STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE PROSECUTING ATTORNEYS ASSOCIATION,	)	
Complainant,	)	CASE 12173-U-95-2874
vs.	)	DECISION 5391-B - PECB
CITY OF SEATTLE,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Cline & Emmal, by Roger C. Cartwright, Attorney at Law, appeared on behalf of the complainant.

Mark H. Sidran, City Attorney, by Leigh Ann Collings Tift, Assistant City Attorney, appeared for the respondent.

On November 17, 1995, the Seattle Prosecuting Attorneys Association (SPAA) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the City of Seattle (employer) had committed unfair labor practices in violation of RCW 41.56.140. An amended complaint was filed on December 22, 1995, in response to a deficiency notice issued by the Executive Director under WAC 391-45-110 on December 14, 1995. An order of partial dismissal was issued on March 18, 1996, limiting further proceedings to all or parts of five paragraphs of the amended complaint.[1] Vincent M. Helm of the Commission staff was assigned as Examiner. A hearing

[1] City of Seattle, Decision 5391 (PECB, 1996). That order became final as to the matters decided therein, in the absence of a timely petition for review.

that was originally set for July of 1996 was postponed to "no earlier than October 1996" at the request of the parties. The SPAA filed an amended complaint on October 4, 1996, and it was found to state a cause of action. The SPAA filed another amended complaint on December 22, 1996, and that amendment was accepted. The SPAA filed a third amended complaint on January 2, 1997, only a few days before a hearing scheduled for January 7, 1997. In an order issued on January 2, 1997, the Examiner allowed the third amended complaint with respect to paragraphs which were restatements of allegations previously on file, and also allowed the amendment as to a new allegation "14." which was closely related to the allegations previously on file, but denied the motion to amend with respect to a new allegation "15." which was unrelated to the allegations previously on file.[2] A hearing was held on January 7, 1997.[3] Briefs were filed in March 1997.

BACKGROUND

In the summer of 1995, certain attorneys employed by the City of Seattle became involved in a union organizing campaign. On September 8, 1995, the Seattle Prosecuting Attorneys Association filed a representation petition with the Public Employment

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[2] City of Seattle, Decision 5391-A (PECB, 1997).

[3] In a pre-hearing brief, the employer requested the Examiner to rule on whether the Commission had jurisdiction over the employees, in view of a court decision in Spokane County v. State of Washington, Cause No. 96-2-02957-2, which interpreted RCW 41.56.030 as exempting attorneys appointed by elected officials from the definition of "public employee". At the hearing in this matter, the Examiner noted that the cited decision is on appeal, and that the Commission has continued to exercise jurisdiction pending the outcome of that appeal.

Relations Commission under Chapter 391-25 WAC.[4] The Commission conducted a representation election on November 30, 1995. An interim certification was issued on December 8, 1995, designating the SPAA as exclusive bargaining representative of a bargaining unit described as follows:

> All full-time and regular part-time assistant city attorneys of the City of Seattle Criminal Division, excluding supervisors, confidential [employees] and all other employees.

City of Seattle, Decision 5381 (PECB, 1996).

Throughout the period from September of 1995 to February of 1996, the bargaining unit status of four employees designated as "assistant supervisors" was in question. The employer contended that supervisory and/or confidential responsibilities of those individuals precluded their inclusion in the bargaining unit, while the union maintained they were properly within the bargaining unit.

On February 20, 1996, the parties reached a stipulation and agreement whereby the bargaining unit would include:

> All full-time and regular part-time employees classified as "Assistant City Attorneys" of the City of Seattle Criminal Division, excluding supervisors, and one assistant supervisor (Position #02462) which is presently assigned to supervision in the "High Impact Offender Unit".

Ostensibly, that agreement laid to rest the status of the assistant supervisors.

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[4] Notice is taken of the docket records of the Commission for Case 12026-E-95-1924.

The Disputed Actions

As thrice amended and limited by previous preliminary rulings and orders, the complaint in this case addresses five situations:

1. The SPAA takes issue with a portion of a memorandum from Jack Johnson, the employer's chief civil attorney, which was distributed to all assistant city attorneys in the criminal division on or about October 2, 1995. The relevant portion of that memorandum is as follows:

> Q: What limitations are there on union activity at work?
>
> A: In general, employees may not hold union meetings or conduct union campaigning at the workplace or during work hours or use office resources for those purposes....

The question before the Examiner is whether that memo interfered with employee rights protected by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

2. The SPAA takes issue with portions of a follow-up memorandum issued by Johnson, as follows:

> First, my reference to "work hours" may have been ambiguous in that as FLSA-exempt employees, assistant city attorneys do not have rigid work schedules. With that in mind, a better term would have been "office hours" - those hours during which the office is officially open for business - 8:00 a.m. to 5:00 p.m., Monday through Friday.
>
> Second, as what activity is prohibited, I expect that a "rule of reason must be applied ... For an analogy I would suggest looking to the broader prohibitions against using city

> time, facilities, or resources for election campaigning. Thus, I would not expect this restriction to apply to a brief casual conversation between two colleagues, but I would get concerned at the point that its nature became more like deliberate or organized advocacy or solicitation ...

The question before the Examiner is whether that memo imposed new requirements on employees where there had previously been no restrictions on communications between employees at the workplace, resulting in employees reasonably perceiving employer interference with lawful union activities.

3. The SPAA takes issue with comments allegedly made by employer official(s) at a meeting held with the "assistant supervisors" a week before the ballots were mailed for the representation election. The question before the Examiner is whether those challenged voters were told that they would lose certain of their duties and suffer a reduction of their pay if the union was selected and they were included in the bargaining unit.

4. The SPAA takes issue with changes of assistant supervisor duties and titles implemented by the employer in July of 1996. The question before the Examiner is whether the employer carried out any or all of the actions described in the preceding paragraph, and/or whether those changes were in retaliation for their being included in the bargaining unit or reasonably perceived as such by employees.

5. The SPAA takes issue with an alleged loss of opportunities to receive future pay increases based on their performance as assistant supervisors. The question before the Examiner is whether the employer carried through its alleged threats.

POSITIONS OF THE PARTIES

The SPAA contends that the assistant city attorneys believed, as a result of the employer's memoranda, that they were not to discuss the union at all at the workplace, and that participation in union activities would result in employer reprisals.[5] The union correctly notes the standards utilized by the Commission in determining whether an interference violation is established. The SPAA also argues that the employer's actions regarding the assistant supervisors constituted a unilateral elimination of a bargaining unit position, in derogation of its bargaining obligation, and that discussions between union and employer representatives relative to the unit placement of the assistant supervisors did not constitute a waiver of the union's right to file unfair labor practice charges on the employer's actions vis-a-vis the assistant supervisors. Finally, the SPAA asserts that the employer's memoranda and the changes implemented regarding the assistant supervisors were in retaliation against the assistant city attorneys generally, and against the assistant supervisors in particular, for attempting to organize a union.

The employer contends that the memoranda at issue neither singled out union-related speech nor imposed an overly-broad constraint. It further asserts that, as matter of fact, the memoranda had no impact upon employees. With respect to changes in job content that it instituted, the employer argues that the changes were negligible and necessary to implement the parties' agreement to include the assistant supervisors in the bargaining unit. Lastly, the employer argues that the union waived any claim with respect to these

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[5] The union relies, in part, upon portions of the memoranda which the Executive Director previously found did not violate the statute. Those portions of the memoranda are not before the Examiner in this case.

allegations, by entering into a stipulation and agreement which is alleged to have been the basis for the employer's actions.

DISCUSSION

Limitations on Union Activity

The witnesses called by the SPAA included three employees who, for over five years, had been designated as assistant supervisors. All three of them had been employed with this employer for approximately seven years. All of them stated that there had historically been "no holds barred" on discussion of almost any topic of interest among the attorneys, particularly in the employee lunch area. All of them testified, however, that this lack of restraint did not extend to discussion of the union during the Summer and Autumn of 1995. Various reasons were advanced for that reticence:

- All three witnesses were aware of the ongoing debate on their inclusion in the bargaining unit, and of an employer concern that any statements they made might be construed by other employees as having been made by representatives of management (thereby subjecting the employer to possible liability for coercive comments). This contributed to a reluctance on their part to discuss the union with their fellow employees.

- There was a concern that it would be a "career mistake" for the assistant supervisors to have supported the union, if they were later excluded from the bargaining unit.

- Their testimony indicated there was a general awareness among the attorneys as to who did or did not support the union, and

that discussion would be limited if persons were present who did not share the witnesses' viewpoints concerning the union.

The general tenor of the testimony of these union witnesses was that the first of the challenged employer memoranda unquestionably had the effect of limiting discussion of the union. The organizing activity was perceived to be a non-work topic, which should not be addressed on the employer's premises.

The employer introduced no evidence which indicates that restrictions on employee discussions or solicitations have been uniformly imposed at the employer's workplace. The employer offered an advisory opinion from its ethics commission, but restrictions set forth in that document on use of the employer's facilities and equipment other than for employer-related business are not relevant to the determination of the issue herein. The employer offered its manual of office policies and procedures in evidence, but it only contains one reference which is relevant to the matter at hand. In a section dealing with ethics, under the heading of "Political Campaigning", the following is set forth:

> As to his own office, the City Attorney will not accept any financial contribution from any employee. Although **the City Attorney does not believe it is appropriate to limit other campaign activities by employees**, such participation is absolutely not expected of employees.
>
> As to other elected offices or ballot issues, **the City Attorney respects the rights of employees to participate in campaign activities**, but encourages each employee to use care that such participation not harm or jeopardize the ability of the office to maintain a positive working relationship with its clients.

[Emphasis by **bold** supplied.]

A passing reference in a "Legal Practice: Standards and Policies" section dealing with the "Civil Division Timesheet System" is of interest in evaluating the employer's overall philosophy toward non-work activities by employees at the work place: In defining billable hours, the employer states,

> It is not appropriate to record time spent chatting about sports, balancing your check-book or conducting other personal business.

Thus, it is fair to say that, the employer recognized a right of its employees to participate in campaign activities prior to the employer's memoranda on union activity issued in the autumn of 1995, so long as such activity did not affect the ability of the employer to provide services to its constituency or involve financial contributions to the city attorney. Absent anything to the contrary, that right must be presumed to have encompassed the work day and the workplace, as well as other times and locations. No evidence was introduced by the employer that discussion of the union at the workplace had actually caused any adverse impact upon its operations. In fact, the employer explicitly recognized that employees will devote some periods of time during their workday to non-work activities, such as discussing sports or handling personal business.

Chapter 41.56 RCW is generally patterned after the National Labor Relations Act (NLRA), and the "interference" prohibition in RCW 41.56.140(1) closely parallels the "interference" prohibition found in Section 8(a)(1) of the NLRA. With the approval of the Supreme Court of the State of Washington, the Commission considers the precedents developed by the National Labor Relations Board (NLRB) and the federal courts under the NLRA in construing this state's collective bargaining statutes in cases where local precedent is

limited or lacking, and the statutes are similar.[6] It has long been established under the NLRA that employer-imposed restrictions on union activity at the workplace *during work time* occupy a different status than restrictions imposed on employee activities *during the work day*. While the former are presumptively valid, the latter are presumptively invalid. Additionally, it has been held under the federal statute that a rule prohibiting union discussion during work time, but not similarly restricting other conversation, is unlawful. Our Way, 268 NLRB 394 (1983).

Turning to the facts of this case, it is clear that the employer's two memoranda must be found to violate RCW 41.56.140(1) on two independent grounds which flow from NLRA precedent:

- First, the memoranda prohibited all campaigning including solicitation at the workplace during working hours or (as modified) during hours when the employer's office was open to the public. Taken literally, the ban on union activity even extended to employee break times and meal periods spent on the employer's premises. A more draconian stricture on lawful union activity is scarcely imaginable.

- Second, the employer's memoranda singled out union activity as the one and only subject of discussion to be proscribed on the employer's premises. The promulgation of a rule which focused on union activity furnishes an additional basis for finding a violation of the statute.

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[6] Federal precedent is persuasive, but is not controlling. See, Nucleonics Alliance v. WPPSS, 101 Wn.2d 24 (1984), citing State ex. rel. Washington Fed'n of State Employees v. Board of Trustees, 93 Wn.2d 60 (1982) and Spokane Education Association v. Barnes, 83 Wn.2d 366, 375 (1974).

The test for finding an "interference" violation is whether the employees reasonably perceived the employer's action as a threat of reprisal or force or a promise of benefit associated with their union activity. The Examiner finds the employer memoranda at issue in this case interfered with the right of employees to organize and select a representative of their own choosing under RCW 41.56.040, and were an unfair labor practice under RCW 41.56.140(1).

The employer argues that the memoranda should not be found to have violated the statute, because the evidence demonstrated that they did not have an actual impact upon union activity. It is well established that actual interference need not be shown to establish an "interference" violation, and that evidence about whether employees actually refrained from pursuit of their collective bargaining rights is irrelevant in such cases. Under the "reasonably perceived" test described in the preceding paragraph, there can be no doubt that the employer memoranda referred to in the first and second issues described above violated the statute. King County, Decision 3318 (PECB, 1989); City of Longview, Decision 4702 (PECB, 1994).

Employer Statements to Assistant Supervisors

Bargaining unit employee Mari Trevino testified about a meeting that she and two other assistant supervisors had with their superior, Ted Inkley, in his office. Trevino testified, without contradiction, that Inkley said certain management responsibilities would be removed from the assistant supervisors if they were included in the bargaining unit. She further testified that, in response to her question at the same meeting, Inkley said the changes in responsibility would impact the pay of the assistant supervisors. Trevino did not establish a time frame for that meeting, other than to say that it occurred while she held the

"assistant supervisor" title and while the union organizing effort was underway. The meeting apparently preceded a meeting about the union held between the assistant supervisors and Marilyn Sherron.[7]

Edward McKenna, another assistant supervisor, was called as a union witness at the hearing in this matter, but was not asked about the meeting with Inkley.

Robert Murashige, another assistant supervisor, attended the meeting, but did not testify about the comments attributed to Inkley.

For his part, Inkley, testified that he recalled meeting with Murashige and Trevino in his office some time in the autumn of 1995, before the representation election. He also recalled the context of the discussion as concerning the inclusion of the assistant supervisors in the bargaining unit. He did not, however, testify as to the substance of his comments at that meeting.

It is fair to say that Inkley made his statements in the context that: (1) There was a representation petition pending before the Commission; (2) the employer's stated position in the representation proceeding was that the assistant supervisors should be excluded from the bargaining unit based on their management responsibilities; and (3) there had not been, up to that point in time, any formal Commission ruling on the unit placement of the assistant supervisors. Those circumstances do not, however, excuse or exonerate Inkley for his comments. It has long been well established that supervisors are employees within the meaning and

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[7] Sherron has appeared before the Commission on a number of cases, and was described in this record as having been the director of the Employment Section of the Civil Division with the city attorney's office.

coverage of Chapter 41.56 RCW, and that supervisors have the same right to organize and bargain as do non-supervisory employees. Municipality of Metropolitan Seattle (METRO) v. Department of Labor and Industries, 88 Wn.2d 925 (1977). Thus, anti-union statements made by an employer official to a supervisor warrant finding exactly the same violation of RCW 41.56.140(1) as would be appropriate if the statements were made to a non-supervisory employee. Moreover, even if the assistant supervisors were ultimately found to have insufficient indicia of supervisory authority to be excluded from the bargaining unit which was then the subject of a representation petition, in no event could their unit placement have lawfully affected their job content or pay.[8]

By his assertions, Inkley conveyed to the affected employees that their exercise of rights under the collective bargaining statute could adversely affect them. Such threats could reasonably be expected to interfere with the exercise of employee rights guaranteed by statute, and therefore violated RCW 41.56.140(1).

Changes in Titles and Responsibilities

Throughout the autumn of 1995, the unit placement of the four assistant supervisors continued to occupy the attention of the employer and union. The disputed individuals involved were afforded the opportunity to cast challenged ballots in the representation election, and their status was to be determined by

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[8] While the employer claimed they held "confidential" status during the processing of the representation case, such a claim is untenable on the record made here. The "confidential" exclusion is narrowly confined to persons having access to information concerning the labor relations policies and strategies of the employer. IAFF, Local 469 v. City of Yakima, 91 Wn.2d 101 (1978). The employees at issue here process criminal charges, not labor relations matters.

means of a post-election hearing and decision.[9] The issue was the subject of several conversations between employer representative Jack Johnson and union representative James Cline.

Changes of Duties -

In a November 2, 1995 letter to Cline, Johnson purported to set forth the tenor of the discussions relative to the unit placement of the assistant supervisors. In essence, Johnson indicated the employer's concerns were the participation of assistant supervisors in management discussions at "Tuesday group" meetings, and their role in the evaluation, promotion and discipline of employees. Johnson went on to state:

- His understanding that Cline maintained it would not be an unfair labor practice for the employer to unilaterally discontinue participation by assistant supervisors in the foregoing activities, if they were included in the bargaining unit;

- His assumption that Cline's position would extend to involvement of assistant supervisors in other "management" activities of a similar nature; and

- His understanding that Cline agreed to waive, in advance, any unfair labor practice claims with respect to such employer actions.

Johnson continued that this removal of functions would normally entail a one-step reduction in pay, but that the employer would maintain the status quo for the assistant supervisors pending the election. Johnson also indicated a desire to resolve the issue

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[9] Challenged ballots are authorized by WAC 391-25-510.

prior to November 8, 1995, and requested a call from Cline by the following Monday to indicate the question had been resolved to the extent "that the election might proceed". The record is unclear as to what response, if any, was made by Cline at that time.

The election was held on November 8, 1996, as previously scheduled, and challenged ballots did not affect the outcome of the election. The interim certification followed, since the union was entitled to status as exclusive bargaining representative regardless of the outcome of the eligibility issue on the assistant supervisors.

The assistant supervisors were the subject of another letter written by Johnson to Cline on December 11, 1995. After reiterating the employer's concern with respect to the assistant supervisors' retention of management responsibilities while being included in the bargaining unit, noting an alleged suggestion by Cline that the dispute could be resolved by removing management responsibilities from the assistant supervisors, and indicating the employer's reluctance to give up the benefit to it of having the assistant supervisors performing their historical range of functions, Johnson suggested an alternative: Rather than requiring a determination by the Commission of the employees' supervisory or confidential status or the employer totally removing all management responsibilities from all of the assistant supervisors, the employer proposed changing job responsibilities in an unspecified manner with the result that three of the four assistant supervisors would be included in the bargaining unit.

In a letter dated December 27, 1995, Cline advised Johnson that he would present the employer's proposal to the SPAA board, and would provide a response.

On February 20, 1996, the parties entered into a formal stipulation and agreement concerning the unit placement issue then pending before the Commission in Case 12026-E-95-1984, as follows:

> All full-time and regular part-time employees classified as "assistant city attorneys" of the City of Seattle criminal division, excluding supervisors, and one assistant supervisor (position #02462) which is presently assigned to supervision in the "high impact offender unit".

Johnson testified that Cline told him, prior to November 2, 1995, that it was the employer's business to determine who would be involved in management and personnel issues, and that taking such responsibilities away from the assistant supervisors would not be an unfair labor practice. Johnson insists that Cline never claimed that the November 2, 1995 letter misrepresented Cline's position. Cline testified that he never agreed to waive unfair labor practices in advance, and that he so advised Johnson in a telephone call. Cline said he repeatedly asked Johnson what management responsibilities he believed the assistant supervisors had. According to Cline, Johnson only specifically referenced participation in the "Tuesday group" and evaluation of employees as management responsibilities, although indicating there were other matters which he did not identify. Ultimately, Cline asserted that he told Johnson that he could not give Johnson carte blanche to change job responsibilities without an unfair labor practice charge being filed. Cline testified that he only assured Johnson that an unfair labor practice charge would not be filed if the assistant supervisors no longer attended "Tuesday group" meetings and/or no longer evaluated employees.

From review of the various conversations between Johnson and Cline, Johnson's letters, and the stipulation filed by the parties in the

representation case, the Examiner concludes that exclusion of the affected employees from attendance at "Tuesday group" meetings and elimination of their participation in evaluation, promotion and discipline of assistant city attorneys were agreed upon by the parties. Although such intent was perhaps imperfectly stated, I conclude that the parties intended to divest the three assistant supervisors who were included in the bargaining unit of any job responsibilities that would be of a supervisory nature incompatible, under Commission precedent, with their inclusion in the unit.[10] Under this view, the employer was not necessarily foreclosed from any further changes in job content necessitated to bring the three positions within the ambit of duties properly included in the certified bargaining unit. Any changes not so required, or any effected without notice to the union and an opportunity to bargain, would subject the employer to a finding of having failed to satisfy its statutory bargaining obligation.

I find no evidence of intent on the part of the employer to retaliate against the three employees with respect to the changes set forth above. Rather, it appears the employer assumed too much about what Cline had conceded in their conversations and correspondence.

Change of Title -

Prior to the onset of this controversy, each of the three employees who were placed in the bargaining unit had been provided business cards bearing the "assistant supervisor" title. Each of them was also listed in the employer's telephone directory with the "assistant supervisor" title beside their names. After the

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[10] See discussion of avoiding potential for conflicts of interest in City of Richland, Decision 279, 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981).

stipulation was filed in the representation case, the employer removed the "assistant supervisor" title from Trevino, Murashige, and McKenna, and substituted what it characterizes as an informal designation of "lead attorney". Two of the three affected employees learned of these changes from performance evaluations they received in July of 1996. The third received word of his changed title from a secretary. After they were placed in the bargaining unit, the affected employees also had indications from the employer that their designations are subject to further change.

The stipulation filed by the parties to resolve the unit placement of the assistant supervisors did not change the list of job classifications previously set forth in the petition. It added a specific exclusion of one assistant supervisor, but there is no indication to any specific discussion on immediate or future changes of job titles for the three employees who were included in the bargaining unit.

There have been psychological impacts of the title change on the affected employees. Each of them perceives the change of job title as a demotion. This feeling prompts real concern, on their part, that the change in job title will produce a negative reaction upon future potential employers. Each of the three former assistant supervisors have also noticed unique changes in job content, some of which are more difficult to quantify:

- Trevino and Murashige no longer receive telephone complaints from attorneys, victims, or members of the public, which are now routed to either of two supervisors.[11]

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[11] Trevino indicated this change was welcome, but it was nevertheless a change.

- Murashige no longer is assigned special projects, such as letters to attorneys or victims, or leading a course in drug traffic loitering.

- McKenna can no longer discuss policies and procedures with judges.

- Other assistant city attorneys question McKenna's case assignments or advice on trial strategy, because he is no longer involved in their performance evaluations.

- Trevino and Murashige continue to staff more calendars as well as more complex filings than do other attorneys.

The record does not establish that the title change was ever discussed, and the mere deletion of certain duties or responsibilities does not create a presumption that a change in job title has also been effected. This is particularly true where, as here, other duties which remained after the agreed upon changes were not performed by other assistant city attorneys in the bargaining unit. Nonetheless the stipulation and agreement provided only for the exclusion of one assistant supervisor.

The changes relative to dealing with complaints from parties and discussing procedural matters with judges fall within the ambit of unilateral action which requires a finding that the employer violated the statute. Bargaining unit work was "skimmed" and given to supervisors outside of the bargaining unit, without notification to the union, an opportunity for bargaining, or good faith negotiations between the employer and union.[12] The employer has not sustained its burden of proof with respect to its affirmative

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[12] See, South Kitsap School District, Decision 472 (PECB, 1978) and numerous subsequent cases on "skimming".

defense that the union waived any right to protest these changes by virtue of the correspondence and conversations between Johnson and Cline. A party asserting the existence of a waiver bears a heavy burden of proof, and waivers must be clear, unmistakable and knowingly made. City of Yakima, Decision 3564-A (PECB, 1991). The employer must thus be found to have refused to bargain, in violation of the statute, with respect to the title changes referenced herein, which were not discussed with and agreed upon with the union. Clover Park School District, Decision 3266 (PECB, 1989).

Compounding the situation is the substantial concerns of the three individuals as to the impact of the change in their job title upon their future employment prospects. This aspect of the matter may well have not entered into the calculations of either of the parties. Even if a reversion of the former assistant supervisors to the assistant city attorney job title was contemplated by the employer before and upon execution of the stipulation filed by the parties in the representation case, such an intent was never communicated to the union or to the affected employees. Thus the employer's change in job title is in violation of its bargaining obligation.

As with the changes in job duties which were not negotiated with the union, I find no evidence of union animus to sustain a contention that the change in job title was in retaliation for activities protected by the statute.

Effect upon Employees' Salaries -

The employer has a single pay scale for all assistant city attorneys, which provides for an eight-step progression to a maximum level. That salary schedule lists neither a separate job title nor a separate salary for an "assistant supervisor" classifi-

cation, and the record is clear that all employees formerly designated as assistant supervisors were paid on the established salary schedule for the classification of assistant city attorney.

Upon being designated as an "assistant supervisor" each of the affected employees had received an immediate step increase. They thereafter advanced through the progression from that higher base, but all of them were topped out on the scale prior to the filing of the stipulation in the representation case. Therefore, none of them could have received any further pay increases except by general increases of the existing pay scale or by transfer into another job classification. There is no evidence to support the union's claim that the former assistant supervisors have lost any opportunity for any future pay increases.

None of the former assistant supervisors have had their salaries reduced by the employer. Therefore, there is also no evidence to support the union's allegation that the assistant supervisors suffered a pay reduction.

FINDINGS OF FACT

1. City of Seattle is a "public employer" within the meaning of RCW 41.56.030(1).

2. Seattle Prosecuting Attorneys Association, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a unit of assistant city attorneys in the criminal division of the office of the city prosecutor employed by the city of Seattle.

3. In September 1995, the union filed a representation petition with the petition for the unit described in 2 above. On

December 8, 1995, the Commission, pursuant to a secret ballot election, issued an interim certification of bargaining representative (Case 12026-E-95-1924).

4. Between the period September 1995 and February 1996, the question of the unit placement of four assistant city attorneys designated as "assistant supervisors" was an open issue between the employer and the union. These individuals cast challenged ballots in the representation election.

5. The employer contended that the employees referenced in 4 above had supervisory and/or confidential duties which rendered their inclusion in the bargaining unit inappropriate.

6. In a meeting with two assistant supervisors in the fall of 1995, Ted Inkley, chief attorney of the criminal division, stated that if assistant supervisors were included in the bargaining unit, certain of their management responsibilities would be removed and such changes in responsibility would affect their pay.

7. Discussions and correspondence transpired between Jack Johnson, chief civil attorney for the employer, and James Cline, counsel for the union, relative to the disposition of the issue of the unit placement of the assistant supervisors.

8. Pursuant to the negotiations referenced in 7 above, the parties entered into a written agreement and stipulation in February 1996 that resulted in three of the four assistant supervisors being placed in the bargaining unit.

9. The underlying rationale for the agreement referenced in 8 above was the parties' agreement that the three assistant supervisors placed in the unit would not attend "Tuesday

group" meetings of supervisors and would not have a role in evaluating, promoting or disciplining employees.

10. In agreeing to the document referenced in 8 above, neither party discussed: removing the title of assistant supervisor from those attorneys possessing that designation; removing verbal or written contact by them with victims, attorneys as members of the public; or eliminating their special projects or contacts with judges relative to court policy.

11. Sometime after execution of the document referenced in 8 above and no later than July 1996, the employer without notice to or negotiation with the union took the unilateral action with respect to the matters referenced in 10 above.

12. The employees reasonably perceived the employer's actions referenced in 6 and 11 above as being threats of retaliation in the case of 6 above and actual retaliation in the case of 11 above.

13. The employer took the action referenced in 11 above as a result of a misunderstanding of the effect of the agreement referenced in 8 and 9 above.

14. The employer in two memoranda, in the fall of 1995 and prior to the representation election, limited discussion of the union to other than work or office hours and outside of the workplace.

15. The employer had no comparable restrictions on other speech or activities of a non-work related nature, and there was no compelling requirement to impose such restrictions in order to maintain the employer's operation.

16. The employer did not actually reduce the pay of the former assistant supervisors.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. By the actions set forth in paragraphs 6, 11, and 14 under the circumstances set forth in paragraphs 3, 10, 12, 13, and 15 of the Findings of Fact, the employer has interfered with, restrained or coerced public employees in the exercise of rights guaranteed by statute in violation of RCW 41.56.140(1).

3. By the action set forth in paragraph 11 under the circumstances set forth in paragraphs 3 and 10 of the Findings of Fact, the employer has failed and refused to bargain in good faith in violation of RCW 41.56.140(4).

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 City of Seattle, its officers and agents, shall immediately:

1. Cease and desist from:

   (a) Interfering with, restraining or coercing public employees in the free exercise of their rights guaranteed them by statute by:

      (1) eliminating the job responsibilities of assistant supervisors which are not of a confidential or

supervisory nature because they are included in a bargaining unit.

(2) eliminating the job title of "assistant supervisors" upon inclusion of employees bearing this title in a bargaining unit.

(3) threatening to eliminate job responsibilities or cut the pay of assistant supervisors if they are included in a bargaining unit.

(4) maintaining a rule prohibiting solicitation for or discussion of the union at the work place or during working or office hours where there are no comparable restrictions on non-work related activity and no compelling circumstances exist for promulgation of such a rule in order to maintain an orderly work environment.

(b) Refusing to bargain in good faith with Seattle Deputy Prosecutors Association, by eliminating non-supervisory or non-confidential job duties and job titles of assistant supervisors without notice to the union.

(c) In any other manner, interfering with, restraining or coercing public employees in the exercise of their rights under Chapter 41.56 RCW.

2. Take the following affirmative actions to remedy the unfair labor practices found and to effectuate the policies of the Act:

(a) Return the non-supervisory, non-confidential work to the assistant supervisors which was transferred to non-

bargaining unit employees sometime after February 20, 1996, including written and verbal contact with attorneys, victims, members of the public and judges.

(b) Restore the title of "assistant supervisor" to the three individuals in the bargaining unit who had that title prior to February 20, 1996.

(c) 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". Such notices shall, after being duly signed by an authorized representative of the City of Seattle, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Seattle to ensure that said notices are not removed, altered, defaced or covered by other material.

(d) Notify the Executive Director of the Commission, in writing, within twenty (20) 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 6th day of June, 1997.

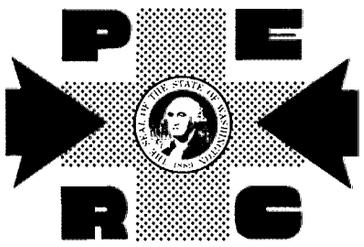
PUBLIC EMPLOYMENT RELATIONS COMMISSION

Vincent M. Helm

VINCENT M. HELM, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

APPENDIX



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 free exercise of their rights guaranteed by the Public Employees Collective Bargaining Act, by promulgating overly broad restrictions on discussions of the union, or removing non-supervisory, non-confidential job responsibilities or threatening to do so, or to affect employee's pay and changing job titles because employees are placed in a unit for bargaining purposes.

WE WILL NOT refuse to bargain in good faith with the Seattle Deputy Prosecutors Association concerning elimination of job duties and titles.

WE WILL permit discussions of the union in the same manner as other subjects at the work place.

WE WILL restore non-supervisory, non-confidential work functions to the assistant city attorneys designated as "assistant supervisors" and included in the bargaining unit.

WE WILL restore the title of "assistant supervisor" to those employees having that title prior to February 20, 1996.

WE WILL bargain in good faith with Seattle Deputy Prosecutors Association with respect to changes in duties or job titles of bargaining unit employees.

DATED: _____

CITY OF SEATTLE

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, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 753-3444.