STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA POLICE UNION, LOCAL 6, Complainant,	)	CASE 11607-U-95-2723
vs.	)	DECISION 5439 - PECB
CITY OF TACOMA, Respondent.	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Cline and Emmal, by Stephen Garvey, Attorney at Law, appeared on behalf of the complainant.

Robin S. Jenkinson, City Attorney, by Cathy L. Parker, Assistant City Attorney, appeared on behalf of the employer.

On February 21, 1995, Tacoma Police Union, Local 6, filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the City of Tacoma failed to provide, or refused to respond in a timely manner to the union's request for, information that was reasonably necessary for the union to perform its function in grievance administration. Additionally, it alleged that the employer interfered with the union by giving erroneous advice to a bargaining unit member. On March 13, 1995, the Executive Director issued a preliminary ruling under WAC 391-45-110, finding that a cause of action existed. The employer filed an answer on April 3, 1995. A hearing was held in Tacoma, Washington, on June 1 and 2, 1995, before Examiner Katrina I. Boedecker. The parties filed post-hearing briefs.

BACKGROUND

Tacoma Police Union, Local 6, is the exclusive bargaining representative for all commissioned law enforcement personnel employed by

the City of Tacoma at or below the rank of captain. The employer and union were parties to a collective bargaining agreement which expired on December 31, 1994.

The instant complaint of unfair labor practices contains three distinct charges that arise out of two separate and unrelated discipline cases. The union asserted some legal issues were identical and joined the charges into one complaint. A review of the entire record, however, directs that each unfair labor practice charge be addressed separately.

FIRST ALLEGATION: Access to an E-mail memorandum

On or about February 16, 1994, Sergeant Michael Taylor sent an intra-departmental memorandum to Lieutenant Ray Roberts in the internal affairs division of the Tacoma Police Department. Taylor claimed that Sergeants A and B were spending excessive on-duty time at restaurants and at Sergeant B's house, which is outside the city limits.[1]

An investigation was commenced by Roberts. He interviewed Sergeant A March 4, 1994. Sergeant A stated that he had been using Sergeant B's computer to develop some forms for the department. He admitted, however, that he did not have permission from a superior officer to be working at home. Sergeant B was interviewed the same day and also could not site specific supervisory approval to leave her sector to go home during her shift.

On March 18, 1994, Roberts wrote a summary of the internal affairs investigation and recommended that both sergeants be found to have violated three sections of the department's rules and procedures.

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[1] In order to protect the identities of persons who are not directly before the Commission in this matter, the designations "Sergeant A" and "Sergeant B" are used to refer to two sergeants who were subject to discipline.

On March 22, 1995, Sergeant Stanley Mowre sent a message to Roberts via the department's computer system's electronic mail [i.e. "E-mail"] stating that he was aware that Sergeant A was working at home on redesigning the daily patrol worksheet for the computer. Additionally, he advanced that "more than one nightshift Lt. was aware of his [Sergeant A's] effort on his computer". In this E-mail, Mowre also cast aspersions on Taylor's motivation for filing the compliant. Roberts was due to rotate out of the internal affairs division at the end of the month. Sometime between March 22 and March 30, he printed out this E-mail and put it in the investigation file. Mowre testified that he might have sent more E-mail messages concerning Sergeant A to Roberts around this time. If such messages were sent, Roberts neither printed them out for inclusion in the investigation file, nor "saved" them on his computer. Mowre did not keep any such messages either and was uncertain what the content was by the time of the hearing. Mowre testified that he had talked to Sergeant A about sending information to Roberts, both before and after he had sent the E-mail. Sergeant A did not mention Sergeant Mowre's E-mail to legal counsel.

On March 25, 1994, Assistant Chief James O. Hairston, the operations bureau commander, recommended to Chief of Police Raymond Fjetland that both Sergeant A and B receive "A one (1) day suspension without pay and a stern warning that more severe penalties will be applied if supervisory performance does not improve."[2] That same day, Fjetland wrote to the two sergeants scheduling a pre-discipline interview. Also that day, Roberts placed "complete" investigation packages, including Hairston's disciplinary recommendations and Fjetland's notice of the pre-discipline interview, in Sergeant A's and B's mailboxes. The chief interviewed the two sergeants March 31, 1994. On April 5, 1994,

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[2] As sergeants, A and B were responsible for directing a certain number of patrol officers.

the chief issued a "disciplinary notice of intent" for them both to be demoted to rank of patrol officer.

The union grieved the demotions. Counsel for the union was Steve Garvey. In August, during preparation for the arbitration, Garvey wrote to Assistant City Attorney Cheryl Carlson, requesting:

> 1. The entire investigatory file in the these matters, including handwritten notes by members of the Tacoma Police Department. Although I believe I have all of the information, in an abundance of caution I am requesting the official file. Alternatively, we can converse by phone to determine whether or not I have received all of the pertinent information.
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Carlson wrote back stating that both employees had been provided with "complete" copies of the "official file", and that she assumed that Garvey had a copy of the same. She agreed to use the phone to determine whether anything was missing from Garvey's file. Thereafter, Garvey never corroborated his file with the employer's. Although Carlson had a copy of Mowre's March 22nd E-mail in her file, Garvey did not. This discrepancy went unnoticed until the arbitration hearing when Mowre told Garvey he had sent E-mail to Roberts about the investigation.

The union filed a grievance alleging that the city violated the collective bargaining provision regarding discovery.[3] The chief

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[3] Article 33 Employee Rights of the parties' collective bargaining agreement calls for the employer to provide information to police officers subject to investigation and/or discipline.

> B. Departmental Charges.
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> When the investigation results in Departmental charges being filed, the employer shall:

denied the grievance, stating that an investigation had been conducted and no E-mails had been kept. The union did not proceed with the grievance, choosing instead to file this unfair labor practice case.

POSITIONS OF THE PARTIES

The union contends that the employer's failure to include the Mowre E-mail message in the internal affairs files of Sergeant A and Sergeant B, hurt its preparation for the grievance arbitration. It contends that the employer cannot be the sole judge of what is or is not material in a disciplinary case. The union claims that the employer should have kept all of the E-mail messages and given them to the union, citing that the one E-mail in the file contained exculpatory evidence and showed bias of the complaining witness.

The employer contends that the union was offered the opportunity to verify whether the union was given all the material in the internal affairs files, and failed to avail itself of the opportunity. The employer also claims that the Commission does not have jurisdiction because the request for the internal affair files is covered by and subject to an interpretation of the collective bargaining agreement.

> 1. After the investigation is complete, and at least seventy-two hours prior to the pre-disciplinary hearing, furnish the employee with a copy of the reports of the investigation which contain all known material facts of the matter, to include any tape recordings at no cost. The employee will also be furnished with the names of all witnesses and complainants who will appear against him/her.
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> 2. This obligation shall continue after the charges have been filed against the employee.
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> ...

DISCUSSION

An employer has a statutory duty to provide, upon request, information that is needed by an exclusive bargaining representative for the proper performance of its duties relating to the negotiation and administration of collective bargaining agreements. See: Pullman School District, Decision 2632 (PECB, 1987); City of Bellevue, Decision 3085-A (PECB, 1989), affirmed, 119 Wn.2d 373 (1992). As the Commission wrote in City of Bellevue, Decision 4324-A (PECB, 1994):

> This duty is derived from the duty to bargain in good faith, and it extends beyond the period of contract negotiations. The obligation applies, for example, to interest arbitration proceedings, and to requests for information necessary for the representation of bargaining unit members in processing grievances to enforce the terms of negotiated contracts.
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> [Citations to footnotes omitted.]

The union has the right to know who participated in a disciplinary decision and on what information was the decision based. State of Washington, Decision 4710 (PECB, 1994). This obligation also extends to relevant information which **may not** have been used to arrive at the decision to discipline. City of Bremerton, Decision 5079 (PECB, 1995). In both cases, the failure to provide such information was an unfair labor practice, subject to the Commission's jurisdiction independent of any contractual rights.

In evaluating information requests, the test is whether the requested information appears reasonably necessary for the performance of the union's function as bargaining representative. See: City of Bellevue, Decision 4324-A (supra) where the Commission found that when the union requested a copy of the internal investigation file **prior** to the employee's pre-disciplinary [Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)]

hearing, the employer's duty to provide the information had not yet arisen. The Commission wrote:

> It is important to note that, even if an information request is relevant to representational functions over which we have jurisdiction, an obligation to provide the requested information only arises if the information is reasonably viewed as **necessary** for the performance of a bargaining representative's duties. That showing of necessity was not made in the present case. Loudermill requires notice of the charges against a public employee, an explanation of the evidence against that individual, and an opportunity to respond. It does not require a complete evidentiary hearing, and we find nothing in the Supreme Court's decision that indicates an accused employee is necessarily entitled to see the actual contents of an investigative file. What must be provided is an explanation of the accumulated evidence. Whether this is provided in the form of a description of the evidence in a file, or in the form of actual witness statements, is left to an employer's discretion.

The Commission has previously noted: "The interests at stake in the Loudermill context are not within the realm of PERC jurisdiction." Okanogan County, Decision 2252-A (PECB, 1986), at page 10, footnote 9. Applying those precedents to the instant case, it is clear the union had no statutory right to the investigation file prior to discipline being issued, in this case April 5, 1994.[4]

The employer's duty under the statute to provide information arises after a request by the union for the information. The record shows that the union made its first request on August 24, 1994. On

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[4] It must be remembered that this case concerns the employer's obligations under Chapter 41.56 RCW. This is not an arbitration to determine if the employer violated the language of the parties' collective bargaining agreement. Any duties the employer had under Article 33 are not before the Examiner here.

September 7th, Carlson wrote that she had what she assumed was the same internal investigation file already provided to the employees. Carlson invited the union's counsel to verify the accuracy of the file that he had received from the employee. It is uncontested that the union counsel never followed through to corroborate the files. If he had, he would have become aware of Mowre's E-mail message and could have judged whether it provided any exculpatory information.

The union requested information; the employer offered the information. The union's lack of follow through does not burden the employer with additional obligations. This allegation must be dismissed.[5]

SECOND ALLEGATION:
Union right to information in civil service forum

The second allegation arises from the situation of Police Officer C[6] whose employment had been terminated on July 25, 1994, for untruthfulness and other reasons.

Police Officer C elected to appeal her discharge to the civil service board instead of filing a grievance to be determined by an arbitrator following the grievance arbitration provisions of the

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[5] The union intimated that there might have been other E-mail messages from Mowre to internal affairs that were not printed out and saved. An employer does not have a free hand to make its own determination as to what is material evidence in a potential grievance. An employer might do well to err on the side of caution and save all information that it is presented. However, on the record before the Examiner, the union did not make a case that there were in fact other E-mail messages from Mowre that were in any manner material to Sergeant A's grievance.

[6] Again, a letter code has been substituted for the name of an employee who is not directly before the Commission.

collective bargaining agreement. Article 30 of the parties' collective bargaining agreement reads as follows:

> All discipline shall be for just cause. An employee may contest a discharge, suspension for three (3) or more days in length, or demotion through the grievance procedure in Article 5 of this Agreement. The filing of such a grievance shall be considered a voluntary and irrevocable waiver of the right to pursue the matter under the Civil Service Procedure.

Decisions of the civil service board are final and binding on the appellant and the employer. Employee rights during an appeal to the civil service board include the right to be represented by counsel or designated representative. The civil service provisions also compel the appointing authorities to follow specified pre-discipline steps when disciplining permanent employees. The employee must at the minimum be "provided with a copy of the proposed charges, and if practical, a copy of the materials or documents upon which the charges are based." Counsel for the union, Steve Garvey, also represented C in her civil service appeal.

The civil service board scheduled the hearing on the Officer C termination for February 13, 1995.

On December 5, 1994, Garvey asked Carlson for the disciplinary file of "Officer D", another bargaining unit member, who was alleged to have been suspended, rather than discharged, for untruthfulness. On December 8, 1994, Garvey repeated this request. On January 5, 1995, he requested, in writing, the entire disciplinary file. On

January 25, 1995, Garvey again wrote Carlson for the disciplinary file of Officer D.[7]

Some time during the week of January 23, 1995, the internal affairs file of Officer D was destroyed by an employee of the police department who was newly assigned to the internal affairs division. It is uncontested that he was acting pursuant to a policy that all internal affairs files be destroyed after three years. The destruction of the file was unbeknownst to Carlson. The city later provided a redacted "notice of intent to discipline" taken from the Officer D's personnel file.

POSITIONS OF THE PARTIES

The union argues that Officer C elected to appeal her termination through the civil service process pursuant to the collective bargaining agreement, so there is a duty to provide relevant information to the exclusive bargaining representative who is responsible for the administration of the agreement.

The employer contends that the Commission does not have any jurisdiction through an unfair labor practice charge to regulate an individual's discovery rights in a civil service proceeding.

DISCUSSION

The statutory right to information runs to the exclusive bargaining representative, not to individual employees. In City of Seattle, Decision 3429 (PECB, 1990), it was held:

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[7] The employer's actions during December and January in this matter are the basis for the third allegation of unfair labor practices and are discussed below.

> Although [the employee] may have been annoyed by the manner in which the employer's representatives conducted themselves at the January 27, 1989 grievance meeting, the evidence fails to support finding any violation of the statute. There was no statutory obligation for the employer to meet with [the employee] regarding his grievance. [The employee] suffered no loss of income, as the meeting took place on the employer's time. **The statutory duty to bargain in good faith obligates an employer to provide the exclusive bargaining representative of its employees with requested information reasonably necessary for the union to perform its representation functions.** City of Bellevue, Decision 3085-A (PECB, 1989). **No such obligation extends towards individual members of a bargaining unit.** Thus, the employer had no statutory obligation to respond to [the employee's] inquiry, or to divulge the substance of what was said in a private caucus. This complaint must also be dismissed.

(Emphasis by **bold** supplied.)

It is well settled, and beyond reasonable challenge, that an employer has a statutory duty to turn over, upon request, information that is needed by the **exclusive** bargaining representative for the proper performance of its duties, as the **exclusive** bargaining representative to administrate and police the collective bargaining agreement. NLRB v. Truitt Mfg. Co., 351 US 149 (1956)[8]; Pullman,

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[8] When interpreting the provisions of Chapter 41.56 RCW, the Public Employment Relations Commission will give due consideration to decisions of the National Labor Relations Board and federal courts which enforce generally similar provisions of the NLRA. Pullman School District, Decision 2632, (PECB, 1987); Clallam County, Decision 1405-A (1982). Since the duty to bargain under RCW 41.56.030(4) is similar to the duty to bargain under Section 8(d) of the National Labor Relations Act (NLRA), federal precedent developed in "refusal to bargain" cases of the NLRA is persuasive in determining "refusal to bargain" allegations under RCW 41.56.140(4). Pullman, supra.

supra; City of Seattle, Decision 3329-B (PECB, 1990). From City of Seattle, Decision 3066 (PECB, 1988):

> The duty to bargain collectively includes a duty on behalf of the employer to provide relevant information needed by a union for the proper performance of its duties as the employees' exclusive bargaining representative. Detroit Edison Co. v. NLRB, 440 U.S. 301 (1979); Anacortes School District, Decision 2544 (EDUC, 1986); Pullman School District, supra; Highland School District, Decision 2684 (PECB, 1987).

Toutle Lake School District, Decision 2474 (PECB, 1986) again upheld the right of a **union** to receive information relevant and necessary to its responsibilities in administering the collective bargaining agreement.

Information concerning employees who have been disciplined for violations of similar rules is relevant to a union who is pursuing a disciplinary grievance. In this case, however, the individual employee chose to appeal her termination through the civil service procedures of the employer. Individuals can have rights outside the collective bargaining agreement. The employee could have chosen any attorney she wanted to represent her during the civil service proceedings, but that does not grant her legal representative all the rights that her exclusive bargaining representative would have. Nor does choosing to use as her attorney for her civil service appeal the same person who is the attorney for her union, bootstrap rights to her legal counsel when acting in a non-collective bargaining forum. Once the election was made to seek redress through the civil service commission, the employee was operating outside of the collective bargaining arena. As Garvey stated at the hearing on this unfair labor practice charge:

> It's the Union's position that Article 30, as Virginia Ferguson stated, is an election of forum. That does not mean that the Union does

> not have some say or some role in this particular forum; that it can take the Civil Service cases on behalf of the individual.
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> **Now, we are not claiming that the Union is a party. We understand what the law is. The actual real party in interest is the individual.**

(Transcript, day 2, page 96. Emphasis by **bold** supplied.)

Even though the union's attorney might advocate on behalf of the employee in the civil service forum, it is no longer policing the collective bargaining agreement. There is no evidence that the civil service board is bound by the labor agreement to use the same standards that an arbitrator would be directed to use in the arbitration language of the contract. The record establishes that Garvey understood this. It was uncontested that the civil service board, at the conclusion of Officer C's hearing, directed the parties to form a "last-chance agreement" to bring Officer C back to work. Garvey opposed the notion on the basis that if it was a "last-chance work agreement" then parties had to include the union and the civil service board could not reach that far.

This is not a new concept. In Highland School District, Decision 2684 (PECB, 1987), a dispute had arisen between the employer and the union as to the discharge of a bargaining unit member. The dispute was initially processed within the collective bargaining provisions. The collective bargaining agreement between the parties did not include provisions for final and binding arbitration of grievance disputes concerning interpretation or application of the contract. Rather, the contract specified the school board as the final step in the grievance process. In relevant part, the decision stated:

> After the parties exhausted the dispute resolution mechanisms available within the contract, the union pursued the dispute beyond the collective bargaining process regulated by

> Chapter 41.56 RCW and the Public Employment Relations Commission, by filing an "appeal" and/or "breach of contract" suit in the civil courts. In City of Tacoma, Decision 322 (PECB, 1978), the Commission held that negotiations for the settlement of civil litigation were controlled by the rules of civil courts and cannot give rise to an unfair labor practice, even though the underlying dispute originated as a collective bargaining dispute. Applying that precedent to the instant case, the union's right of access to information is controlled by the rules and decisions of the civil court to which the dispute has been taken. The instant case is thus factually and legally distinguished from Pullman School District, supra, where the dispute remained within the collective bargaining process regulated by Chapter 41.56 RCW and the Commission maintained jurisdiction, holding that the employer's refusal to provide information as requested was an unfair labor practice in violation of RCW 41.56.140(4).

Thus the union's right of access to information here is controlled by the rules and decisions of the Tacoma civil service board.

The instant case is distinguished from City of Seattle, Decision 3079-A (PECB, 1989), where the employer had contended that the right of employees to union representation at certain times[9] did not apply to internal Equal Employment Opportunity (EEO) procedures which it had unilaterally created. The Commission found an unfair labor practice violation in that case, based on the right of the union to represent bargaining unit employees in securing their wages, hours and working conditions. The Commission found that the unilaterally created EEO procedures had become a "working condition" because the employer had made their usage mandatory. In the matter before us, the collective bargaining agreement allows for an election of remedies, it does not mandate what remedial avenue to use.

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[9] National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975).

A union does not have legal standing, through the unfair labor practice provisions of the statute, to interfere in the discovery activity in a civil service forum. Thus, this second allegation must be dismissed.[10]

THIRD ALLEGATION: Employer mis-advice to bargaining unit member

The actions forming the third unfair labor practice complaint occurred during this same timeframe as the termination of Officer C. Pursuant to a city practice regarding requests for personnel or internal affairs files, Carlson notified Officer D (the employee who allegedly received discipline, but not termination, for untruthfulness) that the union was requesting her internal affairs file. Officer D immediately contacted Carlson's office demanding that her file not be released to the union. Carlson told her that she may have a privacy concern with all or a portion of the contents of the disciplinary file and that she needed to assert her position. Subsequently, Carlson advised Garvey and Officer C, that it was the city's position that neither the attorney nor Officer C

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[10] The "routine" destruction of the file in question is disturbing. The employer was aware that the union desired the file in order to show disparate application of discipline. The request was made on December 5, 1994. The file was destroyed some time during the week of January 23, 1995. There is no allegation that the file was destroyed **because** it was requested. However, the employer might be wise to institute procedures to protect requested files until any controversy about a union's demand for the file can be resolved. If Officer C had elected to proceed with arbitration, instead of going before the civil service board, the parties might have been able to agree to an in camera review or to the copying of documents with the employee's name redacted. Again from Bellevue, Decision 4324-A, at page 12: "The information requested by a union does not have to be provided in the form requested by the exclusive bargaining representative; it need only be made available in a useful format." In an arbitration setting, the employer's destruction of the requested file might easily have been found to violate the grievant's rights.

were entitled to the internal affairs file regarding Officer D's discipline.

On January 26, Beverly G. Grant, an attorney retained by Officer D, advised the union and employer that her client did not want her internal affairs file released. On January 27, 1995, Carlson wrote Grant that it was the city's position that the file was exempt from disclosure by RCW 42.17.310 (1) (b), and that the employer also had a concern that the officer may have a privacy interest that the employer could not violate.

POSITIONS OF THE PARTIES

The union argues that the pursuit of the grievance entitled it to the requested internal affairs file and that under Pullman School District, supra, there is no privacy right through the public disclosure act, over disciplinary actions.

The employer argues that the privacy of the officer outweighs the union's need for the file in a balancing of interests test.

DISCUSSION

The union claims that the employer's counsel gave erroneous legal advice to Officer D, and that this was an unfair labor practice. The record is not so clear. It appears that the "advice" the employer's attorney gave was that the employee should seek her own legal counsel and submit her position. The city did state that it would be the city's position that the employee might have a privacy right. There is, in fact, some authority which would permit a personnel file to be sanitized, if the employee desires, so long as the substance remains. Cowles Pub'g Co. v. Washington State Patrol,

44 Wn. App. 882 (1989), reviewed on other grounds 109 Wn 2d 712 (1988).

Even if this allegation were to be narrowly viewed as whether or not an employer commits an unfair labor practice interference violation when it gives erroneous advise to a bargaining unit member about disciplinary records, the union did not establish that: 1) the employer was giving legal "advice" and/or 2) that any employer "advice" was clearly erroneous.

Alternatively, as seen from the above discussion of the second allegation, once Officer C elected to use the civil service procedures, she was acting in a forum outside the arena protected by the unfair labor practice provisions of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW. If the union wanted to challenge the employer giving advice regarding the public disclosure act requirements in a forum outside the collective bargaining arena, the union should pursue it in superior court.

FINDINGS OF FACT

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

2. Tacoma Police Union, Local 6, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative for all commissioned police officers below the rank of captain in the Tacoma Police Department.

3. During an internal affairs investigation, a sergeant, on or about March 22, 1994, on his own initiative, sent an electronic mail message (E-mail) to the lieutenant in charge of the investigation. Sometime between March 22 and March 30, the lieutenant printed out the E-mail and put it in the investigation file. On March 25, 1994, the two subjects of the

investigation were given copies of the investigation file. The E-mail was not in their files.

4. Pre-discipline interviews by the chief with each subject employee individually were scheduled for March 31, 1994. On April 5, 1994, the chief issued a "disciplinary notice of intent" for each employee to be demoted.

5. The union grieved the demotions. Counsel for the union wrote to the assistant city attorney requesting a copy of the "the entire investigatory file in these matters" and suggested the two could converse by phone to determine whether or not the union had all the pertinent information. The city agreed to use the phone to determine whether anything was missing from the union's file. The attorney for the union never corroborated his file with the employer's.

6. Another member of the bargaining unit elected to, under the provisions of the collective bargaining agreement, appeal her termination for untruthfulness to the civil service board. The same person who was legal counsel for the union, represented the employee in front of the civil service board. The legal counsel requested a copy of the investigation file of another bargaining unit member who was alleged to have received less severe discipline for untruthfulness. The assistant city attorney resisted releasing the file. Before the matter could be resolved, the requested file was routinely destroyed pursuant to a city policy that all internal affairs investigation files be destroyed after three years.

7. Pursuant to a city practice regarding requests for internal affairs files, the assistant city attorney notified the employee who allegedly received less severe discipline for untruthfulness that the union was requesting her internal affairs file. The officer demanded that her file not be

released to the union. The assistant city attorney told her that she may have a privacy concern with all or a portion of the contents of the disciplinary file and that she needed to assert her position.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this case pursuant to Chapter 41.56 RCW.

2. After two bargaining unit members received discipline, the union requested a complete copy of the investigation files. The employer offered counsel for the union the opportunity to corroborate his file with the employer's. Counsel for the union failed to do so. No unfair labor practice violation was committed by the employer.

3. Another bargaining unit member elected to appeal her termination to the civil service board. Hereafter, she was acting outside of the collective bargaining process. Any attorney that represented her in the civil service proceeding would have the rights granted by the civil service board and not have the rights granted to an exclusive bargaining representative in policing and administering the collective bargaining agreement. No unfair labor practice violation was committed by the employer in failing to supply requested information to the employee's attorney during the civil service process.

4. When the assistant city attorney notified another bargaining unit member that the union was seeking her internal affairs investigation file, and told the employee that she may have a privacy concern with all or a portion of the contents of the disciplinary file and that she needed to assert her position, the employer did not commit an unfair labor practice violation.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

Issued at Olympia, Washington, on the 21st day of February, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

KATRINA I. BOEDECKER, Examiner

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