

LOS ANGELES COUNTY EMPLOYEE RELATIONS COMMISSION

HEARING OFFICER REPORT

**RECEIVED
EMPLOYEE RELATIONS
COMMISSION**

JAN 21 2010

In the Matter of)	
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 721)	
)	
Charging Party,)	UFC 23-07
)	
v.)	
)	
DEPARTMENT OF HEALTH SERVICES)	
)	
Respondent.)	

HEARING OFFICER

Walter F. Daugherty

APPEARANCES

For the Charging Party:	James Rutkowski
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INTRODUCTION

The instant unfair employee relations practice charge proceeding arises under the Los Angeles County Employee Relations Ordinance (“Ordinance”) and the Rules and Regulations (“Rules”) of the Los Angeles County Employee Relations Commission (“ERCOM” or “Commission”). Pursuant to the Ordinance and the applicable ERCOM Rules, Walter F. Daugherty was appointed to serve as Hearing Officer.

A hearing was held in the Commissions’s offices on June 18 and August 31, 2009. The County failed to appear at the first scheduled hearing day and the matter was continued. At the August 31, 2009 hearing, both parties appeared and were afforded full opportunity to present relevant evidence, examine and cross-examine witnesses, and offer argument. At the conclusion of the hearing, the parties agreed to submit briefs in support of their respective positions, which were received by the Hearing Officer on or before December 7, 2009. A verbatim transcript of the proceedings was provided to the Hearing Officer for consideration in preparing this Report.

THE UNFAIR EMPLOYEE RELATIONS PRACTICE CHARGE

The charge as filed on November 7, 2007 alleges that the County of Los Angeles Department of Health Services (“Department” or “Respondent”) violated Section 12 (a) (1) of the Los Angeles County Employee Relations Ordinance.¹ Specifically, the charge alleges that Yvonne Palacios was a leader in the Union’s efforts to organize the Department’s student workers and that her May 9, 2007 release/termination was because of her efforts in such regard.

¹Section 12 (a) (1) is codified at Section 5.04.240 (1) of the County Administrative Code.

BACKGROUND

Since November 20, 2001, Yvonne Palacios (“Palacios”) has periodically held temporary Student and Student Professional Worker positions with the Department of Health Services (RX-1).² The duration of these five assignments ranged from two to twelve months. In December 2005, she was assigned as a Student Worker to the Department’s Medical Alert Center performing psychiatric dispatching duties and working with medical professionals on psychiatric holds. On December 26, 2006, Palacios was promoted to Student Professional Worker and transferred to the Human Resources Division under the supervision of Staff Analyst Leslie Mondy. She returned to the Emergency Medical Services (“EMS”) Division in March 2007 and commencing in April 2007 was assigned to the Trauma Emergency Medical Information (“TEMIS”) unit. Senior Nursing Instructor Maureen Hasbrouck then became Palacios’ immediate supervisor. This was a temporary position available to either Student Workers or Student Professional Workers. Its “essential job functions” were described as approximately 80 percent data entry and 20 percent file management work (RX-9). The data entry work involved entering information from paramedics’ emergency medical reports into the Department’s data collection system. She was released from her TEMIS assignment and her Student Professional Worker position effective May 9, 2007.

Ms. Palacios testified that she was never involved with the SEIU 721 (“Charging Party” or “Union”) until after she had become a Student Professional Worker. Palacios testified as follows regarding subsequent involvement with and activities on behalf of the Union: She first met a Union representative at the Department’s Commerce office and later met with this person

²Charging Party and Respondent exhibits are referenced as “CPX__,” and “RX__,” respectively.

at a Starbuck's where she signed a Union authorization card. Afterwards, she began circulating authorization cards among the student workers at the Commerce office, collecting some 100 cards during February and March 2007. She sat on a panel at two meetings at the Union's office held for student workers and was the main speaker (RT, pp. 35-39). On April 4, 2007, she signed an authorization allowing the Union to use her photograph in its organizing materials; afterwards her photograph was included in a flyer distributed to the student workers at the Commerce office announcing an April 18, 2007 meeting at the Union's office (CPX-3 and CPX-4, respectively).³ On April 27, 2007, she appeared on a "You Tube" video entitled "Justice Can't Be Temporary – Los Angeles" designed to solicit student worker support for the Union (CPX-5).

According to Palacios, during April and May 2007 she went on at least four occasions to Sacramento and met with various legislators as well as with legislative aide Jennifer Schieck regarding the alleged unfair treatment of the County's student workers and their health care issues (RT, pp. 48-49). During this period, she also met with staff of all five County Board of Supervisors and discussed the lack of health care for student workers and their use to fill full-time positions (RT, p. 50).

On May 7, 2007, Palacios personally delivered a letter to Cathy Chidester, Assistant Director of Emergency Medical Services, alleging, *inter alia*, that Maureen Hasbrouck, her supervisor, was "Exploiting Temporary Student Workers" (CPX-6).⁴ This letter further advised that Palacios had met with the "Board of Supervisors chief of Staff" and "Legislative Assistant"

³The flyer produced at the hearing was of poor copy quality. The Union agreed to search for a better copy. Following the filing of closing briefs, Union Counsel transmitted an e-mail attachment to the Hearing Officer and Department's Counsel that included a clear copy of the flyer.

⁴Palacios testified that she had prepared this letter at home the previous day.

Jennifer Schieck in Sacramento regarding the treatment of student workers. Palacios was sick the following day and did not report to work. On May 9, 2007, she was called to a meeting with Hasbrouck, the accounts of Palacios and Hasbrouck are in conflict about who was present at the meeting. It is undisputed, however, that Palacios was given a letter by Andree Stecker bearing Chidester's signature. This letter advised that "as of today, May 9, 2007, you are released from your hourly as needed position of Student Professional Worker with the Department of Health Services, Emergency Medical Services (EMS) Agency and from County service" (CPX-7). When the meeting ended, Palacios returned to her work area so that she could remove her personal items. From there, she was escorted from the premises by a security officer.

Following the meeting, Hasbrouck completed a Department "Employment Status Change" regarding Palacios' release (CPX-8). Hasbrouck checked the form's "resign" box and wrote "at this moment there is no work for her at the EMS agency in the area she desires to work." According to Hasbrouck, the TEMIS unit consisted of eight student workers and two Intermediate Typist Clerks in Spring 2007 and no staff reductions were made in 2007. She said that as of the hearing, the unit employed two student workers and two Intermediate Typist Clerks and that staff reductions were made in August 2008 and perhaps earlier that year (RT, pp. 169-172). She acknowledged that work was available for Palacios in May 2007 and that had her work performance been satisfactory she would not have been released (RT, pp. 172-173).

Hasbrouck testified that she is a member of the Union but was unaware of Palacios' union activities before her release on May 9, 2007. She denied seeing any union flyers bearing Palacios' image or viewing the "You Tube" video featuring Palacios and denied that anti-union animus played any role in her decision to release Palacios from her temporary position.

With respect to the productivity issue, TEMIS unit employees were responsible for entering information from paramedics' emergency medical reports into the Department's data collection system. Hasbrouck said that the goal was for the employees to enter 18 forms per hour and that the combined average for all workers in April 2007 was 16.10 forms per hour. Palacios processed 7.01 forms per hour during this period (RX-10, RT, p. 159). In calculating the productivity per hour, the employee's non-productive hours are not counted and Hasbrouck said that she personally reviewed the productivity reports for accuracy. According to Hasbrouck, her best performing permanent employees processed 30 to 32 forms per hour and some long term student workers were doing 20 to 30 forms each hour. She said that some workers in March 2007 were doing no more than ten to twelve forms per hour (RT, pp. 186-187, 208).

The record shows that Palacios began working in the TEMIS unit on April 2, 2007, attended an orientation session on April 3, 2007, and that she had entered an average of 9.95 forms per hour from April 2 through April 15, 2007 (RX-10). Hasbrouck described such productivity as "good" for a new worker and said that it customarily took two to three months for a new TEMIS employee to achieve the 18 forms per hour productivity goal (RT, pp. 174, 189).

Palacios' productivity during the period April 16 through April 30, 2007 declined to 5.67 forms per hour (RX-10). On May 2, 2007, Hasbrouck gave Palacios an evaluation that stated "her forms per hour are below standard" and that "monitoring will be done weekly" (RX-11). The evaluation further advised that "Expectation is immediate improvement to at least 8 forms per hour with consistent improvement to min. 18 FPH." Hasbrouck said that when she presented the evaluation to Palacios she became upset, stating that she did not want to do data entry work

and would speak to the Director. Palacios, according to Hasbrouck, then left her office and met with the Director (RT, p. 161).

Following receipt of this evaluation, Palacios was off work on May 3 and was not scheduled to work May 4, 5, 6 in connection with her regular day off and the weekend. She worked a portion of May 7 and reported off ill on May 8. Hasbrouck testified that she believed Palacios did not want to do data entry work because of her absences in early May and her understanding that she had so advised Chidester (RT, pp. 177-178, 190-192). She acknowledged that she did not have a specific discussion with Palacios in which Palacios had said that she did not wish to perform data entry work (RT, pp. 191-192).

Leslie Mondy, a Staff Analyst employed in the Department's Human Resources unit, testified that she had indirectly supervised Palacios from December 26, 2006 until March 5, 2007 when she had returned to the EMS (RT, pp. 127-128, 133). Mondy described problems she had observed with Palacios' data entry and filing work and said that she would have released her had she not transferred back to EMS (RT, pp. 117, 142). According to Mondy, she was unaware of Palacios' union involvement but said that Palacios had reported that someone from the Union had given her a survey to complete (RT, p. 117). Although Mondy said that either she or an office supervisor would discuss any work-related problems with Palacios, she said that she did not discuss the shortcomings in her filing (RT, pp. 128-130). Mondy acknowledged that she had never discussed Palacios' work problems with anyone outside Human Resources prior to her release nor did she attempt to block her return to the EMS Division (RT, 131-133).

As previously noted, Palacios was released from her Student Professional Worker position on May 9, 2007. She afterwards filed a request for a hearing with the County Civil

Service Commission (“CSC”) on her claim of discrimination based on union activities. This request was denied by the CSC on September 14, 2007. Palacios submitted an amended appeal to the CSC, which was denied on November 7, 2007. The unfair employee relations practice charge at issue was filed with ERCOM on November 7, 2007 and processed through its pertinent procedures culminating in the instant hearing.

FINDINGS AND CONCLUSIONS

Prior to the commencement of the August 31, 2009 hearing, the Respondent submitted a motion to dismiss for lack of jurisdiction, insufficient facts pled, and the unlikelihood that Charging Party would prevail. Charging Party submitted a written statement in opposition to the motion to dismiss. The Respondent’s motion to dismiss was denied and the parties were directed to proceed with their respective presentations. For ERCOM’s consideration, the underlying basis for the Hearing Officer’s ruling is summarized below.

The Hearing Officer’s plain reading of the Ordinance gives ERCOM primary jurisdiction over unfair employee relations practice charges including those implicating allegations of retaliation for union activities. While some jurisdictional overlap may exist by virtue of CSC Rule 25 on matters involving union discrimination, any such concurrent jurisdiction does not strip ERCOM of its authority to hear and decide cases alleging violations of the very Ordinance it is charged with administering and enforcing.⁵ Indeed, ERCOM has consistently exercised jurisdiction over matters implicating questions of concurrent or overlapping jurisdiction with the

⁵CSC Rule 25 lists the types of prohibited discrimination within the jurisdiction of the Civil Service Commission. These include “organizational membership or affiliation, or other non-merit factors.”

Civil Service Commission.⁶ Given this historically consistent assertion of jurisdiction in such regard and the Hearing Officer's reading of the Ordinance, the Respondent's motion to dismiss was denied.

As emphasized by the Respondent, Palacios encumbered a temporary position and thus had no property right in her job and could be released without cause. While this is so, the Department is not permitted to release Palacios for reasons violative of the protections afforded County employees by the Ordinance. In such regard, it is noted that ERCOM has found violations of the Ordinance where an employee for proscribed reasons was removed from a temporary training officer position in which he held no property right and which provided no additional pay or benefits.⁷

It is well settled in California public sector labor law that National Labor Relations Board ("NLRB") and court decisions may be considered in interpreting provisions of a local ordinance that parallel those of the National Labor Relations Act ("NLRA").⁸ In resolving claims implicating Ordinance Section 12 (a) (1), ERCOM has employed the analytical framework developed by the NLRB in *Wright Line and Bernard R. Lamoureux* (1980) 251 NLRB No. 150, 105 LRRM 1169.⁹ Under *Wright Line*, the charging party must make a *prima facie* case showing that protected conduct was a motivating factor in the employer's decision. Once this is

⁶See, e.g., *California Association of Professional Employees v. Department of Public Works* (1990) UFC 3.16, and the cases cited therein.

⁷*LACO Firefighters Local 1014 v. Fire Department* (1987) UFC 5.14.

⁸See, e.g., *Vallejo Fire Fighter's Union v. City of Vallejo* (1974) 12 Cal.3d 608.

⁹See, e.g., *AFSCME Local 119 v. Department of Facilities Management* (1990) UFC 1.83 and *Solomon Fingold v. Museum of Art* (1994) UFC 70.27.

established, the burden shifts to the employer to demonstrate that the same action would have taken place in the absence of the protected conduct. The NLRB's *Wright Line* test has been adopted by the U. S. Supreme Court, the State PERB, and the California Supreme Court in a dispute concerning the Agricultural Labor Relations Act (*NLRB v. Transportation Management Corp.* (1983) 462 U.S. 393, *McPherson v. Public Employment Relations Board* (1987) 189 Cal.App.293, and *Martori Brothers v. Agricultural Labor Relations Board* (1981) 29 Cal.3d 721, respectively). In *Martori*, the Court noted that in *Wright Line* the NLRB had employed the "but for" test and observed that "pretext" is another way of stating that no business justification was found for the adverse employment action at issue (*Martori, supra*, at 730). The mode of analysis as developed in these decisions will be used to examine the charge at issue.

An essential element in establishing the Charging Party's *prima facie* case under the *Wright Line* series of cases is that the Department here must have had knowledge that Palacios engaged in conduct protected under Ordinance Section 4. Palacios testified in such regard that she was involved in the Union's efforts to organize student workers and that these activities included circulating and collecting union authorization cards from student workers at the Department's Commerce office, addressing student workers at meetings at the Union's facility, having her image depicted on Union flyers distributed at the workplace, and appearing on a "YouTube" video soliciting student worker support for the Union. Additionally, she testified that she had met with legislators in Sacramento and with staff of all five County Board of Supervisors regarding issues that concerned student workers. She also personally delivered a letter to Assistant Director of Emergency Medical Services Chidester complaining about the poor

treatment accorded student workers and alleging that Hasbrouck was “exploiting” student workers (CPX-6).

The testimony of Maureen Hasbrouck, Palacios’ immediate supervisor in the TEMIS unit, that she was unaware of Palacios’ purported union activities before her release is noted. However, as argued by the Union, it is problematic that individuals in Palacios’ chain of command were unaware of her activities of circulating and collecting union authorization cards and of her meetings with staff of the Board of Supervisors regarding student worker issues. It is also highly unlikely that these individuals were unaware of the union flyers distributed at the work place that bore Palacios’ image. Further, the May 6, 2007 letter that Palacios delivered to Assistant Director of Emergency Medical Services Chidester on May 7 referenced her meetings with Board of Supervisors staff and with legislative aide Jennifer Schieck in Sacramento regarding student worker issues. These meetings took place in the context of the Union’s then ongoing efforts to organize the student workers.¹⁰ While Palacios did not advise Hasbrouck of her May 3, 2007 meeting with Schieck, instead requesting the day off “for test” (RX-5), Chidester knew of this meeting as it was referenced in Palacios’ May 6, 2007 letter.

Hasbrouck testified that it was her decision to release Palacios and that she had done so after discussions with Richard Tadeo, her immediate supervisor, who, according to Hasbrouck, had discussed the matter with Chidester. Hasbrouck denied ever discussing the matter of Palacios’ release with Chidester and denied seeing Palacios’ letter to Chidester until after she had been given her release on May 9, 2007 (RT, pp. 194-197). Since the May 6, 2007 letter included

¹⁰This campaign ended with ERCOM’s certification of SEIU 721 as the representative of the student workers and student professional workers bargaining unit on June 25, 2007 (CP 01-07).

specific complaints regarding Hasbrouck's treatment of student workers and since discussions were then ongoing regarding Palacios' employment situation, it is difficult to accept Hasbrouck's claim that she was unaware of this letter before Palacios' release. In such regard, neither Chidester nor Tadeo were called to testify regarding their involvement in the decision to release Palacios.

For the reasons discussed above, the Hearing Officer concludes that it is more likely than not that Hasbrouck was aware of Palacios' union activities concerning student workers. Moreover, even if Hasbrouck were not so aware, the evidence as discussed above preponderates that Chidester knew of Palacios' activities in such regard. It was Chidester who signed the May 9, 2007 letter releasing Palacios from her Student Professional Worker position following discussions with Tadeo. She therefore was a participant in the decision to release her. Since Chidester, as concluded above, knew of Palacios' protected activity and participated in the decision to release Palacios, the knowledge element is established.¹¹ As such, and as the Hearing Officer finds that the evidence preponderates that Hasbrouck was aware of Palacios' union activities, it is concluded that the Department was aware of Palacios' Ordinance protected activities before her release on May 9, 2007.

In establishing a connection between an employee's protected activity and the employer's imposition of an adverse employment action, both the NLRB and the State PERB have considered factors such as the temporal proximity of the adverse action in question to the

¹¹In such regard, see *Oakland Unified School District* (2009) PERB Decision No. 2061.

employee's protected conduct and whether the proffered reasons for the employer's action were shifting or inconsistent.¹²

With respect to the timing of Palacios' release, her release followed closely upon her meetings with Board of Supervisors staff and within some two days after delivering the May 6, 2007 letter to Chidester supporting student workers and criticizing Hasbrouck. It is noted further that Palacios was released some seven days after she was given an evaluation advising that she needed to improve her productivity and that her performance would be monitored (RX-11). However, as pointed out by the Charging Party, she was given no opportunity to improve her performance because after receiving the evaluation she worked only part of one day due to her work schedule and approved time off requests. As argued by the Charging Party, the close temporal proximity of Palacios' release to her protected activities raises a reasonable inference of anti-union animus.

As to the reasons for Palacios' release, review of Nursing Director Hasbrouck's testimony discloses that she proffered three reasons with the last two somewhat interrelated. These reasons were: 1) poor productivity, 2) lack of work in the TEMIS unit, and 3) Palacios' preference to perform data entry work no longer.¹³ That such shifting reasons were advanced for Palacios' release is sufficient to support the inference that protected activity played a part in the

¹²See, e.g., *Yaohan of California* (1986) 280 NLRB 268, *North Sacramento School District* (1982) PERB Decision No. 264, and *State of California (Department of Parks and Recreation)* (1983) PERB Decision No. 328-S.

¹³The Department argues in its closing brief that Palacios release was for merit-based reasons for she had also lied to her supervisor regarding her absence of May 3, 2007. However, this reason was not cited by Hasbrouck and, according to Hasbrouck's testimony, she was unaware that Palacios had met with legislative aide Jennifer Schieck on May 3 rather than taking a test as she (Palacios) had reported was the reason for her absence that day (RX-5).

Department's decision to release Palacios. Further, as discussed below, these reasons were found pretextual, thus comprising additional support for the Charging Party's *prima facie* case as required by the *Wright Line* analytical template.

The evidence as discussed above, particularly the timing of the events under consideration, is sufficient to establish the Charging Party's *prima facie* case that protected conduct was a motivating factor in Palacios' release from her temporary Professional Student Worker position.

Under the *Wright Line* series of cases, since the Charging Party has established its *prima facie* case, the Respondent has the burden to show that it would have taken the same action, to wit, Palacios' release from her Professional Student Worker position, even in the absence of the protected conduct.¹⁴ As noted above, three reasons for the Appellant's release were described by the Department's witness.

Turning first to the issue of Palacios' productivity, the Hearing Officer finds no basis to reject the Department's proffered productivity records for Palacios and her TEMIS unit coworkers. These records show that Palacios entered an average of 9.95 forms per hour during her first two weeks of employment in the TEMIS unit (RX-10). While this was the lowest of the TEMIS employees, Hasbrouck acknowledged that this was "good" productivity for a new worker and that some unit employees were doing no more than ten to twelve forms per hour in March 2007. Although the seniority dates of these employees were not specified, the evidence persuades that these employees had more experience in the TEMIS unit than Palacios.

¹⁴As explained by the Court in *Transportation Management, supra*, the shifting burden test developed by the NLRB in *Wright Line* requires the employer to make out what is an affirmative defense that it must prove by a preponderance of the evidence.

It is noted that Palacios productivity declined to 5.67 forms per hour from April 16 through April 30, 2007. However, she was advised in her May 2, 2007 performance evaluation that she would be given an opportunity to improve and that her performance would be monitored. As pointed out by the Charging Party, Palacios was given no such opportunity but was released after working less than one full day following the receipt of the May 2 evaluation. Further, while the Department contends that Palacios did not want to do the data entry work, the evidence as discussed below fails to support this contention. It is therefore concluded that the asserted reason of low productivity as the basis for Palacios release is on this evidence record pretextual.

It is also noted that the Department now asserts that Palacios made many mistakes in her work and had a poor attitude. In such regard, Palacios herself acknowledged that she had made mistakes as a new employee in the TEMIS unit. However, the May 2, 2007 evaluation done by Hasbrouck rated her “standard” in every category except “amount of work performed” and “completion of work on schedule” (RX-11).¹⁵ Thus, the evidence undermines the Respondent’s assertion that Palacios’ poor attitude and mistake-ridden job performance were contributing factors in her release.¹⁶

Also in respect to Palacios’ alleged poor performance, the Hearing Officer has considered the testimony of Human Resources Analyst Leslie Mondy regarding problems she had observed in Palacios’ work during her time at Human Resources. Mondy, however, did not communicate her concerns in such regard to any of the involved EMS Division personnel before the decision

¹⁵These categories include “accuracy,” “neatness of work product,” “compliance with work instructions,” and “application to duties.”

¹⁶Again, it is noted that Palacios worked less than one full day following the issuance of her May 2, 2007 evaluation.

was made to release Palacios. Thus, Palacios' alleged shortcomings while working at Human Resources cannot serve as a basis to explain or justify her release in May 9, 2007, some three months after she had transferred out of Human Resources.

In completing the Employment Status Change form following the May 9, 2007 meeting with Palacios, Hasbrouck wrote "At this moment there is no work for her at the EMS agency in the area she desire to work in" (CPX-8). Although the form was completed on May 9, 2007, Hasbrouck wrote "employee not available" in the space designed for the employee's signature. She also checked the "Resign" box on the form, the other two choices being "Retire" or "Transfer."

The Hearing Officer's review of the form itself discloses that it is to be initially filled in by the employee and then submitted to his or her supervisor. In such regard, it states "Effective the end of my shift on the 'Effective Date' shown above, I hereby" and the employee is requested to check either "Resign," "Retire," or "Transfer." The form goes on to state "This employment change is freely and voluntarily submitted. The reason(s) for my resignation or transfer is:" The form provides a space for the employee to enter the reason, this space was used by Hasbrouck to enter the previously quoted comment regarding the alleged lack of work in the EMS Division.

Palacios, however, did not resign her Student Professional Worker position as that term is customarily used and understood in the employment setting. The inference one would draw from the information contained on Palacios' Employment Status Change form is that she had resigned of her own volition. However, her employment was terminated by the decision and action of the Department, under no semantical stretch can her release be described as a "resignation."

Moreover, and of greater import here, this form also includes another reason for Palacios' release, namely, the claimed lack of work.

Although the TEMIS unit has been downsized since May 2007, the record shows that staff reductions were not made until sometime in 2008. When questioned at the hearing, Hasbrouck acknowledged that work was available for Palacios in May 2007 and that had her work performance been satisfactory she would not have been released (RT, pp. 172-173). The evidence therefore fails to persuade that Palacios' release was due to a lack of available work.

Related to the Department's assertion that Palacios was released for lack of work is Hasbrouck's testimony that she was released because she (Hasbrouck) believed that Palacios did not want to do data entry work. In such regard, Hasbrouck said that when she had presented the May 2, 2007 evaluation to Palacios she had become upset, saying that she did not want to do data entry work and left to speak with EMS Director (RT, pp. 161-162). Hasbrouck stated further that she believed Palacios did not want to do data entry work because of her absences in early May and her understanding that she had so advised Chidester (RT, pp. 177-178). However, Hasbrouck's responses on cross examination about how she came to this conclusion were problematic, for she acknowledged that she never had a discussion in which Palacios told her that she did not want to do data entry work nor could she recall anything Chidester purportedly told her regarding Palacios not wanting to do data entry work (RT, pp. 178,191-192).

Having considered and weighed the evidence regarding the third proffered reason for Palacios' release—her not wanting to do the data entry work—the Hearing Office concludes that this reason is pretextual and not supported by the weight of the evidence.

Based on the evidence as discussed above, it was found that the Charging Party made a *prima facie* case that Palacios' union activities were a motivating factor in her release from her temporary Student Professional Worker position. It is further concluded, for the reasons previously discussed and emphasizing that the proffered reasons for her release were found pretextual, that the Respondent has not met its burden of showing that her release would have taken place in the absence of Palacios' union activities. It is therefore concluded that in releasing Palacios the Department interfered with her rights under Ordinance Section 4 and thus violated Ordinance Section 12 (a) (1). In such regard, since the Department cannot take personnel actions because of an employee's protected activities or for anti-union reasons, it is irrelevant that Palacios held a temporary position.

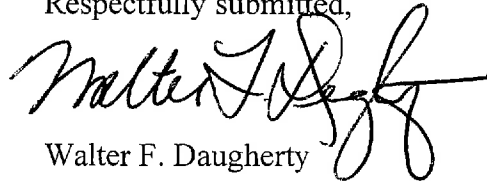
As to the appropriate remedy, the Hearing Officer notes that the customary remedy in matters where an employee is terminated and/or released from employment for the exercise of protected rights is reinstatement and back pay minus interim earnings. However, the record here is less than precise whether sufficient student worker positions were available in the TEMIS unit for the entire period following her May 9, 2007 release. For the evidence shows that the current complement in the TEMIS unit consists of two permanent workers and two student workers and that force reductions were apparently made during 2008. Further, it cannot be determined from the record the period, if any, in which Palacios was enrolled in "an accredited college" as required by the Student Professional Worker class specification (RX-3). The following recommendations are therefore submitted.

RECOMMENDATIONS

The duly appointed Hearing Officer recommends that the Employee Relations Commission adopt the following order:

- 1) The Respondent County of Los Angeles Department of Health Services violated Section 12 (a) (1) of the Ordinance when it released Yvonne Palacios from her temporary Student Professional Worker position on May 9, 2007.
- 2) The matter of the appropriate remedy for the Department's Ordinance violation as described above is remanded to the parties for their determination and agreement.
- 3) After a reasonable period, if the parties are unable to agree on the appropriate remedy, either party may request that ERCOM set this matter for a hearing limited solely to the question of the appropriate remedy.

Respectfully submitted,



Walter F. Daugherty
Hearing Officer

Dated: January 20, 2010
Los Angeles, California