STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CAROLE A. JORDAN, Complainant, vs. COMMUNITY COLLEGE DISTRICT 13 (LOWER COLUMBIA COLLEGE), Respondent.	)	CASE 18740-U-04-4764 DECISION 9171 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Law Offices of Judith A. Lonnquist, P.S., by *Judith A. Lonnquist,* Attorney at Law, for the complainant.

Rob McKenna, Attorney General of Washington, by *Michael P. Sellars*, Senior Assistant Attorney General, and *Rachelle E. Wills*, Assistant Attorney General, for the employer.

On August 4, 2004, Carole A. Jordan filed an unfair labor practice complaint with the Public Employment Relations Commission alleging that Lower Columbia College discriminated against her under RCW 41.56.140(3). The Commission issued a deficiency notice on September 7, 2004. Jordan filed an amended complaint on September 22, 2004. The Commission issued a preliminary ruling on September 27, 2004, finding a cause of action for:

> Employer discrimination for filing an unfair labor practice charge in violation of RCW 41.56.140(3) [and if so, derivative "interference" in violation of RCW 41.56.140(1), by retaliatory actions against Carole Jordan].

The college timely answered the complaint. Examiner David I. Gedrose held hearings in Longview, Washington on February 22, 23,

24, and March 29, 30, 31, 2005. The parties filed post-hearing briefs.

The examiner finds that Lower Columbia College did not discriminate against, nor derivatively interfere with, Carole Jordan's rights under RCW 41.56.140(3) and (1). The complaint is dismissed.

BACKGROUND

Lower Columbia College (employer) is part of the community college system of Washington. At the time pertinent to this proceeding, Dr. James McLaughlin was the college president. Ellen Peres was vice-president of administrative services. Janelle Runyon was director of college relations and marketing, a sub-unit of administrative services. Runyon oversaw production of the employer's publications. She supervised Carole Jordan, Joanne Booth, and Maggie Kennedy. Jordan, the complainant, was a graphic artist. Booth primarily worked with text as a writer and editor. Kennedy was a photographer and performed other administrative tasks as assigned.

Jordan began working for the employer in 2000. Runyon began a year earlier. Booth came at the end of 2001, and Kennedy in the fall of 2002. In 2001, Jordan joined the Washington Public Employees Association (WPEA), the exclusive bargaining representative for her job class. In the spring of 2002, Jordan filed a grievance against Runyon for failure to evaluate her and for transferring her job duties to Booth. Less than three weeks later, the employer reduced Jordan's position to half-time, alleging a lack of funding. She was the only college employee selected for a reduction-in-force. The employer assigned her other duties outside the department to keep her at full-time. It did not cut her pay. The WPEA filed an unfair labor practice complaint in May 2002. On February 5, 2004, the Commission found in Jordan's favor, ruling that the employer

retaliated against Jordan for filing her grievance when it targeted her for reduction-in-force. *Community College 13 (Lower Columbia)*, Decision 8386 (PSRA, 2004).[1] By the time of the February 2004 decision, Jordan had been restored to her full-time position in the college relations and marketing department.

ISSUE

Did the employer discriminate against, and derivatively interfere with, Jordan's rights in violation of RCW 41.56.140(3) and (1)?

ANALYSIS

Legal standard-discrimination

RCW 41.56.140(3) states:

> It shall be an unfair labor practice for a public employer to discriminate against a public employee who has filed an unfair labor practice charge.

The Commission decides discrimination allegations under standards drawn from decisions of the Supreme Court of the State of Washington. The injured party must make a prima facie case showing retaliation. To do this, the complainant must show:

- The exercise of a statutorily protected right, or communication to the employer of an intent to do so;
- The deprivation of some ascertainable right, benefit, or status; and

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[1] The parties resolved the underlying grievance in September 2002.

- The causal connection between the exercise of the legal right and the discriminatory action.

If a complainant provides evidence of a causal connection, a rebuttable presumption is created in favor of the employee. The complainant carries the burden of proof throughout the entire matter, but there is a shifting of the burden of production to the employer. Once the employee establishes his/her prima facie case, the employer has the opportunity to articulate legitimate, non-retaliatory reasons for its actions.

The employee may respond to an employer's defense in one of two ways:

- By showing that the employer's reason is pretextual; or
- By showing that, although some or all of the employer's stated reason is legitimate, the employee's pursuit of the protected right was nevertheless a substantial factor motivating the employer to act in a discriminatory manner.

Wilmot v. Kaiser Aluminum, 118 Wn.2d. 46 (1991); *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991). *See Educational Service District 114*, Decision 4631-A (PECB, 1994); *Brinnon School District*, Decision 7210-A (PECB, 2001).

Legal standard-interference

RCW 41.56.140(1) states:

> It shall be an unfair labor practice for a public employer to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter.

The Commission's test for an interference violation is:

> Whether one or more employees could reasonably perceive employer actions as a threat of reprisal or force or promise of benefit associated with the pursuit of rights under Chapter 41.56 RCW. It is not necessary for a complainant to show that the employer intended to interfere, or even that the employees involved actually felt threatened.

City of Omak, Decision 5579-B (PECB, 1997); *City of Tacoma*, Decision 8031-A (PECB, 2004).

The legal standards for interference and discrimination claims are substantially different. A complainant may prevail in an interference claim by convincing the trier of fact that he or she had a reasonable person's perception of a threat or promise associated with the pursuit of collective bargaining rights. The complainant may prevail even if the employer inadvertently made a threat or promise and even if the threat was ineffective. For a complainant to prove interference, no discipline or sanction need exist, nor loss of work status or benefits result.

Discrimination, on the other hand, requires proof of an employer's intent to deprive the employee of a definable right, benefit, or status, and a showing that such a loss, or losses, actually occurred. Further, the employee must prove that he or she exercised a right given under Chapter 41.56 RCW (or told the employer of such an intent), and that a causal connection existed between that right and the actual harm suffered.

In discrimination cases, a derivative interference claim also exists and is dependent upon the underlying discrimination claim. If the complainant prevails in the discrimination claim, a finding of derivative interference automatically follows. However, if the

complainant fails to prove the underlying discrimination charge, the derivative interference claim also fails. *Yakima School District,* Decision 8612 (EDUC, 2004).

Jordan's complaint

Jordan alleged employer discrimination by Runyon and Booth acting in concert against her. Jordan provided 33 instances between February 5, 2004, and September 22, 2004, of the employer's alleged discriminatory actions. Jordan established the first element of her prima facie case for discrimination. She filed an unfair labor practice complaint against the employer in 2002. She prevailed on it by a Commission decision of February 5, 2004. The analysis thus turns to: (1) whether the employer deprived Jordan of ascertainable rights, benefits, or status, and if so (3) whether a causal connection existed between the exercise of the legal right and the discriminatory action.

Allegations of incomplete or no information given

Jordan alleged that on six jobs[2] Runyon and/or Booth, gave her incomplete or no information on Jordan's assigned tasks. She asserted that their intent was to have her fail at those tasks in order to build a case against her and justify her termination. Jordan believed a related purpose was to make her work environment so stressful that she would resign. At this juncture, Jordan's complaint centered around the use or non-use of "blue forms." Those were blue-colored job orders entitled "Publication Request Form." The blue forms included such information as the job number, date needed, date received, client name, project name, and project directions. Jordan testified that she preferred to use the blue

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[2] The term "job" in this context refers to specific work projects assigned to Jordan as a member of the production team of the college relations and marketing department. The terms "job" and "project" are used interchangeably.

forms because that was how she was trained, and she depended upon them. She asserted that the employer used them when she began her job in 2000, but changed its procedures after she filed her grievance in 2002. Jordan alleged that the new practices accelerated after the Commission's decision in February 2004.

However, in contrast to Jordan's claims, the employer presented convincing evidence that in June 2003, Runyon set forth a written set of guidelines for job requests, stating that job information can come: "(1) only on the blue sheet, (2) on the blue sheet and via e-mail, or (3) via e-mail only." Runyon stated that communication was key. Staff were instructed to ask for information on job requests if they found it lacking. Runyon repeatedly stressed the importance of communication among her staff. She urged staff to e-mail or telephone each other if they had questions on jobs. Staff were free to contact customers directly for needed information. By 2003, Jordan worked in an office separate from Runyon and Booth. Jordan agreed with this arrangement and did not allege that this separate work space constituted discrimination. Jordan also insisted that Runyon and Booth communicate with her solely by e-mail. Runyon and Booth complied with her demand. Jordan's contentions that blue form procedures dramatically changed in 2004, and that the blue forms were essential for job information, were contrary to Runyon's instructions in 2003. The examiner concludes that the employer's blue form procedures in 2004 were not discriminatory.

The six jobs Jordan identified in her complaint were: a parents' brochure, a spring concert project, a collage, projects for customers Adams and Hoseney, and a Latin text concert program. The employer pulled the parents' brochure project for production reasons. Jordan completed the spring concert, collage, and Adams projects without requesting more information or deadline exten-

sions. Hoseney cancelled his job request. The Latin text job did not revolve around a blue form. There is nothing in the extensive e-mail communication between Jordan, Runyon, and Booth about a fatal lack of information on the blue sheets. Jordan completed all the jobs and did not miss any deadlines in doing so. Runyon never counseled nor disciplined Jordan over any of those jobs.

According to the record, Runyon's department processed 42 job orders between February 5 and September 22, 2004. Thus, in the remaining 36 cases, or 86 percent of the time, Jordan did not have alleged problems with information on job orders. Jordan's only communication with Runyon and Booth was through e-mail. Jordan contended in this unfair labor practice that the employer purposely used the incomplete blue forms to cause her harm. Therefore, the examiner expected evidence of that in the e-mails. There was none. Jordan did not prove discrimination regarding the incomplete use or non-use of the blue Publication Request Forms.

Allegations of short deadlines and withheld work

Jordan alleged that on eight occasions Runyon or Booth gave her assignments with short deadlines, or withheld jobs from her until the deadlines were near. Jordan asserted that such actions were designed to have her fail on those jobs. The jobs Jordan complained of were: projects for customers Correll, Koski, Weiss, two projects for Adams (one in July and one in September), and jobs on the employer's summer schedule, the Longview Daily News, and the spring concert. The July job for Adams, and the spring concert job, were discussed above as allegedly having incomplete blue forms. As noted, Jordan recorded no problems completing those projects. Since Jordan separated the other six jobs from her incomplete information allegation, those six projects apparently had sufficient information.

Jordan stated that Runyon and Booth withheld the Correll, Koski, and Weiss jobs, the September Adams project, the summer schedule, and the Longview Daily News project from her, giving her the jobs only when the deadlines were near. The employer produced credible evidence that Correll, Koski and Weiss delayed getting all necessary information to Booth until their own deadlines were at hand. Booth provided Jordan the information when Booth received it. The record showed that the design work for the September Adams project was a near duplication of the one in July and apparently was timed for release, not withheld. The employer demonstrated that it notified Jordan of the summer schedule job seven days in advance, whereas Jordan testified she had been given only three days notice. Runyon offered to transfer the Daily News project to Booth, but Jordan declined and did that job herself.

Runyon made allowances for deadlines and moved them if necessary. Jordan completed all the jobs. Jordan was never counseled nor disciplined regarding deadlines. Jordan did not, in her e-mails, notify Runyon that the deadlines were impossible to meet or otherwise complain about short deadlines.

Jordan claimed that her December 2004 evaluation included references by Runyon to Jordan "rushing" jobs. She asserted that this proved that Runyon was setting her up for failure through short deadlines and withheld work. However, in the evaluation, Runyon referred to one job involving art work for a theater production, and another project for the employer's foundation. Runyon seemed to be saying in the evaluation that Jordan did not fully investigate the needs of the jobs and made errors in her administration of the projects, not in her artwork. Jordan cited neither of those jobs as incidents of short deadline or withheld jobs in the present unfair labor practice complaint.

Booth testified about the stress of the department's work as constantly entailing short deadlines. Runyon stated that customers came in with jobs and wanted them done immediately because the customers had delayed and faced their own deadlines. Runyon and Booth came from newspaper backgrounds and seemingly accepted as normal the situation they described.

The record indicated that Jordan was organized and detail oriented. The clash of working styles had more to do with personality conflicts in the department and patterns of work than conscious attempts by Runyon and Booth to infuriate Jordan. Purposely-and needlessly-withholding jobs would reflect badly on Runyon, not her subordinates, if the customers learned that jobs had been unduly delayed merely on the whim of the manager. Nothing in the record, including Runyon's testimony, showed that Runyon was self-destructively hostile to Jordan.

Jordan cited 12 projects out of 42 where she claimed incomplete information, short deadlines, or withheld work. Jordan did not notify Runyon of those alleged problems at the time Jordan claimed they occurred. Jordan completed all the jobs, was never counseled nor disciplined over them, and received only praise from Runyon about her artwork. Runyon complimented Jordan on meeting deadlines. Runyon's December 2004, evaluation of Jordan mentions only two jobs where Runyon was dissatisfied with Jordan's performance. As stated above, Jordan did not include those projects in her present unfair labor practice complaint. Jordan failed to prove discrimination in the 12 instances she cited.

Allegations of no work assignments

Jordan contended that Runyon did not assign her work on six days between February 5 and September 22, 2004 (the period covered by her unfair labor practice complaint and amended complaint). Jordan

believed that Runyon's purposes in not assigning her work were to build a case that Jordan's position was unnecessary, as well as being part of the employer's alleged harassment campaign against her. The days alleged were: March 1, 2, 3, and 5, May 12, and June 15. There were 161 working days during that period. Six days of no work amounted to four percent of the total. Four of the six days occurred in March. Three of the claimed days in March were for half days. There was no consistent pattern to the supposed lack of work.

An analysis of the days in question further disproves Jordan's claims. On March 1, Jordan met in the afternoon with her union business agent. On March 2, Runyon took sick leave. On March 3, Jordan was ill and had another meeting with her union business agent in the afternoon. There was no record for March 5, but on March 4 Jordan took part in a grievance mediation. Rather than showing a pattern of intentional withholding of work, the first work week in March was legitimately interrupted by a combination of illnesses and union meetings.

On May 11, Runyon asked Jordan if she needed work. Runyon stated that if Jordan needed work, that Runyon would find her an assignment. On May 12, Runyon went to a morning staff appreciation breakfast. Jordan forgot to attend. When Jordan told Runyon in the afternoon that she needed work, Runyon assigned her a project. On June 15, Jordan told Runyon she had no work. Runyon suggested she read some training manuals. Jordan later asked if she could attend a function for another employee at 2:30 pm. Runyon gave her permission to do so.

Runyon and Booth testified that the nature of the department's business was that there were down times, when projects did not come in. There were also hectic times when several jobs came in, some

with short turn-arounds. For portions of six days out of 161, Jordan had down times. When she told this to Runyon, Runyon attempted to find her work. Jordan failed to prove discrimination based on no work assigned.

Jordan felt blamed

Jordan alleged that Runyon and Booth blamed her for a mistake on a spring schedule publication. The schedule's cover featured a student standing against a background of the sky and a college building. The printer e-mailed Runyon stating that the color was distorted, with the sky and student's face unnatural colors, making the student look like an "alien or witch." Runyon, Booth, and Jordan were involved in resolving the issue and reached a quick solution. A review of the e-mail record revealed no evidence of blame assigned to Jordan, either directly or implicitly. Rather, the record showed that Jordan suggested ways to fix the problem, and that Runyon agreed with her ideas. The record demonstrated that Jordan received no blame for this incident.

Allegations of micro-managing

Jordan claimed that on two jobs, Runyon and Booth micro-managed her work. On one job, Jordan was tasked with preparing the artwork to advertise a Shakespearean play. Jordan submitted her design, but Booth disagreed with her concept. The customer, however, accepted Jordan's idea. The advertisement was produced using Jordan's design. Booth was a co-worker and had no control over Jordan's final product. The fact that Booth disagreed with Jordan on one occasion did not amount to discriminatory micro-managing.

On the second project, Jordan submitted a document to Runyon as an initial proof. Proofs were routinely submitted with stamps indicating whether the document was proof 1, 2, 3, etc. Jordan had used a new stamping method she learned about at a conference.

Runyon was unfamiliar with the method and was unsure whether the submitted document was the first or second proof. Runyon wanted to clarify the matter to make sure it did not reoccur. Jordan explained her purpose in using the new method. Runyon replied that she understood, but that nevertheless Jordan had caused confusion. Runyon did not reprimand or discipline Jordan as a result of this exchange. Runyon, as department manager, simply made clear her preference on proofing stamps. This was not discriminatory micro-management.

Allegation of disparate treatment

Jordan alleged that Runyon treated her differently than she treated Booth over Jordan's use of the new stamping method. Booth had used a new method of computer highlighting. Jordan asserted that Runyon did not challenge Booth over the new highlighting method, whereas Runyon made an issue out of Jordan's use of the new stamping method. However, Jordan also alleged that the disparate treatment arose because Runyon and Booth did not include Jordan in the decision to use the new highlighting method. Nothing in the record indicated that the highlighting method caused Runyon any concern. Thus, Runyon had no reason to discuss the highlighting method with Booth. As noted above, Runyon took no adverse job action against Jordan. Jordan's disparate treatment claim was confused and failed to establish discrimination.

Allegations of Jordan's work given to Booth

Jordan asserted that Runyon assigned Jordan's jobs to Booth on two occasions. Jordan stated that in March, Runyon had Booth do the layout and design on a project, with Jordan tasked only with digitally assembling it. The employer presented solid evidence that the customer, not Booth, had suggested the layout and design. Jordan also alleged that after telling Runyon she needed work on June 15, she discovered that Runyon had assigned design work to

Booth that day. Runyon and Booth testified that the job at issue required Booth to adapt schedules to some flyers. Booth had created the schedules and accomplished the task in twenty minutes. Both Runyon and Booth testified that neither of them are artists, and that they cannot do Jordan's work. Jordan's alleged lack of work on June 15 did not result from Booth's completing the flyers. Jordan failed to prove that Runyon discriminated against Jordan by assigning her work to Booth in either the March or June incidents.

Allegations of exclusion

Jordan claimed Runyon excluded her from decisions on three occasions: Kennedy's promotion, the use of Title III funds, and the development of a branding symbol for the employer. Branding referred to the employer's desire to develop a visual symbol that would immediately identify the employer, *e.g.*, a logo.

Kennedy began work for the employer as an intern. In January 2004, she was promoted to a full-time staff position. Runyon and Kennedy testified that Jordan knew of this at the time. Jordan testified that she became aware of it in May 2004. Kennedy testified that Jordan congratulated her in January, but then confronted her over her promotion in May. Kennedy's testimony was more credible than Jordan's. However, even were that not the case, Jordan produced no evidence that she was entitled to that information. It is unclear how Jordan's knowledge, or lack of knowledge, of Kennedy's employment status affected Jordan's benefits, rights, status, or other working conditions.

Jordan alleged that Runyon did not inform her when using Title III monies to purchase office equipment. Runyon, Booth, and Kennedy convincingly testified that no Title III monies were used to purchase office equipment. Jordan received some of the new equipment. However, Jordan's claim was not about receipt of

equipment. Jordan's claim was that she was not included in the decision to purchase the equipment. Runyon, not Jordan, was responsible for department budget decisions. Jordan gave no evidence that she had a right to decide what equipment was or was not purchased.

The employer contracted with a company named Interact to develop its branding symbol. Runyon testified that Interact determined what it needed to complete the project and who among college staff it needed. Booth and Kennedy were only involved with logistical support. Runyon had more contact with Interact as the department manager. Interact did not consult with Jordan over the branding project. Jordan offered no proof that her exclusion was the result of the employer's decision, rather than Interact's.

The employer did not unlawfully exclude Jordan from meetings or projects and did not deprive her of ascertainable rights, benefits, or status.

Allegation of withheld compliment

Jordan charged that Runyon failed to pass on to her a customer's e-mail complimenting Jordan for her work on the customer's job. The customer addressed the e-mail to Jordan. Runyon stated that she did not see the e-mail until Jordan showed it to her. Runyon stated that she would place it in Jordan's personnel file should Jordan so request. Jordan had not made that request at the time of this unfair labor practice hearing. There was no harm to Jordan.

Cancelled union meetings

On three occasions in March, the employer cancelled meetings between Runyon, Jordan, and the WPEA business agent (March 17, 24, and 30). The originating incident for those meetings was the Latin text project given to Jordan earlier in the month. That job

involved producing a program for a choir concert. Runyon asked Jordan to work on the text. This was a task normally done by Booth, but Runyon told Jordan that Booth was overloaded with work and needed assistance.

The job involved working with Latin and placing accent marks in the text. Booth testified that Jordan did not do adequate work, and that Booth had to re-do and complete the project. Jordan's unfair labor practice complaint included the Latin text project as an incident of Runyon and Booth failing to fill out a blue form. However, the core problem in matter did not result from deficient blue form data. The main argument between Jordan and Booth was over the proper computer program the job required.

Runyon wrote an e-mail to Jordan and Booth stating that she had planned to relieve Booth's workload, but that her plan had "backfired." Runyon was disappointed that her intention of relieving Booth's workload had failed, but evidenced no displeasure with Jordan. Runyon did not admonish, counsel, or reprimand Jordan over this job. Runyon did not mention this matter in Jordan's December 2004 evaluation. Runyon eventually considered the matter resolved.

Runyon asked to meet with Jordan and Booth to find out what happened between them over the Latin text project. Runyon stated she was interested only in identifying the problem in order prevent similar occurrences. Jordan agreed to meet only if her union business agent could attend. Upon learning of Jordan's request, Booth agreed to meet only if Booth's union business agent could attend (Booth belonged to another union). Runyon cancelled the first meeting and deferred to her supervisor, Ellen Peres. Peres wanted to meet with the WPEA business agent first, since she had not met the agent before. Two more meetings were set, but the employer eventually cancelled those meetings as well.

Nothing in the record suggested that the employer intended the meetings as disciplinary. An employer may cancel such meetings without violating the provisions of *NLRB v. Weingarten*, 420 U.S. 251 (1975). *See University of Washington*, Decision 8794 (PSRA, 2004). In sum, the employer took no adverse job action against Jordan over the Latin text project. In declining to meet with Jordan and her union business agent, the employer did not commit an unfair labor practice.

Meeting with McGlaughlin

Jordan asserted that the employer discriminated against her during a meeting with the college president, James McGlauglin, on April 1. Jordan was, at the time, secretary of the WPEA bargaining unit. She was also editor of the local union's newsletter. She and other union members, including the local's president, met with McGlaughlin and other administrators in a regularly scheduled labor-management meeting. McGlaughlin had seen a union newsletter publicizing the Commission's February 5, 2004, decision in Jordan's favor. McGlaughlin stated his concern that such material would make the employer look bad and professed his belief that everyone's job depended on the employer prospering. There was a dispute in the record as to whether McGlaughlin had seen the local union's newsletter, or the WPEA's statewide newsletter. Another area of disagreement in the record was McGlaughlin's exact wording and intent regarding potential job losses.

In any case, Jordan believed that McGlaughlin was reacting negatively not only to the Commission's decision and the union's publicity, but to her. She testified that she took the possible job loss reference as a threat against her. The employer asserted that McGlaughlin's only concern was that negative publicity hurt the employer, and that all jobs, including his, were at stake should the employer be harmed. In addition, the employer contended

that the remarks were made at a labor-management meeting, where the parties were encouraged to share concerns, implying that McGlaughlin's remarks should be protected.

Under a discrimination analysis, McGlaughlin's remarks, even taken in the worst light, do not meet the discrimination test. No action was taken against Jordan. She suffered no loss of ascertainable benefits, rights, or status.

Because McGlaughlin's remarks did not constitute discrimination, it is not necessary to reach conclusions about what he actually said, his intent, or whether his remarks were protected. Having failed to prove discrimination in this instance, Jordan cannot claim derivative interference by the employer due to McGlaughlin's statements. *Yakima School District,* Decision 8612.

Meeting with Peres

Jordan and her union business agent finally met with Peres and Runyon on April 7. According to the record, this was Jordan's first and only direct interaction with Peres during the time period pertinent to this unfair labor practice complaint. Jordan and the business agent testified that Peres was unfriendly toward them, especially toward Jordan. They stated that Peres seemed disinterested in, and even hostile to, Jordan's concerns. Jordan believed that Peres acted unprofessionally toward her. Jordan cites Peres' attitude as evidence of the employer's discrimination. Peres denied any bias toward Jordan. Peres testified that in the meeting the parties discussed mediating the issues between Jordan, Runyon, and Booth. Peres stated that she made it clear she was in favor of mediation.

Jordan had one encounter with Peres. There was disputed testimony over Peres' words and intentions. Peres took no job action against

Jordan. Jordan's evidence failed to show that Peres was part of the employer's alleged plan to discriminate against Jordan.

Jordan's complaint fails

Jordan's complaint arose from the employer's retaliatory attempt to deprive her of her full employment as a graphic artist by a reduction-in-force. *Community College 13 (Lower Columbia)*, Decision 8386. Jordan believed that the employer, through Runyon and Booth, discriminated against her for filing that charge. Jordan's theory was that Runyon and Booth wanted to disrupt Jordan's job performance in order to build a case against her and justify a performance based termination. Jordan also believed they wanted to drive her to a voluntary quit by using harassing techniques. Jordan described 33 incidents of alleged disruption or harassment over a seven month period. However, she did not prevail in any of the 33 instances. Of her 33 individual complaints of retaliation, 20 allegedly took place between February and April, while 13 allegedly happened between May and September. Thus, based on Jordan's own evidence, the level of alleged retaliation and harassment decreased after her April meetings with McGlaughlin and Peres. Under Jordan's theory of her case, the incidents of discrimination logically should have increased, not diminished with time.

Jordan produced few corroborating witnesses on her behalf. She did not call former or present co-workers or union members. The union business agent confirmed only Jordan's concerns about Peres' attitude. A customer testified that she liked to work with Jordan. The union president testified solely about the McGlaughlin meeting, and McGlaughlin's comments and demeanor. The testimony did not provide evidence of discrimination. The three witnesses and Jordan's testimony failed to prove the existence of a discrimination plot against her.

Runyon evaluated Jordan as organized, able to meet deadlines, and overall successful in her job performance. Both Runyon and Booth described Jordan as an excellent artist and the only person in the department capable of design work. Jordan failed to prove a conspiracy against her by Runyon and Booth.

Finally, a discrimination finding based on Jordan's evidence would require a reformulation of the discrimination standard. No longer would it entail an ascertainable loss of a benefit, right, or status. A potential loss would suffice. The definitions of benefit, right, and status would need to include such factors as freedom from emotional trauma, anxiety, pressures of work, and unpopular supervisors and coworkers. The examiner has no authority under statute or case law to make such changes in the legal standard for discrimination. The employer did not discriminate against Jordan, nor derivatively interfere with her rights, under RCW 41.56.140(3) and (1).

Cause of action

The Commission will not consider evidence or argument that does not apply to the cause of action specified in the preliminary ruling. *King County,* Decision 6994-B (PECB, 2002). Prior to the hearing, proposed amendments may be filed under WAC 391-45-070. After the hearing begins, amendments are allowed only upon a motion to conform the pleadings to the evidence received, without objection. WAC 391-45-070(2)(c); *City of Seattle,* Decision 8313-B (PECB, 2004). Interference claims alleged under RCW 41.56.140(1) must be asserted independently of discrimination claims proposed under RCW 41.56.140(3). *Yakima School District,* Decision 8612.

Jordan's cause of action was for employer discrimination for filing an unfair labor practice charge. In her closing brief, Jordan alleged an independent interference claim. No cause of action

existed for an independent interference claim. Jordan filed her unfair labor practice complaint using the standard Commission form. That form gives a complainant several options in charging alleged violations. For complaints against employers by employees, the options are: (1) employer interference with employee rights; (2) employer discrimination; (3) employer discrimination for filing charges; and (4) other unfair labor practice (which the complainant is asked to explain on an attached sheet of paper). Jordan indicated only that her claim was for "employer discrimination for filing charges." The preliminary ruling found that a cause of action existed for that claim, along with an automatic derivative interference claim. Jordan did not move to amend her complaint again prior to the hearing. At the hearing, Jordan did not move to amend her complaint to conform to the evidence. Accordingly, this examiner has considered evidence and argument related only to employer discrimination for filing charges under RCW 41.56.140(3).

FINDINGS OF FACT

1. Lower Columbia College is a public employer within the meaning of RCW 41.56.030(1).

2. Carole A. Jordan is a public employee within the meaning of RCW 41.56.030(2).

3. In 2002, Jordan filed an unfair labor practice complaint against the employer. She prevailed in February 2004. *Community College 13 (Lower Columbia)*, Decision 8386 (PSRA, 2004).

4. Jordan failed to show that on 12 occasions the employer unlawfully gave her incomplete information on jobs, gave her short deadlines on jobs, or withheld jobs.

5. Jordan failed to show that on six occasions the employer unlawfully did not assign her work.

6. Jordan failed to show that on one occasion the employer unlawfully blamed her for a mistake on a job.

7. Jordan failed to show that on two occasions the employer unlawfully micro-managed her work.

8. Jordan failed to show that on one occasion the employer unlawfully engaged in disparate treatment toward her.

9. Jordan failed to show that on two occasions the employer unlawfully transferred her work to another employee.

10. Jordan failed to show that on three occasions the employer unlawfully excluded her from decisions at work.

11. Jordan failed to show that on one occasion the employer unlawfully withheld a customer's compliment concerning Jordan.

12. Jordan failed to show that on three occasions the employer unlawfully cancelled meetings with Jordan and her union business agent.

13. Jordan's claims as detailed in Findings of Fact 4-12 failed to show that the employer deprived her of ascertainable rights, benefits, or status.

14. Jordan failed to show that, in a meeting on April 1, 2004, the employer's comments deprived Jordan of ascertainable rights, benefits, or status.

15. Jordan failed to show that, in a meeting on April 7, 2004, the employer's comments and demeanor toward Jordan deprived Jordan of ascertainable rights, benefits, or status.

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. Based on Finding of Fact 3, Jordan engaged in protected activity under Chapter 41.56 RCW.

3. Based on Findings of Fact 4-15, the employer did not discriminate against Jordan for filing charges under RCW 41.56.140(3).

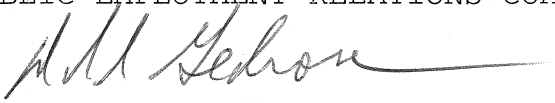
4. Based on Findings of Fact 4-15, and Conclusion of Law 3, the employer did not derivatively interfere with Jordan's collective bargaining rights under RCW 41.56.140(1).

ORDER

The complaint alleging unfair labor practices filed in case 18740-U-04-4764 is DISMISSED on the merits.

Issued at Olympia, Washington, on the 18th day of November, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DAVID I. GEDROSE, 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.