City of Pullman, Decision 8086 (PECB, 2003)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PULLMAN POLICE OFFICERS' GUILD,	)	
	)	
Complainant,	)	CASE 16177-U-02-4134
	)	
vs.	)	DECISION 8086 - PECB
	)	
CITY OF PULLMAN,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Respondent.	)	AND ORDER
	)	

Garrettson Goldberg Fenrich & Makler, by *Steven Schuback*, Labor Representative, for the union.

Thomas F. Kingen, Attorney at Law, for the employer.

On January 14, 2002, the Pullman Police Officers' Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming the City of Pullman (employer) as respondent. A preliminary ruling issued under WAC 391-45-110 on February 15, 2002, found a cause of action existed on allegations summarized as:

> Employer refusal to bargain in violation of RCW 41.56.140(4) [and derivative "interference" in violation of RCW 41.56.140(1)], by its unilateral change in the tape recording of internal investigation interviews, without providing an opportunity for bargaining.

A hearing was held on October 22, 2002, before Examiner Sally B. Carpenter. The parties submitted post-hearing briefs.

Based on the evidence and the arguments advanced by the parties, the Examiner finds that the employer committed an unfair labor

practice by unilaterally changing, and refusing to bargain with the union about, a mandatory subject of bargaining.

BACKGROUND

The city of Pullman has a population of about 25,000. The Pullman Police Department is headed by Chief of Police Ted Weatherly. A patrol commander supervises law enforcement officers assigned to patrol duties.

The union is the exclusive bargaining representative of all full-time and regular part-time law enforcement officers employed by the employer, excluding supervisors, confidential employees, and all other employees of the employer. The bargaining unit consists of approximately 34 employees, including police officers and sergeants, who are "uniformed personnel" within the meaning of RCW 41.56.030(7).[1] Mike Austin was the president of the union during the time period relevant to this case.

During the time period relevant to this proceeding the parties were at the mediation stage of bargaining on a successor contract. Nothing in their collective bargaining agreement regulates tape recording of internal investigation interviews. Prior to the onset of this controversy, the employer had no written policies governing the tape recording of internal investigation interviews.

The Precipitating Incident -

Although this case actually concerns a change of policy that was announced on November 19, 2001, it is helpful to describe an issue

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[1] The interest arbitration procedures in RCW 41.56.430 through .490 are thus applicable to these parties.

that arose earlier in the autumn of 2001, when a bargaining unit employee sought to be relieved of responsibilities as a field training officer (FTO).[2] The patrol commander received that request from the bargaining unit employee, and passed along the information to the chief of police. The chief concluded that the bargaining unit employee would no longer meet the criteria for status as a "Police Officer First Class" under the parties' collective bargaining agreement, which required employees holding that status to be "willing and able to perform FTO duties when assigned." The chief contacted the union president, and a meeting was scheduled to discuss the situation. Those attending the meeting held on November 9, 2001, were the chief, the patrol commander, the union president, and the employee desiring the change of responsibilities. The union president sought to tape record the meeting, but the chief refused to give his permission to do so.[3] The meeting thus proceeded without being tape recorded.

The Disputed Change of Practice -

On November 19, 2001, the chief issued a notice to all police supervisors and to the union president by e-mail message, stating: "Effective immediately, no tape recordings will be made by either party on any internal investigation."

On November 22, 2001, the union president responded by e-mail, objecting to the chief's directive and stating that the union had, "routinely recorded interviews during internal investigation interviews" because "a recording is much more accurate than notes that are contested by different parties."

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[2] An FTO must successfully complete an approved course, after which he or she is assigned to train new recruits.

[3] The chief testified he was concerned about a potential violation of a state "all-party consent" statute.

In an e-mail message sent to the union president on November 26, 2001, the chief stated that he believed recording may be perceived as coercive by the investigator or by the person being investigated. The chief also stated a concern about violating a state law regarding the recording of private conversations. Finally, the chief stated a concern about the "ownership and disposition" of the recordings. The chief stated, however, that he was willing to bargain over the issue.

In a letter to the union's attorney on November 27, 2001, the employer's labor relations consultant suggested that the parties discuss the tape recording issue at an upcoming mediation session.

The employer subsequently proposed to add the following language to its policy manual at section 3.4.2: "*Questioning of Members Who are the Subject of an Administrative Investigation* - The interview or interrogation shall not be electronically recorded." The union responded by filing the complaint to initiate this unfair labor practice proceeding on January 14, 2002.

POSITIONS OF THE PARTIES

The union asserts that the employer committed an unfair labor practice by making a unilateral change in working conditions. The union contends it has been the practice to tape record internal investigation interviews for at least the past 10 years, and that the chief's announcement banning any future tape recording, without first notifying the union and bargaining the decision, amounts to a refusal to bargain on a mandatory subject of bargaining.

The employer disputes the union's claim of a routine practice of tape recording internal investigation interviews, and also argues

that tape recording of investigative meetings is not a mandatory subject of bargaining. It further argues that investigatory interviews are private conversations, so that tape recording without the consent of all parties would violate state law.

DISCUSSION

Applicable Legal Standards

The Duty to Bargain -

The duty to bargain under the Public Employees' Collective Bargaining Act is defined as follows:

> "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions . . .

RCW 41.56.030(4). That definition is similar to the definition contained in the National Labor Relations Act (NLRA), which states, "to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . ." 29 USC § 158(d). The failure or refusal of an employer to bargain in good faith (including a unilateral change made without fulfilling the statutory bargaining obligation) is an unfair labor practice. RCW 41.56.140(4).

Scope of Bargaining -

Under precedents developed under the federal National Labor Relations Act (NLRA) dating back to *Borg-Warner Corp.*, 356 U.S. 342 (1958), a distinction has been drawn between:

- *Mandatory subjects* of bargaining (employee wages, hours and working conditions) on which employers and unions must bargain in good faith;
- *Permissive subjects* (primarily management and union rights which are not improper subjects) on which parties may bargain but are not obligated to do so; and
- *Illegal subjects* on which parties cannot lawfully agree or enforce a collective bargaining agreement.

In *First National Maintenance Corp*, 452 U.S. 666 (1981), the Supreme Court of the United States held a balancing test should be applied where it is necessary to decide whether a management decision is a mandatory or permissive subject of bargaining: The employer's need to conduct a profitable business must be balanced against the impact of the decision on the bargaining process.

Washington collective bargaining law has developed along the same lines as the federal law, including the "mandatory/permissive/ illegal" triad of potential subjects for bargaining. Moreover, the Supreme Court of the State of Washington held that a balancing approach is to be used when determining scope of bargaining issues. The court explained the balancing approach as follows:

> On one side of the balance is the relationship the subject bears to "wages, hours and working conditions". On the other side is the extent to which the subject lies "at the core of entrepreneurial control" or is a management prerogative. Where a subject both relates to conditions of employment and is a managerial prerogative, the focus of inquiry is to determine which of these characteristics predominates.

International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission [City of Richland], 113 Wn.2d 197 (1989) (citing *Spokane Education Association v. Barnes*, 83 Wn.2d 366 at 376 (1974)). Further, the Supreme Court wrote: "Scope-of-bargaining questions cannot be resolved . . . summarily. Every case presents unique circumstances, in which the relative strengths of the public employer's need for managerial control on the one hand, and the employees' concern with working conditions on the other, will vary. *City Richland*, 113 Wn.2d at 203. The Court thus embraced the Commission's well-established practice of determining scope of bargaining questions only on a case-by-case basis.

Unilateral Changes Unlawful -

One frequently-encountered subtype of "refusal to bargain" conduct occurs if an employer implements a change of the wages, hours, or working conditions of its union-represented employees without first meeting its collective bargaining obligations (by giving notice to the exclusive bargaining representative, providing opportunity for bargaining before the decision is made, and bargaining in good faith if asked to do so). *NLRB v. Katz*, 369 U.S. 736 (1962). The usual remedy for an insult to the collective bargaining *process* is that an employer who implements a unilateral change presented to a union as a *fait accompli* will be ordered to restore the status quo which existed before the change, regardless of the merits of the change.

The frequency of unilateral change allegations does not mean that finding a violation is automatic. A complaint alleging a "unilateral change" must establish both: (1) the existence of a relevant status quo; and (2) a meaningful change in employee wages, hours, or working conditions. An employer only commits an unfair labor practice under RCW 41.56.140(4) if it imposes a new term or condition of employment, or meaningfully changes an existing term

or condition of employment, without exhausting its bargaining obligations. *City of Kalama*, Decision 6773-A (PECB, 2000).

Application of Standards

Effect of Privacy Statute -

Washington state law requires the consent of all participants prior to recording any *private* communication, reading in part:

> RCW 9.73.030 INTERCEPTING, RECORDING, OR DIVULGING PRIVATE COMMUNICATION - CONSENT REQUIRED - EXCEPTIONS. (1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:
>
> . . . .
>
> (b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

The employer asserts here that RCW 9.73.030 enabled the chief to withhold his concurrence for tape recording of internal investigation interviews. The argument is without merit.

The Examiner is charged with enforcement of the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, and is mindful that the Supreme Court of the State of Washington has ruled that Chapter 41.56 RCW prevails over conflicting statutes.[4] The employer cannot

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[4] *Rose v. Erickson*, 106 Wn.2d 420 (1986). *See also Mason County*, Decision 3108 (PECB, 1989), *aff'd*, Decision 3108-A, (PECB, 1989) [state statute authorizing employer to restrict smoking in the workplace not a defense to a refusal to bargain charge].

exclude its actions from scrutiny in this unfair labor practice proceeding under Chapter 41.56 RCW,[5] and its argument merely calls for understanding the juxtaposition of the duty to bargain and other statutes.

Cities, like other public entities, only have the authority conferred upon them by statutes. Two situations can exist:

First, an employer is not obligated to bargain a matter over which it has no discretion. In *City of Seattle*, Decision 4687-B (PECB, 1997), *aff'd*, 93 Wn. App. 235(1998), *review denied*, 137

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[5] A line of inquiry not fully explored by the Examiner here is whether the employer's argument would even hold up under RCW 9.73.030. A conversation must be deemed "private" before that statute is activated. In *State v. Flora*, 68 Wn. App. 802 (1992), the Court held "private" in RCW 9.73.030 means a conversation that is secret, is intended only for participants in the conversation, holds a confidential relationship to something, or is not open or in public. Other court rulings cast doubt on the ability to claim "privacy" for investigatory interviews:

In *Barfield v. City of Seattle*, 100 Wn.2d 878 (1984), citizens who brought actions against the employer and police officers sought discovery of internal investigation files to seek evidence of prior complaints against the officers. The Court held police department internal investigation files are not exempt from public inspection, unless disclosure would violate a privacy right, make law enforcement ineffective, or endanger a person's life, physical safety, or property. The Court rejected arguments based on RCW 5.60.060(5) and RCW 42.17.310, reasoning that those statutes only granted a *conditional* privilege. Disclosure depends on whether "the public interest would suffer."

In *Ames v. City of Fircrest*, 71 Wn. App. 284, a police chief filed defamation and breach of contract claims after the city released information about a criminal investigation of the police department and a resulting newspaper story named the chief as responsible for specific misconduct. The chief's arguments based on an exemption for investigation records in the state public disclosure law were rejected by the court.

Wn.2d 1035 (1999), an examiner and the Commission ruled, and the courts affirmed, that a public employer had no duty to bargain concerning pension benefits for law enforcement officers and fire fighters covered by Chapter 41.26 RCW (the LEOFF Retirement System), because the Legislature had occupied the field by passing that statute as an exclusive system for providing pension benefits.

Second, where state statutes grant them a range of discretionary authority, public entities must satisfy their statutory bargaining obligations in exercising their discretionary authority as to any mandatory subjects of collective bargaining. Thus, the "wages" of school district classified employees are a mandatory subject of collective bargaining under Chapter 41.56 RCW, even though RCW 28A.400.200 confers specific statutory authority upon school boards to "fix, alter, allow, and order paid salaries and compensation for all district employees . . . ."

Applying those principles to this case, the statute relied upon by the employer clearly does not occupy the field at either extreme: The Legislature has neither required tape recording in all investigatory interviews nor altogether prohibited tape recording of such meetings. Instead, the officials acting on behalf of the employer have discretionary authority to grant or withhold consent to tape record investigatory interviews in which they participate. For the chief or any other employer official to foreclose bargaining on that exercise of discretion would be no different than a school board setting a salary and refusing to bargain with the union representing its classified employees. An employer or union that forecloses or prejudices good faith bargaining on a mandatory subject commits an unfair labor practice. See *Whitman County*, Decision 250 (PECB, 1976) [employer that refused to consider proposals after announcing wage increase at a public meeting found guilty of "refusal to bargain" violation] and *City of Pasco (IAFF*

Local 1433), Decision 2919 (PECB, 1988) [union that foreclosed discussion of mandatory subject proposed by employer found guilty of "refusal to bargain" violation].

Past Practice Concerning Tape Recording -

The employer's contention that there was no consistent practice of tape recording interviews ignores what is actually at issue here: The chief's directive imposing a fixed practice (i.e. absolutely no tape recording) in place of a vacuum (i.e. tape recording upon ad hoc consent) could give rise to a duty to bargain.

In actual fact, the Pullman Police Department conducts internal investigations whenever there is an allegation of misconduct by a law enforcement officer, including by employees in the bargaining unit represented by the union. Internal investigation is also a mechanism by which the employer monitors employee compliance with departmental policies and procedures. The *Pullman Police Department Policies and Procedures Manual*, approved in December 1999, contains material pertinent to this case. "Chapter 8 - Discipline" contains several numbered sections that govern the procedure for administrative investigations,[6] including:

- "*1.4 Objectives of . . . Investigations*" explains that investigations are meant to determine facts, to uncover and preserve all pertinent evidence, to determine whether the employee's conduct was intentional or unintentional, and to determine whether the employee's actions were reasonable.

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[6] There is some confusion in the record about the difference (if any) between "administrative investigations" and "internal affairs investigations." The policy manual does not appear to make a distinction between the two terms. However, the policy manual does make a distinction between "administrative investigations" and "criminal investigations."

- *"2.22 Interviews"* describes the process of advising employees of their *"Garrity"* rights in investigations.[7]

- *"3.4 Investigative Process"* describes when and where the interview will take place, as well as how the interview will be conducted. It also gives the employee an opportunity to "contact and consult privately with an attorney of his/her own choosing and/or a representative from the Guild for a reasonable period of time before being interviewed." Additionally,

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[7] In *Garrity v. New Jersey,* 385 U.S. 493 (1967), the Supreme Court held that, where police officers being investigated were given the choice either to incriminate themselves or to forfeit their jobs, involuntary confessions coerced from officers who refused to testify on grounds of self-incrimination could not be used in subsequent criminal prosecutions. In the case now before the Examiner, the employer's policy manual includes:

> When a member is interviewed as part of an official administrative investigation of the Pullman Police Department, that member will be asked questions specifically directed and narrowly related to the performance of the member's official duties or fitness for office. The members are entitled to all rights and privileges guaranteed by the laws and Constitution of this State and the Constitution of the United States including the right not to be compelled to incriminate themselves. If a member is ordered to answer questions after being advised of their "Garrity rights" and the member refuses to testify or answer questions relating to the performance of his or her official duties or fitness for duties, the member will be subject to departmental charges which could result in dismissal from the Pullman Police Department. If the member does answer neither statements nor any information or evidence that is gained by reason of such statements, can be used against the member in any subsequent criminal proceeding. However those statements may be used against the member in any subsequent departmental charges.

> a Guild representative "may be present during the interview or interrogation to serve as counsel for the employee."[8]

Thus, the employer can order an employee to respond to questions in an investigative interview, and the employee is compelled to answer under threat of discipline.

In fact, while nothing in the employer's policy manual explicitly regulates tape recording of investigatory interviews, the union produced convincing evidence that the employer has consented to tape recording of investigatory interviews on an ad hoc basis for several years. Indeed, there is some evidence in this record that the employer has *never* denied a union request for tape recording. Thus, it is clear that the absolute ban on tape recording announced by the chief constituted a change of practice - at least from there being no absolute ban, and possibly from a use of tape recording on a case-by-case basis upon request. Thus, there would have been a duty to bargain if tape recording is a mandatory subject.

Discipline/Discharge Procedures As Mandatory Subject - Washington law is well-settled that changes in disciplinary procedures constitute mandatory subjects of bargaining. *City of Spokane*, Decision 5054 (PECB, 1995) (citing *City of Yakima*, Decision 3503-A (PECB, 1990), *aff'd*, *City of Yakima v. International Association of Fire Fighters, Local 469*, 117 Wn. 2d 655 (1991)). The Commission has noted, "Discipline can affect tenure of employment, which is the ultimate 'working condition' within the traditional scope of 'wages, hours and working condition.'" *City of Seattle*, Decision 6662 (PECB, 1999). Thus, there could be a

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[8] These rights appear to be an attempt to conform with *National Labor Relations Board v. Weingarten, Inc.*, 420 U.S. 251 (1975) and Commission precedents embracing the federal holding that employees have a right to union representation at investigatory interviews.

duty to bargain about tape recording of investigatory interviews, if it affects the disciplinary procedure.

Verbatim Recording As A Mandatory Subject -
The Examiner concludes that the facts of this case and the applicable precedents disclose two clearly separate situations:

Recording of contract negotiations and grievance meetings has been addressed by the National Labor Relation Board (NLRB) and federal courts on several occasions, and the federal precedents consistently exclude verbatim recording from those types of sessions:

- In *Bartlett-Collins Company*, 639 F.2d 652, *cert. denied*, 454 U.S. 961 (1981), the court enforced an NLRB decision holding that the presence of a court reporter during collective bargaining was *NOT* a mandatory subject of bargaining. The Board held that insisting to impasse upon the use of a court reporter to transcribe negotiations as a precondition to collective bargaining was an unfair labor practice.

- In *Nabisco Brands, Inc.*, 272 NLRB 1362 (1984), the NLRB held that insisting on tape recording certain meetings was an unfair labor practice. The Board reasoned:

> Experience has taught that the presence of a stenographer or tape recorder does inhibit free collective bargaining. Both sides talk for the record and not for the purpose of advancing negotiations towards eventual settlement. Each becomes overconscious of the recording of his remarks. The ease of expression so necessary to proper exposition of problems is hampered.

Nabisco, at 1364. The NLRB reached that conclusion even though the union and employer had a ten-year practice of tape-recording negotiations and third-step grievance meetings.

- In *Pennsylvania Telephone Guild*, 799 F.2d 84 (1986), the court enforced a NLRB cease and desist order against a union that had insisted to impasse that a grievance meeting be tape recorded. Collective bargaining negotiations and grievance meetings were equated, finding them to be "substantially similar in character and method" because both are "informal mechanisms used to resolve employee concerns about working terms and conditions through settlement and agreement." *Pennsylvania Telephone Guild*, at 88.

A fundamental reason for holding that verbatim recording of collective bargaining negotiations and grievance meetings is not a mandatory subject of bargaining is because there is "no significant relation between the presence or absence of a stenographer [or tape recorder] at [those] sessions, and the terms and conditions of employment of the employees." *Latrobe Steel Co.*, 630 F.2d 171, 176 (1980). A similar process-versus-substance distinction was drawn under Chapter 41.56 RCW in *City of Tukwila*, Decision 1975 (PECB, 1984), where a cease and desist order was issued when a union insisted to impasse on retaining a contractual interest arbitration *process* that could only indirectly affect employee wages, hours, and working conditions.

The precedents concerning verbatim recording do *not* extend to note-taking. In *City of Pasco*, Decision 2919 (PECB, 1988), an examiner held that a union's abandonment of bargaining because of the presence of a note taker (who was not making a verbatim record) constituted an unfair labor practice. The federal precedents are similar: "*Unlike note taking*, the verbatim recordings unduly formalize the bargaining process and impede the resolution of the dispute." *Pennsylvania Telephone Guild*, at 89 (emphasis added).

Recording of investigatory interviews is not directly addressed in any NLRB or Commission decision cited by the parties or found by

the Examiner in this case. An intelligible policy emerges from review of surrounding principles, however:

- Under *National Labor Relations Board v. Weingarten, Inc.*, 420 U.S. 251 (1975) and a long line of federal and state precedents flowing from that decision finding an unfair labor practice under the "interference" prohibition, it is clear that investigatory interviews are *NOT* bargaining sessions even if a union official is present to assist a bargaining unit employee. *Weingarten*, at 260.

- Rather than being a forum for "free collective bargaining" or "advancing negotiations towards eventual settlement" where the NLRB sought to protect "ease of expression" between union and management in *Nabisco*, at 1364, an investigatory interview puts bargaining unit employee conduct under direct scrutiny and has the potential to directly affect that employee's wages, hours, and working conditions.

- The Third Circuit drew a distinction, in *Pennsylvania Telephone Guild*, at 88, between the "informal mechanisms" of collective bargaining (contract negotiations and grievance meetings) and other types of dispute resolution mechanisms: "In contrast to trials or arbitration, the primary purpose of [collective bargaining negotiations and grievance meetings] is not to elicit facts, but to negotiate the settlement of disputes."

An investigatory interview is much more comparable to a trial or arbitration than to a negotiation. The record shows that internal investigations can lead to disciplinary action. In fact, rules governing procedure for these investigations fall under the "discipline" chapter in the employer's policy manual. A refusal to answer can lead to disciplinary action, including dismissal. In addition, answers given may be used in disciplinary actions.

Balancing the employer's interests under the state privacy statute against the employee interests in preserving an accurate record of what transpires in an investigatory interview that could lead to their discipline or discharge, the Examiner concludes that investigatory interviews are part of the discipline process and, as such, are both factually and legally distinguishable from collective bargaining negotiations and/or grievance meetings. Like other aspects of the discipline process, the presence or absence of tape recording at investigatory interviews is a mandatory subject of collective bargaining.

The Tardy Offer to Bargain -

The chief presented his absolute ban on tape recording to the union as a *fait accompli*. That relieved the union of any obligation to request bargaining on the subject, and the fact the employer later offered to bargain on the subject does not absolve the employer of having committed an unfair labor practice. *City of Bremerton*, Decision 7873 (PECB, 2002).

FINDINGS OF FACT

1. The City of Pullman is a public employer within the meaning of RCW 41.56.030(1).

2. The Pullman Police Officers' Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of all law enforcement officers employed by the City of Pullman who are "uniformed personnel" within the meaning of RCW 41.56.030(7), excluding supervisors, confidential employees, and all other employees of the employer.

3. The employer and union were parties to a collective bargaining agreement which did not regulate tape recording of investigatory interviews of bargaining unit employees.

4. For at least ten years prior to November of 2001, the union and employer agreed to tape record internal investigation interviews on an ad hoc basis.

5. Investigatory interviews are fact-finding procedures that focus on the conduct of individual employees within the bargaining unit represented by the union, and can lead to disciplinary actions, including suspensions which affect the wages and hours of such employees and discharges which affect the wages, hours and tenure of such employees.

6. The bargaining unit employees subjected to the investigatory interviews described in paragraph 5 of these findings of fact, and the union as their exclusive bargaining representative, have a substantial interest in accurately recording and preserving the matters discussed in such investigatory interviews for purposes of potential filing and processing of grievances under the parties' collective bargaining agreement.

7. The investigatory interviews described in paragraphs 5 and 6 of these findings of fact are factually distinguishable from collective bargaining negotiations and grievance meetings, where a free exchange of proposals is encouraged and the duty to bargain in good faith exists.

8. On November 19, 2001, without prior notice to the union, the employer's chief of police issued an order which was effective

immediately, and which prohibited any tape recording of investigatory interviews of bargaining unit employees.

9. On January 14, 2002, the union filed a timely complaint charging unfair labor practices, alleging that the employer had unlawfully refused to bargain concerning the prohibition of tape recording all investigatory interviews.

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. On the basis of paragraphs 5 and 6 of the foregoing findings of fact, tape recording of investigatory interviews is a mandatory subject of bargaining under RCW 41.56.030(4).

3. By its unilateral implementation of a prohibition against tape recording of investigatory interviews as described in paragraph 8 of the foregoing findings of fact, in place of the ad hoc practice described in paragraph 4 of those findings of fact, the employer presented the union with a *fait accompli* and failed and refused to bargain in violation of RCW 41.56.140(4), and thereby also interfered with employee rights in violation of RCW 41.56.140(1).

ORDER

The CITY OF PULLMAN, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Unilaterally changing the wages, hours, and working conditions of employees in the bargaining unit represented by the Pullman Police Officers' Guild, including the tape recording of investigatory interviews.

   b. In any other manner, interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

   a. Restore the *status quo ante* by considering requests for tape recording of investigatory interviews on a case-by-case basis.

   b. Give notice to and, upon request, negotiate in good faith with the Pullman Police Officers' Guild, concerning any future modification of disciplinary procedures for employees represented by the union.

   c. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

   d. Read the notice attached to this order into the record at a regular public meeting of the Pullman City Council, and

permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

e. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

f. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice attached to this order.

Issued at Olympia, Washington, on the 30th day of May, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Sally B Carpenter

SALLY B. CARPENTER, 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

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE WILL cease and desist from unilaterally changing the wages, hours and working conditions of employees in the bargaining units represented by the Pullman Police Officers' Guild.

WE WILL restore the status quo ante by considering requests for tape recording of investigatory interviews on a case-by-case basis.

WE WILL give notice to and, upon request, negotiate in good faith with the Pullman Police Officers' Guild, concerning any future modification of disciplinary procedures for employees represented by the union.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL read this notice into the record at a regular public meeting of the Pullman City Council, and permanently append a copy of this notice to the official minutes of the meeting where the notice is read.

DATED:_____

CITY OF PULLMAN

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone (360) 570-7300.