City of Tacoma, Decision 6793 (PECB, 1999)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA POLICE UNION, LOCAL 6, Complainant,	)	CASE 13544-U-97-3306
vs.	)	DECISION 6793 - PECB
CITY OF TACOMA, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Aitchison and Vick, by Roger C. Cartwright, Attorney at Law, appeared on behalf of the union.

Robin S. Jenkinson, City Attorney, by Cheryl Carlson, Assistant City Attorney, appeared on behalf of the employer.

On November 17, 1997, Tacoma Police Union, Local 6 (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Tacoma (employer) as respondent. A hearing was conducted in Tacoma, Washington, on June 17, 1998, before Examiner Kenneth J. Latsch. The parties submitted closing briefs on August 3, 1998.

In the preliminary ruling issued under WAC 391-45-110, the Executive Director found a cause of action to exist on allegations that the union alleged that the employer committed unfair labor practices within the meaning of RCW 41.56.140(1) and (2), by interfering with internal union affairs and intimidating a union

official. The Examiner rules that union has not established a violation of RCW 41.56.140, and dismisses the complaint.

BACKGROUND

The City of Tacoma provides law enforcement functions through the Tacoma Police Department. During the events leading to this controversy, the department was under the command of Police Chief Philip Arreola and James Hairston served as deputy chief. The department was divided into several administrative divisions and bureaus, each under command of an assistant chief. The record indicates that the assistant chiefs coordinated their work through Hairston, and that Hairston became the acting police chief when Arreola was away from the department.

Tacoma Police Union, Local 6, represents a bargaining unit of approximately 375 uniformed employees in the ranks of patrol officer, sergeant, lieutenant, captain, and detective. At all times pertinent to these proceedings, Robert Blystone served as president of the union.

The Deadly Force Review Board

This unfair labor practice complaint arises from events occurring during the course of a "Use of Deadly Force Review Board" proceeding. Since much of the hearing concerned the parties' understanding of that process, it is appropriate to set forth the history, structure, and operation of such boards and the policies under which they exist and operate.

History and Structure -
The Tacoma Police Department established the Use of Deadly Force Review Board (review board) by department policy issued in 1981. Modeled after a program used in the Los Angeles Police Department, the design called for an ad hoc process to be convened whenever deadly force was utilized involving a law enforcement officer or a member of the public in contact with one or more law enforcement officers.

The review board process was intended to address a number of issues associated with the use of deadly force, by reviewing situation(s) to ensure that department policies were followed, to analyze training needs in light of the incident, and to determine whether criminal investigations would be necessary. The review board has the authority to call witnesses and to review documents associated with the incident under scrutiny. Each member is allowed to ask questions, and has an equal vote. The final report submitted to the chief is prepared as a series of recommendations for the chief's consideration. The recommendations could include proposals to change training requirements, to initiate internal affairs procedures, to impose discipline, or even the commencement of a criminal investigations. While the chief is not bound to accept the recommendations, the record reflects that most review board reports have been accepted without modification. Any review board member who disagrees with the final report is permitted to submit a dissenting opinion which is forwarded to the chief.

Initially, review boards were composed of five members: (1) The division commander of the officer involved; (2) the commander of the Support Services Division; (3) the commander in charge of criminal investigations; (4) the lieutenant responsible for the

work shift when the incident took place; and (5) the sergeant responsible for the same work shift. While the union did not have a designated member on such boards, the union had informal input on board member selection.

Later, the employer determined that the deputy chief should be a regular member of review boards, to provide a consistent management presence during the process. The union was concerned that addition of the deputy chief could lead to tie votes, and the union was then invited to name its own member to review boards. The record indicates that the union president has routinely appointed union members, and the union appointees have been given equal participation in the review board processes.

Still later, the composition of review board was changed by eliminating one of the shift officers and adding a member of the public. This change was designed to improve public participation in the department's operation, and to give the public more confidence in the decisions made by the review board.[1]

The "Lowry Board" -

Officer William Lowry was killed in the line of duty on August 28, 1997, during an attempted arrest involving the department's Special Weapons and Tactics (SWAT) team. The record reflects that Officer Lowry was very well liked within the department, and that his death

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[1] The review board process has undergone other modifications, which are not germane to the instant dispute. For example, a "divisional" review board has been established if force has been used and a citizen's personal property or pet has been injured. In recent adaptations of the review board process, the union is allowed to appoint a member to the board.

was surrounded by a great deal of controversy. Local press reports questioned the tactics employed by the SWAT team, and citizens were very critical of the police department's use of force in the circumstances leading to Lowry's death.

The police department convened a "Use of Deadly Force Review Board" to analyze the circumstances surrounding Officer Lowry's death. As Lowry's commander, Assistant Chief Michael Darland would normally have served as the board chair, but Chief Arreola directed Deputy Chief Hairston to serve as co-chair with Darland. Given the volatile nature of the incident, Arreola determined that Hairston's participation would give more objectivity to the review process.

Department officials followed standard procedure by inviting the president of the union, Robert Blystone, to appoint a member of the review board. Blystone appointed Detective Steve Holmes to serve as the union appointee on the "Lowry" review board.

Holmes was present when Hairston convened the "Lowry" review board on Tuesday, October 21, 1997. At the opening session, the civilian board member was introduced to the rest of the group, and Hairston reviewed the procedures that would be followed. Each review board member was given a notebook containing information about the incident. Investigators from the department's Internal Affairs Division (IAD) had already contacted potential witnesses, and an internal affairs officer presented an introduction about the crime scene. Hairston reminded the review board members that their primary duty was to determine whether the use of force occurred within standards set forth in department policy. Near the end of the day, Assistant Chief Darland and Detective Holmes disagreed sharply about the use of "covering fire" as a legitimate tactic in

the situation where Officer Lowry was killed. Holmes expressed concern that a patrol officer would be disciplined for using "covering fire", while Darland expressed concern that Holmes did not understand the concept as applied in SWAT situations. Hairston testified that the confrontation ended quickly, and that he shortly thereafter adjourned the review board meeting for the day.

It was unusual for a review board proceeding to last more than one day, but given the complexities of the Lowry incident, a large number of witnesses were to be called. The review board was thus reconvened on Wednesday, October 22, 1997. At the beginning of that day, Hairston reminded the review board members that they all had the right to ask questions of any witnesses. The review board conducted business, but did not meet for a full day. Further proceedings were set for Thursday, October 30, 1997, to accommodate the civilian member's schedule.

Union President's Discussion with Union Appointee -
On October 24, 1997, Detective Holmes told Deputy Chief Hairston that he had received a telephone call from President Blystone, in which Blystone stated that Holmes was not fulfilling his obligation as the union's representative on the review board. Holmes further stated a belief that Blystone had been in communication with Assistant Chief Darland, and that Blystone was trying to influence the way Holmes performed his functions as a member of the "Lowry" review board.

Hairston testified that Holmes was trying to see Chief Arreola on October 24, that the chief was not present, and that Holmes then approached Hairston. It was further Hairston's testimony that Holmes appeared to be very agitated and upset when their meeting

began. Hairston directed Holmes to document his concerns. Holmes prepared a memorandum detailing the situation. In pertinent part, that memorandum is as follows:

> [Blystone] started the conversation by saying that he was just calling to get an update on the status of the shooting review board since he's been busy and hasn't had a chance to touch base with anyone. I informed him that things were moving right along, that we heard testimony from involved officers over a day and a half period. I also told him that we would be meeting again on Thursday, 10-30-97 for the purposes of discussing the case, testimony and evidence before us. I told him that the reason for the delay is that Chief Darland and Gary Wiegand are going to be in Las Vegas and would be unavailable till then. Again, Blystone asked me, so other than that, how are things going on the Board? I told him that things were going fine. I quickly realized that it wasn't just an update call. He told me that this brings me to a concern that I have. I asked him what his concern was, and he told me that Chief Darland has complained about me, and that I was not representing the union body and that I was asking too many fault finding questions and Darland felt the need that other [sic] should bring it to his (Blystone's) attention, to get the problem taken care of. He told me that he has received numerous telephone calls from other officers who in his opinion was [sic] asked to call him at the behest of Chief Darland. I became very angry with Blystone and told him that Chief Darland has absolutely no business divulging confidential board business to other officers on this department that I have to work with. I in no certain [sic] terms informed Blysone that I would examine all the evidence as a jury would then make a sane and rational decision based upon what I view is the right decision, not because Chief Darland or Blystone is telling me how to vote. He

> told me that I have to be very careful in the way I vote because the union representative that sat on the Officer Barry Paris board voted against the officer and it caused a lot of upset officers and a lot of consternation amongst the union ranks. There is no question that I was being told that I had better vote to back the union officers at any cost. I told him that Chief Darland was apparently worried about me.
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> I told him that if I couldn't vote my conscious [sic] that he should remove me from the Board. He told me that he just wanted me to understand my union representative board obligation. I relayed to Blystone how upset and extremely angry I was. I told him to be advised that I am going directly to Chief Arreola over this conversation and to lodge a complaint ...

Hairston was concerned about Holmes' allegations, and he discussed them with City Manager Ray Corpuz on Monday, October 27, 1997.

Employer's Investigation of Union Interference - Hairston determined that the "Lowry" review board process should be suspended pending an investigation into Holmes' allegations of union interference with that process. Hairston directed the IAD to investigate the situation, and Detective Holmes' allegations were processed as a violation of department policy. Assistant Chief Darland was not accused of any specific wrongdoing arising from his participation on the "Lowry" review board, but Blystone was accused of "unbecoming conduct", by attempting to influence the workings of the review board.

Assistant Chief Darland was interviewed by investigators from the IAD on October 31, 1997. Darland denied ever contacting Blystone

about the conduct or demeanor of any members of the "Lowry" review board.

President Blystone was interviewed by investigators from the IAD on November 10, 1997. Blystone was accompanied to the meeting by the union's attorney, Christopher Vick. At the outset of the meeting, Vick stated that the investigation violated Chapter 41.56 RCW, because the employer was attempting to intrude into internal union matters. Vick argued that Blystone was communicating to Holmes as union president,[2] and that the employer could not lawfully force Blystone to divulge the content of those communications. After stating his objections to the procedure, Vick allowed Blystone to answer questions put to him by the investigators.

When the interview continued, Blystone gave a detailed explanation of his conversation with Holmes. When asked what he believed the union's role was on review boards, the employer's transcript of the interview indicates that Blystone responded as follows:

> The union role is simply one of advocacy, where our role is to go in there and make sure that the officers' rights are adhered to; and basically, what that would mean is that, that as the officers come in to the Board, they - the questions again are limited to the scope of what the inquiry would be; the officers are not being brow-beat; the system is as fair and equitable as it could be; and so basically, the union has oversight of the process. That's what I envision it and how I -- what direction I've given other people that I've appointed to the Boards.

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[2] The record establishes that Blystone's conversation with Holmes took place during regular office hours.

Blystone denied that Assistant Chief Darland had contacted him about Holmes' work on the "Lowry" review board, but he declined to name the source of concern about Holmes. The IAD investigator informed Blystone that his refusal to answer the question could lead to discipline, including dismissal. Vick argued that the employer could not ask a union official to divulge communications with a union member, and that the inquiry should cease. At the hearing in this proceeding, Blystone's testimony was consistent with the statements he made in the IAD interview.

Management witnesses had a view concerning the union's role in review board proceedings that was markedly different from the one espoused by Blystone. Hairston testified that the union was a participant in review board processes, but was not viewed as an advocate for the affected officer. Hairston strongly disagreed with Blystone's assertion that the union had "oversight" responsibilities on the board. Assistant Chief Darland also testified that the union's role on the review board was limited to a single, equal vote just like all other review board members.

On November 17, 1997, the union filed a complaint charging unfair labor practices against the employer, alleging that the employer violated RCW 41.56.140(1) and (2) by directing union president Blystone to divulge communications with a union member.

The "Lowry" review board reconvened shortly after Blystone's interview with the IAD investigators was completed, and a final report was submitted to the chief for his consideration.[3] While

[3] The review board's findings and recommendations are not germane to the instant unfair labor practice proceedings.

the IAD completed its investigation into Blystone's communication with Detective Holmes, disciplinary action was held in abeyance while this unfair labor practice complaint was litigated. At the time of hearing, no discipline had been imposed or recommended by management officials.

POSITIONS OF THE PARTIES

The union argues that the employer committed unfair labor practices by attempting to force union President Blystone to divulge the content of communications with union members. The union maintains that the employer did not have any legitimate reason to seek that information, and that the employer's actions were intended to intimidate the union and to interfere with the union's ability to represent its members. In addition, the union contends that the employer still reserves the right to discipline Blystone, thus perpetuating the threat against him as a union official.

The employer denies that it committed any unfair labor practice. It contends that the police department had legitimate concerns about Blystone's contact with a review board member during the pendency of the board's work, and that any questioning was related to that set of circumstances. The employer acknowledges that Blystone was serving as a union officer at the time of the inquiries, but contends that Blystone's union position did not insulate him from department rules and regulations. The employer maintains that it followed appropriate procedures, and that the questioning did not have any detrimental effect on Blystone or the union.

DISCUSSION

This unfair labor practice complaint presents a difficult situation for determination. Ultimately, the employer believes that it has a legitimate right to inquire about who contacted the union president concerning the conduct of the union appointee to the "Lowry" review board. Conversely, the union believes the employer has no right to delve into communications between a union officer and a union member. Given the nature of the underlying events, the Examiner concludes the employer did not violate collective bargaining laws by making inquiries about the deadly force review board, and Blystone could not use his position as union president to refuse cooperation in the employer's investigation.

The Applicable Legal Standards

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, protects employee rights at RCW 41.56.040, as follows:

> 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.

RCW 41.56.140 further protects public employees in the exercise of their collective bargaining rights, as follows:

> It shall be an unfair labor practice for a public employer:

> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
> (2) To control, dominate or interfere with a bargaining representative;
> (3) To discriminate against a public employee who has filed an unfair labor practice charge;
> (4) To refuse to engage in collective bargaining.

The Commission has long held that a public employer cannot lawfully interrogate employees about their union activities. See: City of Pasco, Decision 4860-A (PECB, 1995). The Commission has also ruled that:

> [A]n interference violation occurs under RCW 41.56.140(1) **when an employee could reasonably perceive** the employer's actions as a threat of reprisal or force or promise of benefit associated with their union activity.

Port of Tacoma, Decision 4626-A (PECB, 1995) [emphasis by **bold** supplied].

This determination is not based on the actual feelings of particular employees, but on whether a typical employee in the same circumstances could reasonably see the employer's actions as discouraging his or her union activities. An employer's innocent intentions when engaging in the disputed actions are legally irrelevant. City of Seattle, Decision 3066 (PECB, 1988), affirmed Decision 3066-A (PECB, 1989).

In its closing brief, the union properly expresses its burden of proof where interference has been alleged:

> The burden of proving an allegation of unlawful interference with the exercise of rights protected by Chapter 41.56 RCW rests with the complaining party, and must be established by a preponderance of the evidence. The "reasonable perception" test does not require a showing that particular employees were actually interfered with, restrained, or coerced. An individual employee or a group of employees may prove that an employer took some action against them, meant as a "warning" threat or coercive measure in response to their voicing of some concern or union activity.

City of Omak, Decision 5579-A (PECB, 1997).

The Supreme Court of the State of Washington has ruled that the provisions of Chapter 41.56 RCW must be construed liberally, by narrowly construing any exceptions to it. Yakima v. Fire Fighters, 117 Wn.2d 655 (1991). The Supreme Court has also determined that provisions of Chapter 41.56 RCW override contrary provisions of other statutes, including a state civil service law for deputy sheriffs which states it is the sole remedy for those employees. Rose v. Erickson, 106 Wn.2d 420 (1986). Given these directives, it is clear that there is a policy in favor of the collective bargaining process, and free exercise of rights under the collective bargaining law.

In setting forth the scope of collective bargaining rights, the Commission has long held that public employers cannot interfere with a union's internal business. The decision in State of Washington, Decision 2900 (PECB, 1988), detailed the history of Wagner Act and National Labor Relations Board precedents that prohibit employer involvement in union business, and asserted that public employers do not have the right to meddle in the internal

workings of a union. See also: City of Longview Decision 4702 (PECB, 1994), which reiterated that even the appearance of employer surveillance of union meetings constitutes unlawful interference.

The employer properly notes that Chapter 41.56 RCW is not absolute, and its protections must be viewed in terms of the actions undertaken by the public employee at the time that the alleged interference took place. For example:

- An unfair labor practice complaint was dismissed in Pierce County Fire District No. 9, Decision 3334 (PECB, 1989), where a union alleged that an employer violated Chapter 41.56 RCW by threatening to discipline an employee for his actions while serving as a union representative. The actions of the employee/representative in that case went beyond the bounds of the protections set forth in the collective bargaining statute, and that the collective bargaining law was not a "shield" protecting the employee from appropriate discipline for his misconduct.

- In City of Seattle, Decision 809-A (PECB, 1980), the Commission ruled that a union could waive its representation rights by agreeing to submit to forums outside the collective bargaining arena. In that instance, the union complained that its non-attorney business manager was not allowed to represent union members before a local civil service board that had a long-standing rule requiring that only attorneys could represent appellants. The Commission decided that the union must accept responsibility for the use of alternative forums, and could not inject collective bargaining rights to a non-bargaining setting.

- A "refusal to provide information" complaint was dismissed in Highland School District, Decision 2684 (PECB, 1987), where the request related to a proceeding outside of the collective bargaining process. A dispute between that employer and union about the discharge of a bargaining unit employee was initiated within the collective bargaining process, but the parties' collective bargaining agreement did not include provisions for final and binding arbitration of grievances and the union had appealed to court from a decision made by the school board at the final step in the contractual grievance procedure. In relevant part, the decision stated:

  > After the parties exhausted the dispute resolution mechanisms available within the contract, the union pursued the dispute beyond the collective bargaining process regulated by Chapter 41.56 RCW and the Public Employment Relations Commission, by filing an "appeal" and/or "breach of contract" suit in the civil courts.

  Thus, the duty to provide information which grows out of the duty to bargain no longer applied in that situation.

- In City of Tacoma, Decision 322 (PECB, 1978), the Commission ruled that negotiations for the settlement of civil litigation were controlled by the rules of civil courts, and did not give rise to an unfair labor practice even though the underlying dispute originated as a collective bargaining dispute.

- The assertion that an investigation could lead to possible grievances was closely analyzed in City of Bellevue, Decision 4324-A (PECB, 1994), where the Commission dealt with the

employer's duty to provide information in the context of due process hearings held under Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). The Commission wrote:

> It is important to note that, even if an information request is relevant to representational functions over which we have jurisdiction, an obligation to provide the requested information only arises if the information is reasonably viewed as necessary for the performance of a bargaining representative's duties. That showing of necessity was not made in the present case. Loudermill requires notice of the charges against a public employee, an explanation of the evidence against that individual, and an opportunity to respond. It does not require a complete evidentiary hearing, and we find nothing in the Supreme Court's decision that indicates an accused employee is necessarily entitled to see the actual contents of an investigative file. What must be provided is an explanation of the accumulated evidence. Whether this is provided in the form of a description of the evidence in a file, or in the form of actual witness statements, is left to an employer's discretion.

Thus, the duty to provide information which arises under the collective bargaining law was again found inapplicable to a proceeding outside of the collective bargaining process.

- In like manner, the Washington State Court of Appeals ruled that the right to investigate grievances filed under terms of a collective bargaining agreement is not unlimited. See: Service Employees International Union v. Vancouver School District 79 Wn.App 905 (Division 2, 1995), review denied, 129 Wn.2d 1019 (1996). While a union clearly has a right to investigate grievances, inappropriate conduct in connection

with such an investigation is not protected by the collective bargaining act.

Taken together, these precedents help define the scope and application of collective bargaining rights. While recognizing that these rights must be given a great deal of attention and deference, such privileges are not absolute, and the mere assertion that one is engaged in a protected activity does not extend statutory permission to that specific act. Unless the underlying activity is a "protected activity", actions arising from the disputed activity cannot be defined as protected activities within the meaning of Chapter 41.56 RCW.

Application of Legal Standards

In this case, the union has taken an interesting position concerning its obligation to divulge information about the deadly force review board. The union has acknowledged that Blystone had conversations with the union's designee on the board, and has even divulged the content of that conversation. The conversation which the union actually seeks to protect in this case (and the information that Blystone refused to divulge to the IAD investigators) is his source of information that led to his conversation with Holmes.

The Nature of "Review Board" Proceedings -

As a starting point, it must be determined whether the union officer was engaged in protected activity at the time of the IAD investigation. The deadly force review board process is not established by the parties' collective bargaining agreement, or even a creation of the collective bargaining process. Rather, the review board was a creation of department policy and rules. The

union wanted to participate in the process, and the employer agreed that such participation would be appropriate. While the union has been included in the review procedure, that inclusion was not mandated by any collective bargaining agreement.

While review board recommendations can lead to disciplinary measures which could, in turn, become subjects of the negotiated grievance procedure, this case concerns the internal workings of the review board process. Review board proceedings had customarily been concluded within a single day, so there had been few previous opportunities for the confidentiality of that process to be compromised in the manner which appears to have occurred in this case. It must be concluded that the employer had the right to manage the conduct of its review board process, and to investigate if it appeared that irregularities had taken place. The employer had a right and obligation to determine the source and extent of the problem.

The union finds itself in a unique situation. While Blystone may have believed that the union had some kind of "oversight" role in the review board process, the union was unable to provide any evidence supporting Blystone's interpretation. While maintaining that it is a distinct entity, the evidence indicates that the union conducts a majority of its business on the employer's premises during regular work hours; Blystone was serving as a detective at all times pertinent to these proceedings, and he testified that he routinely used his department office to conduct union business. While it is clear that Blystone was protecting his source, the union did not even offer evidence that the source was an employee within the bargaining unit represented by the union; the union would have no protected interest in preserving a source of leaks

from the citizen member of the review board or from one of the senior officers excluded from the bargaining unit.

It is clear that a union official must be free to conduct business without interference from the employer. Just as the exclusion of "confidential employees" in RCW 41.56.030(2)(c) protects employers from disclosure of confidential information concerning their labor relations information, the "domination" unfair labor practice in RCW 41.56.140(2) protects employees from disclosure of confidential information shared with their statutory representatives. In this case, it appears the employer has made exceptional accommodations to allow the union to have its officials perform their functions on the employer's time and premises. That accommodation may have added to the confusion of roles evident in Blystone's refusal to answer employer questions about the review board process. While Blystone maintained that his position as union president protected him from providing any and all information sought by the Internal Affairs investigators, his perception of the situation was incorrect. At some point, Blystone had to recognize that he was still a police officer under the regular chain of command in the Tacoma Police Department. In the absence of evidence that he was protecting a source within the bargaining unit in this case, the union has failed to establish that Blystone was engaged in a protected activity, and he could not use his union position to refuse the employer's questions. The complaint must be dismissed.

FINDINGS OF FACT

1. The City of Tacoma (employer) is a "public employer" within the meaning of RCW 41.56.030(1). Phillip Arreola served as

chief of police, James Hairston served as the deputy chief of police, and Michael Darland served as assistant chief of police, at all times pertinent to these proceedings.

2. Tacoma Police Union, a "bargaining representative" within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of non-supervisory uniformed personnel of the Tacoma Police Department. At all times pertinent to this complaint, Robert Blystone served as president of the union.

3. A "Deadly Force Review Board" was convened under Tacoma Police Department policies after Officer William Lowry was killed in the line of duty on August 28, 1997. The review board was co-chaired by Deputy Chief Hairston and Assistant Chief Darland. Other persons excluded from the union's bargaining unit were appointed to the review board under the department policy, including a citizen member not employed in the department. Acting under the department policy, Blystone appointed a bargaining unit member, Detective Steve Holmes, to serve as a member of that board.

4. The review board was convened on October 21, 1997. Near the end of the day, Holmes and Darland engaged in a brief argument about the appropriate use of tactics in situations such as the one in which Officer Lowry was killed. The review board met again on October 22, 1997, but did not complete its work. Hairston scheduled the next meeting for October 30, 1997.

5. On October 24, 1997, Holmes complained to Hairston about a telephone call he had received from Blystone. Holmes was upset because Blystone had questioned his work on the review

board and complained that Holmes was not fulfilling his role as a union advocate. Holmes believed that Assistant Chief Darland had contacted Blystone, and that Blystone was pressuring him to limit his inquiries.

6. Hairston was concerned that the work of the review board had been compromised, and he suspended further proceedings. Hairston then directed the department's Internal Affairs Division to begin an investigation into Holmes' accusations.

7. Internal Affairs Division investigators contacted Blystone and asked him about the situation. The union initially took the position that Blystone's union office protected him from any questioning, but it did not persist in that position.

8. When questioned about his conversation with Holmes, Blystone disclosed his conversation with that bargaining unit member.

9. When asked about who had contacted him in the first place about the review board proceedings, Blystone abjectly refused to reveal the source of his information, arguing that he received the information as union president and that the employer could not inquire about internal union matters.

10. The review board reconvened and finished its recommendations for Chief Arreola's consideration after Blystone was investigated by the Internal Affairs Division.

11. As of the date of these proceedings, Blystone had not been disciplined for his refusal to provide the information sought by the employer concerning the deadly force review board.

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 union has failed to sustain its burden of proof to establish that protecting the source of Blystone's information concerning the internal workings of the review board was an activity protected by RCW 41.56.040.

3. The union has not established that the employer has either interfered with employee rights protected by RCW 41.56.140(1) or improperly involved itself in internal union affairs in violation of RCW 41.56.140(2).

ORDER

The complaint charging unfair labor practices filed in the above entitled matter is hereby DISMISSED.

Issued at Olympia, Washington this 17th day of August, 1999.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNETH J. LATSCH, 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.