STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| TEAMSTERS LOCAL 760,<br><br>Complainant,<br><br>vs.<br><br>CHELAN PUBLIC HOSPITAL DISTRICT 2, dba LAKE CHELAN COMMUNITY HOSPITAL,<br><br>Respondent. | CASE 24200-U-11-6199<br><br>DECISION 11294 - PECB<br><br>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER |

Reid, Pedersen, McCarthy & Ballew, L.L.P., by *Thomas A. Leahy*, Attorney at Law, for the union.

Foster Pepper PLLC, by *P. Stephen DiJulio,* Attorney at Law, for the employer.

On August 24, 2011, Teamsters Local 760 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The complaint alleged that Lake Chelan Community Hospital (employer) discriminated by terminating David Pletsch in reprisal for his giving testimony at a hearing before the Commission. A preliminary ruling was issued, finding the union's complaint stated a cause of action for employer discrimination under RCW 41.56.140(3). On November 17, 2011, the union filed an amended complaint including new allegations of employer discrimination in reprisal for Pletsch's union activities protected by Chapter 41.56 RCW. An amended preliminary ruling was issued, finding the union's amended complaint stated a cause of action for employer discrimination in violation of RCW 41.56.140(1) and (3). Examiner Kristi Aravena conducted a hearing on December 15, 2011. The parties filed post-hearing briefs to complete the record.

## ISSUE

Did the employer unlawfully discriminate with protected rights, in reprisal for giving testimony before the Commission or in reprisal for union activities, when it terminated employee David Pletsch?

The Examiner finds the employer did not discriminate in reprisal for protected union activities by its termination of David Pletsch.

APPLICABLE LEGAL STANDARD

Chapter 41.56 RCW grants public employees certain 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.

Under RCW 41.56.140(1) and (3), it is an unfair labor practice for a public employer to discriminate against an employee in reprisal for union activities protected by RCW 41.56.040.

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The employee maintains the burden of proof in employer discrimination cases. To prove discrimination, the employee must first set forth a *prima facie* case by establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute, or communicated to the employer an intent to do so;
2. The employer deprived the employee of some ascertainable right, benefit, or status; and
3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

To establish this causal connection, the employee must show that the employer took adverse personnel action after the employee exercised a protected right under circumstances from which the Examiner can reasonably infer the protected conduct was a motivating factor in the employer's action. A discrimination violation under RCW 41.56.040 and RCW 41.56.140(1) involves an intentional action by an employer based on protected union activity, and so requires a higher standard of proof than an

interference violation. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Once the employee establishes a prima facie case, the employer need only articulate legitimate, non-discriminatory reasons for its actions. It does not have the burden of proof to establish those matters. *Port of Tacoma*, Decision 4626-A; *City of Yakima*, Decision 9451-B (PECB, 2007). The burden remains on the employee to prove by a preponderance of the evidence that the disputed action was in retaliation for the employee's exercise of statutory rights. The employee may respond to an employer's defense in one of two ways:

1. By showing the employer's reason is pretextual; or

2. By showing that, although some or all of the employer's stated reasons is legitimate, the employee's pursuit of protected rights was nevertheless a substantial factor motivating the employer to act in a discriminatory manner.

*Port of Seattle*, Decision 10097-A (PECB, 2009). Also see *Educational Service District 114,* Decision 4361-A; *Mansfield School District*, Decision 5238-A (EDUC, 1996); *Pasco Housing Authority*, Decision 6248-A (PECB, 1998).

The timing of adverse actions in relation to protected union activity can serve as circumstantial evidence of a causal connection between the protected activity and the adverse action. *City of Winlock,* Decision 4784-A (PECB, 1995); *Mansfield School District*, Decision 5238-A. Ordinarily, an employee may use circumstantial evidence to establish the *prima facie* case because parties do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). To prove discriminatory motivation, the employee must establish that the employer had knowledge of the employee's union activity. An examiner may base such a finding on an inference drawn from circumstantial evidence although such an inference cannot be entirely speculative or improbable. *Northshore Utility District*, Decision 10534-A (PECB, 2010). Circumstantial evidence consists of proof of facts or circumstances which, according to the common experience, gives rise to a reasonable inference of the truth of the fact sought to be proved. *City of Yakima*, Decision 10270-B (PECB, 2011).

## ANALYSIS

Pletsch is a full-time paramedic with the employer. In early January 2011, Pletsch contacted union Business Representative Paul Parmley to organize union membership for the employer's full-time emergency medical technicians (EMTs) and paramedics. The union sought only to include full-time

staff in the bargaining unit because it did not feel part-time staff shared a community of interest with full-time staff. On January 31, 2011, Parmley submitted a memo to Kevin Abel, CEO, requesting the employer to voluntarily recognize the union as the exclusive representative of all full-time medical service staff. On February 3, 2011, the employer indicated it would consider the request at its next scheduled board meeting on February 22, 2011. On February 7, 2011, the union filed a representation petition with the Commission.[1] A hearing was held on the petition on June 7 and 8, 2011, to determine the appropriateness of the proposed bargaining unit. Post-hearing briefs were filed by both parties on August 4, 2011. On August 5, 2011, the employer terminated Pletsch's employment.

Prima Facie Case

In order to meet its burden of proof, the union must establish a *prima facie* case of employer discrimination. It is undisputed that Pletsch participated in protected union activities. DeLynn Cook, Human Resources Director, testified that she knew Pletsch supported the union organizing drive and testified in support of the union during the representation hearing. Pletsch was the only witness called by the union at the hearing. Pletsch challenged the employer's testimony on wages, duties of fill-in staff, and the community of interest between full-time and part-time staff. Pletsch was deprived of an ascertainable right, benefit, or status when he was terminated. The union is left with showing a causal connection between Pletsch's union activity, including testimony before the Commission, and his termination. Pletsch's termination occurred shortly after he testified at the Commission hearing and the day following the union's filing of its post-hearing brief. Testifying at a Commission hearing in support of the union and openly supporting the union's organizing drive are protected union activities. The close timing between the organizing campaign, including testifying at the hearing, and Pletsch's termination supports an inference of motivation. The union established there was a causal connection between Pletsch's union activity and his termination. The union established a *prima facie* case.

Employer's Non-Discriminatory Reasons

If the union demonstrates a *prima facie* case of discrimination, the employer has the opportunity to articulate legitimate non-discriminatory reasons for its actions. During testimony and in its brief, the employer explained that Pletsch was terminated out of concerns for other employees and in response to what Abel described as a hostile work environment, including threatening and demeaning behavior against female EMTs. After reading the personnel file, anecdotal evidence, and having discussions with

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[1] Case 23790-E-11-3627.

Cook and Brad Hankins, Risk Manager, Abel believed Pletsch's behavior was egregious and abusive and left the employer liable from a lawsuit. Testimony from female EMTs/paramedics described a hostile working relationship with Pletsch. The employer met its burden of production to articulate legitimate, non-discriminatory reasons for terminating Pletsch.

Pretext

The union bears the burden of proving, by direct or circumstantial evidence, that the employer's justifications for its actions were pretextual or that its actions were retaliatory. In order to meet this burden, the union presented testimony and arguments calling the employer's motives into question. Each will be examined in turn to determine if the employer's actions were pretextual and/or retaliatory.

1) The union claims the employer's termination of Pletsch was a rush to judgment.

To determine the validity of this claim, it is necessary to go through Pletsch's discipline history and the incident that ultimately led to his termination.

May 22, 2010 "chair incident"

The "chair incident" with Jennifer Foreman, part-time paramedic and part-time EMS Command Medic, occurred on the morning of May 22, 2010 at Fire Station 71. The employer has an agreement with Chelan Fire and Rescue District 7 to house the EMT/paramedic crew at Fire Station 71. Foreman was at the computer and closed out the time clock to check her e-mail when Pletsch walked in and said "you did not just do that." Pletsch was coming off shift and wanted to clock out. Pletsch then told her to get out of his chair and Carol, the administrative assistant, said "do you want me to hit him for you?" Pletsch then responded that he was about to hit her (Foreman). There is conflicting testimony from Pletsch, Foreman, and Raynor Baker, EMT, about whether Pletsch was serious about hitting Foreman although Pletsch testified that he was being gruff. Regardless, Foreman credibly testified that she was scared and feared retaliation from him. Foreman reported the incident to Karl Jonasson, EMS Director, and later sent an e-mail to Human Resources Director Cook about the incident.

July 6, 2010 Final Warning

On July 6, 2010, Pletsch received a final warning from the employer for verbal abuse, demeaning language, unprofessional conduct, derogatory statements towards other employees and the EMS

Department, and retaliation/retribution. This discipline stemmed from a formal written complaint dated June 14, 2010 from EMT Cathy Jones and what is characterized as the "chair incident" with Jennifer Foreman. In Cathy Jones' formal complaint she walks through a shift she worked with Pletsch on June 12, 2010 in which she felt humiliated and denigrated as a person and as an EMT. She credibly testified that June 12, 2010, was "one of the worst days of my life." When Pletsch realized she would be the second EMT for the shift, Jones testified that Pletsch was angry and told her the hospital was doing a complete disservice by allowing her to work on a duty shift with him. His behavior was belittling toward her and made her feel horrible. After the incident she spoke with Jonasson and requested not to work with Pletsch again. Jonasson told her that was not going to be a problem. Under cross-examination, Jones testified that when she tried to ask Pletsch what was wrong he said the hospital tried to "f'in ruin his reputation and that he hated the f'in idiots that worked at the hospital."

Although testimony credited these two incidents for the final warning, there were other incidents documented by Kaylin Whitlam, EMT, and Rinita Cook, Regional Trainer for Basic Life Support Services, prior to the final warning. As argued in the union's post-hearing brief, because these incidents occurred before the final warning, they will not be considered individually. It is well documented in testimony, however, that multiple female employees felt belittled by Pletsch. He was given the final warning which noted that additional instances of the same behaviors with his co-workers and/or supervisor would result in immediate termination.

June 26, 2011 Final incident

The final incident which led to Pletsch's termination occurred on June 26, 2011. Fire personnel at Station 71 and the employer's EMTs and paramedics often ate dinner together at the station. That day Lieutenant EMT Evan Woods, Firefighter Shawn Sherman, Paramedic Pletsch, EMT Baker, and EMS Command Medic Foreman were on duty. The EMS crew decided to make dinner together and Woods, Sherman, Pletsch, and Baker all went to Safeway to collect food. Woods had communicated with Foreman earlier in the day and she said she would let him know if she would participate in dinner. While at Safeway, Woods received notice from Foreman that she would be participating in dinner. Woods testified that when he told the rest of the EMS crew they needed to grab extra food for Foreman, Pletsch said he would not cook dinner for Foreman or be involved with making dinner with her. Woods and Sherman testified that Pletsch was mad, aggressive, and argumentative. Sherman testified that Pletsch said he wasn't "cooking dinner for that fuckin bitch" although Sherman did not include that

derogatory statement in the memo he submitted following the incident. Pletsch and Baker both testified it was not a heated discussion just a matter of fact statement that Pletsch would not participate in dinner with Foreman. The Examiner credits Woods' and Sherman's testimony that Pletsch was using foul language and being aggressive.

When Woods, Sherman, Pletsch, and Baker returned to the station from Safeway, Foreman was there. Foreman, Woods, and Sherman went to work out and had a conversation about discussing the incident with Pletsch and trying to work through the conflict. Woods and Sherman were bothered by everyone not being able to get along and thought discussing it with Pletsch would help. Foreman, Woods, and Sherman went to the kitchen where Pletsch was already cooking. Throughout the discussion, Pletsch made it clear he did not want to discuss the issue and that he would not cook for Foreman. He eventually took his dinner and ate alone in his room.

The union argues Pletsch had no obligation to cook for or eat dinner with Foreman. While the union is correct that there are no requirements for when you eat, who you eat with, or where you eat, there are practical implications to Pletsch's actions. While you don't necessarily have to cook for one another, there is an expectation in the full-time paramedic job description that employees will address conflict directly and promptly, focusing on problem-solving and a positive outcome. Given their 48-hour work shifts, it is reasonable to assume that a closer working relationship is important at Fire Station 71 as compared with a typical 8 to 5 job.

Following the incident, both Pletsch and Foreman filed complaints with employer's Human Resources Department. Human Resources Director Cook headed up the investigation and ultimately, along with Risk Manager Hankins, recommended to CEO Abel that the employer terminate the employment of Pletsch. Although Cook did not question Pletsch or Baker prior to terminating Pletsch, Cook testified that she did not feel she needed to because the documentation they had spoke for itself. Pletsch was on a final warning/last chance agreement from July 6, 2010 and violated the terms of that agreement. Pletsch knew prior to his involvement with organizing union representation with Teamsters Local 760 that his job was at risk. Pletsch testified that as early as February 6, 2010 he knew his job was at risk. That morning in a meeting with EMS Director Jonasson, Pletsch was told that if he didn't do something differently he would be down the road.

2) The union claims the June 26, 2011 incident was minor.

Looking at this incident in isolation may produce the impression that the employer made this into a bigger deal than it really was. However, the incident required the employer to take a deeper look at issues that employees were having with Pletsch and involved three additional key personnel who had not been involved with Pletsch's discipline before, Hankins, Abel, and Timothy Lemon, Fire Chief at District 7. Lemon testified that subsequent to taking Woods' and Sherman's statements regarding the June 26th incident to the hospital, he had a discussion with the employer regarding the relationship between the hospital and the district. Lemon testified that he made it clear to the hospital that if the environment wasn't conducive to a positive and collaborative atmosphere for both parties to work in, he wasn't beyond severing the interlocal agreement and having the EMS crews no longer housed at Station 71. Severing this interlocal agreement would be of serious consequence to the employer because it relies on the station for employees to have a place to eat and sleep.

After the June 26, 2011 incident, Foreman was placed on paid leave for a couple of shifts. She then contacted Hankins to discuss her fears. She had been sleeping with a gun ever since the incident and reflected on all the accommodations she had been making for shifts when she was working with Pletsch. She testified that she spoke with Hankins rather than Human Resources initially because she did not feel like she had previously been listened to by Cook and Jonasson.

Although the incident on June 26, 2011 may appear minor, what had been building up prior to the incident was not. Female employees Foreman, Jones, and Whitlam all testified they were unable to work with Pletsch. There were issues of serious concern that the employer admitted it should have taken care of earlier. Cook testified that it was an error for Human Resources not to have taken action prior to Pletsch's termination on August 5, 2011. Although the hospital admits their error, there is no reason to believe this final incident was used to terminate Pletsch for his union activity. The June 26th incident brought the employer's awareness to a new level and involved more personnel than the previous complaints. After studying Pletsch's personnel file and statements related to the June 26th incident, Abel felt the employer had no choice but to terminate Pletsch's employment. Abel believed that terminating Pletsch was a moral decision and one he didn't take lightly. Abel felt not terminating Pletsch would put the employer at risk of a lawsuit for a hostile working environment.

3) The union alleges that Foreman's allegations make no sense because they are not supported by any valid evidence, testimony or history.

It is undisputed that Pletsch never touched Foreman in an inappropriate manner, but not undisputed that Pletsch threatened to harm her. Although Pletsch testified he did not intend to hurt Foreman during the May 22, 2010 "chair incident," I credit Foreman's testimony that she was scared and felt threatened. Foreman did not realize until she sat down to document the June 26, 2011 incident that she had been making accommodations while working with Pletsch since the May 22, 2010 incident. She made sure she was never alone with him and usually had dinner elsewhere when Pletsch was on shift. She would lock her door when Pletsch worked but not when any of the other crews were working. Foreman altered her behavior out of fear when Pletsch was on duty. Foreman testified that she agreed to have dinner with the crew on June 26, 2011 because she felt safe in a group and wanted to spend some time with Sherman and Woods. It is notable that this is the first time in over a year Pletsch and Foreman were potentially going to eat together. For that not to have occurred earlier suggests Foreman was making an effort to avoid contact with Pletsch.

4) The union claims Pletsch was a strong and knowledgeable paramedic.

That claim is undisputed in the testimony. The employer even trusted Pletsch to train fellow employees. He had high standards for himself and his co-workers, although he appeared to take this to an extreme. Whitlam and Jones both testified that he belittled them and made them feel inadequate as EMTs. They were both EMT trained, licensed through the State of Washington and had no formal complaints against their work. However, Pletsch did not like to work with them because they didn't meet his standards. There was no evidence produced that leads the Examiner to believe that Pletsch himself set the standards for the EMS Department. Pletsch testified he believed he cared more about patient care than most of the other staff, particularly the part-time staff. This belief became a huge source of conflict between Pletsch and the other EMS employees.

5) Lastly, the union claims the allegations brought up at the hearing by the employer mask the real reason for Pletsch's termination.

The Examiner agrees that many of the allegations the hospital raised in the hearing occurred before Pletsch's July 2010 final warning. Therefore, the Examiner did not consider those complaints in coming

to a decision in this matter. The final warning in July 2010 and the June 26, 2011 incident and subsequent investigation speak for themselves.

Engaging in statutorily protected activity does not enshroud an employee in protection, preventing an employer from taking action that does not violate the statute but to which the employee objects. Even when an employee engages in protected activity, an employer may still take actions the employer deems necessary to its operations so long as those actions are not pretextual or substantially motivated by union animus. Credible testimony by Human Resources Director Cook and CEO Abel suggested they considered *not* terminating Pletsch's employment because of his testimony at the June 2011 representation hearing and his union activity. Initially the employer was considering issuing Pletsch another final warning. It wasn't until further discussions with Foreman and the involvement of Hankins and Lemon, that Abel determined a final warning was not appropriate. The employer knew Pletsch's termination would likely lead to an unfair labor practice complaint, but ultimately decided terminating him was the right thing to do.

## CONCLUSION

I find the employer did not commit an unfair labor practice as alleged by the union. The union did not establish that the employer's justifications for terminating Pletsch were pretextual or that its actions were retaliatory in nature. The employer had legitimate, non-discriminatory business reasons for terminating Pletsch; therefore, the unfair labor practice complaint must be dismissed.

## FINDINGS OF FACT

1. Lake Chelan Community Hospital is a public employer within the meaning of RCW 41.56.030(12).

2. Teamsters Local 760 is a bargaining representative within the meaning of RCW 41.56.030(2) and filed a representation petition with the Commission on February 7, 2011 to represent the employer's full-time EMTs and paramedics.

3. David Pletsch is a full-time paramedic with the employer and is a public employee within the meaning of RCW 41.56.030(11).

4. Pletsch participated in protected union activities when he supported the union organizing drive and when he testified in support of the union during the representation hearing on June 7 and 8, 2011 before the Commission.

5. On August 5, 2011, the employer terminated Pletsch's employment shortly after he testified at the Commission hearing and the day following the union's filing of its post-hearing brief. The close timing between the organizing campaign including testifying at the hearing and Pletsch's termination established a causal connection between Pletsch's union activity and his termination.

6. The employer articulated legitimate, non-discriminatory reasons for terminating Pletsch by explaining that it terminated Pletsch out of concerns for other employees and in response to what CEO Abel described as a hostile work environment, including threatening and demeaning behavior against female EMTs.

7. A chair incident occurred on May 22, 2010, that resulted in paramedic Jennifer Foreman being scared of Pletsch and fearing retaliation from him.

8. Pletsch received a final warning/last chance agreement from the employer on July 6, 2010 for verbal abuse, demeaning language, unprofessional conduct, derogatory statements towards other employees and the EMS Department, and retaliation/retribution.

9. The final incident which led to Pletsch's termination occurred on June 26, 2011. This incident violated the terms of his July 6, 2010 final warning/last chance agreement.

10. Pletsch knew prior to his involvement with organizing union representation with Teamsters Local 760 that his job was at risk.

11. The union did not establish that the employer's justifications for terminating Pletsch were pretextual or that its actions were retaliatory in nature.

## CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45WAC.

2. As described in Findings of Fact 3 through 11, the union failed to sustain its burden of proof to establish that Lake Chelan Community Hospital discriminated against David Pletsch or violated RCW 41.56.140(1) or (3).

## ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 15th day of February, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Kristi Aravena

KRISTI L. ARAVENA, Examiner

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

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

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## RECORD OF SERVICE - ISSUED 02/15/2012

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

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| CASE NUMBER: | 24200-U-11-06199 | FILED: | 08/24/2011 | FILED BY: | PARTY 2 |
| DISPUTE: | ER DISCRIMINATE | | | | |
| BAR UNIT: | PARAMEDICS | | | | |
| DETAILS: | - | | | | |
| COMMENTS: | | | | | |

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