STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION,	)	CASE 16531-U-02-4279
	)	DECISION 8785 - PSRA
Complainant,	)	
	)	CASE 16624-U-02-4337
vs.	)	DECISION 8786 - PSRA
	)	
WASHINGTON STATE PATROL,	)	
	)	DECISION ON
Respondent.	)	BIFURCATED MATTERS
	)	

Mark S. Lyon, Attorney at Law, for the union.

Christine O. Gregoire, Attorney General, by *Elizabeth Delay Brown*, Assistant Attorney General, for the employer.

The Washington Public Employees Association (union) filed two complaints charging unfair labor practices against the Washington State Patrol (employer). The union filed its first complaint with the Washington State Department of Personnel on April 3, 2002, docketed as ULP - 532. Effective June 13, 2002, the Public Employment Relations Commission (Commission) acquired jurisdiction over unfair labor practice complaints for state civil service employees, including the union's first complaint. RCW 41.06.340(2). The Commission's rules were made applicable retroactively to state civil service employees by operation of WAC 391-45-056. The Commission docketed the first complaint as Case 16531-U-02-4279. The union filed a second complaint with the Commission on August 20, 2002, docketed as Case 16624-U-02-4337. Both complaints concern union president Barbara Gagner in the

deputy state fire marshal's unit of the employer's fire protection bureau and her supervisor Mary Corso.

In a preliminary ruling dated September 25, 2003, the two cases were consolidated for hearing because they involved common issues and parties. The preliminary ruling also contained a deficiency notice involving Case 16531-U-02-4279. The union filed an amended complaint on October 16, 2003. On November 6, 2003, the Commission issued a second preliminary ruling, sending the consolidated cases to hearing. The consolidated matters were set for hearing on April 26 and 27, 2004.

On April 21, 2004, the union filed a pre-hearing "Motion to Compel Production of Documents and Alternative Motion to Continue." During a telephone conference with both parties, Examiner Karyl Elinski noted that the Commission disfavors a discovery motion practice. The Examiner ordered the matters raised in the motion to be bifurcated from the remaining issues and heard on the scheduled date.

The hearing proceeded on April 26, 2004, with respect to the following issues:

- the preclusive effects of previous Personnel Resources Board (PRB) decisions in related matters;
- the matters pertaining to the union's information request raised in the motion to compel; and
- the production of documents related to Steve Barber.

All other remaining issues were reserved for further hearing. The parties filed post hearing briefs.

The Examiner rules that the PRB arbitration decision does not preclude the Examiner from ruling on this case and that the employer committed an unfair labor practice by failing to provide requested information that was relevant and necessary.[1] The Examiner further rules that the Commission has no jurisdiction to enforce or interpret the settlement agreement between the union and employer relating to Steve Barber.

BACKGROUND

Barbara Gagner's Claims -

Barbara Gagner, a deputy state fire marshal, served as union board chair of the employer's local union (referred to as union president during the hearing) during all relevant times. In April 2002, the union filed two grievances on behalf of Gagner concerning interactions with her supervisor, Mary Corso, State Fire Marshal. In the second of these grievances, Gagner contended that Corso harassed her. That allegation was the focus of an internal investigation by the employer's Office of Professional Standards (OPS). After conducting its investigation (including interviewing Gagner and other employees), OPS determined that the harassment complaint against Corso was "unfounded" (unfounded investigation).

The union filed a third grievance (third grievance) alleging that the employer violated Gagner's rights and discriminated against her in the course of conducting the OPS investigation. The relevant essence of the third grievance was that OPS: treated Gagner differently from other employees contacted during the OPS investi-

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[1] At the hearing, the Examiner agreed to inspect the documents in question *in camera*. Upon reflection, however, the Examiner has determined that an *in camera* inspection is not necessary to render this decision.

gation; failed to provide Gagner with adequate notice of the interview; denied her request for union representation; and engaged in intimidation, unfair treatment and retaliation for union activities.

The Union's Request for Information -

On April 24, 2002, the union requested all information relating to the OPS investigation, including "all paper copy of the testimony and all papers in regards to the investigation that you conducted." The union further stated "[t]his information is germane to the provision of adequate representation regarding her grievances and Unfair Labor Practice charges."

On April 30, 2002, the employer responded to the union's request acknowledging that it had "received your public disclosure request pertaining to the incident involving Ms. Mary Corson and Ms. Barbara Gagner. Every effort will be made to provide the requested information within 30 days."

In a letter dated May 17, 2002, the employer further responded to the request, stating:

> Information that has been redacted or withheld is exempt from public disclosure for the following reason(s):
>
> - Documents withheld reflect privileged attorney-client communication, and attorney work product.
>
> It is the position of the WSP that the disclosure of internal investigation files, where the determination was that the employee did not act improperly, would harm the public's confidence in the department's ability to ensure the highest standard of conduct among its employees. Pursuant to RCW 42.17.310(1)(d); and the State Supreme Court case *Cowles Publishing Co. v. Washington State Patrol*, 109 Wash.2d 712, 748 P.2d 597 (1988), the WSP will not be releasing records concerning this investigation.

After that letter, union representative Marian Gonzales contacted the employer and objected to the employer's reliance on the Public Disclosure Act, RCW 42.17.310(1)(d), and its refusal to provide the requested information. The union conveyed the necessity of the information for processing its grievance. The employer refused to provide the requested information.

Processing of the Original Grievances -

The employer subsequently denied all three grievances. The parties proceeded to arbitration before the PRB on the third grievance only (concerning the manner in which OPS conducted its investigation).

Prior to the arbitration hearing of the third grievance, the union filed a motion to compel production of documents related to its previous request for information. The motion focused on the employer's failure to provide the union with the entire contents of the OPS file concerning Gagner's harassment claims against Corso, including transcripts and tapes of all witness interviews. At the employer's request, the PRB reviewed the requested documents *in camera*. The PRB granted the motion as to the production of the transcript of Gagner's interview only, and denied the remainder of the union's motion. The PRB subsequently issued an arbitration award on the third grievance, finding that the employer violated the union contract and its own policies in conducting its interview with Gagner. *Gagner v. Washington State Patrol*, 2002 ARB-49 (WPRB, 2003).

Steve Barber's Claims -

Steve Barber was a deputy state fire marshal whose employment was terminated on November 1, 2001. In the course of pursuing four unfair labor practice claims and two Personnel Appeals Board actions related to Barber's termination, the union requested a variety of documents.

On March 3, 2003, the employer reinstated Barber as part of a settlement agreement. That agreement required that Barber withdraw his pending Personnel Appeals Board cases and Commission Cases 16527-U-02-4275, 16528-U-02-4276, 16529-U-4277, and 16530-U-02-4278. The settlement agreement does not specifically refer to Case 16531-U-02-4279. In this case, the union asserts that the employer failed to provide some of the requested information and gave conflicting responses on how to obtain the requested information.

ISSUES PRESENTED

1. Does the PRB decision on an underlying grievance preclude the Examiner from deciding the issue of the employer's duty to provide information?

2. Did the employer commit an unfair labor practice by refusing to provide the contents of the "unfounded" internal affairs investigation file?

3. Does the Public Employment Relations Commission have jurisdiction to determine whether a settlement agreement between the parties bars the pending unfair labor practice claim as it relates to Steve Barber?

ANALYSIS

ISSUE 1: DOES THE PRB DECISION ON AN UNDERLYING GRIEVANCE PRECLUDE THE EXAMINER FROM DECIDING THE ISSUE OF THE EMPLOYER'S DUTY TO PROVIDE INFORMATION?

Res Judicata -

The principle of *res judicata* precludes re-litigation of issues. The Supreme Court of Washington described the purpose and application of *res judicata* as follows:

> [i]t is designed to "prevent relitigation of already determined causes and curtail multiplicity of actions and harassment in the courts." . . . For the doctrine to apply, a prior judgment must have a concurrence of identity with a subsequent action (1) in subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made. [citations omitted]

Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759 (1995).

Deferral to Arbitration Decision -

The NLRB has determined that "refusal to provide information" unfair labor practice charges should not be deferred to arbitration. Instead, the NLRB retains jurisdiction of these claims. *U.S. Postal Service,* 302 NLRB 918 (1991).[2]

The Commission has adopted the NLRB's rule against deferring "refusal to provide information" claims to arbitration. The Commission has statutory responsibility to assure that parties' collective bargaining complies with the law. The duty to provide information between parties is derived from the statutory bargaining obligations set forth in Chapter 41.56 RCW. Since an arbitrator's authority is drawn exclusively from the terms of a collective bargaining agreement, an arbitrator does not have authority to interpret or enforce statutory provisions. *Tacoma Housing Authority*, Decision 7390 (PECB, 2001). That responsibility is not impaired by the existence or exercise of contractual dispute resolution methods. *City of Pasco*, Decision 3804-A (PECB, 1992).

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[2] The NLRB decision follows the conclusion of the United States Supreme Court in *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967) that the NLRB has jurisdiction to determine whether a refusal to provide information was an unfair labor practice, even though the request related to a grievance that had been submitted to final and binding arbitration.

Several examiners have specifically rejected employers' arbitration-based jurisdictional challenges in information request unfair labor practice cases. *City of Bremerton*, Decision 5079 (PECB, 1995) (refused to be bound by arbitrator's decision that requested information was not necessary); and *State of Washington (Washington State Patrol)*, Decision 4710 (PECB, 1994) (refused to leave relevance decision to arbitrators).

Impact of Personnel Resources Board Decision -

The PRB served as arbitrator of the third grievance pursued under the parties' collective bargaining agreement. Prior to the hearing on the grievance, the union filed a motion to compel production of documents concerning the unfounded investigation file. Although the PRB ordered the employer to produce the transcript of Gagner's OSP interview, it denied the remainder of the motion.

The PRB arbitration differed in scope and application of law from the current proceeding. In the current case, the union alleges specific violations of Chapter 41.56 RCW. In the grievance, the PRB focused on alleged violations of the collective bargaining agreement and WSP internal policies.[3] The PRB decision did not deprive the Commission of its jurisdiction and obligation to rule on the union's claims. This case fits squarely within the Commission's jurisdiction.

An unfair labor practice can be committed long before a case goes to arbitration, and even before a written grievance is filed. A party does not have to wait until an arbitration hearing to find

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[3] In the third grievance the union also alleges violations of Chapter 41.06 RCW. There is no evidence that the PRB evaluated the case for statutory violations. Its ruling was limited strictly to consideration of contract and/or internal policy violations.

out relevant information, or to obtain information that could lead to other relevant information. The duty to provide information does not depend on the results of an arbitrator's decision, or upon the requested information actually being accepted into evidence by an arbitrator. The existence of the duty does not depend on the objections made in arbitration, on whether a party is prejudiced, or on whether a party would have prepared differently if it had known of the content of the requested file.

An arbitrator lacks authority to interpret or enforce the statutory provisions of the Public Employees' Collective Bargaining Act, as the provisions apply through Chapter 41.56 RCW, and the Personnel System Reform Act. The Examiner has the authority to determine unfair labor practices, and thus declines to defer to the arbitration award, or find that the PRB decision bars the current proceeding through operation of *res judicata*.

ISSUE 2: DID THE EMPLOYER COMMIT AN UNFAIR LABOR PRACTICE BY REFUSING TO PROVIDE THE CONTENTS OF THE "UNFOUNDED" INVESTIGATION FILE?

Under federal and state precedent, parties to a collective bargaining agreement have a duty to provide information under a broad range of circumstances (see discussion below). In this case, none of the employer's asserted exceptions to the duty to provide information applies.

Duty to Provide Relevant and Necessary Information -
The duty to bargain under the Public Employees Collective Bargaining Act is defined in RCW 41.56.030(4) as follows: "Collective bargaining means . . . to confer and negotiate in good faith . . ."

That definition is patterned after the National Labor Relations Act (NLRA). Decisions construing the NLRA are persuasive in interpret-

ing similar provisions of RCW 41.56. *Nucleonics Alliance v. WPPSS*, 101 Wn.2d 24 (1981).

Under both federal and Washington state precedent, the duty to bargain includes a duty to provide relevant information needed by the other party for the proper performance of its duties in the collective bargaining process. *NLRB v. Acme Industrial Co.*, 385 US 432(1967); *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd*, 119 Wn.2d 373 (1992). This obligation extends not only to information that is useful and relevant for the purpose of contract negotiations, but also encompasses information necessary to the administration of the collective-bargaining agreement.

Employers must provide requested information that is relevant and necessary for processing contractual grievances, including the information necessary to decide whether to proceed with a grievance or arbitration. In *Acme Industrial Co.*, the Court strongly endorsed requiring the employer to supply information that would aid the union in "sifting out unmeritorious claims" in the grievance process. *See also City of Seattle*, Decision 3066 (PECB, 1988), *aff'd*, Decision 3066-A (PECB, 1988).

"Relevant and Necessary" Standard -
The courts and the NLRB use a discovery-type standard to determine relevance of the requested information:

> [T]he goal of the process of exchanging information is to encourage resolution of disputes, short of arbitration hearings, briefs, and decision so that the arbitration system is not "woefully overburdened."

Pennsylvania Power and Light Company, 301 NLRB 1104, 1105 (1991) (citing *Acme Industrial Co.*, 385 US at 438).

An employer commits an unfair labor practice when it withholds relevant and necessary information requested by the union. *Snohomish County PUD,* Decision 7656-A (PECB, 2003). Where the circumstances surrounding the union's request are reasonably calculated to put the employer on notice of a relevant purpose, the employer may be obligated to furnish the requested information. In an unfair labor practice case concerning the duty to provide information, the union has the burden to show both: (1) the relevance of the requested information; and (2) that the union adequately informed the employer of the basis for its request. *Pasco School District*, Decision 5384-A (PECB, 1996). Requests for information that a union might use to sort out meritorious from frivolous grievances are relevant, as are requests for information made after a grievance has been processed at the first step of a contractual procedure. *Pasco School District*, Decision 5384-A.

Information pertaining to employees in the bargaining unit is presumptively relevant. *Northwest Publications, Inc.*, 211 NLRB 464 (1974); *City of Bremerton*, Decision 6006-A (PECB, 1998); *Whatcom County*, Decision 7728 (PECB, 2002). When the union requests information pertaining to an employee outside of the bargaining unit, however, the requesting party bears the burden of establishing that the information is relevant and necessary to its bargaining responsibilities. *Pasco School District*, Decision 5384-A. The union may have a legitimate interest in obtaining information about a non-bargaining unit employee. Once the union establishes its relevance and necessity, the employer must conform to the purpose of the collective bargaining process by providing the requested information. *City of Pullman*, Decision 7126 (PECB, 2000).

Duty to Bargain Information Requests -

A party may not simply refuse to comply with a request for information, but is under an obligation to request clarification

and/or comply with the request to the extent it does encompass necessary and relevant information. Employers and unions must negotiate over any objections to producing requested documents. *City of Bremerton*, Decision 5079 (PECB, 1995); and *City of Tacoma*, Decision 5284 (PECB, 1995).

The employer failed to make any effort to bargain over the union's information request, flatly denying its duty to disclose the requested information. The employer erroneously asserted protection from disclosure on the basis of the Public Disclosure Act and decisions interpreting its provisions, privilege and public policy. Although the union persisted in its request, the employer failed to make any effort to resolve the matter with the union. Thus, the employer failed in its bargaining duty.

The Employer's Duty to Provide Information -
Once an act or event occurs which gives rise to a potential grievance, a union representing the affected employee(s) has a right to request information, and the employer has an obligation to provide the information as long as the union has demonstrated its actual relevance and purpose.

In this case, the union requested the information to assist it in "pursuing its pending grievance" and unfair labor practice claim. In the third grievance, the union argued that Gagner was treated differently from others during the course of the OSP investigation. In the unfair labor practice claim, the union alleges that Gagner was treated differently due to her union status. The PRB found that the employer violated the contract and its own policies when the employer refused to allow Gagner union representation during the investigation and failed to provide proper notice of its intent to interview her.

The best, and possibly only, direct evidence of OSP's treatment of other witnesses is contained in the logs and transcripts of the interviews contained in the OSP file. The union has overcome its burden of showing relevance and necessity of the file regardless of the bargaining unit status of Corso or other employee witnesses interviewed during the investigation. The files contain transcripts that would allow the union to better assess its claims. The information is also necessary to the union because the union has no effective means of reconstructing the investigative file. Even if it were to have unbridled access to everyone involved in the investigation, both witnesses and investigators, it would be difficult to determine precisely what was said and done during the investigatory process.

The union needed the materials at the time of its request in order to properly represent Gagner in the processing of a grievance. It needed the information to determine whether Gagner was treated differently from other employees questioned in the harassment investigation. It needed the information to prepare its case. The union demonstrated the actual relevance of the requested information simply by the nature of its assertion that Gagner was subjected to different treatment during the investigatory process, as well as by the assertion that it needed the information to process the grievance. Although the requested file contains information concerning employees who were not members of the bargaining unit, the employer failed to demonstrate that confidentiality is of overriding concern.

The Employer's Arguments Regarding Exceptions to Its Duty Do Not Apply -

The Public Disclosure Act - The employer urges the Examiner to look to exclusions to the Public Disclosure Act contained in

Chapter 42.17 RCW and the Examiner's decision in *City of Spokane*, Decision 5054 (PECB, 1995). In that case, the Examiner determined that it would be highly offensive to a reasonable person to release performance evaluation pursuant to a Public Disclosure Act request. The unfounded file, it argues, is similar to a performance evaluation, the disclosure of which would be highly offensive to a reasonable person.

The Legislature decreed that the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, supercedes any other statute, ordinance, or regulation with which it conflicts. RCW 41.56.905. *Rose v. Erickson*, 106 Wn.2d 420, 423-34 (1986). In a number of cases, the Commission has rejected the argument that the language of the Public Disclosure Act limits the duty to provide information growing out of a collective bargaining relationship.

In *Washington State Patrol*, Decision 4710 (PECB, 1994), the Examiner determined that the employer here committed an unfair labor practice when it refused to provide a union with an "administrative insights file." The employer refused on the grounds that the file consisted of preliminary policy recommendations and opinions exempted from disclosure by the Public Records Act, RCW 42.17.310(1)(I). The employer contended that if the Public Records Act exempts it from releasing a particular document to a citizen, then it need not provide the document to the exclusive bargaining representative of its employees. That argument ignored the special status of an exclusive bargaining representative status in an ongoing relationship with the employer under RCW 41.56.080. When an exclusive bargaining representative requests a document that is relevant to its duty to bargain for members of the bargaining unit it represents, it has a separate right that an ordinary citizen cannot claim. *Washington State Patrol*, Decision 4710.

A citizen's right to public records is predicated on an assumption that sound government and public confidence in that government both flourish in an atmosphere of full disclosure, subject to limitations to insure privacy rights and efficient administration of government. RCW 42.17.010(11). On the other hand, the stated purpose of the collective bargaining act is to improve the relationship between public employees and public employers by allowing employees to select an exclusive bargaining representative to deal with the employer on their behalf. RCW 41.56.010; RCW 41.56.030(3) and (4); RCW 41.56.080.

In this case, the State Patrol acted as an employer, not simply a law enforcement agency. The investigation concerning the harassment claim was not part of a criminal investigation. The employer's reliance on the Public Disclosure Act, public policy and privilege is inapposite to the bargaining duties arising from its relationship with the union. The employer may not shirk its collective bargaining obligations merely because it is a law enforcement agency. Nor is the union a citizen with only public disclosure rights. The union's relationship with the employer results in an inalienable duty to bargain, including the duty to provide information. The exemptions and analysis under the Public Disclosure Act are inapplicable here.

Excluded Witness Statements - The NLRA recognizes that "witness statements" are an exception to the general obligation to honor requests for information, even if they are otherwise relevant and necessary. *Snohomish County PUD*, Decision 7656-A (PECB, 2003) (citing *Anheuser-Busch, Inc.*, 237 NLRB 982, 984 (1978)). This exception, however, has been narrowly applied to "statements." There are two necessary elements for a statement to constitute an excludable "witness statement." First, the witness must adopt a

statement given to an employer representative. *Anheuser-Busch* 237 NLRB 982. Second, the statements must be given under an assurance of confidentiality. *New Jersey Bell*, 300 NLRB 42 (1990), *aff'd*, 936 F.2d 144 (1991).

An employer generally has a duty to supply names of witnesses to an incident for which an employee is disciplined. The names of witnesses need not be released, however, if the employer offers convincing evidence that there is an imminent danger of harassment and intimidation. *Conoco Chemicals Company v. NLRB*, 275 NLRB 39 (1985) (evidence of past conduct of the union and its members was not conclusive with regard to present danger within five year time span).

In *Snohomish County PUD*, Decision 7656-A (PECB, 2003), the Commission held that notes an employer took while interviewing witnesses were not "witness statements" protected from disclosure. Moreover, the names of bargaining unit employees interviewed were not confidential even though some of the employees expressed a fear of retaliation. The burden of proof is on the party asserting confidentiality. *Fairmont Hotel*, 304 NLRB 746, 748 (1991); *Snohomish County PUD*, Decision 7656-A.[4]

Although non-bargaining unit employees interviewed during the course of the OPS harassment investigation may have received assurances of confidentiality, the employer's notes otherwise fall short of being "witness statements" within the meaning of Commission and NLRB precedents. The employer presented no evidence that

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[4] The employer relies heavily on the decision in *Cowles Publishing Co. v. Washington State Patrol,* 109 Wn.2d 712 (1988) for its position that an unfounded investigation file is exempt from disclosure as an investigative record. The *Cowles* decision was based on Chapter 42.17 RCW (the Public Disclosure Act).

any of the witnesses adopted the "statements" taken by the employer. There was no evidence that employees read the statements or had them read to them; they did not adopt the employer's writing in any other manner. There was also no evidence that witnesses feared reprisal from anyone for cooperating in the investigation. Thus, the interview transcripts and tapes do not fall under the witness statement exception to disclosure.

Policy Considerations - The employer urges that it should be exempt from providing any and all "unfounded" investigation files due to overriding legal and policy considerations. Requiring this employer to produce the contents of this "unfounded" file, it claims, would erode the public confidence in the law enforcement investigation process and discourage full and complete cooperation in internal investigations. This argument fails on two counts. As discussed above, the union has a different relationship to the employer from the general public. The union holds a special relationship to the employer requiring the parties to fully engage in their bargaining relationship. Disclosure to the union is not tantamount to disclosure to the public at large.

The employer further urges the Examiner to analogize this case to the exclusions to the Public Disclosure Act discussed in the Examiner's decision in *City of Spokane*, Decision 5054 (PECB, 1995). The employer argues that the unfounded file is similar to a performance evaluation, the disclosure of which would be highly offensive to a reasonable person.

The OPS investigation is not a performance evaluation. Even if the Commission were to adopt that analogy, however, the argument fails. The only person with a privacy interest in his or her performance evaluation is the employee evaluated. In an investigation of a

complaint of one employee against his or her supervisor, there are two people whose interests might be at stake: the person doing the complaining, and the person against whom the complaint was lodged.

Here, the union requested files to process a grievance of the person who complained of the harassment. The complaining individual believes that she was treated differently from her non-bargaining unit counter-parts during the investigation. The union accordingly had an interest in obtaining the file.

The union's interest in obtaining the file overrides the employer's claimed policy considerations. The Examiner rules that the file should be given to the union.

ISSUE 3: DOES THE AGENCY HAVE JURISDICTION TO DETERMINE WHETHER A SETTLEMENT AGREEMENT BETWEEN THE PARTIES BARS THE PENDING UNFAIR LABOR PRACTICE CLAIM AS IT RELATES TO STEVE BARBER?

Commission Jurisdiction Over Settlement Agreements -
A settlement agreement is an ordinary contract governed by general contract interpretation principles. *State Farm Mutual Auto Ins. Co. v. Avery*, 114 Wn. App. 299 (2002). The Examiner does not assert jurisdiction over private contracts, and does not remedy violations of private contracts. Such interpretation must be sought through any applicable contractual procedures (*i.e.*, grievance arbitration) or through the courts. *City of Kirkland*, Decision 5672 (PECB, 1996); *Seattle Community College*, Decision 8115 (CCOL, 2003).

Status of Claims Related to Steve Barber -
The Examiner declines to rule on whether the settlement agreement eliminates those portions of the unfair labor practice claims

relating to Barber. The Examiner will only process this case as reflected in the relevant pleadings and preliminary rulings. The Commission is bound to process the claims related to Steve Barber unless and until the claims are formally withdrawn.

FINDINGS OF FACT

1. The Washington State Patrol is a public employer in the State of Washington within the meaning and coverage of Chapters 41.06 and 41.80 RCW, and Chapter 41.56 RCW as applied through 41.06.

2. At all relevant times, Mary Corso served as state fire marshal.

3. Washington Public Employees Association (union), an employee organization within the meaning of RCW 41.80.005(7) and Chapter 41.06 RCW, is the exclusive bargaining representative of a bargaining unit of deputy fire marshals.

4. At all relevant times, deputy state fire marshal Barbara Gagner served as local union board chair.

5. On or about April 3, 2002, the union filed an unfair labor practice claim with the Washington State Department of Personnel on April 3, 2002, docketed as ULP - 532. Effective June 13, 2002, the Public Employment Relations Commission acquired jurisdiction over unfair labor practice complaints for state civil service employees, including the union's first complaint. The Commission docketed the first complaint as Case 16531-U-02-4279. The union filed a second complaint with the Commission on August 20, 2002, docketed as Case 16624-U-02-4337.

6. In a preliminary ruling dated September 25, 2003, the two cases were consolidated for hearing. The preliminary ruling also contained a deficiency notice involving Case 16531-U-02-4279. The union filed an amended complaint on October 16, 2003. On November 6, 2003, the Commission issued a second preliminary ruling, sending the consolidated cases to hearing. The Examiner set the consolidated matters for hearing on April 26 and 27, 2004.

7. In or about April 2002, the Washington State Patrol's Office of Professional Standards conducted an internal investigation regarding Gagner's claim in a grievance that Corso harassed her. The investigation resulted in an "unfounded" disposition.

8. On or about April 22, 2002, Gagner filed a grievance concerning her treatment during the Office of Professional Standards investigation, specifying issues of "intimidation, unfair treatment, retaliation for union activities, union officers being free from restraint, intimidation, coercion, and retaliation in the performance of union duties as the President and chief representative for the WPEA Fire Marshal bargaining unit."

9. On or about April 24, 2002, the union requested information, including the contents of the OPS investigation file, specifying that the requested information was "germane to the provision of adequate representation regarding her [Gagner's] grievances and Unfair Labor Practice charges."

10. The employer refused to provide the information requested in Finding of Fact 9, above, citing Chapter 41.17 RCW (the Public

Disclosure Act) and attorney-client and work product privileges.

11. The union attempted to engage in bargaining over the information requested in Finding of Fact 9, but the employer at all relevant times refused to provide the information.

12. The Personnel Resources Board held a hearing on the third grievance, and after an *in camera* inspection of the file in question, the Board ruled that the information contained in the file was not relevant to its proceedings. *Gagner v. Washington State Patrol*, 2002 ARB-49 (WPRB, 2003).

13. The union and employer entered into a settlement agreement concerning the termination of Steve Barber. The union agreed to dismiss a number of pending grievances and unfair labor practice claims as part of the settlement, but it did not dismiss its claims in the current proceeding.

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 information requested in Findings of Fact 9, above, was relevant and necessary to the union for carrying out its collective bargaining responsibilities. Chapter 41.56 RCW

3. By its refusal to provide the union, upon request, with the investigation file concerning Gagner's harassment complaint against Corso, the employer committed an unfair labor practice within the meaning of RCW 41.56.140(4) and (1).

4. The decision of the Personnel Resources Board in Case 2002 ARB-49 with respect to the union's request for information does not preclude the Commission, by operation of *res judicata,* from exercising its jurisdiction to determine violations of Chapter 41.56 RCW.

5. The Commission does not defer to the decision of the Personnel Resources Board in Case 2002 ARB-49 with respect to the current proceeding. *City of Pasco*, Decision 3804-A (PECB, 1992).

6. The Commission does not enforce private contracts between parties. The Commission will proceed to process Case 16531-U-02-4279 as filed. *City of Kirkland*, Decision 5672 (PECB, 1996).

ORDER

The Washington State Patrol, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
   a. Refusing to bargain collectively in good faith with the Washington Public Employees Association, by refusing to provide relevant information requested by the union for its use in processing grievances and unfair labor practice claims filed with the Public Employment Relations Commission.

   b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collec-

tive bargaining rights secured by the laws of the State of Washington.

2. Take the following affirmative actions to remedy the unfair labor practices and effectuate the purposes and policies of Chapter 41.56 RCW:

a. Upon request, promptly provide to the union the unfounded investigation file relating to Gagner's harassment complaint against Corso, or any other member of the bargaining unit represented by the union who files a grievance or unfair labor practice complaint.

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

c. Notify the union, 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 union 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, as to what steps have been taken to comply with this order within 20 days following the date of this order, and at the same time

provide the Executive Director with a signed copy of the notice required by this order.

ENTERED at Olympia, Washington, on this 7th day of December, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Karyl Elinski

KARYL ELINSKI, Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

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 provide relevant information requested by Washington Public Employees Association in its capacity as exclusive bargaining representative of our employees.

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: _____

WASHINGTON STATE PATROL

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, 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300.