

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BREMERTON PATROLMAN'S ASSOCIATION,)	
)	
Complainant,)	CASE NO. 7098-U-87-1451
)	
vs.)	DECISION 2994 - PECB
)	
CITY OF BREMERTON,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND ORDER
)	
)	

Aitchison and Moore, Labor Consultants, by Peter A. Ravella, appeared on behalf of the complainant.

Ian R. Sievers, City Attorney, appeared on behalf of the respondent.

On October 19, 1987, the Bremerton Patrolman's Association (complainant) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Bremerton (respondent) committed unfair labor practices within the meaning of RCW 41.56.140(1), (2), and (4) through a series of transactions involving Patrol Officer Roy Alloway. Kenneth J. Latsch was designated as Examiner. A hearing was conducted on March 29, 1988, in Bremerton, Washington. The parties filed post-hearing briefs.

BACKGROUND

The City of Bremerton has collective bargaining relationships with several employee organizations, including the Bremerton

Patrolman's Association. The complainant represents a bargaining unit of nonsupervisory law enforcement personnel.

Events leading to the instant unfair labor practice matter can be traced to negotiations which began between the complainant and the city in March, 1987. The parties encountered serious difficulties in the negotiation process. The respondent proposed a number of modifications in the existing employment relationship, including a new salary structure, modified vacation and holiday schedules, reduced medical benefits, and a rotating shift schedule. Roy Alloway was President of the Bremerton Patrolman's Association and served as its chief spokesman during the course of bargaining in 1987.

By the latter part of 1987, the parties were unable to reach agreement on any substantive issues. At some unspecified time, the complainant learned that the respondent intended to make a number of changes in working conditions while bargaining was still in progress.

On October 12, 1987, Alloway sent a letter to Chief of Police Lynn Coney, objecting to the following changes:

1. The long established practice and policy that governs off duty employment permits including the State ferry positions.
2. The established practice of granting overtime for work beyond the normal work day, when part of the day is taken off as leave.
3. Hours of work for several individuals to engage in emphasis patrols disrupting thier (sic) normal fixed shifts to avoid paying overtime.
4. The Citys (sic) requiring officers to attend medical appointments for the

Citys (sic) needs and information, then attempting to coerce individuals into paying for the medical costs.

5. The historical use of Police Reserves including benefits of these reserves which infringe upon the benefits of our membership.

Alloway went on to demand bargaining on the "decision and the impact" of each of the above-listed changes prior to implementation. He also demanded the restoration of the status quo during negotiations on the particular subjects.

On October 12, 1988, without waiting for a reply from the employer, Alloway sent a copy of his letter to Chief Coney to the local newspaper, The Bremerton Sun.

On October 13, 1987, The Bremerton Sun ran a story based on Alloway's letter and an interview of Alloway.

On October 13, 1987, evidently after the employer had occasion to read the story in The Bremerton Sun, Alloway was informed that he was the subject of an internal investigation to be conducted by Captain Joe Hatfield, Internal Investigations Officer. In the internal investigation complaint form, Alloway was accused of violating five standard operating procedures (SOP's), because of "release (unauthorized) of information to the news media in regards to dept. operations/policies". The SOP's listed in the complaint covered the following subject matters:

7.11.00 CONDUCT UNBECOMING AN OFFICER
All officers shall avoid any conduct on duty or off duty which adversely affects the morale or efficiency of the police department. Further, all officers shall avoid conduct which has a tendency to destroy public respect or trust for

municipal employees and for confidence in the operation of the police department.

13.03.00 CONFIDENTIALITY OF DEPARTMENT INFORMATION

Employees shall regard all information concerning the official business operations and policies of this department as confidential and shall not release such information unless its release is specifically permitted.

15.00.02 RESPONSE TO CONTROVERSIAL QUESTIONS

Officers who are confronted by members of the media with questions or probes of a controversial nature or which might compromise any department operation, shall immediately refer the matter to a supervisor or commanding officer.

15.03.00 STATEMENTS OF DEPARTMENT POLICY

Statements to the media regarding department policy, philosophy or enforcement procedures shall be made only by the Chief or his designated representative.

15.04.00 RELEASE OF INFORMATION ON SUSPECTS, CASES AND DEPARTMENT OPERATIONS

Release of any information to the media regarding suspects, cases, and department operations, shall strictly conform to established department procedures and regulations in this area.

The record does not indicate the nature of the discipline that could be imposed as a result of the investigation. However, Alloway had previously been subjected to discipline for an incident involving reports he made concerning alleged thefts committed by a police lieutenant.¹

On October 19, 1987, the association filed the instant unfair labor practice complaint.

¹ That matter was pending in court at the time of hearing in the instant matter.

On October 21, 1987, Hatfield interviewed Alloway about the events leading to the internal investigation. A transcript of the interview reveals that the ensuing discussion was contentious. During the course of the interview, Alloway took the position that the city was investigating his activities as union president, rather than his duties as a patrol officer. Hatfield took the position that the investigation dealt only with Alloway's actions as a police officer. The record indicates that Alloway had not waited for a response from the police chief before he sent the copy of his October 12 letter to the newspaper. At one point in the interview, Alloway admitted that he had contacted the newspaper and that the newspaper account was an accurate representation of the information he provided. Once again, Alloway and Hatfield argued over the course of the investigation, with Alloway claiming that he was being harassed because of his union office.

On October 28, 1987, Hatfield issued findings concerning his investigation of the October 13 charges against Alloway. The investigation concluded with the finding of "not sustained", which is defined on the investigation report in the following manner:

There is not a preponderance of available evidence to either prove or disprove the allegation.

The matter did not thereby come to rest, however. On October 28, 1987, City Attorney Ian Sievers sent a letter to the complainant's labor consultant, Peter Ravella, suggesting that the parties discuss the Alloway matter as well as the issues raised in his October 12, 1987 letter. Ravella responded by letter dated November 3, 1987, indicating the complainant's willingness to discuss the situation. The parties were unable

to resolve their differences, and the unfair labor practice complaint was processed to hearing.

POSITIONS OF THE PARTIES

The complainant alleges that the respondent committed an unfair labor practice through its treatment of Alloway, who was serving as president of the labor organization. Given the circumstances surrounding the disciplinary action commenced by the respondent, the complainant argues that the respondent was attempting to coerce the complainant's chief officer during the pendency of collective bargaining negotiations.

The respondent contends that it did not commit an unfair labor practice. The respondent notes that Alloway sent a copy of his letter requesting negotiations to the newspaper on the same day that he sent the letter to the respondent, and contends that release of that letter without prior authorization by the Chief of Police violated internal department policies. The respondent contends that Alloway was not treated any differently from other officers in similar circumstances.

DISCUSSION

From testimony presented at the hearing in this matter, it is evident that the parties to these proceedings have had a troubled collective bargaining relationship. Their past difficulties carried over into their recent negotiations. As the complainant sought to open negotiations with the respondent on a variety of issues, its president simultaneously sent the union's bargaining demands to a local newspaper. While the complainant's strategy of "going public" outside of the usual

bargaining process may be questionable in this instance, the focus in this unfair labor practice proceeding must rest on the employer's response to the newspaper report.

In essence, the instant complaint presents a question of balance in the bargaining process. The employer's need to monitor communications leaving the police department must be weighed against the right of the exclusive bargaining representative and its officials to inform the public about the status of collective bargaining negotiations.

An employee has certain responsibilities to respect the rules and regulations of his or her employer. If police operational data had been released in this case, there might be no doubt that the employer would have been justified in undertaking an investigation.

An employer, on the other hand, must respect the statutory right of employees to organize and bargain collectively through representatives of their own choosing. In this case, the information released by Alloway to the newspaper dealt only with the issues and procedures of collective bargaining between the parties. The employer's reaction to the release of that type of information thus raises serious questions.

A set of objective factors must be analyzed to determine whether an unfair labor practice has been committed. As the complainant correctly points out in its closing brief, proof of an anti-union intent, or motive, is not a necessary element in determining an "interference" unfair labor practice allegation under RCW 41.56.140(1). As noted in City of Seattle, Decision 2134 (PECB, 1985), the test for an "interference" violation is "whether the employer engaged in conduct which, it may be reasonably said, tends to interfere with the exercise of

employee rights under the Act." See, also, American Freightways Co., Inc., 124 NLRB 146 (1959).

The record in this case demonstrates that the respondent's actions went beyond mere questioning of the complainant's, or Alloway's, bargaining tactics. The respondent's actions amounted to a concerted investigation of the association president as an employee. The investigation was launched immediately after the bargaining demand was made. Although the employer concluded when its investigation was complete that the charges against Alloway could not be substantiated, even though Officer Alloway admitted that he had contacted the newspaper, the net effect of the employer's investigation was to leave an incident report in Alloway's personnel file. Thus, the possibility remains that the incident might be referred to again in the future.

Given these factors, Alloway and other bargaining unit members could have reasonably perceived a pattern of retaliation arising from the collective bargaining process. A union official was subjected to an intense internal investigation because of his actions on behalf of the union, and the employer kept the issue alive in its personnel file on the individual. Such actions could substantially impair the complainant's ability to conduct its regular business as the exclusive bargaining representative of the bargaining unit, and could also have a chilling effect on the willingness or desire of bargaining unit members to pursue their statutory rights and remedies. An unfair labor practice violation must be found.

As a remedy for the unfair labor practice, the employer shall be ordered to cease and desist from the unlawful activity, to expunge reference to the incident from Alloway's personnel file, and to post appropriate notices.

FINDINGS OF FACT

1. The City of Bremerton is a "public employer" within the meaning of RCW 41.56.020(1).
2. The Bremerton Patrolman's Association is a "bargaining representative" within the meaning of RCW 41.56.020(3). Roy Alloway was President of the organization at all times relevant to this proceeding.
3. The Bremerton Patrolman's Association is the exclusive bargaining representative of a bargaining unit of non-supervisory law enforcement personnel of the City of Bremerton.
4. In the latter part of 1987, while the City of Bremerton and the Bremerton Patrolman's Association were engaged in collective bargaining negotiations, the union learned that the employer intended to change certain employment practices dealing with: Police officers serving as security personnel on vessels operated by the Washington State Ferry System; the use of "reserve" personnel; and certain other matters.
5. Acting in his capacity as an official of the union, Alloway sent a letter to the Chief of Police on October 12, 1987, protesting the proposed changes and demanding that the parties negotiate prior to the implementation of new procedures. On the same day, also acting in his capacity as an official of the union, Alloway sent a copy of the union's bargaining demand to the local newspaper.
6. On October 13, 1987, the newspaper published a full account of the union's bargaining demand on the city,

along with an interview of Alloway, acting in his capacity as an official of the union, about the status of the relationship between the employer and the union.

7. On October 13, 1987, the employer commenced an internal investigation of charges against Alloway, and informed Alloway that he was being investigated for discipline on charges of unauthorized release of police department information.
8. During the course of the investigation, Alloway admitted that he had sent the information to the newspaper.
9. At the conclusion of the investigation, Alloway was informed that the issue would be closed as a matter "not proven". The record indicates, however, that the report would remain part of Alloway's personnel file.

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 paragraphs 5 through 9 of the foregoing Findings of Fact, the City of Bremerton has interfered with, restrained and coerced public employees in the exercise of their rights under RCW 41.56.040, and thus has committed unfair labor practices within the meaning of RCW 41.56.140 (1).

ORDER

Upon the basis of the above Findings of Fact and Conclusions of Law, and pursuant to the Public Employees Collective Bargaining

Act and RCW 41.56.160, it is ordered that the City of Bremerton, its officers and agents shall immediately:

1. Cease and desist from interfering with the rights of Roy Alloway in his capacity as President of the Bremerton Patrolman's Association.
2. Take the following affirmative action to remedy the unfair labor practice and effectuate the policies of the Act:
 - A. Remove from the personnel files maintained by the City of Bremerton concerning its employee, Roy Alloway, any and all documents and references to the events described in the above Findings of Fact and Conclusions of Law.
 - 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". Such notice shall, after being duly signed by an authorized representative of the City of Bremerton, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the City of Bremerton to insure that said notices are not removed, altered, defaced, or covered by other material.
 - C. Notify the complainant, 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 complainant with a signed copy of the notice required by the preceding paragraph.

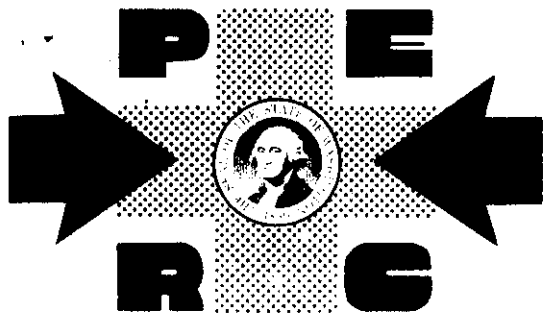
- D. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by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

DATED at Olympia, Washington, this 2nd day of September, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


KENNETH J. LATSCH, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.



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 the rights of bargaining unit employees engaged in collective bargaining activities.

WE WILL NOT intimidate or harass officers of the Bremerton Patrolman's Association in the exercise of their responsibilities as union officials.

WE WILL remove any disciplinary documents from Officer Roy Alloway's personnel file arising from his contact with The Bremerton Sun concerning collective bargaining matters.

CITY OF BREMERTON

BY: _____
Authorized Representative

DATED _____

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.