STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LONGVIEW POLICE GUILD,	)	
	)	
Complainant,	)	CASE 10782-U-93-2507
	)	
vs.	)	DECISION 4702 - PECB
	)	
CITY OF LONGVIEW,	)	
	)	SUMMARY JUDGMENT
Respondent.	)	
	)	
	)	

Hoag, Vick, Tarantino & Garrettson, by Jaime B. Goldberg, Consultant, filed the complaint on behalf of the union.

Edwin R. Ivey, City Manager, filed the answer on behalf of the employer.

On November 15, 1993, the Longview Police Guild filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Longview (employer) had violated RCW 41.56.140(1). The allegations were that the employer was engaged in surveillance, or at least gave the impression of surveillance, of union members on and after September 27, 1993, by asking for verification of comments made at a union meeting, and confronting a bargaining unit employee regarding his comments at that meeting.

The case was processed under the "preliminary ruling" procedure of WAC 391-45-110.[1]. On January 5, 1994, the Executive Director found a cause of action to exist, and directed the employer to file its

[1] At this stage of the proceedings, all of the facts alleged in the complaint were assumed to be true and provable. The question at hand there was whether, as a matter of law, the complaint stated a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

answer within 21 days thereafter. The answer filed by the employer on January 26, 1994 was then considered in light of established legal precedent, and it appeared that a summary judgment could be appropriate under WAC 391-08-230. By letter dated April 4, 1994, the employer was directed to show cause as to why a summary judgment should not be issued against it. In a letter filed on April 25, 1994, the employer indicated that it had reviewed the facts and had nothing to add.

Admitted Facts

The Longview Police Guild is the exclusive bargaining representative of commissioned law enforcement officers employed by the City of Longview, excluding supervisors and confidential employees. Harry Hackett is president of the organization.

The complaint alleges that Chief of Police Jan R. Duke was invited to attend a union meeting held on September 27, 1993, to discuss manpower. After speaking approximately thirty minutes, Chief Duke left the meeting, and union members discussed the Chief's remarks. Among those who made comments at that time were Hackett and Detective Sergeant Dennis Davenport.

The operative allegations of employer misconduct in this complaint are: (1) On September 29, 1993, Chief Duke asked Hackett about the remarks made by Davenport at the union meeting after the chief had left; (2) Hackett confirmed that Davenport had made certain comments, and (3) Chief Duke met with Davenport on or about October 1, 1993, and expressed anger and dissatisfaction with Davenport's comments at the union meeting.

While the employer's answer initially denied that it had engaged in surveillance, or that it had given the appearance of surveillance of employees represented by the union, an "affirmative defense" asserted the facts giving rise to the summary judgment inquiry. In

particular, the employer stated that Chief Duke had heard that Davenport had made disparaging remarks about the chief's comments, that the chief obtained that information from an unnamed Longview police captain,[2] that the information was volunteered to the captain by an unnamed union member, that the chief asked Hackett about the allegedly disparaging remarks, and that the chief later asked Davenport if he had made those remarks. The employer characterized the chief's discussion with Davenport as:

> Sgt. Davenport stated to Chief Duke that he did feel that the Chief was not giving the Guild the whole story, and he did say he felt the Chief was trying to pull the wool over people's eyes. The Chief's response was that he may not have given exactly the same presentation to the Guild as he had to the staff, but that it was as close as he could remember. Chief Duke then explained to Sgt. Davenport the importance of the Department working as a team. The Chief encouraged Sgt. Davenport to come to him directly in the future to discuss any disagreement with the Chief.

While the employer denied that Chief Duke was angry, confrontive or that he placed Davenport in a compromising position, the employer's account of the events at issue otherwise differs from the union's allegations only as to the dates of certain occurrences.[3]

The "show cause" letter observed that the employer appeared to have made a telling admission in stating that "the Chief's intent in speaking with Sgt. Davenport was to resolve an employee relations issue, clarify a situation, and extinguish rumors".

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[2] It appears that the police captains in Longview are not in the bargaining unit represented by the union.

[3] The employer believes Chief Duke met with Hackett and Davenport on October 4, 1993, rather than the October 1 date set forth in the complaint.

APPLICABLE LEGAL PRINCIPLES

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, grants and protects the right of public employees to form and join unions of their own choosing. RCW 41.56.140(1) prohibits employer interference with the collective bargaining rights of its employees. RCW 41.56.140(2) prohibits employer involvement in internal union affairs. City of Pasco, Decision 4197-A, 4198-A (PECB, 1994); Washington State Patrol, Decision 2900 (PECB, 1988).

The employee rights protected by the statute include the right to attend and participate in union meetings. Since the early days of the National Labor Relations Act (NLRA), employer surveillance of employees engaged in protected union activities has been held to be an unlawful interference with employee rights. The very first unfair labor practice violation found under a public sector collective bargaining statute involved an employer official who engaged in surveillance of a union organizational meeting. Green Lake County, (Wisconsin Employment Relations Commission Decision 6061, 1962). Any such surveillance necessarily has a "chilling effect" on the future participation by employees in union meetings. The Public Employment Relations Commission has followed the NLRA precedents in this area. For an extensive discussion of this precedent, see Town of Granite Falls, Decision 2692 (PERC, 1987) at page 11.

It is also well established that it is not necessary to prove "intent" under RCW 41.56.140(1), and that an "interference violation will be found if employees reasonably perceived a threat of reprisal from the employer's actions. King County, Decision 3318 (PECB, 1989). Thus, an employer also commits a violation if it creates the impression that it is engaged in surveillance of employees engaged in protected activities, even if there was no actual surveillance.

In this case, the employer's answer admits that the police chief interrogated the union president about what transpired behind the closed doors of the union meeting. Compounding its intrusion into the union meeting, the chief then confronted Davenport about what that bargaining unit employee said at the union meeting. In doing so, it admitted at least the "impression of surveillance" alleged in the complaint. With the employer's response that it has "nothing to add", a summary judgment finding a violation of RCW 41.56.140(1) is appropriate on this case.

Remedy

In the absence of any actual discipline or other adverse action against any of the employees involved, the appropriate remedies in this case are limited to "cease and desist" and "post notice" orders.

FINDINGS OF FACT

1. The City of Longview is a municipality of the state of Washington, and is a public employer under Chapter 41.56 RCW. Jan R. Duke is the chief of police of the Longview Police Department.

2. The Longview Police Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of commissioned law enforcement officers employed in the Longview Police Department. Harry Hackett is the president of the organization.

3. Chief Duke was invited to attend a meeting of the Longview Police Guild held on September 27, 1993, at which time he made a presentation concerning manpower. Chief Duke left the union meeting after the completion of his presentation.

4. After Chief Duke left the meeting of the Longview Police Guild held on September 27, 1993, a discussion ensued among union members concerning the chief's presentation. Among those who made comments were Hackett and bargaining unit member Dennis Davenport.

5. After the meeting of the Longview Police Guild held on September 27, 1993, Chief Duke learned of the comments made following his departure from that union meeting.

6. On September 29, 1993, Chief Duke interrogated Hackett concerning the comments made following his departure from the union meeting, with particular attention to the comments made by Davenport.

7. On or before October 4, 1993, Chief Duke interrogated Davenport concerning the comments he made at the meeting of the Longview Police Guild held on September 27, 1993.

8. Bargaining unit member Dennis Davenport and others similarly situated could reasonably have perceived a threat of reprisal in connection with the interrogation of Davenport by a management official concerning comments made at a closed union meeting, apparently based on detailed knowledge of what had transpired at the union meeting.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. A summary judgment is appropriate in this case under WAC 391-08-230, in the absence of a dispute concerning any material issue of fact.

3. By its interrogation of Harry Hackett and Dennis Davenport, based on an appearance of detailed knowledge concerning what had transpired behind the closed doors of a union meeting, the City of Longview gave the impression of surveillance of lawful union activities protected by RCW 41.56.040, and thereby interfered with, restrained and coerced its employees in violation of RCW 41.56.140(1).

ORDER

The City of Longview, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Interrogating its employees concerning the conversations and transactions occurring in meetings of the Longview Police Guild.

   b. In any other manner interfering with, restraining or coercing its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

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

   a. 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 above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such

notices are not removed, altered, defaced, or covered by other material.

b. Notify the above-named 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 above-named complainant with a signed copy of the notice required by the preceding paragraph.

c. 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 required by this order.

Dated at Olympia, Washington, on the 9th day of May, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

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

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 OUR EMPLOYEES:

WE WILL NOT interrogate our employees concerning the conversations and transactions occurring in meetings of the Longview Police Guild.

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.

DATED: _____

CITY OF LONGVIEW

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: (206) 753-3444.