Snohomish County, Decision 9678 (PECB, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY CORRECTIONS GUILD,	)	
Complainant,	)	CASE 19975-U-05-5070
vs.	)	DECISION 9678 - PECB
SNOHOMISH COUNTY,	)	FINDINGS OF FACT,
Respondent.	)	CONCLUSIONS OF LAW, AND ORDER

Cline and Associates, by *James M. Cline*, Attorney, for the union.

Janice E. Ellis, Prosecuting Attorney, by *Steven Bladek*, Deputy Prosecuting Attorney, for the employer.

On February 10, 2006, Snohomish County Corrections Guild (union) filed a complaint charging multiple unfair labor practices with the Public Employment Relations Commission, which named Snohomish County (employer) as the respondent. Among other county operations, the employer operates a correctional facility and the union is the exclusive bargaining representative of the corrections officers who work in that facility. The employees in the bargaining unit had been covered under a collective bargaining agreement that expired on December 31, 2004. At the time of the hearing, the parties had not concluded negotiations for a successor agreement and had requested interest arbitration to adjudicate contractual dispositions on which the parties could not agree.

There are several controversies in this case regarding different sets of facts. First, the union claims that the employer

retaliated against union president Charles Carrell on several occasions, and derivatively or independently interfered with Carrell's exercise of rights protected under Chapter 41.56 RCW. The union further alleges that the employer unilaterally changed working conditions without affording the union an opportunity to bargain in seven different occasions. The union also alleges that the employer failed to allow the union's representatives to review an officer's reports on the death of an inmate, and failed to provide information related to a grievance related to a disciplinary action and the use of video recordings.

Agency staff reviewed the complaint under WAC 391-45-110 and issued a preliminary ruling, finding that a cause of action existed under RCW 41.56.140(1). Examiner Carlos R. Carrión-Crespo held a hearing on the case on June 29 and 30, July 11 to 14, and August 1 and 2. The parties submitted post-hearing briefs.

ISSUES PRESENTED

1. Did the employer discriminate against Charles Carrell for engaging in protected activities and/or interfere with his protected activities:

   a. when it documented an instance in which Carrell was late for work;

   b. when it reduced the amount of hours paid for the aforementioned shift;

   c. when it investigated Carrell for reporting a live bird in the jail medical facility;

   d. when it investigated Carrell for allegedly taking a long lunch break;

e. when it removed Carrell's name from the vacation calendar without notice after his vacation request had been approved;

f. when it failed to provide Carrell a ride home after he worked a second straight shift?

2. Did the employer unlawfully refuse to provide the union information related to a disciplinary action?

3. Did the employer change the working conditions of employees without affording the union an opportunity to bargain:

a. when it refused to allow Carrell to bring guild materials into the jail;

b. when it employed a security video as evidence to discipline an officer;

c. when it changed its policy on hair length for female officers;

d. when it ordered an officer to take leave involuntarily;

e. when it did not compensate an officer for working on a changed schedule according to past practice for changed shifts;

f. when it did not compensate an officer for working on a holiday;

g. when it changed an officer's schedule without paying the accustomed premium for a change of shift?

4. Did the employer interfere with the rights of Officer Stacey Stokes when it refused his request to allow the union president to review an incident report?

On the basis of the record presented as a whole, the Examiner holds that the union proved that the employer interfered with Carrell's rights under the statute in one of the charges filed by the union. The union did not meet the burden of proof necessary to establish that the employer retaliated against Carrell's rights guaranteed by RCW 41.56.040, interfered with Carrell's rights in any other complained-of occasion, changed working conditions unilaterally, refused to provide information or interfered with Stacey Stokes' rights under the statute.[1]

ANALYSIS

Issue 1: Discrimination Against Carrell for Union Activities and Interference with His Exercise of Protected Activities

Applicable Legal Principles

Discrimination

Commission precedent regarding RCW 41.56.040 and 41.56.140(1) indicates that in order to prevail in a complaint charging discrimination, the union must meet a "substantial motivating factor" standard. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The first step in this test is to establish a prima facie case. This means that a union must prove three basic

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[1] The union also argues in its brief that the alleged failure to provide Carrell a ride home; to pay him for an hour of overtime; and to allow him to bring guild materials to the jail constituted unilateral changes in past practices. In the complaint, however, the union raises these charges as instances of discrimination and interference but not of refusal to bargain, and requested no corresponding remedy. Therefore, the Examiner will not consider the charges.

facts to establish that the employer discriminated against an employee for engaging in protected activities. They are:

- That the employee exercised a right protected by the collective bargaining statute, or communicated an intent to do so;
- That the employee was deprived of some ascertainable right, benefit or status; and
- That there was a causal connection between the exercise of the legal right and the deprivation.

Port of Tacoma, Decision 4626-A, (PECB, 1995).

A union may establish this causal connection by showing that the adverse action followed the employee's known exercise of a protected right under circumstances from which the Examiner can reasonably infer causality. *Port of Tacoma; City of Tacoma*, Decision 8031-B (PECB, 2004). The Commission has declared that "[t]he timing of adverse actions in relation to protected union activity can serve as circumstantial evidence of a causal connection between the protected activity and the adverse action." *Mansfield School District*, Decision 5238-A (EDUC, 1996).

Once the union has established a prima facie case, it creates a rebuttable presumption that the employer has acted unlawfully. The employer then has an opportunity to articulate legitimate, non-discriminatory reasons for its actions. It does not have to prove them: it is a burden of production. *Educational Service District 114*, Decision 4631-A. If the employer is able to articulate such reasons, the union must then show, by a preponderance of the evidence, that the employer's reasons are mere pretexts or that the protected activity substantially motivated the

employer's actions. *City of Tacoma*, Decision 8031-B. This may be established by showing:

- that the stated reasons for the disputed actions were pretexts; and/or
- that union animus was nevertheless a substantial motivating factor behind the action.

Educational Service District 114, Decision 4631-A.

Interference

The Public Employees' Collective Bargaining Act, in RCW 41.56.040, grants public employees the right to organize and designate representatives of their own choosing without interference, restraint, coercion or discrimination from their employer. RCW 41.56.140(1) protects these rights when it declares that it is an unfair labor practice for employers to interfere with employees when they exercise such rights.

The Commission has found that an employer interferes with an employee's rights:

> whenever a complainant establishes that a party engaged in separate conduct that an employee could reasonably perceive as a threat of reprisal or force or promise of benefit associated with their union activity. The burden of proving unlawful interference rests with the complaining party and must be established by a preponderance of the evidence, but the test for deciding such cases is relatively simple.

King County, Decision 6994-B (PECB, 2002) (citations omitted).

The Commission has not specifically defined "threat of reprisal." In a footnote in *Kennewick School District*, Decision 5632-A (PECB, 1996), the Commission listed particular situations it had considered as threats of reprisal:

> The Commission has found interference where employees could reasonably perceive a lay-off of a union activist as a threat of reprisal associated with union activity (*City of Federal Way*, Decision 5183-A (PECB, 1996)); where an employee's prior behavior was characterized as misconduct and he was warned about it only after the processing of his grievance (*City of Pasco*, [Decision 3804-A (PECB, 1992)]); where the employer allowed an employee to have a union representative present during investigatory interview, but refused to allow the representative to actively participate in meeting (*King County*, Decision 4299 (PECB, 1993)); where the employer refused requests for a union representative at an "investigatory" meeting where the employee had a reasonable belief the interview could lead to disciplinary action against him (*City of Seattle*, Decision 3593-A (PECB, 1991)); and where employees could have perceived interview questions as directed toward stifling union activity, and characterization of a union activist as "iconoclastic" or "argumentative" could be reasonably perceived as a threat of reprisal associated with union activity. (*Port of Tacoma*, Decision 4626-A (1995)). The Commission found no interference violation in *Seattle School District*, Decision 5237-B (EDUC, 1996), where union activity was limited to a group grievance filed after the employer began working with the employee to improve performance, and the record was devoid of anti-union animus.

Application

The union alleges that the employer interfered with the union through its constant threats to discipline Carrell in the incidents that are listed above. The Examiner finds that the employer commit an interference violation, because Carrell could have reasonably perceived that the employer's actions threatened reprisal

associated with his union activity, as the following discussion explains.

On December 10, 2004, the Commission certified the union as the exclusive representative for the employees of this bargaining unit. Following the certification the employer and the union engaged in collective bargaining beginning in January 2005, but were unable to reach agreement and relations between the parties became tense. The union filed 53 grievances between January and May 2005. Also, the union requested that the Department of Labor and Industries to inspect the jail for occupational safety and health violations. L&I found four violations.

Shortly after Carrell became union president, Director Thompson spoke to Carrell in Thompson's office and gave him a copy of an article published in the March 2005 issue of "American Police Beat," titled "Bye Bye Bargaining," which discussed several instances in which police officers had lost the right to bargain collectively. Thompson testified that he had intended to show Carrell that there was a trend in the country that could repeat itself in Washington if the elected governor assumed a position against collective bargaining. He specifically referred to the possibility that the legislature would amend the law to allow county governments to subcontract services, but that such an occurrence could be avoided if the employees provided an efficient service. Carrell took the comment as a demand to acquiesce to the employer's requests.

The protected activity

The union alleges that the employer discriminated against Carrell because he was the union president at the time of the events, and he was actively attempting to negotiate a first agreement with the

employer on behalf of the union. There is no controversy that Carrell was the union president and that he was at the bargaining table, so the Examiner rules that Carrell was engaging in protected activity.

The adverse actions

The union alleges that the employer took five specific adverse actions against Carrell. The union must show that the actions deprived Carrell of any right, benefit or status, regardless of their disciplinary status under the contract. For the following reasons, the Examiner finds that the union discharged its burden of proof in only one of its allegations.

The first five actions that the union alleges did not entail the loss of any ascertainable right, benefit of status for Carrell. In light of this conclusion, the union did not establish a prima facie case of discrimination in any of the above-complained of actions, as Commission precedent requires.

Situations in Which No Violation Occurred

Tardy Slip

The employer issued a memorandum on June 1, 2005, which stated that Carrell had been two minutes late for his shift. In his testimony, Carrell explained that he was late because his name was not in the daily assignment schedule for that day and he received his assignment after he waited in front of the sergeant's room for several minutes, and that other officers had not received a slip. The memorandum included a note that "[a] fourth tardy slip within a rolling 12 month period will result in a written reprimand." A copy of the document was sent to the "tardiness log." Carrell

signed the document and wrote, in a space provided for employee comments, that he did not agree.

The tardy slip documents an event in a neutral fashion and provides the employee an opportunity to justify the tardiness. The employer's responses to the ensuing grievance attributed part of the delay in travel time to the fact that Carrell engaged in union-related conversation with Officer Gonzales before arriving at his post, which was not an acceptable reason because it was not related to an existing grievance.

This tardy slip provided Carrell an opportunity to explain why he had arrived late to his shift, and thus allowed him to ascertain his rights and avoid any attempt to deprive him of any ascertainable right, status or benefit without just cause. The document, in and of itself, did not deprive him of either one. Therefore, the document did not constitute an adverse action and thus could not be construed as discrimination. Although it constituted a threat of future adverse action, it did not constitute interference because it was related to his admitted tardiness and not to his functions as union president.

Order to Stop Carrying Briefcase

In February or March 2005, Carrell asked Commander Christopher Bly to approve a briefcase that Carrell planned to carry into the secured part of the facility, because he knew there had been an issue with people bringing in large bags. Carrell did not tell Bly that he planned to use the briefcase to carry union-related documents. Bly did not object to Carrell's request. On August 18, 2005, Steve Thompson, director of the jail, forbade Carrell from bringing a briefcase with union material into the secure areas while on duty. Thompson allowed Carrell to keep the material in a

locker located in the lobby, and then access them during the breaks.

Carrell testified that Thompson's action impaired his ability to perform union-related activities, such as processing grievances, and that the lobby locker was not readily accessible during breaks. In his testimony, Thompson acknowledged this could be an inconvenience which did not occur when the preceding labor representative employed outside personnel to provide advice, but stated that allowing the union to have an officer perform those functions could compromise the security of the institution.

The union did not provide evidence of a single situation in which Thompson's instructions precluded Carrel from discharging his duties as union president. The union argues that the employer issued the order under the pretext that the briefcase was excessively large, but the orders specifically alleged a different reason: that the guild materials distracted Carrell from his duties as an officer. Carrell had no reasonable basis to infer a threat of retaliation because the employer's instructions were based on legitimate security concerns.

Vacation Calendar

The employer granted Carrell the opportunity to take a one-day vacation on September 3, 2005. However, before that date, Carrell's name was removed from the vacation calendar. Captain Elisa Eby believed that his name had been added too late, but testified that she did not delete the name and that the policy was to notify an officer before doing so. After calling the fact to the employer's attention, Carrell was allowed to take the day off.

The union alleges that the employee's action to reinstate the day in the calendar cannot free the employer from the charge. However, complaints of discrimination require that the complainant state that an employee has suffered harm, not that the employee had to take action to avoid it. Furthermore, the deletion was an error that may not be reasonably construed as a threat. The union based its contentions on the perception that Eby had showed a hostile attitude towards Carrell, which would conceivably lead her to delete the name. The union did not establish a factual basis for this charge of inference.

Transportation to Residence After Second Shift

On August 5, 2005, the employer ordered Carrell to work a second straight shift. Between shifts, Carrell took his vehicle to his wife, which required him to start the second shift 50 minutes late. At the end of the shift, the employer failed to provide him a customary cab ride home because the cab company that held the contract to do so had ceased operations. Instead, the employer offered him an employer-owned vehicle to drive to his house. Carrell declined because he was tired and arranged transportation on his own.

Carrell subsequently claimed an additional eight hours pay for the second shift and two additional hours for the time it would have taken him to drive the employer-owned vehicle home, alleging that he would have been paid if he would have done so. Sergeant Ivey authorized the first claim, but Captain Eby, who supervised the day shift at the time, reduced it to seven hours because Carrell had said before the shift that it was going to take him one hour to deliver the vehicle to his wife. Eby placed the second claim on hold and ordered Carrell to submit a report regarding the events related to both requests, by the end of the shift on August 25,

2005. Carrell submitted the report on time, but did not sign it. Eby returned the unsigned report to Carrell and ordered him to sign and submit it by the end of the shift on August 26, 2005.

One hour before Carrell finished a second straight shift on August 5, 2005, Sergeant Leroy Ward attempted, on Carrell's behalf, to call the cab company contracted to transport officers home when necessary. Ward called the telephone number listed in the form that the employer had provided, a telephone number listed in the internet telephone listings, and a third telephone number that a directory assistance operator provided him. After being unable to reach the cab company, Ward notified Captain Bly. Carrell went to the sergeants' office before the end of the shift and Sergeant Fairbanks notified him that the employer was still attempting to contact the cab company. Bly attempted to obtain transportation for Carrell with other officers, and finally authorized Carrell to take an employer-owned vehicle to his residence. On August 16, 2005, the employer realized the company had ceased operations, and attempted to contract with another company to perform the service.

Transportation is an ascertainable benefit, and the record shows that Carrell did not receive it in this instance. Since the union has shown that the employer's failure to secure transportation affected Carrell adversely, the Examiner will proceed to the third step of the prima facie case analysis on this incident.

Causal relationship

The union demonstrated two factors that weigh in favor of a finding of causality: the timing of the incident, which occurred after Carrell participated in collective bargaining and had filed many grievances, and his reportedly tense labor relationship with the employer. However, it was the failure of the cab company to

update the employer's records, not the employer's actions, which caused Carrell to lack transportation. That intervening event showed that the employer did not discriminate against Carrell. Therefore, the union failed to sustain the third phase of the prima facie case of discrimination, because the union has not established a causal relationship between the protected activity and the loss of the benefit.

Letter of corrective counseling

On August 26, 2005, Captain Eby issued a letter of corrective counseling to Carrell for failing to submit a report regarding the above-mentioned claim for overtime pay on the date he had been so instructed. The letter concluded that Carrell had violated a policy but specified that it was not disciplinary, and provided Carrell an opportunity to improve or discuss its contents with Eby. The letter also advised Carrell that the employer would place a copy in a departmental file, not in Carrell's personnel file, and remove it "per the terms of applicable Collective Bargaining agreements." The union argues that the corrective counseling letters are not mentioned in the collective bargaining agreement (CBA) but that they substituted the verbal reprimands. Carrell, however, did not lose the right to discuss the merits of the information, and the union bases its assertion of loss on the unproven allegation that a copy of the letter would be placed in Carrell's personnel file.

Eby's explicit threat to discipline Carrell for failing to submit a signed report the same day was not related to Carrell's failure to follow an order necessary to further the security or efficient operation of the jail, but to Carrell's failure to justify a personnel transaction that he had initiated. Although a threat of discipline seems to be out of order since it was the first request

for such report, the union did not prove that Carrell could reasonably perceive that the threat was related to Carrell's union activity.

Lunch Duration

On August 18, 2005, Carrell worked as a relief officer and ate lunch in the designated work area. Commander Bly informed Eby of this fact because Bly understood that under the terms of the expired collective bargaining agreement, Carrell was expected to eat his food in the lunch room and return to his work area. Eby believed that Carrell had taken around 50 minutes to eat. On August 26, Eby ordered Carrell to submit a report explaining the incident, under penalty of "further" discipline, alleging it was the second time it occurred in the preceding week. On August 27, 2005, Carrell submitted the report, in which he denied taking more than 30 minutes to eat, indicated that no supervisor had called his attention to the length of his lunch break and there was no time clock to verify the time and stated that he felt he was being singled out for his union activities.

These facts do not establish that Carrell lost any ascertainable right, benefit or status. The union did not prove that the order was related to any union activity: it is not enough to assert that the employer was harassing Carrell for union activities. Therefore, the order did not constitute discrimination nor interference.

Conclusion

In the instances listed above, the union did not prove that employer's actions were related to Carrell's activities as union president. An employee could not reasonably construe them as threats related to Carrell's union activities.

Instance in which a violation occurred

As discussed above, the employer documented personnel transactions and required officers to submit reports to explain what occurred within the jail. The employer's expectation to know every activity in the secure facility is reasonable, given the safety concerns involved in correctional work. However, in one specific instance, the employer attempted to control Carrell's activities related to collective bargaining.

Safety and health report

On August 19, 2005, Carrell was alerted to the presence of a bird in the medical area of the secure facility. He and officer Crawford, who was working in the area, entered nurse Nikki Behner's office and found the bird in a cardboard box. He did not remove the bird, but called officer Juan Rubio and asked him to report it. Rubio wrote Eby that he believed there was a bird in the medical area and cited a regulation that forbade it. Eby asked Rubio if he was serious, but Rubio did not respond. On the same day, Behner asked Carrell in an electronic message if he was looking for something in her office, to which Carrell replied with a summary of the events. On August 22, 2005, Behner forwarded these electronic messages to her supervisor, Janet Hall, and discussed the incident with her. On August 24, 2005, Hall gave Behner a letter of reprimand for the violation.

On August 26, 2005, Eby ordered Carrell to submit a report regarding an unspecified safety and security issue by the end of the shift on August 27, 2005, under penalty of "further" disciplinary action. The report was expected to address eight specific questions, including who had informed him, when and why, and whether the person had reported it to a superior officer. On

August 27, 2005, Carrell submitted a report asking that the employer specify which incident the order referred to, alleging that he received safety complaints constantly as president of the union. On September 1, 2005, Captain Daniel Bly ordered Carrell to submit a report regarding the bird incident and all other safety complaints he has received by the end of the day, under penalty of discipline. On September 23, 2005, Bly specified that he was concerned that officers would report those issues to their labor representative before informing their supervisor.

These facts do not lead to conclude that Carrell lost any ascertainable right, benefit or status, and therefore did not constitute evidence of discrimination. However, the employer used the threat of discipline to obtain information on workplace safety and security concerns that Carrell had received in his capacity as union official, including the identity of officers who took their complaints to him in such capacity. Since this occurred after the union had caused a state agency to find that the employer had committed four occupational safety and health violations, the timing of the employer's order implies that the employer attempted to keep Carrell from receiving employees' complaints. Therefore, the Examiner concludes that the employer interfered with Carrell's activities as union official.

Conclusion

Considering the totality of the circumstances, the Examiner finds that Carrell could reasonably believe that the communication described above constituted a threat of adverse action based on union activity. The Examiner calls attention to the repeated threat of "further discipline," which falsely implied that Carrell had been disciplined previously. The phrase also suggested that the employer was prepared to take punitive actions against Carrell

not for failing to comply with substantive work rules but for failing to submit reports within a tight schedule.

Issue 2: Request for Information Regarding Disciplinary Action

Applicable Legal Principles

This decision now turns to a series of incidents in which the union asserts that the employer violated the statute when dealing with members of the bargaining unit. The duty to bargain in good faith includes a duty to provide relevant information needed to administer the collective bargaining agreement, including grievance administration. *City of Redmond*, Decision 8879-A (PECB, 2006); *King County*, Decision 6772-A (PECB, 1999). The circumstances of each particular case will determine "the type of disclosure that will satisfy that duty." *Public Utility District 1 of Snohomish County (International Brotherhood of Electrical Workers, Local 77)*, Decision 7656-A (PECB, 2003). The goal of the requirement is to encourage resolution of disputes short of arbitration hearings, not to overburden the parties with work. *King County*, Decision 6772-A. The focus of the inquiry is whether the union will probably need the requested information to properly perform its duties in processing a grievance. *Seattle School District*, Decision 5542-C (PECB, 1997).

Application

On June 16, 2005, an inmate reported an incident which involved officer Michael Abbitt. The employer considered the incident as an instance of sexual harassment, and issued Abbitt a letter of reprimand on June 23, 2005. Abbitt grieved the action on July 6, 2005, and the union requested all documentation and reports related to the disciplinary action on August 16, 2005, in order to be able

to represent Abbitt in an informal disciplinary hearing. Commander Bly responded that he would determine later whether to provide the information. The following day, Thompson ordered Bly to provide the union the information he had or used in the matter. Bly referred the request to his secretary, Joyce Diedrichs, who later wrote on the document the word "done." This notation led Thompson and Bly to understand that the request had been satisfied. The union made no further requests, and Bly did not verify that the union had received the information. Carrell did not receive the information until two or three weeks before the scheduled hearing. There is no evidence indicating whether any hearing regarding Abbitt took place.

Given the circumstances of this case, the union did not prove that the employer refused to provide the requested information in bad faith. The employer's uncontested testimony shows that its officials made a good faith effort to provide the union with the information, and that they were under the impression that the union had received it. The union did not make an equivalent good faith effort to ascertain why it had not received the information. Neither did it provide evidence that the information was necessary to represent Abbitt in an informal hearing or any other disciplinary proceeding. Therefore, the union failed to provide a basis to conclude that the employer's failed efforts had an adverse impact.

Issue 4: Unilateral Changes

Applicable Legal Principles

In a complaint alleging a unilateral change in a mandatory subject of bargaining, the complainant must prove that the dispute affects

employees' wages, hours, and working conditions, and that the employer made a decision that changes an express agreement or past practice regarding such a subject. *Kitsap County*, Decision 8292-B (PECB, January 31, 2007). The complainant must also establish what is the relevant status quo. *Municipality of Metropolitan Seattle*, Decision 2746-B (PECB, 1989). Then the complainant must establish that the respondent has effectuated a change in that status quo and that it did not provide the complainant an opportunity to bargain regarding the change. *Kitsap County*, Decision 8292-B; *Port of Seattle*, Decision 7000-A (PECB, 2000).

A "past practice" exists when the parties to a collective bargaining agreement have consistently observed a prior course of conduct and the parties have an understanding that such conduct is the proper response to the circumstances. The practice may help to interpret ambiguous provisions of an agreement, or establish the status quo when the contract is silent as to a material issue. *Snohomish County*, Decision 8852-A (PECB, January 31, 2007). The practice that a party represents as controlling must be of the same nature as the action object of the complaint. *Snohomish County Public Utility District 1*, Decision 8727-A (PECB, 2006).

An isolated incident does not constitute a unilateral change in working conditions if there is no evidence that the employer changed a specific past practice or policy regarding a mandatory subject of bargaining. The complainant must also show that the change was material, substantial, and significant. *City of Burlington*, Decision 5841-A (PECB, 1997).

The Commission does not assert jurisdiction over unfair labor practice complaints concerning contract violations. A party may

file such complaints if the dispute has not been reasonably and promptly resolved by settlement, grievance arbitration, or the courts. They can also be filed if the grievance arbitration proceedings "have not been fair and regular or have reached a result which is repugnant" to the statute. *City of Kennewick*, Decision 334 (1977).

Application

Barring Guild Materials from the Jail

The union alleges that Thompson's aforementioned order that Carrell cease carrying union-related documents into the secure facility constituted a change in past practices. The employer states that it was not.

Before the union was certified as the exclusive bargaining representative of the employees, the employer allowed the representative of the previous bargaining agent, who was not in the employer's payroll, to carry union documents into the lunch room. This lunch room was not located within the secure areas. Since there is no evidence that the previous representative entered the secure areas with union-related documents, the use of the lunch room for these purposes constituted the past practice in this case.

To allow Carrell to carry the documents into the secure areas would deviate from such practice, which the employer had no obligation to do without prior bargaining. The security concerns of having an officer carry documents not necessary to perform job-related duties outweigh the inconvenience that abiding with past practice may cause the union. The union's argument that other officers brought lunch boxes, mail, and job-related reading material to their

modules to read during breaks is inapposite to Carrell's attempts to carry union documents in transit between modules.

Hair Length for Female Officers

On July 14, 2005, Young informed Officers Jackson and Frese that the employer would implement a policy that limited the hair length of all female officers to the shirt yoke, which is the horizontal seam located several inches below the shoulders on the back of the uniform shirt. Young instructed the employees to cut their hair accordingly. Frese obeyed the order. Commander Bly later instructed Young to rescind those instructions, which Young did less than a week after he had imparted them.

The union alleges that the employer violated the statute when Captain Kevin Young enforced a new policy on hair length that the employer had not been negotiated with the union. The employer admits that Young mistakenly communicated a change in policy but asserts that it rescinded Young's actions.

Young's actions were erroneous but isolated, since the employer promptly corrected them. Young might have contravened past practice, but the employer rescinded his instructions. This precluded Young's actions from rising to the level of an unfair labor practice. Therefore, the Examiner rules that the employer committed no violation.

Ordering Doctor's Notes

The union alleges that the employer changed its medical policy unilaterally when the employer ordered two officers to bring medical certificates.

- Officer Shields: The employer ordered Officer Shields to bring a medical certificate showing he could work and to take leave without pay after Shields declined to work overtime for medical reasons. The employer stated that Shields was too sick to work at all during that day. The union alleges that the employer unilaterally changed the past practice contained in Section 9.2.3 of the expired collective bargaining agreement.

- Officer Frese: The employer ordered Officer Frese to bring a medical certificate showing she had attended a doctor's appointment that she claimed as justification to decline to work on her free day. The union alleges that the employer changed the past practice contained in a grievance resolution dated April 19, 2001.

While the union alleges that the employer changed past practice without bargaining; it also alleges that the employer applied the wrong section of the collective bargaining agreement to three situations. During the parties' negotiations for a collective bargaining agreement, the parties signed a Memorandum of Understanding which recognized the expired contract as the legal status quo between the parties. The parties also agreed to establish a grievance procedure to resolve alleged violations of the status quo, but did not provide for arbitration of grievances as had the expired contract.

Shields Incident

As referenced above, on August 29, 2005, Shields told Sergeant Ball that he could not work the second shift he had been assigned to work because he was ill with walking pneumonia, but could work the remainder of his regular shift. Captain Young then ordered Shields

to leave the jail because his presence was a liability, and to return to work only when he could evidence that he was well. As a result, Shields had to take leave without pay. Young testified that he had issued an identical order to another officer in 2002.

Under the expired collective bargaining agreement, officers could refuse to work a second straight shift. The union's argument rests on Section 9.2.3 of the expired agreement, which allows the employer to request a medical certificate when an officer is absent for three or more consecutive days, or has an unsatisfactory attendance record.

Section 9.2.3 of the expired agreement constitutes past practice for situations in which the employer orders an employee to document the use of sick leave. Shields' situation differs from what Section 9.2.3 addressed because the employer ordered him to document that he could return to work, not that he had to be absent. Therefore, the union has not proved that the employer changed past practice.

Frese Incident

In the second incident, on September 2, 2005, officer Frese notified Sergeant Ivey that she could not work a second shift because she had a medical appointment, and Ivey asked her to bring a note showing that she had attended the appointment. On September 9, 2005, Frese filed a grievance alleging that the request had violated a practice established in 2000. On that occasion, the employer had agreed with Frese in a separate grievance regarding a similar order, because Frese had not used many days of sick leave. On September 29, 2005, Director Thompson denied the grievance because her payroll record showed that she had been paid "repeated" days of sick leave.

The union alleges that the 2005 request deviated from the practice established with Frese's 2000 grievance. However, Thompson adduced in 2005 that Frese's record was different to the one in 2000. The union has not argued otherwise. Therefore, the 2000 practice does not constitute a precedent for the 2005 situation, and cannot the basis for the finding of an unfair labor practice.

Compensation for Shift Changes

The union alleges that the employer unilaterally changed the past practice of compensating officers an additional half of their regular rate of pay if the employer did not notify an officer of a change in shifts at least 72 hours in advance. The employer argues that the change resulted in an extended shift, not a change in schedule, and that the employer acted according to past practice for a shift extension.

The employer assigned Officer Hecht to transport inmates without prior notice. Hecht normally worked the day shift from 7:00 A.M. to 3:00 P.M., but occasionally would be transferred to transport inmates to jury trial, which ran from 8:00 A.M. to 4:00 P.M. or even later. On July 25, 2005, Hecht reported at 7:00 A.M., but was transferred without notice to transport inmates at 8:00 A.M. Sergeant Clinton Moll, the transport supervisor, asked Hecht to begin at 7:00 A.M. and begin transport duties at 8:00 A.M. The change resulted in a shift two hours longer than Hecht's normal shift, for which the employer compensated Hecht at a rate of time and a half the hourly rate.

There was abundant testimony regarding mandatory and regular use of overtime in the jail, as well as regarding regular transfer of officers to transport duty. Officer Hecht began his shift at the usual time and worked two hours more than usual as a result of the

transport duties. Hecht's schedule did not change: only his duties did, and this resulted in overtime work. The union tacitly admitted in its brief that the impact on Hecht's working conditions was minor, by asserting that transport officers "work jury trials work an 8:00 to 4:00 schedule to save the County money on overtime." On this occasion, the employer simply did not save that money. In view of this conclusion, the employer did not need to notify Hecht of the change 72 hours in advance, and did not commit an unfair labor practice.

Compensating an Officer for Working on a Holiday

The union alleges that the employer unilaterally changed working conditions when it compensated Officer Derek Henry according to section 8.3 of the expired collective bargaining agreement. The union argues that the situation required that the employer apply both sections 8.2 and 8.3 of the expired collective bargaining agreement simultaneously. The employer asserts that there was no past practice of compounding both methods of compensating an officer.

Henry was regularly assigned to work the day shift, but worked a swing shift on Monday, May 30, 2005. Under the expired agreement, the last Monday in May is considered a holiday. Also, Henry was not scheduled to work on May 30. The employer gave Henry 12 hours holiday time accrual. Henry filed a grievance on June 1, 2005, arguing that the employer should have compounded sections 8.2 and 8.3 of the expired agreement, which would have resulted in eight hours straight pay for the swing shift plus 12 hours of accrued holiday time. Director Thompson resolved that the situation called for applying only section 8.3 of the expired agreement, and that it had paid Henry straight time for all hours worked and credited him with time and a half hours worked as holiday time.

The union reasons that Henry was scheduled to work on his day off and on a holiday, so both situations were present. It also asserts that the employer's interpretation provides no incentive to work on a holiday, if the officer is not scheduled to work, and that compounding both sections would result in compensating Henry time and a half for the hours he worked on Memorial Day 2005, plus eight hours for the holiday.

The union bases its assertion of past practice on the text of the expired contract. Although the terms of the expired contract constitute the status quo, the union did not provide evidence that the two sections had ever been applied jointly and actually cites testimony that "employees were paid based on one holiday section and not both" on six instances that occurred as far back as May 2004. According to that testimony, the employer has applied only one section of the expired collective bargaining agreement at a time since May 2004 or before. It is proper to conclude that such conduct constituted the relevant past practice, and that the employer did not deviate from it. Therefore, the employer did not commit an unfair labor practice.

Use of Video Recording in Disciplinary Action

The union claims that the employer used images from security cameras for disciplinary purposes on two occasions, and that such use was a change in past practices and that the employer did not afford it an opportunity to negotiate regarding such a change. The employer contends that the disciplinary measure was not based on the video recording.

Managerial prerogative or change in working conditions?

A decision to install video cameras in certain workplaces, including jails, falls into the realm of entrepreneurial control

until it impacts a working condition. *King County*, Decision 9495 (PECB, November 22, 2006). In that case, the examiner found that installing cameras for disciplinary purposes impacted working conditions and the employer was required to bargain regarding the effects of the decision, and that the employer committed an unfair labor practice because it notified the union only two weeks before implementing the proposal. The National Labor Relations Board has likewise found that the installation of cameras to document actions for disciplinary purposes are "investigatory tools or methods used by an employer to ascertain whether any of its employees has engaged in misconduct . . . ." like others that the Board has found to be mandatory subjects of bargaining. *Colgate-Palmolive Co.*, 323 NLRB 82 (1997). Furthermore, the Board found that a change in these methods has "serious implications for [the] employees' job security, which in no way touches on the discretionary 'core of entrepreneurial control'." *Colgate-Palmolive Co.*, 323 NLRB 82 (1997). The Board also considered that the invasion of privacy involved in video recordings adds to the potential effect on working conditions.

Applying these principles, however, depends on each set of circumstances. The State of Washington Marine Employees' Commission has found that installing video cameras where there is no expectation of privacy does not require prior bargaining. *Washington State Ferries*, Decision 437 (MEC, 2005). The Connecticut State Board of Labor Relations, in turn, found that an employer did not need to bargain with the union to install and use an electronic surveillance device to investigate a crime or serious misconduct in the workplace if the scope of the investigation is properly limited. *Town of Rocky Hill*, Decision No. 3565 (Conn. St. Bd. Lab. Rels., 1998). In that case, the still pictures that the

camera took revealed a police officer secretly inspecting or copying materials located in a commander's desk. The Connecticut Board distinguished between widespread surveillance of a work site to detect possible crimes or misconduct as in *Colgate-Palmolive Co.*, and "surveillance limited to a specific site where the employer had good reason to believe that improper activity was taking place." Applying a balance of interests test, the Connecticut Board felt that the latter situation tended to protect the employer's interest in protecting sensitive information, and impinged less upon working conditions than the measures taken in *Colgate-Palmolive Co.*

In this case, the employer presented testimony regarding its use of cameras for security purposes and to preserve evidence relevant to possible inmate lawsuits. Its control room contains monitors which show images transmitted by the cameras spread throughout the facility, and the control room officers view the images. On June 27, 2005, officer Robin Otto filed a grievance alleging that control room officers had used the monitors to watch Officer Crumrine work in a module. Otto argued that the equipment was not intended for such use. Director Thompson denied the grievance on the grounds that it was appropriate to use cameras to look at the modules. He explained that the cameras recorded for two weeks and then recorded over the previous two-week period, unless preserved on purpose. Thompson also assured the union that the images that Otto saw had not been preserved.

Later, the employer investigated an incident in which several inmates accessed a computer monitor to open a cell on October 27, 2005. The employer determined that the inmates had been able to do so through instructions from Officer Cathy Board. The employer

reached that conclusion through testimony from the inmates, as well as through computer records detailing the times in which the doors were opened through the computer screen. The video was used to verify that the recorded activity coincided with the time that the door to the cell in which Board was trapped was unlocked. As a result, Board faced an internal investigation for six violations of the rules of conduct. On October 14, 2005, Captain Randy Harrison found that the evidence confirmed each of the six allegations, and recommended that they be sustained. As a result of Harrison's report, Board faced a possible discharge.

The report states that Harrison examined seven interviews, as well as "miscellaneous reports and documents." In one of the interviews, Captain Robin Haas declared that he had viewed the recording to verify which inmates had informed Officer Leopold about the incident. Haas also declared that he had seen inmates around the officer's station without an officer present, touching the screen, and that one of them picked up a personal digital assistant, which are assigned to officers and can open cells, and walked off with it. Haas compared the time of the recording with a "door activity report," which showed that touch screen depicted in the recording had opened one cell door at the time of the recording.

According to the evidence, the information obtained through the cameras was not used to initiate disciplinary action against either Crumrine or Board, but only to corroborate information obtained in a security investigation regarding the security lapse involving Board. The video recording used in the employer's investigation of Board did not compromise her privacy because it did not depict the actions for which she was disciplined. The employer initiated disciplinary action against Board because of information obtained

independently. The employer showed no intent to institute a policy of using the surveillance system for disciplinary purposes, as in *Colgate-Palmolive Co.* or *King County.* The video recording was corroborative, circumstantial evidence in an investigation regarding a breach of jail security by inmates. Therefore, the totality of the circumstances does not show a unilateral change of working conditions, and does not constitute an unfair labor practice.

Issue 5: Request For Union Review of Incident Report

The union alleges that the employer did not grant Officer Stokes' request to have a union officer review his report regarding an inmate's death. The union asserts that this action represented a refusal to respect his right to have a union representative present in a situation that amounted to a disciplinary interview. The employer argues that the right to a union representative does not assist an employee who has been ordered to submit a report and that such report was a routine element of the officer's duties and did not attach an expectation of disciplinary action. Finally, the employer argued that it did not have a duty to allow representation because the union induced the request.

Applicable Legal Principles

The policy enacted in the U.S. Supreme Court decision issued in *N.L.R.B. v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), applies to Chapter 41.56 RCW. *Okanogan County*, Decision 2252-A (PECB, 1986). In *Weingarten*, the U.S. Supreme Court sustained the National Labor Relations Board's conclusion that an employee had a "statutory

right . . . to refuse to submit without union representation to an interview which he reasonably fears may result in his discipline."

After an employee requests union representation, "the employer must either grant the request or end the interview." *Methow Valley School District*, Decision 8400-A (PECB, 2004). However, this right does not extend to a meeting held only to give an employee notice of an action being proposed (*e.g.*, notice of an interview or hearing to be held) or a decision already made (*e.g.*, discipline imposed). *Bethel School District (Public School Employees of Washington)*, Decision 6847-A (PECB, 2000).

The Commission has found that the U.S. Supreme Court intended to:

> insure that an employee may have the assistance of the exclusive bargaining representative in circumstances where the employee may be too intimidated, inarticulate or unsophisticated to properly present the facts in an investigatory setting. 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.

Cowlitz County, Decision 6832-A (PECB, 1999).

The Commission holds that "[i]t is the nature of an 'investigatory' interview that the employer is seeking information from the employee." *City of Bellevue*, Decision 4324-A (PECB, 1994). All the cases examined thus far have discussed situations in which an employer conducted a face to face meeting, because the Commission has not ruled on the application of the *Weingarten* principles to employer requests for information in other settings.

In *Weingarten*, the employer had interviewed an employee regarding an allegation that she had stolen from the employer, denied her request to have a union representative present, and found that the employee was not guilty. The employee then made an extraneous statement, based on which the employer began a second investigation regarding possible improper conduct. The Court ruled:

- The employee must make a specific request and reasonably believe there is a risk of disciplinary action;
- The right to refuse to participate in the interview "may not interfere with legitimate employer prerogatives . . . The employer would then be free to act on the basis of information obtained from other sources."

The ruling's purpose was to safeguard "the interests of the entire bargaining unit by exercising vigilance to make certain that the employer does not initiate or continue a practice of imposing punishment unjustly." *Weingarten*, 420 U.S. at 260. The union representative can also assist the employer by eliciting relevant and extenuating declarations from the employee. Later, the Court clarified that "representation is not the equivalent of obstruction." *National Aeronautics and Space Admin. v. Federal Labor Relations Authority*, 527 U.S. 229, 236 (1999).

Other forums have expressed themselves on whether this right extends to employer requests of written information for employees. Two NLRB judges have found separately that representation rights do not attach to settings similar to the facts in the instant case. In *Staten Island University Hospital*, Case No. 29-CA-22755 (2001), the employee requested union representation in an interview, but only after the employer requested a written report. The judge ruled that the request was related only to the report and that "*Weingarten* and its progeny are solely concerned with an employee being confronted by his supervisor at an interview." In *Akal*

Corporation, Case 27-CA-19482 (2005), the employer ordered an employee to respond to written questions in writing, and instructed the union representative to remain silent. The judge did not find a violation for the following reasons:

- The employer did not question or interview the employee about the matter under investigation;
- The restrictions were meant to assure that the written responses were to be those of the employee alone;
- The union was not barred from perusing the questions or raising arguments or issues about those questions;
- The employer told the union that they could confer privately in the hallway before the employee completed his responses and they took advantage of that opportunity.
- The employer was not even present in the same room while the employee wrote his responses to the questions.

Akal Corporation, Case 27-CA-19482.

Since the judges in *Staten Island University Hospital* and *Akal Corporation* found that the right of representation did not attach to these particular orders to submit written information, they dismissed the complaints without analyzing whether they were disciplinary in nature.

Based on the foregoing, the Examiner concludes that the right to union representation may not be necessarily limited to oral interviews, but is required only in circumstances where the employee may be too intimidated, inarticulate or unsophisticated to properly present the facts in an investigatory setting.

Application

On January 21, 2006, an inmate died while Officer Stokes was on duty. As a result, the employer initiated a routine criminal

investigation. When the Sergeant in charge, Marlene Fairbanks, arrived at the scene, she interviewed Stokes and ordered an officer to create a log. Fairbanks told Stokes she thought that he had done nothing wrong, and ordered Stokes to submit a report on the incident. Stokes called Carrell, who suggested to Stokes that he request a union representative to review his report to ensure that he was protected. Stokes made the request, but Fairbanks denied it asserting that such a review would delay the report and constitute an obstruction of justice. Stokes called Carrell again, and Carrell suggested that Stokes write in his report that his request had been denied. Stokes followed Carrell's suggestion.

The union argues that the employer should have granted the request because: Stokes made it personally; the report was investigatory in nature; and Stokes reasonably believed that it could result in disciplinary action against him. The union also asserts that excluding written reports from the protection of the right of union representation would allow the employer to circumvent its duty to provide union representation.

The employer alleges that the employee could not be intimidated in a self-narrative report; that the criminal investigation was normal in an inmate death scene; and that the union provided Stokes assistance by phone while Stokes prepared the report. Thompson testified that "all [Stokes] needed to do was write a report that had all the facts, you know, whole truth, nothing but the truth, don't embellish, don't editorialize and don't omit."

Considering the totality of the circumstances, Stokes' right to union representation was not denied. As in Akal Corporation, Stokes was required to give the employer his version of the events in writing. Stokes was more protected than the employee in that

case since the report did not contain specific questions, and Stokes had full control of what he wrote. In fact, the form was identical to that used for other incidents, so he knew what the employer expected him to write. Stokes spoke to Carrell freely and could discuss the incident with him before writing the report. Furthermore, there was no employer representative present to coerce or intimidate him in any manner.

Therefore, Stokes' situation did not deprive him of union representation. The Examiner concludes that the union did not prove that the employer interfered with Stokes' exercise of protected rights.

Final Conclusion

Based on the foregoing discussion and analysis, the Examiner rules that the union proved that the employer interfered with Carrell' exercise of protected activities only when it ordered him to submit a report on every single health and safety issue that employees brought to him on August 19, 2005. The union did not prove that the employer discriminated against Charles Carrell for engaging in protected activities. Neither did the union prove that the employer refused to provide the union information related to the disciplinary action it took against Michel Abbitt, or that the employer changed working conditions without affording the union an opportunity to bargain, or that the employer interfered with the rights of Stacey Stokes.

Remedies

The union requests that the examiner grant attorney's fees. Commission and judicial precedent allows an award of attorney fees

as part of a remedial order where it is necessary to make the order effective and where the defenses are frivolous. *See Lewis County v. PERC*, 31 Wn.App. 853 (1982) and *City of Tukwila*, Decision 2434-A (PECB, 1987). However, the union did not prevail in most of its charges and attempted to include new charges in its post-hearing brief. The employer's interference violation is not egregious and do not warrant such a remedy.

FINDINGS OF FACT

1. Snohomish County is a "public employer" within the meaning of RCW 41.56.030(1).

2. The Snohomish County Corrections Guild is a "bargaining representative" within the meaning of RCW 41.56.030(3), and is the exclusive bargaining representative of an appropriate bargaining unit of corrections officers.

3. At all pertinent times, Corrections Officers Charles Carrell, Eva Frese, Michael Abbitt, Richard Hecht, Robin Otto, Cathy Board, Derek Henry, Aurelia Jackson and Scott Shields were members of the bargaining unit described in finding of fact number 2. Carrell has been union president since February 2005.

4. At all pertinent times, Jail Director Steve Thompson; Commander Christopher Bly; Captains Daniel Bly, Elisa Eby, Randy Harrison, Kevin Young, and Robin Haas; Sergeants Marlene Fairbanks, Clinton Moll, Leroy Ward, Daniel Young, Ken Ivey, and Michael Ball; and Administrative Service Manager Janet Hall were supervisory employees and agents of the employer.

5. The employer and the union began bargaining for a collective bargaining agreement on January 2005. As part of the negotiations, the parties signed a Memorandum of Understanding in which they recognized that the expired collective bargaining agreement constituted the legal status quo. The parties also agreed to establish a grievance procedure that did not include arbitration.

6. Shortly after Carrell became union president, Director Thompson spoke to Carrell in Thompson's office and gave him a copy of an article published in the March 2005 issue of "American Police Beat," titled "Bye Bye Bargaining," which discussed several instances in which police officers had lost the right to bargain collectively.

7. On Monday, May 30, 2005, Officer Derek Henry worked a swing shift. The employer paid Henry straight time for all hours worked and awarded Henry 12 hours holiday time accrual, under the terms of the expired collective bargaining agreement.

8. On June 1, 2005, the employer issued a memorandum which stated that Carrell had been two minutes late for his shift. The memorandum included a note that "[a] fourth tardy slip within a rolling 12 month period will result in a written reprimand." A copy of the document was sent to the "tardiness log." Carrell signed the document and wrote, in a space provided for employee comments, that he did not agree.

9. On June 16, 2005, an inmate reported an incident which involved officer Michael Abbitt. The employer considered the incident as an instance of sexual harassment, and issued Abbitt a letter of reprimand on June 23, 2005.

10. On July 6, 2005, Abbitt grieved the reprimand described in paragraph 11 of these findings of fact. On August 16, 2005, the union requested all documentation and reports related to the disciplinary action against Abbitt in order to be able to represent Abbitt in an informal disciplinary hearing.

11. On August 16, 2005, Thompson ordered Commmander Bly to provide the union the information he had or used in the matter regarding Officer Abbitt. Bly referred the request to his secretary, who later wrote "done" on the document. This notation led Thompson and Bly to understand that the request had been satisfied, even though the union did not receive the information until two or three weeks before the hearing on this case.

12. The union made no further requests for information referring Abbitt, and Bly did not verify that the union had received the information.

13. On July 14, 2005, Captain Kevin Young informed Officers Aurelia Jackson and Eva Frese that the employer would implement a change to the employee hair policy and instructed them to cut their hair so it would not reach the yokes of their shirts. Officer Frese obeyed the order. Commander Bly later instructed Young to rescind those instructions, which Young did less than a week after he had imparted them.

14. On July 25, 2005, Officer Richard Hecht reported to work at 7:00 A.M., and was transferred without notice to transport inmates beginning at 8:00 A.M. Sergeant Clinton Moll, the transport supervisor, asked Hecht to begin at 7:00 A.M. and begin transport duties at 8:00 A.M. The change resulted in a

shift two hours longer than Hecht's normal shift, for which the employer compensated Hecht at a rate of time and a half the hourly rate.

15. On August 5, 2005, the employer ordered Carrell to work a second straight shift. Between shifts, Carrell took his vehicle to his wife, which required him to start the second shift 50 minutes late. Sergeant Daniel Young promised Carrell that the employer would provide Carrell transportation to his residence after he worked a mandatory second straight.

16. Sergeant Leroy Ward attempted to call the cab company contracted to perform the service, one hour before Carrell finished his work assignment. Ward unsuccessfully called three telephone numbers for the cab company. Captain Daniel Bly attempted to obtain transportation for Carrell with other officers and authorized Carrell to take an employer-owned vehicle to his residence. Carrell declined because he was tired and arranged transportation on his own.

17. On August 6, 2005, Carrell claimed an additional eight hours pay for the second shift he worked on August 5, 2005. Carrell also requested the employer to pay him two hours for the time it would have taken him to drive the employer-owned vehicle home, alleging that he would have been paid for doing so.

18. Sergeant Ivey authorized the first claim, but Captain Elisa Eby reduced it to seven hours, based on Carrell's assertion that it would take him one hour to deliver the vehicle to his wife. Eby placed the second claim on hold and ordered Carrell to submit a report regarding the events related to both requests, by the end of the shift on August 25, 2005. Officer

Carrell complied, but submitted the report without signing. Eby returned the unsigned report to Carrell and ordered him to sign and submit it by the end of the shift on August 26, 2005.

19. On August 26, 2005, Eby sent Carrell a letter of corrective counseling, alleging that he had failed to acknowledge her authority in the matter described in paragraph 19 of these findings of fact, which constituted insubordination. The letter advised Carrell that improving in this area would avoid disciplinary actions against him.

20. On August 18, 2005, Steve Thompson, director of the jail, forbade Carrell from bringing a briefcase with Guild material into the secure areas while on duty. Thompson allowed Carrell to keep the material in locker located in the lobby, and access them during the breaks.

21. On August 18, 2005, Carrell worked as a relief officer and ate lunch in the designated area. Commander Chris Bly informed Eby of this fact because Bly understood that under the terms of the expired collective bargaining agreement, Carrell was expected to eat his food in the lunch room and return to his work area. Eby believed that Carrell had taken around 50 minutes to eat.

22. On August 26, Eby ordered Carrell to submit a report explaining the incident described in paragraph 22 of these findings of fact, under penalty of "further" discipline, alleging it was the second time it occurred in the preceding week. On August 27, 2005, Carrell submitted the report, in which he denied taking more than 30 minutes to eat, indicated that no supervisor had called his attention to the length of

his lunch break and there was no time clock to verify the time and stated that he felt he was being singled out for his union activities.

23. On August 19, 2005, Carrell was alerted to the presence of a bird in the medical area of the secure facility. He and officer Crawford, who was working in the area, entered nurse Nikki Behner's office and found the bird in a cardboard box. He did not remove the bird, but called officer Juan Rubio and asked him to report it. Rubio wrote Eby that he believed there was a bird in the medical area and cited a regulation that forbade it. Eby asked Rubio if he was serious, but Rubio did not respond.

24. On August 19, 2005, Nikki Behner asked Carrell in an electronic message if he was looking for something in her office, to which Carrell replied with a summary of the events. On August 22, 2005, Behner forwarded these electronic messages to her supervisor, Janet Hall, and discussed the incident with her. On August 24, 2005, Hall gave Behner a letter of reprimand for the violation.

25. On August 26, 2005, Captain Elisa Eby ordered Carrell to submit a report regarding an unspecified safety and security issue by the end of the shift on August 27, 2005, under penalty of "further" disciplinary action. The report was expected to address eight specific questions, including who had informed him, when and why, and whether the person had reported it to a superior officer.

26. On August 27, 2005, Carrell submitted a report requesting more details regarding the order of August 26, 2005, alleging that

he received safety complaints constantly as president of the union.

27. On September 1, 2005, Captain Daniel Bly ordered Carrell to submit a report regarding the incident involving the bird and all other safety complaints he has received by the end of the day, under penalty of discipline.

28. On September 23, 2005, Bly specified that he was concerned that officers would report safety issues to their labor representatives before informing their supervisor.

29. Before August 26, 2005, the employer removed Carrell's name from the vacation calendar for September 3, 2005. After calling the fact to the employer's attention, Carrell was allowed to take the day off.

30. On August 29, 2005, Officer Scott Shields told Sergeant Michael Ball that he could not work the second shift he had been assigned to work that day because he was ill with walking pneumonia, but could work the remainder of his regular shift.

31. On August 29, 2005, Captain Young questioned Scott Shields on the state of his health and told Shields that Young could not allow him to remain on the job if he was ill. Shields responded that he did not want to go home because he did not have any accrued sick leave. As a result, Shields had to take leave without pay.

32. On September 2, 2005, Officer Eva Frese notified Sergeant Ivey that she could not work a second shift because she had a

medical appointment, and Ivey asked Frese to bring a note showing that she had attended the appointment.

33. On September 9, 2005, Frese filed a grievance alleging that the request had violated the practice established in 2000. On that occasion, the employer agreed with Frese on a separate grievance regarding a similar order, because Frese had not used many days of sick leave.

34. On September 29, 2005, Director Thompson denied the grievance because Frese had not articulated any violation of the expired contract, and because her payroll record showed that she had been paid "repeated" days of sick leave.

35. On January 21, 2006, an inmate died while Officer Stokes was on duty. As a result, the employer initiated a routine criminal investigation.

36. When the Sergeant in charge at the time of the events described in paragraph 35 of these findings of fact, Marlene Fairbanks, arrived at the scene, she ordered an officer to create a log and interviewed Stokes. Fairbanks told Stokes she thought that he had done nothing wrong, and ordered Stokes to submit a report on the incident.

37. Stokes requested that the employer allow the union president to examine the report before Stokes submitted it, in order to ensure that he was protected. Fairbanks denied the request, asserting that such a review would delay the report and constitute an obstruction of justice.

CONCLUSIONS OF LAW

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

2. As described in paragraphs 8, 16, 18, 19, 22 and 25 to 29 of the foregoing findings of fact, the union failed to discharge its burden of proof to establish that Snohomish County discriminated against Charles Carrell and violated RCW 41.56.140(3) by documenting an instance in which Carrell was late for work; failing to provide Carrell a ride home after he worked a second straight shift; reducing the amount of hours paid for the aforementioned shift investigating Carrell for requesting such overtime pay; reporting a live bird in the jail medical facility; allegedly taking a long lunch break; and by removing Carrell's name from the vacation calendar without notice.

3. As described in paragraphs 8, 16, 18, and 29 of the foregoing findings of fact, the union failed to discharge its burden of proof to establish that Snohomish County interfered with employee rights in violation of RCW 41.56.140(1) by documenting an instance in which Carrell was late for work; failing to provide Carrell a ride home after he worked a second straight shift; reducing the amount of hours paid for the aforementioned shift, and removing Carrell's name from the vacation calendar without notice.

4. By issuing Carrell a letter of corrective counseling, and two orders to submit reports not related to legitimate security concerns under threats of "further discipline" on August 26,

2005, and by expressing concern that officers might communicate safety and health issues to the union before informing supervisors, as described in paragraphs 19, 27, and 28 of the foregoing findings of fact, Snohomish County interfered with employee rights in violation of RCW 41.56.140(1).

5. As described in paragraphs 7, 11, 13, 14, 17, 20, 31, and 32 to 34 of the foregoing findings of fact, the union failed to discharge its burden of proof to establish that Snohomish County breached its good faith obligation or violate RCW 413.56.140(4): by refusing to allow Officer Charles Carrell to bring guild materials into the jail; by refusing to provide information to the union regarding a disciplinary action against an officer; by employing a security video as evidence to discipline an officer; by changing its policy on hair length for female officers; by ordering an officer to take leave involuntarily; by not compensating an officer for working on a changed schedule according to past practice for changed shifts; by not compensating an officer correctly for working on a holiday; or by changing an officer's schedule without paying the accustomed premium for a change of shift.

6. As described in paragraphs 37 of the foregoing findings of fact, the union failed to discharge its burden of proof to establish that Snohomish County interfered with Stacey Stokes' rights or violated RCW 41.56.140(1).

ORDER

SNOHOMISH COUNTY, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

a. Interfering with Charles Carrell's exercise of rights protected under Chapter 41.56, by ordering Carrell to submit reports not related to legitimate security concerns under threat of discipline;

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

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

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

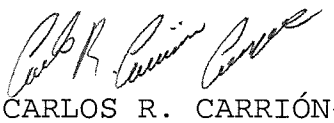
b. Read the notice attached to this order into the record at a regular public meeting of the County Council of SNOHOMISH COUNTY, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

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

d. Notify the Compliance Officer 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 Compliance Officer with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, this 23rd day of May, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CARLOS R. CARRIÓN-CRESPO, Examiner

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

Case 19975-U-05-5070

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY ordered Officer Charles Carrell to submit reports not related to legitimate security concerns on a tight deadline under threat of discipline.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL NOT order Officers to submit reports not related to legitimate security concerns on a tight deadline under threat of discipline.

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: _____ SNOHOMISH 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, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.