

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

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IN THE COURT OF APPEALS
STATE OF WASHINGTON
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VERIZON NORTHWEST, INC.,

Appellant,

v.

WASHINGTON EMPLOYMENT SECURITY DEPARTMENT;
STEVEN D. ACKERMAN; LESSA P. ADAMS; ANGELA L.
ALEXANDER; MATTHEW J. ALICE; MARSHA A. ALLGIRE; ANN
M. ALMLI; LARRY F. AMES; CAROL A. ARENDSE; CHRISTINE S.
BAILEY; JERRY J. BAKKO; SHARON A. BARAKAT; MELISSA J.
BARRAN; DAVID O. BAUER; MARLENA S. BAUER; THOMAS W.
BECKER; SUZANNE M. BECKMANN; JOANNE L. BELL; TRENT A.
BERRING; STARLA J. BESSLER; MICHAEL E. BEVIS; DENMAN M.
BIRD; MICHAEL L. BLY; BOHDON W. BODNARCHUK; RUSSELL
L. BOKNECHT; JOHN A. BOORMAN; TERRI L. BOWKER; DAVID
L. BRADFORD; DON R. BRANSON; PATRICIA A. BRAY; SONYA L.
BREAU; TRAVIS S. BRIAN; BILLYE L. BROOKS; DOUGLAS M.
BROWN; PAMELA J. BROWN; GARY A. BUCKNER; JOSEPH T.
BUONGIORNO; NICKI R. BURNS-AMMA; KATIE G. BYRNES; RON
J. CAFFREYE; KELLY L. CAMPBELL; DEBORAH J. CARLSON;
LISA R. CARLSON; RICHARD L. CARROLL; KAREN L. CARSON;
RICHARD F. CASTANO; FRANCISCO J. CAYERE; RAYMOND D.
CHAVIS; JUDY A. CHESLEY; EZEKIEL J. CHRISTENSON; STEVEN
R. CLEVELAND; SHIRLEY A. COLEMAN; KENNETH D. COLLINS;
DEBORAH M. COOPER; KENNETH A. CUNNINGHAM; RUSSELL
D. CURRAN; THOMAS E. DALES; SHEILA K. DAVIDSON;
ROSEMARY B. DAVIS; TYRA L. DEBONO; DAVID J. DINGMAN;
DENNIS M. DOBBELAERE; JEANETTE S. DODSON; THOMAS
DORAN; JENNIFER L. DOWLING; FONDA K. DOWNS; JUDY
EDDY; GREGORY J. EITELBERG; SHEREE L. ELMENDORF;
JOANNE M. ERICKSEN; CECILE L. ERVIN; PAMELA J. EVANS;

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GLENN W. EXTOR; KENNETH F. FAIRCLOTH; ROGER M. FARRAR; TARRI N. FEDEN; WILLIAM C. FISHER; EDWARD T. FLOREZ; STEVE J. FONTAINE; FLOYD C. FOSTER; DONALD J. FRANKS; GEORGE C. FULLER; CHRISTINE M. FUNKHOUSER; RANDY L. FURNAS; STERLING H. GIBSON; TERRI L. GIBSON; MARLA J. GIESE; JOYE M. GILL; KAREN M. GRAHAM; KEITH P. GREEN; JOHN H. GRIFFIS; SCOTT S. HAEGER; RODNEY D. HAGGE; CYNTHIA A. HALL; PAULA E. HARRINGTON; TIM HARRIS; LARRY M. HENDERSON; SUE J. HICKS; THOMAS W. HIGDON; LYND A. HILDEBRANT; CURTIS D. HILL; JAMES C. HILL; CORINE M. HOTNESS; NORMA K. HOMANN; HOLLY L. HOPPER; ELLEN A. HORNE; VANESSA R. HORNING; BERKE T. HORROCKS; ERIK D. HOVDE; BETSY J. HOWARD; MICHAEL R. HOWARD; STEVEN J. HOWARD; JERRY R. HUDSON; GAYLE A. HUMANN; REGINA H. HUNT; MICHAEL G. HUPF; NANCY M. HURLBUT; DAVID M. JACOBSEN; RANDAL V. JENSEN; BILLY JIRA; ALAN W. JOHNSON; DEBRA J. JOHNSON; LEANNE E. JOHNSON; LORI A. JOHNSON; PATRICIA E. JOHNSON; THOMAS A. JOHNSON; ALVIN W. JOINER; MARY A. JONES; RACQUEL K. JONSON; DAWN KAUHANE; ROBERT W. KILLOPS; DOUGLAS P. KNIGHT; CHARLENE Y. KOLACKI; ALICYN S. KOMINE; ANDREW F. KOPS; DAINEL N. KRAH; DIANA L. LADISER; GARY S. LARSON; CHARLES W. LAWRENCE; ANDREA E. LAZANIS; DAVID W. LEE; DONNA M. LEGORE; DINO J. LENCE; DARLA J. LENNIER; EMORY D. LINDGARD; RICHARD D. LIPPINCOTT; PATRICIA A. LOHSE; WILLIAM C. LONG; GREGORY J. LUNDGREN; KENNETH C. MAAS; JEANINE M. MacKENZIE; MIKE P. MAHONEY; SUSAN C. MALONE; KATHLEEN G. MARRINIER; MARCIA A. MATSON; DALLAS L. McCORMICK; DEBRA C. McDADE; KRISTI A. McMULLEN; JAMES C. McMURTRY; CHARLES E. MELL; LINDA J. MISMAS; KAREN A. MONTAGUE; MERRILYN J. MORRISON; JOELLA J. MUELLER; KAY S. MULDER; CONSTANCE C. MURRY; ROBERT E. NEAL; EDWARD D. NELSON; GARY L. NELSON; ROBERT A. NELSON; TERRY L. NESS; VINNIE H. NGUYEN; PATRICIA C. NORDBY; LORNA M. NUNN; STEPHEN C. OLESEN; BARRY N. ORDELL; ANDRE H. OSBORNE; KATHRYN A. PANFILI; JANICE PARKER; GRETCHEN L. PAYLOR; PAMELA PERRYMAN; JEAN M PETERSON; JAMES M. RAINER; GORDON L. RECHCYGL; DAVID P. RIDGEWAY; JEANNE R. ROGERS; HOWARD E. RONKIN; GERALD K. ROSS;

RYAN M. ROUMONADA; MILDRED L. RUOSCH; BEVERLY C. RUSSELL; MIKE T. RYMAN; AVA G. SAKOWSKI; JILL E. SAUNDERS; ROBERT D. SCHLAGEL; KEITH D. SCHULZ; JAMES D. SEABERG; DIANE L. SEARSON; WILLIAM K. SEUFERT; JEFFREY T. SHIPLEY; STEPHEN D. SHIPLEY; MARGARET E. SIMMONS; DALLAS J. SINGLETON; DWIGHT O. SISSONS; JOHN L. SMITS; FAITH V. SNELGROVE; CHERYL A. SNYDER; FERN K. SODERSTROM; CYNTHIA A. ST. CLAIR; TRACI L. STEENBURGEN; DONALD W. STINGLEY; SHARON L. STJERN; DIANA L. STOREY; JAMES M. STRAGO; CAROL S. STULTZ; DOUG E. SUNDIN; CHRISTINE I. SURINA; JULIE A. SWANSON; PATRICK C. SWEENEY; JO ELLEN F. SWEHLA; JOSE F. TERRAZAS; CANDACE M. TESTA; EILEEN A. TEUFEL; DONALD P. THOMAS; STACEY S. THOMAS; RICHARD W. TICKLE; DAVID N. ULRICH; RODNEY A. VISSER; ERIC M. WAHL; KRINA L. WALL; ROBIN E. WARREN; MICHAEL J. WEDDLE; JANET L. WEEKS; GREG R. WEGNER; STEVE L. WESTMAN; WILLIAM WESTWOOD; BARBARA J. WETZEL; ALISON D. WEYMOUTH; WILLIAM A. WHEATON, JR.; JAMES R. WHISMAN; JONATHAN C. WHITE; CHARLENE M. WICKLUND; SHERRI L. WILLIAMS; TERRY E. WILSON; FEYE L. WOODS; MARIA WRASPIR; RALPH R. YUNKER; FRED T. ZELICH,

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I. INTRODUCTION

Verizon has established that its wholly voluntary severance program did not meet two of the three elements required to bring it within the narrow exception to the rule that employees who voluntarily leave work without good cause are ineligible for unemployment benefits. Respondent has failed to establish grounds for this Court to depart from its own precedent. The Commissioner's decision should be reversed.

This Court and Division II have each confronted and authoritatively decided the precise questions at issue in this case. As a threshold matter, the regulation in question - WAC 192-150-100 - sets out three conditions, all of which must be met before the exception applies. First, there must be an announcement by the employer of an involuntary or imminent layoff. Second, there must be an offer by employees to be among those laid off. And third, there must be an acceptance by the employer of the employee's offer. This acceptance must be discretionary with the employer: automatically processing clerical paperwork is not sufficient.

Contrary to Respondent's assertions, which incorrectly emphasize the "factual findings" of the Commissioner's decision on the *employees' motion for summary judgment*, Verizon did not announce an involuntary or mandatory program. Even more clear under the precedent of this Court, under the undisputed facts in this record Verizon did not accept anything.

Verizon respectfully requests that this Court apply the established law, reverse the Commissioner's decision, and grant summary judgment in Verizon's favor. In the alternative, if the Court concludes that the Commissioner properly interpreted the regulation, the Court should hold that it is invalid as it exceeds the Department's authority under the Employment Security Act.

II. ARGUMENT

A. Standard of Review

Respondent impermissibly disregards the procedural posture of this case by asserting that the Court must give substantial deference to the Commissioner's interpretation of the Employment Security Act. Respondent completely fails to mention the fact that this case was before the Administrative Law Judge on the employees' motion for summary judgment.¹ In fact, none of the cases Respondent relies upon for the deferential standard owed to the Commissioner's decision were before the courts on a motion for summary judgment.

On summary judgment, the Administrative Law Judge and the Commissioner were bound to view the facts, and inferences drawn from the facts, in the light most favorable to Verizon as the non-moving party. Thus the Commissioner did not "weigh the evidence" or make "factual

¹ Respondent inserts, as a footnote in the "Statement of the Case," the fact that a motion for summary judgment was filed, but wholly ignores it in his discussion of the Standard of Review.

findings."² It is disingenuous and misleading to argue that the Commissioner's conclusion that the MVSP was "implicitly" an involuntary layoff is a factual finding that must be affirmed if supported by substantial evidence.³

This Court may affirm summary judgment only if the written record shows that there is no genuine issue of material fact and the Department is entitled to judgment as a matter of law. WAC 10-08-135. The Court reviews a grant of summary judgment de novo, assuming facts most favorable to Verizon as the non-moving party. Hartley v. State, 103 Wn.2d 768, 774, 698 P.2d 77 (1985). Respondent's assertion of the proper standard of review misstates the law.

Moreover, considering the undisputed evidence in the record, Verizon is entitled to summary judgment in its favor. The purpose of summary judgment proceedings is to spare the parties the waste of resources inherent in an unneeded hearing on the merits. Meissner v. Simpson Timber Co., 69 Wn.2d 949, 951, 421 P.2d 674 (1966). No purpose would be served by sending this case back to the agency for hearing, in view of the undisputed evidence that the claimants left work voluntarily, not for good cause.

² Thus Respondent's assertion that the Commissioner's "factual findings ... are verities on appeal" is misplaced. Resp. Br. at 10.

³ Moreover, as discussed below, even if the program was "implicitly" involuntary, that does not satisfy the regulation's requirement for a written notice of inevitable or impending layoff.

B. The Employees - not Verizon - Took the Final Action to Terminate the Employment Relationship.

The regulation at issue requires that all three elements be met in order for employees who volunteer for a layoff to be eligible for benefits. Broschart v. Empl. Sec. Dep't. 123 Wn. App. 257, 268, 95 P.3d 356, rev. denied, 153 Wn.2d 1024, 110 P.3d 755 (2005); see also Employees of Intalco Alum. Corp. v. Empl. Sec. Dep't. 128 Wn. App. 121, 127, 114 P.3d 675 (2005). Because of the clarity of the undisputed evidence on this issue, Verizon focuses as an initial matter on the last of these three elements: "Your employer takes the final action in the separation process by accepting your offer to be one of the employees included in the layoff or reduction in force, thereby ending your employment relationship." WAC 192-150-100(1)(c). Respondent concedes that once employees volunteered to participate in the MVSP, "Verizon retained no control over who elected to participate." Respondent's Brief ("Resp. Br.") at 22. Respondent further concedes that, as in Intalco, "once the offer was formally accepted, it was binding" on Verizon. Id. And in Intalco, the court found that the employees took the final action. Id. Respondent nonetheless asserts that "Verizon took the final action." Resp. Br. at 22. These dueling assertions defy logic.

Respondent claims that the Verizon and Intalco programs are only "superficially similar" and that there are "fundamental differences" between the programs. Respondent fails to refute Verizon's detailed

analysis of the factual similarities of the programs and only dismisses them in a footnote. See Resp. Br. at 22 n.6. A close look at the differences reveals they are not at all "fundamental."

1. The Automated Confirmation Was Not the Final Action

Respondent first points to the fact that Verizon sent employees an automated electronic confirmation of the employees' acceptance as evidence that Verizon "accepted" their "acceptances." This automatic step performed by a computer notified every employee who accepted the offer of voluntary retirement that Verizon had received their acceptance. CR 847, Ex. 6. The computer certainly retained no "power to decide which employees to accept in the program." Broschart, 123 Wn. App. at 268 (emphasis added). It is difficult to emphasize strongly enough that this fact is wholly undisputed: Verizon "automatically" accepted the decision of any employee who accepted the MVSP by sending out an "automated" notice. Resp. Br. at 22. If anything, this process is even less discretionary than the "clerical paperwork" this court has already declared not to be "the final action contemplated by the regulation." Intalco, 128 Wn. App. at 130.

The automated notice is in the record, and could not be more clear. It advises the employee that "acceptance of your voluntary separation has been received." CR 847. The notice supplied the employee with a "confirmation number for your acceptance of voluntary separation". Id.

Verizon's automated confirmation notices are analogous to the action typically taken by the recipient of a letter sent through the U.S. Post Office via "Certified Mail, Return Receipt Requested." Normally (unless the recipient is attempting to evade service), the individual will simply sign for the letter, take it from the carrier, and open the envelope to read what's inside. The recipient's signature is nearly "automatic." Certainly the act of signing the small green receipt card cannot constitute acceptance of the offer contained in the letter. Crockett v. Lowther, 549 P.2d 303, 310 (Wyo. 1976) (certified mail return receipt signed by the offeree did not constitute acceptance of the offer). Just as certainly, Verizon's automated confirmation cannot constitute acceptance.

2. The Identification of a Large "Subset" of Eligible Employees Was Not the Final Action.

Respondent makes much throughout his brief that in the initial eligibility determination, before the program was even announced, a "specific subset," a "particular class" or a "precise subset" of Verizon employees were "specifically targeted" for eligibility. But the automated confirmation cannot be transformed into an "acceptance" by the fact that less than every Verizon employee was initially eligible for the program. As a threshold matter, nothing in the regulation requires that the program be made available to all employees. See WAC 296-150-100(1)(a) ("Your employer takes the first action in the separation process by announcing in writing to its employees that ... employees can offer to be among those

included in the layoff or reduction in force.") Indeed, the Intalco program was offered to only union or hourly employees. Intalco, 128 Wn. App. at 125; Broschart, 123 Wn. App. at 261.⁴ In cases interpreting the predecessor regulation, WAC 192-16-070, the voluntary program was not offered to all employees. See Goewert v. Anheuser Busch, Inc., 82 Wn. App. 753, 755, 919 P.2d 106 (1996), rev. denied 131 Wn.2d 1005 (1997) (voluntary layoff program offered only to salaried administrative staff); Ortega v. Empl. Sec. Dep't. 90 Wn. App. 617, 621, 953 P.2d 827 (1998), rev. granted 136 Wn.2d 1028 (1998); Nielsen v. Empl. Sec. Dep't. 93 Wn. App. 21, 25, 966 P.2d 399 (1998) (program offered to "selected categories of employees"). Like the employers in Intalco, Goewert and Ortega, Verizon offered its program to a large population, but less than all, of its employees. CR 939, Ex. 14-A at 1 ("[a]lmost all Verizon management and nonunion employees"). This is hardly a "precise subset" or a "specifically targeted class." Thus the automated confirmation is not an "acceptance" simply because the voluntary program was not available to every employee.⁵

⁴ Respondent mischaracterizes the Intalco program as being offered to "all" employees and that Intalco had "no power to decide who would participate in the program". Resp. Br. at 16, 17. Respondent misstates Intalco. The Court expressly noted that the voluntary severance program was only offered to "all hourly employees." 128 Wn. App. at 125.

⁵ The Court may take judicial notice that a company, cognizant of its business needs going forward, may seek to reduce its employee complement by offering a voluntary program to only management, only hourly employees, or only several classes of employees. The Department, in promulgating the regulation at issue, has not limited voluntary layoff programs to only those offered to all employees. Indeed, it would be improper for it to do so, for an administrative agency of the State is in no better position

Moreover, Respondent's assertion that "Verizon retained the power to reject employees simply by not making them eligible in the first place," Resp. Br. at 22, cannot be reconciled with the regulation. WAC 192-150-100 sets out a strict procedure that must be followed for employees to be eligible for unemployment benefits after accepting an offer of layoff. First, there is an announcement of a layoff program. WAC 192-150-100(1)(a). Second, there is an offer by the employee to participate in the program. WAC 192-150-100(1)(b). Third, there is acceptance by the employer, constituting the "final action. WAC 192-150-100(1)(c). These three events necessarily occur in sequence: announcement - offer - acceptance. The "announcement" simply cannot constitute "acceptance" because the offer has not yet been made. Respondent's argument ignores the text and structure of the regulation and the law of contract formation. See Intalco, 128 Wn. App. at 130 (offer is contractually binding when accepted).⁶

3. The "Announcement" Was Not the Final Action.

Respondent's third argument is equally unpersuasive. Respondent appears to assert that because Verizon's program was "implicitly involuntary," it took the "final action." Resp. Br. at 23-24. This assertion, like the one before it, impermissibly combines two of the three elements

than the courts to act as a "super personnel agency." White v. State, 131 Wn.2d 1, 20, 929 P.2d 396 (1997)

⁶ Respondent concedes that this is the law of contract formation. Resp. Br. at 18-19.

of an involuntary layoff program: the announcement of the involuntary program and the acceptance after offers are made. This reasoning flies in the face of the Broschart and Intalco courts' admonition that all three of the elements of the regulation must be established. Broschart, 123 Wn. App. at 268; Intalco, 128 Wn. App. at 127.

4. As an Undisputed Fact, the Employees' Acceptances Were the Final Action.

Finally, Respondent concedes that where the employer gives employees seven days to change their minds, the employer did not take the "final action." Resp. Br. at 17 (citing Broschart, 123 Wn. App. at 271). And Respondent concedes that this is precisely what Verizon did. Resp. Br. at 4 (citing CR 844) (letter provided seven⁷ days to revoke the release; "If you revoke the Release, you will also revoke your decision to volunteer and will remain on the payroll"). Moreover, 760 employees did in fact rescind their voluntary elections. CR 935, Hankins Decl. 1114. Thus it was the employees - and not Verizon - who took the final action.

C. Verizon Did Not Take the First Action By Announcing an Inevitable or Involuntary Layoff: An "Implicitly Involuntary" Reduction Does Not Satisfy the Requirement

Verizon went to great lengths to assure its employees of the purely voluntary nature of its program. See Appellant's Opening Brief, Parts IV, V.C, D and E. But even if a reasonable employee would infer that the

⁷This was later extended to eight days due to a clerical error. CR 935, 1011-12, Ex. 14 ¶ 12, Ex. 14-H.

program was "implicitly involuntary" - which Verizon sharply disputes - that fails to meet the regulation's requirement that the written announcement state that layoffs are mandatory, imminent or inevitable.

Respondent concedes that to meet the "first action" requirement, there must be "formal written notice that layoffs or reductions were inevitable." Resp. Br. at 17 (citing Broschart, 123 Wn. App. at 260, 268, 270-71). Respondent acknowledges that the employer "must announce an involuntary layoff or reduction in force; to hold otherwise would contravene the purpose of the Employment Security Act ..." Id. at 11-12 (citing Read v. Empl. Sec. Dep't. 62 Wn. App. 227, 236-37, 813 P.2d 1262 (1991)). Notwithstanding these concessions, Respondent asserts that Verizon's program was "implicitly" an involuntary one. Id. at 12. But under the regulation at issue, it is insufficient that the employees might "infer" the inevitability requirement: the written notice must contain it.⁸

Moreover, Respondent's claims that the voluntary program here was "implicitly involuntary" must be rejected. In a long line of decisions interpreting the voluntary quit statute, RCW 50.20.050, this Court has consistently held that "good cause must be based upon existing facts as contrasted to conjecture ..." Korte v. Empl. Sec. Dep't. 47 Wn. App. 296, 302, 734 P.2d 939 (1987) (harm of proposed contract was conjectural;

⁸ Thus Respondent's argument that Verizon's reduction in force was "staged amid a backdrop of coercion inherent in statements offered by senior management" is largely irrelevant absent a written notice of impending, inevitable or mandatory layoffs. Resp. Br. at 1.

employee did not have good cause to quit). Thus where an employer announced an early retirement plan and stated that it would reduce its workforce "by about 25 positions through a combination of attrition, early retirement and job eliminations," the employees' "unsubstantiated apprehension of being laid off" was not objective evidence that they were actually at risk of being laid off. Read, 62 Wn. App. at 234 - 35. And where an employer announced its intent to reduce its workforce by 10 percent, first by a voluntary program and then by a mandatory program if the 10 percent goal were not achieved, an employee's fear that he would be laid off was not enough to establish good cause for quitting. Goewert, 82 Wn. App. at 755 - 56. See also Ortega, 90 Wn. App. at 621 (employee quit because he was unsure of his future with the company).

In contrast to these express suggestions of possible future involuntary layoffs, all Respondent can point to here are concerns about the need to remain competitive, and an executive's comparison of this voluntary program with an involuntary one - without any suggestion from the executive that such an involuntary layoff was even being considered, must less imminent. Resp. Br. at 25-26. Uncertainty is simply not enough to constitute "good cause" for quitting.

Moreover, it is of no moment that Verizon offered the program in order to remain competitive, and this somehow transformed a voluntary program into an involuntary one. This argument is similarly misplaced. Respondent recognizes that the voluntary Intalco program was "in

response to price pressure in the electricity market." Resp. Br. at 16 (citing Broschart, 123 Wn. App. at 260). Indeed, it is difficult to imagine an employer implementing a voluntary layoff program if it were not motivated to cut its costs or reconfigure its business.

Respondent asserts that Verizon sought to lay off the "current occupants" of particular positions with a desire to replace them with new hires with different skills. Resp. Br. at 21. This transparent attempt to project upon Verizon the desire to target certain employees for involuntary layoffs must be rejected for the same reason as much of Respondent's analysis in this case: it rests on nothing other than sheer conjecture. The facts establish that ten percent of Verizon's workforce chose to take advantage of the voluntary program, and the Company advised the claimants herein that it would need to backfill some positions. CR 935-36, 1014-16, Ex. 14 ¶ 15, Ex. 14-I. There simply is no evidence in the record that any employee who chose to rescind their earlier acceptance of the incentive program might be laid off. This argument, unsupported by any facts whatsoever, cannot defeat Verizon's entitlement to summary judgment on its behalf - much less serve as a basis to grant summary judgment against Verizon.

Finally, Respondent again raises the specter that Verizon used the term "reduction in force." Resp. Br. at 24- 25. But as this court has already made clear, the use of the words "reduction of the work force" is

"not the equivalent of a written layoff announcement." Intalco, 128 Wn. App. at 128.⁹

The record is clear: Verizon went to great lengths to assure its employees of the wholly voluntary nature of this program. Even if the program were "implicitly involuntary - which it was not - that is insufficient as a matter of law to satisfy the regulation's requirement of a written notice of involuntary layoffs. Respondent's arguments to the contrary should be rejected.

D. Respondent has Failed to Meet Verizon's Argument that if WAC 192-150-100 was Properly Interpreted by the Commissioner, the Department Exceeded its Authority in Adopting the Rule

Respondent's only arguments in support of its assertion that the regulation was properly promulgated are that (1) the Employment Security Act should be liberally construed, and (2) the reason for job separation must be "external and apart from the claimant." Resp. Br. at 26. These vague assertions fail to respond to Verizon's arguments that (1) the rule, if properly interpreted by the Commissioner, does not comport with the plain

⁹ It is for this reason that the Superior Court's ruling below is not helpful to this Court. Notwithstanding this Court's express conclusion that terms such as "reduction in the work force" are not dispositive, the Superior Court made clear, at length, that the use of the term "reduction in force ("RIF")" was "the key statement in this voluminous record." RP, at 3-4; see id., 3-5, passim. Even if the Superior Court's conclusions were not "superfluous" as a matter of administrative law, Valentine v. Dept. of Licensing, 77 Wn. App. 838, 844, 894 P.2d 1352 (1999), the Superior Court's failure in this case to follow the guidance of this Court renders the Superior Court's ruling of little value. Respondent's reliance on that ruling, Resp. Br. at 25-26, is misplaced.

meaning or the purpose of the statute, and (2) the Department has always interpreted "reduction in force" to mean "involuntary reduction in force."

This Court does not owe any deference to the Department's interpretive regulation. Verizon respectfully requests that this Court fully examine whether, if properly interpreted to allow unemployment benefits to employees who voluntarily participate in a non-mandatory reduction in force, the regulation exceeds the Department's statutory authority to enact rules consistent with the statute. Respondent concedes that "[t]he Employment Security Act was enacted to provide compensation to individuals who are involuntarily unemployed through no fault of their own. Resp. Br. at 11 (quotations, citations omitted; emphasis added). If the regulation was properly applied, it contravenes the law and must be declared invalid.

III. CONCLUSION

Respondent's arguments should be rejected. Verizon did not announce an involuntary or imminent reduction in force, and certainly did not accept employees' offers to be included in the voluntary program. Verizon respectfully requests this Court reverse the Commissioner's decision and grant summary judgment in favor of Verizon.

DATED: November .-/J, 2007.

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