STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, Complainant,	)	CASE 15560-U-01-3942
vs.	)	DECISION 7613 - PECB
PORT OF BELLINGHAM, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Schwerin Campbell Barnard by *Sonja D. Fritts*, Attorney at Law, for the complainant.

Halvorson and Saunders by *Larry E. Halvorson*, Attorney at Law, for the respondent.

On January 4, 2001, International Longshore and Warehouse Union (union) filed a complaint charging unfair labor practices with the Commission under Chapter 391-45 WAC, naming the Port of Bellingham (employer) as respondent. A preliminary ruling was issued on January 12, 2001, under WAC 391-45-110, in which a cause of action was found to exist on allegations summarized as:

> Employer interference with employee rights, in violation of RCW 41.56.140(1), by promises of benefit to employees to encourage the filing of a decertification petition and by participating in a misrepresentation of facts to the Commission concerning the processing of the representation petition.

A hearing was conducted on June 27 and 28, 2001, before Examiner Kenneth J. Latsch. The parties filed post-hearing briefs.

Based on the evidence and arguments, the Examiner dismisses most of the "interference" claims advanced by the union, but holds that the employer committed a technical violation by failing to post a notice as required by the Commission's rules regulating the processing of representation petitions.

BACKGROUND

The Employer and its Bargaining Relationships

The Port of Bellingham operates a variety of transportation facilities in several Whatcom County locations. Those facilities include two small craft marinas, a cruise ship terminal, a passenger train station, a shipping terminal, and the Bellingham International Airport. Those operations are under the policy direction of an elected three-member board of commissioners, and Executive Director James Darling reports directly to that board. Each of the employer's operations is supervised by a "director" who also reports to Darling. Larry Boone also reports directly to Darling, and has served as the employer's manager of human resources since October 1998. The employer's administrative offices are located in Bellingham, as are its repair and communications centers.

With a workforce of approximately 80 employees, the employer has collective bargaining relationships with employee organizations representing several bargaining units:

- The International Association of Fire Fighters (IAFF) represents a bargaining unit of "airport technicians" working at Bellingham International Airport.

- The Inlandboatmens' Union (IBU) represents a bargaining unit of ticketing agents at the cruise ship terminal.

- The International Longshore and Warehouse Union (ILWU), Local 7, has represented the employer's longshore employees for well over 15 years.

- ILWU Local 7, has also represented the employer's maintenance employees for some unspecified time. The maintenance employees are covered in a separate collective bargaining agreement.

- ILWU Local 7, is also the exclusive bargaining representative of the bargaining unit involved in this proceeding, which is described as:

> All non-exempt office clerical employees of the Port of Bellingham; excluding supervisors, guards, ticketing agents at the Bellingham Cruise Terminal, and employees represented by other labor organizations.

That bargaining unit has existed since 1990, under *Port of Bellingham*, Decision 3487 (PECB, 1990).

The union and employer signed their initial collective bargaining agreement covering the office-clerical unit on January 22, 1991, and that contract was effective for the period from January 1, 1991, through December 31, 1991.[1] The introductory paragraph of that agreement contained the following language:

> This agreement made and entered into between the Port of Bellingham, a municipal corporation, organized under the laws of the State of Washington, hereinafter designated as "Em-

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[1] Larry Roughton, secretary/dispatcher for Local 7, signed that contract on behalf of the union.

ployer", and the International Longshoremen's and Warehousemen's Union, Local No. 7A, hereinafter designated as "Union".

John Munson, a bargaining unit member who has held several union offices, testified that "Local 7A" was created by the union to deal with the office-clerical employees as a separate group. Local 7A does not have separate bylaws, or dues accounting separate from Local 7; it has a separately-elected slate of officers; it only bargains only with the Port of Bellingham; and Local 7A members ratify contracts as a separate entity from Local 7.

Local 7A and the employer entered into a series of successor collective bargaining agreements during the 1990s. Those contracts specified that Local 7A represented the bargaining unit of office-clerical employees. By calendar year 2000, the parties had gone through at least four rounds of bargaining. Bargaining for a successor contract was set to commence in the latter part of calendar year 2000.

The Decertification Effort

Bargaining unit employee Peter Zuanich emerges as a primary actor in the course of events leading to this unfair labor practice case, as described in the following chronology of events, but Zuanich was not called as a witness by either party. Because his actions are described by other observers and participants, Zuanich's motivations and intentions must be inferred from the point of view of co-workers and management officials who dealt with him in his position of union president.

In January 2000, Zuanich was elected as president of Local 7A. At the same time, Dave Warter and Trudy Marino were elected as "Labor

Relations Committee" members, and Andy Peterson was elected as shop steward.

On August 28, 2000, John Munson met with Zuanich to discuss issues concerning Local 7A's operation. Munson asked to meet with Zuanich because he had been informed that Zuanich had not been conducting regular union meetings for Local 7A members. Munson characterized his meeting with Zuanich in the following terms:

> I introduced myself to Mr. Zuanich and told him that I would be working with him in contract negotiations and I wanted to find out how things had been going. And I asked--I told him that I would make available to him contracts from other port districts that were represented by the ILWU because it would give him a frame of reference as far as what we'd be working on in contract negotiations because I knew that he had never negotiated a contract. He seemed pretty happy at the prospect of getting those contract documents but then proceeded to talk to me about the fact that he didn't really--that they had some real reservations about the value of even being represented by a union at this point in time. He said that he thought that--he had discussions with people at the Port of Bellingham regarding the prospect of a decertification . . .

Munson testified that he told Zuanich that he did not have independent authority to meet with employer representatives on wage issues, and that such matters should be put on the bargaining table. Munson further testified that Zuanich became rather evasive about the discussions, and that Zuanich started using "hypotheticals" in his explanation of events.

The record indicates that, several weeks later, Munson provided Zuanich with the bargaining information that he had promised.

During the same general time period, Zuanich held a bargaining unit meeting at a local restaurant. The record indicates that 10 bargaining unit members attended the meeting. During the course of that meeting, several unit members noted the union's perceived weakness in dealing with the employer, and asked why they should pay dues to an organization that would not support them adequately. The possibility of decertifying the union was raised, and Zuanich appeared to support decertification by stating that all of the bargaining unit employees would earn $30,000 a year or more if they left the union.

Zuanich spoke with several Local 7A members individually about the possibility of decertifying the union:

- Bargaining unit employee Jon Hoffman testified that Zuanich asked him if he would be interested in decertifying the union, and that Zuanich claimed the bargaining unit employees would make more money if they were not unionized. Hoffman told Zuanich that he wanted to stay in the union, and that he was not interested in decertification.

- Bargaining unit employee Anthony Flaherty testified that Zuanich approached him at his work site, and suggested decertification was a way to "keep options open as a negotiating tool."

- The record indicates that Zuanich had similar conversations with bargaining unit employees Elsie Nelson and Patricia Paus. In each of those conversations, Zuanich expressed his support for a possible decertification effort.

In addition to his conversations with bargaining unit employees, Zuanich made contact with Port of Bellingham officials about non-union wage rates. On October 9, 2000, Zuanich submitted a "public

disclosure request" seeking a "Port of Bellingham exempt employee salary schedule for year 2000." Zuanich filled out the request as "Peter Zuanich for ILWU," and submitted the request to Human Resources Manager Larry Boone. Boone prepared the requested information for Zuanich to pick up.

On October 18, 2000, Zuanich submitted a second public disclosure request, now asking for a "list of all exempt employees at current salary grade" and the "Executive Director salary and compensation package." Boone responded the same day, sending Zuanich a list of management employee salaries and benefits.

On October 20, 2000, Zuanich and Boone had a private meeting to discuss the upcoming negotiations. Boone testified that the conversation dealt with preliminary matters such as the size of the bargaining teams, who the chief spokesperson for each team would be, and other procedural issues.

In the same general time period, Zuanich met with Boone to discuss the exempt salary information. Zuanich initiated the meeting, and had a number of specific questions concerning new employees being placed on the schedule. Boone testified that he explained the procedure followed by the employer, but that he did not make any reference about the application of the exempt salary schedule for any bargaining unit members.

On October 23, 2000, the parties began negotiations for a successor collective bargaining agreement. Boone was part of a three person bargaining team representing the employer. The union bargaining team consisted of Zuanich and Marino. No officer or other representative of Local 7 participated in that initial meeting. The parties dealt with a number of procedural matters, such as "ground rules" for the negotiations, and the union submitted its initial bargaining demand.

On October 31, 2000, Zuanich filed a petition with the Commission under Chapter 391-25 WAC.[2] He sought decertification of "ILWU 7A, Clerical Union" as the exclusive bargaining representative of the office-clerical employees of the Port of Bellingham.

On November 2, 2000, the Commission sent a letter to Larry Boone, explaining that the petition had been filed and directing the employer to review the provisions of WAC 391-25-140 for the necessary posting of notices associated with the petition. That letter included:

> The employer shall post a notice to employees, in the form specified by the commission, advising of the existence of proceedings under this chapter. The agency shall furnish the employer with copies of such notice, and the employer shall post them in conspicuous places on its premises where notices to affected employees are usually posted. The notice shall remain posted until a certification or interim certification is issued in the proceeding.

The employer was provided with five copies of the specified notice, which included a "types of improper conduct" banner alongside six paragraphs that included:

> • Threats of loss of jobs or benefits, or threats of physical force or violence, made by an employer or union to influence an employee's choice concerning union representation.

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[2] That petition was docketed as Case 15457-E-00-2573. Notice is taken of the Commission's docket records for Case 15457-E-00-2573, which disclose that an investigation conference was scheduled initially for November 30, 2000, but was later delayed to December 13, 2000.

> - Discharge of an employee to discourage or encourage union activity, or a union causing an employee to be fired to discourage or encourage union activity.
> - Promising or granting changes of employee wages, hours or working conditions while the petition is pending before the Commission.
> - Mis-statements of important facts by an employer or union, where the other party does not have a fair chance to reply.
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> . . . .

Nevertheless, several bargaining unit employees testified that they did not see the notices posted at their work locations.

The record reflects that negotiations for a successor contract were suspended after the representation petition was filed.[3]

Zuanich participated in the investigation conference held on December 13, 2000, and an investigation statement issued on December 18, 2000, indicated there were no issues to be resolved in the representation case.[4]

Zuanich had at least one more meeting with employer officials Boone and Darling on December 19, 2000. Boone testified that the meeting took place at Zuanich's request, and that he and Darling only answered questions about the employer's salary schedule for non-represented employees. Bargaining unit member Flaherty testified that he saw Zuanich leaving Darling's office after that meeting,

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[3] The suspension of bargaining was consistent with Commission precedents which have since been codified in WAC 391-25-140(4), effective August 1, 2001.

[4] Notice is taken of the Commission's records for Case 15457-E-00-2573. Posting of the investigation statement and related documents was required by WAC 391-25-220(2).

that Zuanich gave him a "thumbs up" signal as he walked past, and that Zuanich stated that he had done well for bargaining unit members' salaries.

On December 21, 2000, Zuanich sent an e-mail message to bargaining unit members, stating that a unit meeting would be held soon. In pertinent part, the e-mail explained:

> Last month representatives of your union filed a petition with the Public Employment Relations Commission concerning our continued representation by the ILWU. This petition in no way committed us to decertifying the Union but merely gave us another option during wage negotiations . . .
>
> If we as a group choose to decertify our Union the Port is limited to only one option of placing us in the exempt non-represented salary program that is available to all non-represented employees. In order to explain just exactly what this program would mean to each of you individually and discuss the positive and negative aspects of all options available to us, I have scheduled a Union meeting on Friday, December 29th beginning at 5:30 p.m. in the Harbor Center Building . . .

Among those sent that e-mail was Dave Warter, a bargaining unit employee serving as a temporary supervisor.

Bargaining unit member Flaherty subsequently challenged Zuanich about the inclusion of Warter among the addressees of the e-mail message concerning the decertification issue. Zuanich responded that Warter's appointment as a supervisor was temporary, and that Warter should be told about what the bargaining unit was considering.[5]

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[5] Warter was not appointed to a permanent supervisory position until January 15, 2001.

Approximately nine bargaining unit employees met on December 29, 2000, in response to Zuanich's e-mail message. Several bargaining unit members had invited John Munson to attend, and Paul Bigman, a union organizer from the union's Seattle office was also present. Munson testified that Zuanich told him that he and Bigman could observe the meeting but could not take any active part in discussions. Zuanich then made a detailed presentation about the effects of decertification, and copies of the petition filed with the Commission were handed out. Munson testified that Zuanich stated that the bargaining unit employees would be placed on the employer's non-represented salary schedule in a salary range from $26,000 to $36,000 annually.[6] Several bargaining unit members challenged Zuanich about the possible salary increase. Munson testified that Zuanich stated that each employee would have to meet with management officials to have their individual salary level set, but that Zuanich again stated his belief that the employees would be placed in the $26,000 to $36,000 range. The meeting soon degenerated into a shouting match between Zuanich and Bigman, and nothing further was discussed.

The bargaining unit did not have further meetings after December 29, 2000, but Zuanich did have several conversations with bargaining unit members individually. Flaherty testified that Zuanich told him the employer would start eliminating bargaining unit positions if the decertification did not go through. Flaherty did not hear about this threat from any management officials, and only knew about it through Zuanich's statements.

On January 4, 2001, Bigman filed the complaint to initiate the instant unfair labor practice proceedings. "ILWU Local 7" alleged

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[6] The record indicates this would amount to a substantial increase in the bargaining unit employees' wages.

that the employer was behind the decertification campaign. Zuanich sent an e-mail message to bargaining unit employees on January 9, 2001, notifying them that the complaint had been filed and that it would block the pending decertification petition. Zuanich referred all questions to Joe Schmidt, the president of ILWU Local 7.

Late Posting of Commission Notices

Boone testified that he posted the notices provided by the Commission, as directed, but was not aware that he was also required to post the investigation statement and related documents. After calling the Commission's office to review the situation, he posted all required documents. Boone testified that he did not intentionally obstruct Commission procedures.

One bargaining unit employee who worked in a remote location separate from the rest of the office-clerical group testified that she did not see a notice posted at her work location until two weeks before the hearing conducted in the instant unfair labor practice proceedings in June of 2001. Elsie Nelson further testified that she did not receive a copy of the petition when it was handed out at the meeting on December 29, 2000. Boone testified that he hand-delivered copies of the missing documents, once he realized that he excluded Nelson's workplace, but Nelson testified that she did not remember having Boone deliver a copy of the documents to her.

POSITIONS OF THE PARTIES

The union contends that the employer always knew that Local 7 was the exclusive bargaining representative of the office-clerical bargaining unit, and it maintains that the employer did not have a good faith doubt as to the identity of Local 7 as the exclusive

bargaining representative. The union argues that the employer took active steps to encourage the decertification effort, and that the decertification effort could not have proceeded without the employer's promise of increased salaries if the bargaining unit decertified the union. The union also contends that the employer interfered with the union's ability to fulfill its representation duties. In addition, the union maintains that the employer's failure to post the required notices on its premises demonstrates the employer's disregard for the Commission's procedures. As a remedy, the union asks that the decertification petition be dismissed, and that the employer be ordered to bargain in good faith with Local 7 as the exclusive bargaining representative of the affected employees.

The employer contends that it did not commit any unfair labor practice. It claims that it had good faith doubt as to who the exclusive bargaining representative was, and did not consider Local 7 to be the exclusive bargaining representative of the office-clerical bargaining unit. The employer asserts that it had been dealing with officials of "Local 7A" and was never informed that Local 7A officers did not have authority to speak for the affected bargaining unit. The employer maintains that it did not take any active role in the decertification process, and merely answered questions put to it by Peter Zuanich. The employer contends the decertification campaign originated with Zuanich, and that the employer took a neutral position in this matter. Turning to the issue of notice posting, the employer admits that several documents were not posted in a timely manner, but maintains that this was a good faith mistake that was remedied as soon as it was brought to the employer's attention.

DISCUSSION

This unfair labor practice complaint deals with a number of important principles of labor law as interpreted by the Public Employment Relations Commission. From allegations of employer assistance with a decertification effort to alleged refusal to follow Commission rules on posting notices, each subject matter must be analyzed separately to discover whether the employer's actions, taken as a whole, constitute unfair labor practices within the meaning of the statute.

Applicable Legal Standards

RCW 41.56.040 expresses a strong legislative intent to allow public employees free choice in their selection of an exclusive bargaining representative:

> 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 given a liberal construction, to effect its purpose as a remedial statute 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).

RCW 41.56.140 prohibits certain employer activities which constitute unfair labor practices as they relate to the exercise of protected rights by public employees:

> 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;
>
> (2) To control, dominate or interfere with a bargaining representative;
>
> (3) To discriminate against a public employee who has filed an unfair labor practice;
>
> (4) To refuse to engage in collective bargaining.

In RCW 41.56.160, the Commission has been granted broad authority to prevent unfair labor practices that may arise when public employees attempt to exercise their collective bargaining rights. In pertinent part, that statute provides:

> (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law . . .

An "interference" violation occurs under RCW 41.56.140(1) whenever a public employee reasonably perceives employer actions as a threat of reprisal or force or promise of benefit associated with the employee's union activity. *See City of Pasco*, Decision 3804-A (PECB, 1992); *City of Seattle*, Decision 3566-A (PECB, 1991); *City of Seattle*, Decision 3066-A (PECB, 1988). A public employer need

not exhibit anti-union sentiments to be guilty of an interference violation. As stated in *City of Seattle*, Decision 2773 (PECB, 1987):

> The test for judgment on "interference" allegations has been determined by both the National Labor Relations Board and the Public Employment Relations Commission. A showing of intent or motivation is not required. Nor is it necessary to show that the employees concerned were actually interfered with or coerced.

The focus remains on the affected employee(s) and his/her/their perception of the employer's actions.

The complaining party, in this case the union, has the burden of proof to show that an interference violation has taken place. *See* WAC 391-45-270 and *Lyle School District*, Decision 2736 (PECB, 1987). While an employer's actions are closely scrutinized if an unfair labor practice complaint is alleged, that scrutiny is even more intense if the allegations involve prohibited activity during the pendency of a representation petition. As the complainant properly notes in its closing brief:

> (L)abor organizations derive their authority as exclusive bargaining representatives upon certification, and lose the authority when they are decertified or replaced by another union as certified exclusive bargaining representative. *Clark County*, Decision 5373 (PECB, 1995).

In *Wellpinit School District*, Decision 1243 (PECB 1982), the Commission specifically adopted the National Labor Relations Board's test to determine whether employer actions during the pendency of an election process violated the act. By adopting the

NLRB's test in *General Shoe Corporation*, 77 NLRB 124 (1948), the Commission recognized that the pre-election environment must be:

> [L]ike a "laboratory" in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of employees.

In *City of Tukwila*, Decision 2434 (PECB, 1986), the Commission ruled that:

> [A]ny promise of benefits is inherently coercive, a subversion of the laboratory conditions under which representation elections are to be conducted, and a clear violation of the rules of the Commission.

As the employer properly notes in its closing brief, however, a promise of benefit will only be considered unlawful if it is made by the public employer through its agents or supervisors who are acting in an official capacity. *See Seattle School District*, Decision 5755-A (PECB, 1998). Regardless of the official's title, the employer will be bound by the acts of its supervisors or agents who engage in prohibited activity. *See Port of Seattle*, Decision 1624 (PECB, 1983), where fire captains and lieutenants who exercised authority on behalf of the employer over subordinate employees were found to be agents of the employer in an interference complaint.

This legal framework sets the stage for determining whether the employer in the instant matter committed unfair labor practices.

Identity of the Exclusive Bargaining Representative

There is a genuine dispute as to which union represents the affected bargaining unit. While ILWU Local 7 claims to be the only

representative, the employer contends that a separate entity, ILWU Local 7A, was the exclusive bargaining representative.

The original certification stated that Local 7 was the exclusive bargaining representative, but the record clearly shows that the parties developed a practice whereby "Local 7A" became identified as the exclusive bargaining representative of the office-clerical bargaining unit. This is not a distinction without a difference. Apart from the difference in names, Local 7A elected separate officers and dealt with the employer independently from Local 7.

If the union believed that Local 7 and Local 7A were the same entity, it did not make that point clear to the employer. In fact, the employer presented credible evidence that its human resources director had never met officials of Local 7. Given the circumstances presented here, the employer made a good faith reliance on the representations of Local 7A officials who claimed to be a separate organization representing the employer's office-clerical workforce.

If Local 7 wanted to make the position it now takes clear to the employer, it had ample opportunity to do so. Local 7 officials met with Local 7A officials as early as August 2000, but never approached the employer with any concerns about the status of Local 7A as the exclusive bargaining representative of the office-clerical employees. Accordingly, the union failed to make use of the opportunity available to it, and its allegation that the employer refused to deal with the certified exclusive bargaining representative must be dismissed.

Employer Contacts with Peter Zuanich

The next allegation to be addressed concerns the nature of the contacts between employer officials and Peter Zuanich, the

separately-elected president of Local 7A. The union now maintains that the employer encouraged Zuanich's decertification effort, and that the decertification campaign could not have moved forward without the employer's active assistance.

It is clear that Zuanich met with management personnel in their official capacities. The question is how to characterize those meetings. While the union contends that the meetings were called to allow the employer to assist Zuanich in his decertification effort, the record clearly shows that Zuanich initiated the meetings. The employer presented credible testimony that all of the meetings were held in response to Zuanich's requests for information, and that it merely provided the information requested by Zuanich. The union did not prove that employer officials ever made any specific promise concerning the placement of bargaining unit employees on the port's non-represented salary schedule. In fact, the record shows that Zuanich was the only person who made any representations to the bargaining unit employees. The record thus supports a conclusion that Zuanich, who was the prime actor in the decertification effort, merely used his own interpretation of public information in support of his decertification campaign. The union has not proven that the employer was engaged in prohibited activity, and these allegations must be dismissed.

Employer's Failure to Post Required Notices

A representation petition was filed with the Commission on October 31, 2000, and the Commission's rules required the employer to post certain documents on its premises where notices to affected employees are usually posted. The employer posted some notices, but it clearly failed to attach all of the required documents and, in the case of one employee, it failed to post the notice where it was accessible to one of the bargaining unit employees.

It is unusual to interpret a representation case rule in the context of an unfair labor practice proceeding, but it is necessary in this case. The employer did not comply with the Commission's requirements to post required notices until long after the notices were to be posted. While the employer argues that the violation should be overlooked, because the employees would still have at least seven days notice before the election was to take place, that argument is not persuasive. A failure to post the initial notice required by WAC 391-25-140 could easily have deprived bargaining unit employees of information that would have enabled them to properly evaluate any implied promise of a pay increase upon decertification and/or any threat of loss of employment in the absence of decertification. A failure to post an investigation statement and all required attachments as required by WAC 391-25-220 could easily have deprived bargaining unit employees of information that would have led them to contact ILWU officials above the president of "Local 7A." Accepting that the employer may not have intended to withhold the notices, those are potential results of its actions. Because the employer's actions have destroyed the laboratory conditions for processing of the representation petition filed in October 2000, an unfair labor practice must be found on this allegation.

REMEDY

While most of the substantive unfair labor practice allegations advanced by the union in this case are being dismissed, an appropriate remedy must be fashioned to remedy the employer's failure to post representation notices in a timely manner. Given the existence of substantial doubts as to the authority to rule on such matters, a ruling on the procedural defect in the decertification case must be left to the Executive Director under Chapter 391-25 WAC. The employer will be required to post and read appropriate

notices to clear the air concerning its interference with the election process, and to promptly post any further notices provided to it in connection with the representation proceedings.

FINDINGS OF FACT

1. The Port of Bellingham is a municipal corporation created under Title 53 RCW, and is a "public employer" within the meaning of RCW 41.56.030(1) and RCW 53.18.015.

2. International Longshore and Warehouse Union, Local 7, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of certain employees of the Port of Bellingham.

3. Following certification of Local 7 as exclusive bargaining representative of the employer's office-clerical employees in 1990, representation of that bargaining unit has been by a "Local 7A" which elects separate officers and has operated independently of Local 7. Peter Zuanich was the separately-elected president of Local 7A in calendar year 2000.

4. As early as August 28, 2000, Zuanich expressed his belief that members of the office-clerical bargaining unit would be better off without union representation.

5. At a union meeting held after August 28, 2000, Zuanich again raised the issue of decertifying the union. Several bargaining unit members supported this idea, while others were strongly opposed to decertifying the union. During the course of these conversations, Zuanich clearly stated his belief that the employees should consider decertification as a way to gain better wage rates.

6. On October 9, 2000, Zuanich submitted a "public disclosure request" to the employer, asking for a copy of the "Port of Bellingham exempt employee salary schedule for year 2000." The employer's human resources director, Larry Boone, provided the requested document.

7. On October 18, 2000, Zuanich made a second public disclosure request, now asking for a "list of all exempt employees at current salary grade" and the "Executive Director salary and compensation package." Boone provided the information requested by Zuanich.

8. Zuanich and Boone had a private meeting on October 20, 2000, to discuss upcoming negotiations for a successor collective bargaining agreement. Boone and Zuanich discussed their negotiating styles and possible ground rules for bargaining. In the same general time period, Zuanich asked for a meeting to discuss the exempt salary information. Boone met with Zuanich in response to that request, and responded to specific questions that Zuanich had about the employer's salary schedule for non-represented employees. There is no credible evidence that Boone or any other employer official sought the filing of a decertification petition, made any promises of benefit in the event of a decertification, or threatened any loss of employment by bargaining unit employees in the absence of a decertification.

9. On October 23, 2000, the employer and union met for their first bargaining session. Zuanich was joined by two other Local 7A members on behalf of the union. Boone served as the employer's chief spokesperson. Ground rules were discussed, and the union made its initial bargaining proposal.

10. On October 31, 2000, Zuanich filed a petition with the Public Employment Relations Commission, seeking decertification of Local 7A as the exclusive bargaining representative of the office-clerical bargaining unit. Once the decertification petition was filed, negotiations for a successor collective bargaining agreement were suspended.

11. On November 2, 2000, the Commission furnished the employer with notices to post concerning the decertification petition. The employer failed to post those notices as required by the Commission's rules. The absence of posting could have prejudiced the ability of bargaining unit employees to evaluate the propriety of any real or implied threats of reprisal or promises of benefit made in connection with the decertification proceedings.

12. On December 19, 2000, Boone and the employer's executive director, James Darling, met with Zuanich in response to a request by Zuanich. In response to Zuanich's questions, Boone and Darling explained the employer's salary structure for its non-represented employees. There is no credible evidence that any other employer official endorsed the decertification effort, made any promises of benefit in the event of a decertification, or threatened any loss of employment by bargaining unit employees in the absence of a decertification.

13. As Zuanich departed from the meeting described in paragraph 12 of these findings of fact, he made a statement to another bargaining unit employee that he had achieved a result favorable to the bargaining unit employees, but there is no credible evidence that Zuanich was expressing anything other than his own interpretation of what would happen if the employees decertified the union.

14. On December 21, 2000, Zuanich sent an e-mail message to all bargaining unit members, stating that a bargaining unit meeting would soon be held. Although that message was sent to an employee who was then working under a temporary appointment to a supervisory position, there is no credible evidence that Zuanich had any other contact with that individual that is relevant to this proceeding.

15. At a union meeting held on December 29, 2000, John Munson, an official from Local 7, and Paul Bigman, an official from the union's Seattle office, were present at the invitation of several bargaining unit members. Zuanich told Munson and Bigman that they could observe the meeting but could not take an active part in the discussions.

16. During the meeting described in paragraph 15 of these findings of fact, Zuanich made a detailed presentation about decertification, including that the bargaining unit employees would have to meet with management officials to have their individual salaries set if decertification took place. There is no credible evidence that Zuanich was expressing anything other than his own interpretation of what would happen if the employees decertified the union. Bigman wanted to make a statement, and Zuanich refused. The meeting soon degenerated into a shouting match, and nothing further was discussed.

17. On January 4, 2001, Local 7 filed the instant unfair labor practice complaint, alleging that the employer had given material assistance and support to the decertification campaign.

18. Elsie Nelson, an office-clerical employee working at a remote facility, did not receive a copy of the notice concerning the

decertification petition until June 2001. The employer did not provide an adequate explanation as to why the notice had not been posted in the specified time period.

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. By events described in paragraphs 4 through 10 and 12 through 16 of the foregoing findings of fact, the complainant has failed to sustain its burden of proof that the employer made any promises of benefit or any threats of reprisal in connection with the decertification of the union, so that the Port of Bellingham has not committed any unfair labor practices within the meaning of RCW 41.56.140(1).

3. By its actions or inaction as described in paragraphs 11 and 18 of the foregoing findings of fact, the Port of Bellingham has interfered with, restrained and coerced its employees in the exercise of their rights under Chapter 41.56 RCW, and has committed an unfair labor practice in violation of RCW 41.56.140(1).

ORDER

The Port of Bellingham, its officers and agents, shall immediately take the following actions to remedy its unfair labor practice:

1. CEASE AND DESIST from:

   A. Failing or refusing to post appropriate notices for any representation proceeding in all appropriate places on

its premises, as required by rules of the Public Employment Relations Commission.

B. In any other manner, interfering with, restraining or coercing its employees in the exercise of their rights under Chapter 41.56 RCW.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies 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.

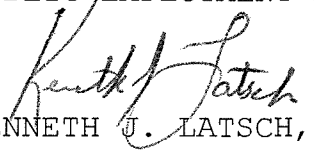
B. Read the notice required by the preceding paragraph into the record of an open, public meeting of the governing body of the Port of Bellingham, and permanently append a copy of that notice to the official minutes of the meeting where the notice is read.

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 above-named 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 23rd day of January, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KENNETH J. LATSCH, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to 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 post all notices to employees as required by the rules of the Public Employment Relations Commission.

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.

WE WILL read this notice into the record of the next public meeting of the governing body of the Port of Bellingham, and permanently append a copy thereof to the official minutes of such meeting.

DATED: _____

PORT OF BELLINGHAM

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.