City of Tacoma, Decision 11064-A (PECB, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TACOMA POLICE UNION LOCAL 6, Complainant, vs. CITY OF TACOMA, Respondent.	CASE 23180-U-10-5903 DECISION 11064-A - PECB DECISION OF COMMISSION

Aitchison & Vick, by *Jeffrey Julius*, Attorney at Law, for the union.

Tacoma City Attorney Elizabeth Pauli, by *Michael J. Smith*, Deputy City Attorney, for the employer.

On April 22, 2010, the Tacoma Police Union Local 6 (union) filed an unfair labor practice complaint against the City of Tacoma (employer) alleging that the employer committed an unfair labor practice when it refused to allow an employee to be represented by his first choice of union representative at an investigatory interview. Examiner Guy O. Coss held a hearing and determined that the employer did not commit an unfair labor practice. The union now appeals the decision.

On appeal the union makes several arguments, none of which we find persuasive. To address those arguments we incorporate the Examiner's applicable legal standards, analysis and conclusions here as we see no reason to restate them. Nevertheless, we want to address some relevant points related to the union's arguments.

First, the union argues that the Examiner erred by failing to find that the employee had an absolute right to select his *Weingarten* representative. Longstanding case precedent as stated in the Examiner's decision is clear on this point – the employee's *Weingarten* right is not absolute. An employer may exclude an employee's first choice of representative if they can prove

"special" or "extenuating" circumstances. Such exclusions are not necessarily limited to availability issues, and each case must be analyzed on its own set of facts.

Second, the union argues that if the employee's right is not absolute, that the Examiner erred by improperly expanding the special or extenuating circumstances limitation. Under the specific facts of this case, we agree with the Examiner that the employer's concerns regarding the employee's first choice of union representative were valid and that the choice created a special or extenuating circumstance due to a conflict of interest so that the employer's exclusion was proper.

We have reviewed the entire record and fully considered the arguments of the parties. The Examiner correctly stated the legal standards. We find that substantial evidence supports the Examiner's findings of fact, and the findings of fact support the conclusions of law. We affirm the Examiner's decision in its entirety. We find that the employer did not interfere with employee rights, dominate or assist the union, or commit a derivative interference violation.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law and Order of Examiner Guy O. Coss are AFFIRMED and ADOPTED as the Findings of Fact, Conclusions of Law and Order of the Commission. The complaint charging unfair labor practices in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 18th day of July, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER:	23180-U-10-05903	FILED:	04/22/2010	FILED BY:	PARTY 2
DISPUTE:	ER INTERFERENCE				
BAR UNIT:	LAW ENFORCE				
DETAILS:	AJ Internal Affairs Interview				
COMMENTS:					

EMPLOYER: CITY OF TACOMA
ATTN: MARILYN STRICKLAND
TACOMA MUNICIPAL BLDG
747 MARKET ST STE 1200
TACOMA, WA 98402-3764
Ph1: 253-591-5100 Ph2: 253-594-7848

REP BY: MICHAEL J SMITH
CITY OF TACOMA
3701 S PINE ST
TACOMA, WA 98409
Ph1: 253-591-5573

PARTY 2: TACOMA POLICE UNION LOCAL 6
ATTN: TERRY KRAUSE
3702 S FIFE ST STE #K
PMB 5
TACOMA, WA 98409
Ph1: 253-591-5668 Ph2: 253-272-2119

REP BY: JEFFREY JULIUS
VICK JULIUS MCCLURE
5701 6TH AVE S STE 491A
SEATTLE, WA 98108-2568
Ph1: 206-957-0926