We affirm the Examiner's order requiring the employer to offer Schwilke reinstatement and back pay for the medical records position. The discriminatory actions occurred in connection with Schwilke's work in that role, and her resignation from the medical records position was directly influenced by that discrimination.

We are not persuaded that Schwilke's separate resignation from her ward clerk position was sufficiently connected to the discrimination to warrant reinstatement or back pay for that position. The delayed effective date of her resignation from the ward clerk position indicates less urgency to leave that role, and thus demonstrates a remote relationship to the actual discrimination.

NOW, THEREFORE, the Commission makes the following:

## AMENDED FINDINGS OF FACT

1. North Valley Hospital is a public employer within the meaning of RCW 41.56.020 and 41.56.030(1). At all times pertinent hereto, Don James was the hospital administrator, Sue Cutler

was its director of human resources, and Ron Massone was its finance director.

2. Linda Schwilke made telephone calls to the Public Employment Relations Commission on April 24, 1996, while on duty at the hospital. Those calls collectively totaled three minutes, and were made on Schwilke's own telephone calling card. The calls were made in response to official notices published by the Commission for a representation election in which Schwilke was an eligible voter, and were made for the purpose of obtaining mail ballots for certain of her co-workers who had not yet received ballot materials from the Commission. Two voicemail messages which Schwilke left for the Commission staff person named in the official notices of the election named the employees who had not received ballots, but did not contain the addresses of those employees and did not identify herself other than as "Linda".

3. After receiving the voicemail messages left by Schwilke, the Commission staff person telephoned Cutler to obtain further identification of "Linda" and the addresses of the employees named in Schwilke's messages.

4. The employer immediately conducted an investigation to identify who had made the calls to the Commission. After determining that Schwilke made the telephone calls to the Commission, a supervisor who reports to Massone reprimanded Schwilke for making the telephone calls and questioned her about whether the calls were made on the employer's time or at the employer's expense. The supervisor thereafter issued a memorandum to be placed in Schwilke's personnel file, stating that Schwilke had been reprimanded for making the telephone calls to the Commission.

5. At her request, Schwilke met with James, Cutler and Massonne on April 25, 1996. Although other subjects were discussed at that meeting, the employer officials questioned Schwilke about whether the telephone calls to the Commission were made at the employer's expense, or on the employer's time. During that conversation, the employer also questioned Schwilke's authority to make the telephone calls to the Commission, and disclosed that the employer had interrogated the employees who were the subject of Schwilke's telephone calls to the Commission. Schwilke felt she had been reprimanded for making the telephone calls to the Commission, and stated that she believed she had a right to contact the Commission.

6. During the meeting described in paragraph 5 of these findings of fact, Cutler told Schwilke that a Commission staff member had said that Schwilke should have sent the employees to her or the hospital administrator if they had questions about the election. Those statements directly contradicted the official election notices which had been promulgated by the Commission and posted by the employer, as well as the notices that accompanied the mail ballot materials issued by the Commission. Cutler's assertions in this regard led Schwilke to believe that the Commission had caused her to be reprimanded by the employer.

7. As a result of the hostile work environment created by the employer's reprimand and related actions, Linda Schwilke submitted a letter on April 26, 1996, resigning her part-time position as medical transcriber. Her last day of employment in that position was May 17, 1996.

8. On May 7, 1996, Schwilke submitted a letter resigning her part-time position as a ward clerk. Her last day of employment in that position was May 28, 1996.

## AMENDED CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The evidence, as described in the foregoing findings of fact, establishes a prima facie case sufficient to support an inference that union animus in reprisal for the exercise of rights protected by RCW 41.56.040 was a motivating factor in the employer's reprimands of Linda Schwilke.

3. The evidence, as described in the foregoing findings of fact, establishes that the reasons asserted by the employer for its actions were unlawful under RCW 41.56.140(1) and/or were pretexts designed to conceal reprisals for the exercise of employee rights protected by RCW 41.56.040, so that Linda Schwilke's protected activity was a substantial factor in the employer's decision to reprimand her and North Valley Hospital has discriminated in violation of RCW 41.56.140(1).

4. The evidence, as described in the foregoing findings of fact, establishes that the employer unlawfully invoked the Commission and its election processes as a basis for its telling Linda Schwilke she should not call the Commission, so that North Valley Hospital has committed unfair labor practices in violation of RCW 41.56.140(1).

5. The evidence, as described in the foregoing findings of fact, establishes that Linda Schwilke's resignation of her part-time position in the employer's medical records operation was a direct result of the employer's unlawful discrimination against her in violation of RCW 41.56.140(1), for which she is entitled to a remedy under RCW 41.56.160.

6. Schwilke and other employees could reasonably perceive the employer's discussions with Schwilke about union-related issues on April 25, 1996 as a threat of reprisal associated with the exercise of rights protected by RCW 41.56.040, so that North Valley Hospital interfered with employee rights in violation of RCW 41.56.140(1).

## AMENDED ORDER

North Valley Hospital, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Interfering with or discriminating against Linda Schwilke for her exercise of her collective bargaining rights under Chapter 41.56 RCW.

   b. In any like or related manner, interfering with, restraining or coercing its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

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

   a. Remove the memorandum issued by Medical Records Supervisor Terry Long concerning the reprimand of Linda Schwilke from all personnel files maintained by the employer, and take no future action against Linda Schwilke based on that memorandum.

b. Offer Linda Schwilke immediate and full reinstatement as a part-time medical records employee of North Valley Hospital, and make her whole by payment of back pay and benefits, for the time she would have worked in the medical records position for the period from the effective dates of her resignation from that position to the date of the unconditional offer of reinstatement made pursuant to this Order. Such back pay shall be computed, with interest, in accordance with WAC 391-45-410.

c. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

d. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time

provide the Executive Director with a signed copy of the notice required by this order.

Issued at Olympia, Washington, on the 5th day of June, 1997.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

SAM KINVILLE, Commissioner

JOSEPH W. DUFFY, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

# NOTICE

**THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:**

WE WILL NOT interfere with, restrain, coerce or discriminate against our employees in connection with the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL offer reinstatement to Linda Schwilke as an employee in good standing in her medical records position, and will provide her with back pay and benefits for the period since the date of her resignation of that position.

DATED: _____

NORTH VALLEY HOSPITAL

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P.O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 753-3444.