

By a complaint charging unfair labor practices filed with the Public Employment Relations Commission on November 17, 1982, Teamsters Local 461 alleged that Pierce County had acted in breach of its bargaining obligations with the complainant and had provided unlawful assistance to another labor organization in connection with various events occurring between November, 1981 and October, 1982. An amended complaint was filed on February 24, 1983. Several rounds of motions, answers, correspondence and position statements were exchanged among the parties and filed with the Commission up to April 20, 1983, including a motion for intervention by the labor organization named in the complaint and amended complaint as having received unlawful assistance from the employer. On April 20, 1983, the Executive Director issued his preliminary ruling under WAC 391-45-110 and assigned the matter to Jack T. Cowan, Examiner. A hearing on the matter was held at Tacoma, Washington on June 14, 1983, before the Examiner. The complainant filed a post-hearing brief on August 16, 1983. The employer and the intervenor filed a joint post-hearing brief on the same date.

BACKGROUND:

The Pierce County Deputy Sheriff's Association (Association) was originally formed during or about 1970. Its amended articles of incorporation dated April 14, 1975 describe its purposes as:

1. To promote the civic and social welfare of the Pierce County community.
2. To work to develop good citizenship and improve moral, mental and social welfare of the Pierce County community.
3. To engage in all other lawful purposes as are allowed under Section 501(c)(4) of the Internal Revenue Code.

Membership in the Association is limited by its articles of incorporation to:

All classified employees serving with the Pierce County Sheriff's Department and all other ancillary employees who are engaged in law enforcement activities in Pierce County.

The by-laws of the Association further limit membership to:

Any person who is a classified employee of the Pierce County Sheriff's Office or an employee with LESA by (sic) a clerical position related to the Pierce County Sheriff's Office.

The affairs of the Association are conducted between annual meetings by three trustees, a president, a vice-president and a secretary/treasurer. The organization is described in the testimony of its former president as a social organization of persons employed by Pierce County as deputy sheriffs. Although its articles of incorporation prohibit it from engaging in "lobbying", testimony reveals that one of the recent activities of the Association was a public information campaign designed to improve public awareness and support for the Pierce County Sheriff's Department. The main component of that campaign was an audio-visual presentation prepared for the Association by an advertising agency at a cost of \$10,000. The Association solicited support for that campaign from Teamsters Local 461, and received a \$2500 contribution from Local 461 towards the cost of the audio-visual presentation. The audio-visual presentation has been made available to service clubs and civic organizations in Pierce County. The presentation was also shown to the Pierce County Council. So far as it appears from this record, the Pierce County Sheriff's Association does not act, or seek to act, as the exclusive bargaining representative of Pierce County employees in collective bargaining.

For approximately the past 20 years, Teamsters Local 461 has been the exclusive bargaining representative of employees in the Pierce County Sheriff's Department. The same labor organization also represents a variety of other types of employees of the county in departments other than the Sheriff's Department. Pierce County and Teamsters Local 461 were parties to a collective bargaining agreement which contained a union security provision under which all employees were required to pay union dues or the equivalent.

Civil litigation was initiated in the Pierce County Superior Court on May 18, 1980 on behalf of certain deputy sheriffs employed by Pierce County. The purpose of that litigation was to challenge the union security provision contained in the collective bargaining agreement between the county and Local 461. As the result of a settlement agreement reached by the parties in that litigation, a petition was filed with the Public Employment Relations Commission on September 11, 1980 for investigation of a question concerning representation involving commissioned employees of the Pierce County Sheriff's Department. That matter was docketed by the Commission as Case No. 3025-E-80-583.

The Pierce County Deputy Sheriffs' Independent Guild (Guild) was formed on or about August 25, 1980 as a labor organization having a purpose to seek certification as the exclusive bargaining representative of law enforcement employees of Pierce County. The Guild filed a motion with the Commission on September 11, 1980 for intervention in Case No. 3025-E-80-583, and that motion for intervention was granted.

The Public Employment Relations Commission conducted a representation election and a run-off representation election in Case No. 3025-E-80-583, resulting in the certification, on December 18, 1980, of Local 461 as the exclusive bargaining representative of non-supervisory law enforcement officers employed by Pierce County. See: Pierce County, Decision 1050 (PECB, 1980).

The Guild affiliated on September 25, 1980 with the International Union of Police Associations (IUPA) and it remained a viable organization for a period of time after December 18, 1980. Thereafter, the Guild became dormant as an organization and was suspended by the IUPA as an affiliate of that organization.

The county's practice of making personal assignments of county-owned vehicles to certain county employees became a political issue in the campaign which preceded elections in 1981 for the offices of Sheriff and County Executive of Pierce County. A representative of Local 461 contacted Lyle Smith regarding the "cars" issue prior to Smith's election as Sheriff. Booth Gardner was elected as County Executive and, after taking office, took steps to effect expenditure reductions by elimination of personal assignment of police patrol vehicles. The cars became a subject of discussion, political action and attempts at collective bargaining by Local 461. Allegations concerning the failure or refusal on the part of Pierce County to bargain with Local 461 regarding the cars issue are currently pending before the Public Employment Relations Commission in another case, and are not decided as part of this proceeding. Suffice it to say that collective bargaining was only one of the channels of communication pursued by the employees involved. Substantial evidence indicates that the real motivation for the Association's expenditure on the audio-visual presentation, and for Local 461's contribution of financial support to that project, was related to the cars issue.

Officials of the Association sought and obtained an appointment with Gardner during or about November, 1981. During that meeting, officials of the Association raised a number of subjects, but in particular sought to draw Gardner into discussion of the cars issue. Some of the testimony indicates that Gardner precluded discussion of the cars or other collective bargaining issues by ground rules which he laid down at the outset of the meeting with the Association officials. Other testimony indicates that he merely refused to be drawn into discussion of the subject when it was raised. None of the evidence indicates, however, that Gardner engaged in any sort of give and take discussion of the matter.

During or about April, 1982, the leadership of the then-dormant Guild met and determined to re-activate that organization. They took steps to rehabilitate the status of the Guild with its affiliate organization, and they began to hold meetings and to take steps towards the purpose of initiating representation proceedings to again challenge Local 461's status as exclusive bargaining representative of the bargaining unit for which it was certified in 1980. Officers of the Guild used the employer's facilities and resources for Guild purposes to the extent of holding certain Guild meetings on the employer's premises, using the employer's telephones, and using the employer's offices and time for Guild purposes. There is no indication that the employer was aware of or approved the use of its facilities and resources for Guild purposes. The President of the Guild at that time was assigned to a small section within the Sheriff's Department and was working out of a small semi-private office which gave him opportunity to conduct Guild business without being observed by any significant number of other employees or supervisory personnel. When informed of the use of its premises, the employer took steps to terminate the use.

On October 5, 1982, the Guild filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation involving non-supervisory law enforcement employees of Pierce County. That matter was docketed as Case No. 4265-E-82-787. The original petition filed by the Guild in that case listed the Guild's business office as: "County-City Bldg. Rm. 173, 938 Tacoma Ave. S., Tacoma", which is the address of the Pierce County Sheriff's Department office. After the complaint was filed in the instant matter, the Guild filed notice with the Commission altering its business address for purposes of the representation case to a location not on county premises.

POSITIONS OF THE PARTIES

The complainant contends that it was an unfair labor practice for the County Executive to meet with and engage in discussion with employees concerning the cars issue. It relies on both PERC and NLRB precedent holding that discussions between a supervisory employee and a bargaining unit member without the presence of the representative of the exclusive bargaining representative is an unfair labor practice. The complainant views the dealings with employees, while refusing to discuss the cars issue with Local 461, as a calculated attempt by the employer to undermine Local 461. The complainant contends that the county has shown its preference as between labor organizations by permitting the Guild the use of county facilities and resources for the conduct of Guild meetings and other business, in violation of RCW 41.56.140(2). Turning to the Guild itself, the complainant alleges that the Guild has committed unfair labor practices under RCW 41.56.150(2) by inducing the county to commit unfair labor practices.

In their joint brief, the county and the Guild describe the complainant's allegations concerning the discussions with Gardner as being without merit and unsupported by the record. They first contend that the change of policy regarding the assignment of cars was presented to Local 461 months before its implementation. They draw a distinction between the Guild and the Association. They contend that no discussion of the cars actually occurred, because Gardner himself refused to engage in such discussion. They point out that the public relations campaign launched by the Association was actually co-sponsored by Local 461, and that Local 461 was fully apprised of and endorsed the efforts of the Association to address the cars problem. They contend that the record is devoid of evidence that the county authorized use of its facilities or resources by the Guild, that the room and bulletin board used by the Guild are open to a variety of public and community uses, and that the use of the employer's office by the Guild as its mailing address was unauthorized. They also point out that a recent change of governmental structure in Pierce County has removed the Sheriff from authority with respect to collective bargaining, and reason from that circumstance that any discussions between Guild officials and Sheriff Smith are not subject to being characterized as collective bargaining.

DISCUSSION:

At the outset, the Examiner observes that the record establishes a clear distinction between the Association and the Guild. The Guild is a labor organization, seeking to compete with Local 461. The Association is a social/political/charitable organization sometimes working in harmony with Local 461 to advance mutual interests regarding the Sheriff's Department. Some of the conduct attributed to the Guild in the complaint and in the complainant's opening statement at the hearing is actually chargeable to the Association and its officers. The Association was not named as a party respondent in this matter. It did not move for intervention or otherwise become a participant at the hearing. Furthermore, even if the Association had been named as a respondent in this case, the evidence fails to support a conclusion that the Association currently is or purports to be a labor organization within the meaning of Chapter 41.56 RCW. Under such circumstances, there is no basis for concluding that any violation of RCW 41.56.140(2) could be found with respect to any dealings between Pierce County and the Pierce County Deputy Sheriff's Association.

The practices of the county concerning the assignment of cars have been, are, and likely will continue to be a substantial source of discussion and debate. They were a political issue in the 1981 elections, and the evidence establishes that a supporter and official of Local 461 sought to obtain commitments on the cars issue through the political, rather than collective bargaining, process. They continued to be a political or community issue after the election of the County Executive, when the Association and Local 461 committed substantial funds to the audio-visual public relations campaign. One quickly infers that, in addition to whatever efforts were being made by Local 461 at the bargaining table, Local 461 and the employees were pursuing whatever means they could think of to obtain relief on the cars issue. It does not appear that any of the methods used were having much success, largely due to the county's resistance to making any change of its position. Although the testimony certainly indicates that the officials of the Association may have attempted to draw Gardner into a "bargaining" posture during their meetings, the evidence does not establish that Gardner was receptive to those initiatives or that he was actually drawn into any sort of a negotiating or bargaining posture. On the facts shown, the Examiner does not find employer misconduct of the type found in the "circumvention of bargaining representative" cases relied upon by the complainant.

The Guild is, without question, guilty of appropriating to its own purposes some limited use of the employer's facilities and resources. The evidence does not establish that the employer intentionally provided, tolerated, or even negligently allowed the Guild's use of its facilities and resources. Although the timeliness of certain of the employer's responses are

questioned by the complainant as being slow, the evidence discloses that the employer did eventually insist on its neutrality and did terminate the use of its facilities and resources reasonably quickly after being made aware of their unauthorized use. The Examiner thus concludes that the record is insufficient to base a finding of employer intent to unlawfully assist or to dominate the Guild under RCW 41.56.140(2). By contrast, no showing of intent is necessary to find an interference violation. In Renton School Distirct, Decision 1501 (PECB, 1982), the Examiner found a "technical" interference violation by the employer under RCW 41.56.140(1) as the result of employer conduct during a representation campaign which might have been reasonably construed by employees as an expression of preference by the employer favoring one of the competing organizations over the other. The employer was required in that case to post notices to employees for a brief period to "clear the air". Since the county has already acted to terminate the Guild's use of county facilities and resources, and since the Guild has acted to change its mailing address, the Examiner concludes that a similar procedure and remedy should be adopted in this case.

FINDINGS OF ACT

1. Pierce County, Washington, is a political subdivision of the State of Washington and is a public employer within the meaning of RCW 41.56.030(1).
2. Automotive and Special Services, Teamsters Local 461, is a labor organization and bargaining representative within the meaning of RCW 41.56.030(3) which is the certified exclusive bargaining representative of non-supervisory law enforcement officers employed by Pierce County.
3. Pierce County Deputy Sheriffs' Independent Guild, Local 1889, IUPA, is a labor organization and a prospective bargaining representative within the meaning of RCW 41.56.030(3) and RCW 41.56.070, which filed a petition with the Public Employment Relations Commission for investigation of a question concerning representation involving non-supervisory law enforcement officers employed by Pierce County.
4. Pierce County Deputy Sheriffs' Association is a non-profit charitable corporation engaged in social, political and charitable activities. The Association's articles of incorporation and by-laws do not list collective bargaining or the representation of employees in dealings with their employer on matters of wages, hours or working conditions as purposes of the Association.

5. Pierce County implemented a change of its practices concerning the assignment of county owned vehicles to county employees, including assignments made to non-supervisory law enforcement officers within the bargaining unit for which Local 461 is the exclusive bargaining representative. Issues concerning the duty of the county to bargain collectively with Local 461 on those changes of practice are the subject of separate litigation in another unfair labor practice case. In addition to its efforts through the collective bargaining process, Local 461 and the Pierce County Deputy Sheriffs' Association co-sponsored a public relations effort to obtain a change of the county's position through the political process. Representatives of Local 461 and of the Association attempted to address the issues concerning assignment of county cars through direct contacts with incumbent or prospective county officials. The evidence does not disclose that the county officials so contacted actually engaged in negotiations or bargaining on behalf of Pierce County with employees or their organizations other than Local 461.
6. The Pierce County Deputy Sheriffs' Independent Guild, Local 1889, IUPA, used the employer's office address as its mailing address for purposes of the representation petition referred to in paragraph 3 of these findings of fact, made unauthorized use for Guild purposes of the office space and telephone assigned to the Guild's President, and, without expressed authorization or concurrence by the employer, made use of bulletin boards and a meeting room in a county facility which are made available from time to time for community and private uses.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.
2. By the events described in Finding of Fact 6, above, Pierce County appeared to assist, support or show a preference for Pierce County Deputy Sheriffs' Independent Guild, Local 1889, IUPA, and thereby technically interfered with the exercise of employee rights secured by RCW 41.56.040, in violation of RCW 41.56.140(1).

ORDER

Upon the basis of the above Findings of Fact and Conclusions of Law, it is ordered that Pierce County, its officers and agents, shall immediately:

1. Cease and desist from permitting or appearing to permit labor organizations to conduct their affairs by the use of the employer's facilities or resources or otherwise appearing to show a preference in favor of or against one of competing labor organizations during a representation campaign.

2. Take the following affirmative action to remedy the unfair labor practices and effectuate the policies of the Act:

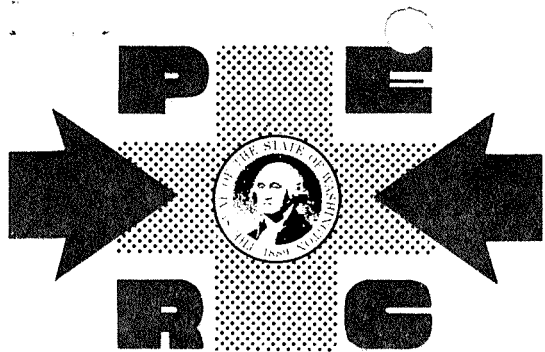
- (a) Post, in conspicuous places on the employer's premises where notices to law enforcement employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of Pierce County be and remain posted for twenty (20) days. Reasonable steps shall be taken by Pierce County to ensure that said notices are not removed, altered, defaced or covered by other material.
- (b) Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith and at the same time provide the Executive Director with a signed copy of the notice posted as required by the preceding paragraph.

DATED at Olympia, Washington, this 3rd day of November, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, Examiner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

For a period of time during 1982, officers and members of the Pierce County Deputy Sheriffs' Independent Guild, Local 1889, IUPA, a labor organization within the meaning of Chapter 41.56 RCW, made unauthorized use of facilities and resources of Pierce County for the Guild's purposes. Such unauthorized usage has been discontinued.

It was not the intention of Pierce County to allow or show any preference in favor of or against any labor organization seeking to represent employees of Pierce County.

All of our employees are free to become, remain or refrain from becoming members of any labor organization of their own choosing, pursuant to the Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

DATED: _____

PIERCE COUNTY

BY _____
AUTHORIZED REPRESENTATIVE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone (206) 753-3444.