

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 117,

Complainant,

vs.

STATE – CORRECTIONS,

Respondent.

CASE 127827-U-16

DECISION 12644 - PSRA

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

*Spencer Nathan Thal*, General Counsel, for Teamsters Local 117.

*Catherine S. Blinn*, Assistant Attorney General, Attorney General Robert W. Ferguson, for the Washington State Department of Corrections.

On January 13, 2016, Teamsters Local 117 (union) filed an unfair labor practice complaint against the Washington State Department of Corrections (employer). The union alleged employer interference in violation of RCW 41.80.110(1)(a). The Unfair Labor Practice Manager reviewed the complaint under WAC 391-45-110 and on January 20, 2016, issued a preliminary ruling with a cause of action for interference. On February 9, 2016, the employer filed its answer to the complaint. Examiner Emily Whitney held a hearing on June 13 and July 22, 2016. On September 30, 2016, the parties submitted post-hearing briefs to complete the record.

ISSUE

As framed by the preliminary ruling, the issue presented by the union is as follows:

Did the employer interfere with employee rights in violation of RCW 41.80.110(1)(a) on December 8, 2015, by (1) engaging in surveillance of the union's membership meeting, (2) interrupting the union's meeting, (3) asking individual employees who attended the union meeting about the length of the meeting, and/or (4) demanding leave slips from employees who attended the union meeting?

Based on the totality of the circumstances, the union proved by a preponderance of the evidence that the employer interfered with employee rights in violation of RCW 41.80.110(1)(a). On December 8, 2015, bargaining unit members were engaged in union activity by attending a union membership meeting. Associate Superintendent Michael Tupper created an impression of surveillance when he walked past the room where the meeting was being held, looked inside, and made detailed observations. Captain Edwin Reetz called into the meeting, questioned the bargaining unit member who answered the phone about what was going on as well as how long the meeting would last, and demanded leave slips from the employees in attendance. Tupper entered the union membership meeting and interrupted union business representative Talisa Boad while she was speaking with bargaining unit members. Regardless of the employer's intentions, an employee could reasonably perceive the employer's actions on December 8, 2015, to be a threat of reprisal or force associated with the employee's union activity.

### BACKGROUND

The union represents certain supervisory and non-supervisory classified employees of the employer working at Clallam Bay Corrections Center (Clallam Bay). The employer and union are parties to a collective bargaining agreement effective from July 1, 2015, through June 30, 2017.

#### Layout of Clallam Bay Corrections Center

Clallam Bay is a maximum security prison that houses approximately 900 inmates. Clallam Bay's campus has multiple buildings, including the Administration Support Building (administration building) and the Intensive Management Units Building that contains Management Services (management services). In the administration building, there is a main hallway that runs the length of the building. Superintendent Ronald Haynes's office, the records office, the visit room, and Lieutenant Robert Monger's office are all located along the right side of the hallway. The superintendent's office is located at the beginning of the hallway, and the business office is across the hall. The visit room is closer to the end of the hallway. The wall that separates the visit room from the hallway is made up of windows, so people in the room can see others walking down the hallway and vice versa. Monger's office is next to the visit room and is the last room on the right side of the hallway.

Past Monger's office there is a door that leads to the main courtyard, which is an outdoor area that separates the administration building from the other buildings in the facility. Management services is across the main courtyard. The offices of Tupper and Reetz are located in management services.

#### December 8, 2015, Meeting

The union holds quarterly membership meetings on-site at Clallam Bay. The fourth quarter meetings are held in December. Boad e-mailed the superintendent's secretary to book the visit room for the December 8, 2015, meeting. On October 22, 2015, Boad received a response confirming that the room was reserved for the union meeting from 12:00 p.m. to 11:00 p.m. on December 8, 2015, along with a copy of the room schedule. Because of the varying times that bargaining unit employees can take breaks, the union reserves an 11-hour block of time and schedules one-hour meetings over that duration. Bargaining unit members attend the meetings when they take their breaks, and they regularly come and go during meetings. Boad makes herself available between meetings to communicate with employees who are unable to attend at a set meeting time.

On November 20, 2015, Boad sent an e-mail to Haynes and Reetz notifying them that she and Eric Smith, another business representative, would be visiting Clallam Bay on December 8, 2015. Boad submitted a request to bring in electronic equipment for the meeting. Reetz assisted her by signing and processing the request.

On December 8, 2015, Boad and Smith arrived at Clallam Bay at approximately 11:50 a.m. They crossed paths with Haynes in the parking lot and exchanged pleasantries. Haynes, who was leaving to attend a superintendents' meeting at headquarters, had forgotten about the representatives' scheduled visit until he saw them. Thus, he had not said anything to Tupper or Reetz about the visit before he left.

Boad and Smith entered the administration building. Because there was an attorney and offender visit occurring in the visit room at the time, Boad and Smith waited outside the room for approximately 10 minutes while the visit concluded. Monger credibly testified that he helped to

facilitate the removal of the attorneys and offender from the room so that the union representatives could enter and begin setting up for the membership meeting.

Prior to membership meetings, shop stewards post meeting flyers on bulletin boards and in break rooms and pass them out to members in an effort to increase meeting attendance. The quarterly membership meetings are an important part of the union's work because they provide a forum for the union representatives to share information regarding current events with the members, update members on the status of ongoing business, and open up dialogue regarding issues the members may be experiencing. Fourth quarter membership meetings at Clallam Bay are generally well attended, and it is common knowledge that the union gives out gift cards at those meetings.

The December 8, 2015, meeting began at approximately 12:20 p.m. and was very well attended. Shop steward Anthony Stovall testified that attendance at the meeting was the highest he had seen since he started working at Clallam Bay in 2008. Boad observed there were 50 percent more members at the meeting than at any other meeting she had previously conducted at the facility. Attendees included both longtime members and probationary employees.

#### Discussion in Management Services

Around lunch time, Tupper approached Roster Manager Debra Welty at her desk in management services and asked where the two employees she supervised were. The employees did not take their lunch breaks at regular times each day. Rather, they took their lunch breaks when they were able. On this day, Welty was not in the office when the employees left for their breaks, so she did not know where they were or when they had left.

At Clallam Bay, if an employee is not at his or her workstation, the supervisor can initiate steps to find the employee. The first step is to check the accountability board and determine the employee's last known location. If the supervisor is unable to find the employee, and he or she is truly missing, Clallam Bay's staff accountability protocol is triggered. Welty and Tupper viewed the accountability board, which indicated that the employees were in the visit room. Welty then recalled hearing the employees mention something about the union and a gift card earlier in the day and determined that the employees were likely doing something union related in the visit room.

A short time later, Welty noticed it had been a half hour since she noted her employees were not at their workstations. At that point, she asked her supervisor, Reetz, what the procedure was for when an employee stayed at a union meeting for longer than their allotted break time. Tupper was present for this conversation. Despite the fact that Reetz had received Boad's November 20, 2015, e-mail and had assisted her in getting approval for her electronics request, he testified that he had forgotten there was a union meeting occurring on December 8, 2015. Reetz told Welty and Tupper that he would call the visit room and see what was going on.

#### Tupper's Observation of the Visit Room

After speaking with Welty and Reetz, Tupper returned to his office. Tupper called the superintendent to see if he could gather more information, but they were unable to have a conversation due to poor phone reception. He was then called to sign some papers in the superintendent's office at the front of the administration building. Tupper left his office in management services, crossed the courtyard, and entered the administration building through the back door.

On his way to the superintendent's office between 12:30 p.m. and 12:45 p.m., Tupper passed the visit room and looked inside. Tupper testified that it was not his intention to scope out what was going on in the room when he passed by. He observed that it was set up like a classroom. Boad was at the front presenting to a group of approximately 20–30 people, including a couple of shop stewards. Tupper testified that it was only after he made these observations that he concluded a union meeting was taking place in the visit room.

Bargaining unit member Joschue Reyes, shop steward Cristen White, shop steward Jeremy Sheldon, and Stovall all testified that they saw Tupper walk by the room and look in at the bargaining unit employees throughout the meeting. Stovall testified that Tupper "seemed to show a big interest in what was going on in there" and looked every time he went by. Stovall stated that Tupper's behavior seemed odd, and "it made members a little uncomfortable." White testified that he observed Tupper walking past the windows of the visit room several times and that he had "an angry look on his face." White believed Tupper was upset for some reason.

### Monger's Observation of the Visit Room

Testimony showed that Monger walked by and looked into the visit room multiple times during the December 8 meeting. While Reyes and Stovall testified that Monger walked past the visit room and looked in, the testimony also showed that Monger regularly walks by the room to go to the smoking area or business office.

### Reetz's Phone Call

Reetz called the visit room at approximately 12:40 p.m. The phone rang several times. When no one else got up to answer the phone, Charlotte Berry, a bargaining unit member, picked it up. When Berry answered the phone, Reetz immediately asked her questions about what was going on and how long the meeting would last, and he demanded leave slips from the employees in attendance.<sup>1</sup> Reetz's questions and demand made Berry feel very uncomfortable because she was not a supervisor, and it was not her place to ask her peers for leave slips. Berry suggested that Reetz speak to Boad and motioned for Boad to take the call.

Boad stopped what she was doing, handed control of the meeting over to one of the shop stewards, and spoke with Reetz. Berry observed that the other meeting attendees appeared upset by the call. She testified that the atmosphere in the room was no longer informative and chipper; it was more solemn and toned down. Boad testified that after the call there was a sense of panic or fear in the room. Boad saw one bargaining unit employee who appeared really worried exit the meeting right away.

After the call, Reetz told Welty that the employees she supervised were in a union meeting and that the meeting had started late. Reetz testified that the employees were not missing, so the staff accountability protocol was not triggered.

### Tupper's Interruption

Tupper spent 10–15 minutes signing papers in the superintendent's office and then walked back along the main hallway of the administration building toward his office in management services.

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<sup>1</sup> Reetz testified that he ultimately did not require any employees in his chain of command to submit leave slips for their attendance at the membership meeting.

Between approximately 12:45 p.m. and 1:00 p.m., Tupper looked inside the visit room as he passed by. According to Tupper, there were approximately six bargaining unit members in the room at that time. He entered the room. Berry testified that she was walking out as Tupper walked in, and she thought he “looked very upset.” She was very uncomfortable and did not want to be there any longer. Sheldon and a new employee were speaking with Boad when Tupper interrupted their conversation. Sheldon testified that Tupper’s tone was irritated. Sheldon also testified that Tupper’s actions caused the new employee to feel intimidated and afraid, because he had just started with the facility and did not want to make waves or get fired. Tupper testified that Boad became “defensive and aggressive” during the conversation. Human Resources Manager Paula Gaumond testified that she was informed of Tupper’s interruption after the fact, and she understood the conversation between Tupper and Boad “had gotten quite heated.”

#### Bargaining Unit Employees’ Perceptions

Reyes reported that after the meeting he received “a lot of phone calls” from employees asking whether Tupper or Reetz was demanding leave slips. Reyes felt pretty upset that the employer “would have [a] staff member being intimidated for exercising [his or her] rights to be involved [with] a union.” According to Stovall, the events that occurred during the meeting caused some newer, non-permanent bargaining unit members to “get up and just leave the meeting.” When Stovall spoke to these members afterward, they explained that they left because “they just got the job; they [were] not trying to lose it due to participating in union activity.” He testified that some of those employees still refuse to participate in any union activity due to fear of retaliation. Boad testified that two of the bargaining unit employees she had asked to participate in the hearing refused because they were afraid that management would retaliate against or punish them.

### ANALYSIS

#### Applicable Legal Standards

It is an unfair labor practice for an employer to interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by Chapter 41.80 RCW. RCW 41.80.110(1)(a); *State – Corrections*, Decision 11571-A (PSRA, 2013). The rights protected by the statute include the right to attend and participate in union meetings. *See* RCW 41.80.050. To establish an

interference violation the union must prove, by a preponderance of the evidence that the employer's conduct interfered with protected employee rights. *State – Washington State Patrol*, Decision 11775-A (PSRA, 2014). The standard is not particularly high. *Columbia Basin College*, Decision 11609-A (PSRA, 2013); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997).

An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *State – Washington State Patrol*, Decision 11775-A; *Kennewick School District*, Decision 5632-A (PECB, 1996). An employer may interfere with employee rights by making statements, through written communication, or by actions. *State – Washington State Patrol*, Decision 11775-A; *Snohomish County*, Decision 9834-B (PECB, 2008).

The complainant is not required to demonstrate that the employer intended or was motivated to interfere with employees' protected collective bargaining rights. *State – Washington State Patrol*, Decision 11775-A; *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary for the complainant to show that the employees involved were actually coerced by the employer or that the employer had union animus for an interference charge to prevail. *State – Washington State Patrol*, Decision 11775-A; *City of Tacoma*, Decision 6793-A.

An employer commits an interference violation if it creates the impression that it is engaged in surveillance of employees involved in protected activities, even if there is no actual surveillance. *City of Longview*, Decision 4702 (PECB, 1994) (police chief asked employees questions about what transpired behind closed doors of a union meeting). Even seemingly innocent actions may create the impression that the employer is engaged in surveillance of employees involved in protected activities and therefore constitute an interference violation. *Town of Granite Falls*, Decision 2692 (PECB, 1987) (mayor engaged in three seemingly innocent incidents by twice taking pictures of employees while they were participating in union activities and once driving past the location where a union meeting was being held).



### Application of Standards

Based on the totality of the circumstances, the union proved that the employer interfered with employee rights in violation of RCW 41.80.110(1)(a) when it created an impression of surveillance of the union meeting, called into and asked questions about the meeting, demanded leave slips from the employees in attendance at the meeting, and walked in and interrupted the meeting. A preponderance of the evidence submitted by the union established that an employee could reasonably perceive the employer's actions on December 8, 2015, to be a threat of reprisal or force associated with the employee's union activity.

### *Tupper's Observation of the Visit Room*

Here, the union presented sufficient evidence that an employee could reasonably perceive Tupper's actions as giving the impression of surveillance. Tupper admitted to walking past the visit room on two occasions between 12:30 p.m. and 1:00 p.m. during which he observed a number of specific details about the meeting, including the way the room was set up, the number of bargaining unit members present, and what they were doing. Reyes, White, Sheldon, and Stovall all testified that they saw Tupper walk by the room and look in at the bargaining unit employees throughout the meeting. Testimony also indicated that Tupper appeared angry or upset, and his behavior made the employees uncomfortable. Tupper's actions support an interference violation.

The union did not, however, provide sufficient evidence to prove that an employee could reasonably perceive that Monger engaged in surveillance. The evidence shows only that Monger, whose office is next to the visit room, may have walked down the hallway outside the visit room during the meeting and looked inside on his way to the smoking area or business office. His actions are not enough to reasonably create an impression of surveillance.

### *Reetz's Phone Call*

Based on the circumstances of this case, the union provided sufficient evidence that Reetz's actions could be perceived by a reasonable employee as employer interference with his or her rights by discouraging him or her from engaging in protected union activity. Reetz called into the meeting while bargaining unit members were engaged in their protected right to attend and participate in a union meeting. The call interrupted the meeting and drew the attention of the bargaining unit

members. When Berry answered the phone, Reetz questioned her about what was going on as well as how long the meeting would last and demanded leave slips from the employees in attendance. Reetz's questions and demand made Berry very uncomfortable. Boad had to stop what she was doing, hand control of the meeting over to one of the shop stewards, and speak with Reetz. Berry observed that other meeting attendees appeared upset by the call and that the atmosphere in the room changed. Boad testified that after the call there was a sense of panic or fear in the room, and one bargaining unit employee who appeared really worried exited the meeting right away. Based on the context of Reetz's call, an employee could reasonably perceive Reetz's statements as discouraging him or her from engaging in protected union activity. Reetz's actions support an interference violation.

The employer claims that Reetz's call was required by its safety protocols. At Clallam Bay, a staff accountability protocol is triggered when an employee is presumed missing. According to the employer's post-hearing brief, Reetz followed the protocol when he called the visit room because the first step in the protocol is to determine the employees' last known whereabouts.

The employer's arguments are not persuasive, however, to establish that Reetz had a legitimate reason for calling into the visit room when he did and in the manner he did. *Cf. City of Seattle*, Decision 3066 (PECB, 1988), *aff'd*, Decision 3066-A (PECB, 1989) (union argued that supervisor's actions of surveillance by desk searches created impression of interference with employees' rights, but violation found because supervisor had legitimate reasons for searches). When Reetz made the call, he already knew that the accountability board indicated that Welty's two employees were in the visit room, and Welty had told him she believed they were in a union-related meeting. Nevertheless, even though he had knowledge of what was going on in the room, Reetz still asked what was going on and how long the meeting would last and demanded leave slips from the employees in attendance. He did not specifically inquire about the two allegedly missing employees by name while speaking with Berry or Boad. Furthermore, Reetz himself testified that the employer's accountability protocol was not triggered on December 8, 2015, because no staff were deemed missing.

*Tupper's Interruption*

In this case, the union presented sufficient evidence that an employee could reasonably perceive that the employer interfered with employee rights when Tupper entered the visit room. Case law establishes that an employee could reasonably perceive an employer's interruption of a meeting as interfering with protected activity. *Seattle School District*, Decision 12237 (PECB, 2015); *City of Pasco*, Decision 504 (PECB, 1978), *aff'd*, Decision 504-A (PECB, 1979). In *Seattle School District*, the examiner held that within the context of the case a school principal's interruption of a step-one grievance meeting could reasonably have been seen by an employee as interfering with protected rights.<sup>2</sup> In *City of Pasco*, the examiner found that under the circumstances of that case the employer's act of having a city police officer deliver a termination letter to an employee in the midst of a union meeting constituted unlawful interference. The examiner noted that the employer's conduct unlawfully implied a threat of discharge to the other employees at the meeting and created the impression among the employees that their union activities were under the surveillance of the employer. The examiner concluded that such conduct tends to inhibit employees' subsequent union activities.

Here, Tupper walked into the union meeting and interrupted Boad while she was speaking with bargaining unit members. According to Tupper, approximately six bargaining unit members were present when he entered the visit room. While Tupper testified that he remained calm, several people testified that the conversation between Tupper and Boad became intense. Berry credibly testified that she was walking out of the room as Tupper was walking in and that he looked very upset, his presence in the room was uncomfortable, and she did not want to be in the room any longer. Sheldon and a new employee were speaking with Boad when Tupper interrupted. Sheldon credibly testified that Tupper's tone was irritated, and Tupper's actions caused the new employee to feel intimidated and afraid because he had just started at the facility and did not want to make waves or get fired. Gaumond testified that she understood that the conversation between Tupper and Boad "had gotten quite heated." Justifiably, Tupper's demeanor could have negatively impacted the perception of the employees who attended the union meeting. An employee could

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<sup>2</sup> Filing grievances, like attending and participating in union meetings, is a protected union activity.

reasonably perceive Tupper's actions to be a threat of reprisal or force associated with the employee's attendance at the meeting. Tupper's actions support an interference violation.

*Bargaining Unit Employees' Reasonable Perceptions*

The employer's actions caused some bargaining unit members to fear they would be retaliated against if they continued to attend union meetings and others to cease participation in union activity altogether. Reyes received "a lot of phone calls" from employees asking if they would be required to submit leave slips. Stovall testified that newer, non-permanent employees were concerned they would lose their jobs because they had participated in union activity and that they continue to not participate in union activity due to fear of retaliation. Boad testified that two of the bargaining unit employees she had asked to participate in the hearing refused because they were afraid that management would retaliate against or punish them. Here, regardless of the employer's intentions, an employee could reasonably perceive the employer's actions on December 8, 2015, as a threat of reprisal or force associated with the employee's union activity.

Union's Request for an Extraordinary Remedy

The Commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders. RCW 41.80.120(1) and (2). Fashioning remedies is a discretionary act of the Commission. *University of Washington*, Decision 11499-A (PSRA, 2013), citing *State – Corrections*, Decision 11060-A (PSRA, 2012). The Commission has authority to issue appropriate orders that, in its expertise, the Commission "believes are consistent with the purposes of the act, and that are necessary to make [its] orders effective . . . ." *University of Washington*, Decision 11499-A, citing *Municipality of Metropolitan Seattle v. Public Employment Relations Commission*, 118 Wn.2d 621, 634–5 (1992).

The standard remedy for an unfair labor practice violation includes ordering the offending party to cease and desist and, if necessary, to restore the status quo; make employees whole; post notice of the violation; publicly read the notice; and to bargain with the other party from the status quo. *University of Washington*, Decision 11499-A, citing *State – Corrections*, Decision 11060-A (public reading is not standard with this employer). Deviation from the standard remedy is an extraordinary remedy. *University of Washington*, Decision 11499-A.

Extraordinary remedies are used sparingly and ordered only when a defense is frivolous or when the respondent has engaged in a pattern of conduct showing a patent disregard of the law. *Id.*, citing *State – Corrections*, Decision 11060-A. An extraordinary remedy is not appropriate when a standard remedy will suffice. *University of Washington*, Decision 11499-A.

In the case at hand, the union requests that the extraordinary remedy of training be ordered in addition to the standard remedy. The union asks that the employer receive training on the collective bargaining rights of employees. The union argues that such training is warranted because the employer has committed multiple unfair labor practice violations in addition to the one in this case over a period of five years.

The Commission has in the past ordered the extraordinary remedy of training when necessary to ensure that in the future an employer fully complies with its obligations under the statute. See *Seattle School District*, Decision 10664-A (PECB, 2010) (employer ordered to attend training after fourth violation); *Western Washington University*, Decision 9309-A (PSRA, 2008) (employer ordered to attend training after fourth violation).

Here, however, the union has not shown that the employer's violation makes an extraordinary remedy necessary. The employer has multiple facilities across the state. The two cases cited by the union in support of an extraordinary remedy do not relate to occurrences at Clallam Bay. Because the facts of this case and the cases cited by the union, taken together, do not evince a pattern of conduct showing a patent disregard of the law or suggest that future violations will occur at Clallam Bay, an extraordinary remedy is not necessary to effectuate the purposes of the statute.

## CONCLUSION

Based on the totality of the circumstances, the union proved by a preponderance of the evidence that the employer interfered with employee rights in violation of RCW 41.80.110(1)(a). On December 8, 2015, bargaining unit members were engaged in union activity by attending a union membership meeting. Tupper created an impression of surveillance when he walked past the room where the meeting was being held, looked inside, and made detailed observations. Reetz called

into the meeting, questioned the bargaining unit member who answered the phone about what was going on as well as how long the meeting would last, and demanded leave slips from the employees in attendance. Tupper entered the union membership meeting and interrupted Boad while she was speaking with bargaining unit members. Regardless of the employer's intentions, an employee could reasonably perceive the employer's actions on December 8, 2015, to be a threat of reprisal or force associated with the employee's union activity.

### FINDINGS OF FACT

1. The Washington State Department of Corrections is a public employer within the meaning of RCW 41.80.005(8). The employer operates Clallam Bay Corrections Center (Clallam Bay), a maximum security prison that houses approximately 900 inmates.
2. Teamsters Local 117 (union) is an exclusive bargaining representative within the meaning of RCW 41.80.005(9). The union represents certain supervisory and non-supervisory classified employees of the employer working at Clallam Bay.
3. The employer and union are parties to a collective bargaining agreement effective from July 1, 2015, through June 30, 2017.
4. Clallam Bay's campus has multiple buildings, including the Administration Support Building (administration building) and the Intensive Management Units Building that contains Management Services (management services). In the administration building, there is a main hallway that runs the length of the building. Superintendent Ronald Haynes's office, the records office, the visit room, and Lieutenant Robert Monger's office are all located along the right side of the hallway. The superintendent's office is located at the beginning of the hallway, and the business office is across the hall. The visit room is closer to the end of the hallway. The wall that separates the visit room from the hallway is made up of windows, so people in the room can see others walking down the hallway and vice versa. Monger's office is next to the visit room and is the last room on the right side of the hallway.

5. Past Monger's office there is a door that leads to the main courtyard, which is an outdoor area that separates the administration building from the other buildings in the facility. Management services is across the main courtyard. The offices of Associate Superintendent Michael Tupper and Captain Edwin Reetz are located in management services.
6. The union holds quarterly membership meetings on-site at Clallam Bay. The fourth quarter meetings are held in December. Union business representative Talisa Boad e-mailed the superintendent's secretary to book the visit room for the December 8, 2015, meeting. On October 22, 2015, Boad received a response confirming that the room was reserved for the union meeting from 12:00 p.m. to 11:00 p.m. on December 8, 2015, along with a copy of the room schedule. Because of the varying times that bargaining unit employees can take breaks, the union reserves an 11-hour block of time and schedules one-hour meetings over that duration. Bargaining unit members attend the meetings when they take their breaks, and they regularly come and go during meetings. Boad makes herself available between meetings to communicate with employees who are unable to attend at a set meeting time.
7. On November 20, 2015, Boad sent an e-mail to Haynes and Reetz notifying them that she and Eric Smith, another business representative, would be visiting Clallam Bay on December 8, 2015. Boad submitted a request to bring in electronic equipment for the meeting. Reetz assisted her by signing and processing the request.
8. On December 8, 2015, Boad and Smith arrived at Clallam Bay at approximately 11:50 a.m. They crossed paths with Haynes in the parking lot and exchanged pleasantries. Haynes, who was leaving to attend a superintendents' meeting at headquarters, had forgotten about the representatives' scheduled visit until he saw them. Thus, he had not said anything to Tupper or Reetz about the visit before he left.
9. Boad and Smith entered the administration building. Because there was an attorney and offender visit occurring in the visit room at the time, Boad and Smith waited outside the room for approximately 10 minutes while the visit concluded. Monger credibly testified

that he helped to facilitate the removal of the attorneys and offender from the room so that the union representatives could enter and begin setting up for the membership meeting.

10. Prior to membership meetings, shop stewards post meeting flyers on bulletin boards and in break rooms and pass them out to members in an effort to increase meeting attendance. The quarterly membership meetings are an important part of the union's work because they provide a forum for the union representatives to share information regarding current events with the members, update members on the status of ongoing business, and open up dialogue regarding issues the members may be experiencing. Fourth quarter membership meetings at Clallam Bay are generally well attended, and it is common knowledge that the union gives out gift cards at those meetings.
11. The December 8, 2015, meeting began at approximately 12:20 p.m. and was very well attended. Shop steward Anthony Stovall testified that attendance at the meeting was the highest he had seen since he started working at Clallam Bay in 2008. Boad observed there were 50 percent more members at the meeting than at any other meeting she had previously conducted at the facility. Attendees included both longtime members and probationary employees.
12. Around lunch time, Tupper approached Roster Manager Debra Welty at her desk in management services and asked where the two employees she supervised were. The employees did not take their lunch breaks at regular times each day. Rather, they took their lunch breaks when they were able. On this day, Welty was not in the office when the employees left for their breaks, so she did not know where they were or when they had left.
13. At Clallam Bay, if an employee is not at his or her workstation, the supervisor can initiate steps to find the employee. The first step is to check the accountability board and determine the employee's last known location. If the supervisor is unable to find the employee, and he or she is truly missing, Clallam Bay's staff accountability protocol is triggered. Welty and Tupper viewed the accountability board, which indicated that the employees were in the visit room. Welty then recalled hearing the employees mention something about the



union and a gift card earlier in the day and determined that the employees were likely doing something union related in the visit room.

14. A short time later, Welty noticed it had been a half hour since she noted her employees were not at their workstations. At that point, she asked her supervisor, Reetz, what the procedure was for when an employee stayed at a union meeting for longer than their allotted break time. Tupper was present for this conversation. Despite the fact that Reetz had received Boad's November 20, 2015, e-mail and had assisted her in getting approval for her electronics request, he testified that he had forgotten there was a union meeting occurring on December 8, 2015. Reetz told Welty and Tupper that he would call the visit room and see what was going on.
15. After speaking with Welty and Reetz, Tupper returned to his office. Tupper called the superintendent to see if he could gather more information, but they were unable to have a conversation due to poor phone reception. He was then called to sign some papers in the superintendent's office at the front of the administration building. Tupper left his office in management services, crossed the courtyard, and entered the administration building through the back door.
16. On his way to the superintendent's office between 12:30 p.m. and 12:45 p.m., Tupper passed the visit room and looked inside. Tupper testified that it was not his intention to scope out what was going on in the room when he passed by. He observed that it was set up like a classroom. Boad was at the front presenting to a group of approximately 20–30 people, including a couple of shop stewards. Tupper testified that it was only after he made these observations that he concluded a union meeting was taking place in the visit room.
17. Bargaining unit member Joschue Reyes, shop steward Cristen White, shop steward Jeremy Sheldon, and Stovall all testified that they saw Tupper walk by the room and look in at the bargaining unit employees throughout the meeting. Stovall testified that Tupper "seemed to show a big interest in what was going on in there" and looked every time he went by. Stovall stated that Tupper's behavior seemed odd, and "it made members a little

uncomfortable.” White testified that he observed Tupper walking past the windows of the visit room several times and that he had “an angry look on his face.” White believed Tupper was upset for some reason.

18. Testimony showed that Monger walked by and looked into the visit room multiple times during the December 8 meeting. While Reyes and Stovall testified that Monger walked past the visit room and looked in, the testimony also showed that Monger regularly walks by the room to go to the smoking area or business office.
19. Reetz called the visit room at approximately 12:40 p.m. The phone rang several times. When no one else got up to answer the phone, Charlotte Berry, a bargaining unit member, picked it up. When Berry answered the phone, Reetz immediately asked her questions about what was going on and how long the meeting would last, and he demanded leave slips from the employees in attendance. Reetz’s questions and demand made Berry feel very uncomfortable because she was not a supervisor, and it was not her place to ask her peers for leave slips. Berry suggested that Reetz speak to Boad and motioned for Boad to take the call.
20. Boad stopped what she was doing, handed control of the meeting over to one of the shop stewards, and spoke with Reetz. Berry observed that the other meeting attendees appeared upset by the call. She testified that the atmosphere in the room was no longer informative and chipper; it was more solemn and toned down. Boad testified that after the call there was a sense of panic or fear in the room. Boad saw one bargaining unit employee who appeared really worried exit the meeting right away.
21. After the call, Reetz told Welty that the employees she supervised were in a union meeting and that the meeting had started late. Reetz testified that the employees were not missing, so the staff accountability protocol was not triggered.
22. Tupper spent 10–15 minutes signing papers in the superintendent’s office and then walked back along the main hallway of the administration building toward his office in

management services. Between approximately 12:45 p.m. and 1:00 p.m., Tupper looked inside the visit room as he passed by. According to Tupper, there were approximately six bargaining unit members in the room at that time. He entered the room. Berry testified that she was walking out as Tupper walked in, and she thought he “looked very upset.” She was very uncomfortable and did not want to be there any longer. Sheldon and a new employee were speaking with Boad when Tupper interrupted their conversation. Sheldon testified that Tupper’s tone was irritated. Sheldon also testified that Tupper’s actions caused the new employee to feel intimidated and afraid, because he had just started with the facility and did not want to make waves or get fired. Tupper testified that Boad became “defensive and aggressive” during the conversation. Human Resources Manager Paula Gaumont testified that she was informed of Tupper’s interruption after the fact, and she understood the conversation between Tupper and Boad “had gotten quite heated.”

23. Reyes reported that after the meeting he received “a lot of phone calls” from employees asking whether Tupper or Reetz was demanding leave slips. Reyes felt pretty upset that the employer “would have [a] staff member being intimidated for exercising [his or her] rights to be involved [with] a union.” According to Stovall, the events that occurred during the meeting caused some newer, non-permanent bargaining unit members to “get up and just leave the meeting.” When Stovall spoke to these members afterward, they explained that they left because “they just got the job; they [were] not trying to lose it due to participating in union activity.” He testified that some of those employees still refuse to participate in any union activity due to fear of retaliation. Boad testified that two of the bargaining unit employees she had asked to participate in the hearing refused because they were afraid that management would retaliate against or punish them.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.80 RCW and Chapter 391-45 WAC.

2. Based on Findings of Fact 4 through 23, the employer interfered with employee rights in violation of RCW 41.80.110(1)(a) by taking actions that constitute threats of reprisal or force in connection with its employees' protected union activities.

ORDER

The Washington State Department of Corrections, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
  - a. Engaging in conduct that could be perceived as discouraging union activity, including but not limited to
    1. engaging in surveillance of union membership meetings,
    2. interrupting union membership meetings,
    3. asking individual employees about the content or length of union membership meetings, and/or
    4. demanding leave slips from employees who attend union membership meetings on non-work time.
  - b. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights under the laws of the State of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.80 RCW:
  - a. Contact the Compliance Officer at the Public Employment Relations Commission to receive official copies of the required notice posting within 20 days of the date this order becomes final. Post copies of the notice provided by the Compliance Officer 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.

- b. Notify the complainant, in writing, within 20 days following the date this order becomes final 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.
- c. Notify the Compliance Officer, in writing, within 20 days following the date this order becomes final as to what steps have been taken to comply with this order and, at the same time, provide her with a signed copy of the notice she provides.

ISSUED at Olympia, Washington, this 22nd day of December, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
EMILY K. WHITNEY, 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.



**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 STATE PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING, RULED THAT THE WASHINGTON STATE DEPARTMENT OF CORRECTIONS COMMITTED AN UNFAIR LABOR PRACTICE, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:**

WE UNLAWFULLY engaged in conduct that could reasonably be perceived as a threat of reprisal or force associated with employees' union activity. On December 8, 2015, employer officials at the Clallam Bay Corrections Center engaged in surveillance of a union membership meeting, interrupted the meeting, asked individual employees about the content or length of the meeting, and demanded leave slips from employees who attended the meeting on non-work time.

**TO REMEDY OUR UNFAIR LABOR PRACTICES:**

WE WILL respect the rights of our employees to attend union membership meetings and to engage in protected union activities.

WE WILL NOT engage in conduct which could discourage our employees from engaging in protected union activities, including but not limited to (1) engaging in surveillance of union membership meetings, (2) interrupting union membership meetings, (3) asking individual employees about the content or length of union membership meetings, and/or (4) demanding leave slips from employees who attend union membership meetings on non-work time.

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](http://www.perc.wa.gov).



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

MARILYN GLENN SAYAN, CHAIRPERSON  
MARK E. BRENNAN, COMMISSIONER  
MIKESELLARS, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 12/22/2016

DECISION 12644 - PSRA has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 127827-U-16

EMPLOYER: STATE - CORRECTIONS  
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