City of Puyallup, Decision 6784 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUYALLUP POLICE OFFICERS' ASSOCIATION,	)	
Complainant,	)	CASE 14139-U-98-03505
vs.	)	DECISION 6784 - PECB
CITY OF PUYALLUP,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER.

Cline and Associates, by James M. Cline, Attorney at Law, appeared on behalf of the union.

Summit Law Group, by Bruce L. Schroeder, Attorney at Law, appeared on behalf of the employer.

The Puyallup Police Officers' Association (union) filed a complaint charging unfair labor practices on September 14, 1998, naming the City of Puyallup (employer) as respondent. A hearing was held on February 2 and 11, 1999, before Examiner Walter M. Stuteville. The parties filed post-hearing briefs to complete the record.

The preliminary ruling issued on October 8, 1998, under WAC 391-45-110,[1] found a cause of action to exist with respect to union allegations that the employer interfered with and discriminated against a bargaining unit employee when it resisted his requests for union representation at a meeting held on May 25, 1999, and then charged that employee with insubordination; that the employer

[1] At this stage, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Commission.

engaged in further interference and discrimination when it removed the same employee from a narcotics investigation task force on June 2, 1998; and that the employer refused to bargain and circumvented the exclusive bargaining representative when it insisted that the employee assigned to the narcotics task force sign a waiver of contractual rights in the event of a shooting. The Examiner rules that the employer was not refusing to bargain or circumventing the union when it removed the employee from the narcotics task force, but that it violated RCW 41.56.140(1) when it asked Gill's union representative to leave the May 26, 1998 meeting and then proceeded to threaten him with insubordination.

BACKGROUND

Puyallup is a growing community with a population of approximately 30,000, situated in Pierce County.[2] The union represents a bargaining unit of approximately 40 uniformed police officers. The employer and union are parties to a collective bargaining agreement covering that bargaining unit, effective from January 1, 1998 through December 31, 2000.

The employer is a participant in a county-wide narcotics task force, known as the Tahoma Narcotics Enforcement Team (TNET), which has objectives set forth in a "Standard Task-Force Agreement" as follows:

> A. Disrupt the illicit drug traffic in the Pierce County area by immobilizing targeted violators and trafficking organizations.
>
> B. Gather and report intelligence data relating to the trafficking in narcotics and dangerous drugs.

---

[2] The 1998-1999 Directory of Washington City & Town Officials lists the population as 29,490.

C. Conduct undercover operations where appropriate and engage in such other traditional methods of investigation in order that the Task Forces's activities result in effective prosecution before the courts of the United States and the State of Washington.

The federal government, the Washington State Patrol, Pierce County, and the cities of Sumner and Bonney Lake are members of that task force, in addition to Puyallup. Five police officers from among the participating entities, two office assistants, and a deputy prosecuting attorney from Pierce County are assigned to work for the task force. The federal government provides a resident agent and funds for office space, office equipment, investigative equipment, travel, and training. The governing body of the task force is an advisory board made up of participating agencies. The chief of police in Puyallup, Lockheed Reader, is a member of that advisory board, and was its chairman in 1997 and 1998.

Throughout 1995 and into 1996, Sergeant Roger Lake of the Washington State Patrol had the primary responsibility for supervising the personnel assigned to TNET. Employees assigned to work with TNET reported to Lake, but they continued to be employees of their respective agencies and continued to be paid by their respective agencies. Officer Don Gill was the Puyallup Police Department Officer assigned to work with TNET.

Changes in TNET -

In 1997, the TNET board began considering a merger with the federal Drug Enforcement Agency (DEA). Such a merger would provide greater resources through the DEA, and would enable TNET to use a broader range of drug enforcement actions. Of particular relevance to this case, one result of such a merger would be that the police officers assigned to TNET would be deputized similar to federal marshals. The union was kept abreast of this proposed merger through periodic meetings. Early in 1998, the merger was approved.

When the merger was implemented, the DEA's local resident agent-in-charge, George Yerry, was given responsibility for management of the task force. As one of his first actions, Yerry instructed each of the participating police officers to complete a standard, federal Deputization Request/Authorization Form. Part IV of the form is the Oath of Office, which is to be signed and dated by the task force officer and the Special Agent in Charge. The second paragraph of the oath reads as follows:

> I understand that, upon deputization, I will be subject to the provisions contained in 5 U.S.C. 3374(C), including the provisions relating to the unauthorized use of official Government vehicles. I further certify that I have read, understand, and agree to abide by the standards of conduct described in Section 2735 of the DEA Personnel Manual and Subchapter 32 of the DEA Agents Manual pertaining to the dissemination of information.

Completion of that form was necessary to give the officers the broad powers of arrest, similar to the arrest authority of a United States Marshall, which was one objective of the merger.

Gill did not immediately sign the Deputization Request/Authorization Form, and instead turned it over to his union's officers. In turn, the union officers sent it to the union's attorney, Patrick Emmal, for advice. Because he had not signed the form, Gill was restricted as a member of the drug task force, and was also excluded from eligibility for federal government reimbursement for overtime work he performed for the task force.[3]

On May 22, 1998, Sergeant Joe Sokonik and Commander Ron Erickson of the Puyallup Police Department met with Yerry, to seek clarification concerning certain DEA procedures. During the course of the

---

[3] Although the law enforcement officers assigned to TNET were paid by their own employers, overtime worked on task force activities was reimbursed by the DEA.

meeting, Yerry told them that he had not yet received the signed deputization form from Gill.

The May 26, 1998 Meeting -
Sokolik and Erickson scheduled a meeting with Gill for May 26, 1998, to discuss the results of their meeting with Yerry. Gill arrived for the meeting accompanied by the vice-president of the union, Dave McDonald. Erickson immediately questioned why McDonald was at the meeting, stated that the meeting was not disciplinary, and that McDonald was not invited to the meeting. Over Gill's protests, McDonald left the area and the meeting proceeded with only Sokolik, Erickson, and Gill in attendance.

During the course of the meeting, Gill expressed negative comments concerning the merger of TNET with the federal agency. Erickson responded with explanation of why it was important to the employer that the federal deputization form be completed. Erickson ended the meeting by ordering Gill to sign the deputization form and informing him that refusing to sign the form would be considered grounds for insubordination.

Gill delivered the signed deputization form to the employer the following morning. Along with the signed form, he included the following memo:

> I don't know about you but I was very disappointed with our meeting yesterday, it went poorly from the very start. My instincts were correct when I asked McDonald to attend, I knew what was coming but you re-ensured [sic] me that the conversation about removing me from TNET would not occur and our meeting was simply a conversation about the merger and some of the problems that needed to be worked out. But instead it was in fact exactly what I had heard it to be about, my possible removal from TNET and insubordination, which can result in my termination.

> George [Yerry] provided us with the improper forms 5 weeks ago, which I had already signed and turned in, but they had to be replaced with the correct forms, DEA takes over TNET a month early, but no administrator considers there might be some police association concerns and because I have the merger contract checked by the Police Association and because I get threatened with a disciplinary action that can lead to my termination.
>
> On the plus side the proper forms are signed, we both learned that George has a great deal of influence with our Chief, policy is made by the budget restrains and the problem solving techniques (COP and POP) designed by the department to use with the general public are ignored when problems within the department arise with from line employees.
>
> It will be a difficult task to work for a person who can simply pick up a phone and have your career threaten [sic], but lets see how it goes.
>
> I sincerely hope this merger works, but I know someday people in our department and community will regret this move, some of us already do.
>
> Anyway I'll keep a [sic] eye out for George's "china white", as everyone knows it [sic] a huge problem in our community.

The term "George's China White" was explained as a reference to heroin, and to a difference of opinion between Gill and Yerry concerning whether heroin or methamphetamines were more of a problem in Pierce County.[4]

The June 3, 1998 Meeting -

Because of concerns expressed by Yerry about Gill's commitment to the redesigned task force, Erickson asked Gill to meet with him and Yerry to discuss any issues or concerns that Gill still had about the TNET/DEA merger. The meeting occurred on June 3, 1998, but no

---

[4] Gill apparently believed that this illustrated that Yerry was an "east coast guy" and did not fully understand street drugs on the west coast.

action was taken and the meeting apparently did not resolve any issues for any of those present.

Following the June 3 meeting, Yerry sent a letter to Erickson, as follows:

> Reference is made to our conversation on June 3, 1998 with Officer Don Gill. After careful consideration, it is my impression that Officer Gill is reluctant to commit himself to the policies and mission of the new Tacoma Regional Task Force.
>
> I will fully support whatever action the Puyallup Police Department takes concerning this matter.

An inference is available that the substance of Yerry's message was communicated to Erickson even before the letter arrived.

The Re-assignment of Officer Gill -

Later in the day on June 3, 1998, Gill was informed in writing that he was to be removed from the task force. The document included:

> As of today, June 3, 1998, I am transferring you from TNET, to the Puyallup Police Department Investigations Division. You will be reporting to me until a transfer to the Patrol/Traffic Division can be scheduled.
>
> This transfer is a result of the difficulty you are having adjusting to the TNET merger with DEA. You have not responded positively to the merger. You also will not make the necessary strong commitment to support the mission and philosophy of the new Task Force. Therefore, it is in the best interests of the Puyallup Police Department and the Task Force that this transfer occurs.
>
> The Department recognizes and appreciates the contributions you have made while assigned to TNET.

[Capitalization as in original.]

Gill requested a meeting with the chief to discuss his transfer. At a meeting held on June 5, 1998, Reader concurred that Gill's removal from the TNET task force was appropriate. Gill was replaced on TNET by Officer Steve Pigman of the Puyallup Police Department.

POSITIONS OF THE PARTIES

The union contends the employer circumvented the union and refused to bargain by: Requiring Gill to sign a "deputizing" document which waived rights which the union alleges are mandatory subjects of bargaining; unilaterally changing rules concerning overtime opportunities; and allowing the federal task force to suspend negotiated rules involving shootings. It further asserts that the employer committed an interference violation when it refused to allow Gill union representation during the May 26 meeting.

The employer denies that it violated Gill's statutorily protected rights when it removed him from the drug enforcement task force. It argues that Gill had been clear in his negative opinion about the merger of the task force and the federal Drug Enforcement Agency, and that the employer should not be required to maintain an employee's assignment in the face of clearly expressed unhappiness and disagreement. It denies that Gill's rights were violated during the meetings he attended which led to his transfer.

DISCUSSION

These parties and their collective bargaining relationship are subject to the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. This unfair labor practice proceeding is conducted under Chapter 391-45 WAC. As the moving party, the union has the burden of proof on all of its claims.

The Refusal To Bargain Allegations

Where eligible employees have organized and selected an exclusive bargaining representative under Chapter 41.56 RCW, the employer is obligated to negotiate with that organization about all changes of the wages, hours or working conditions of bargaining unit employees. RCW 41.56.080; RCW 41.56.030(4). The duty to bargain is enforced by RCW 41.56.140(4) and RCW 41.56.150(4). Both "unilateral changes" (i.e., changes of mandatory subject of bargaining imposed without notice and opportunity for bargaining) and "circumvention" (i.e., negotiating directly with bargaining unit employees) are sub-types of the "refusal to bargain" unfair labor practice. In this case, the union charges that the employer violated the law by dealing directly with Gill in regard to his signing a "deputizing" document which modified work rules; by unilaterally changing rules concerning overtime opportunities; and by allowing the federal task force to suspend negotiated rules involving shootings.

Timeliness/Absence of Change -
Generally, the union is years too late to complain about details of the TNET program. RCW 41.56.160 limits the processing of unfair labor practice claims to those filed within six months following the alleged misconduct, and Commission precedent requires proof of actual change to give rise to a duty to bargain. In this case, although details of supervision and focus may have changed with the DEA taking over supervision of the drug intervention task force, the basic program and special assignment remain basically the same.

Waiver By Contract -
Special assignments are specifically referenced in the parties' collective bargaining agreement in Article 20 - Management Rights:

> It is recognized that the City shall retain whatever rights and authority are necessary

> for it to operate and direct the affairs of the Police department, including, but not limited to, the right to direct the working forces; to plan, direct and control all the operations and services of the police department; to determine the methods, means organization by which such operations and services are to be conducted; to assign overtime; **to lawfully recruit, assign, reassign, or promote employees to positions within the Police department**; and (for cause) to fairly demote, suspend, discipline, discharge employees; or relieve employees due to lack of work or other legitimate reasons; to make and enforce reasonable rules and regulations; and to make reasonable changes or eliminate existing methods, equipment or facilities, provided that nothing herein relieves the parties of their statutory obligation to engage in collective bargaining.
>
> [Emphasis by **bold** supplied]

While working for TNET, Gill was literally "hired out" to work for the task force and was in a "special assignment" under the collective bargaining agreement. The drug enforcement task force had been established for some time, and acceptance of an assignment to TNET inherently involved being supervised by officials who were not hired and controlled by the employer. By giving the employer the authority to assign and reassign employees to such special assignment, the union has specifically waived by contract its right to demand bargaining concerning this special assignment. The time for the union to demand negotiation of the details of the task force employment, including weapons discharge procedures or overtime standards or any other policy affecting the day-to-day work of a narcotics investigation team, was when the team was first being instituted or when the collective bargaining agreement was being renegotiated. Once the task force was in place and the respective employers agreed to supply employees to staff its programs, it would be difficult, if not impossible, to expect this employer to attempt to renegotiate the details of an employment situation over which it has no direct control.

While Gill's overtime opportunities were changed when he was transferred out of the drug task force, bargaining on that issue was also previously waived by contract. The Management Rights language in the parties' collective bargaining agreement waived the union's bargaining rights in regard to individual transfers into or out of special duty assignments.

Waiver By Inaction -
Some aspects of the TNET assignment did change as a result of the involvement of the DEA. Gill had had notice of those changes, had questioned some of the changes, had discussed them with his peers on the task force, and had even discussed them with representatives of his union. Indeed, his reason for Gill's delay in signing the federal deputization form was that his union attorney was studying the document. However, at no time did the union demand to bargain with the employer concerning any of the details of the special assignment, or even raise any questions as to the details of the reconstituted task force. Therefore, the union waived by inaction any right to challenge changes in work rules that might have resulted from the involvement of the DEA.

Indeed, even Gill did not initially pay much attention to such details. He testified that all of the TNET officers were asked to sign a deputization request/authorization form soon after Yerry took over the task force. Gill immediately signed it because, as he stated in testimony, he was "... just, you know, happy to be there." By the time he was presented with a replacement document to sign (because the earlier form had been outdated), Gill had some serious doubts about the details of the reconstituted task force. It was apparently only then that he decided to actually read what he was being asked to sign, and became concerned about the documents described in the new form.

The union should have negotiated the details of the task force assignment when the task force was first instituted, and may have

done so, but nothing in this record indicates that such negotiation ever took place. Under these circumstances, the Examiner concludes that the union has waived any rights to question the details of the program after the fact. It clearly is a program administered by another agency. Chief Reader's involvement notwithstanding, it was never shown that the Puyallup Police Department has any managerial control over TNET procedures or policies. The employer did not commit an unfair labor practice when the task force modified its administrative structure and its policy concerning weapons discharge.

The Denial of Union Representation Allegation

Employees have a right to the assistance of representatives of their own choosing under RCW 41.56.040. Employer attempts to limit or evade exercise of that right have been found unlawful (as "interference" in violation of RCW 41.56.140(1)) in numerous Commission decisions adopting the policy enunciated by the Supreme Court of the United States in National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975). The Examiner in King County, Decision 4299 (PECB, 1993) examined the pertinent issues involved in a Weingarten situation and (after detailing the origin of the right to union representation in RCW 41.56.040 and 41.56.140(1)) succinctly described when and where the right to representation pertains:

> Chapter 41.56 RCW is patterned after the federal National Labor Relations Act (NLRA), as amended by the Labor Management Relations Act of 1947 (the Taft-Hartley Act). Both the Commission and the Washington courts have looked to decisions construing the NLRA in interpreting parallel provisions of Chapter 41.56 RCW. State ex rel. Washington Federation of State Employees v. Board of Trustees, 93 Wn.2d 60 (1980) at 67-68. In National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975), the Supreme Court of the United States affirmed a National Labor Rela-

tions Board (NLRB) decision which had held that an:

> ... employer's denial of an employee's request that her union representative be present at an investigatory interview which the employee reasonably believed might result in disciplinary action constituted an unfair labor practice in violation of Section 8(a)(1) of the National Labor Relations Act ...

Weingarten, at page 252.

The cited section of the NLRA parallels RCW 41.56.140(1). The Commission has adopted the legal principle enunciated in Weingarten as an operative interpretation of the state law. Examiner decisions applying the Weingarten precedent under Chapter 41.56 RCW date back to at least City of Montesano, Decision 1101 (PECB, 1981). The Commission's adoption of Weingarten principles in Okanogan County, Decision 2252-A (PECB, 1986), was affirmed by the Superior Court for Thurston County. The Commission revisited the Weingarten precedents in City of Seattle, Decision 3593-A (PECB, 1991), where it stated:

> [T]he law in such matters is clear: A public employee has a right to union representation, upon request, at an "investigatory" interview where the facts are to be examined.

Decision 3593-A, at page 6.

More recently, the Examiner in Washington State Patrol, Decision 4040 (PECB, 1992), set forth a step-by-step recitation of the Weingarten standards:

> First, **the right to representation attaches only where the employer compels the employee to attend an investigatory meeting.** ...
>
> Second, a significant **purpose of the interview must be to obtain facts which might support disciplinary action.** ...
>
> Third, the **employee must reasonably believe that potential discipline might result** from the interview. ...

> The fourth element is that the **employee must request the presence of the union representative. ...**

Decision 4040, at pages 9-10 [emphasis by **bold** in original].

The Expressed Intent of the Supreme Court - In explaining its rationale for allowing employees a right to union representation at investigatory interviews, the Supreme Court made reference to several NLRB decisions in its Weingarten decision. The Court quoted from Mobil Oil Corp., 196 NLRB 1052 (1972), as follows:

> [I]t is a serious violation of the employee's individual right to engage in concerted activity by seeking the assistance of his statutory representative if the employer denies the employee's request and compels the employee to appear **unassisted** at an interview which may put his job security in jeopardy.

Weingarten, at page 257. [Emphasis by **bold** supplied.]

Two paragraphs later, the Supreme Court quoted from Quality Mfg. Co., 195 NLRB 197 (1972 as follows:

> We would not apply the rule to such run-of-the-mill shop-floor conversations as, for example, the giving of instructions or training or needed corrections of work techniques. In such cases there cannot normally be any reasonable basis for an employee to fear that any adverse impact may result from the interview, and thus we would then see no reasonable basis for him to seek the **assistance** of his representative.

Weingarten, at pages 257-58. [Emphasis by **bold** supplied.]

The Supreme Court then quoted, with approval, from the NLRB's brief in the Weingarten case, stating:

> The representative is present to **assist** the employee, and may attempt to **clarify** the facts or **suggest** other

> employees who may have knowledge of them.
>
> Weingarten, at page 260. [Emphasis by **bold** supplied.]

An active role for the union representative was also seen as consistent with the general purpose of the NLRA, as described by the Supreme Court later in Weingarten:

> The [NLRB's] construction plainly effectuates the most fundamental purposes of the Act. In section 1, 29 U.S.C. section 151, the Act declares that it is a goal of national labor policy to protect "the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of ... mutual aid or protection." To that end the Act is designed to eliminate the "inequality of bargaining power between employees ... and employers." Requiring a lone employee to attend an investigatory interview which he reasonably believes may result in the imposition of discipline perpetuates the inequality the Act was designed to eliminate, and bars recourse to the safeguards the Act provided "to redress the perceived imbalance of economic power between labor and management." [citation omitted] ...
>
> Weingarten, at pages 261-62.

The Court then listed the many benefits that occur when union representation is allowed at investigatory interviews, stating:

> The Board's construction also gives recognition to the right **when it is most useful** to both employee and employer. A single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate **to relate accurately** the incident being investigated, or too ignorant **to raise extenuating factors.** A knowledgeable union representative could assist the employer by **eliciting favorable facts,** and save the employer production time

> by getting to the bottom of the incident occasioning the interview. ..."
>
> Weingarten, at pages 262-63. [Emphasis by **bold** supplied.]

The Commission affirmed in King County, Decision 4299-A, and it cited that Examiner decision with approval in City of Bellevue, Decision 4324-A, (PECB, 1994).[5]

The May 26, 1998 Meeting -

Based on the foregoing analysis, the union argues that Gill's right to representation was unlawfully interfered with when his union representative, MacDonald, was excluded from the May 26, 1998 meeting. The four step analysis in Washington State Patrol, supra, is applied to the details of that meeting in the following fashion:

- The employer compelled Gill to attend the meeting. Commander Erickson asked Gill to meet with him to discuss the TNET assignment. Even without any formal, written directive, it would be difficult in any employment setting -- and even more difficult in context of the paramilitary rank structure of a police department -- to view this request as something less than compelling, in most supervisor - employee settings, but particularly in a police department, it would be difficult not to view this as something less than a "compelling" request to attend.

- The meeting was designed to obtain facts which might support action against Gill. Although Erickson testified that he had not consciously thought of removing Gill from the task force

---

[5] The union cites Whatcom Transportation Authority, Decision 5276 (PECB, 1995), in favor of a two-step Weingarten analysis. Those two steps are the final two steps of the Washington State Patrol analysis, which is more balanced of the two approaches, relying not only on the employee's understanding and request, but also considers the employer's reasons for calling the meeting.

or of imposing discipline when he scheduled the meeting, the fact that both actions were threatened during the course of the meeting supports a conclusion that both of those actions were within the realm of possible reactions. Moreover, Erickson described his intent as "... to **have Don explain to me** from him [sic] what his issues and concerns were ...", which certainly indicates an investigatory purpose.

- Gill reasonably believed that the meeting could result in some action adverse to him. Gill knew that his signature on the federal deputization form had been requested, and that some time had passed since he had been asked to sign the form. Gill knew that an employee from another TNET participant agency had been threatened with discipline for failure or refusal to sign the federal form, and he believed the same thing would happen to him.

- It is undisputed that Gill asked the union vice-president to accompany him to the May 26, 1998 meeting, and that the employer was aware of Gill's request for representation during the meeting. Gill had previously sought assistance from his union because of concerns about the federal form. He believed that the meeting concerned his not having signed the deputization form, and that he might be disciplined for that refusal.

The facts of this case do not fit the breach of rules/misconduct situation often encountered in Weingarten cases, and the Examiner credits Erickson's testimony that he had not intended to threaten discipline when he scheduled the meeting with Gill, but that does not relieve the employer of its obligation to respect the right of its employee to representation under Weingarten. Employer intent to interfere is not a required element of proof for finding an "interference" violation under RCW 41.56.140(1).

Avoidance of a violation would not have been difficult in this instance. McDonald was already present at the meeting, so that there was no issue about delay until a union representative could be present. All the employer would have had to do was to allow the union representative to remain in the meeting. Instead, Erickson made a call which was not his to make: The right to representation is the employee's, not the employer's; if the reasonability of the employee's perceptions are to be decided at all, that is done by the Commission rather than by the employer. Proof that Erickson or any other employer official reasonably had different perceptions of the situation is irrelevant. An employer official who refuses an employee's request for representation, as Erickson did here, assumes a substantial risk.[6]

The finding of a violation in this case also underscores the importance of the disciplinary threat which actually occurred. The right to union representation applies to a meeting which is convened for another purpose but actually turns into an investigatory session. Gulf State Manufacturing v. NLRB, 704 F.2d 1390 (5th Circuit, 1983). Although the threat of discipline may have come about in this instance because of Gill's continued resistence to signing the federal form, it should not have been utilized without due consideration on the part of the supervisor. It would have been appropriate for Erickson either to have McDonald rejoin the meeting or to reschedule the meeting, when it became apparent that the possibility of discipline was going to be discussed. This is the real essence of Weingarten: Ensuring that the employee is fully aware of what a meeting is going to be about, and providing safeguards when an investigatory inquiry could lead to discipline. The employer interfered with Gill's rights as a represented

---

[6] Repeated attempts by an employer to defend the actions of supervisors who talked employees out of asserting their right to representation eventually led to imposition of an extraordinary remedy in City of Seattle, Decision 3593 (PECB, 1990). No such remedy is warranted here, for a first violation of this type.

employee when it excluded Gill's union representative from the meeting and then proceeded to threaten Gill with discipline.

The June 3, 1998 Meeting -
While a second meeting concerning Gill's TNET assignment occurred on June 3, 1998, Gill did not request that a union representative be present. Therefore, the fourth step of the Washington State Patrol test is not satisfied. City of Seattle, Decision 3593-A (PECB, 1991). The employer did not commit an unfair labor practice in the process of conducting the June 3, 1998 meeting.

Remedy

The employer argued that, even if the Examiner found the employer had violated the principles of Weingarten, it would be a technical violation. It asserted that such a violation would not deserve a "make whole" remedy returning Gill to the drug task force. The Examiner agrees with this argument.

Under both Okanogan County, supra, and federal precedent, complete overturning of a discharge or other employer action is not an automatic remedy for a Weingarten violation. In this case, Gill made it clear, first in correspondence and later in testimony, that he did not agree with the DEA supervision of TNET, and that he believed that the reconstituted task force would not survive. Given that opinion, and the fact that the employer had relied on valid contract language when it reassigned Gill out of the task force, a remedy which returns Gill to the task force would be inappropriate. Similarly, to award Gill back pay for the loss of overtime opportunities would not be justified, when his reassignment was not a violation of the collective bargaining agreement and the overtime was never a financial obligation of this employer. The remedial order will focus, instead, on the actions of the employer and the manner in which it handles employee discipline.

FINDINGS OF FACT

1. The City of Puyallup is a public employer within the meaning of RCW 41.56.030(1). During the period pertinent here, Lockheed Reader was the Chief of Police, Ronald R. Ericson was the commander of the Investigations Division, and Joseph Sokolik was a sergeant in the Puyallup Police Department.

2. The Puyallup Police Officers' Association, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of non-supervisory law enforcement officers employed by the city of Puyallup.

3. During the period pertinent to this controversy, the employer and union were parties to a collective bargaining agreement which reserved to the employer an authority to make special assignments of its employees. One such special assignment was the Tahoma Narcotics Enforcement Team (TNET), which originally consisted of representatives of the cities of Puyallup, Sumner, and Bonney Lake; and Pierce County and the Washington State Patrol, using office space and office and investigative equipment provided by the federal government under the direction of a board made up of representatives of the participating agencies.

4. During the period pertinent, Donald Gill was employed by the City of Puyallup as a police officer in the bargaining unit represented by the Puyallup Police Officers' Association. Gill was assigned to the TNET, where he was supervised by officials not under the control of the City of Puyallup.

5. Early in 1998, the TNET board decided to merge TNET with the federal Drug Enforcement Administration (DEA). As a result of that merger, supervision of the task force was shifted from a Washington State Patrol employee to the resident DEA agent.

6. In connection with the change to federal supervision, Gill and other local government employees assigned to the TNET were asked to sign a federal deputization form which gave them authority similar to a federal marshal. Gill signed the form.

7. During or about March 1998, Gill and other local government employees assigned to the TNET were asked to sign another federal deputization form, because the forms they had signed earlier were obsolete. Gill was unwilling to sign the form because of references to the DEA Personnel Manual and the DEA Agents Manual, neither of which he had the opportunity to read. Gill submitted the federal materials to his union and, in turn, the union submitted those materials to its attorney for advice. The union did not request that the employer engage in collective bargaining with respect to either the merger decision or any effects of the merger on the wages, hours or working conditions of bargaining unit employees.

8. On an unspecified date prior to May 26, 1998, Gill learned that another TNET officer had been threatened with discipline by his respective local government agency, for not having signed the deputization form.

9. Ericson and Sokolik called Gill into a meeting on May 26, 1998, with the intention of asking Gill questions concerning his failure or refusal to sign the federal deputization form.

10. Gill believed that the meeting could result in discipline or other adverse action against him, and he brought the union's vice-president, Officer Dave McDonald, into the meeting with him.

11. Ericson objected to the presence of McDonald at the May 26, 1998 meeting, and excluded McDonald from that meeting while stating the meeting would focus on the DEA/TNET merger.

12. During the course of the May 26, 1998 meeting, Ericson stated that Gill would be removed from the TNET task force and would be charged with insubordination, unless Gill signed and submitted the federal deputization form by the next morning.

13. Gill presented the signed deputization form to Ericson on May 27, 1998, as ordered. Along with the signed form, Gill supplied a memo in which he stated that he regretted the merger.

14. On June 3, 1998, Gill was called into a meeting with Ericson and the DEA resident agent, George Yerry. Gill did not request union representation on that occasion.

15. Later in the day on June 3, 1998, Gill was removed from the TNET task force, and was reassigned to other duties within the Puyallup Police Department and the bargaining unit represented by the union.

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. Under the circumstances of the contractually-authorized special assignment to the Tahoma Narcotics Enforcement Task force (TNET) having been in effect for a substantial period of time, and where the details of that employment setting were outside the control of this employer, and where the union did not make a timely request for collective bargaining on either the decision or its effects, the employer did not commit an unfair labor practice by expecting Gill to comply with the rules and regulations of the TNET and the DEA following a

merger of the TNET into the DEA, or by removing Gill from that special assignment, and so has not violated RCW 41.56.140(4).

3. By refusing the request of Donald Gill for union representation at a meeting held on May 26, 1998, in which the employer interrogated Gill about his failure or refusal to sign a federal deputization form and eventually threatened Gill with discipline, and in which Gill reasonably feared that discipline or other adverse action against him could result, the City of Puyallup interfered with, restrained and coerced its employee in the exercise of rights guaranteed by RCW 41.56.040, and committed an unfair labor practice in violation of RCW 41.56.140(1).

ORDER

The City of Puyallup, its officers and agents; shall immediately:

1. CEASE AND DESIST from:

   a. Refusing employees union representation, upon their request, in investigatory interviews where the employee reasonably fears that discipline could result; and

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

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

   a. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies

of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

b. Read the notice attached hereto into the record at an open, public meeting of the City Council of the City of Puyallup, and permanently attach a copy of that notice to the minutes of that meeting.

c. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice required by the preceding paragraph.

d. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

Issued at Olympia, Washington, on the 11th of August, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

WALTER M. STUTEVILLE, 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.

APPENDIX

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE WILL allow union representatives to be present, upon request of the employee(s) involved, when we are meeting with employees concerning issues which involve an investigation or threat of investigation which could lead to discipline or discharge.

WE WILL read this notice at the notice attached hereto and required preceding paragraphs, at the regularly scheduled public meeting of the Puyallup City Council which immediately follows the receipt of this decision.

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

DATED: _____

CITY OF PUYALLUP

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with te order issued by the Commission may be directed to the Public Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone (360) 753-3444.