

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNITED FOOD AND COMMERCIAL	)	
WORKERS, LOCAL 381,	)	CASE 12012-U-95-2819
	)	
Complainant,	)	DECISION 5445 - PECB
	)	
vs.	)	
	)	
CLALLAM COUNTY PUBLIC HOSPITAL	)	
DISTRICT 1, d/b/a FORKS	)	
COMMUNITY HOSPITAL,	)	FINDINGS OF FACT
	)	CONCLUSIONS OF LAW
Respondent.	)	AND ORDER
	)	
	)	

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Cari Trussel, Union Representative, appeared on behalf of the union.

Johnson, Miller and Richardson, by Craig Miller, Attorney at Law, appeared on behalf of the employer.

On August 30, 1995, the United Food and Commercial Workers, Local 381 (UFCW), filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that Clallam County Public Hospital District 1 had violated RCW 41.56.140(1), by encouraging bargaining unit employees to file a decertification petition with the Commission.<sup>1</sup> The Executive Director of the Commission issued a preliminary ruling under WAC 391-45-110 on September 20, 1995, noting that employer assistance to a decertification effort could be an unfair labor practice. The Executive Director also indicated that the complaint would be treated as a "blocking charge" under WAC 391-25-370, so that the representation

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<sup>1</sup> A petition for investigation of a question concerning representation filed on August 7, 1995, was docketed as Case 11968-E-95-1972. Andrea Perkins-Pepper, a bargaining unit member, was listed as the petitioner. It was designated as a "decertification" petition, indicating that the employees in the bargaining unit did not wish to be represented by any organization.

petition would be held in abeyance until this unfair labor practice case is resolved.<sup>2</sup> The employer filed an answer on September 25, 1995, denying any involvement in the decertification petition. A hearing was held at Peninsula Community College in Port Angeles, Washington, on November 16, 1995, before Examiner Katrina I. Boedecker. Post-hearing briefs were filed to complete the record.

#### BACKGROUND

Clallam County Public Hospital District 1 (employer) is a public body which operates Forks Community Hospital and other medical facilities on the Olympic Peninsula of Washington. Eric Jensen was the hospital administrator at all times relevant to these proceedings. Maggie White is the employer's human resources director, and has general labor relations authority at the hospital.

In 1993, after an election conducted by the Commission, the UFCW was certified as exclusive bargaining representative of a bargaining unit of support and technical employees at the hospital.<sup>3</sup> That unit includes employees performing fiscal services, maintenance, laboratory, admitting, reception, and purchasing functions. As a

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<sup>2</sup> WAC 391-25-370 provides:

Blocking charges--Suspension of proceedings--Request to proceed. (1) Where representation proceedings have been commenced under this chapter and:

(a) A complaint charging unfair labor practices is filed under the provisions of chapter 391-45 WAC; and

(b) It appears that the facts as alleged may constitute an unfair labor practice; and

(c) Such unfair labor practice could improperly affect the outcome of a representation election; the executive director may suspend the representation proceedings under this chapter pending the resolution of the unfair labor practice case.

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<sup>3</sup> Forks Community Hospital, Decision 4187-B, (PECB, 1993).

result of collective bargaining, the employer and union signed a contract with an expiration date of July 31, 1995. Negotiations for a successor agreement were underway in July of 1995.

Andrea Perkins-Peppers works as a coding analyst at the hospital, and is in the bargaining unit represented by the UFCW. She testified that she began an effort to decertify the union, after discussions with two other bargaining unit members. She further testified that she asked no questions and sought no advice from the administrators of the hospital, and that administrators neither gave advice nor offered comment to her.

Perkins-Peppers would approach bargaining unit employees, and would ask them to sign her petition. She did this on her own time, which amounted to two 10-minute breaks and one 30-minute duty free lunch each day. Some employees in dietary and housekeeping were probably approached during their work times. She met with varying results:

\* Devennie Anderson indicated that she both signed the decertification petition and invited other employees to do so during her break periods. She would refer interested employees to Perkins-Peppers, who had the petition in her possession.

\* Cheryl Anderson testified that she was approached by Perkins-Peppers in the first week of August, but replied that she felt uncomfortable about the situation and preferred not to sign the petition. She was also approached by Devennie Anderson. These conversations took place near work desks in hospital offices.

\* Richard Street, a maintenance employee, was approached by Perkins-Peppers about signing the petition. He refused because, as a newly-hired employee, he was not yet a union member.

\* Clarence Hayworth, another maintenance employee, was asked to sign the petition on two occasions. He refused each time.

\* Bonnie Parejo, a purchasing agent within the bargaining unit, testified that Perkins-Peppers approached her twice about signing the petition. Parejo indicated she felt coerced, and signed the petition just to have the matter settled by an election.

White testified that no employee contacted her for advice about how to file a petition with the Commission, nor did anyone ask her about the employer's position. Perkins-Peppers attempted to talk with Jensen when she went to the hospital administrator's office to "file" her petition, on or about August 1, 1995. Jensen testified that this was the first he had heard about the decertification petition. Perkins-Peppers asked him "what to do with it", and he informed her that she should contact the Public Employment Relations Commission.

Perkins-Peppers placed envelopes addressed to the Commission and to the UFCW in the employer's outgoing mail, and they were postmarked "August 4, 1995" by the hospital's postage meter. The petition was received by the Commission on August 7, 1995.

White indicated that the employer had no written or announced policy prior to August 8, 1995, with regard to solicitation or discussion of union-related topics during work time and at work areas.<sup>4</sup> Jensen met with supervisors on August 8, 1995, one day after the petition was filed. Jensen testified:

I decided to have a meeting with the supervisors to instruct them as to what they could and could not do in regards to the decertification petition, which was basically to keep their hands off it and stay away from it. ... None of [the managers] indicated that they were aware of it or were involved in the petition -- I mean, were supporting the petition in any way. ...

Jensen further testified that he was concerned that incidents of "harassment or intimidation" by employees towards each other be reported to White, and that disciplinary action ought to be

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<sup>4</sup> The record establishes that no employee has been disciplined for discussing personal or family business during work hours in work areas.

considered. Jensen also talked to the employer's labor consultant, Fred Lorenz, about the situation. He, thereafter, advised the supervisors that "you do have permission to instruct employees not to discuss union business on hospital time." Jensen confirmed White's testimony that the hospital had not had a formal no-solicitation policy up to that time, and that the employees were pretty much free to discuss anything at the facility.

Perkins-Peppers sent a letter to the employees, in which she responded to union claims that it had won two grievance arbitrations and had negotiated a superior insurance package for bargaining unit members. That letter included:

LIE-- The union says they discovered that the decertification was set up by management.

FACT-- I made the petition in representation of a large group of unhappy union members. I circulated the petition as the spokesperson for a large group of unhappy union members, and I sent it to [the Public Employment Relations Commission] as the representative of a large group of unhappy union members. If I am management, its news to me. I guess I shouldn't have been paying dues all this time. The administration had no idea I was even filing a petition. ...

Another bargaining unit employee obtained a list of employee names and addresses from the union.<sup>5</sup> The letter is not dated, but the use of the past tense in reference to sending the petition to the Commission suggests it was after August 4. Perkins-Peppers made the copies of her letter at the hospital, but it is also clear that she paid the hospital \$8.00 for the copying costs.

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<sup>5</sup> Barbara Stever testified that she and another employee became angry over the possibility that the addresses used by Perkins-Peppers to mail her letter might have come from the employer's personnel files.

POSITIONS OF THE PARTIES

The union argues that, in the absence of the employer having a valid no-solicitation policy in place, the employer allowed anti-union discussions to take place on hospital time and in work areas. The union reasons that this led to the filing of a decertification petition with the knowledge and assistance of the management, which interfered with employee rights under Chapter 41.56 RCW.

The employer argues that it knew that a petition was going to be filed no more than a day or two before the petition was mailed, and that it took no steps to stimulate or encourage such action. The employer contends that the absence of a "no-solicitation" policy or other rules on employee misconduct does not mislead employees, and is not an unfair labor practice.

DISCUSSIONAbsence of a No-Solicitation Rule

The union makes the odd claim that, after doing nothing to prevent the union's organizing efforts two years ago, the employer is now culpable because it did not have or enforce a no-solicitation rule to prevent the same employees from revisiting the representation issue. That is not the law. Employers get in trouble for putting unwarranted restrictions on the exercise of employee rights under a collective bargaining statute such as RCW 41.56.040, not for remaining silent on such matters.

Even if the employer had some policy or rule in effect, a valid no-solicitation, no-distribution rule could not have prevented the off-duty activities described by Perkins-Peppers in her testimony. A valid employer policy might prohibit union-related activities on employee work time and in work areas, but could not prohibit

discussion of such issues by employees on their breaks, during lunch periods, or on their own time. Our Way Inc., 268 NLRB 394 (1983).<sup>6</sup> See, also, King County, Decision 2553-A (PECB, 1987); and City of Tukwila, Decision 2434-A (PECB, 1987).

Employer Involvement in Decertification Effort

It is important to note that the focus of this case is on whether the employer instigated, supported, or condoned the decertification movement **prior to the time the decertification petition was filed**. Employees have a right to organize for the purpose of collective bargaining under RCW 41.56.040, but also have a right to select "no representative". The employer is not chargeable for actions taken by employees in pursuit of their own rights, in the absence of any employer interference with those employees or with their exercise of their own rights.<sup>7</sup>

Decertification efforts may inevitably arouse some acrimony, hurt feelings, suspicions, and anger among the employees involved. Although some witnesses testified that they believed the solicitations to sign the petition were coercive, the evidence establishes that any "coercion" was from fellow bargaining unit members. Even if the Examiner were to conclude that the conduct of Perkins-Peppers was overbearing and coercive, such conduct cannot be imputed to the employer on the basis of the record made here. There is simply no evidence that either the hospital administrator

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<sup>6</sup> A valid no-solicitation rule would also have to uniformly ban other solicitations, such as selling raffle tickets or admissions for charities or charitable events.

<sup>7</sup> Employees are allowed considerable latitude in seeking the support of other employees for a representation petition. In Lewis County, Decision 4691-A (PECB, 1994), a union supporter's manner was observed to be rude and discourteous, but it was nevertheless held that "RCW 41.56.140(1) and .150(1) do not prohibit free speech to the degree that raised voices, angry words, and sharp disagreements are universally rendered illegal."

or the human resources manager insisted on employees looking at the petition. Rather, this appears to be a garden-variety decertification movement at a local level.

On the record as a whole, the Examiner cannot find a preponderance of evidence which proves that the employer was even aware of the decertification effort. The evidence was unrebutted that Perkins-Peppers telephoned the Commission's office in July of 1995, and that she obtained the necessary forms from the Commission. The list of names and addresses of bargaining unit members was not provided by the hospital as feared by some of the employees, but "borrowed" from the union by one of its own members. There was no evidence that any supervisor or management official talked to any employee about the decertification effort. Nor is there even an indication that the supervisors supported the decertification petition. At most, supervisors may have observed employees being solicited for signatures on the decertification form.

#### Use of Employer Resources

The only issue remaining to be determined is whether the employer allowed Perkins-Peppers the use of hospital resources for her decertification effort. A "technical" violation was found in Pierce County, Decision 1786 (PECB, 1983), where employees could reasonably have perceived ongoing use of employer office space, work time, and telephones as employer support for an organization, even though the employer did not expressly condone that usage or otherwise indicate its preference for that organization.

The employer's postage meter was used to file and serve the decertification petition, but the record merely establishes that envelopes placed in the employer's outgoing mail box were processed routinely thereafter.<sup>8</sup> No management official granted approval for

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<sup>8</sup> The postage meter was in an area where employees or members of the public could have access to it.



this use of the employer's postage meter. The unauthorized use of 64 cents of postage is not enough to tie this employer to the decertification effort. See: Valley Communications Center, Decision 4145 (PECB, 1992).

Unrebutted testimony indicates that Perkins-Peppers reimbursed the employer for the copies of the letters she sent to the employees. The union has not contended, and the record does not suggest, that those letters were mailed at the employer's expense.

#### FINDINGS OF FACT

1. Clallam County Public Hospital District 1, d/b/a Forks Community Hospital, is a public employer within the meaning of RCW 41.56.030(1).
2. United Food and Commercial Workers, Local 381 (UFCW), a bargaining representative within the meaning of RCW 41.56.030-(3), is the exclusive bargaining representative of maintenance and administrative employees at Forks Community Hospital.
3. The employer and union were parties to a collective bargaining agreement which expired July 31, 1995. During July of 1995, the employer and union were engaged in negotiations for a successor contract.
4. During July and August of 1995, bargaining unit employee Andrea Perkins-Peppers solicited support among bargaining unit employees for the filing of a decertification petition with the Commission. Perkins-Peppers obtained the necessary forms from the Commission, reimbursed the employer for the cost of copying a letter she mailed to bargaining unit employees, and used a union list of addresses to mail that letter to bargaining unit employees. There is no evidence that the employer initiated, supported, or condoned the decertification effort.

5. Andrea Perkins-Peppers obtained unauthorized use of the employer's postage meter to file her decertification petition with the Commission and to serve a copy of her decertification petition on the union. There is no evidence that any management official approved that use of employer resources.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.
2. By its actions prior to the filing of the decertification petition by Andrea Perkins-Peppers, the employer did not interfere with, restrain, or coerce its employees in the exercise of their rights under Chapter 41.56 RCW, and has not committed any unfair labor practice under RCW 41.56.140.

ORDER

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

Issued at Olympia, Washington, on the 26th day of February, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
KATRINA I. BOEDECKER, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.