King County, Decision 6994-C (PECB, 2002)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL 17,	)	CASE 14042-U-98-3471
	)	DECISION 6994-C PECB
Complainant,	)	
	)	CASE 14454-U-99-3581
vs.	)	DECISION 6995-C PECB
KING COUNTY,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER

Ray Goforth, Business Representative, for the union.

Norm Maleng, Prosecuting Attorney, by *Diane Hess Taylor*, Assistant Prosecuting Attorney, and *Robert Railton*, Labor Negotiator, for the employer.

On July 21, 1998, International Federation of Professional and Technical Engineers, Local 17 (union) filed an unfair labor practice complaint with the Commission under Chapter 391-45 WAC, naming King County (employer) as the respondent. Case 14042-U-98-3471 was docketed. A preliminary ruling was issued on August 14, 1998, under WAC 391-45-110, finding a cause of action to exist on allegations summarized as follows:

1. Failure or refusal of employer officials to supply information requested by the union in connection with its representation of [Sherilyn McKee] seeking return to work.
2. Interference with employee rights, by a July 9, 1998, communication by supervisory employee Baugh [to McKee], which disparaged the union by reference to intervention of "third parties"; and
3. Failure and refusal of employer officials to respond to union telephone messages

> and/or requests for meetings concerning the status of [McKee].

The employer filed its answer and affirmative defenses on September 14, 1998.[1]

On March 15, 1999, the union filed additional unfair labor practice charges involving different King County employees. Case 14454-U-99-3581 was docketed. A preliminary ruling was issued in Case 14454-99-3581 on March 16, 1999, finding a cause of action to exist on allegations summarized as follows:

> Employer reprisals against [Terry Hammond and Sherilyn McKee] for their protected activities under Chapter 41.56 RCW, by means of discriminatory administration of the federal Family Medical Leave Act (FMLA) . . .

The matters were consolidated, and were assigned to the undersigned Examiner.

The employer filed a motion for summary judgment on March 25, 1999, seeking dismissal of both complaints.[2] A hearing was held before Examiner J. Martin Smith on October 7, 1999, March 30, 2000, and May 31, 2000.[3] The parties filed briefs.

Following the issuance of a decision and an appeal, the Commission remanded these cases with instructions to address only:

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[1] Affidavits and exhibits attached to the employer's answer did not thereby become part of the evidentiary record.

[2] That motion was denied on October 7, 1999.

[3] The hearing initially set for April 21, 1999, was postponed, based upon representations from the parties that they were working on a settlement which would lead to withdrawal of all claims.

> (1) an independent interference violation involving McKee, based on the letter dated July 9, 1998; (2) refusal to bargain violations, based on the duty to provide information; and (3) discrimination violations involving McKee and Hammond, as detailed in the second complaint.

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

Upon reconsideration of the evidence in the record, the Examiner concludes that the employer did not commit unfair labor practices under the applicable collective bargaining statute. The complaints are DISMISSED.

BACKGROUND

King County has more than 10,000 employees working in a governmental structure so complex as to be comparable to state governments in Idaho and Wyoming. Ron Sims is the county executive; Lynette Baugh is the manager of the Building Services Division within the King County Department of Development and Environmental Services (DDES), where these cases arose. The employees involved in these cases work in county offices located in Renton and Bellevue.

The union represents several bargaining units of King County employees, touching several departments. During the period relevant to these cases, Ray Goforth was the union business agent responsible for those bargaining units.

In 1998, Sherilyn McKee was a DDES employee represented by the union. Special workplace accommodations were required for McKee, prior to the events giving rise to this case, because she has an ongoing medical disability. McKee was also absent from work from April of 1998 to at least June 11, 1998, due to new injuries she received in an automobile accident.

Exhibit 14 in this proceeding is a letter prepared on June 9 and sent to McKee on June 11, 1998, in which Baugh stated that the employer had concerns about getting a response from McKee:

> This letter serves to notify you that your Family and Medical Leave entitlement began on April 21, 1998. The 12-month period is from April 21, 1998 through April 20, 1999.
>
> Please ask your medical practitioner to complete the enclosed FMLA Medical Certification form and return it to Kathy Graves in the Administrative Services Division of this department no later than June 26, 1998.
>
> Communication during this time is important.

The union received a copy of that letter. Apart from voicing displeasure with the management in general, and with Baugh in particular, Goforth filed a complaint with the United States Department of Labor concerning McKee's rights under the FMLA.

Baugh made repeated telephone calls to McKee's residence without getting any answer. It is now apparent that McKee's physical limitations prevented her from accessing her telephone and mailbox in that timeframe. Hence, McKee did not respond to the letter sent by Baugh on June 11. A second letter was sent to McKee on June 30, 1998. That letter included:

> On July [sic] 11, 1998, you were provided a Family and Medical Leave Medical Certification form from my office. You were instructed to complete the form and return it to Kathy Graves no later than Friday June 26, 1998. In spite of those instructions, the completed form has not been received to date.
>
> Please be reminded that King County is empowered to direct you to complete the form and return it to Kathy Graves, as instructed, no later than July 7, 1998. I have enclosed an additional FMLA medical certification form for your medical practitioner to complete.

> Failure to complete the form and return it in a timely fashion, as directed above, will place you in violation of a lawful directive by a Division Manager. Your absence will also be considered unauthorized at that point.

According to employer official Michael Frawley,[4] that letter was drafted hastily, in an effort to elicit a response from McKee as soon as possible. While it is clear that a response period of less than 14 days was allowed in that letter, and while Frawley acknowledged in this proceeding that the deadline imposed upon McKee was inappropriate, Frawley testified that no disciplinary action was actually contemplated or commenced against McKee.

In a conversation on July 6, 1998, Baugh assured McKee that a copy of her June 30 letter would be sent to Goforth. Goforth independently requested a copy of that letter by leaving a voice-mail message for Baugh.[5]

Employer official Bob Derrick responded by telephone on July 9, 1998, and assured Goforth that no discipline or adverse action had been or was planned in regard to McKee. Goforth seemed reassured. Transcript 164, 177-78. Derrick also sent a follow-up letter to Goforth. Transcript 162; Exhibit 14.

Goforth actually received two copies of the June 30 letter within three days following his demand that the employer produce important

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[4] Frawley testified on the last day of the hearing. He has been an administrative services manager with the employer for many years. His contacts with Goforth on this case were always on behalf of other employer officials.

[5] The Examiner mentions this fact only because it was uncontroverted. Voice-mail messages otherwise fall into a category of hearsay for which the Examiner would have no basis on which to verify that a messages was properly transmitted to or received by the intended recipient(s).

documents. Goforth noted the mistaken date in the letter,[6] and he also asked for a fax version of Baugh's letter. Baugh delegated Frawley to contact Goforth. When Frawley talked to Goforth the next day, Goforth indicated that he had received the requested letter(s). Although union representatives usually arrange meeting dates, exchange bargaining proposals, and request information through the employer's senior labor negotiator, Robert Railton, there is no evidence that Goforth ever made an information request to Railton in regard to the McKee situation.

The employer did not hold McKee to the "July 7" deadline, and instead processed McKee's FMLA claim in a timely fashion. McKee was not disciplined, and she was on sick leave and FMLA leave while she recuperated from her injuries received in the auto accident.

Derrick and McKee had a telephone conversation on July 9 about whether working at home for four to five weeks might resolve problems for McKee. The accommodations made available to McKee at her workplace included a large machine to lift heavy maps, and alteration of her lunch hour to accommodate her difficulty in walking and standing.

On July 9, 1998, Baugh sent the letter which is the focus of the first issue remanded by the Commission, stating:

> Dear Ms. McKee:
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> I am writing in order to provide you with further clarification as to those requirements the Department has relating to your current medical leave. . . . I am very appreciative of your willingness to engage in an interactive process in order that both your needs and

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[6] It should have been obvious that the past-tense reference to "July 11, 1998" was incorrect in a letter dated June 30, 1998. The context indicates the writer was referring to the letter sent on June 11, 1998.

> the needs of the Department may be addressed. . . . [T]here is a need for you to complete certain forms and forward them to Kathy Graves of the Administrative Services Division. As of this writing, I have not yet received those forms. I have enclosed additional forms for your use if that is required. It is important that you provide information in order that we may begin the process of determining what if any accommodations are appropriate in this case. I caution you, however, that the process cannot begin until such time as we have heard from your medical practitioner. . . . Please be assured that all levels of department management wish to assure that a reasonable and appropriate response is made to the needs you state. *We are concerned that third parties are disseminating misinformation as it relates to our interaction with you. Such conduct is unproductive* and does not serve to further the interactive process of reasonable accommodation in which we wish to engage. I look forward to your response to this letter and wish to assure you that I will actively work with you in order to determine that reasonable accommodation which is appropriate.
>
> Sincerely,
>
> /s/ Lynette Baugh . . . .
>
> (emphasis added.)

The context for Baugh's comment about "third parties" derived from her understanding that, in addition to dealing with the employer through Goforth, McKee had been using multiple fellow employees to convey messages between herself and Baugh.

The only face-to-face meeting between the parties on this controversy may have been during conciliation conducted by the U.S. Department of Labor on the federal complaint. The record in this proceeding is unclear even on that point.[7]

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[7] The Department of Labor closed the federal complaint following the conciliation process.

POSITIONS OF PARTIES

The parties have not re-briefed or re-argued these cases before the Examiner on remand, and the Examiner has thus reconsidered the case on the briefs filed by the parties after the hearing. Among the five issues the union sought to outline at page 1 of its post-hearing brief, two lines of argument go beyond the preliminary rulings and the issues remanded by the Commission. The positions of the parties on the three viable issues are set forth below, under the separate headings for those issues.

DISCUSSION

Matters *Not Before the Examiner* in this Case

In reconsidering this case on remand, the Examiner has maintained close adherence to the preliminary rulings. The jurisdiction of the Public Employment Relations Commission in this matter arises from the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, and is limited to the interpretation and enforcement of that state law. Thus:

- The Commission has no jurisdiction to enforce the FMLA, which is a federal law enacted in 1993 and administered by an agency of the federal government.
- The Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. *City of Walla Walla*, Decision 104 (PECB, 1976).[8]

[8] Examination of a contract is sometimes necessary where there are allegations of interference in the grievance process, but the enforcement of such contracts is for an arbitrator or the courts.

While federal precedents interpreting the National Labor Relations Act (NLRA) can be considered when interpreting the similar provisions of Chapter 41.56 RCW, the state law and precedents are the primary authority in such matters. Because the definition of collective bargaining and the duty to bargain in good faith are set forth in RCW 41.56.030, and there have been numerous Commission and Washington court decisions interpreting the state statute, there is little need for further research into the underpinnings of definitions contained in the NLRA.

The Refusal to Bargain Allegations

In the cases now before the Examiner, a "refusal to bargain" theory is only raised under the first complaint, Case 14042-U-98-3471. There was a check mark in the box on the complaint form to indicate a claimed violation of RCW 41.56.140(4),[9] and the preliminary ruling framed both "refusal to provide information" and "refusal to respond to union officials" issues.

The Refusal to Provide Information Claim -

The duty to bargain includes a duty to provide relevant, necessary information requested by a party to a collective bargaining relationship for the proper performance of its duties in the collective bargaining process. This extends to requests for information that a union might use to sort out meritorious from frivolous grievances, and might include requests for further information made after a grievance has been processed at the first step of a contractual procedure. The party receiving a request for information may negotiate with the opposite party (as it would with regard to any other issue arising in collective bargaining), with regard to confusing requests, irrelevant information, costs of copying or release, and so on. In remanding this case to the

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[9] In its filing on July 21, 1998, the union used the complaint form promulgated by the Commission (Form U-1).

Examiner, the Commission cautioned that the appropriate test to be applied is a broad application of the "presumptively appropriate" rule.[10] *Port of Seattle*, Decision 7000-A (PECB, 2000); *City of Pullman*, Decision 7126 (PECB, 2000). Contrary to what the Examiner stated in his earlier decision in these cases, the Commission held that information pertaining to employees in the bargaining unit represented by a union is presumptively relevant.[11]

The employer answered the alleged refusal to provide the union with the two letters and other documents regarding McKee's FMLA claim. The employer's answer and the record made at the hearing properly bring the issue before the Examiner for decision. When all is said and done, however, the Examiner concludes that the employer complied with its statutory obligation under RCW 41.56.030(4) to offer up the requested information.

The focus of the duty to provide information is on substance, and the Commission urged that the "spirit of communications" inherent in our collective bargaining laws not be overlooked. At page 10 of its brief on appeal, the union asserted that it engaged in "numerous conversations/negotiations" with Derrick regarding McKee's return to work. That was the situation on June 30, 1998. The letter of June 30, the telephone call to McKee on July 6, and the letter of July 9 were really all part of the same "negotiation" between the union and the employer regarding McKee's return to work. It is apparent from the record that McKee became confused after receiving the June 30 letter, and that she thought by July 9 that she was being disciplined. Accepting that the requested information was presumptively relevant to the union's representa-

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[10] Limiting the request inquiry to material relevant to a potential contract violation, or an existing grievance, is too narrow a view.

[11] The Commission cited *Port of Seattle*, and cited *City of Bremerton*, Decision 6006-A (PECB, 1998).

tion of Ms. McKee, the union has not shown by a preponderance of the evidence that the information it sought was not conveyed in a timely manner. Indeed, it is clear that Goforth received two copies of one of the requested letters within three days of his request![12]

Refusal to Respond to Union Officials -
Although not specifically mentioned in the remand order, the third allegation set out in the preliminary ruling in Case 14042-U-98-3471 concerned whether the employer failed or refused to respond to requests by the union for meetings or to respond to telephone calls from the union. Questions as to whether the employer's officials responded in a polite and politic manner, and whether the employer responded by the officials that Goforth apparently wanted to talk to are not before the Examiner.

The union's case is inconsistent and unsubstantial, at best. The union's brief alleges that it engaged in "numerous conversations and meetings" with Derrick concerning McKee's return to work, which is an admission against interest in regard to its "refusal to respond" claim. Although Baugh or Derrick both testified in this proceeding, the union did not ask either of them whether they had failed or refused to return calls or messages.

Goforth also testified in this proceeding, and related his conversations with Derrick about workplace accommodations for McKee.

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[12] Even if they had been before the Examiner and supported by evidence, claims by employer officials that Goforth had been "rude" on the telephone would not have excused the employer from its duty to provide information or excuse a tardy response. Such claims are irrelevant here, however, where the Examiner finds that the employer did respond, and that its response was not unreasonably delayed.

- Goforth testified at Transcript 176 that, soon after talking to McKee about her accident, he talked to Derrick and explained that bringing McKee back to the workplace was a priority for the union;
- Goforth testified at Transcript 178 that he subsequently reassured McKee that he had talked to Derrick and had assurances that she would be accommodated and returned to the workplace;
- Goforth testified at Transcript 189-190 that he and Derrick exchanged three or four voice-mails, and that Derrick acknowledged the union's concerns in responding to all of them;
- Goforth testified at Transcript 190 that he had a telephone conversation with Derrick on July 9, which was two days after the challenged "deadline" mentioned in the June 30 letter;
- Although Goforth testified that Derrick declined to attach or otherwise send copies of the June 30 letter from Baugh to McKee, he never asked Derrick about this alleged refusal, and other evidence shows that the letters were provided.[13]

The Examiner thus takes it as un-rebutted that Derrick both responded to the union's inquiries, and supplied the information

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[13] Derrick testified at Transcript 160-161, as follows:

> Q. [By Ms. Taylor] And [the July 9 letter] has two letters attached to it?
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> A. [By Mr. Derrick] That's correct. June 30th letter from Lynn Baugh, signed by Pam Paul and then a June 11th letter to Sheri McKee signed by Lynn Baugh.
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> Q. So the day that you speak with Mr. Goforth you prepare a letter and attach the documents he's requested; correct?
>
> A. That's correct.

Exhibit 14 includes the two letters as attachments to the July 9 letter.

requested by the union, so that the union's representation of McKee was not compromised.

The "Discrimination" Claim

In the cases now before the Examiner, a "discrimination" theory is only raised under the second complaint, Case 14454-U-99-3581. The preliminary ruling in that case framed a "discrimination" allegation that was also remanded by the Commission.

Standards for Discrimination Allegations -
Chapter 41.56 RCW is a remedial statute, and hence insures that employers and employees have processes to resolve disputes. Like the NLRA, RCW 41.56.040 secures the right of public employees to organize and bargain, and RCW 41.56.140(1) prohibits discrimination against employees who exercise their collective bargaining rights. The legal standard applied here is a "substantial factor" test:

- The union must first make out a prima facie case of discrimination, by showing: That the employee(s) involved exercised rights protected by Chapter 41.56 RCW or communicated an intent to do so; that the employer discriminatorily deprived the employee(s) of some ascertainable right, status or benefit; and that there was a causal connection between the exercise of protected rights and the discriminatory action.

- If a prima facie case is made out, the respondent must undertake a burden of production, to set forth lawful reasons for its actions.

- The complainant retains the burden of proof at all times, but may satisfy that burden by showing that the reasons advanced by the respondent were pre-textual and/or that protected union activity was nevertheless a substantial motivating factor underlying the disputed action(s).

This is one area in which state law differs from NLRA precedent, and is based upon the decisions of the Supreme Court of the State of Washington in *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991).

Application of Discrimination Standard -

The Commission's remand instructing the Examiner to review the record with regard to discrimination claims against McKee and Hammond appears to assume that the union has made out a prima facie case. The critical issue is thus whether union activities were a *substantial motivating factor* in the actions taken.

The parties' 1998-2000 collective bargaining agreement is silent with regard to FMLA certification procedures, although donated sick leave is addressed. The employer had only been requesting FMLA certifications since February of 1998, and had implemented the FMLA from 1993 up to that time without use of the forms required by the federal government.

Sherilyn McKee and Terry Hammond were both involved in motor vehicle accidents. McKee's accident was in April of 1998; Hammond's was in June of 1998. Letters were sent to both employees on the same day, June 11, 1998, with several paragraphs being identical between those letters. Those letters both stated the beginning and ending dates of the FMLA benefit period, and asked the employee to supply a medical certification. A subsequent letter sent to McKee actually extended the deadline for another 11 days, until July 7, 1998. Hence, McKee was allowed a total of 26 days from the initial notice provided under the FMLA. The record is clear that both employees provided statements from their physicians, and that they both remained eligible for leave under the FMLA.

The 15-day period for employee response specified in the FMLA seems plain enough:

> Section 825.305 . . . (b) When the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, *the employee must provide the requested certification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request,* unless it is not practicable. . . .)
>
> (emphasis added.)

A similar 15-day period is specified in cases where the employee is asked for re-certification based on a doctor's recommendation. Section 825.308(d). However, there appears to be no forfeiture or penalty if a response is not provided within 15 days.

Although Frawley acknowledged that McKee and Hammond were the first employees subjected to the federal deadline, he also acknowledged that the imposition of the deadline was on a "learn-as-you-go" basis. He seemed to have been unaware of Section 825.305 in June and July of 1998. Transcript 512.[14]

The union notes that five of 11 requests made by the employer for FMLA certification during 1998 were issued to members of Local 17, and it also points out that the requests made to Hammond and McKee allowed less time for responses than the 15 days specified in the federal rule. The union characterizes these facts as "abusive" and argues that they demonstrate a "pattern of misapplication" towards union activists.

On the facts presented in this record, even after review for a second time, the Examiner cannot conclude that the employer engaged in unlawful discrimination. That the 11 applications of the

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[14] Kathy Graves also testified that the employer did not become aware of the 15-day rule until August of 1998 - probably through its dealings with Mr. Goforth.

federal rule were all somewhat vague is easily explained by the evidence showing that the employer initially did not perceive or implement the specific requirements of the federal rule. Such fumbling does not rise to a level of "abusive misapplication" as the Union argues.

As to McKee, there is no showing of a causal connection or retaliation that would satisfy the "substantial motivating factor" test. The record seems clear that only Derrick was aware that McKee had been involved in grievances or was a shop steward. Frawley, Baugh and Graves were the employer officials responsible for drafting the disputed letters,[15] and they did not know of McKee's union activities. When asked by Goforth, "Do you believe that Local 17 shop stewards are targets for abuse at DDES?" even McKee's response weakens the union's claim. She replied, "I don't think its abuse, but I think it is kind of looked on as part of the enemy force as opposed to a force to help resolve internal conflict . . ." Transcript 291. There is simply no evidence connecting the employer's fumbling attempts to implement the federal law with McKee's inclusion in the bargaining unit represented by the union, with her support for or membership in the union, with her request for union assistance, or with her filing of grievances under the collective bargaining agreement.

As to Hammond, the union's focus is limited to the employer's requests for FMLA documentation within a time frame smaller than was permitted by the FMLA rules. It is clear that the employer asked Hammond to provide a response within eight days in June of 1998, and within 13 days in October of 1998. Hammond had been a shop steward for the union since 1995, and had been somehow involved in the processing of five or six grievances, but there is

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[15] Graves testified that she and Frawley decided on giving "about two weeks" for employees to respond to requests for medical information. Transcript 527.

no other evidence that the employer knew of his union activities. As with the situation of McKee, the Examiner is unable to conclude that the "substantial motivating factor" test has been met. The short time periods for Hammond to respond to requests for medical information clearly resulted from a lack of familiarity by employer officials with the FMLA rules, rather than from a designed plan to harass or target union officials and shop stewards.

The Interference" Claim Based on the July 9 Letter

The preliminary ruling in Case 14042-U-98-3471 framed an issue concerning an "interference" keyed to the "third parties" comment by Baugh in the letter issued to McKee on July 9, 1998. That issue was also remanded by the Commission.

Standards for Interference Allegations -

A violation of RCW 41.56.140(1) will be found if employer conduct is *reasonably* perceived by one or more employees as a threat of reprisal or force or promise of benefit associated with exercise of rights guaranteed by Chapter 41.56 RCW.[16] *City of Vancouver*, Decision 6733-A (PECB, 1999); *Port of Tacoma*, Decision 4626-A (PECB, 1995). Even where a refusal to permit union representation is alleged, the employee must present objective evidence that their impending discipline was reasonably suspected.[17]

Application of Standard -

The characterization of the employer's letters as "disciplinary" is consistent throughout the union's brief, but that is not persua-

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[16] A party alleging only an "interference" allegation has no burden to show actual intent, and can prevail if it demonstrates that employees reasonably perceived the disputed action as a threat of reprisal or force or promise of benefit associated with their union activity.

[17] See *National Labor Relations Board v. Weingarten, Inc.*, 420 U.S. 251 (1975) and conforming Commission precedents such as *Okanogan County*, Decision 2252-A (PECB, 1986).

sive. There is no evidence whatever of any steps taken by the employer to discuss or implement any discipline of McKee, and no discipline was ever imposed upon McKee. Employer witnesses credibly testified that their focus was on eliciting a response from McKee, who seemed to be "out of touch" after her motor vehicle accident. Other evidence confirms that McKee was not using traditional channels of communication, such as the mail and the telephone. The letters sent to McKee on June 11 and June 30 are not disciplinary on their face, and have not even been challenged as unfair labor practices in this proceeding.

The Examiner does not credit the union's argument that Baugh's statement about third-parties spreading misinformation was sufficient, taken alone, to constitute an interference violation. There is no corroborating evidence, save Goforth's speculation that the comment was directed at him or the union.[18] Baugh's mention of "third party" involvement was not directly associated with Goforth or the union, however, and so does not fit cleanly within the numerous precedents where employers have been found guilty of unfair labor practice violations for disparaging unions.

The focus here must be on McKee's reasonable perceptions. Baugh, Frawley and Graves all testified that they received information concerning McKee from employees, above and beyond efforts to communicate with McKee directly or through the union. Rather than being a basis for McKee to fear for her job, the challenged statement in Baugh's letter was both preceded and followed by

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[18] See *Town of Steilacoom*, Decision 6213 (PECB, 1998), dismissing a discrimination claim of an employee who filed a workers' compensation claim where no union animus was shown. The employee in that case was visible as a union-guild president of long standing. In contrast, McKee was little known to the employer as a union adherent, and she left the presentation of her concerns to her union shop steward and bargaining representative.

statements that affirmed the employer's desire to accommodate McKee:

> Please be assured that *all levels of Department management wish to assure that a reasonable and appropriate response is made to the needs you state.* We are concerned that third parties are disseminating misinformation as it relates to our interaction with you. Such conduct is unproductive and does not further the *interactive process of reasonable accommodation in which we wish to engage.*
>
> (emphasis added.)

Contrary to the conclusion which the union would have drawn here, it was Derrick's testimony that he and Baugh preferred communicating with union officials and stewards, rather than through other employees. Further, McKee's conversations with Derrick seemed to resolve things fairly well. The Examiner is unable to conclude that Baugh's comment was reasonably perceived by McKee as an attack on the union or on her union activity.

FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.020, .030(1).

2. International Federation of Professional and Technical Engineers, Local 17, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of several units of employees in King County. During the period relevant to these proceedings, Raymond Goforth was the union representative responsible for members in those units.

3. Prior to April of 1998, Sherilyn McKee was a King County employee working in a bargaining unit represented by Local 17.

McKee held office as a shop steward for Local 17, and was involved in the filing of some grievances. McKee was injured in an motor vehicle accident in April of 1998, and was unable to work for a time thereafter. Her absence qualified for leave under the federal Family Medical Leave Act (FMLA).

4. Prior to June of 1998, Terry Hammond was a King County employee working in a bargaining unit represented by Local 17. Hammond held office as a shop steward for Local 17, and was involved in the filing of some grievances. Hammond was injured in a motor vehicle accident in June of 1998, and was unable to work for a time thereafter. His absence qualified for leave under the FMLA.

5. On June 11, 1998, the employer sent separate letters to McKee and Hammond, asking in each case for medical verification in connection with their FMLA leaves. The employer sent another such letter to Hammond in October of 1998. Each of those letters requested a response from the employee in a period shorter than the period allowed by the FMLA and implementing rules.

6. The erroneous periods allowed for response in the letters described in paragraph 5 of these findings of fact was due to unfamiliarity of employer officials with FMLA procedures.

7. Although the letter sent to McKee in June of 1998 was definite in tone and purported to set a deadline for reply, it neither expressly threatened nor actually constituted a disciplinary action as defined in the collective bargaining agreement between the employer and Local 17.

8. McKee did not promptly receive the letter described in paragraph 6 of these findings of fact, due to disabilities

which prevented her from accessing her U.S. Mail. Employer officials received information concerning McKee from a variety of employees, as well as through the union.

9. In a letter sent to McKee on June 30, 1998, the employer again requested documentation in support of her FMLA leave. Although this letter was also definite in tone and purported to set a deadline for reply, it neither expressly threatened nor actually constituted a disciplinary action as defined in the collective bargaining agreement between the employer and Local 17. A reference in that letter to a previous letter as having been issued on "July 11, 1998" was clearly erroneous, and there is no reasonable basis for concluding it had any impact upon subsequent events.

10. Employer officials neither discussed nor implemented any form of disciplinary action against McKee or Hammond.

11. Although perhaps inconvenienced by the errors and/or inaccurate deadlines imposed by the employer, as described in these findings of fact, neither McKee nor Hammond were adversely affected by the employer. McKee continued to hold status as a King County employee on leave under the FMLA.

12. In an effort to point out the incorrect date in the letter described in paragraph 9 of these findings of fact and/or to point out the employer's alleged contravention of the FMLA, Goforth sent letters, e-mail messages and faxes to a number of employer officials. Goforth should have known that most of the individuals addressed were without authority to act in the matter, inasmuch as Lynette Baugh, Michael Frawley, Pamela Paul and Robert Derrick had all deferred to the employer's senior labor negotiator, Robert Railton, and Railton had instructed Goforth to contact him in the event that he and the

union needed more information regarding grievances or bargaining matters.

13. On July 9, 1998, Baugh sent a letter to McKee in which she made reference to third parties, but that was not tied directly or indirectly to the union or to the ongoing conversations between employer officials and Goforth acting on her behalf.

14. On various dates, McKee and/or Goforth requested that Goforth be provided with documents regarding McKee's FMLA leave. Within three days after Goforth's request, the employer provided Goforth with a copy of the letter issued to McKee on June 30, 1998, and it promptly provided Goforth with any other documents requested.

15. The union has failed to establish any causal connection between McKee's status as a union steward and the events described in these findings of fact.

16. The union has failed to establish that the employer's actions were reasonably perceived as an interference with the rights of McKee under Chapter 41.56 RCW.

17. The employer responded in a timely fashion to requests for meetings and/or return telephonic messages.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in these matters under RCW 41.56.140 and Chapter 391-45 WAC.

2. International Federation of Professional and Technical Engineers, Local 17, has failed to establish that King County

discriminated against Terry Hammond or Sherilyn McKee in reprisal for their exercise of rights under RCW 41.56.040, so that no unfair labor practice has been established under RCW 41.56.140(1).

3. International Federation of Professional and Technical Engineers, Local 17, has failed to establish that King County failed or refused its duty to provide any information to which the union was entitled, so that no unfair labor practice has been established under RCW 41.56.140(4).

4. International Federation of Professional and Technical Engineers, Local 17, has failed to establish that McKee or any other employee represented by Local 17 reasonably perceived the employer actions described in the foregoing findings of fact as threats of reprisal or force or promises of benefit associated with their exercise of rights under Chapter 41.56 RCW, so that no unfair labor practice has been established under RCW 41.56.140(1).

ORDER

The complaints charging unfair labor practices filed in the above-captioned matters are DISMISSED on their merits.

Issued at Olympia, Washington, on the 27th day of November, 2002.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

J. MARTIN SMITH, 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.