STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

VICKI ANNE LADEN, Complainant, vs. PUBLIC HOSPITAL DISTRICT NO. 1 OF KING COUNTY d/b/a/ VALLEY GENERAL HOSPITAL, Respondent.	)	CASE NO. 2371-U-79-339 DECISION NO. 1195-A PECB DECISION OF COMMISSION

Mrak & Blumberg, by Christine M. Mrak, Attorney at Law, appeared on behalf of the complainant.

Richard N. Burt, Donworth, Taylor & Company, Management Consultants, appeared on behalf of the respondent.

Examiner Katrina I. Boedecker issued her findings of fact, conclusions of law and order in the captioned matter on July 18, 1981, wherein she found that the respondent employer had committed unfair labor practice in violation of RCW 41.56.140 by its discharge of the complainant. The respondent filed a timely petition for review of the Examiner's decision by the Commission, and both parties filed briefs on the petition for review.

POSITIONS OF THE PARTIES ON REVIEW

The complainant supports the decision of the Examiner, which concludes that (as alleged in the complaint) Laden was discharged for her exercise of union activity protected by RCW 41.56.

The respondent's arguments in its petition for review are identical to the position which it took before the Examiner: That Laden was discharged because of her attitude and behavior, and that as a probationary employee Laden was not protected from being discharged with or without cause.

DISCUSSION

This case involves the termination of an employee who was a "probationary" employee under the terms of the collective bargaining agreement covering her

employment. In addition to the usual problems of deciding facts from conflicting testimony, this case brings before the Commission questions distinguishing the rights and status of an employee under contractual agreements between labor and management from the employee's statutory rights.

The Probationary Employee Issue

As seen by the Examiner, the main issue in this case is whether Vicki Anne Laden was discharged for her exercise of rights protected by RCW 41.56. Before addressing that issue, it is necessary for the Commission to resolve the employer's position that, since Laden was a probationary employee at the time of her discharge, she was subject to termination by the employer without any showing of cause.

In raising Laden's probationary status, the employer relies both on the labor agreement between it and Office and Professional Employees Local 8, and on its Personnel Policy and Procedure Manual. Both documents indicate that probationary employees enjoy little, if any, protection from a management discharge decision. Additionally, the employer cites the decision in Linda Orr and the Seattle Area Committee vs. Valley General Hospital, King County Superior Court No. 790422, as indicating court approval of management's right to discharge employees without cause.

The entire line of argument is found to be without merit. Laden has not asserted any contractual protection from discharge in these proceedings, and the Examiner did not base her decision on any contractual right. The union involved evidently did not pursue Laden's discharge through any contractual grievance procedures. The case is more complex than a simple discharge of an employee who may or may not have been performing her duties in a satisfactory manner. Laden alleged that her discharge was caused by her pursuit of her legal rights concerning break time, measurement of radiation absorption and union representation. Her pursuit of her legal rights in those areas included seeking assistance from her union for the processing of her grievances. The rights conferred and protected by Chapter 41.56 RCW, the Public Employees Collecive Bargaining Act, are independent of any rights secured to employees in a collective bargaining agreement negotiated under the provisions of the Act. No decision of the National Labor Relations Board is cited by the employer in support of its proposition that, in effect, the protections conferred by the collective bargaining statute stand subordinate to the rights reserved to the employer in the collective bargaining agreement, and none has been found. Some recent contrary examples are noted: Corry Jamestown Corporation, 238 NLRB No. 52 (1978); Industrial Steel Stampings, Inc., 238 NLRB No. 48 (1978); General Battery Corp., 241 NLRB No. 185 (1979); Kansas City Power & Light Co., 244 NLRB No. 93 (1979); Southern Florida Hotel & Motel Assn., 245 NLRB No. 49 (1979); Bucyrus-Erie Co., 247 NLRB No. 59 (1980); Fluid Packaging Co., Inc., 247 NLRB No. 196 (1980);

Schneider's Dairy, Inc., 248 NLRB 1093 (1980). The probationary period provisions of the contract are irrelevant to the inquiry which is before the Commission.

The Protected Activity Issue

While Laden requested information about union representation early in her employment, questioned management about radiation absorption and contacted the Department of Labor and Industries regarding rest periods, her claim of protected activity relates primarily to her efforts to obtain satisfactory break time arrangements through contacts with her union and the procedures of the collective bargaining agreement. The record shows that, during the week of September 10, 1979 and thereafter, Laden talked to her supervisors, Lennon and Dofelmier, about the difficulty with taking break time. Laden contacted a union representative at Office and Professional Employees Local 8 on September 25, 1979, and so informed Lennon and Dofelmier.

The scope of collective bargaining under RCW 41.56 includes: "wages, hours and working conditions" See: RCW 41.56.030(4), (emphasis supplied). The "rest periods" provisions negotiated fall within the "hours" aspect of the scope of collective bargaining. Atlas Tack Corp., 226 NLRB 222 (1976). There is no question that Laden's pursuit of her break time grievance was an activity protected by the statute.

Was Laden discharged for pursuit of her grievance or for some other reason? In answering that question, the Commission has reviewed the entire record and that review leads the Commission to concur with the Examiner's analysis of the employer's anti-union animus (Decision 1195, at pages 10-11), and that portion of the Examiner's decision is adopted by reference. In finding that the employer discharged Laden for her pursuit of the break time issue, it is not necessary to find that a formal grievance was filed or that management had knowledge of Laden's contacts with the union in pursuit of her disagreement with the employer concerning break times.

NOW, THEREFORE, It is

ORDERED

1. The findings of fact, conclusions of law and order issued by the Examiner in the above entitled matter are affirmed.

2. King County Public Hospital District No. 1 shall notify the Executive Director of the Commission, in writing, within thirty (30) days following the date of this Order, as to what steps have been taken to comply with the order

issued by the Examiner and affirmed by the Commission in this matter, and shall at the same time provide the Executive Director with a signed copy of the notice required by the order.

DATED this 11th day of December, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jane R. Wilkinson
JANE R. WILKINSON, Chairman

Robert J. Williams
R. J. WILLIAMS, Commissioner

Mark C. Endresen
MARK C. ENDRESEN, Commissioner