STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

COWLITZ COUNTY JAIL EMPLOYEES GUILD,	)	
Complainant,	)	CASE 14618-U-99-03659
vs.	)	DECISION 7037 - PECB
COWLITZ COUNTY,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW
Respondent.	)	AND ORDER

Emmal, Skalbania & Vinnedge, PLLC, by Alex J. Skalbania, Attorney at Law, appeared on behalf of the union.

Amburgy & Rubin, P.C. by Ralph F. Rayburn, Attorney at Law, appeared on behalf of the employer.

On June 3, 1999, the Cowlitz County Jail Employees Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Cowlitz County (employer) as the respondent. The employer filed its answer on September 3, 1999. A hearing was held on November 17, 1999, before Examiner Walter M. Stuteville.[1] The parties filed post-hearing briefs to complete the record.

The preliminary ruling issued in this case under WAC 391-45-110, summarized the cause of action as follows:

[1] Prior to the scheduled hearing date, the undersigned was substituted for the Examiner originally assigned.

1. Interference with employee rights, by subverting the request of Larry Greene for union representation at an investigatory interview held on May 17, 1999; and

2. Interference with internal union affairs, discrimination in reprisal for protected union activities, and discrimination for filing unfair labor practice charges, based on the actions of employer official Lt. Kurt Bledsoe in questioning union official Larry Greene on May 17, 1999.

Based upon the evidence presented, and the record as a whole, the Examiner finds that the employer interfered with the rights of represented employees in interrogating Greene on May 17, 1999, by requiring Greene to answer questions under threat of insubordination and by scheduling the meeting so as to prevent Greene from seeking legal counsel that was known by both parties to be available to him. The Examiner further finds that the union did not carry its burden of proof concerning the charge that the employer discriminated against Greene or the union because of the exercise of statutorily protected rights.

BACKGROUND

The employer provides the services customarily provided by counties, including maintenance and operation of a corrections facility staffed by approximately 33 correction officers. Because the population of Cowlitz County exceeds 70,000, its corrections personnel are "uniformed personnel" under RCW 41.56.030(7) and are eligible for interest arbitration under RCW 41.56.430, et seq.

Lieutenant Kurt Bledsoe has responsibilities which include personnel matters affecting corrections personnel employed by

Cowlitz County, and he is the supervisor responsible for conducting internal investigations. He has held his current position for about five years. During the eight years prior to becoming the operations lieutenant for the corrections division, Bledsoe was a correction officer and correction sergeant with this employer.

The union is an independent labor organization which became the exclusive bargaining representative of the corrections personnel at Cowlitz County in July of 1998, as the result of a representation proceeding conducted by the Commission.[2] Larry Greene is the president of the union; Frank Hauschildt is the vice-president of the union. The union utilizes its attorney, Alex J. Skalbania, in both the representation of bargaining unit members and collective bargaining negotiations.

Although the employer and union had been engaged in negotiations since the union was certified, they had not ratified a collective bargaining agreement as of the date of the hearing in this matter. The union characterizes the parties' current relationship as "acrimonious", and it has filed five separate unfair labor practice complaints against this employer since 1998. This and at least one other complaint involves alleged refusal of the employer to allow bargaining unit employees union representation in meetings called by Bledsoe.[3]

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[2] The corrections personnel had been previously represented by Teamsters Union, Local 58.

[3] In Cowlitz County, Decision 6834 (PECB, 1999), Examiner Vincent M. Helm ruled that the employer committed unfair labor practices by the actions of Bledsoe to deny the requests of two bargaining unit employees for union representation at what became an "investigatory" interview. The Commission affirmed the Examiner's decision, on an appeal filed by the employer. Cowlitz County, Decision 6834-A (PECB, April 12, 2000).

This case involves Bledsoe's actions on the same day the hearing was held in the earlier "right to union representation" case. The employer had previously become aware of complaints concerning the behavior of bargaining unit employee Richard Uhlich in regard to his coworkers. Those complaints concerned verbal harassment and demeaning comments concerning the performance of fellow employees, and particularly that Uhlich appeared to "pick on" coworkers who had been appointed to speciality positions such as "court officer" or "officer in charge". Two bargaining unit employees reported their concerns to their supervisor, Sergeant Jeannie Hollatz, who passed along their concerns to Bledsoe and the superintendent of the corrections facility. The name of Greene came up in follow-up contacts made by Bledsoe.

On May 17, 1999, Bledsoe met with Greene in advance of the hearing on the earlier unfair labor practice case concerning the "right to union representation". After Greene made a request for union representation, Bledsoe adjourned the meeting with assurances that it would not be reconvened the same day. However, Bledsoe reconvened the meeting later that day.

POSITIONS OF THE PARTIES

The union argues that Bledsoe's conduct could reasonably be perceived by employees as multiple violations of their statutory rights. It asserts that Bledsoe committed unfair labor practices by questioning Greene about conversations held at a union meeting, by subverting Greene's attempt to secure the assistance of the union's attorney, by asking Greene substantive questions when Greene did not have union representation, and by the timing of the questioning of Greene in relation to their participation in the

unfair labor practice hearing held on the same day. The union further argues that the nature of the investigation did not require employer interrogation of the union president, or threats of discipline. In essence, the union argues that the employer's actions were motivated by the hearing held that same day, and were intended to avoid having Greene represented by the union's attorney.

The employer defends Bledsoe's actions, asserting that he was attempting to corroborate whether Ulrich was spreading a rumor to undermine the work performance of one or more other bargaining unit employees. Concerning the alleged denial of the right to union representation, the employer argues that Greene had no reason to request representation (because he had been assured that he was not the subject of an investigation), so that no right to representation arose at the first meeting between Bledsoe and Greene on May 17, 1999. As to the second meeting that day, the employer argues that Bledsoe specifically told Greene that he should have a union representative present, and that the employer is not required to schedule investigatory interviews based upon the availability of the union's legal counsel. Concerning the claim of privileged communication, the employer asserts that no such privilege exists because the employer had a legitimate need for the requested information.

DISCUSSION

The Statutory Framework

As was recently discussed by the Commission in City of Vancouver, Decision 6732-A (PECB, 1999), the right of employees to freely

exercise their representation and collective bargaining rights is at the core of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. The rights of employees are set forth in RCW 41.56.040, as follows:

> No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

The Supreme Court of the State of Washington has ruled that Chapter 41.56 RCW is to be liberally construed to effect its purpose of implementing the right of public employees to join and be represented by labor organizations. Nucleonics Alliance v. Washington Public Power Supply System, 101 Wn.2d 24 (1984). See, also, Municipality of Metropolitan Seattle v. PERC, 118 Wn.2d 621 (1992).

Enforcement of the statutory rights conferred in RCW 41.56.040 is accomplished through unfair labor practice proceedings. RCW 41.56.140 enumerates unfair labor practices by a public employer:

> It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
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> (2) To control, dominate or interfere with a bargaining representative;
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> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
>
> (4) To refuse to engage in collective bargaining.

The Commission has jurisdiction to determine and remedy unfair labor practices. RCW 41.56.160. The burden of proof in an unfair labor practice proceeding rests with the complaining party, and must be established by a preponderance of the evidence.

To establish an "interference" violation under RCW 41.56.140(1), a complainant need only establish that an employer engaged in conduct which employees could reasonably perceive as a threat of reprisal or force or promise of benefit associated with their union activity. City of Seattle, Decision 3066 (PECB, 1989); affirmed Decision 3066-A (PECB, 1989). See, also, City of Pasco, Decision 3804-A (PECB, 1992), and cases cited therein. It is not necessary for a complainant to show that the employer acted with intent or motivation to interfere. Nor is it necessary to show that the employees concerned were actually interfered with or coerced. It is not even necessary to show anti-union animus for an interference charge to prevail. Clallam County v. PERC, 43 Wn.App. 589 (1986).

The Right to Union Representation -
Affirming a National Labor Relations Board decision in National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975), the Supreme Court of the United States ruled that an employee's rights under the National Labor Relations Act (NLRA) are violated where:

(1) The employee reasonably believes that the purpose of an employer-called meeting is for eliciting information which might support potential disciplinary action;

(2) the employee requests union representation; and

(3) the employer refuses the employees' request for union representation.

The basic premise of Weingarten is to insure that employees have the assistance of their exclusive bargaining representative in

circumstances where the employee may be too intimidated, inarticulate or unsophisticated to properly present the facts in an investigatory setting. The right to union representation applies to an interview which turns into an investigative session, even if it was originally convened (and/or announced) for a different purpose. Gulf State Manufacturing v. NLRB, 704 F.2d 1390 (5th Cir. 1983). Such requests for assistance are regarded as being part of the employee's statutory right to a representative of his or her own choosing, and the denial of the request is deemed to be an unlawful interference with such rights. An employee must specifically request representation, and may waive that right.[4]

The Public Employment Relations Commission has adopted the Weingarten policy as applicable under state collective bargaining laws which parallel the NLRA. See, Okanogan County, Decision 2252-A (PECB, 1986). In the recent decision involving these same parties, Cowlitz County, Decision 6832, supra, the Examiner provided a historical account of Weingarten principles. While the existence of reasonable grounds for concern about potential discipline must be evaluated on the basis of objective standards and all of the circumstances in the particular case, under Spartan Stores, Inc. v. NLRB, 628 F.2d 953 (6th Cir. 1980), the Commission has rejected employer attempts to distinguish what they describe as "voluntary" or "non-investigatory" meetings. Like other "interference" claims, the Commission evaluates such questions from the perspective of the employee(s) involved. The Commission has even imposed an extraordinary remedy where an employer committed repetitive violations of this type. See, City of Seattle, 3593-A (PECB, 1989).

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[4] In City of Montesano, Decision 1101 (PECB, 1981), the employee waived her right to union representation by failing to make a timely request.

Interference with Internal Union Affairs -

The employee rights protected by RCW 41.56.040 include the right to attend and participate in union meetings and in union business. RCW 41.56.140(2) is the counterpart to Section 8(a)(2) of the National Labor Relations Act, which was designed to preclude employer intrusion into internal union affairs. See, Washington State Patrol, Decision 2900 (PECB, 1987). An employer commits an "interference" violation under RCW 41.56.140(1) if it engages in (or merely creates an impression that it is engaged in) surveillance of employees' protected activities, even if there was no actual surveillance. City of Longview, Decision 4702 (PECB, 1994); City of Vancouver, supra.

Application of Precedent

Application of the legal principles set forth above calls for detailed review of the facts in this case.

Initial Report of Concerns -

Bargaining unit employees Hauschildt and Richardson approached Sergeant Hollatz, because they were concerned about Uhlich's behavior toward bargaining unit employee Ehrmantrout. Hauschildt testified that he believed Uhlich's critical comments were undermining Ehrmantrout, who had recently been appointed to a speciality position. Nothing in the statute precludes bargaining unit employees from complaining to their supervisors about the misconduct of other bargaining unit employees, and nothing about this particular transaction suggests any employer misconduct.

Although Hauschildt and Richardson asked that their comments be kept confidential, Hollatz reported their concerns to Bledsoe and Corrections Superintendent Price. Thereafter, Price ordered

Bledsoe to investigate further. Nothing in the statute precludes employer officials from exchanging and acting upon information they have lawfully received. Again, therefore, nothing about this particular transaction suggests any misconduct by the employer.

Bledsoe interviewed Hauschildt about the relationship between Uhlich and Ehrmantrout. During that interview, Hauschildt recounted a conversation he had with Greene, in which Greene was quoted as expressing an opinion in words to the effect that "[Y]ou might want to be careful what you say around [Ehrmantrout]." There is no indication that Hauschildt requested union representation, or that the employer committed any violation of Chapter 41.56 RCW, in connection with that interview.

The First Disputed Meeting -

On the morning of May 17, 1999, at approximately 8:15 a.m., Bledsoe asked Greene to meet with him. They met in an unoccupied office, where Bledsoe stated that he was conducting an investigation of Uhlich. Bledsoe turned the meeting into an investigatory interview, however, when he indicated that he wanted to talk to Greene about a conversation alleged to have taken place between Greene and Hauschildt, and when he specifically asked Greene if he had ever told Hauschildt that Ehrmantrout was a management "snitch" or that Ehrmantrout could not be trusted.

Greene replied to Bledsoe's question by stating that the only conversation with Hauschildt that he could remember along those lines was a conversation between union officers, held away from the jail. Greene raised a concern that he, himself, was being investigated, Greene clearly stated that he wanted to have a union representative present if the interview was to continue, and Greene stated that he wanted to be represented by Skalbania (who was to be

in the building for the unfair labor practice hearing later that day). At that point, Bledsoe was required to either: (1) terminate the investigatory interview; or (2) permit Greene a reasonable opportunity to obtain union representation.

The reasonability of Greene's specific request for Skalbania as his union representative need not be decided in this case, because Bledsoe took neither of the roads that were open to him: The meeting was ended, with Bledsoe assuring Greene that a continuation of the meeting could not be scheduled that same day. Up to that point, the evidence does not establish any unfair labor practice by the employer.

The Unfair Labor Practice Hearing -

Examiner Helm held the hearing on the unfair labor practice charges before him on May 17, 1999. That case concerned allegations that Bledsoe interrogated two other bargaining unit employees about their alleged misconduct, after rejecting their requests for union representation. Both Bledsoe and Greene attended that hearing, where Skalbania represented the union.

The Second Disputed Meeting -

Shortly after 3:00 p.m. on May 17, 1999, Bledsoe called upon Greene to meet with him again that afternoon, and specifically advised Greene that he would need union representation for the meeting. Presumably, this occurred shortly after the unfair labor practice hearing ended, and Skalbania had left the employer's facilities.[5] Greene immediately asked another bargaining unit member to attend

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[5] An inference is necessary as to the timing, because the record does not reveal when the hearing was concluded. Since hearings take time, Greene and Bledsoe both attended the hearing and both had returned to work, the Examiner infers that the hearing had recently ended.

the meeting with him. Although Betty Richardson does not hold any office in the union, she was immediately available to meet with Greene and Bledsoe. Against the background of other events that day, the evidence establishes a violation of Greene's right to union representation.

First, the employer prejudiced Greene's rights in regard to his preference for Skalbania as his union representative. Separate and apart from the resumption of the meeting being in direct contravention of Bledsoe's statement that morning, and also separate and apart from the reasonability of the request made by Greene at their meeting that morning, it would have been eminently reasonable for Bledsoe to resume the investigatory interview before Skalbania departed from the Kelso area.[6] Citing Consolidated Casinos Corp., 226 NLRB 988 (1983), the employer argues that an employee does not have a right to insist on representation by a "personal attorney" in a Weingarten situation, and that the rationale for the Weingarten rule (i.e., mutual aid and protection under the terms of the federal law) does not obligate an employer to wait for a personal attorney to be present in order to conduct an investigatory interview. Upon close examination, however, the circumstances in this case do not present a garden variety "I want my own attorney" situation. Rather than being Greene's personal attorney, Skalbania was (and was requested as) the union's representative. This union is a small organization which appears to be typical of independent organizations which rely heavily on the services of law firms for both collective bargaining and representation in various

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[6] The Examiner takes notice of the Commission's docket records for this case, which indicate that Skalbania's office is located in Seattle, and of the Official Washington State Highway Map published by the Washington State Department of Transportation, which indicates that a distance of approximately 125 miles separates Seattle from Kelso (the county seat of Cowlitz County).

types of procedures and proceedings. Bledsoe was aware that Skalbania was present in the county on that day, as both he and Skalbania had been present at the unfair labor practice hearing held that day. In light of Greene's specific request for Skalbania's presence during their first encounter on that day, Bledsoe's actions give every appearance of a deliberate effort to avoid having Skalbania present for his meeting with Greene.[7]

Second, the employer prejudiced Greene's rights in regard to his right to union representation. The employer's assertion that it fulfilled its obligations under the Weingarten precedents is not persuasive. It is certainly true that Bledsoe told Greene to secure representation for their second meeting on May 17, 1999, and that Greene was accompanied to that meeting by another bargaining unit employee, but that is superficial. Richardson was not a union officer or representative. Further, Bledsoe's approach was significantly changed from his low-key approach at the start of the earlier meeting, and he specifically stated that Greene would be subject to discipline for insubordination if he did not answer the questions put to him. Greene asked for time to attempt contact with Skalbania, but Bledsoe denied Greene's request and made it clear that he wanted ***immediate*** answers to his questions. Analysis of the evidence as a whole leads this Examiner to conclude that Bledsoe set up the situation to deny or prejudice Greene's right to

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[7] The employer correctly contends that an employee cannot make unreasonable demands for the presence of a particular union representative under Weingarten, but that argument does not fit the facts of this case. In this instance, it is probable that Skalbania could have participated in the afternoon meeting without any delay, and the employer clearly had notice of that circumstance. It was upon Bledsoe's initiative that the meeting was reconvened that day, yet no reason was given either to Greene at the time or at hearing in this proceeding, as to the reason for the hurried reconvening of the meeting.

effective union representation while giving the appearance - but not the substance - of complying with long-standing Commission precedents. In so doing, the employer committed an unfair labor practice under RCW 41.56.140(1). Cowlitz County, supra.

Third, the employer interfered with internal union affairs by its questioning of Greene, under threat of discipline, about confidential communications between union officials. Greene had raised a difficult legal issue in the morning meeting, when he stated that the conversation he was being questioned about was a discussion of union business between union officers.[8] Bledsoe appears to have recognized that he was treading on thin ice, and he adjourned the meeting to consult with the employer's legal counsel. In regard to this subject matter, he deprived Greene of a similar opportunity for research and consultation, by telling Greene that the meeting would not be reconvened later that day. Thus, it is understandable that Greene made no attempt to discuss the "confidential union communications" issue with Skalbania during a day already crowded with an unfair labor practice hearing. Bledsoe then took advantage of his para-military rank to order Greene in for questioning on short notice. As stated in City of Yakima, Decision 3564 (PECB, 1990):

> "Gotcha" has no place in labor relations, and is not conducive to the public interest in stable employment relationships.

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[8] In testimony in this unfair labor practice proceeding, Greene explained that the conversation among union officers where Ehrmantrout's reputation was discussed had occurred in relation to their evaluation of Ehrmantrout as a possible candidate for union office. The conversation took place during a union caucus during contract negotiations with this employer. Ehrmantrout's reputation would have been a logical part of their discussion in that context.

With forewarning that he was delving into difficult legal issues, Bledsoe forged ahead with questioning Greene about conversations among union officers on matters of internal union affairs. Greene again responded that the conversation concerned union business and was conducted away from the workplace and during off duty hours, but Bledsoe ordered Greene to answer his questions. Far beyond reasonable perception of this conduct by employees, Bledsoe's actions give every appearance of a deliberate and intentional effort to prevent Greene from seeking legal advice on a matter of legitimate interest to the union, and constituted an unlawful intrusion into internal union affairs. City of Vancouver, supra.

The fact that Greene was not disciplined does not excuse the employer's unlawful conduct. Greene complied with Bledsoe's direct order under threat of discipline. Greene acknowledged having warned Hauschildt to be careful about what was said around Ehrmantrout, but Greene denied that the word "snitch" was used. Greene denied stating that he had not claimed to have information from a "reliable source", and told Bledsoe that he had come to his conclusions about Ehrmantrout from his own observations. The questioning continued, but Greene did not change his positions. The interrogation then ended without further threats of discipline against Greene. The fact that this occurred in the presence of a bargaining unit employee who was not a union officer compounds the problem for the employer. It was reasonable for Richardson to have perceived Bledsoe's conduct as threats of reprisal associated with Greene's union role and activity, even if Greene handled himself well and Bledsoe did not follow through on his threats.

The employer interprets the union's argument as asserting that any and all discussions between union members are privileged communication, and it asserts that such a claim of privilege conflicts with

its legitimate need to obtain information about Uhlich's workplace conduct, but the employer is in error on both propositions. The conversation between Greene and Hauschildt was not conducted while either employee was on duty. The "election of officers" subject matter clearly concerned internal union affairs, to the point that it is difficult to imagine how it could be characterized as within the scope of legitimate employer interest/inquiry. Employee rights as protected by 41.56 RCW have long included the right to attend and participate in union business. From the earliest days of the National Labor Relations Act (NLRA), employer surveillance of employees when they are engaged in union business has been held to be an unfair labor practice. Such surveillance would necessarily have a "chilling effect" on employee participation in union meetings and union affairs. Town of Granite Falls, Decision 2692 (PECB, 1987); City of Longview, Decision 4702 (PECB, 1994).

Further undercutting the employer's defense is the relatively minor nature of Greene's involvement in the situation that was under investigation. Greene was reputed to have merely repeated some statement or information from the bargaining unit employee under investigation. In City of Vancouver, supra, the Commission wrote:

> While circumstances may exist where it would be lawful for an employer to interrogate its employees about some unlawful conspiracy developed (or being developed) behind the closed doors of a union meeting, our thorough review of the record indicates no such facts in this case. Indeed, the employer appears to have over-reacted to exceedingly limited information, and to have gone on a fishing expedition.

In this case, as in Vancouver, the evidence supports a conclusion that the employer was, at most, on a fishing expedition. On the

basis of a concern that one employee was undermining another, the employer assigned an investigator who threatened a different employee with discipline if he did not respond to questions about a conversation with a third employee. Without going into the options available to this employer, it suffices to say that Bledsoe's actions appear to this Examiner to be an overreaction to the situation. This employer has shown **no** legitimate business reasons for such a vigorous inquiry and its defense on that basis is rejected.

Discrimination Allegations

As a part of its argument, the union asserts that Bledsoe's interrogation of Greene on the same day a Commission hearing was being held on another unfair labor practice case gives the impression that the union president was being punished for the filing of the earlier charge. Thus, it is charging that the employer violated Greene's statutory right to file unfair labor practice charges. This claim is based on RCW 41.56.140, which makes it an unfair labor practice for a public employer:

> (3) To discriminate against a public employee who has filed an unfair labor practice charge; ...

The standard of proof for "discrimination" claims was summarized in Seattle School District, Decision 5946 (PECB, 1997), as follows:

> In Wilmot v. Kaiser Aluminum, 118 Wn.2d 46 (1991) and Allison v. Seattle Housing Authority, 118 Wn.2d 79 (1991), the [Supreme] Court [of the State of Washington] adopted a "substantial factor" test for determining discrimination cases. While a charging party retains the burden of proof at all times, it only needs to establish that the statutorily pro-

tected activity was a "substantial" motivating factor in the employer's decision to take adverse action against the employee. As the Court indicated in Wilmot, at page 70:

> If the plaintiff presents a prima facie case, the burden shifts to the employer. To satisfy the burden of production, the employer must articulate a legitimate nonpretextual nonretaliatory reason for the discharge. ... [I]f the employer produces evidence of a legitimate basis for the discharge, the burden shifts back to the plaintiff ... [to] establish [that] the employer's articulated reason is pretextual.

The Commission has embraced a "substantial factor" test. Educational Service District 114, Decision 4361-A (PECB, 1994); City of Federal Way, Decision 4088-B (PECB, 1994). That standard was discussed in North Valley Hospital, Decision 5809 (PECB, 1997) and Mukilteo School District, Decision 5899 (PECB, 1997).

The Prima Facie Case

As described in Seattle School District, Decision 5237-B (EDUC, 1996) and North Valley Hospital, supra, the requirements necessary for a complainant to establish a prima facie case of unlawful discrimination are threefold:

1. The exercise of a statutorily protected right, or communication to the employer of an intent to do so;

2. The employee must be discriminatorily deprived of some ascertainable right, status or benefit; and

3. **There must be a causal connection between the exercise of the legal right and the discriminatory action.**

Proof of one or two of those elements is not sufficient to shift the burden of production to the employer.

[Emphasis by **bold** supplied]

Without clear evidence of some connection between the investigation and the earlier unfair labor practice case, this allegation must be dismissed. See, City of Port Townsend, Decisions 6433-A (PECB, 1999). In this case, the union has not established a causal connection between the earlier unfair labor practice case and the investigatory interview.

First, the subject matter of the investigation had been brought to the employer's attention by bargaining unit employees, without any indication of union animus or misconduct on the part of the employer.

Second, the union did not establish when the conversation between Greene and Hauschildt took place, so it is impossible to form an opinion about whether the timing of the Bledsoe's interview of Greene was suspect - or just coincidence.

Third, although the hearing on the earlier unfair labor practice case was held on May 17, the investigatory interview was begun and the subjects of that investigation were broached before that hearing was convened. The fact that two events occurred on the same day is not, in and of itself, sufficient to meet the union's burden of proof that the resumption/continuation of the earlier meeting was causally connected to the hearing process.

REMEDY

Although this is the second "right of representation" case decided against Cowlitz County in a very brief period of time, and although the employer is responsible for unfair labor practices committed by Bledsoe in both cases, no extraordinary remedy is warranted in this situation. Bledsoe had been accused of misconduct by May 17, 1999, when he committed the acts at issue in this case, but there had been no ruling by that time that his conduct was unlawful. While the Examiner concludes it would be inappropriate to apply the

precedents concerning repetitive violations to Bledsoe's past misconduct, they would certainly be applicable to any future actions of the same type.

FINDINGS OF FACT

1. Cowlitz County is a county of the state of Washington, and is a public employer with the meaning of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

2. Cowlitz County Jail Employees Guild, a "bargaining representative" within the meaning of RCW 41.56.030(30, is the exclusive bargaining representative of a bargaining unit of corrections personnel employed by Cowlitz County. The union's representative for purposes of negotiations and contract administration is its attorney, Alex Skalbania.

3. Larry Greene is the president of the union and Frank Hauschildt is the vice-president of the union. Both of them are employees of Cowlitz County, working within the bargaining unit represented by the union.

4. Kurt Bledsoe is a supervisory employee of Cowlitz County who has responsibility for operations in the corrections facility and for internal investigations.

5. Prior to the events giving rise to this proceeding, bargaining unit members informed their supervisor of alleged misconduct by one bargaining unit employee in regard to undermining another bargaining unit employee serving in a special assignment. The employer initiated an internal investigation conducted by Bledsoe.

6. Prior to the events giving rise to this proceeding, the union filed an unfair labor practice complaint against the employer, alleging an interference with employee rights by Bledsoe's actions denying the requests of bargaining unit employees for union representation at an investigatory interview. A preliminary ruling was issued finding a cause of action to exist in that proceeding, and a hearing was set for May 17, 1999. Skalbania was to represent the union at that hearing.

7. At approximately 8:15 a.m. on May 17, 1999, Bledsoe directed Greene to meet with him. Bledsoe initially stated that Greene was not under investigation, but he proceeded to ask questions about a conversation between Greene and Hauschildt. Greene stated that the conversation concerned a discussion of union business between union officers. Greene formed an opinion that his own conduct was being investigated, and he made a timely request for union representation. Knowing that Skalbania was to be present in the area for the unfair labor practice hearing to be held that day, Greene stated a specific request that Skalbania be present.

8. Bledsoe knew or should have known that Skalbania was to be in the area that day for the unfair labor practice hearing in which Bledsoe's conduct would be at issue, but Bledsoe terminated the meeting and told Greene that it would not be reconvened that day. Greene requested that he be allowed to have Skalbania present as the union representative, if the meeting was to be rescheduled.

9. On May 17, 1999, both Bledsoe and Greene attended the unfair labor practice hearing conducted within the boundaries of Cowlitz County by Examiner Vincent M. Helm of the Public Employment Relations Commission. Skalbania represented the

union at that hearing, but then departed the area when the hearing was concluded.

10. At approximately 3:00 p.m. on May 17, 1999, Bledsoe directed Greene to meet with him again on the subjects they had discussed that morning, and advised Greene that he was entitled to union representation at the meeting. Bledsoe called that meeting in a manner and at a time which disregarded and prejudiced Greene's previous request for Skalbania to be present as his union representative. By contravening his earlier assurances that the meeting would not be rescheduled that day, Bledsoe additionally precluded Greene from researching and/or consulting with other union representatives regarding Bledsoe's questions about internal union affairs.

11. Greene attended the meeting with Bledsoe in the afternoon of May 17, 1999. In the absence of Skalbania or any other union representative, Greene was accompanied by a rank-and-file member of the bargaining unit. Greene made a timely request for representation by a union representative, and requested time to attempt to contact Skalbania. Bledsoe denied Greene's requests for union representation, and directed Greene to answer his questions under threat of discipline.

12. During the investigatory interview held in the afternoon of May 17, 1999, Bledsoe inquired about, and required Greene to disclose details of, discussions held between union officers concerning internal union affairs.

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. The meeting conducted by Bledsoe in the morning of May 17, 1999, became an investigatory interview when Bledsoe asked bargaining unit employee Larry Greene questions which placed the propriety of Greene's conduct in question, and Greene made a timely request for union representation to which he was entitled, under RCW 41.56.040, for at that meeting.

3. By the scheduling of the investigatory interview called in the afternoon of May 17, 1999, the employer prejudiced and interfered with the exercise of the right to representation conferred upon Greene by RCW 41.56.040, and committed unfair labor practices in violation of RCW 41.56.140(1).

4. By the scheduling of the investigatory interview called in the afternoon of May 17, 1999, after having advised Greene that the meeting would not be resumed on that day, the employer prejudiced and interfered with the internal affairs and administration of the union, by precluding Greene from conferring with Skalbania and other union officials concerning the propriety of the employer's inquiries into matters of internal union affairs, and so committed unfair labor practices in violation of RCW 41.56.140(2) and (1).

5. By refusing, during the meeting held in the afternoon of May 17, 1999, Greene's request for time in which to attempt to contact Skalbania, the employer denied Greene's reasonable request for union representation to which he was entitled by RCW 41.56.040, and committed unfair labor practices in violation of RCW 41.56.140(1).

6. By interrogating bargaining unit employee and union officer Larry Greene, under threat of discipline, concerning matters of internal union affairs, after prejudicing the right and

opportunity of Greene to consult with the union's attorney on the subject matter of the interrogation, Cowlitz County committed unfair labor practices in violation of RCW 41.56.140(2) and (1).

7. The union has failed to establish a causal connection between the filing of the unfair labor practice charges heard by Examiner Helm and the subject matter of the investigatory interviews conducted by Bledsoe on May 17, 1999, so that the union has not sustained its burden of proof as to a claim of discrimination under RCW 41.56.140(3) or (1).

ORDER

1. The allegation concerning employer discrimination against Larry Greene is DISMISSED on its merits.

2. Cowlitz County, its officers and agents shall immediately take the following actions to remedy its unfair labor practices:

   A. CEASE AND DESIST from:

      1. Interfering with, restraining or coercing its employees in the exercise of their right to union representation in investigatory interviews where the employee reasonably perceives a possibility of disciplinary action by ignoring or rejecting requests for legal representation when such representation is reasonably available.

      2. Interrogating employees concerning discussions and conduct occurring at private meetings of the Cowlitz County Jail Employees Guild.

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

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

1. 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 respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

2. Read the notice attached to this order into the record at a regular public meeting of the County Commissioners of Cowlitz County, 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.

3. Notify the Cowlitz County Jail Employees Guild, 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 attached to this order.

4. 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 attached to this order.

Issued at Olympia, Washington, this 1st day of May, 2000.

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 OUR EMPLOYEES:

WE WILL NOT ignore, reject disregard and/or refuse the requests of our employees for union representation at investigatory interviews called by the employer, where the employee(s) reasonably perceive discipline could result and where the requested representative is reasonably available.

WE WILL NOT rely, in any manner, upon the investigation conducted with bargaining unit employee Larry Greene on the afternoon of May 17, 1999, as the basis for any future disciplinary action against him.

WE WILL NOT interrogate employees concerning discussions and conduct occurring at private meetings of the Cowlitz County Jail Employees Guild.

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.

DATED: _____

COWLITZ COUNTY

BY: _____
Authorized Representative

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

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

603 EVERGREEN PLAZA BUILDING
P. O. BOX 40919
OLYMPIA, WA 98504-0919

RECORD OF SERVICE

THE ATTACHED DOCUMENT, IDENTIFIED AS: DECISION 7037 - PECB HAS BEEN SERVED BY THE PUBLIC EMPLOYMENT RELATIONS COMMISSION BY DEPOSIT IN THE UNITED STATES MAIL, ON THE DATE ISSUED INDICATED BELOW, 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/ REBECCA AMES

CASE NUMBER: 14618-U-99-03659 FILED: 06/03/1999 ISSUED: 05/01/2000

FILED BY: PARTY 2 DISPUTE: ER MULTIPLE ULP DETAILS: Weingarten Issue

COMMENTS:

Employer:	COWLITZ COUNTY	RALPH F RAYBURN
Attn:	COWLITZ CO COMMISSIONERS	AMBURGEY & RUBIN, P.C.
	207 NORTH FOURTH AVENUE	1750 SW HARBOR WAY, STE 450
	KELSO, WA 98626	PORTLAND, OR 97201-0104
	360-577-3020	(503) 221-0309
Rep by:	DICK ANDERSON	
	COWLITZ COUNTY	
	PO BOX 390	
	KELSO, WA 98626	
	(360) 577-3065	
Party # 2	COWLITZ CO JAIL EMP GLD	ALEX J SKALBANIA
Attn:	LARRY GREENE	EMMAL SKALBANIA & VINNEDGE
	1105 - 15TH AVE STE D 146	10315 GREENWOOD AVE. N, STE C
	LONGVIEW, WA 98632	SEATTLE, WA 98133
	360-577-3094	(206) 464-7984 (206) 310-9731
Rep by:		