STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ISLAND COUNTY DEPUTY SHERIFFS GUILD (CORRECTIONS), Complainant, vs. ISLAND COUNTY, Respondent.	CASE 131438-U-19 DECISION 13182 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Benjamin S. Teets and *James M. Cline*, Attorneys at Law, Cline & Associates, for Island County Deputy Sheriffs Guild (Corrections).

Robert R. Braun, Jr., Consultant, Braun Consulting Group, and *Catherine Reid*, Labor Relations Manager, Island County, for Island County.

The Island County Deputy Sheriffs Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2) and represents a bargaining unit of all regular full-time and part-time corrections deputies, employed by Island County (employer/county). The union and county were parties to a collective bargaining agreement that expired December 31, 2016. On April 9, 2019, the union filed an unfair labor practice complaint with the Public Employment Relations Commission (Commission).

The union asserts that the county refused to bargain by failing to provide requested information. An unfair labor practice manager issued a preliminary ruling on April 17, 2019, stating a cause of action for employer refusal to bargain in violation of RCW 41.56.140(4) [and, if so, derivative interference in violation of RCW 41.56.140(1)] by failing or refusing to provide collective bargaining information requested by the union in January 2019 related to an upcoming interest arbitration. The union filed a motion for summary judgment on August 16, 2019. After receiving a response from the county and a reply from the union, I denied the motion on November 7 stating that there were genuine issues of material fact in dispute concerning whether all documents were

provided to the union and, if so, whether the documents were provided in a timely manner. I held a hearing on November 20, 2019, and the parties submitted post-hearing briefs.

ISSUE

The issue presented is whether the employer refused to bargain by failing or refusing to provide requested information in preparation for an upcoming interest arbitration in violation of RCW 41.56.140(4) and committed derivative interference in violation of RCW 41.56.140(1). I find that the employer failed or refused to provide information for requests 2, 3, 4, 5, 11, 12, 14, 15, 24, 25, and 26 because the employer failed to communicate with the union, did not provide an adequate response in a timely manner, or made it difficult to obtain information by charging a high copying or scanning fee.

BACKGROUND

The union and county have an extensive bargaining history and have sought interest arbitration for contract negotiations on multiple occasions in the past couple decades, including the most recent certification for arbitration given on October 23, 2018. The union communicated with the arbitrator on April 8, 2019, that the arbitration would move forward. At that time the union believed that the documents it received from the employer from January 31 through March 11, 2019, were responsive to its request. When the union began to look at the documents more thoroughly, it found that many were not responsive. A suspension of the arbitration occurred on April 18, 2019, following the union's filing of this unfair labor practice complaint, arguing that the county refused to provide necessary information in preparation for the arbitration, which was to begin on May 1, 2019. The arbitration would have addressed the following issues: discipline and discharge, holidays, vacation policy, light duty, hours of work and overtime, duration, assignment pay, education pay, shift different, health and welfare, wages, and wage tables.

The Union's 29 Information Requests Made on January 26

The initial information request, made on January 26, contained 29 separate requests for information or documentation. The union sought this request under the Public Employees'

Collective Bargaining Act (chapter 41.56 RCW) and the Public Records Act (PRA). The county stated that the request would be fulfilled within a couple of months following January 26, 2019. On March 11, 2019, the employer responded by providing the union with a thumb drive that included a statement that all responses were mostly complete under the RCW and PRA. The employer wrote that if it did not receive any further comments by March 18, 2019, it would consider the matter closed. The union disagreed with the employer's timeline for completion and instead sent an extensive email on April 3, 2019, addressing all the requests, clarifying whether the requests had been fully responded to or not, and where additional information was needed. Seven days later, on April 10, 2019, the union received information or explanations from the employer for a number of the requests.

Information Requests 1 through 5

Requests numbered 1–5 all pertained to information regarding comparable jurisdictions being used for the upcoming interest arbitration. For request number 1, the union asked the employer to provide a list of comparable jurisdictions. The employer fulfilled this request on April 10, and it responded to request 2 on April 10. Request 2 asked the employer to identify factors used to support comparable selection. The employer identified factors but gave no supporting data at that time because it had not compiled any data relating to the factors used for its selection of comparable jurisdictions. Communications between the employer and union on August 22 and September 24 clarified that the employer used a population comparison with a 50 percent below and 100 percent above range of Island County; that the ability to raise revenue was based on the levy lid; and that the cost of living included the consumer price index, housing costs, transportation, medical care, and food costs.

In request 3, the union asked for all reports, documents, and information relating to terms and conditions of the employer's comparators. The employer only provided data for its corrections bargaining unit in an email on April 10, 2019. Request 4 specifically asked for wage, total compensation, and net wage analysis of all comparable jurisdictions that the county would be using for arbitration. The employer only supplied a document from 2015 for the county's corrections bargaining unit. The county had not gathered any other data. In request 5, the union asked for the

employer's understanding of the status of the collective bargaining agreements for each of the proposed comparable jurisdictions as well as for jurisdictions previously proposed by the union. This request was fulfilled on April 10.

Information Requests 6 through 10

In request number 6, the union asked for the collective bargaining agreements of all county bargaining units from 2012–present. The employer fully responded to this request on March 11. In request number 7, the union asked for all ordinances relating to non-represented compensation from 2012–present. The employer fully responded to this request after further clarification that the request include policies, in addition to ordinances. The employer supplemented its response to the request on October 4, 2019, to include non-represented employee wage increases from 2013–18. For request number 8, the union asked the employer to provide the wages and increases for elected officials from 2012–present. On April 10, the employer provided two resolutions relating to wage increases for these positions, which completed the response. The employer fully responded to request 9 on March 11 by directing the union to search the Public Employment Relations Commission website for all prior interest arbitration decisions. Request 10, in which the union asked the employer to identify all comparable jurisdictions proposed by the employer in negotiations with all other county labor organizations, was fully responsive on April 10.

Information Requests 11 and 12

In request numbers 11 and 12, the union asked for wage surveys for represented and non-represented employees. The employer responded on March 11 that it could provide responsive documents in paper form but would require a twenty-five cents per page fee for photocopying or scanning. On August 22, 2019, the human resources director, Melanie Bacon, sent a letter to the union stating that the employer would charge ten cents per page for scanning documents relating to both requests. On September 25, 2019, Bob Braun, the labor consultant for the employer, sent an email to the union that stated that the scanning charges for requests 11 and 12 would be waived but would be non-precedent setting for future requests.

Information Requests 13 through 15

For request number 13, the union asked the employer to identify any surveys, reports, and data relating to regional differences in cost of living. The employer stated that it fully responded to this request on March 11. The employer stated that request numbers 14 and 15, all relating to civil service records from 2005–present, were fully responded to on March 11, however the documents were inadvertently left off the thumb drive and were not received until September 25, 2019. Documents were provided for years 2013–present but not for 2005–12. The employer clarified at hearing that documents for 2005–12 did not exist.

Information Requests 16 through 18

The employer fully responded to the union's request number 16 on April 10, which was for a list of employees employed in the corrections bargaining unit each year from 2005–present. The employer provided a current copy of the county's organizational chart for the corrections division and the sheriff's department on March 11, which fully responded to request 17. For request 18, the union asked for copies of the employer's budgets for 2010–19. The employer fully responded on February 6 to the request.

Information Requests 19 through 22

For request number 19, the employer directed the union to the auditor's website and sent copies of the most recent Washington State Auditor annual financial reports for Island County. The union considered this request to be fully responsive on April 10. For requests 20–22, which related to any reports, memorandum, or other communication regarding revenue projections, receipts, and expenditures from 2017–present, the employer requested clarification on the scope of the request on January 30 and received a response from the union on April 3. The employer provided all responsive documents on May 16.

Information Requests 23 through 26

In request number 23, the union asked the employer to identify any layoffs within the county between 2014–present. The employer fully responded to this request on March 11. For request 24, the union asked the employer to identify any county program reductions between 2014–present. The county fully responded to this request on April 10. For request 25, the union requested the

employer to provide a list of total employer full-time employees both aggregate and by individual department for 2005–present. The county fully responded to this request on April 10. In request 26, the union asked the employer to provide any calculations or reports prepared concerning the costs of the union's proposal or other cost analysis. The employer fully responded to this request on April 10 by producing medical pooling data spreadsheets.

Information Requests 27 through 29

For request numbers 27 and 28, the union asked the employer to produce documents describing covered medical insurance benefits, premiums, and per-employee costs and fund balances to the employer for the bargaining unit employees and all other county employees from 2014–present. The employer fully responded to this request on March 11. For the last numbered request, 29, the union asked the employer to supply the sheriff department's annual reports from 2015–18. The county fully responded to this request on March 11, stating that there were no such responsive documents.

Post-complaint Production

Communication regarding the insufficiency of the employer's production between the two parties halted from April 10, 2019, through August 7, 2019. The union sent a letter to the employer on August 7 that listed each numbered request that the union felt was insufficiently answered and included specific questions regarding each request. Multiple emails were sent between the union and the county between August 7 and October 30, 2019. As of the date of hearing, the union contended that request numbers 2, 3, 11, 12, 14, and 15 were still open.

ANALYSIS

Applicable Legal Standards

Duty to Provide Information

The duty to bargain requires a public employer and the exclusive bargaining representative to bargain in good faith over grievance procedures, wages, hours, and working conditions. RCW 41.56.030(4).

The duty to bargain includes an obligation to provide relevant information needed by the opposite party for the proper performance of its duties in the collective bargaining process. *City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992). The flow of information between the parties must continue during the parties' preparation for interest arbitration. *City of Clarkston (International Association of Fire Fighters, Local 2299)*, Decision 3246 (PECB, 1989).

The obligation extends not only to information that is useful and relevant to the collective bargaining process but also encompasses information necessary to the administration of the parties' collective bargaining agreement. *King County*, Decision 6772-A (PECB, 1999). Failure to provide relevant information upon request constitutes a refusal to bargain unfair labor practice. *University of Washington*, Decision 11414-A (PSRA, 2013).

Communication is essential to fulfilling the obligation to provide information. Upon receiving a relevant information request, the receiving party must provide the requested information or engage in negotiations about the information request. *City of Yakima*, Decision 10270-B (PECB, 2011); *Seattle School District*, Decision 9628-A (PECB, 2008); *Port of Seattle*, Decision 7000-A (PECB, 2000). During those negotiations, the receiving party must timely explain why it does not think the information request is relevant or clear. *Pasco School District*, Decision 5384-A (PECB, 1996). If a party perceives that a particular request is irrelevant or unclear, the party is obligated to communicate its concerns to the other party in a timely manner. *Id.* The responding party must communicate with the requesting party to ensure that the information being gathered is the type of information that has been requested. *Kitsap County*, Decision 9326-B (PECB, 2010) (citing *City of Seattle*, Decision 10249 (PECB, 2008)), *remedy aff'd*, Decision 10249-A (PECB, 2009)).

Delay in providing requested information can constitute an unfair labor practice. *Fort Vancouver Regional Library (Washington Public Employees Association)*, Decision 2350-C (PECB, 1988). One factor to be considered when determining whether a delay constitutes an unfair labor practice is the preparation required for the response. *City of Seattle*, Decision 10249, *remedy aff'd*, Decision 10249-A. If the response will be delayed due to the time required to prepare the response, such a delay must be communicated.

If information is provided after the filing of an unfair labor practice complaint, this evidence should be considered neither inherently inadmissible nor inherently admissible. *Snohomish County Police Staff and Auxiliary Services Center*, Decision 12342-A (PECB, 2016). Evidence of events occurring after a complaint has been filed with the agency may be relevant to the case. *Id*. A strict prohibition of post-complaint evidence would not effectuate the purposes of the statute. *Id.*

Attorney Fees

RCW 41.56.160 is the statutory basis for a remedial order, including an award of attorney fees. *State ex rel. Washington Federation of State Employees v. Board of Trustees*, 93 Wn.2d 60, 69 (1980). An award of attorney fees should not be commonplace; it should be reserved for cases in which a defense to an unfair labor practice charge can be characterized as frivolous or meritless. *Id.* at 69. "The term 'meritless' has been defined as meaning groundless or without foundation." *Id*. Attorney fees are appropriate in cases in which the employer engages in a pattern of bad faith bargaining. *Lewis County. v. Public Employment Relations Commission*, 31 Wn. App. 853 (1982), *review denied*, 97 Wn.2d 1034 (1982).

The authority granted to the Commission by the remedial provision of the statute has also been interpreted to authorize an award of attorney fees. Attorney fees can be granted if (1) such an award is necessary to make the Commission's orders effective, and (2) the defense to the unfair labor practice charge was meritless or frivolous, or the respondent has engaged in a pattern of conduct showing a patent disregard of its good faith bargaining obligation. *Lewis County*, Decision 644-A (PECB, 1979), *aff'd*, *Lewis County v. Public Employment Relations Commission*, 31 Wn. App. 853; *Municipality of Metropolitan Seattle (METRO)*, Decision 2845-A (PECB, 1988), *aff'd*, *Municipality of Metropolitan Seattle*, 118 Wn.2d 621 (1992) (affirming the Commission's authority to order interest arbitration); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000) (affirming the Commission's order of attorney fees when such an order was necessary to make the order effective, the defenses were frivolous, and the violations evidenced a pattern of bad faith conduct).

Application of Standards

Communication and a lack of understanding played key roles in determining whether the employer fulfilled requests 1–5. Catherine Reid, labor relations manager for the county, explained during her testimony that she had studied the statutory scheme and believed that only sworn testimony and documentary evidence could be admitted in an interest arbitration. The employer argues that according to *Snohomish County*, Decision 13098 (PECB, 2019), the county did not have to create any documents that did not already exist.

Up until April 3, 2019, Reid believed that she did not have a duty to provide any other information to the union besides sworn testimony and documentary evidence. Reid did not expand on what specific statutory scheme she consulted or provide any other evidence to substantiate her reasoning.

The duty to provide information does not compel a party to create records that do not exist; however, a party does have an obligation to make a reasonable good faith effort to locate the information requested. *Kitsap County*, Decision 9326-B (PECB, 2010) (citing *Seattle School District*, Decision 9628-A (PECB, 2008)). I do not believe that the union was requesting the county to create a new list of comparable jurisdictions or search for data that it did not already have in its possession. Rather, the union was requesting essential information to prepare for arbitration.

Elkouri & Elkouri emphasize the importance of producing a wide breadth of evidence during arbitration by stating that in most cases "any evidence, information, or testimony is acceptable which is pertinent to the case and which helps the arbitrator to understand and decide the problem before him." ELKOURI & ELKOURI, HOW ARBITRATION WORKS 8-7 (Kenneth May et al. eds., 8th ed. 2016) (citation omitted).

This flexibility of legal rules, allowing the broad admission of evidence, results in the parties being able to present any evidence thought to strengthen and clarify their positions. *Id*. In "disputes over the setting of general wage rates . . . the most important type of evidence is documented statistical and economic data on such matters as prevailing practice, cost of living . . . ." *Id.* at 8-3. The more

serious danger lies in the arbitrator not hearing enough relevant evidence, rather than hearing too much irrelevancy. *Id* at 8-8 (citation omitted).

The employer believed that it did not have to provide a written list of comparable jurisdictions because it determined it was complying with the request by providing the union with a copy of a 2012 arbitration award, which contained the jurisdictions that the employer would be using for the May 1, 2019, arbitration hearing. Following a letter sent on April 3 from the union to the county, the employer clarified the six jurisdictions it would be using to support its case in arbitration, which were the same as the list of jurisdictions from the 2012 arbitration award. It made this clarification on April 10, which was after the unfair labor practice charge was filed in this case. Although the information was transmitted post-complaint, I find that because of the back and forth communication between the employer and union, and the eventual listing of the comparable jurisdictions weeks before the arbitration hearing, that there was not a refusal to bargain by failing to provide this information.

Similarly, the employer initially responded to requests 2, 3, and 4 by stating that after a diligent search, the county found no documents responsive to those requests, as framed. On April 8, Reid sent the union an email stating that the county would be working on gathering the additional information or documents responsive to the union's request by April 11, except for requests 20–22. On April 10, the employer supplemented request number 2 by identifying factors used in determining the comparable jurisdictions, which were size, assessed valuation, cost of living, and ability to raise revenue. The employer did not supply any supporting data for these factors, which it did not tell the union until September 25. Similarly, for requests 3 and 4, the county supplemented its response on April 10 with documentation from the corrections bargaining unit, however it did not tell the union that no other data was available because none had been collected prior to September 25. The employer had a duty to disclose to the union that no such data had been obtained, and it violated its duty to disclose this information. In *Graymont PA, Inc.*, the National Labor Relations Board found that the delay of (this) disclosure was unlawful, as it is well established that the respondent was obligated "to timely disclose that requested information does

not exist" as part of the duty to timely provide information. *Graymont PA, Inc.*, 364 NLRB No. 37 at 6 (2016) (citing *Endo Painting Service*, 360 NLRB 485, 486 (2014)).

The employer fully responded to request number 5 on April 10, when it stated that it understood that the comparators had agreements through 2017 and 2018. Up until April 10 the employer responded to the union by claiming it had no responsive documents. Although it may have not had any responsive documentation, the employer was able to provide information of its knowledge of the comparator agreements on April 10. There is no reason that the employer could not have stated this before April 10. I find that for request 5 the employer failed to provide information to the union.

Information Requests 6 through 10

The employer provided a full response to the union on March 11 for request number 6. For request 7, the union initially only asked for county ordinances relating to non-represented compensation covering 2012–present. The employer stated that there were no responsive documents, which was true because the county does not issue ordinances. A subsequent request for county policies led the county to highlight certain pages in its Personnel, Policies, and Procedures Manual. After clarifying conversations between the union and county, the county fulfilled the request in an email sent on October 28. Because the union and county continued conversations and the county provided information when it was possible, no failure to bargain existed for this request.

For request 8, the union and employer engaged in a back and forth with the employer supplementing its response on April 10. The employer prefaced its response with an explanation that its previous response for this request contained a mistake due to a numbering error. Similar to other responses, after further, timely communication the county provided a full response. The county gave a full response for request 9 on March 11, completing this request. The employer provided a full response for request 10 on April 10 after further questions were posed by the union on April 3 clarifying the employer's answer.

Information Requests 11 through 12

Under RCW 42.56.120(1), a reasonable charge can be imposed for providing copies of public records. Section 2(b)(i) of the same statute explains that an agency may not charge in excess of fifteen cents per page for photocopying and ten cents per page for scanning of a document. Under the Public Records Act, a cost of ten cents per page can be charged, plus the additional cost of staff time for retrieving and duplicating the document. In the present case, the county stated up until August 22, 2019, that it would be charging a fee of twenty-five cents per page for photocopying or scanning the requested documents. This is in clear contrast to both the RCW and the PRA. The last communication between the parties regarding these two requests is in an email sent on September 24, 2019, in which the county stated that even though it had charged fees in the past, it would not charge fees for the present request. At a later date the county attempted to go back on its waiver of fees for copying and scanning, but this seems to be a result of an internal misunderstanding, which was never explained to the union. The county violated its duty to bargain and provide information by initially charging a burdensome amount for the copying and scanning of documents relating to requests 11 and 12. Therefore, the union will not be charged any fees for scanning these requests.

Information Requests 13 through 15

The county fully responded to request number 13 on March 11, however, a miscommunication occurred in the fulfillment of requests 14 and 15. The first issue concerned the physical delivery of the documents. The county claims that the documents were on a thumb drive delivered to the union, and the union argues that the documents were simply not on the thumb drive. The county eventually provided the documents on September 25. On April 3, the union sent the county a letter which, among the other information requested, stated that it had not received the requested documents and further requested that the county either provide documents responsive to the request or indicate where the information could be found among the previously provided documents. On April 10, the county responded to the union by indicating the location where the county believed the documents resided on the submitted thumb drive.

No communication was made between the parties for these requests until August 7, when the union stated in a letter that it could not locate the documents on the flash drives. Since the employer made the last communication on April 10, it was the responsibility of the union to continue the conversation. On August 22, the county responded that it had sent the information prior, stated where it located the information but did not attempt to resend the documents. On September 25, the county responded in an email that it would make a duplicate of the information and send it to the union, which it did. Although these requests did take quite a few months to fulfill, the union and employer continued to have communication throughout the time period and does not constitute a violation.

For requests 14 and 15, the second issue union contested that the requested information was only partially fulfilled—that years 2005–12, from a request for year 2005–present, were missing from the civil service records. Reid testified that she provided the language of the request to the civil service secretary and explained what the request was seeking, but that she was still unable to produce documents for those years. The county did not inform the union that these documents were missing until the hearing. Rather, the county stated that it had provided all responsive documents. Similar to requests 2–4, the county failed to disclose this information to the union, which constitutes a violation to provide information for requests 14 and 15.

Information Requests 16 through 18

On March 11, the employer responded to request number 16 with a list of employees in the corrections bargaining unit for each year between 2005–present. On April 3, the union requested further clarification from the employer. On April 10, the employer provided an exact location where the information could be found. This communication between the county and union shows a desire to bargain in good faith, even though the information came after the complaint in this case was filed.

The employer responded to and completed request 17 on March 11 and request 18 on February 6, both within the couple of months' window of the initial request from January 26.

Information Requests 19 through 22

The employer responded to request number 19 on January 31. The union asked further clarifying questions on April 3, and the employer responded on April 10. The county supplied additional information for a number of the requests on April 10. The union considered this request fully responded to on April 10. I do not believe that the employer could have answered so many of the requests solely in response to the filing of this unfair labor practice complaint as it was filed on April 9, just one day before the county responded to many of the open requests. Based on this rationale, and the two-way communication between the parties, no violation occurred.

Although requests 20–22 were completed after the filing of the complaint in this case, the county fulfilled its duty to bargain by maintaining open communication with the union from the initial request on January 26 to the completion of the requests on May 16. After the initial requests, the employer sought clarification from the union as to the scope of the requests through correspondence on January 30, February 11, and March 11. The union clarified the requests on April 3. The employer responded in an email that the responsive documents would be available on May 1 and should be completed by May 31.

Information Requests 23 through 26:

The employer fully responded to request number 23 on March 11. This date fell within the couple of months' timeframe that the employer stated that all requests were to be answered by and before the union filed its complaint. Request 24, which requested any county program reductions occurring in the years 2014–present, was initially answered by the county as having found no documents responsive to the request. On April 10, after the union filed this complaint, the county added to its response by providing documents it previously said it did not have. There was no communication or explanation given regarding the lack of response on the county's behalf. As a result, the county failed to fulfill its duty to bargain for this request.

Requests 25 and 26 were both fully responded to by the county on April 10, but the county failed to fulfill its duty to bargain and provide information before the complaint was filed. Both requests initially asserted that all responsive documents were provided but then supplemented on April 10. The union claims that it received no explanation as to why the information was provided later for

these two requests. The county's supplemental response to request 25 on April 10 stated that it inadvertently excluded documents from 2015–present. Although this appears to be a mistake on the part of the county, it still failed to fulfill its duty to bargain and provide requested information. The county gave no explanation or communication why there were not any responsive documents included for request 26 before April 10. The county supplemented and satisfied the request after the complaint was filed in this case and, therefore, failed in its duty to bargain and provide requested information.

Information Requests 27 through 29

Requests 27, 28, and 29 were all responsive on March 11, which fell in the couple of month's window of the initial request and was well before the complaint was filed in this case.

Attorney Fees

In its post-hearing brief, the union asked for attorney fees to be granted based on an ongoing pattern of violating the duty to provide information. Although the union raises a fair point, I believe that attorney fees are only granted under extraordinary circumstances. The employer committed a similar unfair labor practice in 2013, *Island County*, Decision 11946-A (PECB, 2014), and again in 2018, *Island County*, Decision 12858 (PECB, 2018). I encourage the employer to develop its relationship and communication with the union and also to strengthen its understanding of labor law as pertaining to arbitrations. If the employer commits a similar error in the near future, the next hearing examiner may be justified in awarding attorney fees.

CONCLUSION

On January 26, 2019, the union made an extensive request for information relevant to information needed for an upcoming interest arbitration. As of the time of this decision, the employer has not fully responded to requests 2, 3, 11, 12, 14, and 15. The employer has failed to fulfill its good faith obligation to provide an adequate response to the union's information requests. The employer failed to provide information to the union in a timely manner, gave answers to requests that no responsive information existed when such information did exist, and made copying/scanning fees burdensome by initially charging a rate higher than defined in the RCW and PRA.

The employer committed a similar violation in 2018 but had not committed the same violation before that since 2013. As a result, the union is not awarded attorney fees as this is not a clear situation where extraordinary remedies are justified.

FINDINGS OF FACT

1. Island County is a public employer within the meaning of RCW 41.56.030(12).

2. The Island County Deputy Sheriffs Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2) and represents a bargaining unit of all regular full-time and part-time corrections deputies, employed by Island County

3. The union and county were parties to a collective bargaining agreement that expired December 31, 2016.

4. The union and county have an extensive bargaining history and have sought interest arbitration for contract negotiations, most recently certified on October 23, 2018.

5. A suspension of the arbitration occurred on April 18, 2019, following the union's filing of this unfair labor practice complaint, which was to begin on May 1, 2019. The arbitration would have addressed the following issues: discipline and discharge, holidays, vacation policy, light duty, hours of work and overtime, duration, assignment pay, education pay, shift different, health and welfare, wages, and wage tables.

6. The initial information request, made on January 26, contained 29 separate requests for information or documentation.

7. The union sought this request under the Public Employees' Collective Bargaining Act (chapter 41.56 RCW) and the Public Records Act (PRA).

8. The county stated that the request would be fulfilled within a couple of months following January 26, 2019. On March 11, 2019, the employer responded by providing the union

with a thumb drive that included a statement that all responses were mostly complete under the RCW and PRA.

9. The union sent an extensive email on April 3, 2019, addressing all the requests, clarifying whether the requests had been fully responded to or not, and where additional information was needed. Seven days later, on April 10, 2019, the union received information or explanations from the employer for a number of the requests.

10. Requests numbered 1–5 all pertained to information regarding comparable jurisdictions being used for the upcoming interest arbitration.

11. For request number 1, the union asked the employer to provide a list of comparable jurisdictions. The employer fulfilled this request on April 10.

12. The employer responded to request 2 on April 10. Request 2 asked the employer to identify factors used to support comparable selection. The employer identified factors but gave no supporting data at that time because it had not compiled any data relating to the factors used for its selection of comparable jurisdictions.

13. In request 3, the union asked for all reports, documents, and information relating to terms and conditions of the employer's comparators. The employer only provided data for its corrections bargaining unit in an email on April 10, 2019.

14. Request 4 specifically asked for wage, total compensation, and net wage analysis of all comparable jurisdictions that the county would be using for arbitration. The employer only supplied a document from 2015 for the county's corrections bargaining unit.

15. In request 5, the union asked for the employer's understanding of the status of the collective bargaining agreements for each of the proposed comparable jurisdictions as well as for jurisdictions previously proposed by the union. This request was fulfilled on April 10.

16. In request number 6, the union asked for the collective bargaining agreements of all county bargaining units from 2012–present. The employer fully responded to this request on March 11.

17. In request number 7, the union asked for all ordinances relating to non-represented compensation from 2012–present. The employer fully responded to this request after further clarification that the request include policies, in addition to ordinances. The employer supplemented its response to the request on October 4, 2019, to include non-represented employee wage increases from 2013–18.

18. For request number 8, the union asked the employer to provide the wages and increases for elected officials from 2012–present. On April 10, the employer provided two resolutions relating to wage increases for these positions, which completed the response.

19. The employer fully responded to request 9 on March 11 by directing the union to search the Public Employment Relations Commission website for all prior interest arbitration decision.

20. Request 10, in which the union asked the employer to identify all comparable jurisdictions proposed by the employer in negotiations with all other county labor organizations, was fully responsive on April 10.

21. In request numbers 11 and 12, the union asked for wage surveys for represented and non-represented employees. The employer responded on March 11 that it could provide responsive documents in paper form but would require a twenty-five cents per page fee for photocopying or scanning. On August 22, 2019, the human resources director, Melanie Bacon, sent a letter to the union stating that the employer would charge ten cents per page for scanning documents relating to both requests. On September 25, 2019, Bob Braun, the labor consultant for the employer, sent an email to the union that stated that the scanning charges for requests 11 and 12 would be waived but would be non-precedent setting for future requests.

22. For request number 13, the union asked the employer to identify any surveys, reports, and data relating to regional differences in cost of living. The employer stated that it fully responded to this request on March 11.

23. The employer stated that request numbers 14 and 15, all relating to civil service records from 2005–present, were fully responded to on March 11, however the documents were inadvertently left off the thumb drive and were not received until September 25, 2019. Documents were provided for years 2013–present but not for 2005–12. The employer clarified at hearing that documents for 2005–12 did not exist.

24. The employer fully responded to the union's request number 16 on April 10, which was for a list of employees employed in the corrections bargaining unit each year from 2005–present.

25. The employer provided a current copy of the county's organizational chart for the corrections division and the sheriff's department on March 11, which fully responded to request 17.

26. For request 18, the union asked for copies of the employer's budgets for 2010–19. The employer fully responded on February 6 to the request.

27. For request number 19, the employer directed the union to the auditor's website and sent copies of the most recent Washington State Auditor annual financial reports for Island County. The union considered this request to be fully responsive on April 10.

28. For requests 20–22, which related to any reports, memorandum, or other communication regarding revenue projections, receipts, and expenditures from 2017–present, the employer requested clarification on the scope of the request on January 30 and received a response from the union on April 3. The employer provided all responsive documents on May 16.

29. In request number 23, the union asked the employer to identify any layoffs within the county between 2014–present. The employer fully responded to this request on March 11.

30. For request 24, the union asked the employer to identify any county program reductions between 2014–present. The county fully responded to this request on April 10.

31. For request 25, the union requested the employer to provide a list of total employer full-time employees both aggregate and by individual department for 2005–present. The county fully responded to this request on April 10.

32. In request 26, the union asked the employer to provide any calculations or reports prepared concerning the costs of the union's proposal or other cost analysis. The employer fully responded to this request on April 10 by producing medical pooling data spreadsheets.

33. For request numbers 27 and 28, the union asked the employer to produce documents describing covered medical insurance benefits, premiums, and per-employee costs and fund balances to the employer for the bargaining unit employees and all other county employees from 2014–present. The employer fully responded to this request on March 11.

34. For request 29, the union asked the employer to supply the sheriff department's annual reports from 2015–18. The county fully responded to this request on March 11, stating that there were no such responsive documents.

35. Communication regarding the insufficiency of the employer's production between the two parties halted from April 10, 2019, through August 7, 2019. The union sent a letter to the employer on August 7 that listed each numbered request that the union felt was insufficiently answered and included specific questions regarding each request. Multiple emails were sent between the union and the county between August 7 and October 30, 2019.

CONCLUSIONS OF LAW

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

2. By failing or refusing to provide information to the union as described in findings of fact 12, 13, 21, and 23, the employer refused to bargain and violated RCW 41.56.140(4) and (1).

ORDER

Island County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Failing or refusing to provide information to the union relevant for interest arbitration.

   b. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of chapter 41.56 RCW:

   a. Provide the Island County Deputy Sheriffs Guild (Corrections) access and the opportunity to scan or copy requests 20, 21, and 22 without accessing any fees relating to the reproduction of these documents.

   b. Provide the Island County Deputy Sheriffs Guild (Corrections) with complete information as described in requests 2, 3, 14, and 15.

   c. Give notice to and, upon request, negotiate in good faith with the Island County Deputy Sheriffs Guild (Corrections) before failing to provide relevant documents.

   d. Contact the compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for posting. Post copies of the notice provided by the compliance officer 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.

e. Read the notice provided by the compliance officer into the record at a regular public meeting of the Board of Island County Commissioners, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

f. 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.

g. Notify the compliance officer, 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 the compliance officer provides.

ISSUED at Olympia, Washington, this 7th day of April, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

ELIZABETH 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 04/07/2020

DECISION 13182 - 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 131438-U-19

EMPLOYER: ISLAND COUNTY

REP BY:
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PARTY 2: ISLAND COUNTY DEPUTY SHERIFFS GUILD (CORRECTIONS)

REP BY:
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