City of Mountlake Terrace, Decision 11831 (PECB, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

MOUNTLAKE TERRACE POLICE GUILD, Complainant, vs. CITY OF MOUNTLAKE TERRACE, Respondent.	CASE 24665-U-12-6303 DECISION 11831 – PECB
CITY OF MOUNTLAKE TERRACE, Complainant, vs. MOUNTLAKE TERRACE POLICE GUILD, Respondent.	CASE 24669-U-12-6307 DECISION 11832 – PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Cline and Associates, by *Cynthia McNabb,* Attorney at Law, for the union.

Summit Law Group, by *Michael C. Bolasina,* Attorney at Law, for the employer.

On March 16, 2012, the Mountlake Terrace Police Guild (union) filed a complaint with the Public Employment Relations Commission charging unfair labor practices against the City of Mountlake Terrace (employer). The union's complaint was docketed as case 24665-U-12-6303. On the same date, the employer filed an unfair labor practice complaint against the union. The employer's complaint was docketed as case 24669-U-12-6307. A preliminary ruling was issued for the employer's complaint on March 26, 2012, finding multiple causes of action. After the union amended its complaint on March 20 and April 16, 2012, a preliminary ruling was issued on April 23, 2012, finding multiple causes of action.

The cases were assigned to Examiner Kristi L. Aravena and a hearing was held on December 3, 4, 6, and 7, 2012. The parties filed post-hearing briefs to complete the record.

ISSUES

A. Union Meeting on November 17, 2011

1. Did the employer discriminate against Tim Krahn and Eric Jones by requiring them to submit leave requests for the meeting, in reprisal for union activities?
2. Did the employer dominate or assist the union through unlawful interference with internal union affairs by its actions regarding the meeting?
3. Did the employer refuse to bargain by its unilateral change to holding union meetings on City property or paid release time for employees to attend these meetings, without providing an opportunity for bargaining?

B. December 2011 Unfair Labor Practice Hearing

1. Did the employer interfere with employee rights by informing Matthew Porter that he needed to submit a leave request to observe the hearing?
2. Did the employer discriminate against Krahn, Jones, and Delsin Thomas by denying them compensation for leave time requests when they testified at the hearing?
3. Did the employer refuse to bargain by its unilateral change to paid release time for employees who testify at unfair labor practice hearings, or attend such hearings as observers while on duty, without providing an opportunity for bargaining?

C. Communications regarding Tam Guthrie and Mark Connor

1. Did the employer interfere with employee rights by statements made regarding the resolution of grievances for Tam Guthrie and Mark Connor in exchange for the withdrawal of a previously filed unfair labor practice complaint, or by an offer concerning Guthrie's request to resign and a related severance settlement in return for the union ceasing all actions regarding an ongoing unfair labor practice complaint?
2. Did the employer discriminate against Guthrie, in reprisal for filing a grievance, by its actions concerning his request to resign and a related severance settlement?

D. Communications between Scott Hugill and Eric Jones

1. Did the employer interfere with employee rights by comments made by Scott Hugill to Jones in a meeting on January 12, 2012?
2. Did the employer dominate or assist the union through unlawful interference with internal union affairs by Hugill's comments to Jones concerning the union's legal counsel?

E. Changes to Grievance Process - Burden Shifting

1. Did the employer refuse to bargain by its unilateral change to the grievance procedure through its actions against Guthrie, without providing an opportunity for bargaining?
2. Did the employer discriminate against Guthrie by its unilateral change to the waiver rule for employees choosing not to attend pre-disciplinary hearings with the police chief, in reprisal for union activities?

F. Compensation for Taking Civil Service Test

1. Did the employer discriminate against Heidi Froisland by denying her leave time requests relative to taking civil service tests, in reprisal for union activities?
2. Did the employer refuse to bargain by its unilateral change to compensation for employees taking civil service tests, without providing an opportunity for bargaining?

G. Personnel Policies

1. Did the employer refuse to bargain concerning personnel policies, by failing or refusing to meet and negotiate with the union, or by its unilateral change to such policies without providing an opportunity for bargaining?
2. Did the union refuse to bargain concerning personnel policies, by failing or refusing to meet and negotiate with the employer, breaching its good faith bargaining obligations, or refusing to provide relevant collective bargaining information requested by the employer?

The union and employer filed unfair labor practice complaints on the same date. The union's complaint contained 15 allegations of employer discrimination, domination, interference, unilateral change without providing an opportunity for bargaining, and failing to meet with the union. I find that one of the union's allegations has merit: the employer interfered with employee rights when assistant city manager Hugill made inappropriate comments to union president Jones during their January 12, 2012 meeting. The remaining allegations are dismissed.

The employer's complaint alleged that the union refused to bargain concerning personnel policies, by failing or refusing to meet and negotiate with the employer, breaching its good faith bargaining obligations, or refusing to provide relevant collective bargaining information requested by the employer. I find that the union failed to meet and negotiate with the employer, and breached its good faith bargaining obligations. The refusal to provide information allegation is dismissed.

LEGAL STANDARDS

Discrimination

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The employee maintains the burden of proof in employer discrimination cases. To prove discrimination, the employee must first set forth a *prima facie* case by establishing the following:

1. The employee, or employees, participated in an activity protected by the collective bargaining statute, or communicated to the employer an intent to do so;
2. The employer deprived the employee(s) of some ascertainable right, benefit, or status; and
3. A causal connection exists between the exercise of a protected activity and the employer's action.

If an employee provides evidence of a causal connection, a rebuttable presumption is created in favor of the employee. While the employee carries the burden of proof throughout the entire matter, there is a shifting of the burden of production. Once the employee establishes a *prima*

facie case, the employer has the opportunity to articulate legitimate, non-retaliatory reasons for its actions. The employee may respond to an employer's defense in one of two ways:

> 1. By showing that the employer's reason is pretextual; or
> 2. By showing that, although some or all of the employer's stated reason is legitimate, the employee's pursuit of protected rights was nevertheless a substantial factor motivating the employer to act in a discriminatory manner. *Port of Seattle*, Decision 10097-A (PECB, 2009). Also see *Educational Service District 114*, Decision 4361-A; *Mansfield School District*, Decision 5238-A (EDUC, 1996); *Pasco Housing Authority*, Decision 6248-A (PECB, 1998).

The timing of adverse actions in relation to protected union activity can serve as circumstantial evidence of a causal connection between the protected activity and the adverse action. *City of Winlock*, Decision 4784-A (PECB, 1995); *Mansfield School District*, Decision 5238-A. Ordinarily, an employee may use circumstantial evidence to establish the *prima facie* case because parties do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). To prove discriminatory motivation, the employee must establish that the employer had knowledge of the employee's union activity. An examiner may base such a finding on an inference drawn from circumstantial evidence although such an inference cannot be entirely speculative or improbable. *Northshore Utility District*, Decision 10534-A (PECB, 2010). Circumstantial evidence consists of proof of facts or circumstances which according to the common experience gives rise to a reasonable inference of the truth of the fact sought to be proved.

In the end, the burden remains on the employee to prove by a preponderance of the evidence that the disputed action was in retaliation for the employee's exercise of statutory rights. *Tacoma-Pierce County Employment and Training Consortium*, Decision 10280-A (PECB, 2009), *citing Clark County*, Decision 9127-A.

Domination

An employer commits an unfair labor practice when it controls, dominates or interferes with a bargaining representative. RCW 41.56.140(2). The Commission finds domination or assistance

when an employer involves itself in the internal affairs or finances of the union, shows a preference between two unions or groups that are competing for the same bargaining unit, or attempts to create, fund or control a "company union." *State - Labor and Industries*, Decision 9348 (PSRA, 2006). The Commission has historically found a violation of RCW 41.56.140(2) when an employer has interfered in the finances or internal affairs of an employee organization or gave the appearance of doing so. *Washington State Patrol*, Decision 2900 (PECB, 1988); *Skamania County*, Decision 5088 (PECB, 1995), *citing City of Pasco*, Decision 4198-A (PECB, 1994); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, 98 Wn. App. 809 (2000).

A domination violation requires proof of employer intent. *Snohomish County*, Decision 9834 (PECB, 2007). In *City of Yakima*, Decision 9451-A (PECB, 2007), an employer's statements indicated union animus but did not rise to the level of attempting to dominate the union because the union's independence of action was not threatened.

Interference

Under RCW 41.56.140(1) it is an unfair labor practice for a public employer to "interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter." An employer commits an interference violation if its actions or the statements of its officials are reasonably perceived by employees as a threat of reprisal or force, or promise of benefit, associated with the exercise of protected union rights. *King County*, Decision 4893-A (PECB, 1995); *Kennewick School District*, Decision 5632-A (PECB, 1996); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd,* 98 Wn. App. 809 (2000). Substantial evidence as shown by the totality of the circumstances must demonstrate that the employees' perception is reasonable. *PERC v. City of Vancouver*, 107 Wn. App. 694 (2001), *review denied,* 145 Wn.2d 1021 (2002). The burden of proving unlawful interference rests with the complaining party or individual. *Grays Harbor College*, Decision 9946-A (PSRA, 2009).

The complainant is not required to demonstrate the employer intended or was motivated to interfere with employees' protected collective bargaining rights. Nor is it necessary to show that the employee, or employees, involved were actually coerced by the employer or that the

employer had a union animus for an interference charge to prevail. *City of Tacoma*, Decision 6793-A (PECB, 2000). The determination is based on whether a typical employee in the same circumstances could reasonably view the employer's actions as discouraging his or her protected union activities. *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004).

Claims of unlawful interference with the exercise of collective bargaining rights must be established by a preponderance of the evidence, though the standard is not particularly high. *Pasco Housing Authority,* Decision 5927-A (PECB, 1997), *aff'd*, 98 Wn. App. 809 (2000); *State – Office of Financial Management*, Decision 11084-A (PSRA, 2012).

In *Grant County Public Hospital District 1*, Decision 8378-A, the Commission noted that employer communications to employees could be an interference unfair labor practice under any one, any combination, or all of the following criteria:

1. Is the communication, in tone, coercive as a whole?
2. Are the employer's comments substantially factual or materially misleading?
3. Has the employer offered new "benefits" to employees outside of the bargaining process?
4. Are there direct dealings or attempts to bargain with the employees?
5. Does the communication disparage, discredit, ridicule, or undermine the union? Are the statements argumentative?
6. Did the union object to such communications during prior negotiations?
7. Does the communication appear to have placed the employer in a position from which it cannot retreat?

These criteria were re-affirmed by the Commission in *Columbia Basin College*, Decision 11609-A (PSRA, 2013).

REFUSAL TO BARGAIN

Unilateral Change

Chapter 41.56 RCW prohibits a public employer from making decisions to change mandatory subjects of bargaining until it has satisfied its collective bargaining obligations with the exclusive bargaining representative of its employees. It is well established that wages, hours and working conditions of employees are mandatory subjects of bargaining. *Community Transit*, Decision

10647-A (PECB, 2011). As a general rule, an employer has an obligation to refrain from unilaterally changing terms or conditions of employment unless it: (1) gives notice to the union; (2) provides an opportunity for bargaining prior to making a final decision; (3) bargains in good faith, upon request; and (4) bargains to agreement or impasse concerning any mandatory subjects of bargaining. *Skagit County*, Decision 8746-A (PECB, 2006); *Snohomish County*, Decision 9770-A (PECB, 2008).[1]

While notice given to a party of a proposed change in the status quo need not be in writing, it must be sufficiently clear to afford the union reasonable notice of the intended change. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998). Informal notice of proposed changes may be sufficient to satisfy the notice requirements, but the imposition of a change in the status quo as a *fait accompli* without any prior contact with the employees' authorized bargaining agent does not create effective notice. Therefore, a failure on the part of the bargaining agent to request bargaining is not a waiver by inaction. *King County*, Decision 5810-A (PECB, 1997); *Snohomish County*, Decision 9770-A.

The burden of proof lies with the union when it charges an employer with making unilateral changes to mandatory subjects of bargaining. WAC 391-45-270(1)(a). *Val Vue Sewer District*, Decision 8963 (PECB, 2005) identified four elements the union must prove in order to prevail in a unilateral change case:

1. The existence of a relevant status quo or past practice.

A past practice exists when the parties acknowledge a mutually accepted, long-standing employment practice. *Kitsap County*, Decision 8292-B (PECB, 2007). To establish a past practice, a party must prove the following two elements: (1) an existing prior course of conduct; and (2) an understanding by the parties that the conduct was known and mutually accepted as the proper response to the circumstances. *City of Pasco*, Decision 9181-A (PECB, 2008); *Wenatchee School District*, Decision 11138 (PECB, 2011), *aff'd*, Decision 11138-A (PECB, 2012).

1 For employees eligible for interest arbitration, an employer may not unilaterally implement its desired change after bargaining to a lawful impasse, but rather must seek interest arbitration.

2. The relevant status quo or past practice was a mandatory subject of bargaining.

Mandatory subjects of bargaining generally include employee wages, hours and working conditions over which both parties must bargain in good faith. It is an unfair labor practice for an employer to refuse to bargain a mandatory subject. RCW 41.56.140(4). The Commission has the exclusive authority to determine whether a subject is a mandatory or nonmandatory subject of bargaining. WAC 391-45-550. The scope of bargaining is a question of law and fact for the Commission to determine on a case-by-case basis. *City of Seattle*, Decision 9957-A (PECB, 2009), citing *International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 197 (1989) (*City of Richland*).

The Commission applies a balancing test on a case-by-case basis to determine whether an issue is a mandatory subject of bargaining and looks at two principal considerations: (1) the extent to which the action impacts the wages, hours and working conditions of employees, and (2) the extent to which the action is deemed to be an essential management prerogative. The inquiry focuses on which characteristic predominates. The Supreme Court held in *City of Richland* that "the scope of mandatory bargaining is thus limited to matters of direct concern to employees" and that "managerial decisions that only remotely affect 'personnel matters', and decisions that are predominantly 'managerial prerogatives', are classified as nonmandatory subjects."

3. Notice and an opportunity to bargain the proposed change was not given, or notice was given but an opportunity to bargain was not afforded and/or the change was a fait accompli.

An employer contemplating a change in a mandatory subject of bargaining must give adequate notice to the union prior to making a decision in order to allow for a reasonable opportunity to bargain. If the employer fails to do so and then implements the decision, the employer risks presenting the action as a *fait accompli* – a decision that has already been made or an action that has already occurred. *City of Edmonds*, Decision 8798-A (PECB, 2005). In determining whether a *fait accompli* has occurred, the Commission focuses on the circumstances as a whole, and whether the employer provided a meaningful opportunity to bargain. *Clover Park Technical College*, Decision 8534-A (PECB, 2004); *Wenatchee School District*, Decision 11138 (PECB, 2011), *aff'd*, Decision 11138-A (PECB, 2012).

4. There was a change to the status quo or past practice.

The Commission does not assert jurisdiction to remedy alleged violations of past practices where there is, in fact, no change of practice. *King County*, Decision 4893-A; *City of Pasco*, Decision 4197-A (PECB, 1994). No duty to bargain arises from a reiteration of established policy. *Clark County Fire District 6*, Decision 3428 (PECB, 1990); *City of Yakima*, Decision 3564-A (PECB, 1991); *Kitsap County*, Decision 8292-B.

When the Commission finds a refusal to bargain violation under the statutes it administers, it automatically finds that the employer derivatively interferes with employee rights. *Battle Ground School District*, Decision 2449-A (PECB, 1986); *Mason County*, Decision 10798-A (PECB, 2011). When an employer commits a refusal to bargain violation by making a unilateral change, the Commission finds that the action has "an intimidating and coercive effect" on employees. *Battle Ground School District*, Decision 2449-A. Therefore, an employer violates RCW 41.56.140(4) and (1) if it implements a unilateral change on a mandatory subject of bargaining without having fulfilled its bargaining obligation.

Refusal to Meet

Chapter 41.56 RCW imposes a mutual obligation upon public employers and unions "to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions. . . ." RCW 41.56.030(4). If parties to a collective bargaining relationship are to resolve their contractual differences through negotiations, they must meet in a timely fashion. *Morton General Hospital*, Decision 2217 (PECB, 1985).

A finding that a party has refused to bargain in good faith is predicated on a finding of bad faith bargaining in regard to mandatory subjects of bargaining. *Spokane School District*, Decision 310-B (EDUC, 1978). The obligation to bargain in good faith encompasses a duty to engage in full and frank discussions on disputed issues, and to explore possible alternatives that may achieve a mutually satisfactory accommodation of the interests of both the employer and employees. *University of Washington*, Decision 11414-A (PSRA, 2013).

In determining whether an unfair labor practice has occurred, the totality of circumstances must be analyzed. *Walla Walla County*, Decision 2932-A (PECB, 1988). The complainant employer or union must first demonstrate that the union was the exclusive bargaining representative of the employees involved at the time of the violation and that the complainant requested negotiations on a collective bargaining agreement or some issue that was a mandatory subject of bargaining. If the complainant establishes these two facts, it must then demonstrate that the respondent employer or union either failed or refused to meet with the complainant, or imposed unreasonable conditions or limitations which frustrated the collective bargaining process. *Washington State Patrol, Decision* 10314-A (PECB, 2010). *See City of Clarkston*, Decision 3246 (PECB, 1989). What may be reasonable conduct in one case may not be reasonable in another.

Duty to Provide Information

Under RCW 41.56.030(4), the parties to a collective bargaining relationship have an obligation to negotiate in good faith. Inherent to the good faith obligation is the obligation of employers and unions to provide each other, upon request, with information needed by the requesting party for collective bargaining negotiations or contract administration. *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd, City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992); *National Labor Relations Board v. Acme Industrial Co.*, 385 U.S. 432 (1967). The obligation extends not only to information that is useful and relevant to the collective bargaining process, but also encompasses information that is necessary for the administration of the parties' collective bargaining agreement. *King County*, Decision 6772-A (PECB, 1999); *Kitsap County*, Decision 9326-B (PECB, 2010). Failure to provide relevant information upon request constitutes a refusal to bargain unfair labor practice. *University of Washington*, Decision 11414-A.

Upon receiving a relevant information request, the receiving party must provide the requested information or notify the other party if it does not believe the information is relevant to collective bargaining activities. *Seattle School District*, Decision 9628-A (PECB, 2008). If a party perceives that a particular request is irrelevant or unclear, the party is obligated to communicate its concerns to the other party in a timely manner. *Pasco School District*, Decision 5384-A

(PECB, 1996). If the requesting party does not believe the provided information sufficiently responds to the intent and purpose of the original request, the requesting party has a duty to contact the responding party and engage in meaningful discussions about what type of information the requestor is seeking. *Kitsap County*, Decision 9326-B. The parties are expected to negotiate any difficulties they encounter with information requests. *Port of Seattle*, Decision 7000-A (PECB, 2000); *City of Yakima*, Decision 10270-B (PECB, 2011); *University of Washington*, Decision 11414-A.

Administration of the collective bargaining agreement includes the ability to review information to assess whether the agreement is being complied with and if a grievance should be filed.

A responding party must reply to the information request in a reasonable and timely manner and may be found responsible for delays caused by its staff's failure to understand the duty to provide information. *Seattle School District*, Decision 8976 (PECB, 2005). Parties must be prompt in providing relevant information. Unreasonable delay in providing necessary information may constitute an unfair labor practice. *Fort Vancouver Regional Library*, Decision 2350-C (PECB, 1988); *University of Washington*, Decision 11414-A. Neither the Commission nor the National Labor Relations Board adopts a bright-line rule defining how quickly a party must respond to a request for information. Commission examiners have looked to several factors to determine whether a delay in providing information was an unfair labor practice, including the preparation required for response, the impact of the delay to the party requesting the information, and whether the party responding to the request intended to delay or obstruct the process. *City of Seattle*, Decision 10249 (PECB, 2008), *aff'd*, Decision 10249-A (PECB, 2009).

Breach of Good Faith

Chapter 41.56 RCW requires public employers and unions to bargain in good faith. *Peninsula School District v. Public School Employees*, 130 Wn.2d 401 (1996). The scope of bargaining under Chapter 41.56 is "grievance procedures and . . . personnel matters, including wages, hours and working conditions." To sustain a charge of a breach of good faith bargaining obligations by the union, which the employer alleges in its complaint filed here, the employer must establish that the union was the exclusive bargaining representative of the employees involved at the time

of the alleged violation and that the employer requested negotiations on a collective bargaining agreement or some issue that was a mandatory subject of bargaining. If the employer establishes these two facts, it must then demonstrate that the union engaged in specific conduct and/or a course of conduct designed to frustrate the collective bargaining process, including tactics such as:

a. Failing or refusing to consider proposals made by the employer;
b. Failing or refusing to make proposals or to explain the proposals it made;
c. Providing the employer with misleading proposals or positions;
d. Failing to follow through on a commitment to recommend proposals made in bargaining;
e. Altering its position in a manner designed to avoid agreement; or
f. Other tactics that delay or avoid reaching an agreement.

ANALYSIS

The union is the exclusive bargaining representative for all officers and sergeants of the Mountlake Terrace Police Department. The employer and union are parties to a collective bargaining agreement, effective from January 1, 2011, through December 31, 2012.

A. Union Meeting on November 17, 2011

On November 17, 2011, members of the union convened a meeting in the conference room at the police department. Present were the union's executive board, other union members, and union attorney Kelly Turner (Turner). The meeting ended when Commander Craig McCaul (McCaul) came into the meeting and told union members they did not have appropriate authorization to conduct the meeting and to disband.

There was various testimony regarding the purpose and content of the meeting. Detective Dan MacKenzie (MacKenzie), union vice president, testified that grievances and the upcoming unfair labor practice hearing were discussed at the meeting, but did not remember what grievances were discussed. Officer Tim Krahn (Krahn), union secretary, who attended the entire meeting,

testified the meeting was to talk about testimony and strategy for the upcoming unfair labor practice hearing. Officer Eric Jones, union president, testified the meeting was to go over contractual issues as well as the unfair labor practice hearing. Officer Delsin Thomas (Thomas) did not specifically remember what was discussed but recalled topics being the unfair labor practice hearing and grievance matters. Police Chief Greg Wilson (Wilson) testified that he had Commander McCaul break up the meeting because Wilson understood it was for unfair labor practice hearing preparation and no one ever corrected his characterization of it.

I credit Krahn's testimony that the meeting was held to go over testimony and strategy for the upcoming unfair labor practice hearing. The timing of the meeting along with other union members' testimony suggests the main purpose of the meeting was to prepare for the upcoming unfair labor practice hearing. Although MacKenzie did not know for sure, he did not dispute the fact that an arbitrator had not even been selected to hear the grievances that would have been discussed at the meeting. The unfair labor practice hearing, however, was just a few weeks away. The timing of the meeting is more than a coincidence and a reasonable person would assume the meeting was held to prepare for the unfair labor practice hearing.

Jones testified that he believed the union had other meetings at the police department involving the whole union membership but could not remember a specific meeting like this that occurred in the last two years. Testimony did not identify a single similar meeting that had occurred in recent years. MacKenzie, Krahn, and Jones testified about holding less formal meetings to discuss grievances before Loudermill or pre-disciplinary hearings, and to discuss other union issues as they came up. These meetings were impromptu and lasted from minutes to one hour. Union executive board members had never requested permission from Chief Wilson to hold these meetings and it did not appear the Chief knew these meetings were occurring.

Multiple witnesses testified about Section 2.3 in the parties' collective bargaining agreement. The section reads:

> Duly authorized representatives of the Guild may visit the work location of employees upon reasonable notification to the Employer provided that such visitation does not interfere with the performance of duties by employees. Such

> representative shall limit his activities during such visitations to matters relating to this Agreement. Guild representatives, with prior approval of the Police Chief or his designee, shall be allowed reasonable release time, without a reduction in wages, to investigate grievances, attend grievance hearings, serve on negotiating committees, counsel Guild members at investigation interviews and serve on joint labor/management meetings that are called by the parties.

While union members believe they had a right to meet and discuss union business at the police department facilities, they acknowledge Section 2.3 does not specifically refer to unfair labor practice hearings. Chief Wilson testified his interpretation of Section 2.3 requires prior approval from the Chief for the use of facilities and time. He disbanded the meeting because he felt it was outside the language of the contract, the union hadn't sought his approval, and he does not believe it is an appropriate use of public funds to pay employees to prepare for an action against the employer. He also believed the meeting interfered with the performance of duties for the two officers on duty, Krahn and Jones.

1. Did the employer discriminate against Krahn and Jones by requiring them to submit leave requests for the meeting, in reprisal for union activities?

Prima Facie Case

To prove discrimination, the union must establish a *prima facie* case of employer discrimination. The evidence supports the finding that both Krahn and Jones were actively involved in preparing for the upcoming unfair labor practice hearing. Krahn and Jones were engaged in a protected union activity. However, they were not deprived of an ascertainable right when they were requested to submit leave requests for the time they spent in the union meeting because paid release time for attending the meeting was not provided under Section 2.3 of the collective bargaining agreement. Because the union failed to show Krahn and Jones were deprived of an ascertainable right, no further analysis is necessary. The employer did not discriminate against Krahn and Jones by requiring them to submit leave requests for time spent in the union meeting.

2. Did the employer dominate or assist the union through unlawful interference with internal union affairs by its actions regarding the meeting?

In order to establish an employer domination violation, the union must prove that the employer intended to involve itself in the internal affairs of the union. The record lacks evidence that by

disbanding the union meeting, the employer involved itself in the internal affairs of the union. While the meeting did end when McCaul told employees they needed to disband, there was conflicting testimony about whether the meeting could have continued in another location. MacKenzie testified that the meeting was almost over anyway. Thomas testified that he felt the union had the option to relocate the meeting to someplace outside the police station. The record lacks evidence that the employer intended to involve itself in the internal affairs of the union. The employer did not control, dominate, or interfere with a bargaining representative.

3. Did the employer refuse to bargain by its unilateral change to holding union meetings on City property or paid release time for employees to attend these meetings, without providing an opportunity for bargaining?

The first element the union must prove in order to prevail in a unilateral change case is the existence of a relevant status quo or past practice. Jones testified that he could not think of an example in the past two years that would be similar to the November 17, 2011 meeting. There was no evidence provided by the union that established the existence of a relevant status quo or past practice of these types of meetings being held at the police department. The employer did not commit a unilateral change violation.

B. December 2011 Unfair Labor Practice Hearing

The parties had an unfair labor practice hearing which began on December 7, 2011. The union alleges the employer changed its past practice related to compensating union members for testifying at or observing unfair labor practice hearings.

The employer does not believe the collective bargaining agreement, specifically Section 2.3, requires them to pay employees to prepare for, testify at, or sit and watch an unfair labor practice hearing. Wilson does not have any knowledge of past circumstances where an employee observed an unfair labor practice hearing on duty and got paid for their time. He had discussions with the union on this issue in reference to a 2009 unfair labor practice hearing and the issue had not come up again until now. He believes no matter who initiates a proceeding, the collective bargaining agreement calls for each party to bear their own expenses for witnesses.

Patrick Hatchell (Hatchell), union treasurer, remembers discussing compensation for witnesses who testify at grievance arbitration hearings at labor management committee meetings. Both parties looked at the collective bargaining agreement and agreed that it pretty much said that each side will pay their own expenses. This conversation occurred approximately two to three years ago. Hatchell wrote a check from the union to compensate Connor for his time testifying at the 2009 unfair labor practice hearing. He doesn't recall why except that Connor was off duty and the union president told him to. Sergeant Mike Haynes (past union president) testified the union agreed to pay their witnesses in the 2009 hearing. He testified "I think we just gave that one - we didn't fight it, I don't think."

Union president Jones testified that to his knowledge, union members in the past have not put in personal time to testify at unfair labor practice hearings but there was no evidence produced by the union to show that was true. Thomas testified that he feels an unfair labor practice complaint is just an over exaggerated grievance that should be compensated in the same manner. He was not paid for testifying at the 2011 unfair labor practice hearing but was paid for his time processing grievances involving the same subject matter. Union vice president MacKenzie's understanding of the 2011 unfair labor practice hearing was that if you were a witness called by the employer, you would be compensated. If you were called by the union, you would not. MacKenzie did not seek compensation for the time he spent testifying at the 2011 unfair labor practice hearing but rather used flex time.

Hatchell testified at the 2011 unfair labor practice hearing as a witness for the employer and was paid as part of his regular work time. Jones and Thomas testified as witnesses for the union but were not compensated. Members of the union that were not compensated for testifying at the 2011 unfair labor practice hearing did not grieve the denial of their leave slips as a violation of the collective bargaining agreement.

Officer Matthew Porter (Porter) came to the 2011 unfair labor practice hearing, while on duty, to see what happened, to get exposure to the process, and to support his partner. He was at the hearing for five minutes before Pete Caw (Caw), Assistant Chief of Police, called and asked why he was there. Porter was given the option to stay but was told that if he did stay, he had to put in for personal time. Porter made the choice to leave. Although sitting in at an unfair labor practice

hearing is not part of his regular assigned duties, Porter believes he has a personal duty to support other members in the union and to understand the business of the union. Porter brought a textbook with him to the hearing to study, First Level Supervision. He was reading the book voluntarily so he could do well on a sergeant promotional exam. Porter did not tell Caw he was reading this book at the hearing and never communicated to any of the command staff that he brought his sergeant's study materials and was using this time to study.

The union failed to produce evidence to show that the employer changed a past practice for compensating employees for testifying, observing, or attending unfair labor practice hearings. The past practice, as acknowledged by both union and employer witnesses, was that witnesses that were called by the employer were compensated by the employer and witnesses called by the union were either not compensated or compensated by the union. This practice dates back to at least the 2009 unfair labor practice hearing.

1. Did the employer interfere with employee rights by informing Porter that he needed to submit a leave request to observe the hearing?

To sustain a charge of interference, the union must show that actions or statements by the employer are reasonably perceived by employees as a threat of reprisal or force, or promise of benefit, associated with the exercise of protected union rights. Porter came to the hearing to observe the process and support his partner. When Caw called and notified him that he needed to put in personal time to attend the hearing, Porter made the decision to leave. Porter testified that his conversation with Caw was insignificant to him at the time. Section 2.3 of the parties' collective bargaining agreement does not provide employees with paid release time to attend unfair labor practice hearings. The union failed to establish that the parties had a past practice of allowing employees to attend unfair labor practice hearings on paid release time.

Public employees do not have a statutory right under Chapter 41.56 RCW to attend unfair labor practice hearings on paid release time. While Porter may have wanted to observe the hearing, a typical employee under the same circumstances could not reasonably view the employer's requirement that Porter submit a leave request to observe the unfair labor practice hearing as discouraging the exercise of protected union rights. The employer did not interfere with employees' protected collective bargaining rights.

2. Did the employer discriminate against Krahn, Jones, and Thomas by denying them compensation for leave time requests when they testified at the hearing?

To prove discrimination, the union must establish a *prima facie* case of employer discrimination. The evidence supports the finding that Krahn, Jones, and Thomas testified at the 2011 unfair labor practice hearing. Krahn, Jones, and Thomas were engaged in a protected union activity. However, they were not deprived of an ascertainable right when they were requested to submit leave requests for the time they spent testifying at the hearing because testifying at an unfair labor practice hearing is not compensable time under Section 2.3 of the collective bargaining agreement nor an established past practice of the parties. Because the union failed to show Krahn, Jones, and Thomas were deprived of an ascertainable right, no further analysis is necessary. The union failed to establish a *prima facie* case of employer discrimination. The employer did not discriminate against Krahn, Jones, and Thomas by denying them compensation for testifying at the unfair labor practice hearing.

3. Did the employer refuse to bargain by its unilateral change to paid release time for employees who testify at unfair labor practice hearings, or attend such hearings as observers while on duty, without providing an opportunity for bargaining?

The first element the union must prove in order to prevail in a unilateral change case is the existence of a relevant status quo or past practice. There was no evidence provided by the union that established the existence of a relevant status quo or past practice of employees being compensated by the employer when they testify for the union at an unfair labor practice hearing or attend such hearings as an observer while on duty. Testimony revealed that dating back to at least the 2009 unfair labor practice hearing, the union provided compensation for a union witness. No past practice was established. The employer did not commit a unilateral change violation.

C. Communications regarding Guthrie and Connor

On December 14, 2011, Officer Tam Guthrie (Guthrie) was sent notice of a pre-disciplinary hearing scheduled for December 22, 2011. The hearing was subsequently rescheduled to

January 3, 2012. The employer was recommending Guthrie be terminated from his employment. Prior to the hearing on January 3, 2012, Jones sent Wilson an e-mail stating that Guthrie was choosing to waive his pre-disciplinary hearing concerning the termination.

On January 11, 2012, the union sent an e-mail to Scott Hugill (Hugill), assistant city manager, notifying the employer that Guthrie was interested in negotiating a settlement offer from the employer in return for his resignation. On that same date, the employer sent Guthrie a certified letter terminating his employment. The union received Guthrie's termination notice on January 12, 2012. When MacKenzie was asked by the employer why the union waited so long after declining the pre-disciplinary hearing to discuss a potential settlement, he stated the delay was because Guthrie could not decide what to do.

Jones testified that he was upset about the timing of the termination notice. The employer had sent the termination notice after receiving the e-mail notifying them that Guthrie was interested in negotiating a settlement. Jones went to Hugill's office on January 12, 2012 to discuss the issue. Hugill indicated there was no way to turn back the clock and that Guthrie was terminated.

MacKenzie spoke with Hugill on January 13, 2012 regarding a settlement option for Guthrie. Hugill told him the employer had set aside a certain amount of money for the year for union-related legal expenses, approximately $25,000.00. Guthrie's severance package would cost approximately $25,000.00 so the employer stated it would be willing to rescind Guthrie's termination and allow him to resign if the union agreed to drop the unfair labor practice complaint regarding Connor's termination and other pending grievances. Dollars could be made available for Guthrie if other litigation was dropped. MacKenzie testified that Hugill told him and also wrote in the settlement offer, "Let me be clear. The union does not have to do this. It is entirely within the union's rights to continue pursuing the grievances and unfair labor practice." MacKenzie spoke to Jones and ultimately the union rejected the offer because they didn't feel they should put one union member above another. Jones was upset about the offer because he had been told the previous day that they could not turn back the clock on the termination.

1. Did the employer interfere with employee rights by statements made regarding the resolution of grievances for Guthrie and Connor in exchange for the withdrawal of a previously filed unfair labor practice complaint, or by an offer concerning Guthrie's request to resign and a related severance settlement in return for the union ceasing all actions regarding an ongoing unfair labor practice complaint?

Demands for withdrawal of pending unfair labor practice complaints are permissive subjects of bargaining and a party violates RCW 41.56.140(4) and (1) by insisting to impasse on such a proposal. *Public Utility District 1 of Clark County*, Decision 2045-B (PECB, 1989); *Whatcom County*, Decision 7244-B (PECB, 2004). However, informal settlement offers and discussions can be a lawful means to explore settling litigation between parties and such inquiries are subject to neither acceptance nor impasse. The offer in this case was made by the employer in an attempt to meet both parties' needs. There was no requirement for the union to accept the offer and if the union rejected the offer the grievance and the unfair labor practice hearing would proceed as scheduled. The employer did not insist that the union withdraw the unfair labor practice complaint concerning Connor's termination. The employer was merely exploring alternatives to resolve pending litigation between the parties. It is important to note that no harm was done to the union by rejecting the employer's proposals. The parties simply reverted back to the schedule of litigation that had existed prior to the offer. A typical employee under the same circumstances could not reasonably view the employer's settlement offer as discouraging the exercise of protected union rights.

The employer's offer was made in an attempt to avoid litigation and the union was free to decline the offer, as it did. The parties did achieve a settlement in the Connor grievance and the related unfair labor complaint was still pursued in the 2011 unfair labor practice hearing. The employer did not interfere with the exercise of any of the union's protected statutory rights by making a settlement offer to resolve pending litigation between the parties.

2. Did the employer discriminate against Guthrie, in reprisal for filing a grievance, by its actions concerning his request to resign and a related severance settlement?

To prove discrimination, the union must establish a *prima facie* case of employer discrimination. As a union member, Guthrie filed a grievance in early 2011 related to a three-day suspension for

missing a workday. This grievance occurred prior to the grievance filed for his termination. Guthrie had engaged in protected union activity prior to his being terminated. Guthrie was deprived of an ascertainable right when he was terminated and his request to resign and receive a severance settlement was denied. The timing of adverse actions in relation to protected union activity can serve as circumstantial evidence of a causal connection between the protected activity and the adverse action. *City of Winlock*, Decision 4784-A. Circumstantial evidence may be used to establish a *prima facie* case. *Clark County*, Decision 9127-A. The timing of Guthrie's grievance filed early in 2011 and his termination in December 2011 establishes a causal connection. A causal connection exists between the denial of Guthrie's request to resign and receive a severance settlement and his filing of a grievance against the employer earlier in the year. A *prima facie* case was established by the union.

Since the union established a *prima facie* case, the employer has the opportunity to articulate legitimate, non-retaliatory reasons for its actions. Hugill testified the employer had already made the decision to terminate Guthrie when they received the union's settlement e-mail on January 11, 2012. At this point, the employer had waited almost a month to act on the termination of Guthrie since notifying Guthrie on December 14, 2011, that it was considering his termination. The pre-disciplinary hearing scheduled for January 3, 2012, was waived by the union and no communication had occurred from the union to give the employer a reason not to terminate Guthrie. It is reasonable to assume the employer would not wait indefinitely to hear from the union. It is somewhat of a coincidence that the employer decided to terminate Guthrie on the same date the union put forward an interest in settlement on the matter, however, I credit Hugill's testimony that the decision to terminate Guthrie had already been made. Whether or not the actual termination notice had been sent to Guthrie is irrelevant. The important fact is the decision to terminate Guthrie had been made and the union's settlement offer did not change the employer's mind.

On January 13, 2012, Hugill offered the union a settlement option for Guthrie. The employer had discussed the issue and decided that it made sense to make money available for Guthrie in the form of unemployment benefits in exchange for the union dropping litigation they had pending. The employer reasoned that if they saved money on litigation, they could have it available to fund Guthrie's unemployment benefits. The union rejected the offer and continued

to pursue the related litigation. The settlement offer does not equate to discrimination but rather an attempt by the employer to resolve ongoing litigation matters in a manner they thought would benefit both parties. The union rejected the offer, Guthrie was terminated, and the union pursued the related litigation.

The union may respond to the employer's defense by showing: 1) the employer's reasons are pretextual; or 2) Guthrie's pursuit of protected union rights was nevertheless a substantial factor in motivating the employer to act in a discriminatory manner. The union did not prove the employer's reasons to discipline Guthrie were pretextual. The employer articulated legitimate, non-retaliatory reasons for offering a settlement to the union on Guthrie's behalf. The union did not prove by a preponderance of the evidence that Guthrie's pursuit of protected union rights was a substantial factor motivating the employer to act in a discriminatory manner. The denial of Guthrie's request to resign and a related severance settlement offer by the employer were not in retaliation for Guthrie's exercise of his protected statutory rights. The employer did not discriminate against Guthrie in reprisal for filing a grievance.

D. Communications between Hugill and Jones

Jones went to Hugill's office on January 12, 2012 to discuss the Guthrie termination. During the conversation, Jones alleges that Hugill made disparaging remarks about the union's attorney, Jim Cline (Cline). Jones testified that Hugill equated the union and the employer to being a marriage and said that Cline was like the mistress between the employer and the union and he was causing all these problems. Jones also testified that Hugill called Cline a liar. Jones testified that Hugill said Cline's only interest was in bringing forth as much litigation as possible to get his name out there to get more clients. Jones inferred from these words that the issues between the union and the employer would continue as long as they retained Cline and Associates as their attorneys. It felt like an ultimatum to him. Jones testified that the union did not consider terminating Cline's legal representation as a result of what Hugill said.

Hugill testified that his remarks about Cline were made in the context of his conversation with Jones. Jones started the conversation by commenting that the 2011 unfair labor practice hearing

took nine days though Cline had told him it would only go three days. Hugill stated that he and Jones commiserated on the cost of litigation. Hugill admitted to saying their relationship is like a marriage and that the union is being wooed by a mistress in focusing on what Cline wants to do as opposed to what the union wants to do. Hugill did not recall directly calling Cline a liar but said he did state that he lied or something similar. Hugill felt his comments were appropriate at the time, in the context of what he characterized as an angry discussion.

I credit Jones' testimony that Hugill called Cline a liar and said that Cline was like the mistress in the relationship between the employer and the union. The union did not change legal representation as a result of the conversation, but that does not negate Hugill's comments. I credit Hugill's characterization of the conversation as angry and testimony shows both sides were frustrated with the amount of ongoing litigation.

1. Did the employer interfere with employee rights by comments made by Hugill to Jones in a meeting on January 12, 2012?

To sustain a charge of interference, the union must show that actions or statements by the employer are reasonably perceived by employees as a threat of reprisal or force, or promise of benefit, associated with the exercise of protected union rights. The statements made by Hugill regarding Cline were inappropriate. Calling Cline a liar or saying that he lied is inappropriate under any circumstance. As a representative of the employer, Hugill is responsible to maintain a professional relationship with the union which includes their chosen representative. The history between the parties does not excuse the inappropriateness of Hugill's comments. Any reasonable person hearing the mistress analogy would assume that as long as the union retained Cline as their representative, interactions between the parties would be difficult.

The employer reasons that the Hugill and Jones conversation had no adverse consequences on the union as Cline was still retained and the union never considered terminating his representation. It is not necessary, however, to show that the employees involved were actually coerced by the employer to prevail on an interference charge. The determination is based on whether a typical employee in the same circumstances could reasonably view the employer's actions as discouraging his or her protected union activities. In the present case, it is reasonable

for employees hearing Hugill's comments about their representative to presume Hugill could be prejudiced against their representative or, at the very least, be concerned about future communication between the parties. A typical employee could reasonably view Hugill's comments as discouraging his or her protected union activities. The employer interfered with employee rights when Hugill made inappropriate comments to Jones during their meeting.

2. Did the employer dominate or assist the union through unlawful interference with internal union affairs by Hugill's comments to Jones concerning the union's legal representative?

A domination charge requires proof of employer intent. The evidence presented during the hearing verified that inappropriate comments were made, but did not prove intent. Hugill's comments were made in the context of a heated discussion where he expressed a lot of raw emotion and frustration about the amount of ongoing litigation and communication issues between the parties. Hugill made comments about Cline he should not have made, but there was no evidence produced or testimony given that showed he made those comments to prejudice Jones against Cline. The union failed to prove that the employer intended to dominate or interfere with internal union affairs by Hugill's comments to Jones concerning the union's legal representative. The employer did not control, dominate or interfere with a bargaining representative.

E. Changes to Grievance Process - Burden Shifting

The union and employer have a clear disagreement over how a pre-disciplinary hearing should be conducted and what the hearing should be used for. The union wants to have the pre-disciplinary hearing in front of the final decision maker, and wants to be able to speak for the employee. The union also does not want to use the pre-disciplinary process to elaborate on the elements of just cause they believe the employer has violated. The employer believes a pre-disciplinary hearing should be used as an opportunity for the employee to tell his or her side of the story. Employees may also show a change in behavior and accept responsibility for their actions. The employer also requests the union provide additional information regarding the lack of just cause so the city manager has the most information possible in order to analyze before making the final disciplinary decision.

On December 14, 2011, Guthrie was sent a notice of a pre-disciplinary hearing that would be held on December 22, 2011. The hearing was subsequently rescheduled for January 3, 2012. The employer was recommending Guthrie be terminated from his employment. Prior to the hearing on January 3, 2012, Jones sent Wilson an e-mail stating that Guthrie was choosing to waive his pre-disciplinary hearing concerning the termination.

MacKenzie testified that Guthrie did not attend the pre-disciplinary hearing because he felt Wilson's mind was made up and the employer was going to terminate him regardless of anything he said. MacKenzie testified that employees do not feel these hearings with Wilson are a meaningful exercise for them to defend charges against themselves because Wilson sees explanations as excuses. Guthrie, however, met with Wilson on a separate grievance earlier in the year. It was originally a three-day suspension that was reduced to a one-day suspension after the pre-disciplinary hearing.

The union, including legal representatives, has been told they cannot speak on an employee's behalf or submit anything on their behalf at a pre-disciplinary hearing before the Chief. They are just there to witness the process. Officer Thomas testified he understood it was a union executive board member's job at a pre-disciplinary hearing to be a witness. They cannot advocate on behalf of the employee because that is the representative's job, through a grievance. Thomas testified that Pat Emmal (Emmal), previous representative for the union, advocated for Officer Keith Poteet (Poteet) at a pre-disciplinary hearing. Wilson testified that was not true. Wilson stated that Emmal did not advocate for Poteet during the pre-disciplinary hearing but met with Poteet prior to the hearing and they constructed a statement that Poteet read at the hearing. I credit Wilson's testimony on this matter.

Although MacKenzie testified that the union wasn't allowed to submit anything on Guthrie's behalf, the union had specifically been requested to do so. City Manager John Caulfield (Caulfield) requested that the union supplement Guthrie's grievance with factual information about why Caulfield should change the termination to something else. The union chose not to provide additional information because as Jones testified, it's not the union's job to do the

employer's investigation. There were instances of Caulfield reducing discipline when he was provided substantive information.

MacKenzie testified that he felt as though he was being asked to make a legal argument regarding just cause on Guthrie's behalf and did not feel capable of making that argument. However, the union did have Cline and Associates on retainer at that time. MacKenzie's testimony displayed that he may not completely understand just cause, but he had a good understanding of the basic principle. He testified that it meant "they had every reason, every right to terminate him. The violations that he committed were egregious enough that it warranted termination." He further testified the opposite would be true if a claim lacked just cause, that he didn't do the things he was accused of. He knew that definition in January of 2012.

Instead of responding in writing, the union wanted to meet directly with Caulfield to discuss Guthrie's termination. The union did not trust Hugill to deliver their message and believed they could communicate their points better orally than in writing. Caulfield, through a letter sent by Hugill, requested written arguments from the union before agreeing to a meeting. The letter stated, "once the city manager receives your written response, if any, I will let you know if he would like to meet with you in person to discuss the issues." The union did not establish that there was any past practice of the city manager meeting with union representatives on a grievance. Hugill testified Caulfield has never had a personal meeting in connection with a grievance with a union representative. Caulfield has never sat in on a pre-disciplinary hearing except for his direct reports. Wilson testified the city manager has not conducted a pre-disciplinary hearing since he began employment as the Chief in August of 2008 and the union never objected until recently. Wilson testified that the union did not say they were not showing up for Guthrie's pre-disciplinary hearing because it was with Wilson and not Caulfield. I credit Hugill and Wilson's testimony on this matter.

Jones testified that the parties' past practice is that the Chief meets with employees for the pre-disciplinary hearing. Typically, a disciplinary grievance starts with the union filing a grievance, the employer requests that the union provide additional information to supplement investigative

findings, the union declines to provide additional information, Caulfield upholds the discipline, and the union proceeds to arbitration. Wilson testified he believes the purpose of a pre-disciplinary hearing is for the employee to present their side of the story and any mitigating factors or circumstances prior to the discipline being imposed. He has changed discipline after pre-disciplinary hearings at least three times, including with Guthrie earlier in the year. Wilson testified he conducted multiple pre-disciplinary hearings for the employer before the union objected to their attorney not being able to advocate for the employee. The first objection was for Officer Osborn (Osborn), the second for Tim Krahn and then Osborn again. The union wanted to have the pre-disciplinary hearing in front of the final decision maker, Caulfield, and wanted to be able to speak for the employee. Wilson believes a pre-disciplinary hearing can change the recommended discipline if the employee shows a change in behavior and accepts responsibility. Wilson believes the grievance procedure should be used if the union disagrees with the investigative findings.

Caulfield has consistently asked the union to provide a more thought-out response in their grievances than simply saying the discipline lacks just cause. Although he has asked for more information from the union, he still appears to review discipline files and make a final determination based on the information available to him. In August 2009, Caulfield changed a grievance denial by Wilson based on facts presented in the grievance by the union. Caulfield thanked the union for providing the detailed information and stated the details served the union's position well. On April 1, 2011, Caulfield sent a letter to the union in response to a grievance for Thomas. Caulfield changed Thomas' discipline after reading the investigation file, but also noted that in the future it would be helpful for the union to provide more information. Sergeant Mike Haynes (Haynes) testified that Caulfield asked the union for more detailed information when he was on the union executive board.

1. Did the employer refuse to bargain by its unilateral change to the grievance procedure through its actions against Guthrie, without providing an opportunity for bargaining?

The first element the union must prove in order to prevail in a unilateral change case is the existence of a relevant status quo or past practice. The union did not establish the existence of a

relevant status quo or past practice of employees having their pre-disciplinary hearing before Caulfield. The past practice was that pre-disciplinary hearings were held before the Police Chief. Testimony also showed that union representatives and attorneys have not been allowed to advocate for employees during the pre-disciplinary hearing process. Union representatives and attorneys can meet with employee prior to the pre-disciplinary hearing and on one occasion a union attorney helped an employee prepare a written statement. The Chief has continued to allow this practice but that is not what the union wants. The union wants a union representative or attorney to speak on the employee's behalf during the pre-disciplinary hearing. This has not been allowed in the past and a relevant status quo or past practice was not established by the union.

The union argues in its brief that the employer has a duty to bargain over all aspects of the grievance procedure. However, the Commission has no jurisdiction over Loudermill or pre-disciplinary hearings. *City of Bellevue*, Decision 4324-A (PECB, 1994). In *City of Bellevue*, the Commission declined to extend the rights and obligations of the statutory collective bargaining process to "due process" hearings which are conducted by public employers to meet their obligations under the United States Constitution, as interpreted by the Supreme Court of the United States in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985). I do not have jurisdiction to determine the extent of constitutional rights that employees are entitled to.

Guthrie was free to choose not to attend his pre-disciplinary hearing with Chief Wilson. This decision, however, left the employer with little evidence to go on other than the investigation file. There was a lot of testimony by both sides about the amount of evidence that should be provided to the employer throughout the grievance process. The union wants to submit very limited information while the employer argues it is difficult to make changes to the recommended discipline without justification. Requesting additional information from the union is not a new practice for the employer. What was new in this incident was Guthrie waiving his right to submit new information by waiving his pre-disciplinary hearing. The union was given additional opportunities to submit arguments on Guthrie's behalf following the waived pre-disciplinary hearing, but they chose not to.

The employer did not make a unilateral change to the grievance procedure by its actions against Guthrie regarding denial of a pre-disciplinary hearing before Caulfield, not allowing advocates to speak for employees during the pre-disciplinary hearing, or requesting additional information regarding Guthrie's justifications for his actions. The employer did not commit a unilateral change violation.

2. Did the employer discriminate against Guthrie by its unilateral change to the waiver rule for employees choosing not to attend pre-disciplinary hearings with the police chief, in reprisal for union activities?

To prove a charge of discrimination, the union must first set forth a *prima facie* case. As a union member, Guthrie filed both grievances and unfair labor practice complaints against the employer. Guthrie was engaged in protected union activity. Guthrie was not, however, deprived of an ascertainable right when he chose not to attend the pre-disciplinary hearing. There was no past practice or any provision in the collective bargaining agreement allowing employees to meet directly with Caulfield. The decision to waive the pre-disciplinary hearing was a choice made by Guthrie, not the employer. Without supplemental information from the employee, whether that be submitted in writing or a verbal discussion at the pre-disciplinary hearing, Caulfield must make a final determination with the information he is presented. The union failed to set forth a *prima facie* case of discrimination. The employer did not discriminate against Guthrie in reprisal for union activities.

F. Compensation for Taking Civil Service Test

Officer Heidi Froisland (Froisland) took a written test to promote to sergeant on February 10, 2012, and went through the oral board process on February 16, 2012. On February 28, 2012, Froisland participated in the Firearm Instructor oral board process. She was off-duty for all three of these promotional tests and submitted overtime slips requesting to be paid with compensatory time-off. The requests were denied. Froisland felt she should have been compensated for taking these tests because the tests were required for the department to fill these positions. Prior to submitting her compensatory time slips, Froisland did not inquire whether she would be paid if she took the tests off-duty. She did not attempt to trade shifts so that she would have been on

duty during the testing. Froisland is the only one of the eight employees who took the test that requested compensation.

MacKenzie testified that he took the SWAT test in 2009 and was compensated for his time off-duty. This test, however, was not conducted by the employer but rather by a regional selection process with the Cities of Mountlake Terrace, Lynnwood, and Edmonds. He also helped the employer administer testing for entry level officers while off-duty and was compensated for that, however, he was administering the test, not participating in it. MacKenzie testified that Porter was the only officer compensated for the 2012 sergeant's exam because he was the only officer working at the time.

Jones testified that although he doesn't have firsthand experience, he was told employees were given the opportunity for flex time which is off the books when testing. He believes past practice was also to try and schedule testing when employees were working so they did not have to take personal time. Jones has never had a conversation with city management about scheduling these tests to accommodate officers who may be off duty. Hugill testified that for at least the last eight years he has worked for the employer, employees who are on duty during testing are paid and employees who are not on duty are not paid.

Wilson testified that he does not interpret any provisions of the collective bargaining agreement to require the employer to pay employees for promotional testing opportunities. He explained to Froisland that these tests were not mandatory, but a voluntary process. Wilson testified that past practice has been if an employee is working at the time of the testing, they test and receive compensation for their regular work time; if they're off duty, they participate on their own time. Of all the promotional testing Wilson has done, Froisland is the only employee to request compensation for off-duty time. The union did not grieve Wilson's denial of Froisland's leave request.

Based on testimony and evidence entered into the record, I credit Wilson's testimony that the employer's practice is that if an employee is working, they are compensated for their regular work time; if they're off-duty, they participate on their own time. The employer introduced time

records and charts that demonstrated this practice. Officers are allowed to trade shifts with other officers so they are on-duty during the scheduled testing time, but Froisland did not request a trade.

1. Did the employer discriminate against Froisland by denying her leave time requests relative to taking civil service tests, in reprisal for union activities?

To prove a charge of discrimination, the union must first set forth a *prima facie* case. Froisland has never held an executive position in the union or testified at a hearing for the union. There was no testimony or evidence provided that she had participated in protected union activities. Being a union member is not enough to meet the first prong of the union's *prima facie* case of discrimination. The claim is dismissed. The employer did not discriminate against Froisland in reprisal for union activities.

2. Did the employer refuse to bargain by its unilateral change to compensation for employees taking civil service tests, without providing an opportunity for bargaining?

The first element the union must prove in order to prevail in a unilateral change case is the existence of a relevant status quo or past practice. The only two examples the union provided were related to MacKenzie. MacKenzie testified that he was compensated for taking the SWAT test in 2009 and was compensated for assisting with the 2012 sergeant's exam. These two instances are not comparable to Froisland's and cannot be used to establish a relevant status quo or past practice. There was no evidence provided by the union that established the existence of a relevant status quo or past practice of employees being compensated for taking civil service tests, while off-duty. The claim is dismissed. The employer did not commit a unilateral change violation.

G. Personnel Policies

Both the union and the employer filed unfair labor practice complaints relating to the implementation of new personnel policies. To get an understanding of the events that transpired, a timeline is helpful.

October 3, 2011 - Hugill sent a letter to the union with an attached red-lined copy of changes the employer was proposing to its personnel policies. The letter requested the union let Hugill know by October 14, 2011, if it believed there were bagainable issues the union would like to address.

October 14, 2011 - Jones replied to Hugill's request to update the policies saying the union received the request and would get back to him. Later that day, Jones asked for an additional week to respond. Hugill suggested they get together the following week to go over the changes and any questions the union had. About thirty minutes later, in a letter drafted by Cline and Associates, the union responded by sending a letter to Hugill. The letter said the changes to the personnel policies involved mandatory subjects of bargaining but did not specify what mandatory subjects the union wanted to discuss or when the union would be available to meet.

October 25, 2011 - Hugill asked Jones for an update. Jones said he was trying to set up a time for a meeting between the employer and Cline and Associates. When Hugill and Jones met in person, Jones did not specifically recall Hugill saying he wanted to get the policies amended by the end of the year. Jones also doesn't remember saying, "sorry, but Cline isn't getting back to me about setting up a meeting." I credit Hugill's testimony that he did tell Jones he wanted to get the policies amended by the end of the year and that Jones had not been able to get an answer from Cline. Jones expressed that he has learned from this process. He knows that it is the union's responsibility to get the answers they need. Jones did not realize he officially had to notify the employer that Cline was taking the lead on this issue so the employer continued to work through Jones.

November 7, 2011 - Jones told Hugill he was still trying to set up a meeting with the union attorney. Hugill again told Jones he was looking to get the policies in place by the end of the year.

November 14, 2011 – Hugill checked in with Jones and was told that the union was still waiting on a response from Cline.

November 21, 2011 – Hugill checked in with Jones and was told the same thing: the union was still waiting on a response from Cline.

December 20, 2011 – Hugill sent an e-mail to Jones notifying him that Hugill wanted to set up a meeting within the next two weeks, by January 3, 2012, to discuss the personnel policies. Jones testified that the union had a lot of issues going on at this time. They were dealing with the 2011 unfair labor practice preparation, Lexipol (separate police department policy for risk management) policy changes, and the Guthrie and Connor settlements. Jones expressed that the delay in responding to Hugill's October 3, 2011 request to update personnel policies was not intentional by the union.

December 23, 2011 - Cline sent an e-mail to Hugill stating his law firm was representing the union over the proposed personnel policy changes. Cline requested a mutually agreed upon time to discuss the changes. Cline did not provide dates to meet but said that he was not available the next two weeks. Hugill had already indicated he was available 24/7. Hugill wanted to meet by January 3rd but Cline said he was not available because it was Christmas. Hugill responded that the employer was going to implement if they did not have input from the union.

January 3, 2012 - A conference call occurred between Hugill, Jones, Cline, and union attorney Kelly Turner. Hugill testified that Cline indicated he wanted to check with union members and to review the law. Hugill further testified that Cline offered to get back to him by January 6th if there were any issues the union wanted to discuss further. Hugill thought that was a quick reply based on his past experience with Cline and was happy with the timeline. When Hugill asked when they could get together again to discuss the policies, Cline indicated he could meet the following week (ending Friday, January 13th), if there were any issues the union wanted to discuss further. Jones testified that he does not remember Cline giving a date of when he would have a list of those topics that involved mandatory subjects of bargaining to Hugill. On cross-examination, Jones said he did not remember for sure. He testified that it is possible that is what happened but was not sure. Jones was also not sure if Cline and Hugill set a date to meet; they may have but he did not recall specifics. I credit Hugill's testimony that Cline set a date (January 6) to get back to Hugill and a subsequent deadline (January 13) for getting together should Cline decide some of the policies involved mandatory subjects of bargaining. The employer submitted notes that Hugill took during the January 3rd conference call that match his

testimony. In addition Jones, under cross-examination, said he was not sure if Cline set a deadline or a date to meet. He indicated Cline may have, but he did not know for sure.

January 25, 2012 - Hugill sent Cline and Jones an e-mail stating that since he had not heard from them by January 13, he would be implementing the proposed policies. Cline responded to the e-mail and objected to a unilateral deadline for implementation of the policies. Cline did not, however, offer a time to meet with Hugill to discuss any issues.

1. Did the employer refuse to bargain concerning personnel policies, by failing or refusing to meet and negotiate with the union, or by its unilateral change to such policies without providing an opportunity for bargaining?

The record does not support the allegation that the employer refused to bargain by failing or refusing to meet and negotiate with the union. The timeline above clearly shows continued inquiries from the employer to the union to bargain the employer's proposed changes to its personnel policies. The employer did not fail or refuse to meet and negotiate with the union.

An employer commits an unfair labor practice if it implements a unilateral change to a mandatory subject of bargaining without giving the union advance notice and a reasonable opportunity to bargain. In the present case, the proposed personnel policies were never implemented for union employees. The policies were only implemented for other employees of the employer. A unilateral change cannot be found without a change being implemented. The employer did not commit a unilateral change violation.

2. Did the union refuse to bargain concerning personnel policies, by failing or refusing to meet and negotiate with the employer, breaching its good faith bargaining obligations, or refusing to provide relevant collective bargaining information requested by the employer?

Refusal to Meet

In determining whether an unfair labor practice has occurred, the totality of circumstances must be analyzed. The timeline above summarizes the totality of circumstances in this case. At no

time since October 3, 2011, has the union identified which changes to the proposed personnel policies they want to bargain over. Hugill contacted Jones on several occasions inquiring about a time they could meet to determine if the union had identified any mandatory subjects of bargaining in the proposed changes to the personnel policies. Hugill was not looking for any determinative answers, just a date where the parties could meet. Jones testified that he was waiting on a determination from Cline as to whether or not any of the proposed changes involved mandatory subjects of bargaining. Jones said it took over two months for Cline to look over the information and give him a determination about the specifics of it. He admitted it took a long time.

If parties to a collective bargaining relationship are to resolve their contractual differences through negotiations, they must meet in a timely fashion. *Morton General Hospital*, Decision 2217. From October 3, 2011, to January 25, 2012, the employer received no feedback from the union regarding the proposed policies. The union knew the employer wanted to implement the policies by the end of 2011, yet nearly four months went by without any action from the union. Jones acknowledged he was also frustrated by the delay and learned a lot from this experience. The only communication from the union was Jones telling Hugill the union was waiting on a response from their attorney and the conference call on January 3 which resulted in timelines being set by Cline which were not met. This is unacceptable. The union refused to bargain by failing to meet and negotiate the proposed personnel policies with the employer.

Breach of Good Faith Bargaining Obligation

Chapter 41.56 RCW requires public employers and unions to bargain in good faith. *Peninsula School District v. Public School Employees*, 130 Wn.2d 401 (1996). There are many tactics a party can use to frustrate the collective bargaining process. In the present case it is clear the union delayed and frustrated the bargaining process. Three months transpired after the employer's initial request to update the personnel policies was received by the union before a conference call occurred. On that call, Cline committed to a timetable where he would let the employer know within three days if there were any mandatory subjects of bargaining the union wanted to bargain, and if so, get together with Hugill the following week to actually meet. Those deadlines came and went without any response from the union. Failing to follow through on a

commitment made during bargaining is one way a party can frustrate the collective bargaining process. Delaying the bargaining process is another tactic that frustrates the process. The timeline above shows the union's delay in bargaining quite clearly. Even Jones was frustrated by the delay. The union engaged in a course of conduct designed to frustrate the collective bargaining process. The union refused to bargain by breaching its good faith bargaining obligation.

Failure to Provide Information

To sustain a failure to provide information charge, the employer must prove they made a particular request for information and the requested information was not provided by the union. The employer made requests to meet and requests to set up a time to meet and discuss which mandatory subjects of bargaining the union wanted to bargain over in relation to the proposed personnel policy changes, but did not actually make a request for information. The union did not refuse to bargain concerning personnel policies, by refusing to provide relevant collective bargaining information requested by the employer.

FINDINGS OF FACT

1. The City of Mountlake Terrace (employer) is a public employer within the meaning of RCW 41.56.030(12).

2. The Mountlake Terrace Police Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2), and is the exclusive bargaining representative for all officers and sergeants of the Mountlake Terrace Police Department.

3. The employer and union are parties to a collective bargaining agreement, effective from January 1, 2011, through December 31, 2012.

4. On November 17, 2011, members of the union convened a meeting in the conference room at the police department. Present were the union's executive board, other union members, and union attorney, Kelly Turner. The meeting ended when Commander Craig

McCaul came into the meeting and told union members they did not have appropriate authorization to conduct the meeting and to disband. The meeting was held to go over testimony and strategy for an upcoming unfair labor practice hearing, which began on December 7, 2011.

5. Union secretary Tim Krahn and union president Eric Jones were actively involved in preparing for the December 7th unfair labor practice hearing. As such, they were engaged in a protected union activity.

6. Krahn and Jones were not deprived of an ascertainable right when they were requested to submit leave requests for the time they spent in the union meeting because paid release time for attending the meeting was not provided under Section 2.3 of the collective bargaining agreement. Because Krahn and Jones were not deprived of an ascertainable right, the union did not establish a *prima facie* case of employer discrimination.

7. The record lacks evidence that the employer intended to involve itself in the internal affairs of the union by disbanding the November 17, 2011 union meeting.

8. There was no evidence provided by the union that established the existence of a relevant status quo or past practice of the type of union meeting that occurred on November 17, 2011, being held at the police department.

9. The employer and union had an unfair labor practice hearing which began on December 7, 2011. When Assistant Chief Pete Caw called and notified Matthew Porter that he needed to put in personal time to attend the hearing, Porter made the decision to leave. Porter testified that his conversation with Caw was insignificant to him at the time.

10. Section 2.3 of the parties' collective bargaining agreement does not provide employees with paid release time to attend unfair labor practice hearings. The union failed to establish that the parties had a past practice of allowing employees to attend unfair labor practice hearings on paid release time.

11. Public employees do not have a statutory right under Chapter 41.56 RCW to attend unfair labor practice hearings on paid release time. While Porter may have wanted to observe the hearing, a typical employee under the same circumstances could not reasonably view the employer's requirement that Porter submit a leave request to observe the unfair labor practice hearing, as discouraging the exercise of protected union rights.

12. Krahn, Jones, and Delsin Thomas testified at the 2011 unfair labor practice hearing. Krahn, Jones, and Thomas were engaged in a protected union activity.

13. Krahn, Jones, and Thomas were not deprived of an ascertainable right when they were requested to submit leave requests for the time they spent testifying at the hearing because testifying at an unfair labor practice hearing is not compensable time under Section 2.3 of the collective bargaining agreement nor an established past practice of the parties. Because Krahn, Jones, and Thomas were not deprived of an ascertainable right, the union did not establish a *prima facie* case of employer discrimination.

14. The union did not establish the existence of a relevant status quo or past practice of employees being compensated by the employer when they testify for the union at an unfair labor practice hearing or attend such hearings as an observer while on duty.

15. On January 11, 2012, the union sent an e-mail to Scott Hugill, assistant city manager, notifying the employer that Tam Guthrie was interested in negotiating a settlement offer from the employer in return for his resignation. On that same date, the employer sent Guthrie a certified letter terminating his employment.

16. Union vice president Dan MacKenzie spoke with Hugill on January 13, 2012, regarding a settlement option for Guthrie. The employer stated it would be willing to rescind Guthrie's termination and allow him to resign if the union agreed to drop the unfair labor practice complaint regarding Mark Connor's termination and other pending grievances.

17. MacKenzie testified that Hugill told him and also wrote in the settlement offer, "Let me be clear. The union does not have to do this. It is entirely within the union's rights to continue pursuing the grievances and unfair labor practice."

18. The employer did not insist that the union withdraw the unfair labor practice complaint concerning Connor's termination. The union rejected the employer's settlement proposal and the parties simply reverted back to the schedule of litigation that had existed prior to the offer. A typical employee under the same circumstances could not reasonably view the employer's settlement offer as discouraging the exercise of protected union rights.

19. As a union member, Guthrie filed a grievance in early 2011 related to a three-day suspension for missing a workday. This grievance occurred prior to the grievance filed for his termination. Guthrie had engaged in protected union activity prior to his being terminated.

20. Guthrie was deprived of an ascertainable right when he was terminated and his request to resign and receive a severance settlement was denied.

21. A causal connection exists between the denial of Guthrie's request to resign and receive a severance settlement and his filing of a grievance against the employer earlier in the year. A *prima facie* case of employer discrimination was established by the union.

22. The employer articulated legitimate, non-retaliatory reasons for its actions.

23. The union did not prove the employer's reasons to discipline Guthrie were pretextual. The union did not prove by a preponderance of the evidence that Guthrie's pursuit of protected union rights was a substantial factor motivating the employer to act in a discriminatory manner. The denial of Guthrie's request to resign and a related severance settlement offer by the employer were not in retaliation for Guthrie's exercise of his protected statutory rights.

24. Jones went to Hugill's office on January 12, 2012 to discuss the Guthrie termination. During the conversation, Hugill called the union's attorney, Jim Cline, a liar and said that Cline was like the mistress in the relationship between the employer and the union. The statements made by Hugill regarding Cline were inappropriate.

25. It is reasonable for employees hearing Hugill's comments about their representative to presume Hugill could be prejudiced against their representative or, at the very least, be concerned about future communication between the parties. A typical employee could reasonably view Hugill's comments as discouraging his or her protected union activities.

26. Hugill made comments about Cline he should not have made, but there was no evidence produced or testimony given that showed he made those comments to prejudice Jones against Cline. The union failed to prove that the employer intended to dominate or interfere with internal union affairs by Hugill's comments to Jones concerning the union's legal representative.

27. On December 14, 2011, Guthrie was sent a notice of a pre-disciplinary hearing. The employer was recommending Guthrie be terminated from his employment. Prior to the hearing on January 3, 2012, Jones sent Wilson an e-mail stating that Guthrie was choosing to waive his pre-disciplinary hearing concerning the termination.

28. The union did not establish the existence of a relevant status quo or past practice of employees having their pre-disciplinary hearing before City Manager John Caulfield. The past practice was that pre-disciplinary hearings were held before the Police Chief.

29. Union representatives and attorneys have not been allowed to advocate for employees during the pre-disciplinary hearing process. This has not been allowed in the past and a relevant status quo or past practice was not established by the union.

30. Caulfield has consistently asked the union to provide a more thought-out response in their grievances than simply saying the discipline lacks just cause.

31. The union chose not to provide additional information because, as Jones testified, it's not the union's job to do the employer's investigation.

32. There were instances of Caulfield reducing discipline when he was provided substantive information.

33. Caulfield has never sat in on a pre-disciplinary hearing except for his direct reports. The union did not establish that there was any past practice of the city manager meeting with union representatives on a grievance.

34. As a union member, Guthrie filed both grievances and unfair labor practice complaints against the employer. Guthrie was engaged in protected union activity.

35. Guthrie was not deprived of an ascertainable right when he chose not to attend the pre-disciplinary hearing. There was no past practice or any provision in the collective bargaining agreement allowing employees to meet directly with Caulfield. The decision to waive the pre-disciplinary hearing was a choice Guthrie made, not the employer. The union failed to set forth a *prima facie* case of discrimination.

36. Officer Heidi Froisland took a written test to promote to sergeant on February 10, 2012, and went through the oral board process on February 16, 2012. On February 28, 2012, Froisland participated in the Firearm Instructor oral board process. She was off-duty for all three of these promotional tests and submitted overtime slips requesting to be paid with compensatory time-off. The requests were denied.

37. Froisland has never held an executive position in the union or testified at a hearing for the union. There was no testimony or evidence provided that Froisland had participated in protected union activities. The union did not establish a *prima facie* case of employer discrimination.

38. MacKenzie was compensated for taking the SWAT test in 2009 and was compensated for assisting with the 2012 sergeant's exam. These two instances are not comparable to

Froisland's and cannot be used to establish a relevant status quo or past practice. There was no evidence provided by the union that established the existence of a relevant status quo or past practice of employees being compensated for taking civil service tests while off-duty.

39. Hugill sent a letter dated October 3, 2011, to the union with an attached red-lined copy of changes the employer was proposing to its personnel policies. The letter requested the union let Hugill know by October 14, 2011, if it believed there were bagainable issues the union would like to address.

40. On October 14, 2011, in a letter drafted by Cline and Associates, the union responded by sending a letter to Hugill. The letter said the changes to the personnel policies involved mandatory subjects of bargaining but did not specify what mandatory subjects the union wanted to discuss or when the union would be available to meet.

41. On October 25, 2011, Hugill asked Jones for an update. Jones said he was trying to set up a time for a meeting between the employer and Cline and Associates.

42. On November 7, 2011, Jones told Hugill he was still trying to set up a meeting with the union attorney. Hugill again told Jones he was looking to get the policies in place by the end of the year.

43. On November 14, 2011, Hugill checked in with Jones and was told that the union was still waiting on a response from Cline.

44. On November 21, 2011, Hugill checked in with Jones and was told the same thing: the union was still waiting on a response from Cline.

45. On December 20, 2011, Hugill sent an e-mail to Jones notifying him that Hugill wanted to set up a meeting within the next two weeks, by January 3, 2012, to discuss the personnel policies.

46. On December 23, 2011, Cline sent an e-mail to Hugill stating his law firm was representing the union over the proposed personnel policy changes.

47. On January 3, 2012, a conference call occurred between Hugill, Jones, Cline, and union attorney Kelly Turner. Cline offered to get back to Hugill by January 6th if there were any issues the union wanted to discuss further. When Hugill asked when they could get together again to discuss the policies, Cline indicated he could meet the following week (ending Friday, January 13th), if there were any issues the union wanted to discuss further.

48. On January 25, 2012, Hugill sent Cline and Jones an e-mail stating that since he had not heard from them by January 13, he would be implementing the proposed policies. Cline responded to the e-mail and objected to a unilateral deadline for implementation of the policies. Cline did not, however, offer a time to meet with Hugill to discuss any issues.

49. The employer made continued requests to the union to bargain the employer's proposed changes to its personnel policies. The employer did not fail or refuse to meet and negotiate with the union.

50. The proposed personnel policies were never implemented for union employees. The policies were only implemented for other employees of the employer. A unilateral change cannot be found without a change being implemented.

51. At no time since October 3, 2011, has the union identified which changes to the proposed personnel policies they want to bargain over. Hugill contacted Jones on several occasions inquiring about a time they could meet to determine if the union had identified any mandatory subjects of bargaining in the proposed changes to the personnel policies. The union refused to bargain by failing to meet and negotiate the proposed personnel policies with the employer.

52. The union engaged in a course of conduct designed to frustrate the collective bargaining process. The union refused to bargain by breaching its good faith bargaining obligation.

53. The employer made requests to meet and requests to set up a time to meet and discuss which mandatory subjects of bargaining the union wanted to bargain over in relation to the proposed personnel policy changes, but did not actually make a request for information.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. As described in Findings of Fact 4 through 6, the employer did not discriminate against Tim Krahn and Eric Jones by requiring them to submit leave requests for time spent in the November 17, 2011 union meeting, and did not violate RCW 41.56.140(1).

3. As described in Finding of Fact 7, the employer did not control, dominate, or interfere with a bargaining representative by its actions regarding the November 17, 2011 union meeting, and did not violate RCW 41.56.140(2).

4. As described in Finding of Fact 8, the employer did not refuse to bargain or commit a unilateral change violation in relation to holding union meetings on City property or paid release time for employees to attend these meetings, and did not violate RCW 41.56.140(4).

5. As described in Findings of Fact 9 through 11, the employer did not interfere with employee rights by informing Matthew Porter that he needed to submit a leave request to observe the December 7, 2011 unfair labor practice hearing, and did not violate RCW 41.56.140(1).

6. As described in Findings of Fact 12 and 13, the employer did not discriminate against Tim Krahn, Eric Jones, and Delsin Thomas by denying them compensation for testifying

at the December 7, 2011 unfair labor practice hearing, and did not violate RCW 41.56.140(1).

7. As described in Finding of Fact 14, the employer did not refuse to bargain commit a unilateral change violation by not compensating employees when they testify for the union at an unfair labor practice hearing or attend such hearings as an observer while on duty, and did not violate RCW 41.56.140(4).

8. As described in Findings of Fact 15 through 18, the employer did not interfere with employee rights by making a settlement offer to resolve pending litigation between the parties, and did not violate RCW 41.56.140(1).

9. As described in Findings of Fact 19 through 23, the employer did not discriminate against Tam Guthrie in reprisal for filing a grievance by its actions concerning his request to resign and a related severance settlement, and did not violate RCW 41.56.140 (1).

10. As described in Findings of Fact 24 and 25, the employer interfered with employee rights in violation of RCW 41.56.140(1), when Scott Hugill made inappropriate comments to Eric Jones during a January 12, 2012 meeting.

11. As described in Finding of Fact 26, the employer did not control, dominate, or interfere with a bargaining representative, by Scott Hugill's comments to Eric Jones concerning the union's legal representative, and did not violate RCW 41.56.140(2).

12. As described in Findings of Fact 27 through 33, the employer did not make a unilateral change to the grievance procedure by its actions against Tam Guthrie regarding denial of a pre-disciplinary hearing before John Caulfield, not allowing advocates to speak for employees during the pre-disciplinary hearing, or requesting additional information regarding Guthrie's justifications for his actions. The employer did not refuse to bargain and did not violate RCW 41.56.140(4).

13. As described in Findings of Fact 34 and 35, the employer did not discriminate against Tam Guthrie for his decision to waive a pre-disciplinary hearing, and did not violate RCW 14.56.140(1).

14. As described in Findings of Fact 36 and 37, the employer did not discriminate against Heidi Froisland by denying her leave time requests relative to taking civil service tests, and did not violate RCW 41.56.140(1).

15. As described in Finding of Fact 38, the employer did not refuse to bargain or commit a unilateral change violation in relation to compensation for employees taking civil service tests, and did not violate RCW 41.56.140(4).

16. As described in Findings of Fact 39 through 49, the employer did not fail or refuse to meet and negotiate with the union concerning personnel policies. The employer did not refuse to bargain and did not violate RCW 41.56.140(4).

17. As described in Findings of Fact 39 through 50, the employer did not refuse to bargain or commit a unilateral change violation concerning personnel policies, and did not violate RCW 41.56.140(4).

18. As described in Findings of Fact 39 through 51, the union refused to bargain in violation of RCW 41.56.150(4), by failing to meet and negotiate with the employer concerning personnel policies.

19. As described in Findings of Fact 39 through 52, the union refused to bargain in violation of RCW 41.56.150(4), by breaching its good faith bargaining obligations concerning personnel policies.

20. As described in Findings of Fact 39 through 53, the union did not refuse to bargain concerning personnel policies, by refusing to provide relevant collective bargaining information requested by the employer, and did not violate RCW 41.56.150(4).

ORDER

CASE 24665-U-12-6303

The City of Mountlake Terrace, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Interfering with employee rights by making inappropriate comments regarding the union's legal representative.

   b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

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

   a. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

   b. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the City Council of the City of Mountlake Terrace, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

c. Notify the 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 complainant with a signed copy of the notice provided by the Compliance Officer.

d. Notify the Compliance Officer, 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 him with a signed copy of the notice he provides.

CASE 24669-U-12-6307

The Mountlake Terrace Police Guild, 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 by failing to meet and negotiate with the employer concerning personnel policies.

b. Refusing to bargain by breaching its good faith bargaining obligations.

c. In any other manner interfering with, restraining or coercing employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

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

a. Upon request, meet and negotiate in good faith with the City of Mountlake Terrace, concerning personnel policies.

b. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where union notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

c. Read the notice provided by the compliance officer into the record at a union meeting of all employees in the bargaining unit and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

d. Notify the 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 complainant with a signed copy of the notice provided by the Compliance Officer.

e. Notify the Compliance Officer, 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 him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 1st day of August, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

KRISTI L. ARAVENA, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

CASE 24665-U-12-6303
DECISION 11831 - PECB

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union)**
- **Bargain collectively with your employer through a union chosen by a majority of employees**
- **Refrain from any or all of these activities except you may be required to make payments to a union or charity under a lawful union security provision**

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT THE *CITY OF MOUNTLAKE TERRACE* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY interfered with employee rights by making inappropriate comments regarding the union's legal representative.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL refrain from making inappropriate comments regarding the union's legal representative.

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.

DO NOT POST OR PUBLICLY READ THIS NOTICE.

AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.

CASE 24669-U-12-6307
DECISION 11832 - PECB

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union)**
- **Bargain collectively with your employer through a union chosen by a majority of employees**
- **Refrain from any or all of these activities except you may be required to make payments to a union or charity under a lawful union security provision**

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT THE *MOUNTLAKE TERRACE POLICE GUILD* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY refused to bargain by failing to meet and negotiate with the employer concerning personnel policies.

WE UNLAWFULLY refused to bargain by breaching our good faith bargaining obligations concerning personnel policies.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL upon request, meet and negotiate in good faith with the City of Mountlake Terrace, concerning personnel policies.

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

DO NOT POST OR PUBLICLY READ THIS NOTICE.

AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
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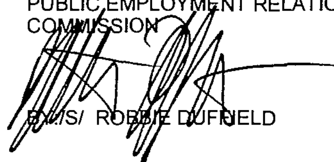
MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 08/01/2013

The attached document identified as: DECISION 11831 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION



BY: /S/ ROBBIE DUFFIELD

CASE NUMBER: 24665-U-12-06303 FILED: 03/16/2012 FILED BY: PARTY 2

DISPUTE: ER MULTIPLE ULP
BAR UNIT: LAW ENFORCE
DETAILS: 25163-S-12-0317
COMMENTS:

EMPLOYER: CITY OF MOUNTLAKE TERRACE
ATTN: JOHN CAULFIELD
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PARTY 2: MOUNTLAKE TERRACE POLICE GUILD
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

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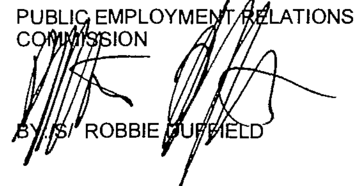

CASE NUMBER:	24669-U-12-06307	FILED:	03/16/2012	FILED BY:	EMPLOYER
DISPUTE:	UN GOOD FAITH				
BAR UNIT:	LAW ENFORCE				
DETAILS:	-				
COMMENTS:					

EMPLOYER: CITY OF MOUNTLAKE TERRACE
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