

In the matter of an Unfair Labor Practice Complaint

Guild of Pacific Northwest Employees

v.

PERC Case# Not Assigned

Bellingham Municipal Court
Judge Debra Lev
Darlene Peterson, Court Administrator

Complainant:

Guild of Pacific Northwest Employees-Local 1937
Dean I. Tharp, Staff Representative
3303 Northshore Rd
Bellingham, WA 98226-7829
(360) 303-8734
deantharp0@gmail.com

Employer:

City of Bellingham
James Erb, Senior Assistant City Attorney
210 Lottie St
Bellingham, WA 98225
Phone: (360) 778-8132
jeerb@cob.org

Individuals Charged:

Judge Debra Lev
Bellingham Municipal Court
2014 C St
Bellingham, WA 98225
(360) 778-8138
dlev@cob.org

Darlene Peterson, Court Administrator
Bellingham Municipal Court
2014 C Street
Bellingham, WA 98225
(360) 778-8144
dlpeterson@cob.org

Contract Status:

Expires December 31, 2021

Applicable RCWs Violation

RCW 41.56.040

Right of employees to organize and designate representatives without interference.

No public employer, **or other person**, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter. (Emphasis Added)

RCW 41.59.140

Unfair labor practices for employer, employee organization, enumerated.

(1) It shall be an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW [41.59.060](#);

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules and regulations made by the commission pursuant to RCW [41.59.110](#), an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or condition of employment, but nothing contained in this subsection shall prevent an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to *RCW [41.59.100](#);

(d) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under **this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

RCW 41.56.010

Declaration of purpose.

The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to ***join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.*** (Emphasis Added)

RCW 41.59.140

Unfair labor practices for employer, employee organization, enumerated.

(1) It shall be an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060;

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules and regulations made by the commission pursuant to RCW 41.59.110, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or condition of employment, but nothing contained in this subsection shall prevent an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to *RCW 41.59.100;

(d) To discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under **this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It shall be an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed in RCW 41.59.060: PROVIDED, That this paragraph shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (ii) an employer in the selection of his or her representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer, provided it is the representative of its employee's subject to RCW 41.59.090.

(3) The expressing of any views, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of **this chapter, if such expression contains no threat of reprisal or force or promise of benefit.

Synopsis of Charge

1. Bellingham Municipal Court (herein after "the Court") employees are represented by Guild of Pacific Northwest Employees-Local 1937, (herein after "Local 1937") and among the 375-member wall-to-wall bargaining unit within the City of Bellingham (herein after the "City").

2. The employer violated applicable RCW's when it interfered and attempted to dominate Local 1937 members exercising their statutory rights, and unilaterally changed working conditions without first bargaining with the exclusive representative.

We provide the following background information to provide context with the specific charges that follows:

Background

3. On May 27, 2021 six members of Local 1937 employed in the Bellingham Municipal Court exercised their contractual right to refuse to perform work in unsafe conditions.
4. This action was necessitated by the failure of the judge and court administrator to cooperate in an investigation being conducted by the city of Bellingham addressing a number of very serious allegations including: hostile work environment, HIPPA violations, discrimination and retaliation for union activity, Weingarten rights violations, age and gender discrimination.
5. Local 1937 has been aware of serious problems encountered by employees working in the Court for some time. It is a well-known fact that employees who have dared to speak out or venture forth opinions are threatened with termination, singled-out and harassed into resignation. This management strategy to eliminate "troublemakers" was recently alluded to in a group "coaching session" where it was pointed out by the judge and court administrator that those who disagree with them "are no longer working here." This atmosphere of fear and intimidation effectively barred employees from making complaints internally, to seek union representation, or to file complaints within the Court.
6. Tensions in the Court started to escalate in December 2020 over an incident that displeased the judge and court administrator.
7. After incident Lev and Peterson retaliated against employees by issuing new office rules/policy that are in effect to this day:
 - No conversations are allowed that were about personal matters, even on breaks.
 - Work topics can be discussed, but only for a very brief time.
 - No loud voices are allowed, employees can only speak in low tones.
 - However, no whispering is allowed.
 - Employees are discouraged from taking lunches together. If they choose to, they are not to speak of lunch plans in the office.

8. These rules are very strictly enforced. Employees are under constant observation and warned if they are seen talking to each other. Video cameras were trained on employees to observe their movements. Employees are followed from their desks to the break room, followed to the bathroom and followed to other offices. The sole purpose of this surveillance is to create fear and obedience to the rules.
9. Employees who are identified as “troublemakers” have been singled out. Their work is scrutinized, they are burdened with additional assignments and not allowed the same flexibility in hours of work as more favored employees.
10. Adding to workplace tensions was an incident that occurred on December 16, 2020 when an employee reported to Local 1937 President, Jael Komac, that an unknown person was in a secure area of the court. Due to Covid-19 the court was closed and no one other than employees of the city had permission to enter. Unknown to Court employees, President Komac, out of concern for the safety of employees and the breach of protocol, informally contacted a Human Resources representative to ask if they could find out who was in the building. We understand that a member of the City Covid response team inquired regarding the visitor.
11. Apparently, Judge Lev herself broke this protocol and allowed her daughter in the Court offices. Apparently, someone informally has asked the question about who was in the court building. This angered Judge Lev and Darlene Peterson and resulted in Judge Lev giving the silent treatment to her Court Clerk, Samantha Aaro, during a court proceeding that day. We learned later that Samantha Aaro had made the mistake of asking Court Administrator Peterson if the unknown person was from the IT dept. This put a target on Ms. Aaro’s back. The employees quickly got an email from the Judge that intimidated them even further from asking any questions about workplace policy.
12. This work environment became so oppressive that eventually four employees, with help from Local 1937 leaders, finally summoned the courage to report these conditions to a member of the Bellingham Human Resources Department. After a few initial interviews, Human Resource officials prudently decided to hire an outside investigator. Local 1937 representatives were informed on April 26, 2021 that Sarah Hale, of Barran Liebman LLP, was hired by the City to conduct a full investigation into the alleged conduct. We were told by Ms. Hale that she intended to interview all employees working at the Municipal Court site (not just the ones who came forward), managers, the judge and other witnesses to the conduct in order to get a clear picture and both sides of the story. It was by representing the four complainants—and other employees in the office that Local 1937 gained knowledge of the underlying events leading to the filing of these charges. As of this date of submission, this investigation has not been concluded.

13. As a Union representative, I attended all in-person interviews of Local 1937 members conducted by the investigator. During these interviews Ms. Hale presented a “No Retaliation” policy, that employees read and signed as acknowledgement. This document laid out the rules against retaliation and offered City protection in the enforcement of these rules.
14. As the investigation proceeded, employees began to report incidents of retaliation from court officials. Surveillance was intensified, employees were given the silent treatment, were scolded, corrections and micro-management increased and the pressure on “troublemakers” intensified. On April 27, 2021 the work environment had become so intolerable that Ms Aaro resigned her position.
15. One employee expressed fear that the erratic and menacing behavior of the individual perpetrating surveillance represented such a threat that she was prepared to file for a restraining order and was worried that workplace violence might occur.
16. On May 24, 2021 our understanding is that the Investigator recommended to the City that the best course of action was to remove one individual from the work site and place her on paid administrative leave. We understand the city did take this action and deactivated her electronic key and computer access password.
17. The following day, May 25, 2021 Court employees reported to Local 1937 leadership that this individual was again at the work site and performing court duties in apparent defiance of city policy. Employees believed her presence in the building was unauthorized. Also, on this day, the video cameras for the entire court building were turned on and placed on display at a workstation in plain view for all employees to see. This was considered a very intimidating action because the court was still closed to the public and here is no public purpose or security reason for this type of surveillance.
18. Local 1937 urgently requested the City take the appropriate steps to secure the safety of the now even more traumatized employees. By the end of the day the Court Administrator was placed on administrative leave by the City. Local 1937 leaders came to understand from City officials that the Judge was now and for the first time in 19 years, asserting her authority over the office and ignoring City safety policies.
19. Local 1937 held an emergency meeting with employees in order to take the necessary steps to protect the safety of employees in the Court. The Local 1937 collective bargaining agreement contains language giving employees the right to stop work if faced with unsafe conditions. The employee’s agreed that if the individual running the surveillance operation returned to the Court the next day, then they would stop work, congregate outside the court building and convene a

meeting with Human Resources located four blocks away. Local 1937 leaders gave city officials advance warning that this event may occur.

20. On Thursday, May 27, 2021 at approximately 8:30 am this threatening individual again appeared at court offices. Local 1937 union members, in conformance with the contract, stopped work for safety reasons and spent the rest of the day conferring with city officials. City officials made efforts to contact the Judge and the Court Administrator in order to resolve this unprecedented situation. Our understanding is that none of the phone calls or email messages from City officials were returned.
21. Later in the day on May 27, 2021, Mayor Fleetwood placed union members who stopped work on paid administrative leave. At 5:00pm we learned (by reading a newspaper article) that Judge Lev filed a lawsuit against the Mayor Seth Fleetwood and the City of Bellingham claiming the city violated the separation of powers provision of statute statutes.
22. It is important to note that for 19 years Judge Lev had agreed to use the City to establish and maintain working conditions in the Court. Judge Lev had honored the collective bargaining agreement and never appeared at the bargaining table. The Judge herself received help and advice from HR on personnel matters. Local 1937 and its members were accustomed to communicating all relevant matters to Human Resources and the City.
23. The Judge has not informed Local 1937 of any change in the exercise of her authority. Local 1937 only has knowledge of a lawsuit because of news reports of the Judge's purported intentions to take over HR duties or administration. She has since been making public statements blaming Local 1937 for not bringing concerns to her.

Charges

24. **Charge 1** Interference, RCW 41.59 (1)(c) Against Judge Lev and Darlene Peterson including denial of Weingarten Rights of Employees by conducting a meeting on December 8, 2020 over employee conduct and expectations that ended with a threat of termination if those expectations were not followed.
25. **Charge 2** Violation RCW 41.59.140(1)(e), Unilateral change to new working conditions, without providing an opportunity for bargaining, when, on December 8, 2020 at a meeting with four Local 1937 members and without the knowledge of Local 1937, a new Court policy was implemented that included the following unreasonable working conditions:

- a. employees were prohibited from taking rest breaks together;
 - b. Employees are discouraged from taking lunches together. If they choose to, they are not to speak of lunch plans in the office.
 - c. Employees were prohibited from having normal work place conversations this included every day pleasantries, like “who was your weekend” inquiries;
 - d. employees were prohibited from having long conversations about work related issues;
 - e. employees were prohibited from talking loudly—and later when employees spoke softly to each other, employees were prohibited from whispering;
 - f. employees were prohibited from sending group emails to each other;
26. **Charge 3** Violation of Employer interference with employee rights in violation of RCW 41.59.140(1)(a). Employees were deliberately misled when, on December 8, 2020 a meeting was convened by Judge Lev and Court Administrator Peterson. One employee, speaking for the group, inquired if they were in trouble and did they need a Union rep there. Employees were told that the meeting was “coaching” and “not disciplinary” and that they checked with Human Resources before holding the meeting. Nevertheless, as the meeting proceeded it clearly was leading to discipline when Lev and Peterson threatened employees with termination if their new rules were not followed. This is a clear violation of public employee’s Weingarten Rights.
27. **Charge 4** Employer interference with employee rights in violation of RCW 41.59.140(1)(a). When Darlene Peterson when talking with new employees would specifically name Julie Olson, union steward, as a “trouble maker” and a person to be avoided.
28. **Charge 5** Employer interference with employee rights in violation of RCW 41.59.140(1)(a) and Unilateral change to new working conditions, without providing an opportunity for bargaining violation of RCW 41.59.140(1)(e), The Employer established an increase in Court video and personal surveillance of employees in order to enforce new working conditions as described in *Charge 1* above. Unilateral change to new working conditions, when intense video and personal surveillance was established in order to enforce new working conditions, without providing an opportunity for bargaining.
29. **Charge 6** Retaliation of Employees. Employer interference with employee rights in violation of RCW 41.59.140(1)(a), when after four Local 1937 members jointly reported to the City of Bellingham about the oppressive and hostile work environment Judge Lev and Court Administrator Peterson retaliated against the complainants and other union members by:
- a. increasing enforcement of unreasonable work rules, singling out employees for petty and contrived mistakes, and intensified surveillance to the point that employees were fearful and intimidated.

- b. When Judge Lev and Darlene Peterson refused to recognize long-established working conditions pertaining to safety and by their actions stripped employees of their right to a safe working environment by refusing to honor the safety provisions of the collective bargaining agreement,
 - c. When Samantha Aaro suffered retaliation so intense and relentless that she was forced to resign her position.
30. **Charge 7** Unilateral change to new working conditions, without providing an opportunity for bargaining violation of RCW 41.59.140(1)(e), when Darlene Peterson, changed Court policy after a complaint was filed over conducting regular Staff meetings during employee's unpaid, duty-free lunch hours. This complaint was successfully resolved in the Union's favor and subsequently Ms. Peterson retaliated by eliminated the practice of holding regular staff meetings and repeatedly blames the union for the reason for this change in policy. She makes statements such as, "We don't get to have staff meetings anymore because the Union got involved."
31. **Charge 8** Employer interference with employee rights in violation of RCW 41.59.140(1)(a) When as part of an ongoing annual review Darlene Peterson and Judge Lev compelled employees to sign a contract, which contains, in part, a provision that prohibits employees from discussing complaints and concerns with their co-workers or anyone else and compels them to direct complaints and concerns to supervisors.
32. **Charge 9** Employer interference with employee rights in violation of RCW 41.59.140(1)(a) and Unilateral change to new working conditions, without providing an opportunity for bargaining violation of RCW 41.59.140(1)(e), Unilateral change to new working conditions, without providing an opportunity for bargaining, when after 19 years of using the City of Bellingham to establish and administer nearly all working conditions, including all human resource functions, sued the City of Bellingham, when she asserted her authority without notice to either Local 1937 or the City of Bellingham.

Remedy Requested

33. In accordance with RCW 41.56.160 we request the Commissioner to determine Darlene Peterson and Judge Debra Lev have engaged and are engaging in an unfair labor practice;
34. We request the Commissioner to protect the rights of Local 1937 members and issue an Order to Judge Lev and Administrator Peterson to cease and desist interfering in the exercise of their rights;

35. We request the Commissioner to Order Judge Lev to cease and desist the unilateral establishment of working conditions without first bargaining with Local 1937.

36. We further request PERC order Judge Lev and Court Administrator Peterson to reimburse the Local 1937 for legal costs associated with bringing forward this charge.

Respectfully Submitted,

Dean I. Tharp
Staff Representative
Local 1937, Guild of Pacific Northwest Employees
June 2, 2021