North Valley Hospital, Decision 5809 (PECB, 1997)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LINDA SCHWILKE, Complainant,	)	CASE 12566-U-96-2987
vs.	)	DECISION 5809 - PECB
NORTH VALLEY HOSPITAL, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Linda Schwilke appeared pro se.

Callaway and Howe, by Michael Howe, Attorney at Law, appeared on behalf of the employer.

On June 24, 1996, Linda Schwilke filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that North Valley Hospital had violated RCW 41.56.140(1), by reprimanding her for contacting the Commission to obtain mail ballots for several employees. A hearing was held before Examiner William A. Lang on November 13, 1996 in Tonasket, Washington. Final arguments were made on the record.

BACKGROUND

North Valley Hospital, located at Tonasket, Washington, is operated by a public hospital district, and so is a public employer under Chapter 41.56 RCW.

Linda Schwilke was employed by North Valley Hospital during the period relevant to this case. She held two separate part-time jobs with the employer: (1) As a ward clerk, and (2) as a medical transcriber.

In April and May of 1996, the Commission conducted a representation election, by mail balloting procedure, among employees of North Valley Hospital.[1] Schwilke was an eligible voter in that election. The official election notice issued by the Commission and posted by the employer, as well as the notices which accompanied the mail ballot materials sent by the Commission to eligible voters, each stated that inquiries concerning the election should be directed to Sally Iverson of the Commission staff, and provided Iverson's address and telephone number.[2]

On April 24, 1996, fellow employee Mariam Caddy mentioned to Schwilke that she had not received a mail ballot for the representation election. Schwilke telephoned the Commission, leaving a voicemail message for Iverson to the effect that "Linda had called to say that Marian Caddy had not received mail ballots for the

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1 United Food and Commercial Workers, Local 1001(B), had filed a petition for investigation of a question concerning representation with the Commission under Chapter 391-25 WAC, seeking certification as exclusive bargaining representative of a bargaining unit consisting of "all employees of the hospital excluding registered nurses, supervisors and confidential employees". All conditions precedent to an election had been cleared, and mail ballots were to be counted on May 7, 1996.

2 As the Commission's Representation Coordinator, Iverson has responsibility for conducting elections.

union election". Later, another employee commented to Schwilke that fellow employee Peggy Weddle had not received a ballot. Schwilke then made another call to the Commission office, on behalf of Weddle. Both of Schwilke's telephone calls to the Commission were made from telephones at the employer's facility, but both were charged to Schwilke's personal telephone card. The two calls took a total of three minutes.

Later in the day on April 24, 1996, Iverson telephoned Human Resources Director Sue Cutler at the hospital, to obtain addresses for the two employees named in Schwilke's voicemail messages, and also asked who "Linda" was so that she could return her telephone calls. Cutler asked Medical Records Supervisor Terry Long if Schwilke had made the calls. Cutler also spoke to Hospital Administrator Don James about the calls to the Commission.

On April 25, 1996, Long asked Schwilke if she had called the Commission regarding the mail ballots. Schwilke acknowledged making the telephone calls, and Long reprimanded Schwilke for making the two telephone calls to the Commission. Later in the conversation, Long asked Schwilke if she was claiming overtime pay for attending meetings of the hospital's board of directors.[3] Schwilke denied being in pay status at the board meetings.

Schwilke called Human Resources Director Cutler and asked to meet with her, Hospital Administrator James and Finance Officer Ron

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[3] Long stated that Hospital Administrator James informed Long that the board of directors had asked whether Schwilke was in a pay status at the board meetings.

Massonne.[4] Schwilke met with Cutler, James and Massone in James' office on April 25, 1996, to discuss her telephone calls to the Commission and James' inquiry about her attending the board meetings on paid time. Although the conversation at this meeting touched on other work problems that Schwilke had been experiencing, it is clear that the employer questioned Schwilke's authority to make the telephone calls to the Commission. The employer officials informed Schwilke that they had spoken to Caddy and Weddle, that those employees had no concern about the mail ballots or their eligibility status to vote in the representation election, and that those employees reported they had not asked Schwilke to make the calls to the Commission. Cutler questioned Schwilke's authority to act on their behalf, and Schwilke responded that she felt she had a right to contact the Commission. Cutler told Schwilke that a Commission staff person said that Schwilke should have sent the two employees to her or to Hospital Administrator James if they had questions about the election. The employer asked Schwilke whether she used hospital time and incurred long distance costs when making the two phone calls.

Following her meeting with the employer officials on April 25, 1996, Schwilke submitted a typed resignation letter to Long.[5] The resignation stated she was giving three weeks notice "in an effort to simplify" her life. Schwilke indicated concern about the department's need for time to find a replacement, thanked Long for

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[4] Massonne was Long's supervisor.

[5] The resignation was dated April 24, but it was prepared after Long reprimanded Schwilke on April 25, 1996.

having the faith to hire her and for the skills she developed, stated that she had enjoyed being part of the team, and referred to her time in medical records as her "peace, quiet and tranquility time". Schwilke testified that she deliberately worded the resignation to be complimentary and non-confrontal, because she had to work with Long during the three week period prior to the effective date of her resignation.

On April 26, 1996, Long issued a written account of the reprimand given Schwilke on the previous day. The memo was written in bold print, under the heading "Verbal Warning" in large type. It specifically stated that Schwilke was reprimanded for making the telephone calls to the Commission. The warning was to remain in Schwilke's personnel file for a year.

On May 7, 1996, Schwilke submitted a hand-written letter resigning her ward clerk position. That letter stated that she:

> ... had been looking for work since January, 1996 (but not too seriously) but **after meeting with Terry and then later with you, Don and Ron, I find that it is too stressful to continue working for North Valley Hospital**. I am quiting medical records as of May 17 and will continue ward clerking till the end of the month so as not to pose a hardship on the nursing staff or abandon them.
>
> **I do not feel that my inquiry to PERC should warrant the conference with my supervisor. The topics at that meeting were (1) my authority to make the phone calls, (2) wasting my work time to make the calls**, and (3) inquiring if I was attending Board meetings and includ-

> ing that time on my time sheet. I then called for a meeting with you, and Ron and Don joined in on that meeting. Again the same subjects were discussed.
>
> I find this microscrutiny of my work ethics to be stressful and as a result I had to see my physician. It is best that I quit. Therefore, I will work till the end of May and then take my vacation time.
>
> /s/ Linda Schwilke

Six weeks later, on June 24, 1996, Schwilke filed her complaint with the Commission.

POSITION OF THE PARTIES

The complainant argues she was disciplined for calling the Commission about the representation election, and that she resigned as a result of the verbal reprimand given to her by the employer.

The employer argues that Supervisor Long's conversation with Schwilke regarding the two telephone calls to the Commission was very brief, and that Schwilke was verbally counseled for using work time for personal calls rather than for calling the Commission. The employer also contends that Schwilke asked for the meeting with hospital administration to discuss other issues, and that she was not disciplined for anything discussed at the meeting. The employer also asserts that Schwilke did not resign as a result of the controversy over her calls to the Commission, pointing out that, by her own admission, she had been looking for other work

since January of 1996 and that she does not seek to be reinstated to employment at North Valley Hospital.

DISCUSSION

Standards for Determining "Discrimination" Claims

RCW 41.56.040 gives public employees a right to organize and select representatives of their own choosing, free from interference and discrimination. RCW 41.56.050, .060 and .070 delegate authority to the Commission to resolve questions concerning representation. RCW 41.56.140(1) makes it an unfair labor practice for a public employer to interfere with the rights conferred on its employees by RCW 41.56.040.

The Supreme Court of the State of Washington has adopted a "substantial factor" test for determining discrimination cases. Wilmot v. Kaiser Aluminum, 118 Wn.2d 46 (1991); Allison v. Seattle Housing Authority, 118 Wn.2nd 79 (1991). Under that test, the charging party retains the burden of proof at all times, but need only establish that statutorily protected activity was a substantial motivating factor in the employer's decision to take adverse action against the employee:

> If the plaintiff presents a prima facie case, the burden [of production] shifts to the employer who must articulate legitimate non-pretexual nonretalitory reasons for the discharge. ... If the employer produces evidence of a legitimate basis for the discharge,

> the burden shifts back to the plaintiff ... to ... establish the employer's reason is pretextual.

Wilmot at page 70.

...

> Under the substantial factor test if the pursuit of [protected rights] was a significant factor in the firing decision, the employer could be liable, even if the employee's conduct otherwise did not entirely meet the employer's standards. ... The employer is simply not entitled to discharge employees because of their assertion of statutory rights.

Wilmot at page 71.

The Commission adopted the "substantial factor" standard in Educational Service District 114, Decision 4361-A (PECB, 1994).

Although the Wilmot and Allison cases involved direct acts of discrimination by employers against employees, the principles enunciated there are equally applicable to "constructive discharge" situations where an employer's reprisals for the exercise of protected activity make the work environment so hostile for an employee that the employee resigns or abandons the employment relationship to end the miserable situation. Thus, regardless of whether the ultimate action is direct or indirect, the employee is deprived of their right to be free of reprisals for exercising their rights under the statute, and RCW 41.56.140(1) is violated.

The Prima Facie Case

To establish a prima facie case of unlawful discrimination, the complainants have the burden to prove:

1. The exercise of a statutorily protected right, or communication to the employer of an intent to do so;

2. That one or more employees was deprived of some ascertainable right, status or benefit; and

3. That there was a causal connection between the exercise of the legal right and the discriminatory action.

The facts in this case are quite clear and straightforward. Linda Schwilke made two telephone calls to the Public Employment Relations Commission while on duty at the hospital. Those calls collectively totaled three minutes, and were made on Schwilke's personal telephone calling card. The calls were made in response to the Commission's official notices concerning a pending representation election, and their purpose was to obtain ballots for co-workers who had not yet received ballots from the Commission. Schwilke left two voicemail messages for the Commission staff member listed in the official notices, stating the names of the employees who had not received ballots. Because the telephone messages only identified the caller as "Linda", and did not include addresses for the two employees named, the Commission staff person contacted the employer to obtain identification of the caller and the addresses of the employees. The employer immediately conducted an "investigation" of who had made the calls. After determining that Linda Schwilke had made the two telephone calls to the Commission, Schwilke's immediate supervisor reprimanded her. In a meeting held soon thereafter, senior management officials criticized Schwilke for calling the Commission and disclosed that they had interrogated the employees who were the subject of Schwilke's calls to the Commission. Within a day thereafter, the employer

placed a memorandum in Schwilke's personnel file noting she had been reprimanded for making the calls to the Commission.

Schwilke was clearly engaged in protected activity when she made the telephone calls to the Commission. The right to vote on representation belongs to employees under RCW 41.56.040 through .070, not to employers. Representation elections are conducted by the Commission under RCW 41.56.060 and .070, not by employers. The Commission's official notices specifically invited that inquiries be made directly to the Commission staff. As an eligible voter, Linda Schwilke had an interest in the outcome of the representation election and a right to contact the Commission about perceived irregularities in the mail balloting procedure. Schwilke was under no obligation to clear her actions with the employer in advance, or even to notify the employer of her call to the Commission staff. Even if asked in advance, the employer would have had no right to prohibit Schwilke from forwarding the names of claimed eligible voters to the Commission.[6]

The fact that Schwilke was subjected to adverse action for making the telephone calls to the Commission is clearly established by

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[6] Even if the named individuals were clearly ineligible, they would have been entitled to cast challenged ballots. At an on-site election, any person presenting themselves at the polls and claiming a right to vote will be given the opportunity to cast a ballot. In a mail ballot setting, ballot materials will be sent to any person who is claimed to be an eligible voter. Under either procedure, the Commission or a party may challenge the ballot of any person whose name does not appear on the official eligibility list. Rulings on the disposition of challenged ballots are made by the Executive Director and/or Commission in post-election proceedings.

both the timing of the reprimand and the employer's written account of the event. The document stated, in pertinent part:

> Verbal Warning
>
> ... 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 within the hospital. In particular, I spoke with her about her use of time and her 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 distant calls made on our phone and how much time she spent on this activity. When I asked Linda about this, she said she used her own calling card but that the two calls she made was here at work. I asked her to refrain from making such calls in the future. ...

The memorandum stated it was prepared by the supervisor for the employer's human resources director, to be placed in Schwilke's personnel folder. In addition, Schwilke was admonished for her telephone calls in her meeting with the administrator and director of human resources.

Furthering the creation of a hostile environment, the employer questioned Schwilke about her authority to make the calls, and disclosed that it had interrogated the employees named in the calls to the extent of ascertaining that they had not asked Schwilke to act on their behalf. Contrary to what is expressly stated in the official notices of the election, Schwilke was told that the Commission staff person told employer officials that Schwilke

should have directed the employees election concerns to the employer and not to the Commission.

Based on the evidence in this proceeding, the Examiner concludes that Schwilke has clearly established a causal connection between her protected activity and the employer's reprimand and admonishments. The complainant has established a prima facie case of unlawful discrimination.

The Employer's Burden of Production

While complainants carry the burden of proof throughout the prosecution of the case, the burden of production shifts to the employer after the complainant establishes a prima facie case of discrimination. If an employer fails to articulate lawful reasons for its actions, the complainant will prevail.[7]

In this case, some of the reasons asserted by the employer are sufficient to warrant further inquiry under the "substantial factor" test. In particular, the employer argues that it had legitimate reason to "counsel" Schwilke for making personal calls while on duty. The employer contends that the counseling concerned the use of work time for the calls, and not the subject matter of the calls themselves. It asserts that the reprimand was given in the context of questioning Schwilke about whether she had used work time for making other calls dealing with Schwilke's duties as

[7] In City of Winlock, Decision 4783 (PECB, 1994), an Examiner found a "discrimination" violation as to the first of two discharges of an employee, because the reasons stated by the employer included the employee's union activity.

councilwoman for the City of Oroville, and an earlier 20 minute conversation with a Dr. Lamb.

Other explanations asserted by the employer fail to meet the "lawful reasons" requirement. The employer attempted to minimize the discussion of the telephone calls at the meeting between Schwilke, Cutler, James and Massone, and it claimed that no disciplinary action taken against Schwilke as a result of that meeting, but the Examiner finds that those explanations fail to set forth lawful reasons for the statements made by employer officials. The employer does not dispute that Schwilke was questioned about her authority to make the calls. That line of inquiry inherently disclosed that the employer had previously interrogated Caddy and Weddle about the matter.[8] Employer officials also contradicted the terms of the official election notice. Apart from the fact that telephone calls of three minutes duration made at the employee's own expense hardly suffice to trigger either an investigation or a formal reprimand, these actions by the senior management officials clearly demonstrated a hostile response to the two telephone calls. Schwilke could reasonably have perceived the employer's actions as threats of reprisal or force associated with her exercise of rights under RCW 41.56.040,[9] so that the "defenses" asserted by the

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[8] Although not alleged in this case, interrogation or surveillance of employees would clearly be a violation of RCW 41.56.140(1) upon a properly filed complaint.

[9] The reprimand immediately after the telephone calls to the Commission could be reasonably interpreted by employees that they should not telephone the Commission about the representation election, even though the official election notices encouraged such inquiries.

employer constituted unlawful interference in violation of RCW 41.56.140(1).

Substantial Factor Analysis

The complainant has the burden of proof to show that the reasons advanced by the employer for its actions were pretextual, or that union activity was nevertheless a substantial motivating factor in those actions. Wilmot; Allison; and Educational Service District 114, supra. The Examiner recognizes that employer motives in cases of this type are seldom marked by specific actions, and must be deduced from the circumstances of the case.

While Supervisor Long testified that she was concerned about the time spent on personal telephone calls, and that the calls to the Commission brought out a need for counseling, the record indicates that it had been commonplace for employees to make some personal telephone calls during their work shifts. The record failed to establish that other employees were disciplined for using the phone during working hours. Additionally, Schwilke considered the three-minute telephone calls were made on her break time, because she had not had another break that day, and the record does not controvert Schwilke's claim that she was on a break. The reasons asserted by the employer are thus found to be pretexts designed to conceal a true motivation of anti-union animus.

The record controverts the employer's concern about Schwilke's political activities. The evidence shows that Schwilke's tenure as councilwoman for the City of Oroville had ended three years

earlier, in 1993. This defense asserted by the employer is thus also found to be pretextual.

The record also controverts the employer's concern about a telephone conversation between Schwilke and a physician. In this instance, the employer's contentions are not even logical. The evidence shows that it was Dr. Lamb who initiated the subject telephone call, in order to obtain information on the clinic while he was considering an offer of employment from the hospital. The employer would seemingly have had a strong interest in making a favorable impression on Dr. Lamb, including being responsive to his questions about the clinic. In fact, Schwilke testified she was the one who was concerned about the length of the call, and was trying to end the call without being rude. Again, the defense asserted by the employer is found to be pretextual.

Based on the evidence and these considerations, the undersigned concludes that Schwilke's telephone calls to the Commission constituted a substantial factor in the employer's decision discipline her. The employer has discriminated against Schwilke in violation of RCW 41.56.140(1).

Invoking the Commission as Endorsing the Discipline

Chapter 41.56 RCW establishes a set of procedures to resolve disputes arising between employers, employees and bargaining representatives. Employer retaliation for use of the dispute resolution processes administered by the Commission is among the most severe forms of misconduct under RCW 41.56.140. See, City of Tukwila, Decision 2434-A (PERC, 1987), where an employer's

statement that the Commission had somehow endorsed or approved an employer-sponsored pre-election meeting was firmly condemned:

> Even if the statements were not a per se violation of our rules, the impact of such statements is devastatingly disruptive of the laboratory conditions for a representation election.

City of Tukwila, at page 9.

In Public Utility District 1 of Clark County, Decision 2045-B (PECB, 1989), the Commission put distance between unfair labor practice litigation and normal collective bargaining by ruling that it was an unfair labor practice for an employer to condition agreement in negotiations upon the withdrawal of previously-filed unfair labor practice charges. In Mansfield School District, Decision 5238-A (EDUC, 1995), the Commission imposed extraordinary remedies on an employer that had discriminated in reprisal for an employee's testimony in previous proceedings before the Commission.

Here, the employer told Schwilke that a Commission staff member had stated that employees should ask the employer about eligibility issues, and not telephone the Commission. Human Resources Director Cutler testified about an April 24, 1996 conversation with Iverson, as follows:

> A. [By Ms. Cutler] ... Can you find out who Linda is? And let her know if people are concerned about their ballots, they need to speak to you or [Hospital Administrator Don James] because we do not make those determinations.

Transcript at page 18, lines 16-20

Cutler's hearsay characterization of Iverson's statement must be discredited, however, for a number of reasons: First, the Commission's rules and precedents on the maintenance of "laboratory conditions" in representation proceedings recognize the role of the agency as the impartial administrator of proceedings in which employees are entitled to vote by secret ballot, and may well be concerned about direct communications with their employer on such sensitive matters.[10] Second, the particular Commission staff member quoted by Cutler is involved in representation elections on a daily basis, responds to numerous inquiries concerning representation and voter eligibility issues, and knows full well that any dispute as to an employee's eligibility to vote is resolved by the Commission in post-election proceedings under RCW 41.56.060,[11] so it is unlikely that she would have directed employee eligibility questions to the employer. Third, the election notices prepared by the same Commission staff member clearly direct employee inquiries to the Commission, and not the employer.[12] Fourth, the challenged ballot procedure is routinely used by Iverson for persons who are not on the eligibility list. The employer's human resources director had participated in two recent representation elections at the hospital, and should have been aware of the process.

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[10] Advising employees to take their election concerns to the employer would not only be intimidating to an employee, but would actually discourage employee participation in the election process.

[11] Iverson conducts investigation conferences on all incoming representation petitions, which also deal with eligibility issues.

[12] It was, in fact, the posted election notice which Schwilke used to get the Commission's phone number.

As in Tukwila, the employer must take full responsibility for any statements which it attributes to the Commission or its staff. In this case, the quoted statement blatantly connected the Commission with the reprimand of Schwilke for her protected activity concerning the election process. Apart from the fact that an employer's discipline of an employee who called the Commission to inquire about mail ballots necessarily has a chilling and a coercive effect on the exercise of employee rights, the attempt to invoke the Commission's name as authority to punish the employee cannot be tolerated.[13] If such discipline were to stand, the message conveyed could be characterized as indicating the Commission is powerless to defend the statutory dispute resolution processes.[14]

Conclusions

The Examiner is not persuaded by the employer's defense that its officials did not intend to violate the law, and only wanted to counsel Schwilke for making personal calls on duty time. The facts clearly show the employer reprimanded the employee for calling the Commission. Attempts to soften this result by including evidence of other personal calls as the real reason for reprimand are pretexual. Its defense that it was acting on advice of a Commis-

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[13] Schwilke testified she believed that the Commission got her in trouble with the employer.

[14] See, City of Mill Creek, Decision 5699 (PECB, 1996), where a violation was found regarding an employee evaluation conference which included mention of his filing of a grievance, with the implication he should discuss the matter with the employer before seeking union assistance.

sion staff member is simply not credible, and its action of invoking the Commission's name in its conversation with the employee cannot be ignored. The employer has committed serious unfair labor practices under RCW 41.56.140.

REMEDY

Where an unfair labor practice violation is found, the Commission's policy has been to fashion a remedy designed to put injured parties back, as nearly as possible, in the situation they would have enjoyed if no unfair labor practice had been committed. For an employee who has been discharged by an employer, that traditionally includes an offer of reinstatement. For an employee who has been constructively discharged by the employer's creation of a hostile work environment, logic dictates that the employee be given the opportunity to reconsider his/her resignation decision in a context free of unlawful conduct. Under WAC 391-45-410, back pay for discriminatees is traditionally computed from the date employment was terminated up to the effective date of an unconditional offer of reinstatement made pursuant to the remedial order.

In this case, a normal remedial order would include an offer of reinstatement and back pay to Schwilke, together with the employer's posting of a notice informing all employees of the unfair labor practices committed and the steps taken to remedy that unlawful conduct. While the complainant stated at the hearing that

she was not interested in either reinstatement or back pay, the Examiner notes that the complaint itself had asked for back pay.[15] In view of the above-described infringements on the statutory dispute resolution processes, posting of a notice to inform employees of the violations committed against Schwilke would be an inadequate remedy. The reprimand and the meeting with senior officials were the proximate cause of the complainant's resignation from her positions at the hospital. But for those employer actions, Schwilke would not have resigned her positions in April and May of 1996.

In keeping with the traditional remedies ordered in discharge situations, the employer will be required to remove the reprimand from Linda Schwilke's personnel file, will be required to offer her reinstatement to her former positions, and will be required to make her whole for any loss of pay and benefits for the period of time from the effective date of her resignations to the date of the employer's unconditional offer of reinstatement. If she chooses to decline the offer of reinstatement, that decision will at least be made in a context free of unlawful interference and discrimination.

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

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[15] The complainant's statement at the hearing was made in the presence of employer representatives, which may itself have been intimidating for the complainant.

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 yet not 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 had 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 resigned her part-time position as medical transcriber on April 25, 1996, and she resigned her part-time position as a ward clerk on May 7, 1996.

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 committed unfair labor practices 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 reprimand

of Linda Schwilke, so that North Valley Hospital has committed unfair labor practices in violation of RCW 41.56.140(3) and (1).

Upon the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following:

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 concerning the reprimand of Linda Schwilke from all personnel files.

b. Offer Linda Schwilke immediate and full reinstatement as an employee in good standing of North Valley Hospital, and make her whole by payment of back pay and benefits, for the period from the effective dates of her resignations 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.

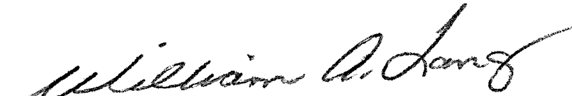
d. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

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 22nd day of January, 1997.

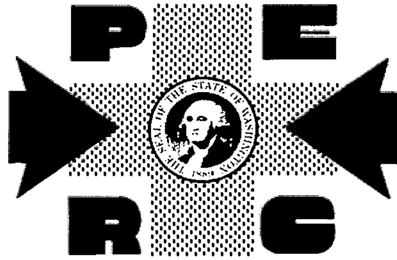
PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

APPENDIX



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, and will provide her with back pay and benefits for the period since the dates of her resignation.

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.