

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

STATE – WASHINGTON STATE PATROL, Employer.	
MICHAEL W. ALDRIDGE Complainant, vs. WASHINGTON STATE PATROL TROOPERS ASSOCIATION, Respondent.	CASE 130029-U-18 DECISION 12967 – PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Michael W. Aldridge, the complainant.

Alyssa Melter and Jeffrey Julius, Attorneys at Law, Vick, Julius, McClure, P.S., for the Washington State Patrol Troopers Association.

On February 2, 2018, Michael Aldridge (complainant) filed an unfair labor practice complaint against the Washington State Patrol Troopers Association (union or WSPTA). The Washington State Patrol (employer or WSP) is not a party to the issues before the Commission. A preliminary ruling was issued on March 1, 2018, finding two causes of action. The first cause of action is for union restraint or coercion in violation of RCW 41.56.150(1) for failing to process the complainant’s grievance under the collective bargaining agreement between the employer and the union. The second alleges union inducement of an employer to commit an unfair labor practice by requesting that the WSP not process the grievance in question in violation of RCW 41.56.150(2). The union filed an answer to the complaint on March 19, 2018. The undersigned conducted a hearing in the matter on September 25, 2018. The parties filed briefs on December 3, 2018, to complete the record.

ISSUES

1. Did the union restrain or coerce the complainant in violation of RCW 41.56.150(1) when it failed to process a grievance on his behalf?
2. Did the union induce the Washington State Patrol to commit an unfair labor practice in violation of RCW 41.56.150(2) by requesting that it not process the complainant's grievance under the terms of the parties' collective bargaining agreement?

After thorough consideration of the record and briefs, I dismiss both allegations. As a WSP trooper who was collecting disability retirement payments pursuant to RCW 43.43.040, the complainant was not a member of the bargaining unit represented by the union. The union thus had no obligation to process or respond to his grievance. The union's communication to the employer that it did not represent employees in disability retirement status was a lawful statement of fact and did not constitute unlawful inducement.

BACKGROUND

The employer is a general authority law enforcement agency under RCW 10.93.020(1). It is charged with various law enforcement functions throughout the state of Washington. The employer's chief has the authority pursuant to RCW 43.43.020 to "appoint . . . persons to act as Washington State Patrol officers . . ." RCW 43.43.050 provides that officers are entitled to "retain their ranks and positions until death or resignation, or until suspended, demoted, or discharged in the manner hereinafter provided."

WSP officers receive a commission from the chief to enforce state law. There is no record evidence of a law, rule, or regulation defining the circumstances under which an officer has his or her commission revoked. Rather, testimony from the employer's labor and policy advisor, Karl Nagel; the head of the human resources division, Captain Travis Matheson; and the union's interim vice president, Spike Unruh, defined having a "commission" as being employed by the employer in a law enforcement capacity. Nagel, for instance, explained that a commissioned officer is "an

employee that has a commission -- issued by the chief of the patrol . . . [S]omeone who is entitled to enforce the laws of the state.” Matheson similarly testified that a fully commissioned officer is an individual who has “met all of the requirements by RCW and [the Criminal Justice Training Commission] for [a] fully commissioned officer in the State of Washington, and, therefore, [is] identified as someone who has the authority to make -- to have full arrest powers of the State of Washington laws.” Unruh’s definition of a commissioned officer corroborated the testimony of Nagel and Matheson. As Unruh noted, a commissioned officer is “an employee who is employed by the Washington State Patrol as an officer who has the general authority to enforce the laws and rules of Washington State, can enforce criminal laws and make arrests.” I find the testimony of Nagel, Matheson, and Unruh to be credible on this point. The three witnesses testified in a clear and coherent manner, answered questions directly, and did not attempt to evade or obfuscate on direct examination or cross-examination. Aldridge, who also testified at the hearing, did not introduce evidence establishing an alternative definition of what constitutes a commissioned officer.

A commissioned officer has the authority to enforce Washington State laws. While not directly applicable to WSP employees, the administrative rules associated with the Law Enforcement Officers’ and Fire Fighters’ Retirement System statute define being commissioned in similar terms. WAC 415-104-011(1) (“Commissioned means that an employee is employed as an officer of a general authority Washington law enforcement agency and is empowered by that employer to enforce the criminal laws of the state of Washington.”). Commissions are therefore revoked when an employee ceases to perform law enforcement work on a permanent basis.

Collective bargaining rights were extended to WSP troopers in 1987. RCW 41.56.475. In contrast to most other state employees who are covered under Chapter 41.80 RCW, WSP officers are covered under Chapter 41.56 RCW. *See* RCW 41.56.473 (“[T]his chapter applies to the state with respect to the officers of the Washington state patrol appointed under RCW 43.43.020 . . .”). The officers are eligible for interest arbitration in a manner similar to other uniformed personnel. RCW 41.56.475.

On November 23, 1987, the union was certified by the Public Employment Relations Commission (PERC) as the exclusive representative of a bargaining unit composed of “all non-supervisory commissioned employees of the Washington State Patrol, excluding: supervisors, confidential employees, trooper cadets, special deputies, any other employees holding limited commissions, and all other employees of the employer.” *State – Washington State Patrol, Decision 2806 (PECB, 1987)*. The unit includes all troopers and sergeants.

In the years following the certification, the union and the employer entered into a series of collective bargaining agreements, the most recent of which is effective July 1, 2017, through June 30, 2019. The recognition clause of the current agreement has not attempted to alter the basic description of the unit as certified in 1987.

WSP Disability Retirement

In contrast to most law enforcement officers in the state, WSP troopers are not covered by the disability retirement provisions of the Law Enforcement Officers’ and Fire Fighters’ Retirement System act set forth at RCW 41.26.120.¹ Instead, they are eligible to participate in a system unique to the state patrol. This system is described at RCW 43.43.040.

The general provisions of RCW 43.43.040 have existed since 1943. The statute provides for certain benefits if an active duty employee suffers an injury while in the course of line duty “to such an extent as to be mentally or physically incapable of active service . . .” RCW 43.43.040(1). Active service is defined in WAC 446-40-020(1) as “all performance of duties of whatever type, performed pursuant to orders by a superior of the member . . .” It is broken down into “line duty” and “other duty.” Line duty includes traffic law enforcement duties and other law enforcement responsibilities. WAC 446-40-020(2). Other duty encompasses other activities undertaken by

¹ See RCW 41.26.030(18):

“General authority law enforcement agency” means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, *but not including the Washington state patrol.*

(emphasis added).

officers on behalf of the WSP that “do not foreseeably require more physical exertion than that normally required for the performance of clerical tasks.” WAC 446-40-020(3). In sum, an employee becomes eligible for disability retirement if they are injured in the course of line duty to such an extent as they are no longer capable of performing work for the employer.²

In the event of such an injury, the officer may be placed on disability leave for a period of up to six months. During this time they continue to receive full pay and benefits, minus any compensation received from the Department of Labor and Industries. RCW 43.43.040(1)(a). Prior to the end of this six-month period, the employer may either return the individual to active duty (which may include a form of limited duty) or, alternatively, place him or her on disability status. Disability status is equated with disability retirement in both the authorizing statute as well as the relevant implementing regulations. *See* RCW 43.43.040(1)(d) (referring to payments as retirement allowance); WAC 446-40-010.

RCW 43.43.040(2)(a) provides that employees on disability status are to receive, *inter alia*, one half of their compensation during the time the disability continues in effect. Reflecting the enduring nature of the disability status designation, the implementing regulations established at Chapter 446-40 WAC contain an appeal process. In the event an employee is moved to disability status, he or she may appeal the decision of the chief to the WSP disability retirement board. The board is authorized to hear and decide appeals of disability designations. During his or her time on inactive status, the employer does not make retirement contributions on behalf of the individual. RCW 43.43.290.

Although remaining in the employer’s human resources’ information system, once granted disability status the individual is, by definition, no longer in active service. The individual is then

² In contrast to disability retirement, under which the individual can no longer perform any work for the WSP, the collective bargaining agreement between the union and the employer contains provisions addressing individuals with less severe injuries. These work assignments are available to employees who, due to injury, are incapable of continuing to perform line duty but can still perform other duty as defined in WAC 446-40-020. As set forth in Article 16.7, because employees assigned to temporary limited duty or long-term limited duty are still capable of active service, they are assigned to perform “duty of a light or modified nature.” While in limited duty status, these employees remain employed by the employer and may, at the employer’s discretion, continue to carry a badge and gun. They are also required to attend certain trainings required of other active duty officers.

notified of such, and informed that he or she does not have the authority to enforce the laws of the state of Washington, nor make arrests. An individual on inactive status due to disability retirement does not perform work for the employer. He or she is not required to report to any office nor take any trainings required of other officers.

Because individuals on disability retirement are no longer actively employed by the employer and no longer have the authority to enforce laws, their commission granted by the chief to do so is revoked.

Both the union and the employer have treated individuals on disability retirement status as being outside of the bargaining unit represented by the union. The status of troopers receiving disability benefits is also addressed in the union's constitution and bylaws. Article IV, Section 2 provides that "[a]ny [WSP] Trooper or Sergeant who has retired or been placed on disability status may be entitled to associate membership in this organization. Associate members may not vote or hold office, and shall be excluded from the bargaining unit for the purposes of representation."

Michael Aldridge was placed on disability retirement

Complainant Michael Aldridge was hired by the employer as a trooper cadet on September 10, 1979. He was later promoted to a trooper position on June 30, 1980, and received his commission as a law enforcement officer. He became part of the bargaining unit represented by the union upon its certification in late 1987. Aldridge worked as a trooper until he suffered an on-the-job injury on October 14, 2000. He was subsequently released from performing any kind of work on December 14, 2000. Later, on July 19, 2002, he received the following notice from his employer:

Effective July 19, 2002, you will be a Washington State Patrol (WSP) employee on inactive status due to a disability. As such, you no longer have authority to enforce the laws, rules, and regulations of the state of Washington. You are prohibited from exercising your WSP law enforcement authority while on inactive status.

The employer's 2002 letter did not specifically state that the complainant's commission was also revoked. In correspondence on an unrelated matter dated April 29, 2013, however, the employer's

human resource division explained that “[a]s a result of [his] inactive status, [he was] not considered a commissioned officer”

Consistent with the definition of a commission as described at hearing, when the employer placed Aldridge on inactive status and he began collecting disability retirement payments, his commission was revoked as he no longer had law enforcement authority.

Since 2002, Aldridge has received payments commensurate with his disability retirement status pursuant to RCW 43.43.040. He has not performed any work or services for the employer. Since being placed on disability retirement status, Aldridge has not been required to complete trainings required of active troopers. He does not report to an office or other work location.

On November 8, 2017, Aldridge filed a grievance under the terms of the collective bargaining agreement between the employer and the union. There was no testimony or documentary evidence introduced at hearing that describes the substance of the issue underlying Aldridge’s grievance. His February 2, 2018, complaint, however, refers to an alleged violation of Articles 17.5 and 17.9 of the contract. The employer responded to the grievance on November 17, 2017, informing Aldridge that it would process the grievance through the procedure available to non-represented employees. Aldridge replied by inquiring why he was considered non-represented.

Following receipt of the grievance, the employer’s labor and policy advisor, Karl Nagel, called the union’s then-vice president, Mark Soper, to determine the union’s view on whether employees on disability retirement status remained part of the bargaining unit. Nagel testified that Soper told him the union did not believe it represented those on disability retirement. The record does not contain any additional evidence concerning the details of their conversation. There is no evidence that Nagel and Soper discussed the complainant’s grievance. There is also no evidence that Soper requested that the employer not process the grievance in any fashion. Soper did not testify at the hearing.

Following their conversation, Nagel replied to the Aldridge’s inquiry with the following, in relevant part:

Although you filed the grievance on a WSPTA form, I understand you are an officer on inactive disability status under RCW 43.43.040. If that is incorrect, please let me know.

If it is correct, your status is not included within the WSPTA's bargaining unit. The Public Employment Relations Commission's description of the bargaining unit is:

All non-supervisory commissioned employees of the Washington State Patrol, excluding: Supervisors, Confidential Employees, Trooper Cadets, Special Deputies, and other employees holding limited commissions, and all other employees of the employer.

Additionally, an officer of the WSPTA confirmed with me the union does not represent employees in disability status under the statute. Since your status does not fall within the other represented groups, the agency is proceeding with your grievance under the [non-represented grievance procedure].

Aldridge responded by asserting his position that he remained a part of the bargaining unit represented by the union. Aldridge and the employer subsequently agreed to hold the grievance in abeyance pending resolution of the underlying issue. He then filed the instant unfair labor practice complaint.

ANALYSIS

Applicable Legal Standard

Duty of Fair Representation

A union's duty of fair representation to members of a bargaining unit stems from its status as the exclusive representative of those employees. *See* RCW 41.56.080. The Commission is vested with the authority to ensure that exclusive bargaining representatives safeguard employee rights. The Commission does not typically assert jurisdiction over breach of duty of fair representation claims arising exclusively out of the processing of contractual grievances. *Mukilteo School District (Public School Employees of Washington)*, Decision 1381 (PECB, 1982). Under certain circumstances it will, however, assert jurisdiction over those duty of fair representation cases that call into question a union's status as the exclusive bargaining representative. *Castle Rock School District (Castle Rock Education Association)*, Decision 4722-B (EDUC, 1995).

When a union refuses to investigate or otherwise process a grievance submitted by a bargaining unit member on the incorrect belief that he or she is not a member of the unit, the union may be found to have violated its duty of fair representation. *City of Port Townsend (Teamsters Local 589)*, Decision 6433-B (PECB, 2000). Conversely, a union does not owe a duty of fair representation to non-bargaining unit members. See *Castle Rock School District (Castle Rock Education Association)*, Decision 4722 (EDUC, 1994) (“Because [the complainant] was in a position outside of the bargaining unit, the union owed him no duty of representation.”); *City of Chelan (AFSCME, Local 846 CC)*, Decision 6266 (PECB, 1998). The Legislature recognized this basic principle in the language of RCW 41.56.080, which states that certified bargaining representatives are required to represent “all the public employees *within* the unit.” (emphasis added).

Inducement

A union will violate RCW 41.56.150(2) if it induces an employer to commit an unfair labor practice. The act of simply asking an employer to take an unlawful action is sufficient to constitute a violation. *Shoreline School District (Service Employees International Union, Local 6)*, Decision 5560-A (PECB, 1996). If the employer may legally agree to what the union seeks, however, the Commission will not find a violation. *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-A (PECB, 1989).

Application of Standard

Duty of Fair Representation

The threshold issue in this case turns on whether Aldridge remained in the bargaining unit represented by the union while collecting disability retirement payments pursuant to RCW 43.43.040. The union argues that he left the bargaining unit at the time he was classified as inactive. Aldridge, on the other hand, claims that despite being on inactive status he falls within the definition of the certified unit as described in the collective bargaining agreement.

I find that Aldridge was not in the bargaining unit represented by the union for several reasons. Because he was not in a position represented by the union, the union’s failure to respond, accept, or otherwise process the complainant’s grievance was lawful.

1. Disability retirement recipients are not commissioned officers

The bargaining unit certified by PERC is composed of “all non-supervisory commissioned employees of the Washington State Patrol, excluding: supervisors, confidential employees, trooper cadets, special deputies, any other employees holding limited commissions, and all other employees of the employer.” The clear language of the certification excludes any individual not holding a full commission.

Individuals on inactive status collecting disability retirement payments do not retain their commission. Witnesses credibly testified that the concept of a commission is linked to employment in a law enforcement capacity. Although this definition does not appear to be codified in any law, rule, or WSP regulation, it is consistent with the way a commission is defined for nearly every other law enforcement officer in the state. Tying a commission to the ability to enforce laws is also consistent with the WSP’s concept of a limited commission. Those individuals with a limited commission have a limited authority to enforce laws. When someone in a law enforcement role ceases to be actively employed by the employer, his or her commission is revoked.

Aldridge attempts to rebut this testimony and delink the concept of a commission from the ability to enforce laws by pointing to the situation of officers temporarily relieved from duty pending review of an incident under investigation. As he reasons, officers temporarily relieved from duty admittedly retain their commission despite having their law enforcement authority temporarily removed. These employees, however, are still actively employed by the employer and are in fact required to contact their respective division or district twice daily and be available to respond to the office within one hour. They also retain their law enforcement authority but are merely instructed not to exercise such for a period of time. Those who are temporarily relieved of duty thus remain in the bargaining unit and are entitled to the various due process protections contained in collective bargaining agreement. In contrast, individuals collecting disability retirement payments do not remain actively employed. They are not required to check in with the chain of command or be available to report to the office. Their authority to enforce laws is also permanently revoked, rather than temporarily suspended. I do not find this evidence sufficient to undermine the testimony of Nagel, Matheson, and Unruh that a commission and law enforcement authority are related.

On brief, Aldridge equates being commissioned with being appointed to the position of trooper by the WSP's chief. Because he retains the title of trooper under RCW 43.43.050, he argues he retains his commission. I find this argument unpersuasive. Accepting his position would blur any distinction between active troopers and those who ceased performing work long ago but have not been removed from the employer's payroll system due to discharge or resignation. It would also conflict with the definition of "commission" applicable to nearly every other law enforcement officer in the state. It is difficult to imagine the Legislature intended such an outcome. Finally, concluding that Aldridge retained his commission despite his status in disability retirement would also imply that employees collecting retirement benefits remain in the bargaining unit represented by the union. This result conflicts with well-established principles of labor law.

2. Retirees are not employees

Generally, retirees do not fall within the scope of a bargaining unit represented by a union. In *Allied Chemical & Alkali Workers of America, Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971), the United States Supreme Court determined that benefits for current retirees are not a mandatory subject of bargaining under the National Labor Relations Act (NLRA). As the Court reasoned, the obligation to bargain only attaches to those issues relating to the terms and conditions of employment of active bargaining unit employees. Retirees do not perform work for the employer. They are therefore not "employees" under the NLRA and no longer part of the bargaining unit. Recognizing the precedential value of Supreme Court decisions interpreting the NLRA, the basic premise that retirees are not members of the bargaining unit has been applied to Washington's collective bargaining statutes. See *City of Kirkland*, Decision 6949-A (PECB, 2000) (Commission decision); *City of Longview*, Decision 922 (PECB, 1980) (Executive Director decision); *Navlet v. Port of Seattle*, 164 Wn.2d 818 (2008) (Washington State Supreme Court).

Individuals receiving disability payments pursuant to RCW 43.43.040 are equivalent to retirees. They no longer perform work for the employer and do not have a reasonable expectation of return. They also no longer have the authority to enforce the laws of the state of Washington. *State v. Hendrickson*, 98 Wn. App. 238 (1999) (finding a state patrol trooper on disability status was not exercising lawful authority when apprehending a driver who the inactive trooper believed to have committed a crime). The statutory language itself recognizes the parallels to retirement, referring

to the payments as a “retirement allowance.” RCW 43.43.040(1)(d). The Legislature’s intent to create a retirement-like benefit is also mirrored in the related administrative code. *See* Chapter 446-40 WAC. The courts have reached a similar conclusion, noting the benefits provided by RCW 43.43.040 constitute a disability pension that vests at the time of injury. *Merino v. State*, 179 Wn. App. 889 (2014).

Because individuals collecting disability retirement payments are the equivalent of retirees, they do not meet the definition of employee contained in Chapter 41.56 RCW.

This is consistent with the Commission’s approach to defining who is an employee. As noted in *Richland School District*, Decision 1189-A (EDUC, 1982), “The fundamental test for being an ‘employee’ . . . is the parties’ expectancy of a continuing employment relationship, with the consequential mutual interest in wages, hours and conditions.”³ The disability retirement recipients have no continuing employment relations and no ongoing interest in wages, hours, or working conditions. They are consequently not employees for the purposes of the Public Employee Collective Bargaining Act and not included within the bargaining unit represented by the WSPTA.

3. Disability retirement recipients lack a community of interest with commissioned officers

Assuming *arguendo* that, despite being in inactive status, the complainant retained his commission and was also considered an employee within the meaning of RCW 41.56.030, he would still not be included within WSPTA-represented bargaining unit. Because of their unique status, disability retirement recipients do not share a community of interest with commissioned troopers and sergeants.

Determining appropriate bargaining units is a function delegated to PERC by the Legislature. *City of Richland*, Decision 279-A (PECB, 1978). The goal is to group together employees who have sufficient similarities (a community of interest) that indicate they will be able to bargain effectively with their employer. *Quincy School District*, Decision 3962-A (PECB, 1993). In evaluating

³ While *Richland School District* arose out of a dispute involving Chapter 41.59 RCW, the Commission has applied the same analysis to Chapter 41.56 RCW. *See City of Auburn*, Decision 4880-A (PECB, 1995).

whether two groups of employees share a community of interest, the agency considers “the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees.” RCW 41.56.060(1).

Nearly all the community of interest factors weigh against finding that disability retirement payment recipients share a community of interest with active duty troopers. Most obviously, those on disability retirement are not required to perform any work for the WSP. They would be excluded from the trooper unit on that basis alone. *See* WAC 391-35-350 (explaining that employees must work at least one-sixth the hours of full-time employees in order to be included in the same unit). Those receiving retirement payments would also have no interest in work assignments, disciplinary procedures, or most other matters typically addressed in collective bargaining agreements. In fact, these two primary issues of concern to disability retirement recipients—the amount of payment and health insurance—are determined by statute and not susceptible to collective bargaining. Given these divergent interests, even if Aldridge retained his commission and was considered an employee under Chapter 41.56 RCW, the group of individuals to which he belongs (those collecting disability retirement payments) does not share a community of interest with the employees represented by the WSPTA. As such, he would not be included in the bargaining unit relevant to the instant proceedings.

Inducement

As an initial matter, there is no record evidence establishing that the union requested that the employer take any action with respect to the complainant. This by itself is sufficient to dismiss the allegation. Even if the union did, in fact, request that the WSP not process the complainant’s grievance, such a request is not unlawful inducement. As noted above, I find that Aldridge was not in a position falling within the WSPTA-represented bargaining unit since at least 2002. Any communication from the WSPTA to the employer confirming this was a lawful statement of fact. It does not constitute inducement to commit an unfair labor practice.

CONCLUSION

A union is only obligated by RCW 41.56.080 to represent those employees employed in the bargaining unit for which it is certified as the exclusive representative. The duty of fair representation does not apply to those employees not employed within a given bargaining unit. At the time that the complainant alleges the union refused to respond or accept his grievance, he was designated by the Washington State Patrol as an inactive employee on disability retirement status. He was not within the bargaining unit represented by the union. The union did not have a duty to represent him. Any communication from the union to the employer that it did not represent individuals collecting disability retirement payments did not constitute an inducement to commit an unfair labor practice.

FINDINGS OF FACT

1. The Washington State Patrol (employer or WSP) is a public employer within the meaning of RCW 41.56.030(12).
2. The Washington State Patrol Troopers Association (union or WSPTA) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. On November 23, 1987, the union was certified by the Public Employment Relations Commission as the exclusive representative of a bargaining unit composed of "all non-supervisory commissioned employees of the Washington State Patrol, excluding: supervisors, confidential employees, trooper cadets, special deputies, any other employees holding limited commissions, and all other employees of the employer."
4. The union and the employer are parties to a collective bargaining agreement effective July 1, 2017, through June 30, 2019.
5. WSP officers receive a commission from the chief to enforce the laws of the state of Washington.

6. A commissioned officer has the authority to enforce the laws of the state of Washington.
7. Commissions are revoked when an employee ceases to perform law enforcement work on a permanent basis.
8. In contrast to most law enforcement officers in the state, WSP troopers are not covered by the disability retirement provisions of the Law Enforcement Officers' and Fire Fighters' Retirement System act set forth at RCW 41.26.120. Instead, they are eligible to participate in a system unique to the state patrol. This system is described in RCW 43.43.040.
9. An employee becomes eligible for disability retirement if injured in the course of line duty to such an extent that he or she is no longer capable of performing work for the employer.
10. Although remaining in the employer's human resources' information system, once granted disability status the individual is, by definition, no longer in active service. The individual is then notified of such, and informed that he or she does not have the authority to enforce the laws of the state of Washington, nor make arrests. An individual on inactive status due to disability retirement does not perform work for the employer. He or she is not required to report to any office nor take any trainings required of other officers.
11. Individuals on disability status receive, inter alia, one half of their compensation during the time the disability continues in effect.
12. Individuals receiving disability retirement payments pursuant to RCW 43.43.040 are equivalent to retirees.
13. Because individuals on disability retirement are no longer actively employed by the employer and no longer have the authority to enforce laws, their commission granted by the chief to do so is revoked.
14. Both the union and the employer have treated individuals in disability retirement status as being outside of the bargaining unit represented by the union.

15. Complainant Michael Aldridge was hired by the employer as a trooper cadet on September 10, 1979. He was later promoted to trooper position on June 30, 1980, and received his commission as a law enforcement officer. He became part of the bargaining unit represented by the union upon its certification in late 1987. Aldridge worked as a trooper until he suffered an on-the-job injury on October 14, 2000. He was subsequently released from performing any kind of work on December 14, 2000.
16. On July 19, 2002, he received the following notice from his employer:

Effective July 19, 2002, you will be a Washington State Patrol (WSP) employee on inactive status due to a disability. As such, you no longer have the authority to enforce the laws, rules, and regulations of the state of Washington. You are prohibited from exercising your WSP law enforcement authority while on inactive status.
17. When the employer placed the Aldridge on inactive status while collecting disability retirement payments, his commission was revoked.
18. Since 2002, Aldridge has received payments commensurate with his disability retirement status pursuant to RCW 43.43.040. He has not performed any work or services for the employer.
19. Since being placed on disability retirement status, Aldridge has not been required to complete trainings required of active troopers. He does not report to an office or other work location.
20. On November 8, 2017, Aldridge filed a grievance under the terms of the collective bargaining agreement between the employer and the union.
21. Following receipt of the grievance, the employer's labor and policy advisor, Karl Nagel, called the union's then-vice president, Mark Soper, to determine the union's view on whether employees on disability retirement status remained part of the bargaining unit. Soper told Nagel that the union did not represent those on disability retirement.

22. Nagel responded to the complainant's grievance by explaining that as an officer on inactive disability status under RCW 43.43.040, Aldridge was not included within the bargaining unit represented by the union.
23. The union did not respond to Aldridge's grievance.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.
2. By its actions described in findings of fact 21-23, the union did not interfere with employee rights in violation of RCW 41.56.150(1) by failing to respond or process the complainant's grievance as he was not a member of the bargaining unit it represented.
3. By its actions described in findings of fact 21-23, the union did not induce the employer to commit an unfair labor practice in violation of RCW 41.56.150(2) when it informed the employer that it did not represent employees on disability retirement status pursuant to RCW 43.43.040.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 25th day of January, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


Michael Snyder, 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.



RECORD OF SERVICE

ISSUED ON 01/25/2019

DECISION 12967 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 130029-U-18

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