STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KITSAP COUNTY DEPUTY SHERIFFS GUILD,	)	
Complainant,	)	CASE 19286-U-05-4897
vs.	)	DECISION 9326-A - PECB
KITSAP COUNTY,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
Respondent.	)	

Merker Law Offices, by *George E. Merker*, Attorney at Law, for the union.

Summit Law Group, by *Bruce L. Schroeder*, Attorney at Law, for the employer.

On March 15, 2005, the Kitsap County Deputy Sheriff's Guild (union) filed an unfair labor practice complaint with the Public Employment Relations Commission under Chapter 391-45 WAC. The complaint alleged that Kitsap County (employer) committed unfair labor practices within the meaning of RCW 41.56. On March 30, 2005, a preliminary ruling was issued, finding a cause of action to exist for employer interference and discrimination, refusal to bargain, and breach of good faith in violation of RCW 41.56.140(1) and (4).

The employer filed its answer on April 21, 2005. The Commission assigned Examiner Lisa A. Hartrich to conduct further proceedings, and the hearing took place on September 26-27, 2006, and February 1, 2007, in Port Orchard, Washington.[1] Both parties submitted post-hearing briefs on April 20, 2007.

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[1] The hearing was originally set for November 8 and 9, 2005, and was rescheduled a number of times in 2006 at the request of the parties. During the months of March and April 2006, the parties filed several pre-hearing motions, responses, declarations, and replies, which required the Examiner to issue rulings. These rulings are documented in *Kitsap County*, Decision 9326 (PECB, 2006).

ISSUES PRESENTED

1. Did the employer interfere with employee rights and refuse to bargain by failing to provide relevant collective bargaining information requested by the union?

2. Did the employer unilaterally change payment practices for copies of requested documents without providing an opportunity to bargain?

3. Did the employer breach its duty to bargain in good faith by:
   - offering regressive proposals?
   - providing false and misleading information?
   - preconditioning the release of information on payment?
   - charging a rate for information in excess of costs?

4. Did the employer discriminate against employees in reprisal for protected union activities when it verbally counseled the union president?

Based on all the arguments and evidence submitted by the parties on these issues, the Examiner rules that the employer did not commit unfair labor practices, and dismisses the complaint.

ISSUE 1: Duty to Provide Information

Legal Principles

The Public Employees Collective Bargaining Act (PECBA), Chapter 41.56 RCW, governs the collective bargaining relationship between the union and the employer. RCW 41.56.030(4) defines "collective bargaining" and requires the parties to negotiate in good faith for wages, hours and working conditions. It is an unfair labor practice for a public employer to refuse to engage in collective bargaining. RCW 41.56.140(4).

Collective bargaining includes the duty to provide relevant information to an opposite party for the purpose of performing its collective bargaining responsibilities. That duty extends to information related to interest arbitration, since that process is an extension of collective bargaining.[2] *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd*, 119 Wn.2d 373 (1992). Failure to provide this information may constitute an unfair labor practice violation under RCW 41.56.140(4).

In order to prove a violation for failure to provide information, the complaining party must prove: (1) that it requested information relevant to the performance of its functions in collective bargaining or contract administration; and (2) that the employer failed or refused to provide that information. *City of Bremerton*, Decision 6006-A (PECB, 1998).

When responding to an information request, an employer has an obligation to make a reasonable good faith effort to locate that information. *Seattle School District*, Decision 9628-A (PECB, 2008). However, the duty to provide information does not compel either party to create records that do not otherwise exist. *City of Anacortes*, Decision 7768 (PECB, 2002).

Analysis

On July 21, 2004, the union sent a letter to the employer requesting documents and information pursuant to the PECBA and the Washington State Public Records Act (PRA), listing 22 items it wanted in preparation for an upcoming interest arbitration.[3] The employer acknowledged receipt of the request, and stated that the documents would be available for inspection by August 23, 2004. At a September 13, 2004 meeting, the union identified and tagged the

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[2] But the duty to provide information does not extend to unfair labor practice cases or to outside litigation. *Snohomish County*, Decison 9570 (PECB, 2007).

[3] PERC case number 17687-I-03-411.

specific documents it wanted to have copied. This request involved some 1,138 pages. Upon receipt of the documents, the union noted that two requested items were missing: The preliminary budget for 2005 (item #17), and revenue projections from 2002 to the present (item #18). On October 4, 2004, the union notified the employer that it was still waiting to obtain access to those items.

On October 5, 2004, information related to revenue projections was transmitted to the union, and the union indicated that the information "appear[ed] responsive to our requests for revenue projections."[4] However, the union was not satisfied with the response related to the preliminary budget request, because the employer insisted that no drafts of the 2005 preliminary budget existed.

On October 6, 2004, the union inquired again about a draft of the preliminary budget. On October 7, the employer asked the union if it wanted to inspect or have copies of departmental budget requests. These were described at the hearing as "wish lists" from each department, which were used to develop the preliminary budget. The union declined, stating, "We are more concerned about the budget and revenue project[ion]s by the budget office."

The interest arbitration hearing began on October 11, 2004. The record indicates that no further documents exchanged hands prior to the date of the hearing.

The union contends that the employer did not make a good faith effort to provide the information relating to the preliminary budget and revenue projections. The employer asserts that no such preliminary budget document existed prior to the interest arbitration hearing. It also thought that it had satisfied the union's request for revenue projections.

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[4] The document was referred to as the "General Fund Financial Model containing revenue and expense projections through 2010."

According to Benjamin Holland, Director of Administrative Services, the employer has the following time line for drafting the preliminary budget: In July, the employer issues a "budget call," notifying elected and appointed officials as well as department heads that their budget requests are due. The preliminary budget is drafted sometime in late October or early November by relying on that information. Once the preliminary budget is complete, the employer holds a public hearing to receive input on the budget. Any changes to the budget are made, and the final budget is adopted. In this instance, the preliminary budget draft was finished on or around November 10, 2004, approximately one month after the arbitration hearing. The notice of public hearing on the budget was first published on November 22, 2004, and the hearing was held on December 6, 2004.

Senior Deputy Prosecuting Attorney Jacquelyn Aufderheide, counsel for the employer, testified that she conveyed the union's request for the preliminary budget to the employer and she was assured that no such document existed. Because of the union's earlier indication that the revenue projection data "appeared responsive," she also believed that the union was satisfied with regard to those documents.

The employer provided ample and credible proof to show that it made a good faith effort to satisfy the union's requests. It responded promptly to the union's initial request by providing access to a large amount of information, and by copying the chosen documents in a timely manner. Later, when the union reiterated its requests for information it deemed missing, the employer attempted to fill those requests with the information it had available. For instance, the employer offered to give access to departmental budget request binders, an offer declined by the union.

The record shows that the employer used reasonable diligence in conducting the search for the requested documents. There is no evidence that the employer knowingly or purposefully withheld

information. Furthermore, the evidence suggests that some of the information requested did not exist at the time of the request.[5]

During the course of the arbitration hearing, some documents were produced that the union thought were included in its initial request for documents. At that point, the union renewed its request, and the employer provided copies of those documents for the union to analyze. There is no credible evidence to suggest the employer purposely attempted to conceal this information from the union.

Conclusion

The Examiner concludes that the employer did not interfere with employee rights by refusing to provide relevant information to the union prior to interest arbitration.

ISSUE 2: Unilateral Change

Legal Principles

An employer is prohibited from making unilateral changes in mandatory subjects of bargaining until it notifies the union and, upon the union's request, bargains in good faith over the change. RCW 41.56.030(4). In order to prove a violation, the union must establish that the employer had an established practice concerning wages, hours or working conditions of bargaining unit employees, and that the employer implemented a change in the practice without sufficient notice to the union. *Kitsap County*, Decision 8292-B (PECB, 2007).

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[5] *See City of Wenatchee*, Decision 8898-A (PECB, 2006). In that case, the union alleged that the employer's failure to provide the information prejudiced the presentation of the union's interest arbitration case. The Commission concluded that the record did not contain any evidence to suggest the information was purposefully withheld by the employer. It argued that if the union later found evidence to bolster its arbitration case, it could have requested the arbitrator to reopen the hearing in order to consider that evidence before issuing the decision.

A practice may be established where, in the course of the parties' dealings, a custom or pattern is acknowledged by the parties over an extended period of time, becoming so well understood that its inclusion in a collective bargaining agreement is deemed superfluous. Such a situation is commonly known as a "past practice." *Whatcom County*, Decision 7288-A (PECB, 2002) citing *City of Pasco*, Decision 4197-A (PECB, 1994). For a past practice to be proven, the union must show that there was a prior course of conduct and that such conduct was known and mutually accepted by the parties. *Kitsap County*, Decision 8292-B.

The Commission does not assert jurisdiction to remedy alleged violations of past practices where there is, in fact, no change of practice. *King County*, Decision 4893-A (PECB, 1995); *Kitsap County*, Decision 8292-B (PECB, 2007).

Analysis

The union's unilateral change complaint stems from the copying costs for approximately 1,100 pages of documents the union requested from the employer in preparation for the October 2004 interest arbitration. The employer charged the union 15 cents per page as allowed by the Public Records Act (PRA) in RCW 42.56.120,[6] and additionally provided for in the Kitsap County Code at 3.76.100(2)(b). The total cost was $175.42, which included the cost for the copies and three CD-ROM discs.

On September 21, 2004, an e-mail exchange between the union and employer discussed payment arrangements for the requested documents. The union did not want to pay for the copies, and suggested that the employer propose another option.

On September 23, 2004, union president Mike Rodrigue e-mailed the employer to inquire if the copies were ready to be picked up. In this note, Rodrigue did not object to paying for the copies, but rather objected to having to pay for the copies prior to receiving

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[6] Formerly 42.17.300. Recodified, effective July 1, 2006.

them. Nonetheless, Rodrigue wrote a personal check for $175.42, which he presented to the employer in exchange for the copies.

The union argues that the employer unilaterally changed a past practice when it charged for the copies. The union also claims that the employer charged an illegal rate for the copies, and illegally conditioned the production of documents upon payment for the copies. The employer argues that it appropriately charged the union for the copies because the union made the request under the PRA. Furthermore, the employer contends there was no established past practice between the parties.

The Commission does not have jurisdiction over the PRA, and therefore cannot enforce payment practices under that act. *See Pasco School District*, Decision 5384-A (PECB, 1996). Rather, in this case, the Commission views the question under PECBA and its case law, and looks to the evidence presented to determine whether or not there was a past practice between the parties.

Evidence supplied at the hearing shows that the union's representative had previously made requests for information under both the PRA and PECBA, and was billed for copies as far back as August 2000. There was also testimony to confirm that the employer often did not charge for copies. Witnesses from both sides agreed that this was a much larger request for documents than usual. However, there did not appear to be a pattern whereby the employer only charged for copies when a large request came in. Based on this record, the Examiner finds no evidence of an established practice.

Finally, there is no evidence that the employer's actions discouraged the union's exercise of its right to request relevant collective bargaining information; nor was there anything to suggest the employer applied the charges in a discriminatory manner. *See Snohomish County*, Decision 9570 (PECB, 2007).[7]

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[7] Nothing in this decision precludes the employer from agreeing to provide copies without charge whenever doing so makes practical sense.

Conclusion

The union did not meet its burden to show that a past practice involving copying costs existed. Since there is no clear practice, there cannot be a change in practice.[8] Therefore, there is no violation.

ISSUE 3: Breach of Good Faith

Legal Principles

In the context of collective bargaining relationships, the good faith obligation calls for honest communication and an effort to reach agreement above and beyond expectations in other business relationships. In order to show a breach of good faith, the union must show that the employer engaged in specific conduct or a course of conduct designed to frustrate the collective bargaining process. This might include tactics such as refusing to consider proposals made by the union, altering a bargaining position in a way that is designed to avoid agreement, or providing misleading proposals or positions. In assessing good faith, the totality of conduct or circumstances is considered. *Kennewick General Hospital,* Decision 4815-B (PECB, 1996).

The good faith bargaining obligation under RCW 41.56 extends to cases involving bargaining units eligible for interest arbitration. *City of Wenatchee*, Decision 8898-A, (PECB, 2006).

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[8] Since there is no past practice, the Examiner does not need to determine whether a mandatory subject of bargaining exists. For a look at the Commission's past cases on that issue, see *City of Bremerton*, Decision 4738 (PECB, 1994), where the Examiner concluded that the issue of prepayment for copies made pursuant to a union's request for information had only a remote and indirect impact on employee working conditions. To constitute an unfair labor practice, a change in the status quo must be meaningful. *City of Kalama*, Decision 6773-A (PECB, 2000). The Examiner in *Snohomish County*, Decision 9655 (PECB, 2007) found that the requirement to pay for copying costs was not a meaningful change.

Analysis

The union claims that the employer breached its duty to bargain in good faith by making a regressive wage proposal, providing false and misleading information concerning the existence of budget records, preconditioning the release of information on payment of a unilaterally established rate, and charging a rate for information in excess of reproduction costs. We will examine each of these claims as follows:

Did the employer present a regressive bargaining proposal?

Bargaining proposals can be changed after interest arbitration has been invoked, particularly when there is an apparent attempt to narrow the parties' differences. However, regressive bargaining occurs when one party in some manner attempts to make a proposal less attractive than its previous offers. *City of Wenatchee*, Decision 8898-A (PECB, 2006). In order for a party to bargain regressively, a bad faith element must infect the collective bargaining process. *City of Redmond*, Decision 8879-A (PECB, 2006).

It is not uncommon during the course of negotiations for parties to exchange conditional, or "what if," proposals, while still maintaining their protected positions. This practice does not fall into the category of regressive bargaining. *City of Redmond*, Decision 8879-A.

The union claims that the employer committed an unfair labor practice by engaging in regressive bargaining during the course of an interest arbitration for the 2003-2005 contract. The union argues that the employer initially offered retroactive pay increases, then subsequently withdrew them.

On October 9, 2002, the employer advanced a bargaining proposal that included a wage adjustment for 2003, contingent upon union ratification of the agreement. The proposal also included wage adjustments for 2004 and 2005. The parties were unable to come to an agreement, and filed a request for mediation with the Commission in late October. Mediation meetings continued throughout early

2003, but were unsuccessful. In July 2003, the Commission certified the parties for interest arbitration.

On December 10, 2003, the employer wrote a letter to the union reiterating its position of "no retroactivity." In a December 29, 2003 letter to the employer, the union did not claim that there was a change in the employer's position, but did object to the implied suggestion that the union was somehow responsible for a delay in the arbitration hearing. An arbitrator was finally chosen in the spring of 2004. The arbitration hearing was set for October 2004.

On September 27, 2004, Prosecuting Attorney Aufderheide wrote a letter to the arbitrator and the union outlining the employer's proposal for the upcoming arbitration hearing. This proposal included the language from the employer's last formal offer in October 2002, which made the wage adjustments contingent upon union ratification of the contract. The next day, on September 28, 2004, Aufderheide sent a corrected letter to the same parties, indicating that her letter of the previous day was in error, and emphasizing that the proposal did not include retroactive payments for 2003, 2004, or 2005. The letter stated that the phrase "following Guild ratification of this agreement" was part of the October 9, 2002 proposal because, at that time, it was expected that the parties would ratify the agreement in 2002 or 2003.

Aufderheide's assertion that she made a mistake when she created the arbitration proposal is credible. Aufderheide had not been involved with negotiations prior to mid-2004, and was not familiar with the history of negotiations between the parties. Additionally, she promptly acted to correct the mistake, and made the reason for the mistake clear to the union and the arbitrator.

The Examiner concludes that the employer did not make a regressive proposal regarding wage adjustments. Even though the employer's 2002 proposal contemplated wage changes for 2003 through 2005, these were proposed as future increases contingent upon agreement, not retroactive pay raises. This finding is further bolstered by

the union's failure to object to the "no retroactivity" position in December 2003.

Conclusion

The record shows that the employer maintained its position on retroactivity in good faith throughout negotiations, and promptly corrected any error in communicating that position.

Did the employer provide false and misleading information?

Carelessly or knowingly providing false information in response to an information request violates the duty to bargain in good faith. *Seattle School District*, Decision 9628-A (PECB, 2008).

The union claims the employer intentionally withheld information prior to the interest arbitration in order to conceal its favorable financial situation. The union further alleges that the employer denied the existence of documents, provided misleading and "somewhat pessimistic" documents, and lied to strengthen its claim that the union's proposals were untenable. The Examiner is not convinced.

Contrary to what the union contends, the evidence shows that the employer was very responsive to the union's information requests. The employer was reasonably prompt in replying to those requests, and conducted a reasonably diligent search for the documents. The Examiner credits Aufderheide's testimony stating that she inquired about the 2005 preliminary budget a number of times, but was repeatedly told that it did not exist. The fact that Aufderheide offered to provide departmental budget request information to the union, which it declined, lends further weight to a conclusion that the employer was responsive to the union's requests, and did not intentionally withhold information.

Conclusion

The Examiner finds no evidence to show that the employer breached its duty of good faith by providing false and misleading information to the union.

Did the employer precondition the release of information on payment?

The union claims that the employer illegally demanded payment for the copies as a precondition to receiving the documents.

In *City of Bremerton*, Decision 4738, the examiner determined that the employer did not commit a violation when it required a payment by the union for photocopying costs prior to a grievance arbitration. The examiner in that case found that copying costs could be reasonably borne by the union as part of the normal course of representing its membership.

Even without *City of Bremerton*, there is no evidence to support the union's claim that the employer conditioned the production of documents on pre-payment. On September 23, 2004, union president Rodrigue went to the front office of the public works building to pick up the copies in question, and brought a check to pay for them. According to the front office staff, Rodrigue became upset when the copies were not ready, and when staff told him to leave the check. However, when the employer's labor relations manager was called to intervene, he promptly agreed that Rodrigue could pay for the documents when he received them. Rodrigue himself testified that at the time he went to pick up the documents, the employer indicated he did not have to leave his check.

Conclusion

The union did not meet its burden of proof on this issue.

Did the employer breach its duty to bargain by charging a rate in excess of a reasonable cost for making copies?

The Public Records Act (PRA) under RCW 42.56 and the Public Employees Collective Bargaining Act establish a duty to provide information. Both protect and promote an interest in an open process and discourage the concealing of information. Both the Washington State PRA and the Kitsap County version of the act allow

for "reasonable charges," including costs incident to providing copies. Both provisions conclude that a "reasonable charge" for paper copies is 15 cents per page.

The union argues that even if the employer has a right to recover the costs for copying, the union should not have to pay anything beyond the actual reproduction costs.[9] It argues that the duty to provide information under RCW 41.56 should be exempt from the costs allowed by the PRA because the bargaining obligation requires more expansive and unimpeded access to information.

While the union is correct in its assertion that the duty to provide information for the purpose of collective bargaining is broader than it is under the PRA, this does not necessarily release the union from paying a reasonable amount above the actual cost of making the copies. For instance, additional costs to consider might include the cost of paper, toner, and machine maintenance.[10]

However, the Examiner is not in a position to speculate what a reasonable charge for copies might be. The union's complaint only seeks a finding that the act of charging 15 cents per page was inherently a breach of good faith.

Conclusion

There is no evidence to suggest the employer breached its duty of good faith by charging 15 cents per page. The action was not designed to frustrate the collective bargaining process, but was simply employed to recover some cost to the employer for the production of documents. The Examiner finds no violation.

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[9] An e-mail from the employer to the union on November 3, 2005, stated that the copy vender quoted the cost per page at 4.8 cents per page.

[10] These factors are cited in *Attorney General Opinion 1991 No. 6* as reasonable charges, in answer to the question, "Under what circumstances would copying charges be deemed excessive?" [under former RCW 42.17.300].

ISSUE 4: Discrimination Charge

Legal Principles

RCW 41.56.140(1) prohibits interference with employee rights, which includes a prohibition of discrimination. The union has the burden of proof in discrimination and interference claims. WAC 395-45-270(1)(a).

Discrimination and interference claims are interrelated in that both require evidence of a protected activity. If a discrimination claim and an interference claim are based on the same set of facts, an independent interference claim will not be found. *Seattle School District*, Decision 5237-B (EDUC, 1996); *Brinnon School District*, Decision 7210-A (PECB, 2001).

A discrimination violation occurs when an employer actually takes action against an employee in reprisal for union activity. The standard for determining a discrimination violation was adopted by the Commission in *Educational Service District 114*, Decision 4631-A (PECB, 1994) and *City of Federal Way*, Decisions 4088-B and 4495-A (PECB, 1994).[11]

In order to prove a discrimination violation, the union must show that one or more employees exercised protected union activity, or communicated to the employer an intent to do so. Next, the union must show that the employee was deprived of some right, status or benefit, and that a connection exists between the protected union activity and the action claimed to be discriminatory. *City of Yakima*, Decision 9451-B (PECB, 2007).

If the union meets the test set out above, the employer must present lawful reasons for its actions. If the employer presents

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[11] Based on 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).

such reasons, the union bears the burden to show that the employer's reasons were designed as pretexts, and/or that the protected activity was a substantial motivating factor for the disputed action. *City of Yakima*, Decision 9451-B.

Analysis

On September 23, 2004, Rob Gudmonson, labor relations manager for the employer, responded to an e-mail from union president Rodrigue. Rodrigue inquired about the total cost of the copies the union had requested in preparation for an arbitration hearing. Later that day, Rodrigue went to pick up the documents at the public works building. He asked for the documents at the front desk and presented a personal check for $175.42. However, the documents were not ready or could not be found by the office staff. Rodrigue was told that he could leave his check, and the documents would be sent to him when they were ready. Rodrigue became upset because he did not want to leave the check without receiving the documents.

Testimony by Marsha Richards, the front office staffperson, revealed that she was taken aback by his behavior. She testified that he started yelling, and that he got very loud and confrontational. Rodrigue characterized his behavior as "stern." Richards called Gudmonson, who came from a nearby office to explain to Rodrigue that the person who was working on the copying project was not in the office. Gudmonson said that he would call Rodrigue when the copies were done, and offered to bring the documents to him.

As a result of this encounter, a rudeness complaint was filed against Rodrigue by Richards' supervisor. Rodrigue was given a supervisory review and received verbal counseling.

Rodrigue testified that he perceived the counseling as a threat of reprisal associated with union activity. Additionally, the union's vice president of negotiations, Roger Howerton, testified that he believed verbal counseling was a prelude to discipline. Howerton

stated that it could be a precursor to any potential future rudeness complaints.

Verbal counseling is not considered a form of discipline by the parties' collective bargaining agreement. Testimony indicated that a record of the investigation does not go into the personnel file, but does go into the supervisory file. However, there is no evidence that Rodrigue suffered any actual repercussions as a result of the investigation.[12]

Rodrigue was clearly engaged in a protected union activity when he went to pick up the documents in preparation for interest arbitration. However, the union failed to meet its burden to show the employer denied a right, status or benefit to Rodrigue as a result of that activity.

Conclusion

The Examiner concludes that the union did not meet its burden of proof on the second element of the discrimination test. There is no violation because there is no evidence that Rodrigue was deprived of any rights protected by RCW 41.56.

FINDINGS OF FACT

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

2. Kitsap County Deputy Sheriff's Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of all Kitsap County commissioned deputy sheriffs through the rank of sergeant.

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[12] The employer could be subject to a future discrimination claim if Rodrigue's verbal counseling regarding rudeness becomes the basis for a disciplinary action.

3. The union and employer were parties to a collective bargaining agreement dated January 1, 2000, through December 31, 2002. The parties began negotiating a successor agreement in the latter part of 2002.

4. In October 2002, the employer advanced a bargaining proposal that included wage adjustments for 2003, contingent upon union ratification. The proposal also included wage adjustments for 2004 and 2005. The parties were unable to come to an agreement for a 2003-2005 contract, and proceeded to interest arbitration in October 2004.

5. On July 21, 2004, the union made an information request for documents in preparation for the upcoming interest arbitration. The request was made under both the state collective bargaining laws and the state Public Records Act.

6. On September 13, 2004, the employer made the requested documents available for inspection, and the union identified and tagged specific documents to be copied. In total, the union requested 1,138 pages.

7. The employer informed the union that it intended to charge 15 cents per page. This amounted to $175.42, including the cost of three compact discs. The union initially objected to the charges, but made preparations to pay the amount.

8. The employer had no clear practice of charging or not charging the union for copies. It had employed both methods in the past.

9. The action of charging 15 cents per page was not designed to frustrate the collective bargaining process.

10. Union president Mike Rodrigue went to pick up the copies on September 23, 2004. The person in charge of making the copies was not available. Other office staff could not locate the documents.

11. Office staff told Rodrigue to leave payment for the copies, and he would be called when they were ready. This upset Rodrigue, which startled the office staff.

12. Labor relations manager Rob Gudmonson was called to speak to Rodrigue. He told Rodrigue that he would call him when the documents were ready, and that Rodrigue could pay for them at that time.

13. As a result of the interaction between Rodrigue and the office staff, the incident was reported to a supervisor. An investigation was conducted. Rodrigue received verbal counseling for his behavior. Under the collective bargaining agreement, verbal counseling is not considered discipline.

14. On September 27, 2004, in preparation for the interest arbitration, Senior Deputy Prosecuting Attorney Jacquelyn Aufderheide sent a letter to the union and the arbitrator and attached language from the employer's October 2002 contract proposal.

15. On September 28, 2004, Aufderheide sent a corrected letter, stating that her September 27 letter was in error because the October 2002 proposal contemplated wage adjustments based on union ratification, but was not intended to include retroactive pay.

16. Prior to the interest arbitration hearing, the union expressed concern about the employer's failure to produce a preliminary draft of the 2005 budget and communications regarding revenue projections from 2002 to present.

17. The employer responded by stating that a preliminary draft of the 2005 budget did not exist. The employer offered to supply departmental budget requests, which are used to develop the budget. The union declined.

18. The employer sent a document in response to the union's request for revenue projections. The union indicated that it was responsive to their request.

CONCLUSIONS OF LAW

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

2. As described in Findings of Facts 5, 6, 16, 17, and 18, the employer did not fail to provide relevant collective bargaining information to the union in violation of RCW 41.56.140(1) or (4).

3. As described in Findings of Facts 7 and 8, the employer did not unilaterally change payment practices for copies of requested documents in violation of RCW 41.56.140(1) and (4).

4. As described in Findings of Facts 14 and 15, the employer did not offer regressive contract proposals in violation of RCW 41.56.140(1) and (4).

5. As described in Findings of Facts 16, 17, and 18, the employer did not provide false and misleading information in violation of RCW 41.56.140(1) and (4) when it responded to the union's request for information.

6. As described in Findings of Facts 10, 11, and 12, the employer did not precondition the release of information on payment for copies in violation of RCW 41.56.140(1) and (4).

7. As described in Findings of Facts 7, 8, and 9 the employer did not breach its duty to bargain in good faith in violation of RCW 41.56.140(1) and (4) by charging 15 cents per page.

8. As described in Findings of Fact 13, the employer did not discriminate against employees in reprisal for union activity

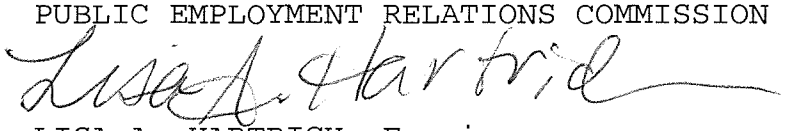
in violation of RCW 41.56.140(1) and (4) when it verbally counseled the union president.

ORDER

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

ISSUED at Olympia, Washington, this 7th day of April, 2008.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



LISA A. HARTRICH, 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.