

The Department of Public Safety was created in November 1975 by the merger of the police department and fire department. Jan Deveny was hired as the overall director of the new department.

The city has always maintained recognition of two separate bargaining units: one unit of firefighters and one unit of patrol officers, sergeants and dispatchers/clerks. Currently the city and the Mercer Island Police Association have a collective bargaining agreement effective from January 1, 1979 through December 31, 1980.

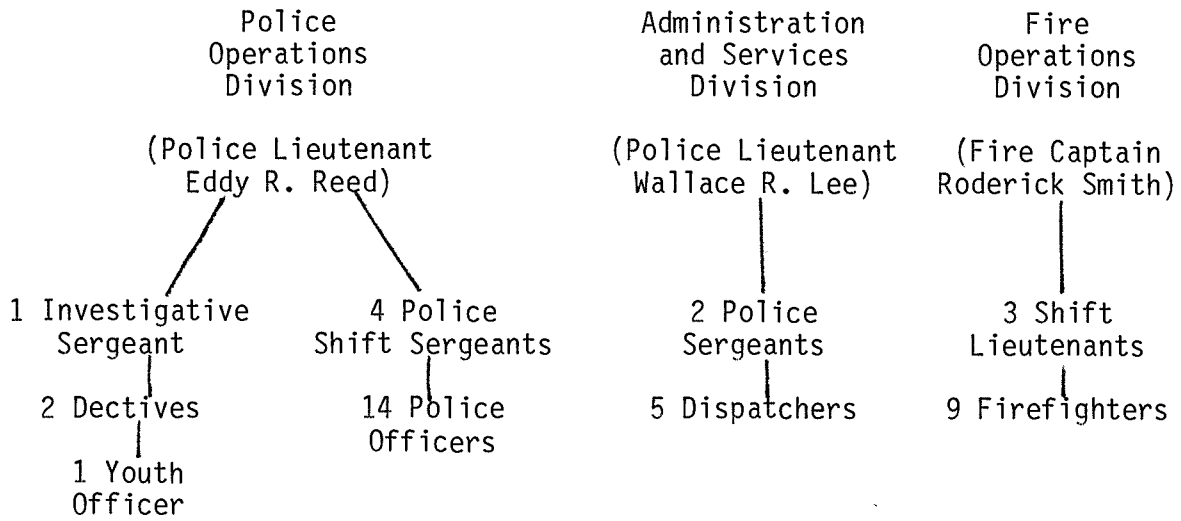
Lieutenant Eddy Reed testified that in 1978, he and Lieutenant Wallace Lee approached Director Deveny on several occasions to discuss a salary increase since "it was a little bit uncomfortable and unrealistic for us to be almost regularly paid less than the people we supervise ...which are sergeants." The lieutenants at the time, received a slightly higher wage than the sergeants. However, when the sergeants' overtime and school incentive pay were added on, the sergeants would usually earn more than the lieutenants. The city did not bargain with the two lieutenants on this matter.

The lieutenants approached the MIPA and asked for assistance. The association proposed to the city that it be recognized as the bargaining agent for the lieutenants during the 1978 negotiations. The city did not do so.

In February, 1979, the lieutenants filed a petition for a question concerning representation with PERC to form a bargaining unit for police lieutenants. The parties agreed to limit the scope of the issue to whether or not the lieutenants were confidential employees within the meaning of RCW 41.56.030(2). At the hearing the parties stipulated that if the lieutenants were determined not to be confidential employees, they would be included in the already existing MIPA unit. On October 1, 1979, the Executive Director of PERC issued his decision finding that the lieutenants were not confidential employees within the meaning of RCW 41.56. Before the MIPA could bargain for the lieutenants, the department was reorganized.

Prior to November 13, 1979 the chain of command in the pertinent operational sections of the Department of Public Safety was:

Director of Public Safety
(Jan Deveny)



Smith, Lee and Reed were in parallel positions.

When the dust settled after the reorganization on November 15, 1979, Smith was still head of the Fire Operations Division but with the new rank of "Deputy Chief"; Lee and Reed were given notice that they would be demoted to sergeant; the two least senior sergeants, Glendon Booth and Ronald Elsoe were notified of their proposed demotion to police officer; the two junior police officers, Linda Pillo and Lowell Forsman, received notice of their upcoming termination; and job announcements for Deputy Chief/Police Operational Division and Deputy Chief/Administration and Services Division, had been issued.

On December 21, 1979, Deveny issued five memos to police personnel. One, to Pillo and Forsman, rescinded their December 31, 1979, termination notice and reappointed them as police patrol officers. Another, to Sgt. Glendon Booth, stated that on January 1, 1980, he would be appointed as a sergeant on a "temporary" basis. Sgt. Richard Smith and Sgt. Thor Augustson were notified that they were temporarily assigned, in a split schedule, to be "Acting Deputy Chief" in command of the Administration and Services Division. To Lt. Reed, Deveny wrote:

"Effective January 1, 1980, you are relieved of your duties in Administration and Services Division and transferred to Police Operations Division. Your assignment shall be as a Patrol Sergeant."

Lt. Lee received:

"In addition to your other duties, you shall assume the duties of Acting Deputy Chief, in command of Police Operations Division. This temporary appointment shall be from January 1, 1980 to April 30, 1980, unless you are properly relieved at an earlier date."

POSITIONS OF THE PARTIES:

The complainant MIPA argues that the city has unlawfully discriminated and retaliated against the six individuals because they engaged in union activities. The association contends that the timing of the Department of Public Safety Director's orders to eliminate the jobs of lieutenants, demote the lieutenants and sergeants and to discharge the two patrol officers prove that the primary, albeit not exclusive, motive of the city is to evade the effects of the PERC decision. The MIPA argues that the reorganization created an artificial basis for the demotion of the four officers and the discharges of the two. It attacks the city's economic defense as being pretextual and alleges instead that the reorganization was done for punitive reasons, punishing not only the lieutenants but the entire MIPA for supporting them. The association also alleges retaliatory action against Lieutenants Lee and Reed is evident since Deveny automatically promoted the fire captain to the Deputy Director position while the two police lieutenants, which are ranks equivalent to the fire captain, were demoted when the deputy positions were created. The remedy the association seeks is the reinstatement of the six individuals to their former positions together with back pay plus 13.5 percent interest for the salary differential from the date that the four individuals were demoted. The association also seeks reasonable attorneys' fees to bring this action before the commission.

The city first argues that there should be a distinction between the actions of the director of the Department of Public Safety and those of the city council, stating that Director Deveny did not cause the demotions but that the city council did by application of civil service rules and adoption of ordinances. The city stresses that the city council created the Deputy Director positions in order to have confidential personnel in relation to the Director and the city did not keep the lieutenants positions when the Deputy Director positions were created since it wanted to avoid funding a hierarchy of mid-level management positions within the Department of Public Safety. The city argues it had legitimate economic grounds for the elimination of the lieutenant positions and that the association failed to carry their burden of proof to establish that the action was for an improper reason. The city also argues that the sole reason for the demotions was the council's good faith application of the civil service rules. The city defends that no unfair labor practice exists in respect to Patrol Officers Pillo and Forsman since published notices of their discharges were canceled and no discharges in fact occurred. Finally, the city urges PERC to assume jurisdiction over the association's petitions for review before the Mercer Island Civil Service Commission and any grievances filed under

the collective bargaining agreement. It then requests that all complaints be dismissed.

DISCUSSION:

1. Scope of PERC's Jurisdiction

The city requested at the hearing and in its brief, that the Examiner assume jurisdiction over all matters arising out of the series of facts upon which the complaint of unfair labor practice is based. (Those other matters being the association's petition in front of the Mercer Island Civil Service Commission and the association's grievance filed in accordance with the contract.)

The employer cites the legislative intent behind the passage of RCW 41.58.005 to show that PERC must assume the additional jurisdiction.

"RCW 41.58.005 INTENT - CONSTRUCTION

(1) It is the intent of the legislature by the adoption of this 1975 amendatory act to provide, in the area of public employment, for the more uniform and impartial (a) adjustment and settlement of complaints, grievances, and disputes arising out of employer-employee relations and, (b) selection and certification of bargaining representatives by transferring jurisdiction of such matters to the Public Employment Relations Commission from other boards and commissions. It is further the intent of the legislature, by such transfer, to achieve more efficient and expert administration of public labor relations administration and to thereby insure the public of quality public services."

* * *

This statute should be read in the light in which it was born - as a 1975 amendatory session law creating a single agency to administer six collective bargaining statutes that had formerly been spread among a variety of state agencies. The jurisdiction that was transferred from "other boards and commissions" came from other state agencies, not from local bodies. RCW 41.12, Civil Service for City Police, existed at the time RCW 41.58, Public Employment Labor Relations, was enacted. If the legislature had wanted PERC to assume jurisdiction over all pending civil service matters, it could have easily so provided. It did not do so however, and this Examiner will not take jurisdiction that has not been granted by the legislature.

The employer turns to Office & Professional Employees International, Local 425 v. NLRB 419 F. 2d 314 (D. C. Cir. 1969) for authority holding "that where matters complained of before the Civil Service Commission

and under the contract are an intrinsic part of an unfair labor practice, the jurisdiction of the National Labor Relations Board includes the power to adjudicate the Civil Service complaint and the contract dispute." A closer reading of that case shows no Civil Service Commission was ever involved. Also, in OPEIU, LOCAL 425, the court wrote:

"Admittedly, the [NLRB] has no plenary authority to administer and enforce collective bargaining contracts.... In some circumstances the authority of the Board and the law of the contract are overlapping, concurrent regimes, neither pre-empting the other.... Arbitrators and courts are still the principal sources of contract interpretation, but the NLRB may proscribe conduct which is an unfair labor practice even though it is also a breach of contract remediable as such by arbitration and the courts." (emphasis added)

There are additional factors to be considered when determining the scope of PERC's jurisdiction in this matter. The complaint charging an unfair labor practice was filed under RCW 41.56.040.^{1/} There is no compulsory election of remedies section in that statute which would force a complaining party to pursue only one avenue of redress when many are available to it. PERC can neither reach out and invade the province of a civil service commission nor defer to such a body on discriminatory demotion and discharge allegations since the two commissions' elements of unlawful conduct and remedial powers would be different. Nor can a trial examiner usurp the scope of an arbitrator's authority agreed upon between the parties at the collective bargaining table.^{2/} Although in appropriate cases PERC does provide staff members as arbitrators, PERC would not assign the same person to sit in one session as both arbitrator and trial examiner. Thus, the respondent's motion for the Examiner to

^{1/} "RCW 41.56.040 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 their right under this chapter."

^{2/} Clallam County, Decision No. 607-A (PECB, 1979) "We are confronted with a question of contract not statutory interpretation. ...We must leave the parties where we find them. This Commission will not arrogate to itself the role of arbitrator by interpreting an ambiguity in the parties' contract."

assume jurisdiction over the civil service commission petition and the grievance is denied. This decision will only deal with the complainant's pursuit of its statutory rights under RCW 41.56.

2. Appearance of the Employer's Authority

Although the city labors to distinguish between acts of the Director of the Department of Public Safety and acts of the city council of Mercer Island, such distinction is not important in this unfair labor practice proceeding. An employee in the bargaining unit would reasonably interpret either's actions to be the voice of the employer. A reasonable employee would see the director as being an authorized agent of the city council. The Public Employees Collective Bargaining Act defines employer as:

"41.56.030(1) 'Public employer' means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter as designated by RCW 41.56.020, or any subdivision of such public body." (emphasis added)

* * *

"41.56.020 Application of this chapter. This chapter shall apply to any county or municipal corporation or any political subdivision of the State of Washington... (deletions not pertinent)."

3. Creation of the Deputy Director Positions

An employer clearly has the right to create supervisory positions. Lakewood School District, Decision No. 755-A (PECB, 1980). In Lakewood, the employer created three new management positions: Transportation Supervisor, Food Service Supervisor and Maintenance Supervisor. At the same time, the employer eliminated the bargaining unit positions of mechanic, head cook and lead custodian. The Commission held:

"It was not an unfair labor practice for the employer to establish three supervisory positions. It was an unfair labor practice for the employer to skim off the three lead positions from the bargaining unit without prior negotiations with the bargaining representative.

* * *

The detriment of the respondent's unilateral removal of the three lead positions was erosion of the bargaining unit. Fibreboard Paper Products, 130 NLRB 1558 (1961), 138 NLRB 550 (1962); enf'd 332 F.2d 411 (1963) aff'd 379 U.S. 203 (1964)."

Deveny testified his main concern with the results about the lieutenants' previous representation petition, was that it left him with no "confidential" employees between himself and the rank and file unit of patrol officers. If the employer was concerned about having enough exempt personnel to carry on operations in case of a work stoppage by the rank and file unit, then the employer should be reminded uniform personnel are specifically denied the right to strike in exchange for having binding interest arbitration.^{3/} However, that does not seem to be the thrust of his concern since Deveny wrote the city council in his proposal to reorganize the department:

* * *

"The city resisted the change requested by the lieutenants because their role as management was critical to the success of the Department. If the requests of the lieutenants were granted, the Director of Public Safety would be the only management person, except for the Fire Captain, in a Department of 80 people. It was and is the view of the city that the Director cannot manage the Department alone; he needs the assistance of senior level managers. Each of the three Division Heads must be management positions."

* * *

Here the Director's concern could have been assuaged by recognizing an important difference between state and federal labor law. Under the National Labor Relations Act, supervisors and managerial employees are excluded from coverage. Washington Public Employees Collective Bargaining Act excludes neither classification. If the employer needed a separate mid-management level, it could have requested a unit of only "supervisors" thus separating the lieutenants from the rank and file unit. City of Richland, Decision No. 279-A (PECB, 1978). But instead, hesitant to create another bargaining unit, the city stipulated that the lieutenants would be included in the rank and file unit if the position was not found to be confidential. City of Mercer Island, Decision No. 725 (PECB, 1979). In that decision, the Executive Director of PERC found that the lieutenants were not confidential for purposes of labor relations within the standards established by statute and interpreted by

3/

RCW 41.56.490

the state supreme court.^{4/} His ruling did not hold that the lieutenants were non-management personnel. In the Mercer Island decision above, the Executive Director did not propose to place the lieutenants in the bargaining unit, he accepted the parties' stipulation which did place them in the unit. Therefore, as of October 1, 1979, employer decisions affecting lieutenants' wages, hours or working conditions were required to be bargained about with the union. Certainly the elimination of the lieutenant position affects its wages, hours and working conditions.

The MIPA claims the creation of the deputy chief position is an attempt to circumvent the order by the Executive Director. Indeed, the reorganization plan, coming so closely on the heels of the order is suspicious.^{5/} Also questionable is the extent of bargaining unit work transferred to the newly created Deputy Director positions. In a memo December 24, 1979 to Lt. Lee, Sgt. Smith and Sgt. Augustson regarding temporary additional duties, Deveny wrote:

"The primary reason I am making these temporary assignments is because some of the duties are critical to the effectiveness of the Department. Work schedules must be approved, payroll reports must be made, and decisions must be made about equipment and supplies. I cannot assume these duties myself, so I am ordering you to do them."

Testimony from Lt. Reed and Deputy Chief Roderick Smith established that the job descriptions for the Deputy Chief position involved only two new job duties that were not part of the Police Lieutenant or Fire Captain positions:

^{4/} International Association of Firefighters v. City of Yakima 91 Wn. 2d 101 (1978).

^{5/} City of Mercer Island, Decision No. 725 (PECB, 1979) was issued October 1, 1979. The reorganization plan was presented to the city council November 9, 1979. There was no bargaining between the City and the MIPA in the interim.

- "1. Participate in the development and implementation of labor relations policy.
2. May participate in labor negotiations on behalf of the city."

This trial examiner is persuaded by the record in this case that the employer tried to avoid a PERC order and consequently discriminated against the lieutenants in the free exercise of their rights in violation of RCW 41.56.040 which they had been guaranteed when they were held to be within the definition of "public employee".^{6/}

4. Differential Treatment Between Departments

Fire Captain Roderick Smith was automatically placed in the position of Deputy Chief-Fire Department while Lieutenants Lee and Reed, who had just been the subjects of an union representation hearing, were demoted to police sargeant. The hierarchy chart shows that police lieutenant and fire captain were comparable positions prior to the reorganization. Although the city defends this differential treatment on the grounds that the fire captain had recently participated in a rigorous selection process and recently been hired, testimony on that point is not enough to convince this Examiner that the demotions of Lieutenants Reed and Lee were not influenced in a negative way by their recent union activities.

Smith was hired November 6, 1978. He had gone through the selection process over a year before the reorganization. Having him go through another application process for a new job would not have been an unreasonable requirement. However, the employer believed it had seen enough of Smith's qualifications to automatically promote him. Lt. Reed, who had been with the department for 17 years and a lieutenant since March 1, 1974, was required to go through the entire application process, as was Lt. Lee who served in that position since July 1, 1975. It is unrefuted in the record that the lieutenants always received good evaluations from Deveny. The record shows that the positions of "Fire Captain-Operations Division", "Police Lieutenant", and Deputy Chief" are

^{6/}

RCW 41.56.030(2)

the same except for the addition of labor relations responsibilities to the Deputy Chief slots.^{7/}

The absence of equitable treatment coupled with the timing of the demotions and the lieutenants' notoriety for pursuing their collective bargaining rights, persuades this Examiner that the city committed unfair labor practices in sending notices of the demotions of Lee and Reed, and the resulting demotions of Booth and Elsoe and discharges of Pillo and Forsman.^{8/}

5. Employer Defenses

The employer puts forth three defenses to the alleged unlawful demotions and discharges. First, the employer argues that the city council was merely enforcing the civil service rules and therefore there was no union animus involved in the personnel actions. This defense does not stand the scrutiny of logic. The civil service rules did not cause the demotion of Lieutenants Reed and Lee, a conscious management decision did. The civil service rules do not limit the number of lieutenants or the number of sergeants that Mercer Island may employ. It was a management decision to eliminate the lieutenants positions when the deputy director positions were created to "avoid funding a mid-management hierarchy". It is also a management decision to have only two

^{7/} On November 15, 1979, Deveny wrote Smith:

"On November 13, 1979, the city council eliminated one Fire Captain position and created one Deputy Chief position to serve as Commander of the Fire Operations Division. Therefore, in accordance with the direction of the city council, the direction of the Civil Service Commission, and with the authority granted me by Civil Service Rules, I appoint you a Deputy Chief. Your assignment as Fire Operations Division Commander remains the same."

Deveny also testified that police lieutenants were equivalent in rank to fire captains.

^{8/} In The City of Pasco Decision No. 504-A (PECB, 1979) the Commission affirmed an examiner's decision holding that a discharge motivated at least in part by the employer's resentment of the dischargee's exercise of her protected rights violated RCW 41.56.140(1). Also see Leavenworth School District No. 128 Decision No. 533 (EDUC, 1978) where an examiner held that discharges for insubordination were based on pretextual reasons since the employees were actually discharged for their union activities and therefore found that the employer had committed unfair labor practices.

sergeants at one time. Further, since the civil service rules do not limit the number of patrol officers the city may employ at any one time, it was a management decision to layoff patrol officers Pillo and Forsman. The civil service rules were abided by in the demotions and layoffs, but the rules themselves were not a causal factor.

The city also argues that the actions were the result of economic necessity. This argument is not convincing. The Director of Public Safety testified that he "thought" the city council would reject having both the deputy director positions and lieutenants positions, but no evidence was entered that the council specifically denied funding both ranks. In fact, they were never presented with the proposal. In light of the fact that the city was able to create two new, unbudgeted patrol officer positions in December 1979 in order to reinstate Officers Pillo and Forsman, the lack-of-economic-means defense is further weakened.

Finally, the city insists that no unfair labor practice exists since no actual layoffs in fact occurred. The record establishes that on November 15, 1979, Officers Pillo and Forsman received notice that they were to be laid off by December 31, 1979. On December 18th they were informed that no layoffs would occur since the city council had created two new patrol officer positions. It does not matter that officers Pillo and Forsman did not miss one day's wages; they lived for more than 30 days under the notice of their impending dismissal. The idea that they would not have a job would tend to have a coercive, intimidating effect on them. Since a reasonable employee involved in such a situation would tend to pinpoint his/her demotion or impending layoff on the results of actions of two employees seeking their statutory rights under RCW 41.56, the employer's actions tend to discourage the members from joining, participating in or pursuing a union.^{9/}

REMEDY:

When the lieutenants were placed in the rank and file unit, their positions became union concerns. The city failed to bargain in good faith with the union when the city unilaterally abolished the lieutenant positions. The city then skimmed off the lieutenants' duties, now unit

^{9/} RCW 41.56.140 reads "It shall be an unfair labor practice for a public employer: 1) to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter."

work, without bargaining when it created the Deputy Chief positions. The city will be ordered to cease and desist from making unilateral changes in bargaining unit positions. The city will also be ordered to bargain collectively and in good faith with the MIPA with respect to working conditions involving that unit and to restore the status quo ante by reinstating the employment practices in effect prior to November 15, 1979.^{10/} Therefore, the lieutenant positions must be reinstated and filled. Thereafter they may be eliminated or an alternative solution may be reached through good faith collective bargaining.

Because the demotions of Lt. Lee and Lt. Reed have been found to have been based on discriminatory intent, the city will be ordered to reinstate Lee and Reed to their positions as lieutenants and make them whole for any loss in pay or benefits they would have received since the time of their demotions. All references to their time out of rank as lieutenants since November 15, 1979 will be ordered removed from any personnel files. Since the Deputy Chief positions include labor-related job duties that make the positions confidential, the Deputy Chiefs would not be "public employees" within the meaning of the Act nor would they be in the bargaining unit. A make-whole remedy will not be developed here that would tamper with the employer's control over non-bargaining unit positions. Therefore, the employer will not be ordered to make Lee and Reed Deputy Chiefs. Any monetary compensation needed to make whole Lee or Reed shall be subject to interest accrued at a rate of 8 percent per year.^{11/} The resulting demotions of Sgts. Booth and Elsoe and notices of discharge to Officers Pillo and Forsman are directly attributable to the discriminatory actions against Lee and Reed. Therefore, Booth, Elsoe, Pillo and Forsman are derivative discriminatees and will be ordered to receive make whole remedies also.

The city will be ordered to cease and desist from interfering with, restraining or coercing employees in the exercise of their rights under the Public Employees Collective Bargaining Act.

^{10/} Lakewood, supra.

^{11/} Although the MIPA argues that interest should be awarded at a 13.5 percent rate, and there is evidence that the employer pays interest on backpay at 15 percent, PERC is limited by WAC 391-21-556(3) which reads: "(3) Money amounts due shall be subject to interest at the rate which would accrue on a civil judgment of the Washington state courts, from the date of the violation to the date of payment."

The union's request for attorney's fees is denied since there is no showing that the employer raised defenses of a patently frivolous nature, nor is there any suggestion that an order to the employer to cease and desist from its refusal to bargain will be inadequate to effect the intent of the statute.

FINDINGS OF FACT

1. On or about April 27, 1979, the Mercer Island Police Association and the City of Mercer Island stipulated that if police lieutenants were found not to be confidential employees within the meaning of RCW 41.56.030(2), they would be placed in the rank and file bargaining unit. On October 1, 1979, the Executive Director of the Public Employment Relations Commission issued The City of Mercer Island, Decision No. 725 (PECB, 1979) which held that the police lieutenants were not confidential employees.
2. On November 13, 1979, the Mercer Island city council adopted without bargaining with the MIPA, a proposal to reorganize the Department of Public Safety, which eliminated the positions of police lieutenant and fire captain and created positions of "Deputy Chief/Police Operations Division", "Deputy Chief/Administration Services Division" and "Deputy Chief/Fire Operations Division".
3. Lt. Edward Reed and Lt. Wallace Lee have served satisfactorily during their appointments as lieutenants.
4. The positions of police lieutenant held by Lee and Reed, and fire captain held by Roderick Smith are comparable in that they are all division heads.
5. Fire Captain Smith was automatically promoted on November 15, 1979, to "Deputy Chief/Fire Division". Lts. Lee and Reed were notified November 15, 1979, that they would be demoted to patrol sergeant effective December 31, 1979. The demotions were based in part on Lee's and Reed's union activities. Lt. Lee was notified on or about December 21, 1979, that he would be made "Acting Deputy Chief/Police Operations Division" effective January 1, 1980.
6. On or about November 15, 1979, Sgts. Glendon Booth and Ronald Elsoe were notified by the city that they would be demoted to

police officer as of December 31, 1979. On or about December 21, 1979, Booth was informed that he would be a "temporary" sergeant as of January 1, 1980. Booth and Elsoe were "bumped down" as the result of the discriminatory demotions of Lee and Reed.

7. On or about November 15, 1979, Police Officers Linda Pillo and Lowell Forsman were told by the city that they would be laid off as of December 31, 1979. On or about December 21, 1979, the city rescinded the termination notices and reappointed Pillo and Forsman as patrol officers. The layoff notices were issued as the indirect result of the discriminatory demotions of Lee and Reed.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction under RCW 41.56 et seq. only to rule on the unfair labor practice complaints filed in this case.
2. The City of Mercer Island is a public employer within the meaning of RCW 41.56.030(1). At pertinent times herein the city has been represented by Department of Public Safety Director Jan Deveny.
3. The Mercer Island Police Association is a bargaining representative within the meaning of RCW 41.56.030(3) and represents patrol officers, sergeants, lieutenants and dispatchers/clerks in the Department of Public Safety.
4. By unilaterally abolishing the position of "Lieutenant" without bargaining, the City of Mercer Island committed an unfair labor practice in violation of RCW 41.56.140(1) and (4).
5. By demoting Police Lieutenants Lee and Reed in part because of their union activities, the City of Mercer Island violated RCW 41.56.040.
6. By sending notices of demotion to Police Sergeants Booth and Elsoe and notices of lay off to Patrol Officers Pillo and Forsman, as the result of the illegal demotions of Police Lieutenants Lee and Reed, the City of Mercer Island violated RCW 41.56.040 and committed unfair labor practices in violation of RCW 41.56.140(1).

ORDER

Upon the basis of the above Findings of Fact and Conclusions of Law and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that the City of Mercer Island, its officers and agents, shall immediately:

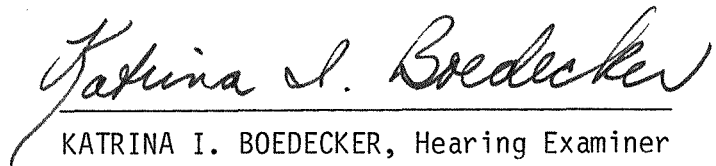
1. Cease and desist from:
 - (a) Refusing to bargain with the Mercer Island Police Association;
 - (b) Making unilateral changes in bargaining unit work without giving notice to and bargaining collectively with the Mercer Island Police Association;
 - (c) Discouraging membership in the Mercer Island Police Association, or any other labor organization, by demoting, sending notices of demotions and lay offs to any of its employees in the bargaining unit or in any other manner discriminating against such employees in regard to tenure of employment, except to the extent permitted by RCW 41.56.140(1).
 - (d) Interfering with, restraining or coercing its employees in any other manner in the free exercise of their rights guaranteed them by the Act.
2. Take the following affirmative actions to remedy the unfair labor practices and to effectuate the policies of the Act:
 - (a) Bargain collectively in good faith with the Mercer Island Police Association as the exclusive bargaining representative of the city's employees in the appropriate bargaining unit with respect to working conditions and specifically with respect to any decision to transfer unit work from bargaining unit employees to other employees.
 - (b) Reinstate the employment practices in effect prior to November 13, 1979, by reestablishing the position of "Police Lieutenant" in the bargaining unit.

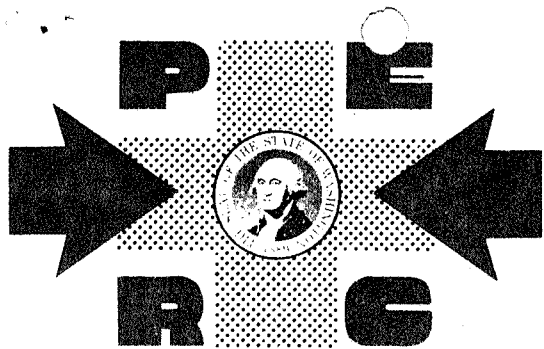
- (c) Make whole employees Wallace Lee and Ed Reed by: offering them immediate and full reinstatement to the positions of police lieutenant without prejudice to their seniority rights or other privileges; eliminating any reference to their demotion from any and all personnel files; reimbursing them for any loss in pay and benefits they might have suffered because of their demotions by paying to each the sum of money equal to that which he would normally have earned or received as a lieutenant from date of his actual demotion to the effective date of his unconditional offer of reinstatement made pursuant to this order, less any earnings he may have received during said period. Such remedy shall be subject to computation and payment of interest as provided by WAC 391-30-556.
- (d) Make whole employees Glendon Booth and Ronald Elsoe by: offering them immediate and full reinstatement to the positions of police sergeant without prejudice to their seniority rights or other privileges; eliminating any reference to their demotion from any and all personnel files; reimbursing them for any loss in pay and benefits they might have suffered because of their demotions by paying to each the sum of money equal to that which he would normally have earned or received as a sergeant from date of his actual demotion to the effective date of his unconditional offer of reinstatement made pursuant to this order, less any earnings he may have received during said period. Such remedy shall be subject to computation and payment of interest as provided by WAC 391-30-556.
- (e) Make whole employees Linda Pillo and Lowell Forsman by: eliminating any prejudice to their seniority rights or other privileges caused by their proposed lay offs; eliminating any reference to their proposed lay offs from any and all personnel files; and reimbursing them for any loss in benefits they might have suffered because of their proposed lay offs. Such remedy shall be subject to computation and payment of interest as provided by WAC 391-30-556.

- (f) 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, after being duly signed by an authorized representative of the City of Mercer Island, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Mercer Island to ensure that said notices are not removed, altered, defaced or covered by other material.
- (g) Notify the Executive Director of the Commission, in writing, within ten (10) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington this 31st day of October, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KATRINA I. BOEDECKER, Hearing Examiner



PUBLIC EMPLOYMENT RELATIONS COMMISSION ^{"APPENDIX A"}

Case No. 2458-U-79-355 Date Issued October 31, 1980

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE PURPOSES OF THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING ACT, THE CITY OF MERCER ISLAND HEREBY NOTIFIES ITS EMPLOYEES THAT:

WE WILL NOT refuse to bargain with the Mercer Island Police Association.

WE WILL NOT make unilateral changes in bargaining unit work without giving notice to and bargaining collectively with the Mercer Island Police Association.

WE WILL NOT discourage membership in the Mercer Island Police Association, or any other labor organization, by demoting, sending notices of demotions and lay offs to any of our employees in the bargaining unit or in any other manner discriminate against such employees in regard to tenure of employment, except to the extent permitted by RCW 41.56.140(1).

WE WILL NOT interfere with, restrain or coerce employees in any other manner in the free exercise of their rights guaranteed them by the Act.

WE WILL bargain collective in good faith with the Mercer Island Police Association as the exclusive bargaining representative of the city's employees in the appropriate bargaining unit with respect to working conditions and specifically with respect to any decision to transfer unit work from bargaining unit employees to other employees.

WE WILL reinstate the employment practices in effect prior to November 13, 1979, by reestablishing the position of "Police Lieutenant" in the bargaining unit.

WE WILL make whole employees Wallace Lee and Ed Reed by: offering them immediate and full reinstatement to the positions of police lieutenant without prejudice to their seniority rights or other privileges; eliminating any reference to their demotion from any and all personnel files; reimbursing them for any loss in pay and benefits they might have suffered because of their demotions by paying to each the sum of money equal to that which he would normally have earned or received as a lieutenant from date of his actual demotion to the effective date of his unconditional offer of reinstatement made pursuant to this order, less any earnings he may have received during said period. Such remedy shall be subject to computation and payment of interest as provided by WAC 391-30-556.

WE WILL make whole employees Glendon Booth and Ronald Elsoe by: offering them immediate and full reinstatement to the positions of police sergeant without prejudice to their seniority rights or other privileges; eliminating any reference to their demotion from any and all personnel files; reimbursing them for any loss in pay and benefits they might have suffered because of their demotions by paying to each the sum of money equal to that which he would normally have earned or received as a sergeant from date of his actual demotion to the effective date of his unconditional offer of reinstatement made pursuant to this order, less any earnings he may have received during said period. Such remedy shall be subject to computation and payment of interest as provided by WAC 391-30-556.

WE WILL make whole employees Linda Pillo and Lowell Forsman by: eliminating any prejudice to their seniority rights or other privileges caused by their proposed lay offs; eliminating any reference to their proposed lay offs from any and all

personnel files, and by reimbursing them for any loss in benefits they might have suffered because of their proposed lay offs. Such remedy shall be subject to computation and payment of interest as provided by WAC 391-30-556.

DATED: _____

CITY OF MERCER ISLAND

By:

Chairperson of the City Council

By:

Mayor

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

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.