Yakima County, Decision 11621 (PECB, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

YAKIMA COUNTY LAW ENFORCEMENT OFFICERS' GUILD, Complainant, vs. YAKIMA COUNTY, Respondent.	CASE 23986-U-11-6135 DECISION 11621 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Cline and Associates, by *James M. Cline,* Attorney at Law, for the union.

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On May 17, 2011, the Yakima County Law Enforcement Officers' Guild (union) filed an unfair labor practice complaint alleging that Yakima County (employer) refused to bargain, discriminated against the union, and interfered with employee rights. A preliminary ruling was issued stating causes of action.

On July 18, 2011, the employer filed a motion for summary judgment. On November 4, 2011, a decision was issued denying the motion. The employer submitted an answer denying the allegations, and Hearing Examiner Robin A. Romeo held hearings on April 30, May 1, and May 2, 2012. The parties submitted post-hearing briefs. Both parties have requested an award of attorney's fees.

ISSUES

1. Did the employer refuse to bargain when it laid off and demoted members of the bargaining unit?

2. Did the employer fail to provide the union with information concerning the decision to layoff and demote members of the bargaining unit?

3. Did the employer interfere with employee rights when it laid off and demoted members of the bargaining unit?

4. Did the employer discriminate against the union when it laid off and demoted members of the bargaining unit?

5. Is either party entitled to attorney's fees?

I find that the employer did not fail to bargain over the decision and the effects when it laid off and demoted bargaining unit members and dismiss those claims. I find that the employer failed or unnecessarily delayed providing information requested by the union.

The allegations of interference and discrimination are dismissed. A remedy of attorney fees is not appropriate.

APPLICABLE LEGAL STANDARDS

ISSUE 1 - Duty to Bargain

To promote the improvement of the relationship between public employers and their employees, the Public Employees Collective Bargaining Act was enacted which provides employees with the right to join a union and be represented by that union in matters concerning their employment relations with the employer. Chapter 41.56 RCW. The Commission was created to further that end by providing for uniform and impartial adjustment and settlement of complaints, grievances, and disputes arising out of employer-employee relations. Chapter 41.06 RCW.

The Commission applies a balancing test on a case-by case basis to determine whether an issue is a mandatory subject of bargaining. In deciding whether a duty to bargain exists, there are two principal considerations: (1) the extent to which managerial action impacts the wages, hours, or working conditions of employees, and (2) the extent to which managerial action is deemed to be

an essential management prerogative. *International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 197, 200 (1989) (*City of Richland*). The inquiry focuses on which characteristic predominates. *City of Richland,* 113 Wn.2d (1989). The Supreme Court in *City of Richland* held that "the scope of mandatory bargaining is limited to matters of direct concern to employees" and that "managerial decisions that only remotely affect 'personnel matters' and decisions that are predominately 'managerial prerogatives' are classified as non-mandatory subjects." The Commission generally finds that any refusal to bargain violation inherently interferes with the rights of bargaining unit employees and is routinely a derivative interference violation. *Skagit County,* Decision 8746-A (PECB, 2006).

Mandatory Subject – Layoffs

The Commission has repeatedly held that the decision to layoff employees is a mandatory subject of collective bargaining. *See, Federal Way School District*, Decision 232-A (EDUC, 1977) and *South Kitsap School District*, Decision 472 (PECB, 1978), each citing *Fibreboard Paper Products v. NLRB*, 370 U.S. 195 (1962); *City of Kelso,* Decision 2633-A (PECB, 1988), *aff'd in part and reversed in part,* 57 Wn. App. 721 (1990), *review denied,* 115 Wn.2d 1010 (1990); *Tacoma-Pierce County Employment and Training Consortium*, Decision 10280-A (PECB, 2009); *King County*, Decision 10576-A (PECB, 2010). *See also: Contech Division, SPX Corp.,* 333 NLRB No. 94 (2001) citing *Westinghouse Electric Corp,* 313 NLRB 452 (1993).

Unilateral Change

An employer violates RCW 41.56.140(4) and (1) if it implements a unilateral change of a mandatory subject of bargaining without having fulfilled its bargaining obligations. As a general rule, an employer has an obligation to refrain from unilaterally changing terms or conditions of employment unless it: (1) gives notice to the union; (2) provides an opportunity for bargaining prior to making a final decision; (3) bargains in good faith, upon request; and (4) bargains to agreement or impasse concerning any mandatory subjects of bargaining. *Skagit County*, Decision 8746-A.

Notice must be given sufficiently in advance of the actual implementation of a change to allow a reasonable opportunity for bargaining between the parties. If the employer's action has already

occurred when the union is given notice, the notice would not be considered timely and the union will be excused from the need to demand bargaining on a *fait accompli*. *City of Edmonds,* Decision 8798-A (PECB, 2005) citing *Washington Public Power Supply System,* Decision 6058-A (PECB, 1998) (footnotes omitted).

Waiver by Contract

The principal intended outcome of the collective bargaining process is for an employer and the exclusive bargaining representative of its employees to enter into a collective bargaining agreement controlling the wages, hours and working conditions of bargaining unit employees. RCW 41.56.030(4). The parties' collective bargaining obligations require that the status quo be maintained regarding all mandatory subjects of bargaining, except where such changes are made in conformity with the collective bargaining obligation or the terms of a collective bargaining agreement. *City of Yakima*, Decision 3503-A (PECB, 1998), *aff'd*, 117 Wn.2d 655 (1991); *Spokane County Fire District 8*, Decision 3661-A (PECB, 1991). Thus, there is no duty to bargain for the life of the contract on the matters set forth in a collective bargaining agreement, and an employer action in conformity with that contract will not be an unlawful unilateral change. *City of Yakima*, Decision 3503-A.

If the union has agreed to a knowing, specific, and intentional waiver of bargaining rights in the collective bargaining agreement, the employer may implement unilateral changes that conform to the contractual waiver. *City of Wenatchee*, Decision 6517-A (PECB, 1999). The waiver must be clear and unmistakable and cannot be implicit. *City of Wenatchee*, Decision 8802-A (PECB, 2006). To meet the "clear and unmistakable" standard, the contract language must be specific, or it must be shown that the matter was fully discussed by the parties and that the party relinquishing its rights did so consciously. *Whatcom County*, Decision 7244-B (PECB, 2004).

Waiver of bargaining rights by agreeing to contract language is an affirmative defense, and the employer has the burden of proof to show that the union waived bargaining rights. *Lakewood School District*, Decision 755-A (PECB, 1980). *City of Wenatchee*, Decision 8802-A. WAC 391-45-270(1)(b). The Commission has long held that typical management rights clauses claimed by employers to be waivers of union bargaining rights generally fail to meet the high standards for

finding a waiver. *See Chelan County*, Decision 5469-A (PECB, 1996); *City of Kennewick*, Decision 482-B (PECB, 1980).

A waiver of collective bargaining rights was found in *Yakima County*, Decision 6594-C (PECB, 1999). In that case, the Commission upheld an Examiner's decision dismissing a failure to bargain charge. The employer had unilaterally implemented a change in the length of time needed by an employee to receive a special assignment. The parties had agreed to contract language allowing the employer to establish lawful work rules which the Commission found eliminated the need to bargain over the change.

In *City of Kelso,* Decision 2633-A (PECB, 1988), *aff'd except as to remedy*, 57 Wn. App. 721 (1990), *rev. denied* 115 Wn.2d 1010 (1990), no waiver was found when the City unilaterally implemented layoffs. There was a layoff clause in the collective bargaining agreement but it only concerned the procedure regarding layoffs, (*i.e.,* the "effects") and not the decision. The Commission also examined the management rights clause but found that it was too general to give rise to a specific waiver.

ISSUE 2 - Failure to provide information

The duty to bargain includes a duty to provide relevant information needed by the opposite party for the proper performance of its duties in the collective bargaining process. *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd, City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992). The obligation extends not only to information that is useful and relevant to the collective bargaining process, but also encompasses information necessary to the administration of the parties' collective bargaining agreement. *City of Redmond,* Decision 8879-A (PECB, 2006) citing *King County*, Decision 6772-A (PECB, 1999). Administration of the collective bargaining agreement includes the ability to review information to assess whether the agreement is being complied with and if a grievance should be filed.

A responding party must reply to the information request in a reasonable and timely manner and may be found responsible for delays caused by its staff's failure to understand the duty to provide information. *Seattle School District*, Decision 8976 (PECB, 2005). Even if the request

is too vague or overly burdensome, a request cannot simply be ignored. Instead, the responding party must communicate any objections and allow the requesting party an opportunity to justify or modify the request. *Port of Seattle*, Decision 7000-A (PECB, 2000); *Seattle School District*, Decision 9628-A (PECB, 2008).

Delay in providing necessary information can constitute an unfair labor practice. *City of Seattle*, Decision 10249 (PECB, 2008), *aff'd,* 10249-A (PECB, 2009); *Fort Vancouver Regional Library*, Decision 2350-C (PECB, 1988). Neither the Commission nor the National Labor Relations Board (NLRB) adopts a bright-line rule defining how quickly a party must respond to a request for information. The examiners in the cases just cited looked to several factors to determine whether a delay in providing information was an unfair labor practice, including the preparation required for response, the impact of the delay to the party requesting the information, and whether the party responding to the request intended to delay or obstruct the process.

ISSUES 3 & 4 – Discrimination and Interference

RCW 41.56.140(1) prohibits an employer from discriminating in reprisal for the exercise of employee rights protected by the collective bargaining statute. The test for discrimination requires the union to set forth a prima facie case showing that:

> (1) one or more employees exercised protected union activity, or communicated to the employer an intent to do so,
> (2) one or more employees were deprived of some ascertainable right, status, or benefit, and
> (3) a causal connection exists between the protected union activity and the employer's action.

Educational Service District 114, Decision 4361-A (PECB, 1994).

The Commission in *Dieringer School District,* Decision 8956-A (PECB, 2007) listed examples of protected union activity: filing an unfair labor practice complaint, *Mulkilteo School District*, Decision 5899-A (PECB, 1997); union organizing, *Asotin County Housing Authority*, Decision 2471-A (PECB, 1987); participating in collective bargaining, *Oroville School District*, Decision 6209-A (PECB, 1998). Other examples include testifying in an interest arbitration hearing, *City*

of Yakima, Decision 10270-A (PECB, 2011) and pursuing grievances, *City of Pasco*, Decision 3804-A (PECB, 1992).

Examples of non-protected activity include: being present when a union survey is presented to management when not acting in any union capacity, *Dieringer School District*, Decision 8956-A; making statements to an employer concerning the denial of leave not submitted in a collective bargaining context, *City of Seattle*, Decision 9439-B (PECB, 2009); criticizing an employer over its search policy and individually bargaining, *Seattle School District*, Decision 11045-A (PECB, 2011).

If the union makes its prima facie case for discrimination, the employer must articulate non-discriminatory reasons for its actions. If the employer provides non-discriminatory reasons, the union bears the burden of proof to show that the employer's reasons were pretexts to conceal the employer's true motivation, or that the protected activity was a substantial motivating factor for the action. *Tacoma-Pierce County Employment and Training Consortium*, Decision 10280-A.

The Commission dismisses interference complaints when they are based upon the same set of facts that fail to constitute a discrimination violation. *Reardan-Edwall School District*, Decision 6205-A (PECB, 1998). The Commission recently declined to overrule this longstanding precedent. *Northshore Utility District*, Decision 10534-A (PECB, 2010).

ISSUE 5 - Remedy

The authority granted to the Commission by the remedial provision of the statute has been interpreted to authorize an award of attorney's fees. The extraordinary remedy can be granted in special cases: (1) if such an award is necessary to make the order effective, and (2) if the defense to the unfair labor practice is frivolous or meritless, or if there has been a pattern of conduct showing a patent disregard of the party's collective bargaining obligations. *METRO*, 118 Wn.2d 621; *State ex. rel. Washington Federation of State Employees v. Board of Trustees*, 93 Wn.2d 60 (1980); *see Lewis County*, Decision 644-A (PECB, 1979), *aff'd*, 31 Wn. App. 853 (1982), *rev. denied*, 97 Wn.2d 1034 (1982).

The Commission uses the extraordinary remedy of attorney's fees sparingly. *Pasco Housing Authority*, Decision 5927-A (PECB, 1997). Commission orders awarding attorney's fees have usually been based on a repetitive pattern of illegal conduct or on egregious or willful bad acts by the respondent. *Western Washington University*, Decision 9309-A (PSRA, 2008); *City of Bremerton*, Decision 6006-A (PECB, 1998): *Seattle School District*, Decision 5733-B (PECB, 1998); *Mansfield School District*, Decision 5238-A (EDUC, 1996).

BACKGROUND

Some background information is necessary to understand the basis for the union's allegations.[1]

The layoffs and the request to bargain

On November 22, 2010, three deputies received layoff notices and four sergeants received rank reduction notices. The layoffs and demotions were due to budgetary shortfalls. On November 30, 2010, the union submitted a request to bargain over the layoffs and a request for information concerning layoffs to the employer. On December 3, 2010 the union submitted an additional request for information.

On December 6, 2010, the employer informed the union that it had no duty to bargain the decision or the effects of the layoffs and therefore refused to provide any information concerning the layoffs. However, the employer stated that information requests relating to bargaining over the collective bargaining agreement would be provided. On December 9, 2010, the union replied to that letter disagreeing with the employers' position on bargaining the decision and effects of the layoffs and with the employers' position on the production of certain documents. On December 15, 2010, the employer responded to the union by restating its position that bargaining over the layoffs was not required. On December 16, the employer transmitted a number of documents in response to the request for information. On March 25, 2011, the employer provided supplemental responses to the union's requests for information.

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[1] The employer argued that background information was inadmissible as it was outside of the 6 month statute of limitations. As stated in the preliminary ruling of November 4, 2011: "the facts contained in those allegations should be set forth in hearing to give a historical basis for the instant complaint. This unfair labor practice did not take place in a vacuum, and it is appropriate to allow the union to present background facts that will help clarify the actions being complained of." The background is not being considered to establish any violation that is outside of the 6 month period.

The budgetary shortfalls

The county's fiscal year is defined as January 1 to December 31. The budget for the year is adopted in November of the preceding year. Included in the budget is an allocation to the Sheriff's Office, (hereinafter, Sheriff) and the Sheriff decides how to distribute the funds. The Sheriff and the Board of County Commissioners (hereinafter, Board) work together during the budget year to address shortfalls and underfunding in the allocation. The county budget and the Sheriff's budget do not include an allocation by number of employees.

The Sheriff supplements his budget with service contracts and grants. The Sheriff has service contracts such as an inter-local agreement with the City of Yakima, Yakima Valley EMS, and Washington State Department of Parks and Recreation. Approximately 10-12% of the budget comes from grants from the U.S. Department of Justice, the National Institute of Justice, Washington Association of Sheriffs and Police Chiefs, and Washington State Community Trade and Economic Development.

The Sheriff's budget incurred shortfalls in 2008 and 2009 due to retroactive collective bargaining increases. The collective bargaining agreement for 2007-2010 was settled in October 2008. Due to the timing of the settlement, funds for the 2007, 2008, and 2009 wage increases were not included in the budgets for those years. In 2008, the collective bargaining increases cost $600,000. The Board only allotted the Sheriff $253,000 for the increases. In 2009, the Board added $375,000 for the increases.

The county budget for 2010 contained an overall reduction of approximately 1.5 million dollars. The Sheriff's budget was reduced by $258,000. Mid-way through 2010, the county budget was additionally reduced by approximately 1.3 million dollars. The Sheriff's budget received an additional reduction of $221,854. Further, the Sheriff had expected to carry over $343,000 from the 2009 budget but that number turned out to be $46,000.

The Sheriff's budget for 2011 contained a reduction of $94,834. The Sheriff also learned in 2010 that an expected $700,000 federal grant would not be given. The cost of funding a deputy went from $70,852.44 in 2004 to $106,391.14 in 2011. Rising funding costs were due to

collective bargaining increases and benefits and the increasing cost of health care. From 2008-2011 the number of deputy sheriffs and sergeants dropped from 63 to 56.

The layoff language in the contract

The collective bargaining agreement covering the period 2007-2010 has two relevant articles concerning layoffs. The first is Article 4 - Management Rights:

> 4.1 The Union recognizes the prerogative of the Employer to operate and manage its affairs in all respects in accordance with its responsibilities, lawful powers and legal authority. The Union agrees that the Employer has core management rights which are exclusively within the Employer's control. The core management rights are:
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> . . . .
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> C. The right to hire, transfer, suspend, discharge, lay off, recall, promote, or discipline employees as deemed necessary by the employer as provided by this Agreement and/or as provided by the General Rules and Regulations of the Yakima County Civil Service Commission . . . .
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> . . . .
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> 4.3 If the employer makes a change that affects wages, hours or working conditions, and if the contract or existing policies, procedures, or past practices, authorize the employer to make such change, then the Union has the right to request to bargain the effects of the change but not the decision, if the effects are not already addressed in the contract, existing policies, procedures, or past practices . . . .
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> 4.4 If the employer makes a change that affects wages, hours or working conditions, and if the change is not authorized by the contract or existing policies, procedures, or past practices, then the Union has the right to request to bargain the decision, its implementation and its effects . . . .

The second is Article 21 - Layoff, Recalls and Transfers (this language has been in the contract continuously since 2002):

> 21.1 The Sheriff and/or the Board of Commissioners shall be the sole determiner of when layoffs are necessary. The Board may lay off employees when such action is determined to be necessary by reason of lack of work, lack of funds, and/or reorganization of the department. Each employee affected by a reduction in force/lay-off shall be notified in writing of the layoff and the reasons therefore at least fifteen days prior to the effective date of the layoff.

> 21.2 When it is necessary to implement layoffs, the Sheriff shall determine the number of employees by classification in which the reductions will take place. The Guild Attorney or President will be notified of the number of employees and classifications designated for reduction as soon as practicable. When reducing the work force, the Sheriff will layoff employees in the reverse order of their seniority within the affected classification of line deputy, deputy sergeant, or lieutenant.

The 2007-10 collective bargaining agreement expired on December 31, 2010. In February 2011, the union submitted an opening proposal for bargaining. Included within that proposal was the elimination of layoff language in 4.1 C of the Management Rights clause and the elimination of 21.1, the first two sentences of 21.2, and an alteration of the third sentence to state that a layoff may occur subject to the statutory duty to bargain.

The facts regarding retaliation

In 2004, pursuant to RCW 82.14.450, the taxpayers of Yakima county approved the annual allocation of sales and use taxes in the amount of 3/10 of one percent for criminal justice, known as the "3/10 money" for a period of 6 years. The allocation of funds was 60% to cities and 40% to the county. Approximately one-eighth of the annual amount is allocated to the Sheriff. Over the years, the total amount of the revenue changed but the allocation percentages remained the same.

On November 17, 2008, then union President Carrie Tribble wrote the county prosecutor, county commissioners, and the Sheriff, stating that unlawful supplanting of the 3/10 money had occurred. She stated that funds were not being used as intended. She stated that the taxpayers had been told that the funds would be used to create additional deputy positions when in fact the money was being used to maintain current deputy positions. She said that if she did not receive an adequate response from the employer she would file a complaint with the auditor.

The Board responded to the union president on November 20, 2008, by claiming that no unlawful supplanting of the 3/10 money had occurred. They also stated that they did not appreciate threats. On November 24, 2008, the Sheriff sent an internal email criticizing the union's conduct, likening them to kidnappers and terrorists. On December 2, 2008, the Sheriff

sent an e-mail to all department employees refuting the union's claim of unlawful supplanting of the 3/10 money.

Unsatisfied with the employer's response, the union filed a complaint in December with the State Auditor claiming that the county was guilty of unlawful supplanting of the 3/10 money. Approximately two years later, in October 2010, the State Auditor issued a report in response to the complaint. The report stated that no unlawful supplanting of 3/10 money had occurred. A news article reported those findings.

The Sheriff ran for reelection in the fall of 2010. The union publically criticized the Sheriff for the way that the 3/10 money was being used. The Sheriff, however, won reelection.

DISCUSSION

Issue 1- Failure to bargain

There is no question that the employer unilaterally implemented layoffs and did not bargain over the decision or the effects of the layoffs. The employer argues that the union waived its right to bargain by the language agreed to in the collective bargaining agreement. The union argues that the county failed to prove waiver of the right to bargain over layoffs.

Unlike *City of Kelso,* Decision 2633-A, the contract clearly gives the Sheriff the right to make the decision whether to implement layoffs. The language in the agreement on layoffs is clear. The contract language states that: "The Sheriff and/or the Board of Commissioners shall be the sole determiner of when layoffs are necessary. The Board may lay off employees when such action is determined to be necessary by reason of lack of work, lack of funds, and/or reorganization of the department." Here, it was the Sheriff who decided to implement layoffs.

The union alleges that the county did not show that a lack of funds required the layoffs. The lack of funds language applies to decisions made by the Board to implement layoffs. The qualification does not include a decision made by the Sheriff. Here, it was the Sheriff alone, not the Board that made the decision. Even if the language were to apply to decisions made by the

Sheriff, the question of whether there was a lack of funds or not is purely a matter of contract interpretation.

If the specific layoff language making the Sheriff the sole determiner of when layoffs are necessary were not in the contract, it is questionable whether the management rights clause alone would suffice to show waiver. *City of Kelso,* Decision 2633-A. However, the language is quite specific on the issue of layoffs.

Additionally, even if the language regarding the decision to implement layoffs were not clear, past practice shows that the union does not believe that it has the right to bargain over the decision to implement layoffs. On two prior occasions, layoffs occurred without a demand to bargain by the union. Further, the union's opening bargaining proposal seeks to eliminate the layoff language from the agreement. The waiver concerning the Sheriff's authority to enact layoffs is clear and unmistakable.

The employer also did not have the obligation to bargain the effects of the layoffs. There is a detailed procedure in the agreement how to implement layoffs. In addition to the provisions of Article 21 quoted above, the following provisions are contained in the agreement:

> 21.3 Employees laid off will be eligible for reinstatement for a period of one year. In the event of a vacancy in the effected classification, an employee who has been laid off will have the first opportunity to fill said vacancy or vacancies in the order of their seniority in that position, provided the employee can perform the work needed in a satisfactory manner. . . .
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> 21.4 All permanent interdepartmental transfers shall be preceded by a five day written notice to the affected employee, except in the case of emergency.
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> 21.5 Persons laid off within each classification shall revert to the next lowest rank in which they have previously served. In the event that such entry requires or results in a reduction of force in the lower rank, such reduction shall be accompanied by a demotion of lay-off of the person or persons in said lower classification or rank having the least seniority. Time spent in all higher classifications or ranks shall count towards seniority for purposes of lay-off within an affected classification, provided that such service has been continuous since the last date of hire. In the event of a subsequent vacancy in a higher classification or rank, employees demoted by lay-off shall have the first right to be reassigned to a higher classification or rank.

The inclusion of a detailed procedure on the process to implement layoffs precludes effects bargaining. *City of Kelso,* Decision 2633-A.

Conclusion

The employer did not fail to bargain when layoffs were unilaterally implemented. The union waived its right to bargain over the decision and the effects by the language agreed to in the contract.

Issue 2 – Failure to provide information

The union argues that the employer's response to its information request was incomplete and late. Specifically, the union argues that items 3 and 4 from its November 30, 2010 request were incomplete and item 10 was late. The union argues that items 1 and 2 from its December 3, 2010 request were incomplete.

The employer argues that it provided a response to items 2, 3, and 6 from the November 30, 2010 request and items 1, 3, 4, 5 and 6 from the December 3, 2010 request. The employer also argues that the union never protested the failure to provide information until the complaint was filed and therefore, the claim should be dismissed, citing *Kitsap County* 9326-B (PECB, 2010).

The union claims that the employer did not completely respond to the following information requested on November 30, 2010:

> 3. Any reports, memorandum or other internal or external communications regarding revenue projections from 2008 to the current time.
> 4. Any reports, memorandum or other internal or external communications regarding revenue receipts from 2008 to the current time.

Specifically, the union claims that no e-mail communication was provided per request number 3 and no periodic budget updates were provided per request number 4, however, there was testimony that there were no e-mails on the subject.

The evidence shows that documents regarding request number 3 were provided on December 16, 2010. Those documents show the General Revenue and Grant/Contract amounts budgeted and

received. The documents cover the 07/08, 08/09, 09/10, and 10/11 budget years and a comparison of the each of the two years.

The evidence shows that documents regarding request number 4 were provided on December 16, 2010. Specifically, documents showing revenue amounts by items received for the years 2003-2010 were provided. However, the County Budget Director's periodic budget update reports were not provided to the union.

The union claims that the following information, requested on November 30, 2010, was produced in an untimely manner:

> 10. Any and all Federal Grant documents for any current grant (Grant for which the county is receiving money or will be receiving money during 2011), including grant contracts and internal and external communications concerning grants.

The evidence shows that eleven different grant documents were provided on March 25, 2011.

The union claims that the following information employer did not completely respond to the following information requested on December 3, 2010:

1. Any and all correspondence, emails, communications, and documents of any type relating to the 2011 Sheriff's Office budget.
2. Any and all correspondence, emails, communications, and documents of any type relating to the recently announced Deputy Sheriffs' layoff.

Specifically, the union claims documents showing communication with the Sheriff's department budget per request number 1 were not provided and communications on the layoffs per request number 2 were not provided.

The evidence shows that in response to request number 1 of December 3, 2010, the county budget director's file folder was produced, and, specifically, the Sheriff's revenue projections, a salary and benefit worksheet and correspondence regarding the budget. Four e-mails, some of which were e-mail chains were provided.

In response to request number 2, numerous documents were produced. Regarding e-mails, the Sheriff testified that he did not remember if he had any.

The employer refused to provide information when it failed to provide the union with the County Budget Director's periodic budget update reports. The employer also delayed providing information concerning Federal Grants. All of the other requests for information were complete and timely.

The employer's argument that the union never protested the incomplete or tardy production of documents fails. *Kitsap County*, Decision 9326-B is inapposite to the facts here. In that case, the claim that the employer failed to provide information was dismissed. One item requested did not exist at the time of the request and the employer so informed the union. When certain documents were produced, the union stated that they were responsive to the request. Here, the union objected to the delay, and the employer did not tell the union that documents did not exist.

Conclusion

The employer refused to bargain with the union when it failed to provide information on items 3 and 4 in response to the November 30, 2010 request for information, and when it delayed providing information in response to item number 10.

Issue 3 & 4 – Discrimination and interference with employee rights

The union argues that the employer discriminated against the union when it laid-off and demoted members of the bargaining unit. The union argues that the discrimination occurred because of the union's whistle blowing activities. The union argues that the Sherriff's budget was deliberately underfunded by the county so as to cause the layoffs and demotions. The union argues that the Sheriff's failure to put the union on notice of the layoffs and demotions is further retaliation and evidence of his disdain for the union.

The employer argues that the allegation of retaliation is pure conjecture, speculative, and unsupported by the evidence. The employer argues that the Sheriff did everything he could to avoid layoffs.

The union's act of filing a complaint with the State Auditor and making public statements about the employer's use of the 3/10 money is not the type of activity typically defined as union activity. It is not the processing of a grievance, testifying at a ULP hearing, or participating in collective bargaining. It is an independent action of the union, not connected to collective bargaining. The union has not satisfied the requirements of a prima facie case.

Even if the union had shown that the activity was protected activity, a causal connection between the activity and the employer's decision has not been established. Legitimate reasons were established by the employer for implementing the layoffs and demotions. The union has not shown that those reasons were a pretext disguising a discriminatory intent. I credit the Sheriff's testimony and find him credible on his reasons for the layoffs and demotion.

The interference claim must be dismissed as it is based upon the same set of facts as the discrimination claim: The union's claims that the employer implemented layoffs in retaliation for the collective bargaining increases agreed to in 2008; for the union filing a complaint with the State Auditor regarding the use of the 3/10 monies; and the timing of the release of the Auditor's report in October and the layoff notices in November.

Conclusion

The union failed to establish a prima facie case that the employer discriminated and interfered against the union for filing a complaint with the Auditor and speaking out about the employer's use of the 3/10 money. The employer had legitimate, nondiscriminatory reasons for implementing the layoffs and demotions. The interference complaint is similarly dismissed.

Issue 5 – Attorney's fees

Both parties have requested attorney's fees. However, there has been no allegation or showing of a repetitive pattern of illegal conduct or on egregious or willful bad acts by either party. The requests for attorney's fees are denied.

FINDINGS OF FACT

1. Yakima County is a public employer within the meaning of RCW 41.56.030(12).

2. The Yakima County Law Enforcement Officers' Union is a bargaining representative within the meaning of RCW 41.56.030(2), and is the exclusive bargaining representative of a unit of deputy sheriffs and sergeants employed by Yakima County.

3. In 2004, pursuant to RCW 82.14.450, the taxpayers of Yakima County approved the annual allocation of sales and use taxes in the amount of 3/10th of one percent for criminal justice, known as the "3/10 money" for a period of 6 years.

4. In December 2008, the union filed a complaint with the State Auditor claiming that the county was guilty of unlawful supplanting of the 3/10 money. The State Auditor issued a report in October 2010, finding that no unlawful supplanting occurred.

5. The collective bargaining agreement covering the period 2007-2010 has two pertinent articles concerning layoffs.

6. On November 22, 2010, three deputy sheriffs received layoff notices and four sergeants received rank reduction notices.

7. On two occasions prior to November 22, 2010, layoffs of deputy sheriffs occurred without a demand to bargain being filed with the employer by the union.

8. On November 30, 2010, the union submitted a request to bargain over the layoffs and a request for information concerning layoffs to the employer. On December 3, 2010, the union submitted an additional request for information.

9. On December 6, 2010, the employer informed the union that it had no duty to bargain the decision or the effects of the layoffs.

10. On December 16, the employer transmitted a number of documents in response to the request for information but failed to provide the budget director's periodic budget update reports.

11. On March 25, 2011, the employer provided supplemental responses to the union's November 30, 2010 request for information with no discussion on the delay.

12. On December 31, 2010, the 2007-2010 collective bargaining agreement between the parties expired. In February 2011, the union submitted an opening proposal for bargaining over the successor collective bargaining agreement. Included within that proposal was the elimination of certain language regarding on layoffs.

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. The employer did not refuse to bargain with the union as described in Findings of Fact 5-9, in violation of RCW 41.56.140(4) and (1), when it laid-off deputy sheriffs and demoted sergeants.

3. The employer refused to bargain with the union as described in Finding of Fact 10 and 11, in violation of RCW 41.56.140(4) and (1), by failing to provide information requested by the union and by providing information in an untimely manner without any discussion with the union.

4. The employer did not discriminate or interfere with employee rights in violation of 41.56.140(1) when it laid-off deputy sheriffs and demoted sergeants.

ORDER

Yakima County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

a. Failing to provide relevant information requested by the union, including providing information in an untimely manner without discussing the delay with the union.

b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under 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. Provide the union with the County Budget Director's periodic budget update reports, as requested on November 30, 2010.

b. In the future, provide relevant information requested by the union and provide it in a timely manner, or discuss with the union any reasons for omission or delay.

c. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

d. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Yakima County Board of Commissioners and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

e. Notify the 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 complainant with a signed copy of the notice provided by the Compliance Officer.

f. Notify the Compliance Officer, 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 him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 15th day of January, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

ROBIN A. ROMEO, 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.

CASE 23986-U-11-6135
DECISION 11621 - PECB

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union)**
- **Bargain collectively with your employer through a union chosen by a majority of employees**
- **Refrain from any or all of these activities except you may be required to make payments to a union or charity under a lawful union security provision**

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT *YAKIMA COUNTY* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY failed to provide relevant information requested by the union, including providing information in an untimely manner.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL provide the union with the County Budget Director's periodic budget update reports, as requested on November 30, 2010, and

WE WILL provide relevant information requested by the union in the future, provide it in a timely manner, and discuss with the union any reasons for omission or delay.

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.

DO NOT POST OR PUBLICLY READ THIS NOTICE.

AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 01/15/2013

The attached document identified as: DECISION 11621 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

CASE NUMBER:	23986-U-11-06135	FILED:	05/17/2011	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	LAW ENFORCE				
DETAILS:	See 24228-S-11-00238				
COMMENTS:					

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