STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY CORRECTIONS GUILD,	)	
Complainant,	)	CASE 18850-U-04-4788
vs.	)	DECISION 9799 - PECB
SNOHOMISH COUNTY,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER

Merker Law Offices, by *George Merker*, Attorney at Law, for the guild.

Janice Ellis, Snohomish County Prosecuting Attorney, by *Doug Morrill*, Deputy Prosecuting Attorney, for the employer.

On October 27, 2004, the Snohomish County Corrections Guild (guild) filed an amended unfair labor practice complaint against Snohomish County (employer), charging this employer with interference with employee rights and discrimination in violation of RCW 41.56.140. A preliminary ruling was issued on November 29, 2004.[1] An answer was received and filed December 21, 2004. A hearing was held before Examiner J. Martin Smith on April 11 and 12 and May 25, 2006.[2] Both parties filed post hearing briefs.

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[1] The Guild filed its original unfair labor practice claim on September 21, 2004. A preliminary ruling allowed several complaints to go to hearing, but dismissed a complaint with regard to use of County computers. The amended complaint here was filed in response to the deficiency notice.

[2] The parties requested postponement of the scheduled hearing in order to allow an opportunity to settle this case. Settlement discussions began in May of 2005. Those talks failed by December of 2005, and hearing dates were re-set.

ISSUES

1. Did the employer discriminate and/or interfere with employee rights under RCW 41.56.140 when it denied certain uses of the County e-mail system to supporters of a decertification effort?

2. Did the employer interfere with and/or discriminate under RCW 41.56.140 against employees supporting a rival labor organization when it allowed the use of the e-mail system by the incumbent labor organization, Teamsters Union Local 763?

3. Did the employer interfere with and/or discriminate against employees under RCW 41.56.140 when it purportedly removed union-related posters and flyers from walls in work areas of the employer?

4. Did the employer interfere with and/or discriminate against employees supporting the rival labor organization by its use of "corrective counseling" letters, in violation of RCW 41.56.140?

5. Did the employer interfere with and/or discriminate against a guild supporter by telling her she "could not file" a grievance or an unfair labor practice charge regarding corrective counseling letters, in violation of RCW 41.56.140?

6. Did the employer interfere with its employees by reprimanding them for wearing their uniforms to a guild organizing meeting, in violation of RCW 41.56.140?

Based on all the arguments and evidence submitted by the parties on the six issues, the Examiner rules that the employer did not interfere with or discriminate against bargaining unit employees by its use of restrictions on the County computer and e-mail system, or by allowing certain e-mail use by the incumbent labor organiza-

tion. Similarly, the employer did not interfere with or discriminate against the employees by policies regarding election posters and campaign material or by corrective counseling letters issued after misuse of the e-mail system. The employer did not interfere with a guild supporter when it told her she "could not file" a grievance or an unfair labor practice complaint. And last, the employer's reprimand of employees for rowdy behavior away from the workplace - while in uniform - did not violate RCW 41.56.140(1). No independent interference or discrimination violations are found.

APPLICABLE LEGAL PRINCIPLES

Legal Standards for Interference

Firm and consistent precedent establishes that employer interference with employees engaged in union activities is not to be tolerated. The Public Employees Collective Bargaining Act (Chapter 41.56 RCW) prohibits employee organizations from interfering with, restraining or coercing employees in the exercise of their collective bargaining rights:

> RCW 41.56.040. RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE. No public employer, or other person, shall *directly or indirectly*, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees *in the free exercise of their right to organize and designate representatives of their own choosing* for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

(emphasis added). Enforcement of these statutory rights is through the unfair labor practice provisions of the statute.

Both unions and employers can commit interference violations, although complaints involving employer conduct occur with more frequency. *City of Issaquah,* Decision 9255 (PECB, 2006); *City of Port Townsend,* Decision 6433-B (PECB, 2000). The legal determination is similar and is relatively simple: Interference is based not upon the reaction of the particular employee involved, but

rather on whether a typical employee in similar circumstances reasonably could perceive the conduct as a threat of reprisal or force or promise of benefit related to the pursuit of rights protected by the chapter. *Community College District 13 (Columbia Basin)*, Decision 9210 (PSRA, 2006); *King County*, Decision 6994-B (PECB, 2002). Intent or motivation is not a factor or defense. Nor is it necessary to show that the employees involved were actually interfered with or restrained for an interference charge to prevail. *King County*, Decision 6994-B. Claims of unlawful interference with the exercise of rights protected by Chapter 41.56 RCW must be established by a preponderance of the evidence. That burden of proof is not substantial. *City of Pasco*, Decision 9181 (PECB, 2005). In situations where internal or PERC elections are being held, however, rules restricting campaign activity to non-working hours and specified locations of public facilities are not unlawful interference. *King County*, Decision 8630-A (PECB, 2005).

Legal Standards for Discrimination

The Public Employment Relations Commission and State court rulings require a higher standard of proof to establish a "discrimination" violation. This standard has come to be known as the Wilmot-Allison test. A discrimination violation occurs when: (1) the employee exercised a right protected by the collective bargaining statute, or communicated to the employer an intent to do so; (2) the employee was discriminatorily deprived of some ascertainable right, benefit or status; and (3) there was a causal connection between the exercise of the legal right and the discriminatory action. *Educational Service District 114*, Decision 4361-A (PECB, 1994); *Mansfield School District*, Decision 5238-A and 5239-A (EDUC, 1996).[3]

In a discrimination case, a complainant has the burden to establish a prima facie case of discrimination, after which the employer has

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[3] See *Wilmot v Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v Seattle Housing Authority*, 118 Wn.2d 79 (1991).

the opportunity to articulate legitimate, non-retaliatory reasons for its actions. The burden remains on the complainant to prove, by a preponderance of the evidence, that the disputed employer action was in retaliation for the employee's exercise of statutory rights, which may be done by: (1) showing the reasons given by the employer were pre-textual; or (2) showing that union animus was nevertheless a substantial motivating factor behind the employer's action. *Educational Service District 114*, Decision 4361-A. To prevail on a discrimination claim, it is critical that the complainant show a disciplinary action was taken in reprisal for union activity. *City of Kirkland*, Decision 6377-A (PECB, 1998).

ANALYSIS

Background

The employer last signed a collective bargaining agreement for its custody and correctional officers in 2002. That agreement was negotiated with Teamsters Union Local 763 (union) and terminated December 31, 2004.

On October 6, 2004, a question concerning representation was created by a petition filed by the Snohomish County Corrections Guild (guild). Officers Juan Rubio and Eva Frese were instrumental in organizing the campaign for a guild. The election campaign was contentious from the beginning. The record was replete with stories of campaign posters disturbed or vandalized, conflicts among the staff, and assorted bad feelings among the employees, divided as to which labor organization should lead them and bargain a new contract. After the guild's petition was filed, no bargaining could take place on a successor contract until the question concerning representation was resolved. As of this writing no new agreement has been reached.

Even before the petition was filed, problems arose. On August 20, 2004, jail director Steve Thompson e-mailed a memo admonishing

employees in his department that County e-mail systems were not to be used for non-county business.[4] Thompson referred specifically to "a possible interest in de-certification of the current labor group," meaning to reference the guild de-certification and organizing effort to supplant the incumbent Teamsters union. Thompson indicated that "corrective action" - presumably against bargaining unit employees - was underway.[5]

In an election conducted by the Commission, the guild prevailed over the Teamsters 108 - 33, with one ballot cast for "No Representative." The guild was certified December 10, 2004.[6]

Issue 1: Did the employer discriminate and/or interfere with employee rights under RCW 41.56.140 when it denied certain uses of the County e-mail system to supporters of a de-certification effort?

The employer did not discriminate or interfere with employee rights under RCW 41.56.140, and properly placed limits on the use of the county e-mail system. The guild was not yet a recognized representative for purposes of bargaining in the period prior to December of 2004. The union's uses here, as a rival labor organization, went beyond normal *de minimis* use.

The County's e-mail policy closely mirrors the language and purpose as that of King County, discussed in Decision 6734 and 6734-A.

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[4] Such e-mails went to all bargaining unit employees and other supervisors in the jail facility.

[5] Counsel for the petitioning guild submitted a letter to Director Thompson soon thereafter, protesting the letters of reprimand and indicating that "incidental personnel use" of electronic mail was permitted under a 2003 version of the County's policy, and that therefore the Director's actions were an unfair labor practice. See footnote 7.

[6] *Snohomish County*, Decision 8805 (PECB, 2004).

King County's language read "*[employee] e-mail is to be used to conduct official County business.*" King County Policy 2.1.2 also stated, "The use of County equipment for personal use, gain, personal business, a commercial advantage, solicitation for any person or non-profit, *advocacy of a cause or special interest*, political advantage or any unlawful purpose is prohibited." (emphasis added)

The policy at dispute in this case is Exec. Order 99-31A, DIS-002 (2003). It was in use during 2004, and reads:

> It is appropriate to use the County's electronic mail system ("e-mail" hereafter) to conduct official County business and to facilitate efficient communications. . . . Snohomish County's e-mail may be used for County business purposes only. . . . The term "county business purposes" means the official work of County government undertaken for the public benefit, as opposed to activities undertaken for personal, non-County or other private purposes.

Even this employer's corrective counseling letter reads the same as in the King County cases: "It has recently come to my attention from a variety of sources that a few individuals in the department may be using the County e-mail system for non-County business." Why then should the Commission apply a different rule here than in King County?

The County policy regarding the computer system was appropriately applied during the organizational and election campaign period. The guild did not establish that its use of the e-mail system - to establish a guild officer Board and to campaign for a PERC conducted election - was an appropriate use of the e-mail system.[7]

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[7] The new e-mail policy explicitly stated that Executive Order 92-11 continued to be in effect in 2003 (4.7), that electioneering was prohibited (4.7.2), and that Policy DIS-002 did not "replace or supercede" other policies.

The union's claims based upon *Community College District 13*, Decision 8117-B are misplaced.

The employer moved to dismiss the allegation regarding e-mail at the close of the guild's case-in-chief. The Examiner granted that motion at hearing, and affirms that ruling here.[8]

Issue 2: Did the employer inappropriately allow use of the e-mail system to the incumbent labor organization?

The employer did not violate RCW 41.56.140 when it allowed certain uses for the e-mail system to the Teamsters in the time period prior to filing of the representation petition. The Teamsters were the certified bargaining representative during 2004. Article 14.1 of the labor contract then in effect between the Teamsters and the employer called for labor-management meetings to "alleviate potential grievances and establish harmonious working relationships between the employees." The contract called for either party to request a meeting with one week notice and to exchange agendas of what they wanted to talk about - these were routinely accomplished through e-mail. The Teamsters were also allowed access privileges to employees in the workplace, and bulletin board space for union notices (Article 4.3). These are permitted under RCW 41.56.040 and 140. *Pierce County*, Decision 1786, (PECB 1983); *King County*, Decision 8630-A (PECB, 2006).

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[8] The guild filed a motion for reconsideration regarding the dismissal of the e-mail policy issue. The Examiner agrees that the guild retains standing to file and make a case on interference violations. But the guild failed to adduce facts indicating that the County's e-mail policy was illegal or discriminatory or was administered with bias towards the incumbent labor organization. *Guard Publishing Company*, 2002 NLRB Lexis 70, 2002, is not the law to be applied under Chapter 41.56 RCW. The Examiner chooses to follow *King County*, Decision 6743-A.

The record showed that notes from a labor-management meeting of March 31, 2004, were prepared by officer Ken Ivey, a shop steward for the Teamsters. Other Teamster members were at the meeting, as were director Thompson and detention manager Chris Bly. Among the meeting topics were: (1) computer terminals, (2) charity fund-raising, (3) nepotism, (4) uses of seniority under the contract, (5) use of medical assistants and nurses, and (6) overtime issues and other items. These notes were distributed via e-mail to all employees at the jail. Permitting such a report on a labor-management meeting does not establish biased usage allowed by the employer. These were statutory duties of bargaining permitted to the Teamsters, and provided for in their labor agreement. All of these communications were work-related and did not violate either 99-13 or the newer DIS-002.

It is disingenuous for the guild to assert that e-mails and behavior of the employer in March and April, 2004 - far before the beginnings of the guild movement - are somehow violative of the statute. Even in that period, however, the employer took action to enforce its e-mail policies when it believed inappropriate use had occurred. For instance, the Teamsters were allowed to use e-mail so that shop stewards and those involved on the bargaining committee could solicit ideas from the membership as to what would be discussed in upcoming negotiations (April 8, 2004). However, an e-mail of April 16 recounting union meetings at the pizza parlor was over-the-line, and a memo was dispatched to "all hands" by Commander Bly on April 21, stating:

> This to inform you that the use of all hands e-mails is not the acceptable forum for in-depth discussions regarding Department issues. I understand and promote the need for people to discuss issues and ideas; however, the electronic media is not the place. The correct forum is through your chain of command, or the labor management process. . . .

The record is also clear that several corrections employees were admonished for using the e-mail system to engage in debate over whether the Teamsters or the guild should be elected to represent their bargaining unit. At least two of those employees were Teamster members at odds with the guild petitioners. (See Issue 4, *infra*) E-mails sent out on August 16 and 19, 2004, were inappropriate under the County policy and the employer promptly took action.

The employer moved to dismiss this allegation at the close of the guild's case-in-chief. The Examiner granted that motion at hearing, and affirms that ruling here. Taken as a whole, the employer walked a fine line between involvement and bias, and managed not to offend RCW 41.56.140 in the process. The guild did not show that the employer implemented or used the e-mail policies in a discriminatory fashion.

Issue 3: Did the employer inappropriately remove posters and flyers from walls in work areas during the election campaign?

Neither labor organization was entitled to enforce "bulletin board" privileges once a representation case campaign had started; *See Pierce County*, Decision 1786 (PECB, 1983). *King County,* Decision 8630, 8630-A (PECB, 2004) stands for the proposition that the employer may implement and enforce even-handed restrictions on flyers, picketing, and posters related to union campaigns that use the employer's premises. PERC has also found legitimate reasonable rules by State of Washington agencies regarding posting of small posters. Restrictions on postings in areas where the general public could view materials are not violations of RCW 41.56 or 41.80. *State of Washington*, Decision 9349 (PSRA, 2005).

On October 21, 2004, correctional officer Ed Howard, a guild supporter, alleged to Thompson that "numerous" postings sponsored and created by the guild were removed from the walls inside the

jail. Howard contended that "supervisors" were responsible. In response, Director Thompson dispatched a letter to employees on October 22, 2004. That letter acknowledged that posters with graffiti or other inappropriate defacement had been removed. Thompson said that he would involve the affected labor organization if other posters had to be removed for the same reason.

Even if the record proves that some posters were removed, there is no support for the allegation that Thompson personally removed any. In any event, *King County,* Decision 8630-A provides that an employer may take reasonable action to limit disruption in the workplace when a PERC election proceeding is underway. The Examiner rules that the County complied with the law in this area, and that no remedy is called for. The employer moved to dismiss this allegation at the close of the guild's case-in-chief. The Examiner granted that motion at hearing, and affirms that ruling here.

Issue 4: Did the employer interfere with or discriminate against employees by use of "corrective counseling" letters?

On August 19, 2004, Thompson issued "letters of corrective counseling" to at least seven employees in the bargaining unit. The letters stated as follows:

> It has been brought to my attention that you have been using Snohomish County work hours and the County e-mail system for non-county purposes. This is an improper use of County work hours and the e-mail system. This conduct violates the following: (1) Article 4.2 of the Agreement by and between Snohomish County, Washington and [Teamsters] No. 763. County work hours shall not be used by employees or Union Representatives for the promotion of Union affairs. (2) Executive Order 99-31A Use of County Email . . . may be used for business purposes only. . . .

Each letter also attached a copy of policy 99-31A, the employer's policy on appropriate use of its e-mail system. As noted else-

where, that policy required that the e-mail system be used only to conduct official county business and to facilitate efficient communication. The policy noted that violations could result in discipline.

The corrective counseling letters reminded employees that all e-mail communications were the property of Snohomish County and were viewable, discoverable and available to the public under provisions of the Public Disclosure Act at RCW 42.17. Recipients of the letters included officers Ball, Moody, Frese, Crumrine, Howard, Aitchison and Larson. Frese was clearly known to the employer as a proponent of the guild, and the documentary record reveals that Ball, Moody, Crumrine and Howard were also guild supporters. The documentary record indicates that Larson and Aitchison supported the Teamsters. All seven employees were warned that further violations could result in discipline up to the level of termination, paraphrasing from the policy itself.

The corrective counseling memos were issued in letter form directly to the individual employees, and not through the e-mail system. The employer attempted to be even-handed with both groups, even with the use of the corrective counseling letters. The employer's decision to deal with the "campaign" issues away from the County computer system was appropriate. With the e-mail policy attached there was no question just what behavior the County expected to be limited.[9]

The employer was obligated to (1) deal with the employees in the subject bargaining unit as represented only by the Teamsters and not the Guild, and (2) comply with Chapter 41.56.040 RCW once a representation case was anticipated and after it was filed.

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[9] The designation of the Policy on e-mails was corrected by a letter of September 7, 2004.

The Examiner concludes that no interference violation has occurred here, because the typical employee in similar circumstances would only perceive that they used the County's computers incorrectly or illegally, not that s/he would be punished for their use, or for helping decertify a union. In addition, the employer's policy on e-mail comports with the "legitimate limitation" discussion in *King County*, Decision 8630 and 8630-A, and with the discussion in *Seattle School District*, Decision 5880 (PECB, 1997).[10] The county proved that it took the corrective counseling action to immediately caution its employees about the uses of the e-mail system, and not as a pretext to retaliate against non-Teamster employees in the corrections force. The preponderance of the evidence showed that director Thompson was trying to maintain a neutral stance during the impending question concerning representation and campaign to change bargaining representatives. A similar case is *King County,* Decision 8630, 8630-A. There, the incumbent union for transit workers was conducting internal union officer "campaigning." To regulate leaflet activity and use of bulletin boards, the union drafted a set of rules and posted them. These rules were reviewed, endorsed and signed by the employer's division manager. Although the rules might have restricted employee protected activity, the Examiner found that the rules and their posting were "a legitimate limitation on the use of the employer's premises for union business." The campaign rules did not address e-mail campaigning but did allow supervisors to remove posted campaign material which was not suitable for viewing or was in bad taste. *See also State of Washington*, Decision 9349.[11]

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[10] Although the discussion in that case centered around an "internal mail" system that predated any common use of e-mail, the parallels between the systems make the findings in that case relevant here.

[11] The King County decisions may not have been available to either union or the employer during late 2004.

Since the Examiner finds no interference violation, it is even more difficult for the petitioner to assert and prove a discrimination violation under Wilmot-Allison. The petitioner guild has not made a prima facie case under Wilmot because, although it showed that guild members were engaged in protected activity, it did not show that they were deprived of any ascertainable right or benefit. Neither the corrective counseling letter nor verbal admonishment rose to that level. There is hence no violation of RCW 41.56.140(1).

Issue 5: Did the employer interfere with or discriminate against a guild supporter by telling her she could not file a grievance or unfair labor practice regarding the corrective counseling letter? Whether Steve Thompson interfered with guild supporter Eva Frese depends very much on the meaning and impact of his comment that "you cannot file an unfair labor practice or file a grievance." The testimony of Thompson is as follows:

> I think, you know, she [Frese] was taking exception to getting one [a corrective counseling letter] and I was explaining to her that it wasn't discipline. We had a nice healthy conversation about it or debate. I recall her saying, well, you know, I'm going to grieve it. And I didn't consider it a threat or anything, just a statement of fact of what action she might take. I think, well, you can't grieve it, it's not - there's no violation of a contractual term here, you don't have a grievance . . . [m]y intent was - at first was to make sure she understood this wasn't discipline. Second, when she's well, I'm going to grieve it, I was explaining to her that in my opinion it didn't violate a contractual term and probably on that - on its face wasn't a grievable issue . . . We did talk about the ULP and my response was quite similar and that was I don't see a violation of the contract. I don't see any change in practice.
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> My understanding was that would not fit the bill of what my understanding of what an ULP - in terms of whether it would be appropriate or sound - you know, something with foundation, I guess, it just didn't meet the level in my mind.

The record is clear that no one but Frese heard these comments - there was no assembled meeting or gathering of employees. Thompson's answers were replies to Frese's questions, and not prepared and researched labor law answers that might be aimed to guild attorneys or business representatives. They were not meant to exhibit the County's policy.

On balance, Thompson's comments appear to be a hurried labor relations opinion that probably needed fuller explanation. Most likely, Frese or any other employee in the bargaining unit could file and serve a grievance or unfair labor practice. Although Frese lacked standing to file grievances on behalf of the guild, Thompson legitimately could expect grievances to be filed through the incumbent union, the Teamsters. Those thoughts were not articulated to Frese. In fact, the Teamsters went ahead and filed grievances over the corrective counseling letters.

During this discussion, Thompson and Frese were trading labor relations opinions, and they clearly disagreed. "You can't file" was not a demand by Thompson that Frese and the guild would be barred from filing a complaint, and implied no effort by the employer to stand in their way. Other employees who had not filed several grievances as a Teamster, as Frese had, might have accepted Thompson's comments as closer to accurate and definitive. Upon hearing Thompson's opinion, Frese and the guild adherents sought other advice which led them to file both grievances and unfair labor practices. To Frese, they were the words of legal challenge, so she filed grievances anyway.

The record here does not support the guild's claim that the comments to Frese could be taken as a threat or promise of benefit in violation of RCW 41.56.140, nor would such a comment be taken as a threat by a member of the bargaining unit who had not been involved in filing grievances or representation cases. Bargaining unit employees are smart enough to know that they may always

communicate with a union representative for a balanced opinion about what claims could be filed in a labor law setting. And that was the action here. *See City of Issaquah,* Decision 9255 (2006).[12]

Issue 6: Did the employer interfere with its employees by reprimanding them for wearing uniforms to a guild organizing meeting? During the spring and summer of 2004, several meetings took place at the Labor Temple and at Alfy's Pizza near the jail facility and courthouse. At a meeting sometime after the October 6 petition was filed, the pizza parlor debates between pro-Teamster and pro-Guild factions became somewhat heated, and the manager of the restaurant tried to curtail the coarse language. Many of the employees were still wearing their uniforms, and hence the general public knew who was causing the ruckus.

The record includes three versions as to the employer's reaction to these incidents:

- Detention Commander Chris Bly, one of the three division commanders, testified that no employee was ever told "not to wear a uniform" in public. He was not asked whether employees were asked to "cover" their uniforms while in public. Bly remembered that a similar event had occurred where an officer was drinking in public while wearing his uniform. That employee was disciplined.

- Director Thompson addressed the issue at a joint labor-management meeting. He expressed some anger that employees were making an ugly scene at a local restaurant, especially since they were identifiable as County employees. Thompson testified that:

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[12] The *Issaquah* case, of course, was being adjudicated as the parties in the instant case went to hearing.

> the manager actually had to come over and ask them to be quiet or to quiet down . . . [or to] leave because of the families and kids. So I think in response to that we had a labor/management meeting scheduled, as it turned out. So I advised everybody there from all the groups that they could not be out in public reflecting poorly on the county or the department, particularly if they're in uniform. That advertises who they are and what they're doing. . . . So I said, you know, that stuff has to be knocked off, and if it's not it would be subject to discipline.

Thompson did not indicate whether a new policy was announced, implemented or even hinted at. During cross-examination of Thompson, guild counsel never asked about his comments at labor-management. Guild organizer Rubio's testimony about this incident indicated only that Thompson told him soon after the Alfy's pizza ruckus that Thompson had received complaints over his people being rude in public while wearing uniforms.

- Eva Frese and Thompson discussed the topic of uniforms in their early August 2004 conversation, part of the same conversation in which they discussed the corrective counseling letter and the use of e-mails. Frese was asked at hearing about that conversation:

> Q. Did you hear . . . that Mr. Thompson would reprimand people who would attend guild meetings in uniform?
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> A. Yes.
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> Q. Did he confirm that he was doing that?
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> A. What he said was that he did not want people attending meetings in their uniforms. He wanted us to wear a coat to cover the patches, which is against our policy at the time . . . that was written by Ms. Bynam before he [Thompson] got there, that we were forbidden to wear our personal coats over our uniform . . . .

No further incidents involving uniforms took place. As the employer's attorney pointed out at hearing, Frese's comment that Thompson "wanted us to wear coats" to cover uniforms is vague and unsubstantiated hearsay. The former corrections director did not testify, and there is no written record about a prior policy. Frese could not "confirm" that Thompson or any other supervisor was reprimanding employees for wearing the uniforms uncovered.[13] Frese admitted she warned her own Guild membership to wear "cover" for the uniforms at meetings, or to not wear them outside the correctional facility.

The testimony on this issue is clear enough that Thompson conveyed to the correctional employees - both Teamsters and guild adherents - that such behavior was distressing, and that he wanted the behavior to cease. Neither Thompson, the Teamsters, or the guild suggested the existence of any new policy with regard to uniforms, where to wear them or how to wear them. The fact that officers Rubio and Frese believed there was a new policy, absent a written memorandum or note in a labor-management meeting to the contrary, does not establish a new policy, as of October 2004. It then follows that there was no change in the policy, no reprimands issued to officers, and no interference as a result.

CONCLUSIONS

The employer did not interfere with or discriminate against employees in the bargaining unit through limitations on e-mail use by a decertifying organization, nor by its use by the incumbent labor organization. The employer's efforts to remove offending

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[13] Officer Rubio asserted in his testimony that the uniform policy has changed, and that Thompson "now allow[s] officers to wear anything you want over your uniform until you get to work, and then you are not allowed to wear anything other than a jacket or sweater over your uniform.

posters and placards, during an election campaign, are permitted by statute and do not interfere with employee rights under RCW 41.56.140.

The evidence in this case demonstrates that the employer did not engage in interference or discrimination behavior when it issued letters of corrective counseling to three employees for use of e-mails during an organizing campaign. Further, the employer did not interfere with employee rights when a manager stated that employees could not file unfair labor practice charges. The employer did not interfere with employees on how they wore their uniforms away from the work site, nor establish a new policy on how they wore them at work.

FINDINGS OF FACT

1. Snohomish County is a "public employer" within the meaning of RCW 41.56.030(1). Steve Thompson is the director of the jail and correctional facility at Snohomish County, administered as part of the Sheriff's Department. Thompson was the department director during all times relevant to this complaint.

2. Teamsters Union Local 763 is an exclusive bargaining representative within the meaning of RCW 41.56.030(3).

3. During 2004, Teamsters Union Local 763 represented the corrections officers in the facility at Snohomish County, and the contract continued through 2004.

4. Snohomish County Corrections Guild is an exclusive bargaining representative within the meaning of RCW 41.56.030(3), representing corrections officers at the employer's jail facility.

5. On October 6, 2004, the Snohomish County Corrections Guild filed a petition for investigation of a question concerning representation with the Commission, seeking to represent the bargaining unit of corrections officers. On December 10, 2004, after an election, the Snohomish County Corrections Guild was certified to represent the corrections officers.

6. The employer admonished employees for using the County e-mail system to form a rival labor organization and to debate whether or not a de-certification effort would succeed. A county policy barred use of the e-mail system for political or union-related communication and campaigning. Use of the e-mail system by guild supporters exceeded normal *de minimis* use.

7. Use of the e-mail system by members and officers in the incumbent union, the Teamsters, did not exceed routine and acceptable uses attendant to their role as the exclusive bargaining representative. Use of the e-mail system to schedule or report on labor-management meetings was also acceptable as a "county use."

8. After some of the union and guild posters were defaced with graffiti and derogatory comments, officials of the jail facility removed the posters from the walls. There is no evidence that other posters were removed or that director Thompson personally removed flyers posted by either labor organization.

9. On August 19, 2004, letters of corrective counseling were issued to seven employees of the bargaining unit, informing them that it was a violation of Snohomish County policy to use the e-mail and computer system for non-county purposes. No actual discipline was administered as a result.

10. Director Thompson also issued an "all hands" e-mail admonishing all other employees of the bargaining unit to refrain from using the e-mail system for non-county purposes, on August 20, 2004. No discipline followed.

11. Thompson's comment to guild organizer Eva Frese that she could not file an unfair labor practice as the result of corrective counseling was made as informal legal advice and not in a threatening way. Thompson's comment that Frese could not file a grievance was meant to indicate that only the incumbent labor organization could officially file a grievance for bargaining unit members. That clarification was acknowledged when all employees filed grievances through the Teamsters.

12. Officers in this department have been admonished personally and in labor-management meetings about their behavior while appearing in the public wearing their uniforms. No officer was told by management to cover their uniforms or refrain from wearing them in public, and no change of policy resulted because of the formation of the guild or subsequent election campaign incident to a representation case processed by the Public Employment Relations Commission.

CONCLUSIONS OF LAW

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

2. By its actions described in paragraphs 6 and 7 of the findings of fact concerning its policies with regard to e-mail or e-mail use, Snohomish County did not interfere with or discriminate against employees in violation of RCW 41.56.140(1).

3. By its actions described in paragraph 8 of the findings of fact concerning removal of union posters or flyers, Snohomish County did not interfere with or discriminate against employees in violation of RCW 41.56.140(1).

4. By its actions described in paragraphs 9 and 10 of the findings of fact regarding the issuance of letters of corrective counseling related to use of the e-mail system, Snohomish County did not interfere with or discriminate against employees in violation of RCW 41.56.140 (1).

5. By its actions described in paragraph 11 of the findings of fact regarding comments by the jail director about the filing of grievances by guild members, Snohomish County did not interfere with or discriminate against employees in violation of RCW 41.56.140(1).

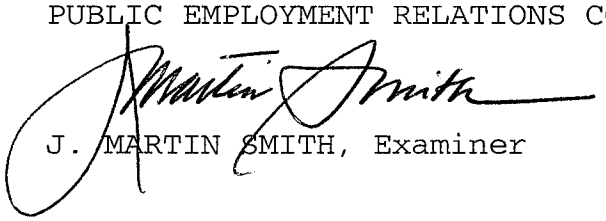
6. By its actions described in paragraph 12 of the findings of fact regarding conduct outside of the work site while in uniform, Snohomish County did not interfere with or discriminate against employees in violation of RCW 41.56.140(1).

ORDER

The complaint charging unfair labor practices is hereby DISMISSED.

ISSUED at Olympia, Washington, this 6th day of July, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



J. MARTIN SMITH, Examiner

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 07/06/2007

The attached document identified as: DECISION 9799 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER:	18850-U-04-04788	FILED:	09/20/2004	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	JAILERS				
DETAILS:	-				
COMMENTS:					

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