

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE POLICE GUILD,

Complainant,

vs.

CITY OF SPOKANE,

Respondent.

CASE 21697-U-08-05532

DECISION 10299 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND  
ORDER

Aitchison & Vick, Inc., by *Derrick Issackson*, Attorney at Law, for the union.

City Attorney Howard F. Delaney, by *Pat Dalton*, Assistant City Attorney, for the employer.

On May 8, 2008, the Spokane Police Guild (union) filed an unfair labor practice complaint against the City of Spokane (employer) charging employer interference and domination in violation of RCW 41.56.140(1) and (2) when the employer passed over detective Dean Sprague for a promotion. A preliminary ruling was issued on May 20, 2008, stating a cause of action to exist under RCW 41.56.140(1) and (2). The employer filed an untimely answer on July 2, 2008. Based on the untimely answer, the union filed a motion for a default judgment and requested the Examiner to treat all alleged facts as true and waive the hearing. In a joint conference call on August 19, 2008, the Examiner denied the motion. On August 26, 2008, the union filed an amended complaint charging employer refusal to bargain under RCW 41.56.140(4). An amended preliminary ruling was issued and a timely answer to the amended complaint was received. On September 3, 2008, the parties filed a joint request for the Examiner to accept the parties'

stipulated facts in lieu of a hearing. Since an examination of the answer revealed that no facts were in dispute, the motion was granted. Simultaneous briefs were subsequently submitted on October 3, 2008.

### Issues Presented

1. Did the employer violate RCW 41.56.140(4) and refuse to bargain when it passed over bargaining unit member Dean Sprague for a promotion?
2. Did the employer violate RCW 41.56.140(1) and interfere with Sprague's protected rights when it passed him over for a promotion?
3. Did the employer violate RCW 41.56.140(2) and assist the Lieutenant and Captain's Association by passing over Sprague for a promotion?

Based on the arguments and evidence submitted by the parties, the Examiner finds that the employer did not commit any of the alleged unfair labor practices and therefore dismisses the complaint.

Issue 1: Did the employer refuse to bargain with the union when it passed over bargaining unit member Dean Sprague for a promotion?

### Duty to Bargain

An employer and union are required to bargain in good faith on personnel matters, including wages, hours and working conditions under RCW 41.56.030. It is illegal for an employer to implement changes to the status quo or Civil Service Rules affecting mandatory subjects of bargaining until it has satisfied its bargaining obligation under Chapter 41.56 RCW. *See City of Yakima*, Decision 3504-A (PECB, 1990).

### Application of Standard

Lieutenant Sprague was a member of the Spokane Police Lieutenants and Captains Association (association) when he entered into a last chance agreement with the employer on February 7,

2006. As part of this agreement, Sprague agreed to a voluntary reduction in rank from lieutenant to detective. This reduction in rank moved Sprague from membership in the Lieutenants and Captains Association bargaining unit to membership in the union's bargaining unit.

On December 31, 2007, Detective Sprague was placed on a certified promotional list for the position of sergeant. As of December 31, 2007, Sprague was the highest ranking employee on the promotional list, but on April 29, 2008, Sprague was notified that he would be passed over for the sergeant position. Subsequently, on May 4, 2008, the employer offered the sergeant position to the next ranking officer on the promotional list.

The union argues that the employer changed the status quo by offering the sergeant position to an employee other than the top ranked employee on the civil service promotional list. The union states, and the employer agrees, that according to status quo, as written into the Civil Service Rules, the top ranked employee on the promotional list is the next to be promoted. However, the employer defends that the union has overlooked an exception to this rule provided by Civil Service Rule V, Section 4 which allows for an employee to be passed over for a promotion if there is reasonable cause to do so.

In a letter dated April 30, 2008, from the police chief to the City's Civil Service Commission, the employer explained that it offered the vacant sergeant position to the second ranked candidate based upon Civil Service Rule V, Section 4. According to this rule, a candidate may be passed over for substandard work performance, prior disciplinary problems, errors in the candidate's judgement, any other documented performance-related reasons, or by mutual pass over. The employer's letter to the Civil Service Commission also explained that the employer was not prohibited from following Civil Service Rule V, Section 4 by the last chance agreement entered into with Sprague and therefore there was no reason why it could not invoke the established Civil Service Rule.

The employer proved that it passed over Sprague for the promotion under the existing Civil Service Rules. Since the employer did not change the status quo, as codified in its Civil Service Rules, it did not have a duty to bargain and this issue is dismissed.

Issue 2: Did the employer interfere with employee rights by passing over Sprague for a promotion?

### Interference

RCW 41.56.140(1) prohibits employer interference with the exercise of employee collective bargaining rights. An interference violation will be found 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 (PECB, 1996). The complainant must establish its burden of proof by a preponderance of the evidence. *Dieringer School District*, Decision 8956-A (PECB, 2007).

### Application of Standard

As recounted above, the employer passed over Sprague for the promotion under the Civil Service Rules. None of the facts argued by the union convinces the Examiner that a reasonable person could perceive the employer's action of using the established Civil Service Rules as interference. The decision was neither a threat of reprisal nor a promise of benefit. Therefore, the employer did not interfere with employee rights and this issue is dismissed.

Issue 3: Did the employer assist the Lieutenant and Captain's Association by passing over Sprague for a promotion within the Spokane Police Guild?

### Employer Assistance

An employer commits an unfair labor practice when it controls, dominates or interferes with a bargaining representative. RCW 41.56.140(2). Commission decisions have found domination or assistance when an employer involves itself in the internal affairs or finances of the union, shows a preference between two unions or groups that are competing for the same bargaining unit, or in attempts to create, fund or control a "company union." *State - Labor and Industries*, Decision 9348 (PSRA, 2006). The union maintains the burden of proving the allegations of its complaint by a preponderance of the evidence. WAC 391-45-270(1)(a). Thus, in unfair labor practice complaints alleging domination or assistance violations, the union must prove the employer

intended to assist one union to the detriment of another. *Community College District 13 - Lower Columbia*, Decision 8117-B (PSRA, 2005).

### Application of Standard

The union argues that the employer showed preference to the Lieutenants and Captains Association by relying on the last chance agreement entered into between the association and the employer to pass over Sprague for a promotion. From the stipulations provided, the union did not prove that the employer relied upon the last chance agreement for passing Sprague over for the promotion. Rather, the employer relied upon the Civil Service Rules for its reason to deny Sprague the promotion. There is no evidence provided that the employer showed any preference for the Lieutenants and Captains Association. No evidence was provided to show that the employer's decision to pass over Sprague for the promotion based on the Civil Service Rules was intended to or did in fact assist the Lieutenants and Captains Association. Therefore, this issue is also dismissed.

### FINDINGS OF FACT

1. The City of Spokane is a public employer within the meaning of RCW 41.56.030(1) and has established a Civil Service Commission pursuant to Chapter 41.12 RCW. That Civil Service Commission has established rules which cover, among other subjects, promotions from rank to rank within the police department.
2. The Spokane Police Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of all commissioned police employees up through the rank of sergeant.
3. The parties to this charge of unfair labor practices agreed that there were no disputed facts in their allegations and therefore submitted joint stipulations in lieu of a hearing.
4. The City of Spokane and Spokane Police Guild are parties to a collective bargaining agreement through December 31, 2009.

5. On December 31, 2007, Detective Sprague was the next employee to be promoted on the lieutenant's promotional list established by the employer's Civil Service Commission.
6. On May 4, 2008, the employer passed over Sprague for a promotion and promoted another employee on the civil service list pursuant to Civil Service Rule V, Section 4.

#### 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. The Examiner granted a joint request to accept the parties' stipulated facts in lieu of a hearing under WAC 10-08-135.
3. The employer did not refuse to bargain or interfere with employee rights violating RCW 41.56.140(1) or (4) by using its Civil Service Rules to pass over Sprague for a promotion.
4. The employer did not assist the Lieutenants and Captains Association violating RCW 41.56.140(2) by using the Civil Service Rules to pass over Sprague for a promotion.

#### ORDER

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

ISSUED at Olympia, Washington, this 9<sup>th</sup> day of February, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[SIGNED]

CHRISTY YOSHITOMI, 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.