STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 839, Complainant, vs. FRANKLIN COUNTY, Respondent.	CASE 135905-U-22 DECISION 13726 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Jack Holland, Attorney at Law, Reid, Ballew, Leahy & Holland, LLP, for Teamsters Local 839.

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Franklin County Sheriff Jim "J.D." Raymond initiated an investigation into Deputies Scott Cram and McKenzie Burgess (at the time, sergeant and corporal, respectively), after he received a report that Burgess and Cram made false statements. Investigators recommended Burgess and Cram's termination, finding that they had been dishonest and had committed numerous policy violations. Ultimately, Raymond demoted them.

The alleged false statements were made in two unfair labor practice complaints filed with this agency. Thus, Teamsters Local 839 (union) claims that Burgess and Cram's demotions were discrimination for filing unfair labor practice complaints.

The record shows that Burgess and Cram were demoted for being dishonest and evasive during the investigation, making dishonest statements in the unfair labor practice complaints, and violating other policies, not for merely filing unfair labor practice complaints. The union has not shown that the employer's reasons for the demotions were a pretext for discrimination. The union argues that the investigators' findings against Burgess and Cram were trivial, but the union does

not show that the investigators treated Burgess and Cram any differently from the subjects of other investigations.

The union also claims that Raymond interfered with employee rights in a statement he made to Cram. Raymond told Cram that the union's threat to take a grievance to arbitration "should be carefully weighed," and described recent legislation relating to law enforcement arbitration and the Criminal Justice Training Commission's authority to decertify corrections officers. Because Raymond's statements were factual and not threatening, the employer did not interfere with employee rights.

Finally, the union claims that Raymond refused to deal with the union's designated representative and instead sent notifications to Burgess, who was the former association president. The preliminary ruling in this case did not recognize such a cause of action. Instead, the preliminary ruling recognized a cause of action that the employer failed to provide information requested by the union. The union's information request was prospective and did not include a request for any existing documents. Because the duty to provide information only requires that the employer provide existing documents, the employer did not breach its duty to provide information.

ISSUES

As stated in the amended preliminary ruling issued on October 6, 2022, the issues in this case are:

1. Employer discrimination in violation of RCW 41.56.140(3) [and if so derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by:

    a. Its demotion of Sergeant Scott Cram for filing an unfair labor practice complaint charge or giving testimony before the Commission.

    b. Its demotion of Corporal McKenzie Burgess for filing an unfair labor practice complaint charge or giving testimony before the Commission.

2. Employer interference with employee rights in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by threats of reprisal or force or promises of benefit made to Scott Cram in a step one grievance response letter.

3. 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)] within six months of the date the complaint was filed, by its refusal to provide relevant information requested by the union concerning representation of bargaining unit employees.

BACKGROUND[1]

The Franklin County Sheriff's Office operates the Franklin County Jail in Pasco, Washington. Jim Raymond was elected Franklin County Sheriff in 2014 and took office on January 1, 2015. Under the prior Sheriff, Richard Lathim, the Franklin County Jail was under federal consent decrees, and equipment, training, and policies were outdated. Raymond brought changes to the jail, including updated uniforms, equipment, training, and policies. The federal consent decrees were lifted, and the jail also became accredited by the Washington Association of Sheriffs and Police Chiefs.

Prior to April 2020, the Corrections Deputies employed at the jail were represented by the Franklin County Corrections Officers Association (referred to as the "association" or "guild"), which was affiliated with the Fraternal Order of Police. In April 2020, an amended certification was issued in which the association affiliated with Teamsters Local 839.[2] *Franklin County*, Decision 13181 (PECB, 2020). Jesus Alvarez is the Business Agent for the union.

McKenzie Burgess was hired by Raymond as a Corrections Deputy in 2017. In September 2018 she became the president of the Association. Raymond promoted her to a corporal in 2019. When

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[1] The evidentiary record in this case is voluminous and includes a full investigatory file which exceed 770 pages. I have reviewed and considered the entire record, but not every detail is recounted here.

[2] The union characterizes this process as dissolving the association and replacing it with Teamsters Local 839.

the association affiliated with Teamsters Local 839 in 2020, Burgess ceased being association president and become the lead shop steward for Teamsters Local 839.

Scott Cram was hired by the prior sheriff in 2002. At some point, Cram was promoted to corporal, and Raymond promoted Cram to corrections sergeant in 2015. Cram had participated on the association's bargaining team, and later, was a Teamsters Local 839 shop steward and member of the Teamsters Local 839 bargaining committee. At some point, Cram became a Corrections Training Officer (CTO) for the jail.

Raymond and the union have a recent history of conflict.

In October 2020, the employer restricted Alvarez from entering the jail facilities unless he was escorted by the Sheriff or Human Resources. The union was provided with a private space outside of the secured area of the jail where Alvarez could meet with members. Prior to this restriction, Alvarez entered the jail without going through security, although he was not unattended. The union filed a grievance challenging this restriction, which proceeded to arbitration. The employer argued that there were safety concerns with escorting visitors through secure areas. On February 24, 2022, Arbitrator Robin Romeo issued an arbitration award sustaining the union's grievance, finding that there was a past practice of Alvarez' ability to access the secure area of the jail.

On March 8, 2022, Raymond posted a letter to "Franklin County Citizens" on his Facebook page. He wrote the letter because his advisory board, which includes county residents, "asked what was going on with the whole union thing in the jail." The letter addressed articles in the *Tri-City Herald*, and on the Washington State Labor Council news website *The Stand*, about Arbitrator Romeo's award. Raymond defended his decision to deny Alvarez a keycard to the secure area of the jail, and said, "as of this writing and since the first attempt by Teamsters Agents to gain unfettered access into a secure law enforcement facility, the Teamsters Union has filed approximately six Unfair Labor Practices (ULP's) with Washington State Public Employment Relations Commission (PERC) and conducted one arbitration hearing. The ULPs are based on lies and ill-prepared defenses to those lies." Raymond explained that Alvarez' engaging in union activities inside the jail caused disruptions in movement of prisoners, medical calls, feeding, and cell checks. He described an incident on February 22, 2022, where Alvarez and another union business agent were

conducting union business with a supervisor (apparently Burgess) inside the jail when an offender had a medical crisis. The record indicates that this offender died in custody on that day, although Raymond did not say this in his letter. Raymond asked, "[i]f the supervisor visiting with Union representation inside the jail would have been paying attention, would outcomes have been different?" Raymond also discussed his investigation of Burgess and Cram (described further below). It is evident from this letter that Raymond had become exasperated by conflicts with the union, and deeply irritated by his perception that on-duty union activities were interfering with jail security and safety.

Following Arbitrator Romeo's Award, the employer revised the orders concerning union representative access to the jail, requiring the union representative to have an escort present. Arbitrator Romeo issued a supplemental Award finding that the employer had still not complied with her initial award.

In March 2022, the union had campaign signs for Raymond's primary election opponent on the side of their building.

In an editorial board interview with the *Tri-City Herald* in October 2022, Raymond stated, "I'm a pretty strong-willed person, I don't believe that unions belong in police work." Raymond distinguishes "unions" from "guilds," "associations," and "law enforcement organizations."[3] He testified, "I was being asked by an editorial board about unions and union involvement in the jail, and I stated my opinion, which is my right to do, and I did so." Raymond testified that the union has the right to criticize him, and he has the right to respond. He testified about various laws that he personally disagrees with but nonetheless follows and enforces, such as the Washington Supreme Court's *Blake* ruling,[4] and new laws restricting police pursuits. Raymond testified that

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[3] Raymond testified, "·I have never been a union member. I have been a guild member, an association member, and member of a law enforcement organizations to include the FOP and WACOPS."

[4] In *State v. Blake*, 197 Wn.2d 170 (2021), the Washington Supreme Court held that the state's felony possession of controlled substance statute was unconstitutional and void.

he follows the unfair labor practice laws that prohibit retaliation for union activity, and that he thinks those laws are important.

Burgess and Cram, through the union, filed two unfair labor practice complaints in 2021.
In this case, the union alleges that Raymond discriminated against Burgess and Cram because they filed unfair labor practice (ULP) complaints on October 15, 2021, and December 10, 2021. Those ULP complaints alleged that Raymond and Jail Commander Stephen Sultemeier made illegal statements to Burgess and Cram during meetings on April 20, 2021, April 26, 2021, and June 9, 2021.

The union alleged that on April 20, 2021, during a meeting with Sultemeier and Raymond, Raymond told Burgess that she was not allowed to conduct union business on his time and that Alvarez was not allowed in the jail. The union alleged that Raymond "said 'You paid [sic] to do a job, you should just do your job; If you don't like your job, you can quit.'" The union alleged that Burgess interpreted Raymond's statements to be an attempt to dissuade her from engaging in union activity.

The union alleged that on April 26, 2021, Sultemeier told Cram to "'get in line' with the Sheriff's point of view on things inside the Jail and that doing so was necessary 'in order to move up the ranks.'" The union alleged that Cram and Sultemeier then met with Raymond, and Raymond told Cram that he was not to conduct union business while on duty and was not to call Alvarez. The union also alleged that Raymond said, "Do you want to move up . . . or do you want to continue pounding concrete?" The union alleged that Cram interpreted Raymond's comments to be a threat, that he would not be able to be promoted if he continued to participate in union activity.

The union alleged that on June 9, 2021, at a meeting of the jail supervisors (including Burgess and Cram, who were sergeant and corporal at the time), there was a discussion about mandatory overtime. The union alleged that Commander Sultemeier "proposed that the question regarding overtime signup procedures be submitted to the Sergeants and Corporals in attendance for a vote." The union alleged that Burgess and Cram "voiced their concerns about conducting a vote – specifically, conducting such a vote without Local 839's participation and input . . . would be

inappropriate." The union further alleged that "Sultemeier ignored the Corporals' concerns and said, 'No, we are going to conduct a vote.' Accordingly, he called the question to a vote and asked for a show of hands for those in favor of changing the overtime signup procedures. The group 'voted' to change the procedures." The union alleged that following the meeting, "the Employer adopted the outcome of the vote regarding changes to Corrections Unit's overtime signup procedures." The union alleged that the employer committed an unlawful unilateral change of the overtime procedures and committed a direct dealing violation by conducting a vote regarding overtime procedures without notice to the union.

The union filed the two ULP complaints at Burgess and Cram's request, based on information they provided to Alvarez.[5]

Commander Sultemeier reported that the ULP complaints contained "lies," and Raymond initiated an investigation.

After reading the ULP complaints, Sultemeier reported to Raymond that the documents contained lies. Sultemeier testified, "I just told the sheriff that these were lies, and he's the one that said well, we'll do an investigation and find out the truth. . . . I was actually insulted that they would sit there and say that I said stuff that was a lie. And I felt like, well, this is a good way to get the truth out." Raymond testified, "Sultemeier [told] me a concern that they were lying and accusing him of actions that didn't occur." Raymond said that he chose to open an investigation because "you had individuals who were lying against – lying about command staff issues, people that they're responsible to report to and creating lies."

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[5] Although the ULPs were actually filed and signed by the union's attorney, Jack Holland, the union does not dispute that Burgess and Cram were centrally involved in the filing of the ULP complaints. For example, on page one of their brief, the union states, "Sgt. Scott Cram and Cpl. McKenzie Burgess . . . filed ULP complaints against the Franklin County Sheriff . . . ."

The union eventually withdrew the two 2021 ULP complaints before they proceeded to any evidentiary hearing.

Raymond opened an internal investigation into Burgess and Cram and assigned Commander Monty Huber and Sergeant Marcus Conner[6] to conduct the investigation. Conner testified how he was assigned to the investigation:

> I was called in to the Sheriff's Office. I was advised that there was some documents that were filed, and the sheriff was being told by the jail commander that there were some outright lies contained in those documents, and he told me that he wanted it investigated. He wanted to figure out who is not telling the truth. There was a significant difference in opinion of what was written and what the commander said happened. And so he wanted us to investigate that to figure out who was telling the truth and who wasn't.

In a summary document, Conner and Huber described which specific false statements were the subject of the investigation:

- "Statement from Cpl. Burgess that Sheriff Raymond's statements were an attempt to dissuade her from engaging in permissible union activity."

- "Statement from Cram that prior to meeting with the Sheriff on April 26, 2021, Commander Sultemeier told Cram that the Sheriff wanted Cram to get in line with the Sheriff's point of view if he wanted to move up the ranks."

- "Statement made by Cram and/or Burgess that Commander Sultemeier proposed a vote to change their overtime process."

- "Cram's statement that he voiced his concern about conducting a vote to change a practice without union representation."

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6 At the time of the events at issue, Huber was a Commander and Conner was a Sergeant. Since then, Huber has been promoted to Undersheriff and Conner has been promoted to Commander.

- "Burgess' statement that she voiced her concern about conducting a vote to change a practice without union representation."

- "Cram's and/or Burgess' statement that Sultemeier ordered a vote after Burgess and Cram objected with the outcome of the vote creating a change to procedures."

- "General statements made about an employer/employee meeting and supervisor meeting that embellished or exaggerated what Commander Sultemeier and/or Sheriff Raymond actually said for the purposes of creating a 'false narrative' in third party filings. This such dishonesty resulting in the expenditure of valuable tax payer resources and staff time."

Sultemeier testified that he did not tell Cram that he needed to get in line in order to move up the ranks. He also testified that no one voiced objections during the June 9, 2021 meeting, and so he did not order a "vote" over Burgess and Cram's objections.[7] He disagreed with the union's characterization that he proposed the overtime procedure be submitted for a "vote" or that the overtime procedure changed, stating, "[i]t was voted to stay the same. And I say 'voted,' it was just a show of hands. And the majority was, let's just keep it the same."

At Burgess' initial investigatory interview on January 24, 2022, Conner questioned her extensively about the events in dispute. During this interview, Burgess disclosed that she had watched an archived video on the jail's computer system.[8] Conner asked Burgess whether she had permission to view the video, and Burgess said that she "wouldn't know," and "not direct permission, no." Burgess also told Conner that immediately following the April 20, 2021, meeting where Raymond

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7 Others also testified that no one objected to the "vote."

8 The referenced video was saved footage from a security camera outside the Franklin County jail, showing Raymond in an altercation (described by Cram as a "pushing match") with a member of the public and sometime jail resident. Backup was called, and the individual was booked into jail. The video seemed to become something of a spectacle among the jail staff and was apparently leaked to the public on Facebook.

told her not to conduct union business on his time, she went to her office while on duty and took notes of what occurred, describing her notes as "union business."

At Cram's initial interview on January 26, 2022, Conner questioned him extensively about the April 26, 2021, meeting with Sultemeier and Raymond, the June 9, 2021, supervisor meeting, and about discussions he had with Burgess.

On February 7, 2022, Burgess was notified that the scope of the investigation was broadened to include an allegation that she "may have accessed and shared data from a Franklin County computer system without permission or legitimate purpose."

Conner held a second interview with Burgess on February 25, 2022. Conner asked Burgess to clarify or explain some of her statements from her first interview and asked her more questions about the video. Conner asked Burgess, "[d]o you believe it was acceptable for you to use that computer for that purpose?" Burgess answered, "No." Conner asked Burgess if she believed that her use of the computer system violated the Corrections Center's information technology policy, and she answered, "Yes." Burgess indicated that everyone who worked at the jail was talking about the video. She said that Deputy Austin "was the main one to make sure everybody saw it."

On March 1, 2022, Burgess and Cram were placed on paid administrative leave pending completion of the investigations.

On March 2, 2022, Cram was notified that the scope of the investigation was being expanded to include possible violations of the information technology policy. Cram was interviewed for a second time on March 8, 2022, and Conner questioned him extensively about the video issue.

Raymond commented on Burgess and Cram's investigations in his letter to the community.
On March 8, Raymond published his letter to the community on his Facebook page (described above). In this letter, Raymond commented on the investigation into Burgess and Cram:

> [M]y staff is trying to conclude an internal review process involving my corrections deputies taking their eye off the ball . . . . We are currently trying to complete the investigation but are being advised to not take any adverse actions against the employees because they and their Union have filed harassment and bulling complaints against me and my command staff.[9] The incident calls into question our employees' character concerning lying, failure to obey directives, and of course, information concerning local Teamsters Business Agent Jesus Alvarez inserting "little Black Books" into the jail with his Union Stewards, providing them instruction on how to keep book on the Sheriff and the Commander. Union activity (Black Book Ledgering) is not acceptable and should not be occurring while these union stewards (corrections supervisors) are supposed to be doing police work.

Conner and Huber also interviewed nine other Corrections Corporals, Captains, Sergeants, and Lieutenants about the June 9, 2021, supervisor meeting. Huber interviewed Sultemeier about the April 2021 meetings and the June 9, 2021, supervisor meeting.

Conner and Huber completed their investigation and recommended Burgess and Cram be terminated, but Raymond ultimately decided to demote them.

On March 25, 2022, Conner and Huber issued letters, stating their findings and recommendations regarding their investigation into Burgess and Cram.

Conner and Huber found that Cram committed 10 policy violations. This included two violations of the truthfulness policy in statements made in the ULP complaints;[10] seven violations of the truthfulness and insubordination policies by changing answers, failing to answer questions, or

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[9] Burgess and Cram filed complaints with Franklin County Human Resources in January and February 2022, claiming that they were the victims of bullying, discrimination, harassment, intimidation, and retaliation by Sultemeier and Raymond.

[10] Conner and Huber found that Cram made false statements "by stating that Commander Sultemeier ordered him to 'Get in line' or to get on the ball otherwise he was not going to get promoted immediately prior to meeting with the Sheriff;" and "by misrepresenting in a ULP filing that the Sheriff dismissed his statement of wanting to promote immediately after he made it by stating the sheriff replied, 'We are done here.' Cram later stated in his interview that statement actually came later as a way to conclude the entire meeting."

being evasive during the investigatory interviews;[11] and one instance of dereliction of duty "by failing to report that Burgess had disclosed to him that she may have been subject to an unsafe work environment."

Conner and Huber found that Burgess committed 23 policy violations. This included one violation of the truthfulness policy in a statement made in a ULP filing;[12] 19 violations of the truthfulness and insubordination policies by changing answers, failing to answer questions, or being evasive during the investigatory interviews;[13] one instance of insubordination "for compiling union materials on duty almost immediately after being ordered by Sheriff Raymond no to;" one violation of the information technology policy "by accessing information on a county computer system without legitimate law enforcement purpose. Burgess admitted to this violation in her interview;" and one instance of "failure to supervise" by observing Deputy Austin "setting up the booking video system to repeatedly play the incident involving the Sheriff for all employees that wished to view it without legitimate law enforcement purpose and not stopping the violating actions or taking any supervisory steps to have it stopped. Additionally, Burgess joined in the violating behavior herself by watching the video and then leaving it up for the next employee to do the same."

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11 For example, Conner and Huber found that Cram violated policy "by changing his answer when asked if he said anything during his meeting with Sheriff Raymond. He originally stated in a ULP filing that he stated, 'I don't conduct union business while I am on duty; I don't know what you are talking about' however he changed this in his interview that he instead stated, 'I asked what I had done and I really didn't get an answer.' Cram refused to stand by his original statement." Conner and Huber also found that Cram violated policy "by stating that he only watched the video involving Sheriff Raymond in his office. He then later changed this by stating that he heard it was on the internet but didn't remember who told him that. It was changed again to state that Deputy Austin showed him the video from his cellphone in the county parking lot."

12 Conner and Huber found that Burgess made a false statement "by stating in a ULP that she believed the purpose of her meeting with Sheriff Raymond was to discuss the security building only to later change her answer and state that she 'had no idea' what the purpose of the meeting was."

13 For example, Conner and Huber found that Burgess violated policy "by giving three separate and different answers to the question of how much talking she did in her meeting with the Sheriff;" "by changing her answers several times when asked if she had permission to view a video of an incident that the Sheriff was involved in, including the statement that the Sheriff gave her permission to perform this task;" and "for willfully not disclosing that she discussed this meeting with Cram. When she asked why she did not disclose this until confronted with it her response was, 'Not wanting to bring more people into it.'"

Huber and Conner each independently concluded that Burgess and Cram should be terminated because of these policy violations and recommended this to Raymond.

On April 29, 2022, Raymond sent a letter to Burgess and Cram, in which he described and sustained Huber and Conner's findings. Raymond summarized:

> Cpl. Burgess each one of the 23 listed policy violations in of themselves are serious offenses. You were promoted to a supervisory rank with the expectation that you would promote the Mission, Vision and Values of the Sheriff's Office. The conduct identified in this investigation tarnishes the image of the Franklin County Sheriff and the corrections profession. On ten separate occasion you lied either about matters affecting our agency or during the course of this investigation.
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> Cpl. Burgess you were given direct orders to quit conducting union business while being paid to supervise jail operations. It was made clear to you to stop but you almost immediately defied the order.
>
> During the course of this investigation you disclosed that you had committed computer trespass on county own computers and encouraged the same behavior of subordinate(s). Again while you were being paid by the county tax dollar to provide due care to inmates. Monitors that were designed to monitor high risk inmates and inmates requiring special observations. Corporal Burgess you accessed video footage without a lawful legitimate law enforcement purpose. Additionally it was also discovered that you allowed subordinates to commit the same offenses and failed to correct their behavior. All actions which places Franklin County at litigious risk.
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> Cpl. Burgess you were entrusted by the Office of Sheriff to serve the organization as a first level supervisor. During the course of the investigation it is clear that you were dishonest, defied direct orders and failed to supervise subordinates. Furthermore, you made attempts on numerous occasion to hinder investigators by lying and manipulating facts. Your actions places your "Peace Officers Certification" in jeopardy.

Raymond sent a similar letter to Cram on April 29, 2022, in which he stated:

> Sergeant Cram you were entrusted by the Office of Sheriff to serve the organization as a senior first level supervisor. During the course of the investigation you were dishonest numerous times. During both of your interviews you attempted to hinder investigators by lying and attempting to minimize involvement in the matters

> discussed. You had to be asked the same questions several times and you remained defiant throughout the interviews even when presented with evidence showing that you were being dishonest. In addition to the obvious policy violations, Sergeant Cram you violated the core values and the ethical values of the Sheriff's Office. Your actions places your "Peace Officers Certification" in jeopardy.

Raymond informed Burgess and Cram that they were going to be terminated, effective May 6.

On May 2, 2022, Alvarez filed grievances challenging Burgess and Cram's terminations. In response to the grievance, on May 3, 2022, Raymond sent letters to Burgess and Cram, scheduling "Loudermill" meetings for May 16, 2022, to "allow for you to provide additional information in order to sway or adjust my decisions."[14]

After holding the "Loudermill" meetings, on May 27, 2022, Raymond issued revised disciplinary letters to Burgess and Cram. Raymond added summaries of Burgess and Cram's statements from the "Loudermill" meetings, and also changed his decision to terminate them. Raymond now stated that they would be reassigned to nonsupervisory corrections officer roles without reduction in pay. Raymond testified, "I just listened [to] the totality of circumstances. And for me, in the end I – I did not want individuals that were going to be supervising a highly litigious – in a highly litigious environment."

Burgess and Cram returned to work at the jail as Corrections Deputies on or about June 13, 2022.

The union grieved the removal of Cram's Corrections Training Officer duties, and Raymond responded to the grievance, informing Cram of new laws.

On or about July 5, 2022, Cram was discovered propping open the door to the segregation unit of the jail with a garbage can. Cram was training a rookie corrections officer who was present during the incident. Because of this incident, on or about July 8, 2022, Raymond and Sultemeier removed Cram's Corrections Training Officer duties. On July 13, 2022, the union filed a grievance alleging

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[14] After Alvarez filed the grievances, Raymond apparently realized that this predisciplinary procedure had been omitted.

that this was discipline without just cause. On July 21, 2022, Raymond sent a step one response to Cram. Raymond stated:

> Mr. Alvarez's threat, made with your apparent agreement, to take this case to Arbitration should be carefully weighed. The legislature substantially modified the process for labor arbitrations involving commissioned law enforcement in 2021. RCW 41.58.070. A new panel of arbitrators will be selected by the Commission. The only arbitrators who will be assigned this panel, are those with a demonstrated understanding of law enforcement processes and procedures. You would be advised to consult this new law and consider its implications.
>
> Please also understand that if the arbitrator makes a credibility finding relating to your conduct and/or allegations, I believe I am obligated to report to the Criminal Justice Training Commission under RCW 43.101.105. Under this law, the [CJTC] can revoke the certification of you and other corrections officers for a variety of misconduct, including but not limited to failing to meet the ethical and professional standards of law enforcement, engaging in acts that diminish the public confidence and other prohibited behavior.
>
> I would recommend that you and your labor representative consider the cumulative effects of these two new laws on your proposed course of action.
>
> To be clear, all union members have a fundamental right to exercise their grievance, arbitration, and other resolution rights under the CBA. These rights are an important sources of protection for law enforcement in a union. It is important that any union member who believes the provisions of the CBA, the Civil Service laws, or of labor laws generally, exercise their rights to the applicable protections and remedies of such laws. The two new laws, and others like them, are also relevant to the process.

Alvarez sent an "information request" to Raymond, and told Raymond that Burgess was not the guild president.

On July 25, 2022, Alvarez sent Raymond a letter, stating:

> Moving forward the Union as the "certified bargaining agent" request a copy of all correspondence between the Sheriff's Office and its membership to be forwarded to the Union Business Agent assigned to the group via email . . . or the Union's physical address . . . . Correspondence will include the following,
>
> - Investigation(s)
> - Probationary extension(s)

- Termination(s)
- Discipline(s)
- Promotion(s)
- Demotion(s)
- Suspension(s)
- Grievance response(s) / to avoid any delays on timelines and respond timely.
- Wages
- Hours
- Working Conditions
- Mandatory Subjects of bargaining

Alvarez continued, "For your information and command staff – Corrections Deputy McKenzie Burgess is the Teamsters Lead Shop Steward for the Franklin County Sheriff's Office Corrections Deputies. She is not the Guild President. There is no guild or association, they have been dissolved. The Franklin County Sheriff's Office Corrections Deputies are not represented by any guild or association. They are represented by Teamsters Local 839."

Raymond insisted on dealing with Burgess despite her requests that he deal with Alvarez.
On August 1, 2022, Raymond sent a letter, via email, addressed to "Corrections Deputy McKenzie Burgess, President of Corrections Guild." The letter was to "serve as notification to the Correction Guild members" that the Sheriff's Office was going to investigate an in-custody death.

Burgess responded, "As much as I appreciate the notification, please stop contacting me . . . . We are no longer a guild. I am no longer the President. Contact our Business Agent Jesus Alvarez JR."

Raymond replied, "I'll continue on with the methods in place. When your guild president status changes let me know."

Burgess said, "We have changed, and you have signed the contract that changed it. I am, however, the Lead Shop Steward. We now have a Business Agent that signed the same contract. I will not be able to accept any more notifications as the Guild is dissolved . . . . [T]hey need to be sent to our Business Agent Jesus Alvarez JR."

Raymond replied, "I gave you my response. When or if your guild picks a different president let me know. Until then I will continue with notification to the deputies guild president."

Procedural History

The union filed the original complaint in this matter on September 9, 2022. The unfair labor practice administrator issued a preliminary ruling on September 28, 2022. The union filed a request to clarify the preliminary ruling on September 30, 2022. The unfair labor practice administrator filed an amended preliminary ruling on October 6, 2022. The employer filed an answer on October 25, 2022. A hearing was held in Pasco, Washington on May 8 and 9, 2023. The parties filed briefs to complete the record on July 7, 2023.

ANALYSIS

Applicable Legal Standards

Discrimination

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of statutorily protected rights. RCW 41.56.140(3); *Tacoma School District*, Decision 5466-D (EDUC, 1997); *Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in a discrimination case. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 349 (2014) (citing *Wilmot v. Kaiser Aluminum and Chemical Corp*., 118 Wn.2d 46 (1991)). To prove discrimination, the complainant must first establish a prima facie case by showing the following:

1. The employee participated in protected activity or communicated to the employer an intent to do so;

2. The employer deprived the employee of some ascertainable right, benefit, or status; and

3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

City of Vancouver v. Public Employment Relations Commission, 180 Wn. App. at 349. If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *Id.*; *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may articulate a legitimate nondiscriminatory reason for the adverse employment action. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. The respondent bears the burden of production, not of persuasion. *Id*. If the respondent meets its burden of production, the complainant bears the burden of persuasion to show that the employer's stated reason was either a pretext or that union animus was a substantial motivating factor for the employer's actions. *Id.*

Interference

To prove an interference violation, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *State – Washington State Patrol*, Decision 11775-A (PSRA, 2014); *Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A.

The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *Id*.

Information Requests

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); *Island County*, Decision 11946-A (PECB, 2014). 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).

A complainant bears the burden of establishing that the employer failed to provide responsive information. *Island County*, Decision 11946-A. The duty to provide information does not compel a party to create records that do not exist. *Id.*; *Seattle School District*, Decision 9628-A (PECB, 2008).

Application of Standards

Issue 1: Did the employer discriminate against Burgess and Cram by demoting them for filing ULP complaints?

The union argues that Burgess and Cram's demotions[15] were discrimination for filing the 2021 unfair labor practice complaints.[16]

The union satisfied the prima facie case.

The first element of the union's prima facie case is that the employee participated in a protected activity. Filing an unfair labor practice complaint is a protected activity. *Mansfield School District*, Decision 5238-A (EDUC, 1996); *City of Yakima*, Decision 9451-B (PECB, 2007); *Seattle School District*, Decision 5946 (PECB, 1997). The employer does not dispute that Burgess and Cram participated in protected activity. The union establishes the first element of its prima facie case.

The second element of the union's prima facie case is that the employer deprived the employee of some ascertainable right, benefit, or status. Although Burgess and Cram did not suffer a loss in pay because of their demotions, they were still deprived of some ascertainable right, benefit, or status. Losing their supervisory positions impacted their status and has consequences for their ability to bid for vacation. Returning to the deputy rank will at least delay their future progression through the ranks. Burgess and Cram's demotions satisfy the second element of the prima facie

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[15] The preliminary ruling states separate causes of action for the respective demotions of Burgess and Cram. Thus, technically, their two discrimination cases are analyzed independently, and it would be possible to find that one demotion was discriminatory, and one was not. But as a practical matter, Burgess and Cram went through this process together, and the facts and analysis for both Burgess and Cram are generally the same. The parties have therefore analyzed Burgess and Cram's cases together, and it is appropriate to continue to do so here.

The preliminary ruling issued under WAC 391-45-110 limits the issues that agency examiners may consider or rule upon. *King County*, Decision 9075-A (PECB, 2007); WAC 391-45-110(2)(b). The preliminary ruling is limited to Burgess and Cram's *demotions*. The decision to *investigate* Burgess and Cram is a distinct action and is not directly at issue. *Compare King County*, Decision 12582-B (PECB, 2018) ("subjecting [an employee] to an internal investigation" was specifically at issue in the preliminary ruling; investigation was found to be a distinct adverse action). Nonetheless, as the demotions directly resulted from the investigations, it may be appropriate to ensure that the investigation was not initiated for a discriminatory reason. *See King County*, Decision 12582-B (where Commission found that decision to investigate employee was discriminatory, Commission found that resulting discipline was therefore also discriminatory, reasoning, "[t]he employer's ultimate decision to issue [the employee] a written reprimand as a result of the investigation cannot be separated from the employer's discriminatory decision to investigate").

[16] In its opening statement, the union asserted that the employer also retaliated against Burgess and Cram for filing complaints with Human Resources, but this is beyond the scope of the preliminary ruling as well.

case. *Mansfield School District*, Decision 5238; *Seattle School District*, Decision 11779-A (PECB, 2014).

The third element of the union's prima facie case is that a causal connection exists between the employee's exercise of a protected activity and the employer's action. Burgess and Cram's participation in the 2021 ULP complaints led directly to the investigations that ultimately resulted in Burgess and Cram's demotions. There is a causal link for purposes of the prima facie case. *Seattle School District*, Decision 5237-B (EDUC, 1996). The employer does not dispute that the union satisfied its prima facie case.

The employer produced a legitimate nondiscriminatory reason for the demotions.
The employer must produce a legitimate, nondiscriminatory reason for the complained-of action. The employer's burden is only a burden of production, not of persuasion. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349.

The employer asserts that Burgess and Cram were demoted for "violating Employer policies after a three-month investigation." It appears that Conner, Huber, and Raymond's primary concerns were Burgess and Cram's dishonesty and evasiveness during the investigation. The union does not dispute that the employer articulates legitimate nondiscriminatory reasons for the demotions, instead attacking the employer's reasons as "grasping" and pretextual. It is appropriate to distinguish between demoting employees merely for filing an unfair labor practice complaint, versus investigating them for dishonesty in an unfair labor practice complaint and demoting them

for policy violations discovered during the investigation.[17] This is a legitimate nondiscriminatory reason for the employer's action.

The union does not carry its ultimate burden of proving that the employer's reason was a pretext for a discriminatory purpose, or that the employer was motivated by union animus.

Because the employer produced legitimate nondiscriminatory reasons for its actions, the union must satisfy the ultimate burden of persuasion by showing that the reasons articulated by the employer were a mere pretext for what, in fact, was a discriminatory purpose, or that protected

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[17] Although the union does not dispute that the employer stated a legitimate, nondiscriminatory reason for the demotion, this case presents an important issue at this stage of the analysis. It would not be legitimate to investigate and discipline an employee merely "for filing a ULP complaint," or if the Sheriff was offended by statements in the ULP, if the Sheriff felt that Burgess and Cram were being disloyal or insubordinate by filing a ULP, or if the Sheriff disagreed that alleged facts constitute ULPs as a matter of law.

Here, the Sheriff was told that Cram and Burgess were being dishonest in the ULP complaints. Washington has a strong public policy requiring honesty among law enforcement. "It is the policy of the state of Washington that all commissioned, appointed, and elected law enforcement personnel comply with their oath of office and agency policies regarding the duty to be truthful and honest in the conduct of their official business." RCW 43.101.021. Only months before the union filed the ULP complaints at-issue in this case, the Governor signed a multitude of police reform bills into law. Among these new laws was ESSB 5051, which expanded the Criminal Justice Training Commission's (CJTC's) mission to focus broadly on the "integrity, effectiveness and professionalism of peace officers and corrections officers" with the goal of "promot[ing] public trust and confidence in every aspect of the criminal justice system." Laws of 2021, ch. 323, § 2, RCW 43.101.020(2). Under ESSB 5051, the CJTC can now revoke a peace officer or corrections officer's commission if they have "[e]ngaged in any conduct or pattern of conduct that: Fails to meet the ethical and professional standards required of a peace officer or corrections officer; disrupts, diminishes, or otherwise jeopardizes public trust or confidence in the law enforcement profession and correctional system . . . ." Laws of 2021, ch. 323, § 9, RCW 43.101.105(3)(j)(iv). Chapter 43.101 RCW anticipates that law enforcement agencies, such as county sheriff's offices, take a proactive role in ensuring that its officers are honest and truthful.

If a Sheriff believes a law enforcement officer may have made a false statement in a ULP filing, is the Sheriff's office prohibited from investigating that possible false statement? And if an investigation finds that law enforcement officers did make false statements in a ULP, and also engaged in other acts of dishonesty and violations of policy, is the Sheriff's office prohibited from doing anything about it? The Public Employees Collective Bargaining Act should not *per se* preclude the Sheriff from investigating the alleged dishonesty of law enforcement officers, even when that question is prompted by statements made in a ULP complaint. And where an investigation concluded that the deputies were dishonest in the ULP complaints, were dishonest and evasive during the investigation, violated other polices, and recommended to the Sheriff that they be terminated, it would be legitimate to for the Sheriff to impose discipline.

activity was nevertheless a substantial motivating factor behind the discriminatory action.[18] *King County*, Decision 6994-B (PECB, 2002). The union must ultimately prove that Burgess and Cram were actually demoted "for filing an unfair labor practice complaint."

The union makes three arguments in support of its case that Burgess and Cram's demotions were pretextual. First, the union argues, "[t]he investigators were hostile toward Cram and Burgess in the interviews, badgered them about trivial or imagined inconsistencies, and were clearly predisposed to find dishonesty, dissembling and insubordination even when none existed." Second, the union argues, "[t]he investigation contained disparate treatment." Third, the union argues "[t]he employer's after-the-fact justification to support its decision to demote fails for disparate treatment."

Contrary to the union's arguments, the preponderance of the evidence shows that the reason Raymond decided to demote Burgess and Cram was that Huber and Conner's investigation found that they committed numerous policy violations and recommended that Raymond terminate them. The evidence does not support the claim that Raymond's true motivation in demoting Burgess and Cram was to retaliate against them for filing the ULP complaints.

Significantly, Raymond did not discipline Burgess and Cram immediately following the filing of the ULP complaints or Sultemeier's accusation. Instead, he opened an internal investigation regarding the accusations, and only took disciplinary action against Burgess and Cram after Conner and Huber made their conclusions and recommendations. Notably, after the "Loudermill" meetings, Raymond decided

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[18] This case is not about whether Burgess and Cram were actually telling the truth about the April and June 2021 meetings in their 2021 ULP complaints, or about whether interference, unilateral changes, or direct dealing occurred at those meetings. Those ULPs were withdrawn and never litigated. This case is also not about whether there was just cause to demote them. The union's arguments that Conner and Huber's findings were trivial and did not warrant demotion might be successful in a grievance arbitration over whether the demotions were for just cause. This case is *only* about whether, in demoting Burgess and Cram, Raymond's true motivation was to discriminate against them for filing ULP complaints. *See East Wenatchee Water Dist.*, Decision 1392 (PECB, 1982) (observing that in discrimination cases under NLRA precedent, "[m]anagement can discharge for good cause, or bad cause, or for no cause at all. It has, as the master of its own business affairs, complete freedom with but one specific definite qualification: it may not discharge when the real motivating purpose is to do that which Section 8 (a)(3) forbids").

to demote Burgess and Cram (without loss of pay) despite the recommendation to terminate their employment. This indicates that Raymond made his decision based on the investigation as well as mitigating factors identified by Burgess and Cram at the "Loudermill" meeting, as opposed to having a retaliatory purpose.

The union does not dispute that Raymond demoted Burgess and Cram based on Conner and Huber's findings. The union's primary argument is that Conner and Huber's investigation itself was biased, and so by relying on the investigation, Raymond's decision was tainted. The union argues that the investigation had a predetermined outcome and was not fairly or objectively conducted, that Conner and Huber were hostile to Burgess and Cram and were predisposed to find dishonesty, dissembling and insubordination, and that they based their conclusions on "minor inconsistencies" and "the most trivial matters."

I have carefully reviewed the investigation file, including the transcripts and recordings of Conner and Huber's interviews of Burgess, Cram, and the other witnesses. I observed Conner and Huber's demeanor at the hearing. There is no reason to doubt Conner and Huber's integrity or the integrity of the investigation. The evidence shows that they strove to conduct the investigation to the best of their ability. The investigation lasted three months and does not appear to have been a perfunctory or superficial effort to "go through the motions" to reach a predetermined outcome. Conner and Huber were exacting in their attention to detail during the investigation, and their repetitive questioning (which the union complains was "badgering") was within the realm of legitimate interviewing techniques.

All 10 findings against Cram and 23 findings against Burgess appear to have a plausible basis in the investigation materials. The union does not point to any specific conclusions as not having any

basis in the investigation.[19] It appears that Conner and Huber were most irritated by their perception that Burgess and Cram were uncooperative and evasive during their investigations,[20] and their findings

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[19] The union argues that the "most egregious example" of the investigators' bad faith motive occurred in the following exchange during Burgess' initial interview:

> Q: On April 20th was he behind a desk?
> A: No.
> Q: On April 20th was he behind a desk?
> A: Yes. Sorry. Yes. He was behind a desk on April 20th.
> Q: 'Kay. Why'd you say no the first time?
> A: I do not know.

This exchange resulted in two of Conner and Huber's findings against Burgess: "answering the question of whether Sheriff Raymond was sitting behind his desk during their meeting first as 'No' and then changing her answer to 'Yes;'" and "willfully giving an untruthful answer to the question regarding Sheriff Raymond being seated and then responding with, 'I don't know' when asked why she gave an untruthful answer." The union argues that Burgess' answer of "No" was "simply a mistake," and "[t]here is no better evidence that the investigators were trying to find dishonesty and insubordination in the most trivial remarks, and even fabricating it when no dishonesty or insubordination existed." Although the union may be correct that Burgess said "No" by mistake, and the union may also be correct that this probably falls on the less serious end of the spectrum of dishonesty, Burgess did actually say this in her investigatory interview. I cannot say that it was a "fabrication" for Conner and Huber to note this inconsistency in their findings. What the union is essentially arguing is that Conner, Huber, and the Franklin County Sheriff's office should have a greater tolerance for inaccurate statements during investigatory interviews. Although Conner and Huber may have been more nitpicky or rigorous than the union thinks they should be, the union has not shown that they placed Burgess under stricter scrutiny than any other employee they have interviewed.

[20] Conner testified emphatically how honesty by an interview subject in an internal investigation is important:

> [T]his is the law enforcement profession. Truth is everything. The law requires it. Even if you go back to some of our old dusty civil service RCWs that require that we're of good moral character as a condition of employment, you know. You've got that aspect of it. You've got the public policy aspect of it, that the community should have that inherent trust in their law enforcement. You've got the colleague relationship. If I were to receive a phone call that says, Get up to the courtroom right now. There's an emergency, and I run up there, and there is a corrections deputy with his gun drawn, aimed at somebody, I do not stop and take the time to ask him to give me a full briefing of what is happening. My gun is drawn. I'm taking orders from him. He knows more than I do, and I have to trust that the information he's giving me is accurate. It's something that I put my own personal safety on the line for. My career, my certifications, all of that is on the line with that deputy and his decision-making. I have to trust that.
>
> The other side of it, specifically to the corrections environment, is you're typically dealing with a very frail segment of the population: substance abuse, behavioral health issues, you know. They should, rightfully so, expect that if they're being brought into our facility with $65, they're leaving the facility with $65. And even though they didn't know how much money was in their pocket when they came in, because they're as high as a kite, that they can expect that we are good, honest people that are going to make sure that everything they came in with is what they're leaving with. We are responsible for their medical care. They have to trust that we're making decisions in their best interest and we're not using that in unprofessional manner.

reflect this. Most of the policy violations had to do with failure to be honest and cooperative during the investigation.

Conner and Huber may have been nitpicky, overly scrupulous, and hypersensitive to inconsistencies, but there is no evidence to establish that the investigations of Burgess and Cram were deviations from their norm.[21] The union's argument suggests that Huber and Conner conspired with each other and the Sheriff to conduct a sham investigation for the true purpose of discriminating against Burgess and Cram for filing the ULP complaints. The evidence does not support this. The union also suggests that Huber, Conner, and Raymond all lied under oath at the hearing. There is insufficient evidence to warrant such a conclusion.

Conner and Huber's credibility is supported by their treatment of the dispute over whether Burgess voiced objections during the June 9, 2021, supervisor meeting. Sultemeier, and Burgess and Cram differed in whether Burgess objected to the vote. During the investigation, Cpt. Diaz, Lt. Harmon, Lt. Jansky, Cpl. McMurray, Cpl. Romero, Sgt. Tennancour, and Sgt. Wilson did not recall anyone objecting to the vote, but Cpl. Iztas and Sgt. Garcia said that Burgess did make an objection. Ultimately, Conner and Huber did not make any finding that Burgess was dishonest regarding this aspect of the June 19 supervisory meeting, apparently acknowledging that the truth or falsity of this claim was not proven by the investigatory interviews.

Providing shifting reasons for taking an action, deviating from an established policy, or engaging in disparate treatment can be facts used to support a finding that the employer's proffered reasons are pretextual or substantially motivated by union animus. *Pasco Housing Authority*, Decision 6248-A (PECB, 1998); *Kennewick School District*, Decision 5632-A. Raymond has not shifted his reasons or acted evasively regarding his reasons for demoting Burgess and Cram. He has remained consistent. There is no evidence demonstrating that the employer deviated from established policy in any way. Ultimately, the union does not show discrimination because it has

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> So there is a lot of trust that, you know, without that, this whole profession and, quite frankly, a civilized society kind of implodes.

[21] Conner testified that he has "tendencies to show some obsessive compulsive issues sometimes."

not shown that Burgess and Cram were treated any differently from any other employees who were accused of lying, or who were found by an internal investigation to have violated similar policies. "[T]he concept of discrimination requires differential treatment of the discriminatee, compared to similarly situated employees." *Seattle School District*, Decision 5237.

The union claims that disparate treatment occurred during the investigation because Burgess and Cram were investigated relating to the video,[22] and they told the investigators that other employees also viewed the video and were involved in sharing it. The union argues, "[t]he County's failure to investigate all employees regarding the video reveals the true nature of the investigation: a targeted investigation against the only two employees who had filed ULP complaints against the Employer."

This fact neither tips the scales in this case nor does it satisfy the union's burden of proof. Conner readily admitted that *he* did not interview other employees about the video issue (he said, "That is correct. Not by me"). Huber testified that he could not recall whether any other employees were interviewed relating to the video. There is no other evidence indicating whether anyone else was investigated relating to the video. The record, then, only establishes that *Conner* did not interview anyone else. The evidence relating to the video is not substantial enough to carry the union's burden of persuasion.

The union's final argument that Burgess and Cram's demotions were pretextual is that the employer improperly used an incident relating to Cram propping open a jail door with a trash can as an "after-the-fact justification to support its decision to demote." The union argues that the employer did not properly investigate this incident, and that others had also engaged in propping open jail doors with trash cans, indicating disparate treatment.

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[22] Burgess was ultimately disciplined for violating the IT policy, based on her admissions during her interview that she violated the policy. Cram was not disciplined for violating the IT policy, only for failing to honestly answer questions about the video.

The record does not support the union's assertion that Raymond used the trash can incident as an after-the-fact justification for the demotions.[23] The incident occurred after the demotions were implemented and Burgess and Cram returned to work as deputies, and appears to be relevant only because it was part of the background for the union's interference complaint, addressed in Issue 2 below.

A complainant can prove discrimination by showing the employer's actions were motivated by union animus. *Educational Service District 114*, Decision 4361-A. Raymond has not attempted to conceal his views towards the union and the role of "unions" in law enforcement.[24] His irritation with the union is clear – as is the union's irritation with Raymond. These parties do not like each other. Raymond has the right to dislike the union and to be philosophically opposed to "unions" in law enforcement. He does not have the right to discriminate against employees because of this. The union has established that Raymond has animus against Teamsters Local 839, but the union has not proven that his decision to demote Burgess and Cram was motivated by that animus. A finding of animus does not automatically mean that every adverse decision is motivated by it. *See Port of Tacoma*, Decision 4626-A ("[w]hile the evidence was sufficient to indicate union animus may have been present, we also find the record persuasive that any such animus was a far less influential factor than legitimate, nonretaliatory reasons the employer had"); *Morton School District*, Decision 5838 (PECB, 1997) (even in case where animus was found on part of the employer, it did not necessarily follow that action was substantially motivated by animus); *METRO*, Decision 2442 (PECB, 1986); *City of Bellingham*, Decision 13291 (PECB, 2021).

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[23] In its answer, the employer stated, "The Sheriff's decision to prevent Cram from supervising was confirmed in July 2022, when Cram was observed on video using a garbage can to prop open a secure door . . . ." Other than this pleading, there does not seem to be any evidence of the employer, or Raymond in particular, linking the trash can incident to the demotions. It seems that here, the employer's attorney is using the trash can incident as an example of how he believes that Raymond's judgment was correct. I am not persuaded that this reference is evidence of a post hoc coverup or manufacturing of justifications for Cram's demotion, as the union suggests.

[24] As noted above, Raymond distinguishes "unions" from "guilds," "associations," and "law enforcement organizations."

The record does not indicate that union animus was a factor in Raymond's decision to initiate the investigation, or to demote them after the investigation was complete. The union does not introduce any evidence to show that Raymond would have proceeded differently if the alleged false statements were unrelated to union activity, or that Raymond treated Burgess and Cram any differently than anyone else who had similar investigation findings.

I have considered the fact that Raymond talked about the investigations into Burgess and Cram in his March 8, 2022, letter to the community, in which Raymond expressed his frustration with the union and his view that on-duty union activities were interfering with the security and operations of the jail. It appears that Raymond brought up the investigation because he was irritated that Burgess continued to engage in union activity on work time (as Raymond described it, "keeping book" or "Black Book Ledgering") despite Raymond's direction immediately beforehand that they not do so on work time. Raymond testified, "they were journaling on behalf of the union while being employed by . . . the citizens of Franklin County . . . and they weren't supposed to be doing that." This does not prove a link between Raymond's union animus and his decision to demote Burgess and Cram.

Raymond insisted that all witnesses be able to have union representation present during their interviews with Conner and Huber, even if, as nonsubject employees, they arguably did not have the right to representation.[25] This indicates that despite his personal feelings about the union, Raymond wanted to ensure that the employees' union rights were respected, undercutting the argument that Burgess and Cram's demotions were part of an antiunion crusade.

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[25] Conner testified that he disagreed that the employees should have union representation at the interviews:

> I did not necessarily agree that everyone should be given a *Weingarten* permission, you know. I don't – based on my training and some of my own research I've done, I personally don't believe *Weingarten* necessarily applies to a witness, and I made that known. The sheriff made the decision: No. If – I don't care if they're a witness or a subject, if they want their union representative present, then they could have it.

In summary, the union has established a prima facie case of discriminatory demotions. The employer produced a legitimate, nondiscriminatory reason for Burgess and Cram's demotions: they were demoted for making dishonest statements, being untruthful and evasive during an investigation, and violating other policies. The union did not prove that this was a pretext and that Raymond actually demoted them in retaliation for filing unfair labor practice complaints.

Issue 2: Did the employer interfere with employee rights in a grievance response letter to Cram? The union claims that Raymond's statements in his July 21, 2022, grievance response to Cram constituted unlawful interference. Cram testified that he perceived the letter as a threat, "that if I continue with my actions and union participation that he is going to file a CJTC to have my certification revoked."

An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or other employees. *Kennewick School District*, Decision 5632-A.

In his July 21, 2022, letter, Raymond told Cram about changes to the law enforcement arbitration law, and his belief that he would have a duty to report an arbitrator's credibility finding to the CJTC under RCW 43.101.105, *if* the arbitrator made a finding regarding Cram's credibility. Raymond accurately informed Cram that the CJTC can revoke the certification of corrections officers for certain conduct. Raymond recommended that Cram and his union consider the effect of these laws as they decide whether to proceed to arbitration. Raymond then specifically clarified that union members have a fundamental right to exercise their grievance and arbitration rights under the CBA.

This information was all factual. He stated what the new law was, and what he believed he was obligated to do. Raymond did not threaten to use his discretion against Cram. An employee could not reasonably perceive that Raymond's letter was a threat of reprisal or force, or a promise of benefit, associated with Cram's union activity. *See Columbia Basin College*, Decision 11609-A (PSRA, 2013) (communications that are factual and do not offer a new benefit outside of bargaining do not interfere with employee rights); *Grays Harbor College*, Decision 9946-A

(PSRA, 2009) (accurate statements did not interfere with employee rights); *Spokane County*, Decision 12216 (PECB, 2014) (employer's statement was "substantially factual or informational, and not persuasive or coercive").

Issue 3: Did the employer refuse to provide information requested by the union?

The union argues that in his August 1, 2022, emails with Burgess, Raymond refused to communicate with the union's designated representative. Employees have the right to the union representation of their choosing, and it can be an unfair labor practice when an employer insists on dealing with someone other than the union's designated representative. *See City of Tacoma*, Decision 11064 (PECB, 2011), *aff'd, City of Tacoma*, Decision 11064-A (PECB, 2012), ("an employee's right to the union representative of his/her choice is an important right and, absent special or extenuating circumstances, is properly the right of union officials, not employers, to decide"); *City of Lakewood*, Decision 13044-A (PECB, 2021). Raymond's conduct here appears to have run afoul of this standard. In his emails with Burgess, Raymond insists on dealing with her as the "guild president," despite her protests that she was not the guild president and despite Alvarez' prior notice that he was the designated union representative.

A cause of action for "refusing to bargain with the union's designated representative," however, is not stated in the preliminary ruling for this case. Instead, the preliminary ruling is for "refusal to provide relevant information requested by the union concerning representation of bargaining unit employees." The preliminary ruling issued under WAC 391-45-110 limits the issues that agency examiners may consider or rule upon. WAC 391-45-110(2)(b), *King County*, Decision 9075-A (PECB, 2007).

If the unfair labor practice administrator did not capture the cause of action sought by the union, the union could have asked for clarification, pursuant to WAC 391-45-110(2)(b). The "refusal to provide relevant information" issue was stated in the original preliminary ruling in this case, issued on September 28, 2022. And in fact, the union did request clarification under WAC 391-45-110(2)(b), but the union only asked the unfair labor practice administrator to add the "interference" claim. The union did not take any issue with the unfair labor practice administrator's framing of an "information" issue rather than a "designated representative" issue. In response to the union's

request, the unfair labor practice administrator issued an amended preliminary ruling on October 6, 2022.

"Failure to provide information" and "refusing to bargain with designated representative" are two different, distinct types of employer refusal to bargain allegations. *See King County*, Decision 9075-A (noting distinct varieties of "refusal to bargain" exist). Each of these allegations has its own individual elements of proof, and each claim has its own separate identity. *Id.*; *see also Western Washington University*, Decision 9309-A (PSRA, 2008).

The union did not brief a "failure to provide information," instead arguing that the Sheriff failed to bargain with the union's chosen representative. Nonetheless, the issue stated in the preliminary ruling must be addressed.[26] *See, e.g., City of Seattle*, Decision 2935 (PECB, 1988) (analyzing claims even though union did not file a brief); *Yakima County (Teamsters Local 760)*, Decision 13338 (PECB, 2021).

Alvarez' request for information was clearly a prospective information request. He stated that "Moving forward the Union . . . request[s] a copy of all correspondence between the Sheriff's Office and its membership . . . ." The request was not for documents that were in existence at the time of the request. The duty to provide information traditionally creates a duty to provide relevant *existing* documents. *See Island County*, Decision 11946-A; *Seattle School District*, Decision 9628-A. There is no relevant precedent that would create a duty under Chapter 41.56 RCW to comply, in perpetuity ("moving forward"), with a prospective information request.

The duty to provide information encompasses information "needed by the opposite party for the proper performance of its duties in the collective bargaining process." *City of Bremerton*, Decision 6006-A (PECB, 1998) (citing *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *City*

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[26] The employer also missed the mark in its briefing of this issue. The employer argued that the employer had not "refused to bargain" *generally* with the union, asserting, "The Employer has never refused to bargain with the Union about issues and has hired a representative to handle bargaining . . . ." The employer did not address the specific "failure to provide information" form of "refusal to bargain" that was recognized in the preliminary ruling.

of Bellevue, Decision 3085-A (PECB, 1989), *affd*, 119 Wn.2d 373 (1992)). Alvarez' prospective request for "all correspondence" is not necessarily limited to such relevant information.

The union's July 25, 2022, letter, was not an information request that triggered a duty to provide information under the PECBA, and so it was not a refusal to bargain for the Sheriff to not comply with the request.

CONCLUSION

The union has not carried its burden of proof in establishing that the employer demoted Burgess and Cram for filing an unfair labor practice complaint. Raymond's July 21, 2022, grievance response did not interfere with employee rights. The union has not established that the employer failed to provide information. The complaint is dismissed.

FINDINGS OF FACT

1. Franklin County (employer) is a public employer within the meaning of RCW 41.56.030(13).

2. Teamsters Local 839 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. Jim "J.D." Raymond is the Franklin County Sheriff.

4. McKenzie Burgess was a Corrections Corporal.

5. Scott Cram was a Corrections Sergeant.

6. Stephen Sultemeier was the Jail Commander.

7. Monty Huber was a Corrections Commander.

8. Marcus Conner was a Corrections Sergeant.

9. Jesus Alvarez is the Business Agent for Teamsters Local 839.

10. Prior to April 2020, the Corrections Deputies employed at the jail were represented by the Franklin County Corrections Officers Association which was affiliated with the Fraternal Order of Police. In April 2020, an amended certification was issued in which the association affiliated with Teamsters Local 839. *Franklin County*, Decision 13181 (PECB, 2020).

11. McKenzie Burgess was hired by Raymond as a Corrections Deputy in 2017. In September 2018 she became the president of the Association. Raymond promoted her to a corporal in 2019. When the association affiliated with Teamsters Local 839 in 2020, Burgess ceased being association president and become the lead shop steward for Teamsters Local 839.

12. Scott Cram was hired by the prior sheriff in 2002. At some point, Cram was promoted to corporal, and Raymond promoted Cram to corrections sergeant in 2015. Cram had participated on the association's bargaining team, and later, was a Teamsters Local 839 shop steward and member of the Teamsters Local 839 bargaining committee. At some point, Cram became a Corrections Training Officer (CTO) for the jail.

13. Burgess and Cram filed unfair labor practice (ULP) complaints against the employer on October 15, 2021, and December 10, 2021.

14. After reading the ULP complaints, Sultemeier reported to Raymond that the ULP complaints contained lies. Raymond opened an investigation into Burgess and Cram, and directed Huber and Conner to conduct the investigation.

15. As part of the investigation, Conner and Huber interviewed Burgess, Cram, Sultemeier, and nine other employees.

16. Conner and Huber found that Cram committed 10 policy violations and Burgess committed 23 policy violations. They recommended that the Sheriff terminated Burgess and Cram.

17. Raymond sent Burgess and Cram letters on April 29, 2022, sustaining Conner and Huber's findings and informing Burgess and Cram that they were being terminated.

18. The union filed grievances on May 2, 2022, challenging Raymond's decision to terminate Burgess and Cram.

19. In response to the grievances, Raymond scheduled "Loudermill" meetings for Burgess and Cram.

20. Following the Loudermill meetings, on May 27, 2022, Raymond sent Burgess and Cram new letters, informing them that they were being demoted without loss of pay.

21. Raymond has animus against Teamsters Local 839.

22. As described in paragraph 13 of these findings of fact, Burgess and Cram were engaged in protected union activities.

23. A causal connection exists between Burgess and Cram's union activities described in paragraph 13 of these findings of fact and their demotions.

24. Raymond decided to investigate Burgess and Cram based on Sultemeier's complaints, and this reason was not a pretext for a discriminatory motivation.

25. Raymond decided to demote Burgess and Cram based on Conner and Huber's investigation, findings, and recommendations, as well as Burgess and Cram's input provided at the Loudermill meetings. This reason was not a pretext for a discriminatory motivation.

26. Raymond's animus against Teamsters Local 839 was not a factor in his decision to investigate or demote Burgess and Cram.

27. On or about July 8, 2022, Raymond and Sultemeier removed Cram's Corrections Training Officer duties after he was discovered propping open a jail door with a garbage can.

28. On July 13, 2022, the union filed a grievance alleging this was discipline without just cause.

29. On July 21, 2022, Raymond sent Cram a letter in response to the grievance, stating that the union's threat to take the case to arbitration should be "carefully weighed." Raymond described new legislation relating to law enforcement labor arbitration and the Criminal Justice Training Commission.

30. On July 25, 2022, Alvarez sent Raymond a letter requesting, "moving forward . . . a copy of all correspondence between the Sheriff's Office and its membership . . . ."

31. On August 1, 2022, Raymond sent a letter to Burgess, to "serve as notification to the Correction Guild members" that the Sheriff's Office was going to investigate an in-custody death.

32. Raymond and Burgess exchanged correspondence in which Burgess objected to Raymond sending her the notification instead of Alvarez, and Raymond dismissed her objections.

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. As described in findings of fact 10 through 26, the employer did not discriminate against Sergeant Scott Cram in violation of RCW 41.56.140(3) by demoting him for filing an unfair labor practice complaint charge or giving testimony before the Commission.

3. As described in findings of fact 10 through 26, the employer did not discriminate against Corporal McKenzie Burgess in violation of RCW 41.56.140(3) by demoting her for filing an unfair labor practice complaint charge or giving testimony before the Commission.

4. As described in findings of fact 27 through 29, the employer did not interfere with employee rights in violation of RCW 41.56.140(1) by threats of reprisal or force or promises of benefit made to Scott Cram in a step one grievance response letter.

5. As described in findings of fact 30 through 32, the employer did not refuse to bargain in violation of RCW 41.56.140(4) by refusing to provide relevant information requested by the union concerning representation of bargaining unit employees.

ORDER

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

ISSUED at Olympia, Washington, this 9th day of October, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEAN M. LEONARD, 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 10/09/2023

DECISION 13726 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 135905-U-22

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