

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CARRIE FEY,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE NO. 4021-U-82-629

DECISION NO. 1698 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF  
LAW AND ORDER

James E. Kennedy, Attorney at Law, appeared on behalf of complainant.

Norm Maleng, Prosecuting Attorney, by Michael Thurston, Deputy Prosecuting Attorney, appeared on behalf of respondent.

On March 23, 1982, Carrie Fey, (complainant) filed a complaint charging unfair labor practices, alleging that King County (respondent) violated RCW 41.56.140(1) by interfering with the pursuit of a grievance through a contractual grievance procedure. A hearing was conducted on April 20, 1983, in Seattle, Washington. The parties submitted post-hearing briefs.

BACKGROUND

Among various law enforcement services, King County operates a detention facility located in the county courthouse. The jail commander supervises the facility's general operation, and unit commanders direct the activities within the facility's various units. The jail staff of correctional officers work in areas ranging from work release programs to intensive detention.

The facility operates 24 hours a day, seven days a week. Work shifts are established as follows: day shift - 6:30 AM to 2:30 PM; swing shift - 2:30 PM to 10:30 PM; and "graveyard" shift - 10:30 PM to 6:30 AM. Correctional employees rotate shifts and unit assignments every four months. Approximately a month before a rotation is to occur, respondent supplies correctional employees with a preference list in order that the employees can request a particular shift and unit assignment. Employees specify three

choices of assignment and submit the completed form to the jail's personnel department. To the extent possible, employee requests are honored, but the jail administration retains final authority in shift and unit assignments to assure that adequate staffing is maintained. Employees are notified of their new shift and unit assignments two weeks before the rotation takes place.

Public Safety Employees, Local 519, represents certain non-supervisory correctional employees employed in the jail. Sergeant Carrie Fey, a bargaining unit employee, filed the unfair labor practice complaint in this matter.

In the latter part of 1981, Fey was on day shift, working in the jail's work release unit. The next scheduled shift rotation was to take effect on January 1, 1982. Preference sheets were distributed in the first week of December, 1981, and Fey submitted her shift and unit assignment preferences in a timely manner. Two weeks before the rotation would take effect, Fey was notified that her preferences could not be accommodated. She was assigned to work in the jail's felony unit on the graveyard shift. Fey did not contest the assignment, and made arrangements to adjust her personal affairs to accommodate the new schedule.

On December 31, 1981, Fey received a change of assignment. Instead of being transferred to the felony unit on graveyard shift, Fey was ordered to report to the work release unit on day shift. Fey refused to sign a waiver of the two week notice requirement. On January 5, 1982 she filed a grievance because of the lack of notification. As a remedy for the grievance, Fey requested that she be allowed to transfer to the felony unit on graveyard shift.

The grievance was brought to the attention of Clifford Simonsen, acting jail commander. Simonsen reviewed the matter and denied the grievance. On January 19, 1982, Simonsen sent a letter to Dustin Frederick, business representative for Local 519, detailing the reasons for denial of the grievance. On January 27, 1982, Frederick sent a letter to Merlyn Bell, acting director of King County Department of Rehabilitative Services notifying him that Fey's grievance was not resolved and advancing the grievance to the next step in the grievance procedure.

Sometime after his denial of the grievance but prior to February 1, 1982, Simonsen had a meeting with Frederick at which Fey's grievance was discussed. Frederick asked Simonsen if he would reconsider his denial of the grievance or find out if Fey could exchange shifts with another officer. Simonsen checked into the matter and determined that another sergeant would exchange shift assignments with Fey. Simonsen then discussed the situation with Lieutenant Thomas Brown, commander of the jail's felony unit. Simonsen

directed Brown to contact Lieutenant Charles Kennon. Kennon would have been Fey's immediate supervisor if she had been transferred to the felony unit on graveyard shift. Kennon was directed to find out if Fey would accept a transfer to his unit on graveyard shift as a resolution of the grievance. Shortly thereafter, Kennon spoke with Frederick about Fey's grievance. Frederick characterized the discussion as "off the record", but did express his belief that the grievance would be settled if Fey was offered the felony unit assignment on graveyard shift.

On the afternoon of February 1, 1982, Fey was not on duty. At approximately 3:30 PM, she received a telephone call at her residence from Kennon. There is some dispute as to the precise words used in the conversation which ensued, but the credible evidence indicates that Kennon identified himself and said that he was calling "as a friend." Kennon asked Fey if she would be willing to transfer to the felony unit on graveyard shift under his supervision. Fey told him that she could not make such a change because she had already made personal arrangements so that she could work the day shift in the work release unit. Fey testified that Kennon, in referring to the grievance, told her that she was "putting herself and the department through a lot of trouble". Kennon acknowledged making the telephone call but denied that he made any reference to difficulties created because of Fey's grievance.

On February 2, 1982, Fey reported to work, and at approximately 8:30 AM she was directed to report to Lieutenant Brown's office. Once there, Brown discussed general matters dealing with work shifts, and then told Fey that he was aware of her telephone conversation with Kennon. Fey testified that Brown ordered her to write a report concerning the conversation and her response to Kennon's offer of settlement on the grievance. Brown testified that he asked Fey to write a report explaining the reasons for her refusal to exchange shifts, but did not request information about the telephone conversation. Fey refused to comply with Brown's order and the meeting ended shortly thereafter.

On February 4, 1982, Brown called Fey into his office and informed her that she was scheduled to have a meeting with Major Thomas Johnson, commander of jail operations. Brown and Fey proceeded to Johnson's office, and Brown stayed at the meeting as an observer. Johnson asked Fey if she had disobeyed a direct order, and she answered affirmatively. Fey testified that Johnson asked if she understood the chain of command in the King County Jail, and questioned her about Kennon's telephone call. Fey refused to discuss the grievance, and told Johnson that any offer of settlement should have been directed to her union representative, Dustin Frederick. Johnson testified that he explained the jail's chain of command and told Fey that he had an "open door policy" regarding personnel problems. Johnson denied that he asked any questions about the telephone conversation. Johnson further testified that he wanted the meeting only to find out why Fey refused to make a written report on the shift exchange issue.

On February 11, 1982, Simonsen had a meeting with Fey. As in the other meetings detailed above, the topics of conversation are in dispute between the parties. Fey testified that Simonsen talked about a sex discrimination charge that Fey had pending and also discussed the grievance she had filed on the shift and assignment changes. According to Fey, Simonsen told her that he had ordered Kennon to telephone her, and that he had authority to make such an order regardless of the collective bargaining agreement's grievance procedure. Simonsen also discussed Fey's refusal to prepare a written report on the telephone conversation. Simonsen testified that he merely wanted to find out why Fey refused to make a report on her refusal to accept a settlement offer on the grievance.

Subsequently, the grievance was "terminated" by Local 519 at Fey's request. Complainant filed the unfair labor practice complaint which is the subject of these proceedings on March 23, 1982.

#### POSITIONS OF THE PARTIES

Complainant maintains that respondent attempted to interfere with, coerce and intimidate her in the processing of a grievance. Complainant argues that respondent failed to discuss offers of settlement with her union representative, but tried to force her into a settlement by conducting a series of meetings with her alone.

Respondent admits that it had a series of conversations with complainant but disagrees about the content of those conversations. Respondent argues that it did not attempt to threaten, intimidate or coerce complainant during the conversations, and was merely attempting to ascertain why complainant refused to accept a resolution of a grievance in light of the fact that respondent was offering the same resolution as that proposed initially by complainant.

#### DISCUSSION

This unfair labor practice complaint deals with respondent's interference with complainant's processing of a grievance through a contractual grievance procedure, in violation of RCW 41.56.140(1). That statute provides:

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; . . .

The Public Employment Relations Commission has held that filing and processing grievances are protected activities under RCW 41.56.140(1). See: Valley General Hospital, Decision No. 1195 (PECB, 1981); Peninsula School District, Decision No. 1477 (EDUC, 1982); Clallam County, Decision No. 1405-A (PECB, 1982); and City of Mercer Island, Decision No. 1580 (PECB, 1983). In City of Mercer Island, it was noted that a finding of employer intent to interfere is not necessary to find a violation of RCW 41.56.140(1). It is sufficient that there was a threat which was reasonably perceived by the employee as an attempt to interfere with rights guaranteed by RCW 41.56.

In this case, respondent made repeated attempts to discuss a pending grievance with complainant rather than using established grievance procedures. While employer officials had at least two discussions with complainant's union representative, there is no indication that the representative gave authorization for respondent to deal directly with complainant. Respondent characterizes the several discussions with complainant as attempts to clarify complainant's desired grievance remedy. However, respondent's confusion about complainant's grievance does not allow respondent to disregard the contractual grievance procedure and deal directly with the affected employee, particularly where the employee specifically requested that the grievance be handled through the union.

If, during the course of an employee-employer interview, the employee reasonably fears disciplinary sanctions will flow from the employer's investigation, the employee must be allowed union representation at the interview. See: NLRB v. Weingarten Inc. 420 U.S. 251 (1975). To invoke Weingarten rights, the affected employee must make an affirmative effort to request union representation. See: NLRB v. Appalachian Power Company 106 LRRM 1041 (1981). In this situation, respondent repeatedly placed complainant in investigatory meetings. The threat of discipline was always present in discussion of the "chain of command" in the context of a para-military structure. In several of the meetings, complainant's refusal to obey a direct order was discussed. Given these circumstances, it is clear that complainant could have received a wide range of disciplinary sanctions as a result of the meetings. The record clearly indicates that complainant asserted her right to be represented by her union when she was called to the meeting with Major Johnson. Once asserted, the Weingarten right remained in full effect during the series of meetings conducted during February, 1982.

#### REMEDY

To correct the unfair labor practices committed, respondent will be ordered to cease and desist from interfering with complainant's right to process a grievance, and will be ordered to post appropriate notices.

Additionally, complainant shall be allowed to process the grievance which led to the unfair labor practice complaint. Since all subsequent processing of the grievance, including its withdrawal, were tainted by the effects of the employer's unlawful conduct, the employer shall, upon request of the complainant, allow the grievance to be reactivated at the step in the grievance procedure where the unfair labor practice was committed. Respondent shall not assert any defenses which arose during the intervening time period, since respondent's actions effectively disrupted the initial grievance processing.

#### FINDINGS OF FACT

1. King County operates a detention facility as part of its law enforcement services, and is a "public employer" within the meaning of RCW 41.56.030(1).
2. Public Safety Employees, Local 519 represents certain correctional employees at the county's detention facility and is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. Sergeant Carrie Fey, a bargaining unit employee, was working on day shift in the facility's work release unit in the latter part of 1981. As part of a regularly scheduled shift rotation, Fey was informed that she was to be assigned to the graveyard shift in the felony unit, effective January 1, 1982. Fey made personal arrangements to accommodate her new assignment.
4. On December 31, 1981, Fey was informed that her assignment was changed to day shift in the work release unit. Under terms of the collective bargaining agreement then in effect, an employee was to receive two weeks notice before an assignment change was made. Fey refused to waive the two week notice requirement and filed a grievance under terms of the contract's grievance procedure.
5. The dispute reached Clifford Simonsen, acting jail commander, and after reviewing the situation he denied the grievance. Simonsen thereafter discussed Fey's grievance with Dustin Frederick, business representative for Local 519. Frederick asked if Simonsen could reconsider his denial or could arrange a shift exchange for Fey. Simonsen was not authorized by Frederick to contact Fey directly to discuss the grievance.
6. Simonsen directed his subordinates to discuss a shift exchange with Fey.
7. On February 1, 1982, Lieutenant Charles Kennon telephoned Fey at her residence and asked her if she would be willing to exchange shifts to settle the grievance. Fey refused the offered shift exchange.

8. When Fey reported for work on February 2, 1982, she was directed to appear in Lieutenant Thomas Brown's office. Brown ordered Fey to submit a written report concerning her refusal to accept the proposed shift exchange as a grievance settlement. Fey refused to comply with Brown's order.
9. On February 4, 1982, Fey was directed to a meeting with Major Thomas Johnson, commander of jail operations. Lieutenant Brown attended the meeting as an observer. Johnson asked Fey why she refused to comply with Brown's order and asked about the outstanding grievance. Fey stated that any settlement offer should be made through her union representative, and admitted that she had disobeyed Brown because she did not feel he was entitled to the information he sought.
10. On February 11, 1982, Simonsen conducted a meeting with Fey. Fey's refusal to obey Brown's order was discussed, and Simonsen questioned Fey about the refusal to accept the shift exchange as a grievance settlement.
11. During the course of the meetings described immediately above, Fey was not represented by any union official, but she had placed King County on notice that grievance settlement discussions should be directed to the union during her telephone conversation with Lieutenant Kennon on February 1, 1982. Nevertheless, the representatives of the employer continued to make implied threats of discipline, questioning Fey as to her understanding of the chain of command.
12. Fey terminated the grievance shortly after her meeting with Simonsen and filed an unfair labor practice complaint on March 23, 1982.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. By events described in Findings of Fact seven through ten, above, King County interfered with an employee's right to process grievances through a grievance procedure established by a collective bargaining agreement, and violated RCW 41.56.140(1).
3. By events described in Findings of Fact eight through eleven, above, King County subjected an employee to a series of investigative meetings without affording the opportunity of union representation, and violated RCW 41.56.140(1).

ORDER

Upon the basis of the above Findings of Fact and Conclusions of Law, and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining act, it is ordered that King County, its officers and agents shall immediately:

(1) Cease and desist from:

(a) Interfering with Carrie Fey's right to process grievances through the grievance procedure.

(b) Conducting investigatory meetings with bargaining unit employees without union representation if the affected employee affirmatively requests such representation.

(2) Take the following affirmative action to remedy the unfair labor practice and effectuate the policies of the Act:

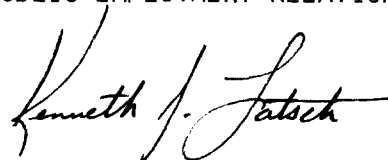
(a) Upon request made by Carrie Fey, allow her to re-institute and to process her grievance concerning the shift change without interference. King County shall not raise any defenses which may have arisen during the intervening period affected by the unfair labor practice. The grievance shall be commenced at the step in the grievance procedure where the unfair labor practices were committed.

(b) 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 A". Such notice shall, after being duly signed by an authorized representative of King County, be and remain posted for sixty (60) days. Reasonable steps shall be taken by King County to ensure that said notices are not removed, altered, defaced, or covered by other material.

(c) Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding.

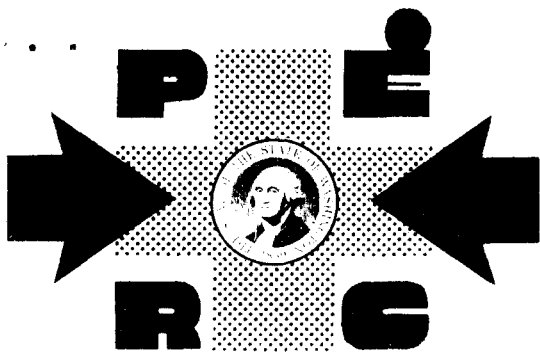
DATED at Olympia, Washington, this 22nd day of August, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KENNETH J. LATSCH, Examiner





PUBLIC EMPLOYMENT RELATIONS COMMISSION

# NOTICE

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

WE WILL NOT interfere with an employee's right to process a grievance through a contractual grievance procedure.

WE WILL NOT conduct investigatory interviews with employees without union representation if the affected employee affirmatively asserts a desire to have a union representative present.

WE WILL allow Sergeant Carrie Fey to fully process her grievance from the step in the grievance procedure that the grievance had progressed when the unfair labor practices were committed. Such processing shall not be affected by any defenses that may have arisen during the intervening period after the unfair labor practices occurred.

DATED: \_\_\_\_\_

KING COUNTY

BY \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

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

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