



officer" retroactive to March of 1988, and that the Examiner erred in concluding that she would not have been medically eligible for that position at that time.

## DISCUSSION

### The Unfair Labor Practice

The issues raised in this appeal are entirely factual. We have reviewed the record, and find that the Examiner did not err in finding a violation of RCW 41.56.140(1). Further, we find that the Examiner did not consider matters beyond the scope of the complaint or of the record.

The facts of this case are unusual, in that there was direct and uncontroverted evidence of retaliation. Rarely is that the case. The Examiner properly applied the Wright Line<sup>1</sup> analysis. His determination that Higgins made a prima facie case, as well as his determination that the employer failed to meet the burden which shifted to it, is supported by the record.

### Remedy

RCW 41.56.160 authorizes the Commission to impose "appropriate" remedies where unfair labor practices are found, giving us a considerable amount of discretion as to what is "appropriate."

Both parties object that the Examiner's remedial order is tied to the "dispatcher" position. The employer complains that Higgins has

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<sup>1</sup> Wright Line, Inc., 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Circuit, 1981); cert. den. 455 U.S. 989. Accord, City of Olympia, Decision 1208-A (PECB, 1982).

never permanently held that classification; Higgins complains that she was previously an "animal control officer", and was qualified for the position in that classification was advertised beginning in March of 1988.

The Examiner had good reason to focus on the "dispatcher" position. Higgins had done the work before, and was qualified for the position when it became available in April, 1988, and she took the affirmative step of applying for that position. However, in view of the parties' objections, we believe the more appropriate focus is the "animal control officer" position which became available in March, 1988. There is evidence Higgins applied for that position and would have qualified for it from a medical standpoint, or that she could have obtained a medical release for work in that position if the employer had asked her to do so. The remedial order will be amended accordingly.

NOW, THEREFORE, it is

ORDERED

1. The findings of fact and conclusions of law issued in the above-entitled matter by Examiner J. Martin Smith are affirmed and adopted as the findings of fact and conclusions of law of the Commission.
2. King County, its officers and agents, shall immediately:
  - a. Cease and desist from interfering with, restraining, coercing and discriminating against employees in the exercise of their rights under Chapter 41.56 RCW, and

specifically with respect to the filing of grievances under a collective bargaining agreement covering their employment.

- b. Take the following affirmative action which the Commission finds will effectuate the purposes of the Public Employees' Collective Bargaining Act:
  1. Reinstate Patricia Higgins to employment with King County in the position of "animal control officer" as that position became available in March of 1988, or in a substantially equivalent position.
  2. Make Patricia Higgins whole for the wages and benefits lost as a result of the discrimination against her, by payment of back pay at the rate of pay of the "animal control officer" position that became available in March of 1988, from the date that such position was filled until the date of the unconditional offer of reinstatement made pursuant to this order, computed in accordance with WAC 391-45-410.
  3. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto. Such notice shall, after being duly signed by an authorized representative of the respondent, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the respondent to insure that said notices are not removed, altered, defaced, or covered by other material.

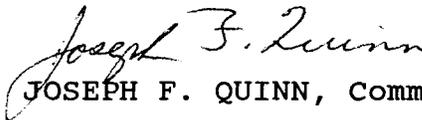
4. Notify the complainant, in writing, within thirty (30) days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice required by this order.
  
5. Notify the Executive Director of the Public Employment Relations Commission, in writing, within thirty (30) days following the date of this order, as to what steps have been taken to comply herewith, and at the same time provide the complainant with a signed copy of the notice required by this order.

DATED at Olympia, Washington, this 21st day of July, 1989.

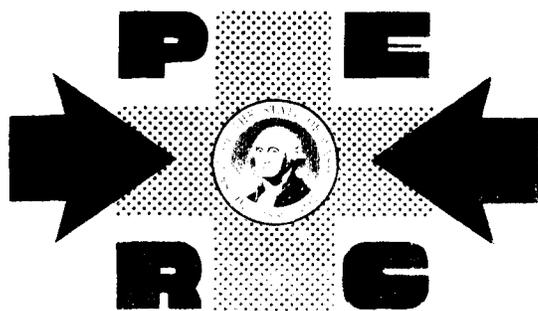
PUBLIC EMPLOYMENT RELATIONS COMMISSION



JANE R. WILKINSON, Chairman



JOSEPH F. QUINN, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

# NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION HAS HELD A HEARING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE. THE COMMISSION HAS FOUND THAT WE VIOLATED THE PUBLIC EMPLOYEES' COLLECTIVE BARGAINING ACT (CHAPTER 41.56 RCW) AND HAS ORDERED US TO POST THIS NOTICE.

WE WILL NOT DISCRIMINATE against Patricia Higgins for protected rights under RCW 41.56, e.g., file grievances under the collective bargaining agreement;

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of rights guaranteed them by the Public Employees' Collective Bargaining Act.

WE WILL offer re-instatement to Patricia Higgins of a position as Animal Control Officer in the Animal Control Division of King County, and will otherwise make her whole in wages for the period March, 1988 to the present date, with interest.

KING COUNTY

By: \_\_\_\_\_  
Authorized Representative

Dated \_\_\_\_\_

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

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone (206) 753-3444.