

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF
STATE EMPLOYEES,

Complainant,

vs.

STATE - SOCIAL AND HEALTH
SERVICES,

Respondent.

CASE 23154-U-10-5893

DECISION 11033 -A - PSRA

CORRECTED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Younglove & Coker, by *Christopher J. Coker*, Attorney at Law, for the union.

Attorney General Robert M. McKenna, by *Donna J. Stambaugh*, Assistant Attorney General, for the employer.

On April 6, 2010, the Washington Federation of State Employees (union) filed unfair labor practice charges against the Washington State Department of Social and Health Services (employer) claiming employer interference with employee rights and discrimination in violation of RCW 41.80.110(1)(a) by employer agents making threats of reprisal or force or promises of benefit in connection with employee disciplinary interviews. Unfair Labor Practice Manager David Gedrose issued a deficiency notice regarding the charge of discrimination. On April 23, 2010 the union filed an amended complaint which deleted the discrimination charge and added a charge of employer refusal to bargain in violation of RCW 41.80.110(1)(e) [and if so, derivative “interference” in violation of RCW 41.80.110(1)(a)], by its refusal to provide relevant information requested by the union regarding one interview.¹

¹ No cause of action was found for a claim of circumvention of the union (“direct dealing”).

On May 7, 2010, the union made a request for reconsideration of the preliminary ruling for the first allegation. On May 14, 2010, Gedrose responded with a revised preliminary ruling for that allegation which read:

Employer interference with employee rights in violation of RCW 41.80.110(1)(a), by employer agents making threats of reprisal or force or promises of benefit, *including disparaging and coercive statements about the exclusive bargaining representative*, in connection with disciplinary interviews, to (a) Regina Anderson² and Greg Davis³ on October 7, 2010,⁴ (b) Aaron Cartledge on January 6, 2010, and (c) Christiana Link (Link) and Trevor Travers on January 8, 2010.

(emphasis added).

The employer filed an answer on June 1, 2010. Claire Nickleberry was assigned as the Examiner and conducted a hearing on August 30, 2010. The parties filed post-hearing briefs to complete the record.

ISSUES

1. Did the employer interfere with employee rights by actions of its agents during disciplinary interviews conducted by detectives of the Washington State Patrol (WSP)?
2. Did the employer commit a refusal to bargain violation by its agent's refusal to provide relevant information requested by the union?

The Examiner rules that the employer did interfere with employee rights and did refuse to bargain.

² In its opening the union acknowledged that it used the wrong name in the complaint, and that the person involved was Gina Anderson, not Regina Anderson (who are different people).

³ Davis and Travers were serving as representatives for Anderson and Link respectively, and were not being interviewed.

⁴ This date was submitted incorrectly; the correct date of the interview was January 7, 2010.

Issue 1: Did the employer interfere with employee rights by actions of its agents during disciplinary interviews conducted by officers of the Washington State Patrol (WSP)?

APPLICABLE LEGAL STANDARDS

Chapter 41.80.110(a) RCW states that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by that chapter.

To prove this charge the complainant must establish that:

- One or more employees engaged in activity protected by the applicable collective bargaining statute, or communicated an intent to engage in protected activity.
- An employer official made some statement or took some action.
- One or more employees reasonably perceived the employer statement/action as a threat of reprisal or force, or promise of benefit, associated with the protected activity.

In *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004) citing *Lake Washington School District*, Decision 2483 (PECB, 1986), the Commission noted:

Employer communications to employees could be an interference unfair labor practice under any one, any combination, or all of the following criteria:

1. Is the communication, in tone, coercive as a whole?
2. Are the employer's comments substantially factual or materially misleading?
3. Has the employer offered new "benefits" to employees outside of the bargaining process?
4. Are there direct dealings or attempts to bargain with the employees?
5. Does the communication disparage, discredit, ridicule, or undermine the union? Are the statements argumentative?
6. Did the union object to such communications during prior negotiations?
7. Does the communication appear to have placed the employer in a position from which it cannot retreat?

It is not necessary to show that the employer acted with intent or motivation to interfere, nor is it necessary to show that the employee involved actually felt threatened or coerced. The de-termination is based on whether a typical

employee in the same circumstances could reasonably see the employer's actions as discouraging his or her union activities. Even if non-coercive in tone, a communication may be unlawful if it has the effect of undermining a union. *City of Seattle*, Decision 3566-A (PECB, 1991).

ANALYSIS

Aaron Cartledge, Gina Anderson, and Christiana Link work at the Eastern State Hospital in Spokane. They were involved in an incident that occurred at the Spokane County Fair where a patient escaped.⁵ The employer investigated the incident, and each of the employees was required to have an investigative interview with two detectives from the WSP.⁶ Detectives Brandie Penney and Clint Thompson were assigned to conduct the interviews. Penney has been doing investigations for the employer since January 2009 and conducted interviews for roughly 80 administrative cases. A year previous to that, while assigned to WSP internal affairs, she also performed 50-60 investigations for the employer. Thompson started in January 2008 and has performed approximately 125-130 administrative investigations.

Each of the employees requested a union representative attend the WSP interview with them. Cartledge was accompanied by Richard (Rick) Nesbitt, council representative for the union. Anderson was accompanied by her union representative, Greg Davis. Davis is the union local's president and a union steward. Link was accompanied by union steward, Dr. Trevor Travers, and Kandys Dygert, council representative for the union.

I will examine the circumstances of each of the interviews individually.

Aaron Cartledge's Interview

Cartledge is employed in Colville as a Financial Service Specialist 3. He has been working in that position for five years. He was contacted by Detective Penney to schedule the interview.

⁵ The parties also used the term "elopement" interchangeably with the term "escape."

⁶ Executive Order 96-01, issued in 1996, gave the WSP the responsibility for conducting criminal and major administrative investigations for the employer. An Interagency Agreement was established in July 2009 to outline the agreement and process therefore establishing that the WSP detectives performed as agents for the employer when conducting these interviews.

Cartledge then contacted Nesbitt to request that Nesbitt attend the interview with him. They met before the interview, and Nesbitt explained how he believed the interview would probably proceed. Nesbitt told Cartledge that the detectives would likely ask to record the interview. He advised Cartledge that it would be best not to allow the interview to be recorded.

Penney and Thompson conducted the interview with Cartledge in Colville on January 6, 2010. Cartledge testified that based on his initial conversation with Penney, he believed that the interview would “take place in the format of any interview, a question is asked, you give an answer, you move on to the next question.” However, Cartledge described Penney’s behavior during the interview as, “very aggressive, hand-slamming-on-the-table interrogation. It was just like something right off a television show. . . . It made me feel awful. It made me feel that I was being called a liar.” He further testified that the detectives were telling him it would be in his best interest to have the interview recorded, which made him worry about the advice he was getting from Nesbitt. Cartledge said that Penney specifically stated, “I want you to know, you are getting bad advice from your union representative.” When asked if the detectives’ comments made him question the union’s advice, he stated “it made me worry that he [Nesbitt] as an individual, his advice might be pointing me in the wrong direction.” He continued to describe Penney’s behavior as aggressive and indicated she was upset and spoke in a threatening manner when she referred to the additional length of time it was going to take to complete the interview since he would not allow her to record the session.

Nesbitt confirmed that Penney told Cartledge on more than one occasion that she thought he was getting bad advice from his union representative. Nesbitt further stated that Thompson started questioning Nesbitt as to why he would give that kind of advice. He indicated that the detectives were visibly upset when they put the tape recorder away and that Penney’s demeanor during the interview was forceful, overbearing, and sometimes she was rude. Nesbitt provided documentation of his recollection of the interview which he typed up on January 19, 2010.

Penney testified that she followed standard procedure for this interview and asked Cartledge if he would mind if the interview be recorded. When he declined she claims they had “a little bit of conversation about, you know, I wonder why it is different on this side of the state rather than the

west side of the state.” Penney testified that she found it interesting that “they’re getting different opinions of being recorded and not being recorded.” She states that the conversation lasted only a few minutes. She denies saying that he was getting bad advice from his union. She indicated that she followed the protocol of asking, explaining the purpose and if declined, noting the declination and proceeding with the interview. She denied stating that it would take longer if it was not recorded and she would have to make written notes. When asked if Thompson recalled Penney stating anything related to the advice that Cartledge may have been getting from the union, he replied, “I do recall her saying that because the answers need to be written, that the interview would take longer.” Thompson stated that he did not hear Penney pound her fist on the table or threaten Cartledge. When asked if he heard her criticize the decision of the union, he said no, “not that I recall.” When asked if he remembered Penney telling Cartledge he was getting bad advice from his union. He replied, “I do not.” However, under cross examination when asked if Penney told Cartledge that it would be to his benefit to have the matter recorded, he replied, “Not that I recall.” He was then asked if it was possible that she had said that and he responded, “In the course of her conversation, is it possible she said that? Yes sir.”

Gina Anderson’s Interview

Anderson is a Recreation Therapist 2 employed in the Competency Evaluation Treatment Ward at Eastern State Hospital for nearly ten years. She was notified by hospital administration that she would be meeting with the WSP for an interview and so contacted her union steward, Davis, to attend with her. On January 7, 2010, Anderson and Davis met prior to the interview to prepare and discuss the process. In that discussion Davis informed Anderson that the WSP might want to record the interview and that he would advise her not to allow it. Anderson testified that she decided based on her representative’s advice that she would not allow the recording. Detective Penney conducted the interview and after brief introductions asked Anderson if she would agree to have the interview recorded. Anderson said no and when Penney pressed her on the recording issue, Anderson said she felt as if Penney was giving her an ultimatum. Anderson and Davis took a break to discuss their position. When they returned, Anderson still replied no to recording. Her testimony indicated that she and Penney then had an exchange which Anderson described as “rather condescending, basically telling me that I was making her job a lot harder, and I shouldn’t be influenced by what other people think, because

this was my interview, not anyone else's." According to Anderson the subsequent discussion was "very curt and rude." Penney brought up the recording again indicating that Anderson had made the process harder than it needed to be, and if she would have just agreed to have it recorded, then they would have been done in 25 – 30 minutes rather than the hour-and-a-half or whatever it was that they were there. At one point, Anderson testified that when Davis was interjecting on her behalf, "[Penney] basically told him to shut up because she was talking to me, not him." Anderson went on to say, "I felt very intimidated, I felt like I was being—I felt I was being treated as if I was guilty before any determination had been made."

Davis added that the situation with Penney had become "hostile" which prevented him from expressing his concerns because he did not want to add to Anderson's discomfort. He did make notes immediately following the interview because he was very upset at what happened in this investigation. He had been "probably through 10 such interviews with the State Patrol, probably 50, 60 other interviews, and never had a member I took in been treated this way."

Penney testified that she asked Anderson to allow the recording and explained the pros of having the interview recorded. Then Anderson left the room with Davis and when they returned she said it was not going to be recorded and they proceeded with the interview. She denied telling Anderson that it would be in her best interest to have it recorded. When asked if she told Anderson it was her decision and not the union representative's decision, she responded, "Well, it is her decision to be recorded or not to be recorded." However, she did not recall if she said that to Anderson or not. She did state that they discussed the inconsistency of allowing recording on the west side versus the east side of the state. Thompson seemed to be confused between the Anderson interview and Link's. He did indicate that he thought he may have asked Anderson at the end of the interview, what caused her not to want it to be recorded because he did not understand why it wasn't.

Christiana Link's Interview

Link has been employed at Eastern State Hospital for four and one-half years as an Administrative Assistant 3. When she received notice of the interview with the WSP to be held on January 8, 2010, she contacted Travers to be her union representative at the interview.

Travers requested assistance from Dygert, council representative for the union. Travers and Dygert met with Link prior to the interview to discuss procedures for the interview, including whether to allow recording. Link indicated that she had asked numerous people whether she should allow recording of the interview and the consensus was not to allow it, which was also what her union representatives advised.

When the interview began, prior to discussing the recording the union representatives asked the detectives to clarify whether the investigation was administrative or criminal. When they couldn't come to a clear conclusion, Link and her representatives asked about signing a form to implement *Garrity* rights.⁷ The detectives indicated that they didn't have a form and would not confirm that *Garrity* would apply so the union would not continue until the issue was resolved. Link, Travers, and Dygert took a break to discuss the situation with Connie Wilmont, the hospital's acting CEO, who conferred with Gary Carlsen, Human Resource Administrator for the employer. The issue was eventually resolved by Link writing the following statement on the bottom of the WSP Administrative Investigation Statement Guide: "I am answering these questions under threat of possible discipline including dismissal. Since I am being directed to answer these questions, none of the information can be used in a criminal action against me."

Travers and Dygert both described the interview as hostile and threatening. They stated that when they asked Penney for documentation of what type of interview this was, administrative or criminal, or to provide something that compelled Link to talk to them, that the detectives indicated they did not have anything and that the employer doesn't do that. During the discussion of the *Garrity* issue they described Penney's behavior as angry and sarcastic. Travers claimed that Penney made the statement regarding the union representatives, "I don't know what kind of advice these people have been giving you." Dygert stated that Penney said regarding the issue of *Garrity* "that there was an issue with *Garrity* and we [the union] should know better, and that they didn't have to give her [Link] anything to sign."

⁷ In *Garrity v. New Jersey*, 385 U.S. 493 (1967), the Supreme Court held that, where police officers being investigated were given the choice either to incriminate themselves or to forfeit their jobs, involuntary confessions coerced from officers who refused to testify on grounds of self-incrimination could not be used in subsequent criminal prosecutions. *City of Pullman*, Decision 8086 (PECB, 2003).

After the discussion with the detectives about not wanting the interview recorded, Link stated that the detectives were “angry They were just rude and mean.” When asked how that made her feel, she replied, “Intimidated, scared, like leaving.” Dygert stated that Penney told Link: “They’re [union] doing you a disservice by not getting this recorded.” She also stated that Thompson told Link it would be in her best interests, that things would go much better for her if she did allow it to be recorded, and that she was getting bad advice.

When asked how the detectives’ behavior affected her relationship with her union, Link stated: “It definitely—when Ms. Penney was being the bad cop and Detective Thompson was being the good cop, I definitely considered listening to them and not trusting my union.” She testified that she thought the detectives were trying to create a divide, and “It felt as though she [Penney] was trying to discredit them [the union representatives], that they didn’t know what they were doing, and that I was going to be in trouble if I didn’t listen.” She stated that she believed that the detectives’ report caused her to receive a letter of reprimand because she followed the employer’s policy completely. She went on to say that when she filed a grievance the reprimand was removed which confirmed to her that the detectives’ report was not accurate.

Thompson was the lead in the Link case while Penney had been the lead in the other interviews. He indicated that this was a follow up interview to another conducted by the employer and that they needed to ask some questions regarding a particular policy. He claims that after discussion about recording the interview, he “ended up reading what we would consider Garrity.” Then she asked about something signed by the secretary which didn’t exist and that is when they took a break to talk to Wilmont and Penney called their supervisor while Thompson called the director of the Human Resources Department for the employer. When asked if he discussed with Link that she was getting bad advice from her union he replied, “Not that I am aware of.”

When Penney was questioned regarding the *Garrity* issue she at one point said she carried a “Garrity, like explaining what Garrity is, that I carry with me. But not a form.” Then later under cross examination she was asked, “So, when did Garrity come into play? Did you ever show them the card that you carry?” She contradicted herself when she replied that she doesn’t carry a card, that it is this form.

The Detectives' Response

The testimony of the detectives is totally opposite that of the employees and union representatives. Both detectives responded to a number of questions about the interviews by indicating that they did not recall specifics, or by denying or indicating that they did not remember if they made any negative comments to or about the union representatives. They do admit that they had some discussion about the inconsistency of the union's willingness to have interviews recorded on the east side of the state versus the west side of the state. They did seem to remember specifics about what was said regarding the recording of the interviews. While they both claimed to have taken notes, they did not have a clear recollection of much that went on at the interviews. They were unclear about many of the details. In some cases their recollections were contradictory.

CONCLUSION

The fact that the testimony of the employer and union participants is so totally different leaves me with no choice but to rely on my analysis of the witnesses' credibility and their testimony. In making that analysis I am looking at many factors. The witnesses were sequestered, so I expect their testimony to be uninfluenced by the testimony of others.

Each of the union's witnesses described the behavior of the detectives to be very negative and critical of advice the union was providing to its members. Each of the employees being investigated testified with very specific examples of statements attributed to the detectives that they testified were offensive to them, were critical of the union's advice, and made them question the wisdom of the union representation. The consistency and specificity of their testimony lends credence to their accounts.

Travers, Nesbitt, and Davis each provided notes that they wrote following the interviews to assist with their recollection of the facts. Oddly, the employer did not offer notes from either detective, even though they reportedly took notes of each interview. The fact that the notes were not offered, while not determinative, raises a question as to why, and whether the notes would support the detectives' testimony. Detective Penney denied ever making comments regarding

advice the union was providing and was vague about many of her other responses. Thompson seemed unsure of many of his responses answering questions with “not that I recall” or “She may have.” I would expect clearer and more straightforward responses from such experienced investigators. Such vague responses and lack of clarity do not support finding their accounts of the interviews to be credible.

In contrast to their other testimony, both detectives recalled some specifics of the discussions about recording the interviews. Penney testified that part of their normal procedure, as stated in the Administrative Investigation Manual, is that when an employee declines to be recorded, they explain the purpose of recording and if the employee still declines, the detectives just mark the box on the interview form and move on. However, both detectives testified that they had discussions with the employees about why they didn’t want to be recorded and they also gave detailed information about why they recommend that they record the interview. Thompson even described a conversation that was raised by him with Anderson after the interview was over. The detectives both seem to recall some elements of the “recording” discussions in detail, but can’t recall many of the other exchanges that took place. The fact that both detectives seemingly recall parts of the discussion about recording the interviews in detail, but are vague about or cannot recall the other elements, also weighs against my finding their accounts of the interviews to be credible.

The testimony of the employees and union representatives consistently indicate long, angry, and intense discussions regarding the recording issue. Conversely, Penney’s description of the process, in which she indicates a simple procedure of asking, advising, and abiding by the employee’s choice, is contrary to the testimony of all of the union witnesses.

The union has supported its version of the interviews by clear and consistent testimony, backed up by the notes of the representatives made shortly after the interviews. I do believe that the detectives made derogatory comments regarding the union representation in an attempt to influence the employees to allow the recording. In Link’s case the comments made regarding the union’s attempt to clarify the *Garrity* rights issue fits into this same category. The impact of the detectives’ behavior undermined and discredited the advice of the union representatives, which

interfered with the union's ability to effectively represent its members. As stated in *City of Seattle*, Decision 3566-A, the legal standard does not require that the employer acted with intent but that a typical employee in the same circumstance could reasonably see the employer's actions as discouraging his/her union activities. All of the employees' testimony is consistent as to how intimidated they felt and how the statements made by the detectives caused them to question their union representation. I believe a typical employee would have experienced the same concern. The overall conduct of the detectives meets the requirements of standards 1 and 5 established in *Grant County Hospital District 1*, Decision 8378-A, in its coercive tone and its disparagement and undermining of the union. The employer improperly interfered with employee rights.

Issue 2: Did the employer commit a refusal to bargain violation by its agent's refusal to provide relevant information requested by the union?

APPLICABLE LEGAL STANDARDS:

Chapter 41.80 RCW prohibits employers from interfering with public employees who exercise their collective bargaining rights secured by statute:

RCW 41.80.050 RIGHTS OF EMPLOYEES: Except as may be specifically limited by this chapter, employees shall have the right to self-organization, to form, join, or assist employee organizations, and to bargain collectively through representatives of their own choosing for the purpose of collective bargaining free from interference, restraint, or coercion. Employees shall also have the right to refrain from any or all such activities except to the extent that they may be required to pay a fee to an exclusive bargaining representative under a union security provision authorized by this chapter.

....
RCW 41.80.110 UNFAIR LABOR PRACTICES ENUMERATED. (1) It is an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this chapter

....
(e) To refuse to bargain collectively with the representatives of its employees.

In order to prove a violation of the statute the complainant union must establish that:

- It is the exclusive bargaining representative of the employees involved.
- It requested existing information relevant to the performance of its functions in collective bargaining or contract administration.
- The employer failed or refused to provide the requested information.

When the union requests information the employer must respond. The employer has the duty to explain any confusion about, or objection to, the request, and then negotiate with the union toward a resolution satisfactory to both parties. *City of Yakima*, Decision 10270 (PECB, 2009) citing *Port of Seattle*, Decision 7000-A (PECB, 2000). In *Seattle School District*, Decision 5542-C, the Commission held that the employer must discuss the requested items with the union “so as to attempt to reach a mutually acceptable compromise or accommodation on the request.” *City of Yakima*, Decision 10270

Although the duty to provide information does not compel a party to create records that do not exist, parties maintain an obligation “to make a reasonable good faith effort to locate the information requested.” *City of Seattle*, Decision 10249 (PECB, 2008) citing *Seattle School District*, Decision 9628-A (PECB, 2008); *Kitsap County*, Decision 9326-A (PECB, 2008).

ANALYSIS

The complaint regarding failure to provide information stems from the interview with Link. According to Link’s testimony, she was asked about:

[A] policy that they kept referring to, saying I wrote it. And I didn’t know what they were talking about. Because I had Eastern State Hospital policies with me, which is what I---which is the reason I acted the way that I did, was this policy, so I brought it with me. And they kept referring to a policy that they said I wrote. And when I asked them what that was, actually I think Kandys asked them what it was, and Penney looked at her and pointed at me, and she said, ‘She knows what it is.’ And I had no clue what it was, what she was talking about.

When asked if she felt she could ask Penney to give her a copy of the policy she was talking about, she responded no, and explained that: “She [Penney] was mean, not very professional. I

didn't feel like she was on my side at all. I didn't feel like she was neutral at all. I felt like she was trying to prove me guilty, like I was already guilty of something."

Link was uncertain what policies the detectives were referring to. She brought a draft of a policy that had not been finalized with her because she thought it may have some relevance. Later, upon cross-examination when questioned if she provided Thompson with a copy of a policy she was asked: "Did you tell him that you thought the policy in question wasn't done yet?" She responded: "Yes I did." The cross continued with her being asked: "And then he asked you for a copy and you gave him a copy of the policy?" She replied: "Of the in-process policy, yes."

Dygert was also questioned about the policy issue. When asked about the kind of questions they were asking Link she replied: "And then it went on to, and did you know about such and such policy? They started asking her policy questions." Dygert was then asked if the detectives had copies of the policies with them and why she thought they wouldn't give them a copy. Dygert responded: "I didn't know if they had copies with them, but they would not give us a copy. . . . Because at one point I asked that she [Link] be given any information that they were talking about, and they refused."

When asked if the policies would have assisted her in representing Link, she replied: "Oh, absolutely" and continued:

Well, we would look at all the policies, determine what she should have done, and been able to answer why she behaved in certain ways that day. Because there was, like six policies that could have been involved. And we even asked for a break for her to go get the policies if they didn't have them, and they refused to get policies. We just didn't have any of the information that we should have had to assist her in her representation.

Dygert confirmed that Penney said Link should know the policies and that Link could get them herself at some time. Dygert testified that at no time did the State Patrol detectives offer to negotiate the issue or offer to allow Link or Dygert time to go obtain the referenced policies. When asked why she didn't offer to stop the investigation at that point, she replied: "Based on how Ms. Link was responding and how the detectives were treating her, I did think it was in her

best interests to try to get this interview completed. I really felt that it would be a detriment to the finding if we stopped it and made them come back.”

She continued to explain why she felt that way: “The whole conversation was hostile. They kept telling her, you know, that she had better cooperate, it would be in her best interests. At one point they talked about how, you know they had to get these things done and back home. So, it was very obvious that they didn’t want to delay this, in their comments. And the outcome of this interview was important to Ms. Link, as far as personnel issues. And, so, this is one time I did not stop it, but said let’s try and get through it.” Further testimony indicated that the ‘in-process’ policy that Link gave to Thompson was not the policy the detectives were questioning her about. Dygert also testified that she previously had asked the employer for all the information used in the investigation. None of these policies were provided to the union as a result of that information request.

In Penney’s testimony she was asked if she told Link that she should know the policy. She replied, no. But when asked: “Did you have a discussion with her about certain policies regarding patient escape or notification of patient escape or anything like that?” She replied: “You know, if it came up in the interview, yes, it was probably something we had a conversation about. But off the top of my head, I don’t remember the specifics of that.” Her responses continue to be inconsistent and vague.

Thompson’s testimony was: “When I was sent over to do that particular case, I was given pretty much follow-up questions that they needed answers to. It was talking about a particular policy, whether or not she was aware of the policy. I was questioning about the policy. She was informing me that she helped write the policy. I did not have a copy of it. But I knew that what they were referring to.”

During cross-examination he was asked if he remembered Dygert ever asking him for a copy of the policy they were discussing during Link’s interview. He replied: “She may have. I don’t recall.” When questioned about if she had asked would he have given it to her, he responded: “If I had it, yes sir.” He then admitted that if he didn’t have it then he would have to get it and give

it to her, if he had access to it. However he continued to claim that he did not remember her asking for it nor did he remember Penney being asked for it. Then on re-direct he was asked: "Whatever policy she asked for, you recall you didn't have?" He responded: "I did not. Because there was some discussion about a particular policy, and there was some discussion about doing another policy. But I had neither one of them. But if I had it, I would easily have given it."

On one hand he didn't remember being asked about the policies, but then later he talks about two policies that they discussed which he didn't have. This brings me to the conclusion that they did discuss the policies but he made no attempt to provide them. I find his testimony and recollection at the very least questionable.

CONCLUSION

Under both federal and state precedent, the duty to bargain includes a duty to provide relevant information needed by the opposite party for the proper performance of its duties in the collective bargaining process. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd*, 119 Wn.2d 373 (1992). The obligation extends not only to information that is useful and relevant for the purpose of contract negotiations, but also encompasses information necessary to the administration of the collective bargaining agreement. Requested information necessary for processing contractual grievances, including that necessary to decide whether to proceed with a grievance or arbitration, must be provided by employers. *City of Bremerton*, Decision 6006-A (PECB, 1998)

Clearly Link's bargaining representative requested all information related to these investigations and particularly these specific policies. They were requested in the context of potential disciplinary investigations and with the possibility of subsequent grievances.

I believe that the policies were discussed and were requested by the union so they would know specifically what the detectives were referring to in Link's interview. The employer had the responsibility to provide the policies that they were questioning Link about either prior to the interview or certainly during the interview. Thompson claims that he did not have them and he made no attempt to provide them. Based on Thompson's testimony he was aware that he should

have attempted to provide the policy information that the union had requested. He gave no reasoning for why he could not get the requested information or why it may not be available.

FINDINGS OF FACT

1. The State of Washington is a public employer within the meaning of RCW 41.80.005(8). The State Department of Social and Health Services is an agency of the State of Washington as defined by RCW 41.80.005(1).
2. The Washington Federation of State Employees is an employee organization within the meaning of RCW 41.80.005(7) and is the exclusive bargaining representative of a bargaining unit of employees at the Department of Social and Health Services.
3. The Washington State Patrol (WSP) has a contract with the employer established in 2009 as a result of Executive Order 96-01 which provides that the WSP will conduct major administrative investigations and some criminal investigations for the employer. The Executive Order provides that WSP detectives perform as agents of the employer when conducting such investigations.
4. Aaron Cartledge, Gina Anderson, and Christiana Link work at Eastern State Hospital in Spokane. They each were interviewed by two WSP detectives regarding the escape of a patient who was visiting the Spokane County Fair.
5. WSP detectives Brandie Penney and Clint Thompson were assigned to conduct the administrative interviews.
6. On January 6, 2010, the Cartledge interview took place. Cartledge was represented by union representative Rick Nesbitt.
7. Cartledge, following Nesbitt's advice, declined to have the interview recorded.
8. Penney questioned that decision and told Cartledge that it would be in his best interest to have the interview recorded. This caused Cartledge to question the advice he was getting from his union representative.

9. Penney told Cartledge directly that he was getting bad advice from his union representative at least twice. Both Cartledge and Nesbitt found Penney's behavior hostile and threatening.
10. In front of Cartledge, Thompson questioned Nesbitt about why he would give that kind of advice.
11. On January 7, 2010, the Anderson interview took place. Anderson was represented by her steward and union president, Gregory Davis.
12. Anderson refused to have the interview recorded and Penney told her she should not be influenced by what other people think (referring to Davis).
13. When Davis interjected on Anderson's behalf, Penney basically told Davis to shut up telling Anderson she was talking to her not to Davis.
14. Because Davis felt that the situation with Penney had become hostile, he refrained from expressing his concerns in support of Anderson because he did not want to add to Anderson's discomfort.
15. On January 8, 2010, the Link interview took place. She was represented by union representative Kandys Dygert and steward Trevor Travers.
16. The union inquired if the interview was criminal or administrative. When it was not clearly determined, they inquired regarding implementation of Garrity rights.
17. To get the Garrity rights issue resolved the union sought clarification from the hospital CEO Connie Wilmont and resolved the issue by Link writing a statement on the detectives' interview form.

18. During the discussion regarding Garrity, Penney stated to Link, "I don't know what kind of advice these people have been giving you."
19. Link declined to have the interview recorded.
20. Penney told Link that the union was doing a disservice to Link by advising her not to have the interview recorded.
21. Thompson told Link it would be in her best interest to be recorded, that things would go better for her if she did allow it to be recorded, and that she was getting bad advice.
22. The detectives' behavior caused Link to consider not trusting the union, and she thought Penney was trying to discredit the union.
23. During Link's interview there was a discussion regarding some of the employer's policies. Link provided Thompson with a policy that was in process but not finalized. Link did not know what policies the detectives were asking her about.
24. Thompson provided contradictory statements regarding his knowledge and/or discussion of policies during Link's interview. He claimed he did not have the policies but did not explain why he could not have gotten them.
25. Dygert requested all information regarding Link's case from the employer, but never received any policies. The detectives did not offer to allow Link or Dygert to attempt to get the policies nor did the detectives make any attempt to provide them.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.80 RCW and Chapter 395-45 WAC.

2. By its agents making disparaging and coercive statements about the union's representation as described in Findings of Fact 8, 9, 10, 12, 13, 14, 18, 20, 21, and 22 the Department of Social and Health Services has interfered with employee rights in violation of RCW 41.80.110(1)(a). By failing to provide relevant information requested by the union in a timely manner as described in Findings of Fact 24 and 25 the Department of Social and Health Services has refused to bargain and interfered with the union in violation of RCW 41.80.110(1)(a) and RCW 41.80.110(1)(e).

ORDER

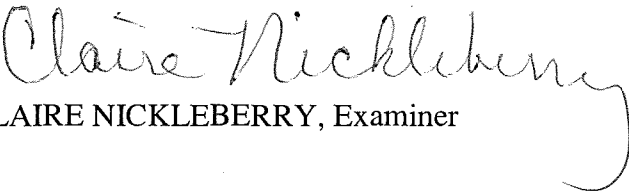
STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
 - a. Making threats of reprisal or force or promises of benefit, including disparaging remarks and coercive statements about the exclusive bargaining representative while employees are in the process of engaging in their collective bargaining rights.
 - b. Interfering with and restraining bargaining unit members' rights under RCW 41.80 by failing to timely provide the union with relevant information it requests when that information is necessary to properly perform its duties in the representation of its members.
 - c. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under by the laws of the state of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.80 RCW:

- a. Publish the notice provided by the Compliance Officer of the Public Employment Relations Commission to all Washington State Patrol investigators working with the Washington State Department of Social and Health Services.
- b. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.
- c. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice provided by the Compliance Officer.
- d. Notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Compliance Officer with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 13th day of April, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


CLAIRE NICKLEBERRY, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT THE WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY made threats of reprisal or force or promises of benefit, including disparaging remarks and coercive statements about the exclusive bargaining representative while employees were in the process of engaging in their collective bargaining rights.

WE UNLAWFULLY interfered with and restrained bargaining unit members' rights under RCW 41.80 by failing to timely provide the union with relevant information it requested when that information was necessary to properly perform its duties in the representation of its members.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL publish the notice provided by the Compliance Officer of the Public Employment Relations Commission to all Washington State Patrol investigators working with the Washington State Department of Social and Health Services.

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

DO NOT POST OR PUBLICLY READ THIS NOTICE.

**AN OFFICIAL NOTICE FOR POSTING AND READING
WILL BE PROVIDED BY THE COMPLIANCE OFFICER.**

The full decision is published on PERC's website, www.perc.wa.gov.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

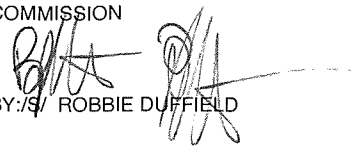
112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 04/13/2011

The attached document identified as: **DECISION 11033-A - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS
COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 23154-U-10-05893 FILED: 04/06/2010 FILED BY: PARTY 2
DISPUTE: ER INTERFERENCE
BAR UNIT: ALL EMPLOYEES
DETAILS: Recording of interview during employee misconduct investigation
COMMENTS:

EMPLOYER: STATE - DSHS
ATTN: DIANE LEIGH
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5154 Ph2: 360-725-5152

REP BY: DONNA STAMBAUGH
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1116 W RIVERSIDE AVE
SPOKANE, WA 99201-1194
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PARTY 2: WA FED OF STATE EMPLOYEES
ATTN: GLADYS BURBANK
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OLYMPIA, WA 98501-2332
Ph1: 800-562-6002 Ph2: 360-352-7603

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