Kennewick General Hospital, Decisions 4815-A, 5052-A, 5594 (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNITED STAFF NURSES, LOCAL 141, Complainant,	)	CASE 10947-U-94-2547
	)	DECISION 4815-A - PECB
	)	CASE 11279-U-94-2640
vs.	)	DECISION 5052-A - PECB
	)	
KENNEWICK PUBLIC HOSPITAL DISTRICT #1 d/b/a KENNEWICK GENERAL HOSPITAL, Respondent.	)	CASE 11397-U-94-2675
	)	DECISION 5594 - PECB
	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Hafer, Price, Rinehart and Robblee, by M. Lee Price, Attorney at Law, appeared on behalf of the complainant.

Conner, Gravrock and Treverton, by William W. Treverton, Attorney at Law, appeared on behalf of the employer.

These cases involve a tedious procedural background. Since all three unfair labor practice complaints arose out of the same set of lengthy negotiations, one decision will address all of the allegations which stated a cause of action.

Case 10947-U-2547 was docketed on the basis of a complaint charging unfair labor practices filed with the Public Employment Relations Commission on February 2, 1994. The United Staff Nurses Union, Local 141 (USNU) alleged that Kennewick General Hospital had violated Chapter 41.56 RCW. Specifically, it alleged that the employer was threatening to unilaterally remove bargaining unit positions from the bargaining unit and attempting to put them under a "new separate corporation" without any union representation in violation of RCW 41.56.140(1) and (4). Steps taken in the processing of that case include:

1. A preliminary ruling made pursuant to WAC 391-45-110, on March 3, 1994, wherein the parties were advised that the allegations of:

> The employer's interference and refusal to bargain with the exclusive bargaining representative of its employees by its establishing an "alter ego" corporation for two clinics, unilaterally transferring certain employees and notifying others that they will be laid off because of the new corporation assuming control of the clinics ...

did state a cause of action and would be set for hearing. On March 23, 1994, the employer filed its answer denying any "alter ego" involvement.

2. On April 26, 1994, the union filed an amendment to the complaint alleging that the hospital had rescinded its decision to transfer the clinic nurses out of the bargaining unit, but was still refusing to bargain with the union over the nursing positions assigned to the clinics. The employer answered the amended complaint on May 16, 1994, claiming that the nurses assigned to the clinics were outside the scope of the union's certification.[1]

3. A hearing was held on the complaint as amended on June 23 and 24, 1994, in Kennewick, Washington.

4. On August 9, 1994, the union filed a motion for "Second Amendment to Charge" based on evidence that was presented by the employer at the hearing, that the union was unaware of until it was brought out during testimony. The evidence

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[1] The United Staff Nurses Union, Local 141, filed a representation petition to "raid" the previous exclusive bargaining representative in 1990. USNU was certified as the exclusive bargaining representative for the nurses in Kennewick General Hospital, Decision 3491-C (PECB, 1991).

brought out at the hearing was that the employer had no intention of rescinding its decision to transfer the clinics out of the hospital and terminate the clinic nurses. The motion was granted over the employer's opposition.[2] A review of the employer's answer to the second amendment determined that the evidentiary record did not need to be reopened.

Case 11279-U-94-2640 was docketed on the basis of a complaint filed by the USNU on August 12, 1994. The union detailed actions which could indicate that the employer was engaging in a course of conduct that demonstrated a lack of good faith bargaining again in violation of RCW 41.56.140(1) and (4).[3]

Case 11397-U-94-2675 was docketed on the basis of a third complaint of unfair labor practices against the hospital filed on October 21, 1994. That complaint alleged that the employer had transferred or terminated bargaining unit members without advising or negotiating with the union which again violated RCW 41.56.140(1) and (4).

The second and third unfair labor practice complaints were consolidated for hearing which was held June 15 and 16, 1995, in Pasco, Washington. The parties filed post-hearing briefs. Along with its post-hearing brief, the respondent filed a motion to dismiss on August 11, 1995. The ruling on that motion is in the discussion below.

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[2] Kennewick General Hospital, Decision 4815 (1994, PECB).

[3] One allegation concerning the employer's refusal to provide information was found to lack detail to state a cause of action. No amendment was filed so that specific allegation was the subject of a order of partial dismissal in Kennewick General Hospital, Decision 5052 (PECB, 1995).

BACKGROUND

Historical Perspective

Kennewick Public Hospital District was established in 1949 as a public agency organized under the laws of the State of Washington. The district is operated by a board of seven commissioners who are elected by the residents of the hospital district. The district is made up of the cities of Kennewick, Finley, Richland south of the Yakima River, and a large portion of rural county area to the east and south of the communities mentioned. The district's monies for operations come from the patients the district serves.

Kennewick General Hospital (KGH) was opened in 1952.[4]

In the late 1980's, the Women and Children's Clinic was established to provide prenatal, postpartum and some on-going services to women. Nurse practitioners and midwives provide services to the female patients at the clinic, as well as perform deliveries in the hospital as would any other practitioner taking care of such women. At the time in question, the clinic was located in a medical office building owned by the district, across the street from the

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[4] Evidence in the record includes a Washington State Audit Report for calendar year 1992 which lists the employer as "Kennewick Public Hospital District No. 1 DBA Kennewick General Hospital". Bylaws dated January 28, 1993, specify:

> Section 1. Name:
> a) The name of this District shall be KENNEWICK PUBLIC HOSPITAL DISTRICT, "District".
> b) The District's hospital shall be known as KENNEWICK GENERAL HOSPITAL, "KGH", and the day-to-day business of the Hospital may be conducted under that name.
> c) The District's non-hospital activities shall be conducted as may, from time to time, be determined by the Board of Commissioners.

hospital. There are approximately 16 employees at this clinic, 5 of whom are registered nurses.

The Columbia Center Clinic is a walk-in urgent care center located in one of the buildings of the Columbia Center shopping mall across town from the hospital. The record does not specify when this clinic was established but the evidence indicates that the clinic was operational at least by 1990. There are approximately 12 employees at this clinic, three of whom are registered nurses.

Certification of USNU -

On April 2, 1990, the United Staff Nurses, Local 141, filed a petition for investigation of a question concerning representation with the Commission[5]. That petition listed the employer as:

> "Kennewick General Hospital
> Kennewick Public Hospital District".

The petitioner sought a bargaining unit described as "All registered nurses employed by the employer."

A pre-hearing conference was held on the petition, and a statement of results issued to the parties. The statement of results listed that the parties stipulated that the correct title for the employer was "Kennewick General Hospital (Kennewick Hospital District)". The statement of results concluded with:

> Any objections to the foregoing must be filed, in writing, with the Hearing Officer within ten (10) days following the date hereof and shall, at the same time, be served upon each of the other parties named above. This statement becomes a part of the record in this matter as binding stipulations of the parties, unless modified for good cause by a subsequent order.

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[5] The petition was docketed as Case 8523-E-90-1434.

Ensuing correspondence from the employer clarified its position to exclude certain classifications from the bargaining unit by listing the employee's name and job title. Among the nursing supervisors excluded from the bargaining unit, the employer specified the "Director of the Women and Children's Clinic" and the "Director of the Columbia Center Clinic".

The USNU was eventually certified as the exclusive bargaining representative of a bargaining unit described as "All full-time, part-time, and per diem registered nurses at Kennewick General Hospital; excluding supervisors, confidential employees and all other employees." Nurses working at the Women and Children's Clinic and the Columbia Center Clinic were on the eligibility list for voting in the representation election.

The Parties' First Contract -

The parties negotiated a collective bargaining agreement for the duration of April 28, 1991 through December 31, 1992. The preamble cited ... "Kennewick General Hospital (hereinafter referred to as the 'Hospital' or 'Employer')..., and recognized the USNU "as the representative for all Registered Nurses employed as Staff Nurse I, Staff Nurse II, and Assistant Nursing Unit Director." Excluded were all unit directors, patient Care Coordinators, Certified Nurse Mid-Wives, Nurse Practitioners, and Nurse Instructors.

During the term of their 1991 - 1992 collective bargaining agreement, the parties met and bargained a "preceptor guideline agreement".[6] It detailed time frames for orienting nurses into various units. The Women and Children's Clinic and the Columbia Center Clinic were among the 12 units identified.

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[6] This mid-term bargaining was contemplated in the collective bargaining agreement, Article 5.10 - Preceptor/Residency Procedure.

The 1993 Contract -

The parties' next collective bargaining agreement covered the period of May 9, 1993 through December 31, 1993. This contract includes references to the nurses in the Women and Children's Clinic and the Columbia Center Clinic as being in the bargaining unit.

Course of Conduct

In October 1993, the parties began negotiations for the contract that would replace the document due to expire at the end of the year. The USNU was represented by John Aslakson, business agent/staff negotiator and certain RNs from the bargaining unit. The employer was represented by labor relations consultant Jim Conner, and by certain hospital supervisors including Assistant Administrator Managing Patient Care Services Linda Garner. During the negotiations, the employer's team had indicated that Hospital Administrator Mike Tuohy was the decisionmaker.

The employer gave its first written proposal on November 5, 1993. That proposal included economic take-aways and deletion of certain language protections. During negotiations on November 22nd, most of the time was devoted to the employer explaining that it needed more flexibility than a multi-year contract would allow, due to impending health care reform. It explained that with the language of RCW 41.56.123, a one-year contract "was really a two-year deal" and a two-year contract "was really a three-year deal".[7] There-

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[7] RCW 41.56.123 Collective bargaining agreements--Effect of termination--Application of section. (1) After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

fore, its position was that it would stand on a one-year wage proposal; or it would make a two-year wage offer if, and only if, the union waived its rights under RCW 41.56.123.

The parties again met on November 29th. The main discussion was on the hospital's proposal concerning work shifts. At the time, certain nurses would work three 12-hour-shifts and receive 40 hours pay. The employer cited that another hospital in the area, Kadlec, had just negotiated a change wherein their nurses got paid for actual time worked.

The next meeting was December 2nd. Conner testified that the parties were now focused on five main issues: wages, retroactivity, the 12-hour shift premium, the clinic nurses, and the ".123 waiver". After negotiating for four hours, the parties agreed to seek the help of a mediator. The parties jointly requested mediation assistance from the Commission on December 7, 1993.[8]

Proposed Transfer of Positions Out of Bargaining Unit

In mid-December 1993, Tuohy announced to the employees that the hospital would cease operating the Women and Children's Clinic and the Columbia Center Clinic.[9] The two clinics would be operated by Northwest Practice Management (NPM) which was described as "a separate corporation that is wholly owned by Kennewick Public Hospital District, and therefore, is a sister organization to

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(2) This section does not apply to provisions of a collective bargaining agreement which both parties agree to exclude from the provisions of subsection (1) of this section and to provisions within the collective bargaining agreement with separate and specific termination dates. ...

[8] Kennewick General Hospital, Case 10819-M-93-4053.

[9] The hospital district's board of commissioners had passed a resolution authorizing the transfer of the two clinics from the hospital to the district on December 17, 1992.

Kennewick General Hospital." The clinic employees were advised that NPM wanted to hire its "own" employees, thus the hospital would eliminate all the positions in the clinics that were hospital employees on or about February 1, 1994. The employees were cautioned that their pay and benefits would probably change, but the NPM had agreed to maintain current salary levels until August 31, 1994. The employees were told to reapply for their positions through NPM.

Aslakson testified that his first knowledge that the employer was taking the position that the clinic nurses were not covered by the USNU's collective bargaining agreement was in a letter from Tuohy dated December 16, 1993. The letter, addressed to Aslakson, began:

> We wish to notify you of a planned reduction in force at Kennewick General Hospital. On December 14, 15 and 17 [sic], 1993 in meetings with the employees, we have notified all of our employees at Women and Children's Clinic and Columbia Center Clinic that effective March 1, 1994 Northwest Practice Management will assume operation and staffing of the two Clinics. Northwest Practice Management is a separate corporation that is wholly owned by Kennewick Public Hospital District.

The letter concluded by inviting Aslakson to contact the hospital's Human Resource Director Carrol Reeves, if he wanted to discuss any matters relating to the "reduction in force". Aslakson attempted to contact Reeves, but never heard back. He also sent a copy of the letter to the union's attorney.

Conner testified that before the November 29th meeting, he had been advised by his client that there was some potential difficulty with respect to clinic nurses. Conner stated that he gave Aslakson a "heads up" on the clinic problem at that meeting and asked that it take priority and be the first topic at the next meeting. Conner stated that Aslakson responded that it was all in the union's

"attorney's hands". Aslakson stated that it was during the December 29th meeting, not the November 29th meeting, that he said it was all in the attorney's hands.

In fact, NPM is a non-profit corporation run by a board of directors consisting of five appointed members. Three of the hospital district's commissioners sit on the board; Tuohy is the president of NPM as well as a board member. The chief financial officer of the hospital, Michael Bonthuis, is the fifth board member. NPM is located in a district-owned building next to the hospital.

On December 20, 1993, an "agreement for lease of personnel" was signed by Tuohy, as "Superintendent Kennewick Public Hospital District", and Bonthuis, as "Chief Financial Officer Kennewick General Hospital". The lease provided:

> Therefore, KGH agrees to maintain as employees of KGH the current employees of Columbia Center Clinic and the Women and Children's Clinic as listed on Exhibit A attached to this letter. Said employees will then be made available to District to staff and operate the Columbia Center Clinic and the Women and Children's Clinic. District will be responsible for reimbursing the Hospital for the full cost of providing said employees. ...

The change was to be effective March 1, 1994.

Mediation

The parties met with the Mediator December 29, 1993. During this first mediation session, the parties went over the open issues and the employer presented a document titled "management mediation issues". The union took the position that the clinics were covered by the contract and that the employer could not unilaterally pull the nurses working there out of the bargaining unit.

During a January 13, 1994 mediation session the employer suggested alternatives to achieving a change in the 12-hour shift situation. One was modeled after Harrison Hospital in Bremerton, Washington, where nurses were also represented by USNU, Local 141. The Harrison model had the nurse be scheduled for one extra shift per month. The union rejected the model for two reasons: The RN would have to work more time for the same amount of money; and, at Harrison, it had become "a farce" because the 12-hour nurse would be the first nurse sent home if a low census occurred.

The parties also discussed the settlement at Kadlec on the 12-hour shift issue. There, after a seven and one-half week strike, Kadlec had signed a three year agreement with two percent increases in each of the three years. To offset the elimination of the 12-hour premium on ratification, all the Kadlec nurses, working 12-hour or 8-hour shifts, received an immediate three step increase. In Kennewick, the employer was only offering the 2 percent for one year or, 2 percent for each of the next two years if the union gave its waiver to the RCW 41.56.123 language; the employer did not offer the extra three step advancement on the wage schedule. The union posed the Kadlec plan to the employer. The employer rejected it.

Delay of Transfer of the Clinic Nurses

At the January 1994 hospital district board meeting, people turned out to protest and express their concerns about the clinic situation. In response, the board agreed to form a task force and bring in a consultant to review the situation. On February 10, 1994, Tuohy sent a memo to all the employees to answer some of the questions raised at the board meeting. He acknowledged that the emphasis on the "hospital district" was of recent vintage and that "In people's minds the District has always been the Hospital." He attributed impending health care reform as causing the district to be viewed as the parent corporation with the hospital being only

one of the operations under the district. When answering why the Women and Children's Clinic and the Columbia Center Clinic were being relocated out of the hospital, Tuohy wrote:

> Unfortunately as departments of the Hospital, these clinics are subject to :
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> * All the licensure rules and regulations of Washington that affect hospitals,
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> ...
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> * union contract [sic] that are not written to respond to the differences between a hospital's operations and clinics.

By January 1994, the employer clearly took the position that the nurses at the Women and Children's Clinic and the Columbia Center Clinic were not covered by the collective bargaining agreement and that the USNU did not represent them.[10] The employer concluded that it had no obligation to discuss the issue with the union. The union continued to assert that it was the certified representative of the all the nurses and any attempt to exclude a class of employees was illegal.

There was a brief mediation session March 2, 1994. Most of the discussion was about the processing of the unfair labor practice complaints. Neither party made any proposal of substance.

Climate at the Hospital District

Tuohy sent another memo to all employees March 31, 1994 to answer more questions that had arisen about the changes to the two clinics.

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[10] It appears that during this same time frame, the malpractice insurance for the two clinics was bid out with all the district's insurance needs in one package, saving the district approximately $155,000 in premium costs.

> 1. **Why not grandfather current staff under the current wage/benefit structure? Why did we reduce pay and benefits?**
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> There are substantial differences in pay and benefits between what was being provided to Hospital employees staffing both the Women and Children's and Columbia Center clinics and what comparable clinics in our and in other areas of Eastern Washington were paying their staff.
>
> Grandfathering the current staff was considered. Grandfathering present employees in two clinics that have very low turnover would not achieve the kinds of cost savings we felt are needed in the time frame we believe is necessary. Therefore, that option was not considered viable.
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> ...
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> 10. **What is Administration's position regarding unionization of employees other than nurses?**
>
> Our position is plain and simple and that is we don't feel that our employees need anyone to represent them in discussions with the management of the Hospital. A third party coming from outside the community with its own agenda only gets in the way of relations between the Hospital and employees.
>
> If the interest in unions is for the union to protect employees from the environment, a union cannot do that -- no one can. The United Staff Nurses Union (USNU) was not even able to protect its own employees, as we understand they had to lay off employees from their Western Washington offices.

[Emphasis by bold in original.]

Mediation and a Ratification Vote

The parties met April 1st in mediation. It appears that the union did not yet have a copy of Tuohy's March 31st letter. The discussions centered around the hospital's position on the RCW 41.56.123 waiver and economic costs.

The union was proposing a 4 percent wage increase. When the employer characterized the proposal as out of line with the rest of the hospitals in the area, the union provided documentation that the 4 percent increase matched what had occurred at Saint Mary's hospital in Moses Lake. The union also pointed out that the Licensed Practical Nurses (LPN's) at KGH had received over a 5 percent increase ratified by the commissioners in February.

The employer offered a 2 percent across-the-board increase for the first year and believed it got the RCW 41.56.123 waiver as the quid pro quo for 2 percent across-the-board increase in the second year of the contract.

The next mediation session was scheduled for May 18th. The employer was concerned about the six week hiatus between meetings, but it believed that the Mediator was deciding when to meet and that the break between April 1st and May 18th was to accommodate Aslakson who was negotiating at Our Lady of Lourdes, another area hospital. The employer knew that the 12-hour shift was an issue there too and thought a settlement at Lourdes might produce a model for KGH.

At the May 18th mediation session, the employer believed that both sides were locked into their respective positions. After meeting for 15 to 20 minutes, management presented its offer to be voted. The offer was the same document from the opening mediation session of December 29th with a handwritten cover letter. The letter conditioned the offer on two points: (1) The union would withdraw its pending unfair labor practice complaints; and (2) that the union would waive its rights under RCW 41.56.123. The union interpreted management's position that in order to talk about salaries in the second year, it had to give up its bargaining rights. The employer's team also conveyed to the union that Tuohy was on his way to Seattle as they were meeting. The union's team understood that to mean that no further negotiations could occur

that day since Tuohy was the decision maker. As the management team was leaving the room one management member commented, "Five down, seven to go." The union interpreted that to refer to the 12 month period in RCW 41.56.123 before an employer could unilaterally implement changes after good faith bargaining.

On May 23rd, the employer faxed a proposal to the union that had two modifications to the May 18th offer. The employer withdrew its demand that the union drop its unfair labor practice complaints, although the employer emphasized that it still believed that the union's position "... is accomplishing nothing other than to force the Hospital to spend a considerable amount of money to defend issues which have essentially become moot."

The second change was a ratification bonus for nurses scheduled on 8 or 10-hour shifts because of "... fairness to those individuals who have had their increases held up because of the intransigence of the Union and twelve-hour shift nurses, as the dispute lingers on."

Conner testified that he was willing to negotiate about the clinic nurses, but that he felt he had been cut off by Aslakson saying it was all in the attorney's hands. The employer's May 23rd proposal did not cover the clinic nurses. The union understood that the employer was maintaining its position that clinic nurses were no longer in the bargaining unit.

The employer offer was rejected by a vote of the bargaining unit and informational picketing began. At one point flyers were distributed in the hospital regarding the union's perspective on certain contract items. Two issues discussed were that by eliminating the 12-hour shift premium, the nurse would suffer an economic loss and that the employer proposed a 2 percent wage increase when the industry standard has been 4 percent. The employer responded by sending a memo to the nursing staff with its

information that a full-time nurse working a 12-hour shift would not have an economic hardship because of overtime rates of working the extra shift per month and that the proposed 2 percent wage increase would put the Kennewick nurses ahead of the two other hospitals in the local marketplace. Garner ended the memo: "I remain open to exploring alternate ideas for resolution, however, and would urge you to bring forth any ideas you may have."

In May, the nurses in the two clinics were notified of "tentative and preliminary" wage reductions, still subject to the task force's findings. A sample reduction was $3.60 per hour or nearly $600.00 per month.

There were no further meetings up to the time the complaint was filed August 9th. The union claims it was making weekly requests of the mediator to meet. The union was under the impression that the employer had no change in its position and did not want to meet. Conner believed that the break was to allow the union to do some informational picketing and to attend a couple of board meetings in the hope that the activities might create some pressure for the employer to change its proposal. Tuohy instructed Conner that he (Conner) could meet with the union if he could somehow assure that "if we were going to meet, they weren't going to have a rehash of just there's no change in positions." So Conner related to the Mediator, "let's make sure we are meeting for some reason."

Transfer of Clinic Nurses

The actual transfer of the clinic nurses can be recapped by reviewing the multiple steps that were involved. The transfer of the clinics from the hospital to the district was made by district resolution in December 1992, retroactively effective to January 1, 1992. The transfer of the employees at the clinics from the hospital to the district was made by the lease agreement. The

decision to transfer the employees at the clinics from the district to NPM was made sometime between January and May of 1993. The Women and Children's Clinic service agreement between the district and NPM was effective June 1, 1993. The Columbia Center Clinic service agreement between the district and NPM was effective November 1, 1993.

On October 17, 1994, the district notified the nurses employed at the Women and Children's Clinic and the Columbia Center Clinic that they were proceeding with the transfer of the clinics to NPM and that the nurses would be terminated as of the end of the month.

NPM as Employer

NPM has an employee handbook from "Pay plus Benefits", a pay-rolling agent that it uses, with a special addendum for NPM employees. The addendum specifies, in part:

> No employee, irrespective of employment status, is guaranteed, nor is there offered any expectation of continuous or continued employment.
>
> At Will Statement: All employees work on an at will basis. This means that just as you are free to resign at any time, we reserve the right to discharge you at any time, with or without cause or advance notice, without compensation except for the time actually worked, provided the termination is not done for a discriminatory reason in violation of law.

The parties' collective bargaining agreement provided for discipline, up to and including discharge, only for just cause.

POSITIONS OF THE PARTIES

The union is seeking a clear statement that the nurses who work at the Women and Children's Clinic and the Columbia Center Clinic are covered by the USNU collective bargaining agreement. The union contends that the employer has demonstrated a lack of good faith bargaining based on the totality of its conduct in dealing with the union. As a remedy the union is asking for a cease and desist order, a restoration of the status quo, a make-whole order for any employee adversely affected, and attorney's fees.

The employer takes the position that the collective bargaining agreement between the employer and the USNU covers only the staff nurses at Kennewick General Hospital and does not cover nurses at the clinics. Therefore, it advances that the union has no interest in negotiations concerning the clinics. It asserts that the employer has engaged in good faith negotiations in an effort to reach a fair contract so that the union is not entitled to attorney's fees.

DISCUSSION

Definition of Employer

The record establishes that both parties knew the employer was "Kennewick General Hospital (Kennewick Hospital District)".

The employer takes the position that the certification issued in Kennewick Hospital, Decision 3491-C (PECB, 1991), and the collective bargaining agreements themselves, covered only the nurses working for the hospital. Thus, when the clinic nurses were transferred to the hospital district, they were no longer part of the hospital and the employer had no obligation to bargain about them. Thereafter, the employer contends, it had the legal right to

contract with NPM for the management of the clinics without committing an unfair labor practice.

The employer sites Chapter 70.44 RCW authorizing the establishment of public hospital districts to own and operate hospitals and other health care facilities, then it cites the hospital licensing and regulation provisions of Chapter 70.41 RCW to show that clinics are excluded from hospitals. This is all to prove that the district, the hospital and the clinics are separate entities. The management structure of the employer is not an issue in this case. The issues are whether the employer committed unfair labor practices by evading its duties under the Public Employees' Bargaining Act, Chapter 41.56 RCW.

The employer discounts the way the "employer" was defined on the petition for question concerning representation and the stipulated designation of the "employer" on the statement of results of pre-hearing conference. It contends that the certification order is controlling and that the certification merged the two to be just the hospital.

This "merger theory" is unprecedented and ignores case precedent showing that the Commission has treated stipulations of parties during election proceedings very seriously. Early in the Commission's history, an employer which entered into a consent election agreement for the unit described in the petition, and supplied the eligibility list for the election, was not allowed to raise eligibility issues. Lewis County, Decision 368 (PECB, 1978). "Stipulations made in proceedings before the Commission are binding upon the parties to the stipulation." Parties have been held to the binding effect of a prior stipulation on the unit status of a position. City of Dupont, Decision 4959-B (PECB, 1995); Olympia School District, Decision 4736-A (PECB, 1994). Pre-hearing stipulations have been held to be binding also in unfair labor practice cases. In City of Bremerton, Decision 5385 (PECB, 1995),

the union's attempt to revive allegations it had dropped in a pre-hearing conference was rejected on that basis that, in the absence of any timely objections, the pre-hearing statement became a binding stipulation controlling the further course of the proceedings.

Agency regulations in effect when the representation petition was filed called for the stipulations to be binding. WAC 10-08-130(3) specified:

> Following the prehearing conference, the presiding officer shall issue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered. **If no objection to such notice is filed within ten days after the date such notice is mailed, it shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.**

[Emphasis by **bold** supplied.]

After the pre-hearing conference was held on the petition, the statement of results issued to the parties contained the stipulation that the correct title for the employer was "Kennewick General Hospital (Kennewick Hospital District)". Subsequent correspondence from the employer concerned certain classifications being excluded from the bargaining unit; the employer did not object to the listing of its title.

Definition of Bargaining Unit

A simple reading of the facts in this case establishes that the nurses at the clinics were bargaining unit members when the exclusive bargaining representative was certified. Any change of their bargaining unit status thereafter would have had to be with the agreement of the union or by order of the Commission. The record does not establish that either arrangement occurred.

The employer contends that the union, during the second contract negotiations, should have sought to "extend" the contract to the district or to the clinics directly since it had knowledge that the clinics were no longer part of the hospital.

It is hard to tell when the union was supposed to have this knowledge. The union was not notified until mid-December 1993, that the employer was going to transfer the clinic nurses to NPM. Apparently, this notification came after the employer communicated directly with its employees on December 14, 15 and 17, 1993. If the employer questioned the status of the clinic nurses vis-a-vis the exclusive bargaining representative, it should have filed a petition under RCW 41.56.050[11] and Chapter 391-35 WAC.

In proclaiming its innocence, the employer argues against itself. The employer concedes that until action by the hospital district commissioners in December 1992, the clinics had been hospital departments. The employer states that this "reorganization" had nothing to do with the union since it had no impact upon employees working at the clinics and the nurses remained hospital employees without any change in their wages, hours and working conditions.

Following all the details of the "reorganization", however, proves that, at some point, the employee transferred bargaining unit members outside of the bargaining unit without notice to, or bargaining with, the union. Commission precedent is legion that an employer cannot transfer work out of the unit without notice and opportunity to the union to bargain. See, King County Fire Protection District 36, Decision 5352 (PECB, 1995): "The agency has held from its infancy that the transfer of bargaining unit work

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[11] RCW 41.56.050 Disagreement in selection of bargaining representative--Intervention by commission. In the event that a public employer and public employees are in disagreement as to the selection of a bargaining representative the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090.

to persons outside the bargaining unit is a mandatory subject of bargaining." South Kitsap School District, Decision 472 (PECB, 1978); City of Kennewick, Decision 482-B (PECB, 1980)."

Aside from the employer being bound by its stipulations made during the representation proceedings, the district could be found liable as a successor employer or alter ego of the hospital. Early on the National Labor Relations Board (NLRB), to whom the Commission can look to for the NLRB's labor law expertise, adopted the practice of directing an order to remedy unfair labor practices not only to the employer that violated the Act but also to its "successors and assigns." The U.S. Supreme Court approved this practice in the Regal Knitwear Co. v. NLRB, 324 US 9 (1945), stating that NLRB orders may be binding upon successors who operate merely as "a disguised continuance of the old employer." At the federal level, a successorship relationship was found to be created by labor law principles arising by operation of law and not dependent upon an agreement by a successor that it should have successor status. Road Sprinkler Fitters, Local 669 v. Independent Sprinkler Corp., 145 LRRM 2152 (11th Cir., January 7, 1994).[12] The chain of liabil-

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[12] In determining whether one company is the successor of another, the NLRB has taken into account such factors as continuity of the original business operation, use of the same plant, facilities, and workforce, and similarity of products or service. Glendora Plumbing, 172 NLRB 1700 (1968), enforced sub nom., NLRB v. Jenks, 72 LRRM 2768 (9th Cir. 1969). A company may also be required to remedy another firm's unfair labor practices on the ground that the company in fact is merely the alter ego of that other firm. In determining whether one company is the alter ego of another, the NLRB has emphasized such factors as the identity of the stockholders and officers of the two companies, the continuation of the same type of business and operation and employment policies, and the employment of the same workers, supervisors and managers. Atlanta Paper Co., 121 NLRB 125 (1958). The NLRB more recently found a medical center that absorbed a hospital and converted it into a rehabilitation center acted unlawfully when it refused to recognize the union representing the hospital's skilled maintenance employees. The NLRB found the center was the successor to the

ity would continue when the district worked the RNs at the clinics through NPM under the Commission's findings in Spokane Airport Board, Decision 919 (PECB, 1980).

"Course of Conduct" Analysis

The employer's conduct in this case did not rise to the level of good faith as required in the definition of collective bargaining in RCW 41.56.030(4).

The employer's initial proposal signaled a "hard" bargaining stance by including economic take-aways, deletion of certain language protections and a one year wage proposal unless the union waived its rights under RCW 41.56.123. That is not necessarily synonymous with illegal or bad faith bargaining, unless the difficult issues indicate an intent to not actually bargain in good faith. Fort Vancouver Regional Library, Decision 2350-D (PECB, 1985). If acting in good faith, an employer may seek changes of long-standing policies or existing contract language, may demand flexibility, or may even seek full control in one or more areas. Such bargaining positions or tactics do not constitute an unfair labor practice, however, if the employer takes the position that it has no flexibility, whatsoever, on most, if not all issues critical to final settlement. Mansfield School District, Decision 4552-B (PECB, 1995).

I credit Aslakson's testimony that his first knowledge that the employer removed the clinic nurses from the bargaining units was

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hospital since acquiring the hospital was an expansion of the services it already performed; the hospital's supervisor was retained by the center (it was immaterial that the supervisor reported to a different individual); and the hospital employees performed the same work after the acquisition an estimated 95 percent of the time. Empire Health Centers Group d/b/a Deaconess Medical Center, 314 NLRB 677, 7/29/94.

Tuohy's letter of December 16, 1993. Although Conner testified that he gave Aslakson a "heads up" on the clinic "problem" on November 29th, he also recalled that Aslakson's reaction was that it was "all in the union's attorney's hands now". Aslakson did not receive Tuohy's letter until after December 16th. Then he sent the letter to the union's attorney. I find it more credible that Aslakson's remark that the attorney was handling it was made at the December 29th meeting due to the timing of the letters sent on this issue.

Although, it appears that the employer was open to bargaining the clinic issue initially, reality showed no such employer intent. "We wish to notify you of a planned reduction ..." and the invitation for Aslakson to contact Reeves to discuss the reduction, were followed by Reeves failure to respond to Aslakson. The "planned" reduction was announced directly to the employees as a fait accompli in mid-December, and the employer never changed its position that the clinic nurses were out of the bargaining unit and not covered by the collective bargaining agreement. An employer which takes a strident position on a "unit" issue does so at its peril if the Commission disagrees with that unit placement. Spokane School District, Decision 718 (PECB, 1979) makes it an unfair labor practice for a party to bargain to impasse on unit issues.

The employer explained its position on the 12-hour shift issue as bargaining to the industry standard. The employer proposed the Harrison plan (which gave it more time worked by 12-hour shift nurses) or the Kadlec model. When the union proposed the exact Kadlec settlement, which included a three step pay increase on the wage schedule and which was reached after a seven and one-half week strike, the employer refused. The employer wanted the working conditions of the industry standard, but it did not want to pay the industry rate to get them.

It is noteworthy that the employer's final offer was nearly the same as its opening mediation proposal. A predetermined resolve not to budge from an initial position is inconsistent with good faith bargaining. NLRB v. Truitt Mfg. Co., 351 U.S. 149 (1956), cited in Mansfield School District, supra. It is alarming that the employer revamped its final offer to benefit the RNs who "have had their increases held up because of the intransigence of the Union and twelve-hour shift nurses, as the dispute lingers on." But the most forceful evidence of the employer's course of conduct to avoid settlement with the union are Tuohy's letters to employees in January and March 1994 which consistently denigrated the union and questioned the employees' need for bargaining representation.

Each party at the bargaining table is required to provide adequate explanations for its proposals. The employer advanced non-specified changes coming in the health care arena. The union justified its proposals by citing a settlement that Kennewick General Hospital had agreed to with its LPN's and another eastern Washington hospital settlement. The analysis in two previous "course of conduct" cases is instructive:

> The school did not engage in unlawful surface bargaining as the school could not be compelled to agree to a proposal or make a concession, although the union understandably objected to many of the changes in the school's lay-off policy. The duty to bargain in good faith is an obligation to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement. ... **The totality of the conduct must be considered.**

Federal Way School District Decision 232-A (EDUC, 1977) [emphasis by **bold** supplied].

> Bargaining in good faith requires the parties to the collective bargaining process to explain and to provide reasons for their proposals. Federal Way School District, Decision 232-A (EDUC, 1977); City of Snohomish, Decision 1661-A (PECB, 1984); International Tele-

phone and Telegraph Corp. v. NLRA, 382 F.2d 366 (3rd Cir., 1967); Anacortes School District, Decision 2544 (EDUC, 1986); Soule Glass and Glazing Co. v. NLRB, 652 F.2d 1055 (1st Cir., 1981). The reason for such a requirement is elementary: **Adequate information concerning proposals is necessary in order to effect the type of communications necessary for good faith bargaining.** The party receiving a proposal must itself fulfill the obligation to make a sincere effort to understand the position of the other, to breach differences and, if possible, to reach an agreement.

...

The finding of a violation generally cannot be based solely on contract proposals put forth by a party. American National Insurance Company, 343 U.S. 395 (1952). Seattle-First National Bank v. NLRB, 638 F.2d 956 (9th Cir., 1981). Since "it would be extraordinary for a party directly to admit a bad faith intention", **the motives of a party must be ascertained from circumstantial evidence, which may properly include some evaluation of contract proposals.** Continental Insurance Co. v. NLRB, 495 F.2d 44 (2nd Cir., 1974). Reed and Prince Mfg. Co. v. NLRB, 205 F.2d 131 (1951). City of Snohomish, supra. A-1 King Size Sandwiches, 732 F.2d 872 (11th Cir., 1984). As the court noted in NLRB v. Cable Vision, 660 F.2d 1 (1st Cir., 1981):

> **[T]he failure to come close to agreement accompanied by a failure to make meaningful concessions on nearly every subject suggests that something is awry ... if management has adhered uniformly to proposals predictably unacceptable to the Union, has refused to make meaningful concessions in nearly every area, and has insisted (without clear justification in principle) on maintaining its original positions in these areas (and the Union has not), one has some evidence for concluding that the company has engaged in surface bargaining instead of bargaining in good faith.**

> Good faith also demands that an employer meet with a willingness to hear and consider a union's view and a willingness to change its mind. M. A. Harrison Manufacturing Company, 253 NLRB 675 (1980), enf. 682 F.2d 580 (6th Cir., 1982). However, even where a respondent behaves in a number of ways evidencing good faith, such behavior cannot mitigate other behavior violative of its good faith obligation. A-1 King Size Sandwiches, supra; City of Snohomish, supra.

Fort Vancouver Regional Library, Decision 2350-C (PECB, 1988) [emphasis by **bold** supplied].

To test the employer's willingness to do more than merely say that it was bargaining in good faith, the Examiner in Mansfield, Decision 4552-A compared the employer's positions at the beginning of bargaining with its positions at the breakdown of negotiations. By refusing to make meaningful compromises on either its own proposals or the union's proposals, and by remaining adamant into mediation that any agreement reflect its first positions, the employer in Mansfield committed an unfair labor practice. Regardless of the possibility that its individual positions on many of the union's proposals were (or could have been) perfectly lawful standing alone, "the overall pattern of the employer's conduct left the union with literally no place to go." Such bargaining tactics frustrate the negotiating process, and are in violation of state law.

> A particular position taken on an issue in good faith may be perfectly lawful, while the same position would be considered part of an unlawful course of conduct if shown to be part of an overall plan to frustrate the progress of negotiations. A decision involving a failure to bargain in good faith reflects qualitative rather than a quantitative evaluation. See, Shelton School District, Decision 579-B (EDUC, 1984).

Mansfield, Decision 4552-B.

Here, the hospital's insistence that the RNs assigned to the clinics were not in the bargaining unit so tainted bargaining that it was impossible for good faith negotiations to survive. The employer's insistence on this proposal causes its proposals on the 12 hour shifts, the lack of retroactivity of wage increases, and the union's waiver of its rights under RCW 41.56.123 to be examined more critically.

A qualitative evaluation of the employer's course of conduct during negotiations shows a lack of good faith bargaining on its part.

MOTION TO DISMISS THE AMENDED COMPLAINT

The employer argues that the union's complaints should be dismissed because USNU and the hospital have ratified a new agreement which resolves the issues raised in the complaints of unfair labor practice and "no purpose would be served by continuing" the cases. To the contrary! Any party to collective bargaining that believes another party has abused the bargaining process has the right to file charges and have a hearing and decision on its causes of action. A settlement of contract language does not remedy damage done to the bargaining process.

Although a complainant may withdraw its compliant at any time, a respondent cannot force a complaint that survives a preliminary ruling under WAC 391-45-110 to be abandoned. Hopefully, a wayward respondent will learn from the decision that is issued and correct its behavior in future bargaining.

The motion for a dismissal of the amended charges of unfair labor practices is DENIED.

REMEDY

The employer's defense to the complaints of threatening to remove bargaining unit work and the employer's transferral or termination of bargaining unit members without advising or negotiating with the union was that "only" two out of nine clinic nurses "transitioned" to NPM, the others transferred to positions in the hospital or got jobs with other employers. The employer argues that the transfer of the nurses occurred for a number of reasons, "most" of which had nothing to do with the union. In the course of conduct case, the employer asserts that it showed a pattern of good faith negotiations given the number of meetings and the number of proposals exchanged.

The union argues for a restoration of the status quo ante, a make whole remedy for any affected employees and the imposition of attorney's fees.

Restoration of the Status Quo Ante -
The restoration of the status quo ante is a common remedy in unilateral change cases which is a claim incorporated in the union's complaints against the employer. Even where an employer argued that the imposition of a bargaining obligation after a transition had taken place would require the dismantling of an organizational structure that it had revamped, the Commission ordered the restoration. METRO, Decision 2845-A (PECB, 1988).

> Unfortunately for METRO, we find that it has been METRO's own recalcitrant and adamant refusal to recognize and bargain with Local 17, from the very inception of METRO's take-over of the "commuter pool" to the present time, that has placed METRO in its present predicament. The precedents of this Commission and of the NLRB strongly support a remedy restoring the status quo ante when there has been a history of "refusal to bargain" unfair labor practice violations and/or unilateral

> changes made without the required notice and bargaining.
>
> There is absolutely no requirement in the Examiner's order that METRO's organizational structure be permanently affected by such a bargaining order or by an ongoing bargaining obligation. METRO retains its management prerogatives, including the right to plan for its own re-organization, but must simply bargain first on matters such as transfer of bargaining unit work and the effects of re-organization. Even the federal court ruling relied on so heavily by METRO, First National Maintenance Corp. vs. NLRB, 452 US 666 (1981), recognized that changes in wages, hours, or conditions of employment cannot be made unilaterally without bargaining.

Another point from the Commission's METRO decision is important to acknowledge:

> A key distinction from First National Maintenance to be observed here is that METRO solicited the take-over of the commuter pool operation from the City of Seattle, and it continues to provide services of that type. If permitted to stand, the reorganization at issue here would, at most, have had the effect of moving the commuter pool work from METRO employees in the bargaining unit represented by Local 17 to METRO employees outside of that bargaining unit. This Commission has long held that there is a mandatory duty to bargain such transfer decisions. City of Mercer Island, Decision 1026-A (PECB, 1981).

The employer is ordered to restore the status quo ante that existed prior to its first attempt to remove the RNs at the clinics from the bargaining unit and the protections of the collective bargaining agreement.

Make Whole Remedy -

Any employee in the bargaining unit that was negatively impacted by the employer's unilateral action must be made whole in wages,

benefits and working conditions. Such a make whole remedy is common in unilateral change cases. See, METRO, supra.

Award of Attorney's Fees -

This is a very close case on the issue of whether to award attorney' fees. The behavior of the hospital administration, of blatantly ignoring its stipulations given to the Commission during the representation proceedings, writing letters that castigated the union to employees, and giving thinly veiled threats to the union bargaining team that it was just waiting for time to pass to be able to implement a contract, is the type of behavior that undermines good faith collective bargaining.

Our Supreme Court has often held that, being remedial in nature, Chapter 41.56 RCW is entitled to a liberal construction to effect its purpose. IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978); Roza Irrigation District v. State, 80 Wn.2d 633 (1972).

The Commission wrote in METRO, supra:

> Mindful of the need to stay within the mandate of the applicable statute, the Supreme Court cautioned in State vs. Board of Trustees, [93 Wn.2d 60, 67 (1980)], that **the power to award attorney fees as an unfair labor practice remedy should be limited to those cases where the defense to the unfair labor practices was characterized as frivolous or meritless.** PERC has followed that limitation with regard to attorney fees in Lewis County, supra, and subsequent cases.

[Emphasis by **bold** supplied.]

The employer is hereby on notice that if facing similar complaints in the future, the arguments it made in this matter will be characterized as frivolous defenses and could very well subject the employer to an order to pay the union for its attorney's fees.

FINDINGS OF FACT

1. Kennewick Public Hospital District #1 d/b/a Kennewick General Hospital, is public employer within the meaning of RCW 41.56-.030(1). Among its services, the district runs a hospital and a Women and Children's Clinic and a Columbia Center Clinic.

2. The United Staff Nurses Union, Local 141, filed a petition to represent certain employees of the employer. Nurses working at the Women and Children's Clinic and the Columbia Center Clinic were on the eligibility list for voting in the representation election. The USNU won the election and was certified as the exclusive bargaining representative of the bargaining unit within the meaning of RCW 41.56.030(3).

3. In their first collective bargaining agreement after USNU was certified, the parties negotiated about the wages, hours and working conditions of the clinic nurses.

4. In October 1993, the parties began negotiations to replace the collective bargaining agreement that was due to expire at the end of the year. The USNU was represented by John Aslakson, business agent/staff negotiator and certain RNs from the bargaining unit. The employer was represented by Labor Relations Consultant Jim Conner, and certain hospital supervisors.

5. On November 5, 1993, the employer gave its first written proposal which included economic take-aways and deletion of certain language protections. The parties again met on November 22nd and 29th. The parties discussed the waiver of union bargaining rights under RCW 41.56.123 and the employer's proposal on 12-hour shifts to eliminate a RN working three 12-hour shifts and being paid for forty hours. The parties next met for four hours on December 2nd where there were four main

issues: Wages, retroactivity, the 12-hour shift premium, and the RCW 41.56.123 waiver. The parties jointly requested mediation assistance from the Commission December 7, 1993.

6. In meeting directly with employees on December 14, 15 and 17, 1993, Hospital Administrator Tuohy announced to the employees that the hospital would cease operating the Women and Children's Clinic and the Columbia Center Clinic.

7. On December 16, 1993, Tuohy notified Aslakson that the clinics would be operated by Northwest Practice Management and the RNs working at the clinics would no longer be working for the hospital. Aslakson attempted to contact Human Resource Director Carrol Reeves, but never heard back. Thereafter the employer took the position that the RNs working at the clinics were no longer part of the bargaining unit.

8. Northwest Practice Management is a non-profit corporation run by a board of directors consisting of five appointed members. Three of the hospital district's commissioners sit on the board; Tuohy is the president of NPM as well as a board member. The chief financial officer of the hospital, Michael Bonthuis, is the fifth board member. NPM is located in a district owned building next to the hospital.

9. The parties met with the Mediator December 29, 1993. The union took the position that the clinics were covered by the contract. During a January 13, 1994 mediation session, the employer proposed alternatives, which it should have known would not be acceptable to the union, to its original 12-hour shift proposal.

10. On February 10, 1994, Tuohy sent a memo to all the employees in which he blamed the union contract for causing the RNs at the clinics to be "relocated" out of the hospital. Bargaining

unit members could reasonably interpret the memo as a reprisal for exercising their statutory rights.

11. There was a brief mediation session March 2, 1994. Neither party made any proposal of substance.

12. Tuohy sent another memo to all employees March 31, 1994, which disparaged the union. Bargaining unit members could reasonably interpret the memo as a reprisal for exercising their statutory rights.

13. The parties met April 1st and May 18th in mediation. On the 18th, after meeting for 15 to 20 minutes, the employer submitted its final offer. The offer was the same document from the opening mediation session with a hand written cover letter which conditioned that the union must withdraw its pending unfair labor practice complaints and that the union must waive its rights under RCW 41.56.123. As the management team was leaving the room one management team member commented, "Five down, seven to go". That statement was reasonably understood by bargaining unit members as referring to the 12-month period in RCW 41.56.123 before an employer could unilaterally implement changes after good faith bargaining, and as indicating that collective bargaining was futile.

14. On May 23rd the employer faxed a proposal to the union that had two modifications to the May 18th final offer: The employer withdrew its demand that the union drop its unfair labor practice complaints, and added a ratification bonus for nurses scheduled on 8 or 10-hour shifts. The letter again disparaged the union.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.59 RCW.

2. The employer has threatened to unilaterally remove bargaining unit positions from the bargaining unit, without adequate notice to and bargaining with the union, and attempted to put the positions under a "new separate corporation" without union representation which is an unfair labor practice under RCW 41.56.140(1) and (4).

3. The hospital refused to bargain with the union over the nursing positions assigned to the clinics which is an unfair labor practice under RCW 41.56.140(1) and (4).

4. By the conduct in Findings of Fact 5, 6, 7, 9, 10, 12, 13 and 14, the employer has engaged in a course of conduct that demonstrated a lack of good faith bargaining which is an unfair labor practice under RCW 41.56.140(1) and (4).

5. The employer had transferred or terminated bargaining unit members without advising or negotiating with the union which is an unfair labor practice under RCW 41.56.140(1) and (4).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following:

ORDER

Pursuant to RCW 41.56.160 of the Public Employees' Collective Bargaining Act, it is ordered that Kennewick Public Hospital District #1 d/b/a Kennewick General Hospital, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Refusing to bargain in good faith with the United Staff Nurses Union, Local 141 as the exclusive bargaining representative of the registered nurses of the employer including the registered nurses working in the clinics.

   b. Engaging in a course of conduct which frustrates the collective bargaining process with the United Staff Nurses Union, Local 141.

   c. In any other manner interfering with, restraining or coercing its certificated employees in the exercise of their right to organize and bargain collectively under Chapter 41.56 RCW.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

   a. Upon request, meet with the authorized representatives of the exclusive bargaining representative of its registered nurses at reasonable times and places, and bargain in good faith, including the nurses at the clinics.

   b. Restore the status quo ante that existed prior to the employer's unlawful actions and maintain those wages, hours and working conditions until changes, if any, are reached through good faith collective bargaining with the union.

   c. Make whole any member of the bargaining unit who suffered changes in his/her wages, hours or working conditions by the employer's unlawful actions.

d. 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, 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.

e. 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.

f. 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 3rd day of July, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Katrina I. Boedecker

KATRINA I. BOEDECKER, Examiner

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX

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 fail or refuse to bargain with the United Staff Nurses, Local 141 as the exclusive bargaining representative of our registered nurses, including registered nurses assigned to the Women and Children's Clinic and the Columbia Center Clinic.

WE WILL NOT engage in a course of conduct which frustrates the collective bargaining process with the United Staff Nurses Union, Local 141.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL, upon request, meet with the authorized representatives of the United Staff Nurses Union, Local 141, at reasonable times and places, and bargain in good faith.

WE WILL make whole any member of the bargaining unit who suffered changes in his or her wages, hours or working conditions by our unlawful actions.

WE WILL restore the status quo ante that existed prior to our unlawful actions and maintain those wages, hours and working conditions until changes, if any, are reached through good faith collective bargaining with the United Staff Nurses Union, Local 141.

DATED: _____

KENNEWICK PUBLIC HOSPITAL DISTRICT #1
d/b/a KENNEWICK GENERAL 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.