STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, UFCW LOCAL 365, Complainant, vs. COMMUNITY COLLEGE DISTRICT 13 (LOWER COLUMBIA COLLEGE), Respondent.	CASE 17397-U-03-4511 DECISION 8117-A - PSRA CASE 17629-U-03-4564 DECISION 8637 - PSRA
COMMUNITY COLLEGE DISTRICT 13 (LOWER COLUMBIA COLLEGE), Employer.	CASE 17419-U-03-4515 DECISION 8118-A - PSRA
WASHINGTON PUBLIC EMPLOYEES ASSOCIATION, UFCW LOCAL 365, Complainant, vs. WASHINGTON FEDERATION OF STATE EMPLOYEES, Respondent.	CASE 17628-U-03-4563 DECISION 8638 - PSRA CONSOLIDATED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On April 3, 2003, the Washington Public Employees Association, United Food and Commercial Workers Union Local 365 (WPEA), filed a

complaint charging unfair labor practices with the Public Employment Relations Commission, naming Community College District 13 d/b/a Lower Columbia College (employer) and the Washington Federation of State Employees (WFSE) as respondents. A deficiency notice issued on April 10, 2003, under WAC 391-45-110,[1] identified certain problems with the original complaint, and notified the parties that the Commission had docketed a separate case for each named respondent.[2] The WPEA amended both complaints on April 16, 2003. A partial dismissal and order for further proceedings was issued on June 19, 2003,[3] finding a cause of action to exist on allegations summarized as follows:

> Case 17397-U-03-4511:
> Employer interference with employee rights in violation of RCW 41.56.140(1) and unlawful assistance to the WFSE in violation of RCW 41.56.140(2) on and after October 3, 2002, by permitting WFSE supporters to use the employer's time, facilities, and e-mail system for purposes of organizing in support of a change of exclusive bargaining representative, and by denying a WPEA request for use of the employer's time and facilities.
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> Case 17419-U-03-4515:
> Union interference with employee rights in violation of RCW 41.56.150(1) and inducing an employer to commit an unfair labor practice in violation of RCW 41.56.150(2) on and after October 3, 2002, by using the employer's time, facilities, and e-mail system and by accepting the involvement of a supervisor in organizing in support of

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[1] All of the facts alleged in a complaint are assumed to be "true and provable" under WAC 391-45-110. If a complaint states a claim for relief available through unfair labor practice proceedings before the Commission, it is forwarded to an Examiner for a hearing and the respondent is directed to file and serve an answer to the complaint.

[2] The employer is the respondent in Case 17397-U-03-4511. The WFSE is the respondent in Case 17419-U-03-4515.

[3] *Community College District 13*, Decision 8117 (PSRA, 2003).

a change of exclusive bargaining representative of non-supervisory employees.

On June 25, 2003, the WPEA filed two additional complaints naming the employer and the WFSE as respondents.[4] A preliminary ruling issued on those complaints summarized causes of action as follows:

> Case 17628-U-03-4563:
> Union interference with employee rights in violation of RCW 41.56.150(1) and inducing an employer to commit an unfair labor practice in violation of RCW 41.56.150(2), by the participation of a non-employee WFSE organizer at an employer-sponsored informational session for employees presented by the Washington State Department of Personnel on May 16, 2003 at the employer premises, by distribution of organizing literature and solicitation of employee support for WFSE by such WFSE organizer at the May 16th meeting, and through surveillance by Sharry Hilton, a WFSE supporter, and Jim Woodruff, a supervisor, of employees attending a WPEA union meeting on June 4, 2003 at a non-work location.
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> Case 17629-U-03-4564:
> Employer interference with employee rights in violation of RCW 41.56.140(1) and domination or assistance of a union in violation of RCW 41.56.140(2), by allowing participation of a non-employee WFSE organizer at an employer sponsored informational session for employees presented by the Washington State Department of Personnel on May 16, 2003 at the employer premises, by allowing distribution of organizing literature and solicitation of employee support for WFSE by such WFSE organizer at the May 16th meeting, by increased scrutiny of leave usage by Ina Ray Leonard and a letter of reprimand issued to Carole Jordan in reprisal for their union activities protected by Chapter 41.56 RCW, and by allowing surveillance by Sharry Hilton, a WFSE supporter and supervisor, and Jim Woodruff, a supervisor, of employees attending a WPEA union meeting on June 4, 2003 at a non-work location.

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[4] The WFSE is the respondent in Case 17628-U-03-4563. The employer is the respondent in Case 17629-U-03-4564.

All four cases were consolidated for hearing. The employer filed answers on July 8 and 30, 2003, and the WFSE filed its answers on July 1 and 28, 2003. Examiner Starr H. Knutson conducted a hearing on February 3 and 9, 2004. The parties filed briefs.

The Examiner rules: (1) the employer interfered with employee rights by its summoning of bargaining unit employee Ina Rae Leonard to an unusual meeting; (2) the WFSE interfered with employee rights when its supporters campaigned in a manner that caused bargaining unit employees to feel coerced into signing cards supporting the WFSE; and (3) all other allegations are dismissed.

BACKGROUND

The Parties and Their Interactions

The employer is a state institution of higher education, within the community college system. Carolyn Harrison is its Vice President for Business Administrative Services. Brian Poffenroth is its human resources director.

The WPEA has represented a bargaining unit of all the classified employees of the employer for more than 20 years. The bargaining unit historically included both supervisors and non-supervisory employees, and officers of the local WPEA chapter have come from both of those groups.

The WFSE has not represented employees of this employer. However, it does represent civil service employees at certain state general government agencies and at some other state institutions of higher education.

The employer and WPEA were parties to a collective bargaining agreement for the period from June 14, 2000, through June 13, 2003.

Change of Statutory Environment

Within the State Civil Service Law, Chapter 41.06 RCW, classified employees of state institutions of higher education were permitted to organize for the purposes of collective bargaining limited to matters controlled by the respective institution. Wages and wage-related benefits were not controlled locally, and were not subjects for bargaining under Chapter 41.06 RCW. Organizational activity among civil service employees was relatively static until 2002.

The Personnel System Reform Act of 2002 (PSRA) was signed into law with various effective dates. A new collective bargaining system for state civil service employees is codified in Chapter 41.80 RCW. One section that took effect on June 13, 2002, is pertinent here:

> RCW 41.80.070 BARGAINING UNITS - CERTIFICATION. (1) A bargaining unit of employees covered by this chapter existing on June 13, 2002, shall be considered an appropriate unit, *unless the unit does not meet all the requirements of (a) . . . of this subsection.* The commission, after hearing upon reasonable notice to all interested parties, shall decide, in each application for certification as an exclusive bargaining representative, the unit appropriate for certification. . . . *However, a unit is not appropriate if it includes:*
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> (a) *Both supervisors and non-supervisory employees.*
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> . . .

(emphasis added). Another PSRA provision effective in 2002 transferred the authority to determine and modify bargaining units, the authority to certify exclusive bargaining representatives, and the authority to determine and remedy unfair labor practices to the Public Employment Relations Commission. *See* RCW 41.06.340.

The expanded collective bargaining rights conferred by the PSRA stimulated increased organizational activity and required modification of numerous existing bargaining units. That increased activity gave rise to, or at least paralleled, the events at issue in these cases.

APPLICABLE LEGAL STANDARDS

RCW 41.56.140 and .150 prohibit certain conduct by public employers and unions representing public employees, respectively, as follows:

> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:
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> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
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> (2) To control, dominate or interfere with a bargaining representative;
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> . . . .
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> RCW 41.56.150 UNFAIR LABOR PRACTICES FOR BARGAINING REPRESENTATIVE ENUMERATED. It shall be an unfair labor practice for a bargaining representative:
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> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
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> (2) To induce the public employer to commit an unfair labor practice;

The "rights guaranteed by this chapter" referenced in RCW 41.56.140(1) and 41.56.150(1) include the rights set forth in RCW 41.56.040, as follows:

> RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against *any public employee or group of public employees in the*

> *free exercise of their right to organize and designate representatives of their own choosing* for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

(emphasis added). The unfair labor practice procedures set forth in RCW 41.56.160 are supplemented by Chapter 391-45 WAC.

The burden of proof in any unfair labor practice case rests with the complaining party, and must be established by a preponderance of the evidence. WAC 391-45-270 provides, "The complainant shall prosecute its own complaint and shall have the burden of proof." *See also State - Corrections,* Decision 7870-A (PSRA, 2003) and cases cited therein.

The "interference" standard is that a violation will be found under RCW 41.56.140(1) or RCW 41.56.150(1) when an employee could reasonably perceive actions as a threat of reprisal or force or promise of benefit associated with protected union activity. *Brinnon School District,* Decision 7210-A (PECB, 2001) and cases cited therein.

The "domination" standard is that a violation will be found under RCW 41.56.140(2) if an employer provides assistance to or shows a preference for a union. The Commission has consistently held that proof of employer intent to assist a particular union is required to find a violation. *King County,* Decision 2553-A (PECB, 1987).

The "induce discrimination" standard is that a violation will be found under RCW 41.56.150(2) if a union solicits or induces actual employer action against an employee in reprisal for the exercise of protected rights.

ANALYSIS

I will address the allegations of unfair practice against the employer and the WFSE together to the extent they concern the same events.

Use of Employer Resources
(Cases 17397-U-03-4511 and 17419-U-03-4515)

The WPEA alleges both the employer and the WFSE interfered with the free exercise of the employees' right to organize and choose a bargaining representative. It contends the employer allowed the WFSE to use employer resources such as work time, facilities, and e-mail, while at the same time denying the same use to the WPEA. The evidence and testimony do not support these allegations.

Use of Employer Facilities -
Article 4 of the collective bargaining agreement between the employer and the WPEA provided for some use of the employer's facilities at paragraph 4.12, as follows:

> WPEA and the WPEA chapter shall have the right to use the College's internal and electronic communication services and mailboxes for communication to unit employees including mass distribution, provided that the material clearly indicates that WPEA and its LCC Chapter is the distributor of the material and such activity is not prohibited by Law. The LCC WPEA chapter shall be allowed to use the College copy machines per College current policy which includes billing to the WPEA P.I.N. number. This right shall include, but not be limited to, access to unit employee mailboxes. The WPEA and Chapter officers shall be entitled to distribute mail through the outgoing mail service provided it reimburses the College in accordance with applicable regulations.

Article 5 of the same contract even permitted some union activity on work time. Paragraph 5.01 stated as follows:

> Classified employees may participate in the WPEA Chapter activities; however, activities shall not exceed two (2) hours per month. Approval must be obtained from the immediate supervisor prior to participating in such activities.

The WPEA chapter officers made use of the employer's resources in early 2003, as they had done in the past, to communicate with the bargaining unit. The WPEA chapter officers were first and foremost members of the bargaining unit when those communications were sent, regardless of whether they were supervisors or non-supervisory employees.[5] Moreover, there was no organizational activity or competition between unions to be concerned with until late February of 2003.

Use of employer facilities by the WFSE was not proven. The evidence clearly showed that the WFSE conducted most of its organizing activities and meetings away from the employer's campus, and outside of the work hours of the bargaining unit employees.

Alleged denial of WPEA use of employer facilities was not proven. The WPEA did not provide evidence that it ever asked to use named resources. The evidence certainly does not support a finding that the employer denied any request from the WPEA. In fact, the WPEA held some meetings on the employer's premises after the WFSE began its organizing activity at the college.

The WPEA alleged in its complaint that it asked to put on a training session on civil service reform, and that the employer denied its request. However, no evidence supporting those allegations was provided. The charges are dismissed.

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[5] The bargaining unit was divided into separate units on March 15, 2003, *Community College District 13*, Decision 8414 (PSRA, 2004).

WFSE Use of Employer's E-Mail System -

Sandi Brockway stepped over the line when she used the employer's computer system to send an e-mail that supported a change of union representation (in clear conflict of interest with her role as the president of the local WPEA chapter), and the WFSE must bear responsibility for Brockway's action, but the evidence does not support a conclusion that the employer knew or should have anticipated that its e-mail system would be misused in that manner.

The WPEA charged the WFSE with inducing the employer to commit an unfair practice by accepting the above actions of the supervisor, but I conclude that the individual acted on her own and inadvertently used the employer's letterhead. Brockway's e-mail message contained an attachment that displayed the employer's letterhead, but Brockway credibly testified that the letterhead was was not visible to her when she created the attachment, and that she did not remember the letterhead would appear when a recipient opened the attachment. Again, the evidence does not support a conclusion that the employer knew or should have anticipated that its e-mail system would be misused in that manner. It is clear that Brockway did not ask the employer for permission to use the e-mail system in this manner.

The WPEA charged that the use of the electronic letterhead constituted employer assistance to the WFSE, but the employer asserted the message was sent without its knowledge and therefore it could not have intended to "assist" the WFSE. Additionally, the employer provided credible testimony that it told Brockway not to use its letterhead as soon as its officials knew about the message. No evidence was presented to indicate Brockway continued to use the letterhead to share information about either union. Since the union did not prove intent, this charge is dismissed.

Alleged Co-Opting of WPEA Chapter Meeting -

RCW 41.56.140 and .150, along with Chapter 41.06 RCW, protect the right of state civil service employees to choose their own representative, and I believe the employees involved in this case were exercising that right. However, Brockway and the other former officers of the local WPEA chapter stepped over the line when they used their union office to set up a situation in which WFSE organizers were invited to attend what was ostensibly a routine WPEA meeting. Their co-opting of the WPEA meeting for a very different purpose interfered in the rights of the other bargaining unit employees to choose their own representative, because the other employees attending had no notice that anyone other than chapter members would be in attendance or that anything other than WPEA business would be discussed.

Once the former officers resigned their WPEA positions and turned the meeting over to the WFSE organizers, bargaining unit employees were strongly encouraged and/or pressured to sign authorization cards favoring the WFSE. The former WPEA leaders should have resigned their WPEA offices before setting up the meeting, or should have left after their resignation without converting the WPEA meeting to a different purpose, and their actions could reasonably have been perceived by bargaining unit employees as coercive. The interference charge against WFSE is upheld.

Allowing WFSE Organizer at Department of Personnel Meeting
(Cases 17628-U-03-4563 and 17629-U-03-4564)

The WPEA charges the employer with interference for allowing a WFSE organizer to attend what it describes as an "employer sponsored" meeting. The Examiner faults both the characterization of the meeting involved and the involvement of the individuals at that meeting, and so dismisses the allegation.

The meetings at issue were scheduled by and conducted by the Washington State Department of Personnel (DOP), rather than by the employer. The meetings were held on the employer's premises on May 16, 2003, but all of the materials advertising the meeting stated that the DOP was to provide "two informational sessions regarding Civil Service Reform." The presentation topics included "Civil Service Reform Bill In Brief, Contracting Out, Collective Bargaining, New Human Resource System, Research Findings, Where We Are Now, and Next Steps." Questions from the audiences were entertained, and answers were provided. A WFSE organizer was in attendance at one such meeting, and asked such a question.

The employer provided testimony that the subject meetings were open, public meetings, and that it had no control over or advance notice of who would attend. Both the employer and bargaining unit employees provided testimony that the DOP meetings were attended by persons other than college employees. Nothing was presented to indicate that this employer was anything other than the landlord for a public meeting which was conducted by another state agency and was likely of interest to its employees and others. The WPEA certainly did not prove any intent on the part of the employer to assist WFSE. The charge is dismissed.

Distribution of Organizing Literature (Cases 17628-U-03-4563 and 17629-U-03-4564)

The WPEA alleges employer assistance to the WFSE and interference with employee rights at the DOP-conducted meeting on May 16, 2003. The allegedly-prohibited actions concern a WFSE organizer distributing organizing literature and soliciting employee support during that meeting. The Examiner rejects the WPEA's characterization of the documents distributed, and concludes that the WPEA failed to prove its allegation.

The so-called organizing literature which was introduced into evidence consisted of two documents which are matters of public record:

- One was a copy of RCW 41.56.123 that had been printed from the Washington State Legislature web page. That is a section of a collective bargaining statute that is largely inapplicable to state civil service employees;[6] and
- The other was a copy of WAC 391-25-140 that had been printed from the Commission's web page. That is a rule applicable to state civil service employees, which freezes the status quo during the processing of a representation petition.

Both the WFSE organizer and bargaining unit employee Leonard testified that the copies were slid across the table without discussion.

Accepting that the contractual rights of employees were a subject of discussion and debate in the organizing campaign, handing out a state statute and an applicable state rule is not a basis to find an interference violation. My conclusion in that regard is reinforced by the absence of proof that the WFSE organizer did anything other than ask a question of the DOP presenter and slide a piece of paper to a bargaining unit employee. I do not believe that any bargaining unit member would reasonably have believed that the employer had sponsored or assisted the WFSE organizing effort, given only the facts proven here. Proof of employer hostility or intent to assist the WFSE is sorely lacking here.

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[6] The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, applies primarily to employees of local government employers. RCW 41.56.123 addresses rights after the expiration of a collective bargaining agreement negotiated under that statute, and parallels language in RCW 41.80.010(7) adopted as part of the PSRA.

Surveillance of Employees
(Cases 17628-U-03-4563 and 17629-U-03-4564)

The WPEA charges both the employer and the WFSE with violations of the statute when two employees, one a supervisor, were observed outside the building where a WPEA meeting was being held. The Examiner concludes that the WPEA has not met its burden of proof.

The meeting was held at a public library which is near, but not part of, the employer's campus. Both of the employees who are accused of surveillance were members of the bargaining unit, and so could have had a right to attend the meeting. The supervisor was wearing a recognizable work shirt, and there is no evidence that he attempted to either conceal himself or to position himself to enable surveillance of others. There is no evidence that the supervisor was present at the behest of the employer.

In fact, non-supervisory employee and former WPEA officer Hilton had invited Woodruff to attend the meeting, because she did not want to attend alone. Woodruff drove to the library when he got off work an hour before the scheduled meeting, and waited in the parking lot. They had a further discussion when Hilton arrived a few minutes after the end of her work shift, and both of them then left the area without attending the meeting. No testimony suggests that employees attending the meeting reasonably believed that either Woodruff or Hilton was watching them, or that the employer had used them to engage in surveillance of protected activities. The incident in the parking lot was also a single and isolated occurrence, rather than part of a course of surveillance or other unlawful conduct. There are no facts approaching or equating with the conduct found unlawful in *City of Longview,* Decision 4702 (PECB, 1994). The charges are dismissed.

Alleged Threat Against Ina Rae Leonard
(Case 17629-U-03-4564)

WPEA charges the employer with an unfair practice when it increased its scrutiny of Ina Rae Leonard's leave usage in April 2003, and it provided evidence concerning the announcement and cancellation of an unusual meeting. The Examiner concludes that employees could reasonably have perceived the actions of the employer as a threat of reprisal associated with protected union activities.

Sandra Brockway was Leonard's supervisor during the period relevant to this case. As noted above, Brockway broke with the WPEA and became an active supporter of the WFSE.

Although Leonard initially signed an authorization card favoring the WFSE, she changed her view after attending a WPEA meeting on April 1, 2003. On the next day, she prepared a statement asking fellow bargaining unit members to get involved and attend meetings of both unions. Leonard testified that she reviewed her statement with other WPEA supporters, and eventually distributed it to other employees. On her own time and expense, Leonard made copies of a flyer advertising a WPEA meeting scheduled for April 8, 2003, and she put those flyers in campus mail boxes before April 8. Following those actions, Leonard noticed a change in Brockway's attitude towards her.

Brockway directed Leonard to attend a meeting on April 8, 2003. The information initially given to Leonard was that Brockway, Brockway's supervisor (Sullivan) and the employer's human resources official (Poffenroth) would all be in attendance at the meeting. There was some evidence of past meetings involving two layers of management officials, but I infer that a meeting with three layers of management participation was unusual.

Adding to any concerns inherent in being directed to attend the meeting, Leonard learned from Brockway on April 8 that a vice-president of the employer (Harrison) would also be in attendance. Leonard's position was under Harrison in the employer's table of organization, but they had never actually met. I infer that a meeting with four layers of management participation was extremely unusual. Neither Harrison nor Sullivan was called as a witness at the hearing.

Leonard reasonably perceived that the meeting called by the employer could result in disciplinary action against her, and she exercised her right to union representation. *See National Labor Relations Board v. Weingarten, Inc.*, 420 U.S. 251 (1975). When Gonzales telephoned Poffenroth about the matter, the meeting was cancelled.

The employer presented documentation showing that it had addressed leave and attendance issues with Leonard in the past. That does not negate Leonard's reasonable perceptions on April 8. The three written memos and letter of reprimand presented by the employer all date back to 2001, and are contradicted by a comment in Leonard's 2002/2003 performance evaluation indicating that Leonard had improved her attendance. No evidence was presented concerning any more recent problems with Leonard's leave use or attendance.

It was not necessary for the WPEA to show that the employer acted with intent or motivation to interfere, nor was it necessary for the WPEA to show that Leonard actually felt threatened or coerced. *Kennewick School District*, Decision 5632-A (PECB, 1996), and cases cited therein. My inquiry in this case is whether a typical employee in the same circumstances could reasonably see the employer's actions as connected with her union activities. An employer's innocent, or even laudatory, intentions when taking in

disputed actions are legally irrelevant. *City of Seattle*, Decision 3066 (PECB, 1988), *aff'd*, Decision 3066-A (PECB, 1989). Thus, although claims of unlawful interference with the exercise of rights protected by Chapter 41.56 RCW must be established by a preponderance of the evidence, the standard is not particularly high. *See City of Mill Creek*, Decision 5699 (PECB, 1996), and cases cited therein. My conclusion is that the employer stepped over the line when its senior officials (Poffenroth and Harrison) became involved in an extremely unusual meeting scheduled to take place within a few days after Leonard announced her change of heart regarding her choice of union representation where Brockway was a vocal supporter of the opposite choice. Leonard could reasonably perceive the employer's renewed attention to her leave and attendance after a two-year hiatus as coercive and retaliatory. This allegation against the employer is upheld.

Letter of Reprimand Issued to Jordan
(Case 17629-U-03-4564)

WPEA contends the employer discriminated against Carole Jordan in reprisal for her union activities. It is clear that Harrison issued a letter of reprimand to Jordan on May 8, 2003, and that moves the case out of the "interference" arena and into the "discrimination" arena under *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991); *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991). Applying the more stringent test applicable when actual action is taken against an employee, the Examiner concludes the WPEA has not sustained its burden of proof as to a key element.

Jordan became an officer of the local WPEA chapter in April 2003, which is clearly a protected union activity. The reprimand concerned Jordan's behavior at staff meetings and/or meetings with her supervisor, and warned that Jordan could be subject to further

discipline if she continued to bring up issues from the past instead of accepting responsibility for her own current behavior.

The problem for the WPEA here is that it has not established the causal connection which is the critical third element of a prima facie case under the "discrimination" test. There is ample evidence of relationship problems between Jordan and the employer:

- Jordan testified that she left an "urgent" message for Gonzales about her concerns prior to May 8;
- Gonzales testified that she returned Jordan's call on May 8, and then talked with Poffenroth to set up a "troubleshooting" meeting for May 9;
- Gonzales testified that Poffenroth did not mention the reprimand during their conversation on May 8;
- Jordan testified that she faxed the reprimand to the WPEA on May 8;
- The meeting took place on May 9, with Gonzales, Jordan, Poffenroth and Harrison in attendance, and Gonzales asked Harrison to document the complaints she had received about Jordan; and
- Harrison provided the information in a letter dated May 14.

What is missing is evidence that Harrison knew of Jordan's election to union office, or that Harrison had any animus against union activity in general or the WPEA in particular.

While Harrison and Jordan may have differing opinions concerning Jordan's behavior at staff meetings and meetings with her supervisor, that is not enough to infer a retalitory motive tied to collective bargaining activity. I find no violation.

FINDINGS OF FACT

1. Community College District 13 (employer) is a state institution of higher education operated under Title 28B RCW as Lower Columbia College. Carolyn Harrison is its vice-president for business administrative services and Brian Poffenroth is its human resources director.

2. The Washington Public Employees Association (WPEA) is an employee organization which has historically represented the classified employees of the employer under the State Civil Service Law, Chapter 41.06 RCW. Marion Gonzales is the WPEA staff member assigned to represent those employees.

3. The Washington Federation of State Employees (WFSE) is an employee organization which has not represented any employees of this employer, but has historically represented state civil service employees of some other institutions of higher education and certain general government agencies. Joan Gallagher and Patty Boday are WFSE organizers.

4. The employer and the WPEA had a collective bargaining agreement in effect until June 13, 2003, under which the WPEA was permitted to use certain employer facilities and resources to meet and communicate with bargaining unit members.

5. Sandi Brockway was the president of the local WPEA chapter prior to the events giving rise to these cases, and was the direct supervisor of bargaining unit employee Ina Rae Leonard.

6. Sharry Hilton was the vice-president of the local WPEA chapter prior to the events giving rise to these cases, and was a non-supervisory employee of the employer.

7. On February 27, 2003, Brockway, Hilton, and other bargaining unit employees met with the WFSE organizers. The meeting was held away from the employer's campus, and outside of the work hours of the bargaining unit employees.

8. Between February 27 and March 12, 2003, a number of bargaining unit employees signed authorization cards supporting the WFSE.

9. Acting in arguable conformity with the contractual provisions described in paragraph 4 of these findings of fact as an exercise of her WPEA office, Brockway used the employer's computer system to send an e-mail message to bargaining unit employees on March 10, 2003, inviting them to attend a WPEA chapter meeting on March 13, 2003.

10. Acting in arguable conflict of interest with her WPEA office, Brockway used the employer's computer system to send a second e-mail message to bargaining unit employees on March 10, 2003, stating her belief that the employees would be better represented by WFSE and asserting that they could change their representation if 70 per cent of the bargaining unit employees signed WFSE authorization cards.

11. On March 11, 2003, several employees signed forms to cancel their payroll deductions favoring the WPEA.

12. On March 12, 2003, Brockway had a meeting with WFSE organizer Boday and gave Boday the WFSE authorization cards she had obtained from bargaining unit employees. That meeting took

place away from the employer's campus, and outside of Brockway's work hours. The WFSE filed a representation petition with the Commission that same day, seeking to replace the WPEA as the exclusive bargaining representative of the employer's classified employees.

13. At a regular monthly meeting of the bargaining unit held on the employer's campus on March 13, 2003, Brockway called the meeting to order as an exercise of her WPEA office. Then Brockway, Hilton and the other officers resigned their positions as officers of the local WPEA chapter and Brockway introduced and gave the floor to the two WFSE organizers she had invited to the meeting.

14. On March 25, 2003, members of the WPEA staff met with bargaining unit employees. That meeting took place away from the employer's campus, and outside of the work hours of the bargaining unit employees.

15. On March 31, 2003, members of the WSFE staff met with bargaining unit employees. That meeting took place away from the employer's campus, and outside of the work hours of the bargaining unit employees.

16. Acting in apparent conformity with the contractual provisions described in paragraph 4 of these findings of fact, members of the WPEA staff met with bargaining unit employees on the employer's campus on April 1, 2003. The meeting was held outside of the work hours of the employees involved.

17. After the meeting described in paragraph 17 of these findings of fact, bargaining unit employee Leonard prepared a letter

informing her co-workers that she no longer fully supported the WFSE.

18. On April 3, 2003, the WPEA filed and served the first of the unfair labor practice complaints now before the Examiner.

19. Prior to April 8, 2003, Leonard left the employer's premises on her own time to make copies of a notice for a WPEA meeting to be held on April 8 after work at an off campus location. Leonard distributed the copies on her own time to various campus services mail boxes.

20. On April 8, 2003, Brockway directed Leonard to meet later that day with herself, another supervisor, and Poffenroth. Prior to the meeting, Brockway informed Leonard that Harrison would also be in attendance at the meeting. Harrison was Leonard's third-level supervisor, and Leonard had never met Harrison up to that time.

21. Although Leonard had inferred the meeting might concern her use of leave for which she believed she had medical documentation, the scheduling of such a meeting and particularly the number and levels of the participants were highly unusual. In the context of the ongoing controversy concerning union representation, Leonard could reasonably have perceived the scheduling of the meeting as related to her support of a union other than the organization supported by Brockway.

22. Leonard actually had concerns about the meeting to which she had been summoned, and she telephoned Gonzales for assistance.

23. Gonzales had a conversation with Poffenroth, after which the meeting was cancelled and was not rescheduled.

24. On April 8, 2003, WPEA representatives met with bargaining unit employees. That meeting took place away from the employer's campus. At the meeting Ron Adkisson became the president, Ina Rae Leonard became the vice-president, and Carole Jordan became the secretary of the local WPEA chapter. There is no evidence that the employer was notified of the names of the new WPEA officers.

25. On May 8, 2003, Jordan received a letter of reprimand from employer official Harrison. The letter described incidents of Jordan's past behavior as unacceptable, and warned Jordan that similar behavior in the future might be grounds for further action. The evidence does not establish any causal connection between the union activities of Carole Jordan and the letter of reprimand described in this paragraph.

26. On May 16, 2003, the Washington State Department of Personnel conducted two informational meetings on the employer's campus regarding civil service reform under the Personnel System Reform Act of 2002. The evidence presented does not establish that this employer had any control over or responsibility for the substance of those meetings.

27. At one of the meetings described in paragraph 28 of these findings of fact, WFSE organizer Gallagher gave Leonard a copy of RCW 41.56.123 as printed from the Washington State Legislature website, together with a copy of a document containing WAC 391-25-140 as printed from the Commission's website.

28. On June 3, 2003, the local WPEA chapter held its first meeting since March 13, 2003. That meeting took place away from the employer's campus, and outside of the work hours of the bargaining unit employees. Former WPEA officer Hilton and a supervisory employee named Woodruff received notice of the meeting as members of the WPEA chapter and went to the meeting site, but did not attend the meeting. There is no evidence that Hilton and/or Woodruff were present to engage in surveillance on behalf of the employer.

29. On June 25, 2003, the WPEA filed the third and fourth unfair labor practice complaints now before the Examiner.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.06.340 and Chapter 391-45 WAC.

2. By actions of its agents Harrison and Poffenroth which were reasonably perceived as unusual scrutiny of Ina Rae Leonard on the recommendation of Sandi Brockway at a time when Leonard and Brockway were engaged in a controversy concerning the selection of an exclusive bargaining representative, Community College District 13 interfered with the exercise of collective bargaining rights by its classified employees and committed an unfair labor practice in violation of RCW 41.56.140(1).

3. By the actions of its supporters in conflict of interest with their roles as officers of the incumbent exclusive bargaining representative prior to their resignations, in co-opting the local WPEA chapter meeting on March 13, 2003, and in campaign activities reasonably perceived by bargaining unit employees as coercive, the Washington Federation of State Employees

interfered with the rights of employees in the bargaining unit represented by the Washington Public Employees Association, and committed unfair labor practices in violation of RCW 41.56.150(1).

4. Except as specified in paragraphs 2 and 3 of these conclusions of law, the Washington Public Employees Association has failed to sustain its burden of proof as to its allegations that Community College District 13 and the Washington Federation of State Employees committed unfair labor practices in violation of RCW 41.56.140 and .150, respectively.

ORDER

1. Community College District 13, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

   A. CEASE AND DESIST from interfering with, restraining or coercing employees in the exercise of their collective bargaining rights secured by the laws of the state of Washington.

   B. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of RCW 41.56.140:

      (i) Rescind and destroy all records pertaining to the meeting that Ina Rae Leonard was directed to attend on April 8, 2003, including removal from the official personnel file and any working files kept by any management or supervisory employee.

      (ii) Post, in conspicuous places on the employer's premises where notices to all employees are

usually posted, copies of the notice attached hereto and marked "Appendix A." Such notices shall be duly signed by an authorized representative of the employer, and shall remain posted for 60 days. Reasonable steps shall be taken by the employer to ensure that such notices are not removed, altered, defaced, or covered by other material.

(iii) Read the notice attached to this order into the record at a regular public meeting of the Board of Trustees of Lower Columbia College, 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.

(iv) Notify the WPEA, 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 WPEA with a signed copy of the notice attached to this order.

(v) Notify the Compliance Manager 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 Manager with a signed copy of the notice attached to this order.

2. The Washington Federation of State Employees, its officers and agents, shall immediately:

A. CEASE AND DESIST from interfering with, restraining or coercing employees in the exercise of their collective

bargaining rights secured by the laws of the state of Washington.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of RCW 41.56.150:

(i) Withdraw all representation petitions currently on file with the Public Employment Relations Commission concerning the classified employees of Community College District 13 d/b/a Lower Columbia College, and destroy all authorization cards obtained concerning that bargaining unit prior to the date of this order.

(ii) Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix B." Such notices shall be duly signed by an authorized representative of the WFSE, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

(iii) Read the notice attached to this order aloud at the next regular meetings of the Executive Board of the Washington Federation of State Employees and permanently append a copy of the notice to any official or unofficial minutes of the meeting where the notice is read as required by this paragraph.

(iv) Read the notice attached to this order aloud at the next regular meetings of the field and

organizing staff of the Washington Federation of State Employees, and permanently append a copy of the notice to any minutes of the meeting where the notice is read as required by this paragraph.

(v) Notify the WPEA, 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 WPEA with a signed copy of the notice attached to this order.

(vi) Notify the Compliance Manager 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 Manager with a signed copy of the notice attached to this order.

3. Except as specified in Section 1 and Section 2 of this order, the complaints filed by the Washington Public Employees Association are DISMISSED on their merits.

ISSUED at Olympia, Washington, on the 30th day of June, 2004.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Starr Knutson

STARR H. KNUTSON, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL read this notice into the record at the next public meeting of the Board of Trustees of Lower Columbia College, and will append a copy thereof the official minutes of such meeting.

DATED: _____

LOWER COLUMBIA COLLEGE

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 112 Henry Street NE, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT interfere with, restrain, or coerce employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL read this notice into the record at the next meeting of the Executive Board of the Washington Federation of State Employees, and will append a copy thereof to any official or unofficial minutes of that meeting.

WE WILL read this notice into the record at the next meeting of the field and organizing Staff of the Washington Federation of State Employees, and will append a copy thereof to any official or unofficial minutes of that meeting.

DATED: _____

WASHINGTON FEDERATION OF STATE EMPLOYEES

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 112 Henry Street NE, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360)-570-7300.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

RECORD OF SERVICE - ISSUED 06/30/2004

The attached document identified as: DECISION 8117-A - PSRA has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ MITCHELL NELSON

CASE NUMBER:	17397-U-03-04511	FILED:	04/03/2003	FILED BY:	PARTY 2
DISPUTE:	ER DOMINATION				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	Classified Staff				
COMMENTS:					

EMPLOYER: C COL DIST 13 - LOWER COLUMBIA
ATTN: JAMES MCLAUGHLIN
LOWER COLUMBIA COLLEGE
PO BOX 3010
LONGVIEW, WA 98632
Ph1: 360-442-2101

REP BY: BRIAN POFFENROTH
C COL DIST 13 - LOWER COLUMBIA
1600 MAPLE ST
PO BOX 3010
LONGVIEW, WA 98632
Ph1: 360-442-2000 Ph2: 360-442-2121

REP BY: MICHAEL P SELLARS
OFFICE OF THE ATTORNEY GENERAL
905 PLUM ST SE BLDG 3
PO BOX 40145
OLYMPIA, WA 98504-0145
Ph1: 360-664-4188

PARTY 2: WA PUBLIC EMPLOYEES ASSN
ATTN: LESLIE LIDDLE
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

REP BY: HERB HARRIS
WA PUBLIC EMPLOYEES ASSN
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

REP BY: MARK LYON
WA PUBLIC EMPLOYEES ASSN
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

RECORD OF SERVICE - ISSUED 06/30/2004

The attached document identified as: DECISION 8637 - PSRA has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ MITCHELL NELSON

CASE NUMBER:	17419-U-03-04515	FILED:	04/03/2003	FILED BY:	PARTY 2
DISPUTE:	UN MISC ULP				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	Classified Staff				
COMMENTS:					

EMPLOYER: C COL DIST 13 - LOWER COLUMBIA
ATTN: JAMES MCLAUGHLIN
LOWER COLUMBIA COLLEGE
PO BOX 3010
LONGVIEW, WA 98632
Ph1: 360-442-2101

REP BY: BRIAN POFFENROTH
C COL DIST 13 - LOWER COLUMBIA
1600 MAPLE ST
PO BOX 3010
LONGVIEW, WA 98632
Ph1: 360-442-2000 Ph2: 360-442-2121

PARTY 2: WA PUBLIC EMPLOYEES ASSN
ATTN: LESLIE LIDDLE
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

REP BY: HERB HARRIS
WA PUBLIC EMPLOYEES ASSN
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

REP BY: MARK LYON
WA PUBLIC EMPLOYEES ASSN
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

PARTY 3: WA FED OF STATE EMPLOYEES
ATTN: GREG DEVEREUX
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501
Ph1: 360-352-7603

REP BY: EDWARD YOUNGLOVE
PARR YOUNGLOVE LYMAN COKER
1800 COOPER PT RD SW BLDG 16
PO BOX 7846
OLYMPIA, WA 98507-7846
Ph1: 360-357-7791

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

RECORD OF SERVICE - ISSUED 06/30/2004

The attached document identified as: DECISION 8638 - PSRA has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ MITCHELL NELSON

CASE NUMBER:	17628-U-03-04563	FILED:	06/25/2003	FILED BY:	PARTY 2
DISPUTE:	UN MULTIPLE ULP				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	Union Multiple ULP Classified				
COMMENTS:					

EMPLOYER: C COL DIST 13 - LOWER COLUMBIA
ATTN: JAMES MCLAUGHLIN
LOWER COLUMBIA COLLEGE
PO BOX 3010
LONGVIEW, WA 98632
Ph1: 360-442-2101

REP BY: BRIAN POFFENROTH
C COL DIST 13 - LOWER COLUMBIA
1600 MAPLE ST
PO BOX 3010
LONGVIEW, WA 98632
Ph1: 360-442-2000 Ph2: 360-442-2121

PARTY 2: WA PUBLIC EMPLOYEES ASSN
ATTN: LESLIE LIDDLE
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

REP BY: MARK LYON
WA PUBLIC EMPLOYEES ASSN
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

PARTY 3: WA FED OF STATE EMPLOYEES
ATTN: GREG DEVEREUX
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501
Ph1: 360-352-7603

REP BY: GLADYS BURBANK
WA FED OF STATE EMPLOYEES
1212 JEFFERSON ST SE STE 300
OLYMPIA, WA 98501
Ph1: 360-352-7603

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

RECORD OF SERVICE - ISSUED 06/30/2004

The attached document identified as: DECISION 8639 - PSRA has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ MITCHELL NELSON

CASE NUMBER:	17629-U-03-04564	FILED:	06/25/2003	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	Employer Multiple ULP Classified				
COMMENTS:					

EMPLOYER: C COL DIST 13 - LOWER COLUMBIA
ATTN: JAMES MCLAUGHLIN
LOWER COLUMBIA COLLEGE
PO BOX 3010
LONGVIEW, WA 98632
Ph1: 360-442-2101

REP BY: BRIAN POFFENROTH
C COL DIST 13 - LOWER COLUMBIA
1600 MAPLE ST
PO BOX 3010
LONGVIEW, WA 98632
Ph1: 360-442-2000 Ph2: 360-442-2121

REP BY: MICHAEL P SELLARS
OFFICE OF THE ATTORNEY GENERAL
905 PLUM ST SE BLDG 3
PO BOX 40145
OLYMPIA, WA 98504-0145
Ph1: 360-664-4188

PARTY 2: WA PUBLIC EMPLOYEES ASSN
ATTN: LESLIE LIDDLE
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121

REP BY: MARK LYON
WA PUBLIC EMPLOYEES ASSN
140 PERCIVAL ST NW
PO BOX 7159
OLYMPIA, WA 98507-7159
Ph1: 360-943-1121