Spokane County, Decision 12216 (PECB, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE COUNTY DEPUTY SHERIFF'S ASSOCIATION, Complainant, vs. SPOKANE COUNTY, Respondent.	CASE 26204-U-14-6695 DECISION 12216 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Bohrnsen Stocker Smith Luciani, PLLC, by *Thomas R. Luciani*, Attorney at Law, for the union.

Prosecuting Attorney Steven J. Tucker, by *Steven J. Kinn*, Deputy Prosecuting Attorney, for the employer.

On January 13, 2014, the Spokane County Deputy Sheriff's Association (union) filed an unfair labor practice (ULP) complaint against Spokane County (employer). The union alleged that the employer interfered with employee rights, and dominated or assisted the union. A preliminary ruling was issued finding causes of action to exist. Examiner Dianne Ramerman held a hearing on July 10, 2014. On September 22, 2014, the parties submitted post-hearing briefs to complete the record.

ISSUES

As framed by the preliminary ruling, the issues presented by the complainant are as follows:

1. Employer interference with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made by [Sheriff Ozzie Knezovich] to [Union President Wally Loucks], through an email sent to President Loucks on November 11, 2013, in connection with President Loucks's union activities; and

2. Employer domination or assistance of a union in violation of RCW 41.56.140(2) [and derivative interference in violation of RCW 41.56.140(1)], by unlawful interference with internal union affairs through Sheriff Knezovich sending emails on November 11, 2013, to President Loucks, union officers, and union executive board members, concerning certain actions by President Loucks as union president.

I find that the employer did not interfere with employee rights in violation of RCW 41.56.140(1) by threats of reprisal or force, or dominate the union in violation of 41.56.140(2) and (1) by unlawful interference with internal union affairs. The union failed to prove by a preponderance of the evidence that, based on the totality of the circumstances of this case, similarly situated employees would reasonably perceive the Sheriff's November 11, 2013 email as a threat of reprisal or force, or that by sending the email to President Loucks and executive board members, the employer intended to dominate or assist the union. Both allegations are dismissed.

BACKGROUND

When the parties' collective bargaining agreement (CBA) expired on December 31, 2010, the parties rolled over the agreement to the end of 2011. The union and employer began negotiating a successor agreement during the middle of 2011. Because no agreement had been reached on issues including health benefits and wages, an interest arbitration hearing was scheduled, but had not occurred at the time of hearing on this matter.

Throughout his time with the employer, President Loucks has been an active union member. He has been the union president for the past three and-a-half years, was the union vice president for approximately four years, and prior to that was an executive board member for two years. His duties as union president include outreach to educate the public about the union's positions.

Sheriff Knezovich was elected Spokane County Sheriff in 2006, and by virtue of that position, he is the department director. Prior to that, he was the union president for five years and a union executive board member.

Although President Loucks and Sheriff Knezovich initially had a professional relationship, both parties agree that the relationship has deteriorated over time. It was strained for 18 months to three years prior to the date this ULP complaint was filed, and since then, both men have communicated solely by email with each other. The union has filed a number of grievances, and Spokane County and the union have filed ULP complaints. Additionally, President Loucks testified that "I believe the last time we communicated with the Sheriff was in response to [his November 11, 2013] email. . . ." that is central to the case at-hand.

Leading up to this November 11, 2013 email, approximately six union members applied for lateral entry positions in October of 2013 with the Spokane Police Department (SPD), including President Loucks. A reporter with KREM.com, the website for KREM-TV, Channel 2, in Spokane received an anonymous tip that the members had applied to the SPD due to the leadership in the Sheriff's office. She interviewed Sheriff Knezovich, and he told her that her tip was not accurate. Knezovich based this on a conversation he had with Mark Burnell, a deputy who left for the SPD, and who told Knezovich he was leaving due to wages. Sheriff Knezovich testified that "[e]xcept for one" deputy who stated he left because he did not get a K-9 position, the deputies left "because of the pay." The reporter posted the following article on-line on November 8, 2013:

> Six [union members] have applied to become [SPD] officers. Officials said this could cause problems for the [employer].
>
> [Sheriff Knezovich] said the deputies' moves all boil down to numbers.
>
> [SPD] leaders said an officer's maximum pay is more than $76,000. The [employer] said a deputy's pay tops out at more than $11,000 less than a police officer. [Sheriff Knezovich] said one of the deputies approached him to explain his decision saying officers could make nearly $500,000 more over the course of their career.
>
> [Sheriff Knezovich] said he sees where the deputies are coming from and he admits the department will feel the sting.
>
> "It'll make things tight, but we'll be able to absorb it. We currently have people in the academy, it'll just take us longer to get back up to where we need to be. It'll take about nine months for us to recover from that," said Sheriff Knezovich.

> [SPD] leaders did not want to speak with KREM 2 News about this matter. [Sheriff Knezovich] said [SPD] Chief Straub told him if the number of deputies applying for his open officer slots is more than six, he will make sure the [employer] has enough deputies to get by.
>
> [Sheriff Knezovich] added that this could have something to do with their contract negotiations right now. He said the [employer] had filed an [ULP complaint] against the [union] for regressive bargaining.

After being told about the article by a union member, President Loucks read it. He testified that he had personal conversations with five applicants (he was also an applicant), and due to these conversations and knowledge, he wanted to "accurately portray the reasons for those individuals applying." In response, President Loucks commented on the KREM.com blog, signing his name "Wally Loucks, President [of the union]," as follows:

> Actually, the information in this article, attributed to Sheriff Knezovich, is woefully misleading. A police officer with 25 years of service does earn an annual salary of $76,650 while a 25 year deputy sheriff earns the base wage of $65,316, but - here's the kicker: in addition to that base wage a deputy earns longevity pay currently negotiated at 11% of the base wage. So, the truthful salary would be $72,500, not the stated amount of $65,316. While there's still a difference in wage compensation, the divide isn't as profound as the author was led to believe.
>
> Another point worth mentioning here is the six deputies who made the decision to lateral to the [SPD] filed their paperwork around October 1st, 2013. The strategic but meritless claims of [a] [ULP violation] weren't levied by the [employer] until after November 1st, 2013. So, unless these guys are clairvoyant and became prospectively upset with the [union] then these two events are truly unrelated. Context is so important in these matters.
>
> To the author, I would recommend more than one source if you're going to publish an article suggesting to the public that veteran law enforcement officers are migrating away from an agency due merely to compensation. These responsible men have accrued an enormous amount of valuable sick leave that they will not monetize upon leaving the organization, nor will they have the benefit of carrying their seniority over to their new home and once again, they may return to working night shift because of their low draft amongst their new colleagues. In short, there might be more going on here than this superficial teaser of an article has brought to the surface; call it intuition.

> In parting ways ma'am, this article as printed is convincing to the unknowing; however, adjusted for factual content, not so impressive and really a loss for an uninformed community regarding these matters of public concern.

Sheriff Knezovich testified that President Loucks defamed him in the November 8, 2013 KREM.com comment. He testified that "from management's stance of [sic] I felt like we had been undermined as far as arguments about trying to maintain good competitive wages . . . - - he just undermined the [union's] ability to negotiate wages." Furthermore, the Sheriff testified that the Sheriff's Office had an interest in recruiting and retaining good employees by having good pay; however, the employer's negotiation team approached him after the article and was very angry at him because the team felt that the article could be viewed as support for higher wages for the deputies.[1]

In response to President Loucks' blog comment, Sheriff Knezovich sent an email titled "KREM Post" on November 11, 2013, to President Loucks and copied the 12 executive board members as well as Employer Attorney Stephen Kinn. It read as follows:

> It has come to my attention that you wrote the below attached blog on the KREM news site in reference to a story they did concerning deputies who have applied to the SPD. I believe it is important to give proper context on this issue.
>
> On or about 11/6/2013, I was contacted by the KREM reporter concerning deputies who are applying to [sic] SPD. She stated she had received an anonymous email claiming there were 15 deputies leaving the Sheriff's Office due to leadership. Based on the conversations that I, and the rest of the senior staff have had with those seeking to work for the SPD, I advised her there were between 4-6 deputies that have applied and the majority of them say they are leaving for the increased salary and benefits.
>
> On 11/7/2013 I was interviewed by the reporter concerning this issue. When asked about the salary issue I requested Deputy Chamberlin to contact both our payroll office and the [SPD] to get the base wage for top step Deputy and Officer respectively. See the below email string:
>
> > -----Original Message-----
> > From: Chamberlin, Craig K . . .

[1] The Spokane County Board of Commissioners negotiates wages and benefits, and the Spokane County Sherriff's Office negotiates working conditions.

> Sent: Thursday, November 07, 2013 12:57 PM
> To: Minzghor, Ann; Cotton, Monique
> Subject: Pay
>
> Sorry to bug ya. Can you guys give me top step without longevity or anything. [sic] Just the basic top step please [sic]
> From: "Cotton, Monique" . . .
> Date: November 7, 2013 at 1:34:36 PM PST
> To: "Chamberlin, Craig K." . . .
> Subject: RE: Pay
> Lateral Max: $76,650
>
> Entry Level Max: $71,075 after 5 years of service, up to a maximum with longevity after 25 years of service of $76,650
> . . .
> Monique Cotton | Director of Communications | [SPD]
> . . .

As you can see two numbers were sent one for Lateral and one for Entry. [sic] Both numbers were conveyed to the reporter.

In your ever present zeal to paint me and my administration in a negative light, you claimed that the numbers presented were misleading. As you can see from the above email, those were the numbers presented by the [SPD] in response to a request for their top step base wage.

You also imply that there was some attempt to tie the ULP filed against you with the fact that [the employer's] personnel are applying to SPD. No such reference was ever made and it appears that you were grasping at straws to explain the fact he [sic] ULP was mentioned in the story.

You also imply that [the employer's] personnel are not leaving due to the money and increased benefits. I find this confusing since I have personally talked with one of our deputies who has applied to the SPD. I am also told you have applied to SPD and the reason you have given was the educational benefits provided by SPD. I find that your implication that there are further reasons baseless and again nothing more than an attempt to continue your zealous attacks on the Administration.

Many see your actions as nothing more than an attempt to further your personal agenda at the expense of your membership. Instead of taking this as an opportunity to discuss wages and benefits issues you chose to state that those issues are not as big of a deal as presented. Your post has become one of the [employer's] biggest exhibits as to wages and benefits not being that big of a difference when compared to comparable agencies.

> I remind you that you have an obligation to present management positions in the proper light to your membership. As you did not take the time to ask me about the news story, and simply blogged your opinion as to the facts, I feel you have once again acted in bad faith in respect to your duties as the president of the [union]. Further, such action on your part will be viewed as grounds for further claims of Unfair Labor Practices.

Sheriff Knezovich credibly testified that he copied all the members of the union's executive board "[b]ecause they're the leadership of the [union]. And we've had - - this is the way we've communicated for a long time."

President Loucks testified that the Sheriff's November 11, 2013 email was "another attempt to make me appear incompetent as far as bargaining in the best interests of my membership, perhaps sabotaging our ability to secure higher wages."

On November 13, 2013, President Loucks responded to the November 11, 2013 email by copying the 12 union executive board members as well as Kinn stating that he would "forward [Sheriff Knezovich's] concerns to [Union Attorney] Luciani."

ISSUE 1: Did the Employer Interfere with Employee Rights by Threats of Reprisal or Force or Promises of Benefit Made by Sheriff Knezovich to President Loucks Through an Email Sent to President Loucks on November 11, 2013, in Connection with President Loucks's Union Activities?

Legal Standard: Employer Interference

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.56.140(1). To prove interference, the complainant must prove by a preponderance of the evidence that the employer's conduct interfered with protected employee rights; the standard is not particularly high. *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014), *citing Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, 98 Wn. App. 809 (2000) (remedy affirmed). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or promise of benefit

associated with the union activity of that employee or of other employees. *City of Mountlake Terrace*, Decision 11831-A, *citing Kennewick School District*, Decision 5632-A (PECB, 1996).

An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A, *aff'd*, 98 Wn. App. 809. Even if non-coercive in tone, a communication may be unlawful if it has the effect of undermining a union. *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004), *citing City of Seattle*, Decision 3566-A (PECB, 1991).

The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *City of Mountlake Terrace*, Decision 11831-A, *citing City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *City of Mountlake Terrace*, Decision 11831-A, *citing City of Tacoma*, Decision 6793-A.

The complainant bears the burden of demonstrating that the employer's conduct resulted in harm to protected employee rights. *State - Office of Financial Management (OFM)*, Decision 11084-A (PSRA, 2012), *citing City of Wenatchee*, Decision 8802-A (PECB, 2006).

The Commission recently reaffirmed the foregoing standard, commonly referred to as the "reasonable perception" standard. *Port of Anacortes*, Decision 12156 (PECB, 2014), *citing City of Mountlake Terrace*, Decision 11831-A.[2] In *City of Mountlake Terrace*, Decision 11831-A, the Commission further clarified two points regarding the standard. First, "[t]here is no requirement that an employee be engaged in protected activity, or have communicated an intent to do so, for an employer interference violation to exist," and second, that the seven criteria test identified in *Lake Washington School District*, Decision 2483 (EDUC, 1986) will "no longer be used to analyze interference claims." *Port of Anacortes*, Decision 12156.

[2] I will apply that standard to the facts of this case. *See Port of Anacortes*, Decision 12156; *City of Mountlake Terrace*, Decision 11831-A; *State - Washington State Patrol*, Decision 11775-A (PSRA, 2014); *State - Washington State Patrol*, Decision 11863-A (PECB, 2014).

Analysis: Employer Did Not Interfere With Protected Employee Rights

Considering all of the facts in this case and the evidence and arguments presented, the union did not prove by a preponderance of the evidence that the employer interfered with President Loucks's or union members' exercise of union activities when Sheriff Knezovich sent the November 11, 2013 email. Thus, the allegation is dismissed. Analyzing the totality of the circumstances, the following six points, when viewed from the "reasonable perception" standard, lead me to that conclusion:

(1) Contentious Relationship –

A key factor in gauging employees' "reasonable perception" of the Sheriff's email is putting it in the context of the widely known, contentious relationship between the Sheriff and President. President Loucks described the relationship between him and the Sheriff as "hostile" and "very toxic." Sheriff Knezovich added that the relationship between the two had "increasingly deteriorated."

In *City of Mountlake Terrace*, Decision 11831-A, the Commission found that, based on the totality of the circumstances that included a contentious bargaining relationship, statements made by the assistant city manager to the union president about the union's legal counsel were not interference. Rather, they expressed the employer's opinion that the union's attorney was the reason the parties' relationship was contentious. In this context, frank and candid statements between union officials and employer officials did not constitute interference.

President Loucks's and the executive board members' knowledge of this contentious relationship is considered when analyzing the November 11, 2013 email. The union points to the testimony of James Dresback, an executive board member for longer than 10 years, to show that the email undermined the ability of President Loucks to execute the duties of his union position. Dresback testified that the November 11, 2013 email threatened, disparaged, and discredited President Loucks. However, Dresback's own testimony - when examined in the context of two men's contentious relationship - actually proves the opposite. Initially, Dresback sought to see if there

was a process to remove Loucks as President. Nevertheless, he testified that he talked to other members outside the executive board about the email, and "after talking to a couple of people I was reminded that the issues that we're having with the Sheriff we were having when our previous [p]resident was [p]resident, and so I didn't . . . go any further than that." In other words, once Dresback was reminded of the tension between the parties, the November 11, 2013 email was put into perspective as, rather than discouraging or interfering with union activity, reflecting the parties' well-known, contentious relationship.

Similarly, former Executive Board Member Aaron Childers testified that the email did not diminish his respect for President Loucks or change his opinion about Loucks's leadership style, because it came from the Sheriff.

Likewise, although Union Vice President Michael Wall testified that the tone of the email was both confrontational and threatening, and that it was detrimental to President Loucks' ability to execute the duties of union president because it caused people to question his motives, President Loucks's leadership was not actually diminished as a result of the email. Wall testified that he did not think Loucks's leadership was diminished because "[h]aving been a part of all of the things in the past that have led up to that during my four years as the Vice-president of the [union], . . . knowing that - - you know, knowing the background." He clarified that the background was that the two men did not get along. In other words, knowledge of this contentious relationship put the November 11, 2013 email into perspective.

(2) Audience Who Received Email Needed to Have a "Thicker Skin" –

It is also important to note the roles of the parties to the communications at issue. *See State - OFM*, Decision 11084-A. Sheriff Knezovich was acting in his official capacity as head of the department when he sent the November 11, 2013 email. President Loucks was acting in his capacity as the union president when he received the Sheriff's email. The executive board, which was copied on the November 11, 2013 email, is the governing body of the union and makes major policy decisions.

The "thicker skin" principle is described as follows: "The longer a union official is involved in representing the interest of bargaining unit employees, the less reasonable are their claimed

perceptions of threats and coercion." *State - OFM*, Decision 11084-A; *City of Renton,* Decision 7476-A (PECB, 2002). The following cases describe comments made by employer officials to union officials and discuss whether or not the comments constituted interference under the statute.

In *State - OFM*, Decision 11084-A, the Commission found that experienced negotiators on both sides of the bargaining table merely "expressed frustration" at the process, and therefore, the employer's statements did not constitute interference. In that case, during the course of bargaining a successor CBA, the Governor said she would see how the supplemental bargaining progressed. The union filed an ULP complaint claiming that the Governor's statement was a threat. The Commission rejected the claim, finding that in context the statement could not reasonably be perceived as a threat as the union sought out the employer to air frustrations, and the comments were not coercive and did not evidence a desire to punish the union.

In *City of Renton*, Decision 7476-A (PECB, 2002), the Chief commented to the union president about being "non-supportive" and "non-positive" with respect to issues that sergeants and managers ought to be proactive about regarding morale and discipline issues. Because the Chief's statement in that case used "a very low level of criticism in his rhetoric," the Commission stated that the union president needed to get a "thicker skin." It explained:

> A sergeant in a police department should be accustomed to interacting with the chief and other managers in frank discussions; union officials should be accustomed to controversial situations, and can be expected to received and interpret harsh words, criticism, and displeasure. For this reason, a local union president needs to be less worried about coercion and threats than does [a rank-and-file employee]. . . . This acquisition of thicker skin has been recognized by the National Labor Relations Board in cases such as *Premier Rubber Co*., 272 NLRB 466; 117 LRRM 1406 (1984), where the employee who claimed to have been "targeted" overtly supported the union, and where the employer's alleged questions about attendance at union meetings or [calling his union badge a "chicken shit badge"] were found to be innocuous questions and non-coercive expressions of opinion.

See also King County, Decision 7506-A (PECB, 2003).

In the case at-hand, looking at the totality of the circumstances, the types of comments contained in the last two paragraphs of the November 11, 2013 email contain the types of comments that the Commission has asserted require experienced labor representatives to have "thicker skin." All of these comments were due to the Sheriff's opinion that a majority of deputies were applying to the SPD for higher wages and that the best way to help union members attain higher wages was to assert this fact, which he believed to be true, rather than stating that the deputies were leaving due to department leadership issues as Loucks did in his blog post. The comments were frank and candid statements to Loucks that reflected the Sheriff's frustration within the context of that contentious relationship. The two men simply had different focuses and perspectives on these topics, and they expressed them in writing and contentiously – two elements that apparently defined much of their communications for at least 18 months.

Furthermore, Union Treasurer Darrell Stidham, an executive board member for eight years, testified that he read Loucks's blog post prior to reading the Sheriff's email that he was copied on, and when he read the email he felt "muzzled." He thought, "Holy cow, [President Loucks's] in trouble. I don't want to be in trouble, so I'm not going to say anything." Because Stidham has been an active union official for a number of years, the "thicker skin" analysis applies to him as well. Consequently, similar to Loucks, the language would not have been reasonably perceived as interfering with the exercise of protected employee rights. Therefore, I cannot find a separate independent interference violation as the union urges.

(3) <u>The November 11, 2013 Email Speaks for Itself</u> –

The overall tone and purpose of the Sheriff's November 11, 2013 email was substantially factual or informational, and not persuasive or coercive. *See City of Seattle*, Decision 3566-A. The Sheriff's response must be viewed in the context of responding to Loucks's own "critical" blog comment that characterized the Sheriff's statements as "woefully misleading." It is not reasonable for one side to raise frustrations with the relationship and expect the other side not to share its own frustrations. *City of Mountlake Terrace*, Decision 11831-A; *State - OFM*, Decision 11084-A.

In general in all but the last two paragraphs, the Sheriff asserts clarifying facts regarding the KREM.com article and in response to Loucks's KREM.com blog comment. In the last two paragraphs of the email, the Sheriff is essentially asserting his frustration and opinion that he does not believe that the President is engaging in "good advocacy" for the union. Here, Sheriff Knezovich is more requesting that Loucks communicate in what he feels to be helpful to labor relations, than directing or restricting President Loucks's or the executive board's union activities by informing the executive board members, stating his opinion as to President Loucks's obligations regarding his advocacy, and asserting the employer's right to file a ULP complaint. *See State - Washington State Patrol*, Decision 11863-A (PECB, 2014) (employer directed employee to stop concurrent misconduct investigation, and employee reasonably feared discipline); *Snohomish County*, Decision 9834 (PECB, 2007), *aff'd*, Decision 9834-B (employee could reasonably perceive that employer was directing the union to hire different attorney through its expressed unwillingness to negotiate with the union's chosen attorney).

(4) No Threat of Unfair Labor Practices -

The Sheriff concluded his email by stating "such action on your part will be viewed as grounds for further claims of [ULP complaints]." The statement comes directly after a sentence where the Sheriff expresses his frustration with Loucks not checking his facts with the Sheriff before blogging his opinion. Where the warning of legal liability might reasonably be perceived as threatening by some employees, the critical consideration is whether any implied threat was reasonably perceived as directed at the exercise of a protected activity. *City of Seattle*, Decision 3566-A (warning of litigation not interference where smoking in banned areas is not protected activity, but challenge to unilateral implementation of city-wide policy is). Here, the comment is a request by the Sheriff for the President to talk to him before blogging and is based on his frustration with the two men's communication issues. Thus, the reference to further claims of ULP complaints is made in the context of airing frustrations.

Additionally, President Loucks forwarded the Sheriff's November 11, 2013 email to Luciani. Loucks testified as follows: "I was surprised that the Sheriff would take this stance with me, especially through such a form, and with such an audience. But I didn't want to ignore him, I couldn't - - I didn't want to say, 'Okay'." The employer argued that it took Loucks's response to

mean that the union may file its own ULP complaint over the situation. Under Chapter 41.56 RCW, parties are given the right to file various ULP complaints; indeed Spokane County and the union have filed such complaints against each other within the last 18 months. The context of the assertion as well as the parties' history and contentious relationship must be taken into account when determining if such statement is a threat aimed at discouraging protected union activity or is the exercise of a valid statutory right.

(5) Executive Board's Receipt of November 11, 2013 Email Not Surprising -

In the context of the very public exchanges that occurred with the KREM.com article and KREM.com blog post, it is not reasonable to perceive the Sheriff copying the executive board on his November 11, 2013 email to President Loucks as interference with union activity. First, the Sheriff was responding to a blog post that was not itself a private communication, so it should not have been a surprise that Sheriff Knezovich would distribute the email to a broader audience than just President Loucks. Second, the evidence shows that the employer had previously included the executive board on various exchanges, as the union had included the command staff, over the last few years. The union asked no questions at hearing and provided no evidence that email communications from the employer had not over the years been copied to the executive board on a variety of broad topics. Consequently, copying executive board members was not in and of itself a unique or isolated incident.

(6) Union Did Not Prove Harm to Protected Employee Rights -

Executive board members testified that they did not believe Loucks's effectiveness as union president was actually undercut by the distribution of the Sheriff's November 11, 2013 email. Additionally, the employer did not file a ULP complaint against the union regarding President Loucks's blog comment, and did not discipline Loucks or any other union member. *See State - Washington State Patrol*, Decision 11863-A; *City of Renton*, Decision 7476-A. Finally, no evidence was presented of any harm to protected employee rights as a result of President Loucks's comments in the KREM.com blog.

Conclusion

In sum, the parties' contentious relationship, audience receiving the email, contents of the November 11, 2013 email itself, right of the parties to file ULP complaints, non-surprising executive board's receipt of the email, and failure to show harm to protected employee rights all lead me to find that the union did not meet its burden of proof regarding its claims of an employer independent interference violation.

ISSUE 2: Did the Employer Dominate or Assist the Union by Unlawful Interference With Internal Union Affairs Through Sheriff Knezovich Sending an Email on November 11, 2013, to President Loucks, Union Officers, and Union Executive Board Members?

Legal Standard: Employer Domination or Assistance of Union

A domination or assistance violation has a high standard of proof, in that it requires proof of employer intent to dominate or assist. *Community College District 13 - Lower Columbia College*, Decision 8637-A (PSRA, 2005), *citing King County*, Decision 2553-A (PECB, 1987). The complainant maintains the burden of proving the allegations of its complaint by a preponderance of the evidence. WAC 391-45-270(1)(a). RCW 41.56.140(2) states that it shall be an unfair labor practice for an employer to control, dominate, or interfere with a bargaining representative. A finding of domination or assistance under RCW 41.56.140(2) can be found where the employer has involved itself in the internal affairs or finances of the union, has shown a preference between two unions or groups competing for the same group of employees, or has attempted to create, fund or control a "company union." *State – Department of Labor and Industries*, Decision 9348 (PSRA, 2006), *citing City of Walla Walla*, Decision 8444 (PECB, 2004).

Analysis: Employer Did Not Dominate or Assist the Union

Considering all of the facts in this case and the evidence and arguments presented, the union did not prove by a preponderance of the evidence that, based on the totality of the circumstances, the employer dominated or assisted the union by intentionally interfering and involving itself in the internal affairs of the union when Sheriff Knezovich sent the November 11, 2013 email to President Loucks and copied union executive board members. Domination or assistance requires

a high standard of proof, in that it is necessary to prove intent. As explained above in detail, Sheriff Knezovich was frustrated with Loucks's blog comment and was airing those frustrations in his November 11, 2013 email. Airing frustrations is not the same as intending to involve the employer in the internal affairs or finances of the union. Here, no evidence was presented that in sending the November 11, 2013 email, the Sheriff was attempting to create, fund or control a "company union." Similarly, no proof of "assistance" to the union was presented. Thus, this allegation is also dismissed.

FINDINGS OF FACT

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

2. Spokane County Deputy Sheriff's Association (union) is a bargaining representative within the meaning of RCW 41.56.030(2) and is the exclusive bargaining representative for all commissioned law enforcement officers of the employer.

3. When the parties' collective bargaining agreement expired on December 31, 2010, the parties rolled over the agreement to the end of 2011. The union and employer began negotiating a successor agreement during the middle of 2011. Because no agreement had been reached on issues including health benefits and wages, an interest arbitration hearing was scheduled, but had not occurred at the time of hearing on this matter.

4. Throughout his time with the employer, President Loucks has been an active union member. He has been the union president for the past three and-a-half years, was the union vice president for approximately four years, and prior to that was an executive board member for two years. His duties as union president include outreach to educate the public about the union's positions.

5. Sheriff Knezovich was elected Spokane County Sheriff in 2006, and by virtue of that position, he is the department director. Prior to that, he was the union president for five years and a union executive board member.

6. Although President Loucks and Sheriff Knezovich initially had a professional relationship, both parties agree that the relationship has deteriorated over time. It was strained for 18 months to three years prior to the date this ULP complaint was filed, and since then, both men have communicated solely by email with each other. The union has filed a number of grievances, and Spokane County and the union have filed ULP complaints. The last time President Loucks communicated with Sheriff Knezovich was in response to his November 11, 2013 email.

7. Approximately six union members applied for lateral entry positions in October of 2013 with the Spokane Police Department (SPD), including President Loucks.

8. A reporter with KREM.com, received an anonymous tip that the members had applied to the SPD due to the leadership in the Sheriff's office. She interviewed Sheriff Knezovich, and he told her that her tip was not accurate. Knezovich based this on a conversation he had with Mark Burnell, a deputy who left for the SPD, and who told Knezovich he was leaving due to wages. Sheriff Knezovich testified that "[e]xcept for one" deputy who stated he left because he did not get a K-9 position, the deputies left "because of the pay." The reporter's article was posted on KREM.com on November 8, 2013.

9. President Loucks read the November 8, 2013 KREM.com article. He testified that he had personal conversations with five applicants (he was also an applicant), and due to these conversations and knowledge, he wanted to "accurately portray the reasons for those individuals applying." In response, President Loucks critically commented on the KREM.com blog and characterized Sheriff Knezovich's statements in the KREM.com article as "woefully misleading."

10. Sheriff Knezovich testified that President Loucks defamed him in the KREM.com comment. He testified that "from management's stance of [sic] I felt like we had been undermined as far as arguments about trying to maintain good competitive wages . . . - - he just undermined the [union's] ability to negotiate wages." Furthermore, the Sheriff testified that the Sheriff's Office had an interest in recruiting and retaining good employees by having good pay; however, the employer's negotiation team approached

him after the article and was very angry at him because the team felt that the article could be viewed as support for higher wages for the deputies.

11. In response to President Loucks' blog comment, Sheriff Knezovich sent an email titled "KREM Post" on November 11, 2013, to President Loucks and copied the 12 executive board members as well as Employer Attorney Stephen Kinn. In the email, he made frank and candid statements, airing his frustrations regarding the communications between himself and President Loucks.

12. Sheriff Knezovich credibly testified that he copied all the members of the union's executive board on the November 11, 2013 email "[b]ecause they're the leadership of the [union]. And we've had - - this is the way we've communicated for a long time."

13. On November 13, 2013, President Loucks responded to the November 11, 2013 email by copying the 12 union executive board members as well as Kinn stating that he would "forward [Sheriff Knezovich's] concerns to [Union Attorney] Luciani."

14. The union did not prove by preponderance that employees could reasonably perceive that the employer's actions referenced in Findings of Fact 3 through 13 were a threat of reprisal or force associated with union activity.

15. The record lacks evidence that the employer intended to dominate or assist the union by unlawful interference with internal union affairs.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. The union failed to establish that by actions described in paragraphs 3 through 14 in the above findings of fact that the employer interfered with employee rights in violation of RCW 41.56.140(1), by threats of reprisal or force or promises of benefit made by Sheriff

Knezovich to Union President Loucks, through an email sent to President Loucks on November 11, 2013, in connection with President Loucks's union activities.

3. The union failed to establish that by actions described in paragraphs 3 through 15 in the above findings of fact that the employer dominated or assisted the union in violation of RCW 41.56.140(2) [and derivative interference in violation of RCW 41.56.140(1)], by unlawful interference with internal union affairs through Sheriff Knezovich sending emails on November 11, 2013, to President Loucks, union officers, and union executive board members, concerning certain actions by President Loucks as union president.

ORDER

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

ISSUED at Olympia, Washington, this 19th day of December, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DIANNE RAMERMAN, 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.