Snohomish County Police Staff and Auxiliary Services Center, Decision 12342 (PECB, 2015)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ASSOCIATION OF SNOPAC EMPLOYEES, Complainant, vs. SNOHOMISH COUNTY POLICE STAFF AND AUXILIARY SERVICES CENTER, Respondent.	CASE 26313-U-14-6717 DECISION 12342 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On February 24, 2014, the Association of SNOPAC Employees (union or ASE) filed an unfair labor practice complaint with the Public Employment Relations Commission (PERC), alleging that the Snohomish County Police Staff and Auxiliary Services Center (employer or SNOPAC) refused to bargain, interfered with employee rights, and discriminated against employees in violation of Chapter 41.56 RCW. On March 6, 2014, the union filed an amended complaint that contained additional refusal to bargain and discrimination allegations. Unfair Labor Practice Manager David I. Gedrose reviewed the amended complaint under WAC 391-45-110 and on March 7, 2014, found a cause of action to exist.

On March 12, 2014, the Commission assigned the matter to Stephen W. Irvin, who presided over 10 days of hearing (July 29, 30, and 31, 2014; August 5, 6, and 7, 2014; November 3, 4, 5, and 12, 2014). On November 3, 2014, the union withdrew four of the issues addressed at the hearing as part of a settlement agreement with the employer. The parties also indicated that they wanted to pursue mediation after the close of the hearing in order to resolve a fifth issue, and a decision regarding that issue will be postponed while the parties attempt to reach a resolution. The parties

filed post-hearing briefs on February 9, 2015, and response briefs on February 23, 2015, to complete the record on the remaining issues.

ISSUES

1. Did the employer refuse to bargain by unilaterally implementing a 5/8s work schedule?

2. Did the employer discriminate by changing the wages, hours, and working conditions of all bargaining unit employees in implementing a 5/8s work schedule?

3. Did the employer refuse to bargain by making unilateral changes to (a) the minimum staffing formula, (b) the break policy, (c) bidding by seniority, (d) the pre-disciplinary notice procedure, and (e) the grievance and arbitration procedure?

4. Did the employer discriminate by changing the wages, hours, and working conditions of all bargaining unit employees in making changes to (a) the minimum staffing formula, (b) the break policy, and (c) bidding by seniority?

5. Did the employer interfere with employee rights by threats of reprisal or force or promises of benefit made, in connection with union activities, to (a) Gina Knapp, for requesting union representation in a proposed investigatory interview; (b) Mara Anderton, regarding a pre-disciplinary notice; and (c) all bargaining unit employees, in making changes to the pre-disciplinary notice procedure and the grievance and arbitration procedure?

6. Did the employer interfere with employee rights by denying Marsha Schumann's right to union representation (*Weingarten* right) in connection with an investigatory interview?

7. Did the employer discriminate by terminating Schumann's employment in reprisal for protected union activities?

Issues 1 and 2

The employer did not commit an unfair labor practice by unilaterally implementing a 5/8s work schedule in January 2014, nor did it discriminate by changing the wages, hours, and working conditions of all bargaining unit employees in implementing the 5/8s work schedule.

The provisions contained in Article 5.1.2 of the parties' CBA allowed either party to reopen the agreement if the 4/10s schedule resulted in unforeseen additional costs or other operational problems. Employee complaints and morale issues associated with employees being assigned mandatory overtime repeatedly as a result of the rotating 4/10s schedule constituted an operational problem that allowed the employer to reopen the agreement for the purpose of negotiating additional changes to the schedule. When the parties did not reach agreement, the employer was able to implement the 5/8s schedule after giving the union 45 days' notice.

The union did not make its *prima facie* case for discrimination regarding the employer's implementation of the 5/8s schedule. Although the employer's schedule change deprived employees of a benefit after employees participated in the protected activity of bargaining over the proposed change, the union did not establish that there was a causal connection between the two events.

Issues 3 and 4

The employer did not refuse to bargain by making unilateral changes to the minimum staffing formula, the break policy, the pre-disciplinary notice procedure, or the grievance and arbitration procedure. The union did not establish that the employer made meaningful changes to the status quo in any of those areas.

The union established that the employer refused to bargain by making a unilateral change to the annual vacation bidding procedure for STCs and lead dispatchers. The employer changed the status quo and a longstanding past practice by requiring STCs and lead dispatchers to bid for vacation according to the terms of the parties' CBA. The employer did so without giving sufficient notice to the union that provided an opportunity to bargain before the final decision was made, and did not bargain to agreement or impasse on the matter.

The union did not make its *prima facie* case for discrimination as it pertains to the employer's changes to the minimum staffing formula, the break policy, or vacation bidding by STCs and lead dispatchers. As stated above, there was no meaningful change to the status quo regarding the minimum staffing formula or break policy, and the union did not meet its burden of proving that there was a causal connection between its filing of the schedule change grievance and the employer's decision to change the vacation bidding process for STCs and lead dispatchers.

Issue 5

The union established that the employer interfered with the exercise of Gina Knapp's statutory and *Weingarten* rights when the employer did not grant Knapp's request to have union representation at a proposed investigatory meeting.

The union did not establish that the employer interfered with Mara Anderton's protected employee rights when the employer did not provide notice of Anderton's pre-disciplinary meeting to the union. Nor did the union meet its burden of proof by providing evidence that the employer interfered with bargaining unit employees' protected employee rights regarding the pre-disciplinary notice procedure and the grievance and arbitration procedure.

Issues 6 and 7

The union established that the employer interfered with the exercise of Marsha Schumann's statutory and *Weingarten* rights when the employer did not grant Schumann's requests to have union representation in connection with an investigatory interview. The union's discrimination allegation is dismissed based on the fact that Schumann resigned and was not terminated.

ISSUES 1 AND 2: Did the employer refuse to bargain by unilaterally implementing a 5/8s work schedule? Did the employer discriminate by changing the wages, hours, and working conditions of all bargaining unit employees in implementing a 5/8s work schedule?

Background

The employer operates an emergency dispatch center based in Everett that receives 911 emergency calls and dispatches police, fire, and emergency medical services for 37 police and fire agencies

in Snohomish County. The employer operates its dispatch center 24 hours a day, seven days a week. The employer's operations are funded by assessments charged to the agencies it serves. Kurt Mills serves as the employer's executive director.

The union represents all full-time and regular part-time non-supervisory employees of SNOPAC, excluding the director, confidential employees, and supervisors.[1] *Snohomish County Police Staff and Auxiliary Services Center*, Decision 4313-A (PECB, 1993). Employees who work on the dispatch center floor are divided into three teams: the gold team is the day shift, the red team is the swing shift, and the blue team is the night shift.

From the spring of 2010 until January 2014, the bargaining unit employees' regular work schedule consisted of four 10-hour shifts per week (4/10s schedule). Prior to adoption of the 4/10s schedule, the employer's calltakers, police dispatchers, fire dispatchers, and lead dispatchers worked five eight-hour shifts per week (5/8s schedule). Supervisor/training coordinators (STCs) were the only bargaining unit employees working the 4/10s schedule prior to the spring of 2010.

Calltakers and dispatchers working the 4/10s schedule reported to work in staggered shifts, with a new group of employees starting a shift every two hours. STCs and lead dispatchers had three distinct starting times that corresponded to day shift, swing shift, and graveyard shift. Because of a contractual 12-hour limit on daily hours worked, employees on the 4/10s schedule could work no more than two hours of overtime. Employees on the 5/8s schedule could work as many as four hours of overtime under the same 12-hour limit.

The switch from the 5/8s schedule to the 4/10s schedule was one of the top priorities for the union while negotiating the parties' collective bargaining agreement (CBA) that was in effect from January 1, 2010, through March 31, 2012. At the time the agreement was signed, the parties were still in the process of developing a 4/10s schedule. The language in Article 5.1.2 of the CBA

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[1] The job classification of supervisor/training coordinator (STC) is part of the bargaining unit represented by the union. In contractual language and correspondence, the employer often uses the term "supervisors" to refer to these employees.

reflected the parties' interests in having flexibility to revisit the schedule issue should circumstances warrant.

> **5.1.2 Schedule Change.** During the first quarter of 2010, the Employer will change the schedules for all Calltakers, Dispatchers and Lead Dispatchers to the 4/10s Schedule. All Supervisors and Training Coordinators will remain on the 4/10s Schedule. Part-time and relief employers [sic] may, at the Employer's discretion, be required to work/continue working eight (8) hour or alternative length shifts. This schedule change shall be subject to the following:
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> (a) In the event that the Employer fails to implement the schedule change described in this section by the end of the first quarter of 2010, the Association may reopen this Agreement.
>
> (b) Either party may reopen the Agreement on or before the implementation of the schedule change for the limited purpose of making any changes to the provisions of Section 5.3 necessary for the effective and efficient operation of the 4/10s Schedule.
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> (c) In the event that the 4/10s schedule results in unforeseen additional operating costs or other operational problems, either party may reopen the Agreement for the purpose of negotiating additional changes to the schedule.
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> (d) In the absence of a mutual agreement between the parties to continue the 4/10s Schedule, all Calltakers, Dispatchers and Lead Dispatchers will return to the 5/8s Schedule effective January 1, 2012. Supervisors will remain on the 4/10s Schedule.

The employer implemented the 4/10s schedule in the spring of 2010. It was in effect on April 21, 2011, when Mills sent an e-mail to team leaders and STCs identifying concerns the employer had regarding the excessive amount of time STCs were spending on administering the new schedule, which took time away from their primary responsibility of overseeing their shifts. Mills' e-mail detailed the steps the employer was undertaking to assess and solve the problem and provided the following information on the employer's position regarding potential changes to the work schedule:

> 1. No decision has been made on whether to keep the 10-hour shifts or revert back to 8-hour shifts, however we have to find ways to address the administration issues or this may occur.

2. SNOPAC has decided to aggressively work on this issue now so we can try to have some resolution by this summer.
3. I do not expect to make any changes to the current schedules this year.
4. Other schedule options are being explored, but those would only be considered if we are unable to find ways to improve the administration of the current 10-hour schedules.

Former employees Amy Spromberg and Jeff Phillips, who were STCs and members of the bargaining unit at the time of Mills' e-mail, took the lead in devising methods within the employer's computer scheduling program (TeleStaff) that consolidated scheduling information and reduced the time needed for scheduling. The changes resolved the issues Mills identified, and Spromberg oversaw scheduling in TeleStaff afterward.

On October 28, 2011, the parties signed a memorandum of agreement (MOA) that modified the existing CBA and extended the 4/10s schedule. It read, in relevant part:

> The parties will continue the 4/10s schedule beyond January 1, 2012. In the event that the 4/10s schedule results in unforeseen additional operating costs or other operational problems, either party may reopen the Agreement for the purpose of negotiating additional changes to the schedule.
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> In the absence of a mutual agreement between the parties to maintain the 4/10's schedule, all Call Takers and Dispatchers will return to the 5/8s schedule following a 45 day advanced notice to the ASE. Supervisors and Leads will remain on the 4/10 schedule.

Negotiations for the parties' successor CBA began in early 2012. During the process, the parties agreed to carry over the language from the 2011 MOA into Section 5.1.2 of the successor agreement, with the only alterations being the omission of the January 1, 2012, reference and a clarification that STCs and lead dispatchers would stay on the 4/10s schedule if the calltakers and dispatchers returned to the 5/8s schedule. On November 15, 2012, the parties signed a CBA effective from April 1, 2012, through March 31, 2016. Article 5.1.2 (Schedule Change) reads as follows:

5.1.2 Schedule Change.

a) In the event that the 4/10s schedule in effect as of the effective date of this Agreement results in unforeseen additional operating costs or other operational problems, either party may reopen the Agreement for the purpose of negotiating additional changes to the schedule.

b) In the absence of a mutual agreement between the parties to continue the 4/10s Schedule, all Calltakers and Dispatchers will return to the 5/8s Schedule following a forty-five (45) day notice from the Employer to the Union. Supervisors and Lead Dispatchers will remain on the 4/10s Schedule.

On June 12, 2013, Finance and Administrative Services Manager Angie Baird sent an e-mail to union president Melissa Tate,[2] requesting to schedule a labor relations meeting and identifying "10-Hour Schedules vs. 8-Hour Schedules" as one of the employer's desired topics to be discussed.

The parties met on July 9, 2013. Tate represented the union at the meeting along with Chris Boone, who succeeded Tate as union president in 2014, and other members of the union's executive board. Mills, Baird, and Operations Manager Karl Christian represented the employer at the meeting.

The employer informed the union at the meeting that it was considering a return to the 5/8s schedule for calltakers and dispatchers, primarily because of a marked increase in mandatory overtime during the first six months of 2013 as compared to the first six months of 2012, and also because of complaints from employees that mandatory overtime was being assigned repeatedly to certain individuals as a result of the 4/10s schedule. TeleStaff report information produced before the meeting showed 929.75 mandatory overtime hours were assigned in the first six months of 2013 as compared to 38 hours assigned in the first six months of 2012, an increase of 2,346 percent.

On July 11, 2013, Mills e-mailed SNOPAC employees regarding the meeting. Mills' e-mail announced that the employer planned to reduce the number of fire dispatcher positions without laying off any bargaining unit employees. The employer planned to accomplish this by having three fire dispatchers during the graveyard shift instead of four and not filling three existing fire dispatcher vacancies. Mills' e-mail next notified employees that "[a]fter much great consideration

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2 Melissa Tate is now Melissa Johnson.

and discussion on options we have determined a need to return to eight hour schedules" and also read, in relevant part:

> There was a time when we were at or near full-staffing when the schedule seemed to be working, however if we fall below a certain number of vacancies it becomes increasingly difficult and impractical to administer the schedule and staff our positions. Additionally the number of staff being assigned mandatory OT [overtime] is not acceptable. The 10-hour schedules limit the available staff for OT, which as most of you know, results in many people being hit by mandatory OT week after week.

Mills' e-mail did not specify a date for either of the changes he identified and stated near the end of the e-mail that "[w]e are still in discussions with the ASE on the details and intend to continue sharing information with you as it becomes available."

The parties participated in five labor management meetings between Mills' July 11 e-mail and the end of August 2013, when the parties agreed to arrive at a final decision on the schedule in order to have time to make any necessary changes to the TeleStaff scheduling program for shift bidding and annual vacation bidding for 2014. Attorney Syd Vinnedge joined the union team in the meetings with the employer team of Mills, Christian, and Baird as the parties shared perspectives on the operational challenges surrounding the 4/10s schedule and potential solutions that would allow the schedule to remain in place.

The union made a number of information requests during the course of the meetings that followed the initial meeting on July 9, 2013. The employer also held two town hall-style meetings in which Mills and Christian were available to share the actions the employer took to trim overtime costs within the 4/10s schedule, address any concerns about the proposed schedule change, and to listen to potential solutions to the problems the employer perceived with the 4/10s schedule.

On July 23, 2013, Christian responded to one of the union's information requests by e-mailing Tate an overtime trend report that indicated overtime as a whole was 97.9 percent higher in the first six months of 2013 than it was during the first six months of 2012. During the following week, the union asked the employer to provide a breakdown of mandatory overtime by the time of day in which it was assigned. Christian responded to Tate and Vinnedge via e-mail on July 31,

2013, that the employer's version of TeleStaff did not have that capability. Christian's e-mail included attachments detailing the numbers of mandatory and voluntary overtime hours worked during each pay period in the first half of 2013.

In an attempt to discern whether there was a different way to operate the 4/10s schedule and overcome the issues the employer identified in early July, the employer sent Tate, Christian, and Spromberg to visit the Valley Communications Center in Kent, which also utilizes a 4/10s schedule. The group reported that the 4/10s schedule worked there largely because the Valley Communications Center had far more cross-trained employees who could perform at all of the work stations, which made it easier to fill openings that arose in the normal course of business.

Few employees at SNOPAC were cross-trained at the time, which influenced the number of employees who could work overtime when needed. For example, if overtime was necessary to fill a police dispatcher or fire dispatcher vacancy, only an employee trained as a police dispatcher or a fire dispatcher would be able to do that work. If the employer could not fill an overtime need through voluntary overtime, it would have to assign mandatory overtime to the employee qualified to do the work.

Following the trip to the Valley Communications Center, the parties held a labor management meeting on August 20, 2013. A day before that meeting, Vinnedge e-mailed Mills a "what-if" proposal that included a 4/10s schedule designed by bargaining unit employee James Torgerson. The primary change in the Torgerson schedule, according to multiple witnesses at hearing, was to shift the day of heavy staffing from Wednesday to Friday, when the union felt more staffing was necessary. The union's what-if proposal also included an escape clause that allowed the employer to implement a 5/8s schedule on July 1, 2014, if the Torgerson schedule did not work.

The Torgerson schedule was one of a number of proposals the union made to address the employer's concerns about the 4/10s schedule, but it was the only proposal the union committed to writing. Prior to proposing the Torgerson schedule, the union proposed a shift cascade that would fill holes in the schedule based on employees' shift preferences, and the union also proposed a voluntary overtime sign-up list that would be posted on a bulletin board instead of using TeleStaff

for voluntary overtime purposes. The employer expressed to the union that it did not believe either unwritten proposal would solve the problems with the 4/10s schedule.

The employer indicated to the union at the August 20, 2013, meeting that it did not have enough time to fully assess the Torgerson schedule in order to provide feedback at that meeting. On August 21, 2013, Christian met with Spromberg and Phillips, who had both been forwarded the proposed schedule and asked to give their input by the management team. Spromberg and Phillips agreed with Christian that the Torgerson schedule would not solve the mandatory overtime issues identified with the 4/10s schedule but instead would shift the problem to a different day. Christian discussed this information with Mills later in the day.

On August 27, 2013, the employer met with the union and stated that the Torgerson proposal was not a viable alternative for resolving the employer's problems with the 4/10s schedule. The employer also stated that it would be switching to the 5/8s schedule in January 2014. Mills announced the final decision to switch schedules in an e-mail to all SNOPAC employees on September 6, 2013, and near the end of the e-mail wrote, "Although we are making this move, I am open to revisiting schedule changes in the future if we are able to address the obstacles that are preventing the schedule from working today."

The parties did not meet about the schedule change after the employer announced its decision to revert to the 5/8s schedule. On November 19, 2013, the union filed a grievance regarding the employer's decision, and Baird denied the grievance in a letter to the union on December 2, 2013. The employer implemented the schedule change in January 2014. The union filed this unfair labor practice complaint challenging the employer's implementation of the 5/8s schedule on February 24, 2014. As of the dates of the hearing, the grievance had not been before an arbitrator.

Applicable Legal Standards

Statute of Limitations

RCW 41.56.160(1) provides that a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. The six-month statute of limitations begins to run when the complainant knows, or should know, of the

violation. *City of Bellevue*, Decision 10830-A (PECB, 2012), *citing City of Bellevue,* Decision 9343-A (PECB, 2007).

Under the standard used by the National Labor Relations Board (NLRB) and embraced by the Commission, the six-month statute of limitations period begins at the time the employer provides clear and unequivocal notice to the union. Unequivocal notice of a decision requires that a party communicate enough information about the decision or action to allow for a clear understanding. Statements that are vague or indecisive are not adequate to put a party on notice. *City of Bellevue*, Decision 10830-A, *citing Community College District 17 (Spokane),* Decision 9795-A (PSRA, 2008).

In order to be clear and unambiguous, the notice must contain specific and concrete information regarding the proposed change. The six-month clock begins to run when a party gives clear and unambiguous notice of its intent to implement the action in question. *Id.*

Duty to Bargain

A public employer has a duty to bargain with the exclusive bargaining representative of its employees over mandatory subjects of bargaining. RCW 41.56.030(4). Whether a particular item is a mandatory subject of bargaining is a question of law and fact for the Commission to decide. WAC 391-45-550. To decide, the Commission applies a balancing test on a case-by-case basis. The Commission balances "the relationship the subject bears to the wages, hours, and working conditions" of employees, and "the extent to which the subject lies 'at the core of entrepreneurial control' or is a management prerogative." The decision focuses on which characteristic predominates. *City of Seattle*, Decision 12060-A (PECB, 2014), *citing International Association of Fire Fighters, Local 1052 v. PERC* (*City of Richland*), 113 Wn.2d 197, 203 (1989).

While the balancing test calls upon the Commission and its examiners to balance these two principal considerations, the test is more nuanced and is not a strict black and white application. Subjects of bargaining fall along a continuum. *City of Seattle*, Decision 12060-A. At one end of the spectrum are grievance procedures and personnel matters, including wages, hours and working conditions. RCW 41.56.030(4). At the other end of the spectrum are matters "at the core of

entrepreneurial control" or management prerogatives. *City of Seattle*, Decision 12060-A, *citing International Association of Fire Fighters, Local 1052 v. PERC (City of Richland)*, 113 Wn.2d 197, 203. In between are other matters, which must be weighed on the specific facts of the case. One case may result in a finding that a subject is a mandatory subject of bargaining, while the same subject, under different facts, may be considered permissive. *City of Seattle*, Decision 12060-A.

Unilateral Change

An employer violates RCW 41.56.140(4) and (1) if it implements a unilateral change of a mandatory subject of bargaining without having fulfilled its bargaining obligations. As a general rule, an employer has an obligation to refrain from unilaterally changing terms or conditions of employment unless it: (1) gives notice to the union; (2) provides an opportunity for bargaining prior to making a final decision; (3) bargains in good faith, upon request; and (4) bargains to agreement or impasse concerning any mandatory subjects of bargaining. *King County,* Decision 10547-A (PECB, 2010), *citing Skagit County*, Decision 8746-A (PECB, 2006).

A complainant alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *City of Mountlake Terrace*, Decision 11702-A (PECB, 2014), *citing Whatcom County*, Decision 7288-A (PECB, 2002); *Municipality of Metropolitan Seattle*, Decision 2746-B (PECB, 1990).

A past practice is a course of dealing acknowledged by the parties over an extended period of time, becoming so well understood that its inclusion in a collective bargaining agreement is deemed superfluous. *City of Mountlake Terrace*, Decision 11702-A, *citing Whatcom County*, Decision 7288-A. To be an established past practice, the practice must be consistent; all parties must have knowledge of it; and the practice must be mutually accepted. *City of Mountlake Terrace*, Decision 11702-A, *citing Snohomish County*, Decision 8852-A (PECB, 2007).

Impasse

The "impasse" concept grows out of the premise that the duty to bargain does not impose upon the parties an obligation to agree. Circumstances exist in which a party may lawfully conclude that further negotiations will not result in an agreement. If the party declaring impasse has bargained

in good faith, and if its conclusion about the status of negotiations is justified by objectively established facts, then the party's duty to bargain is satisfied. *Yakima Valley Community College*, Decision 11326-A (PECB, 2013), *citing Skagit County*, Decision 8746-A. A lawful impasse creates only a temporary hiatus in negotiations "which in almost all cases is eventually broken, through either a change of mind or the application of economic force." *Yakima Valley Community College*, Decision 11326-A, *citing Charles D. Bonanno Linen Service, Inc. v. NLRB*, 454 U.S. 404 (1982).

The Commission analyzes at least five factors when determining whether the parties have reached a good-faith impasse: (1) the bargaining history, (2) the parties' good faith in negotiations, (3) the length of the negotiations, (4) the importance of the issue(s) on which the parties disagree, and (5) the contemporaneous understanding of the parties as to the state of negotiations. *Skagit County*, Decision 8746-A, *citing Taft Broadcasting Co.*, 163 NLRB 475, 478 (1967). These factors are not exclusive and provide a useful basic framework for guidance in determining whether impasse existed. *Skagit County*, Decision 8746-A.

Applying the five *Taft Broadcasting* factors to the record in the particular case, the Commission will find an impasse exists (so that unilateral changes based on that impasse are lawful) only if there was no realistic possibility that continued negotiations would have been fruitful for the parties. *Id. See also Mason County*, Decision 3706-A (PECB, 1991); *American Fed'n of Television and Radio Artists v. NLRB*, 395 F.2d 622, 628 (D.C. Cir. 1968).

Waiver by Contract

A party may waive its right to bargain through the language in its collective bargaining agreement. A contractual waiver of statutory collective bargaining rights must be consciously made, must be clear, and must be unmistakable. *Yakima County*, Decision 11621-A (PECB, 2013). When a knowing, specific, and intentional contractual waiver exists, an employer may lawfully make changes as long as those changes conform to the contractual waiver. *Yakima County*, Decision 11621-A, *citing City of Wenatchee*, Decision 6517-A (PECB, 1999). Waiver is an affirmative defense. *Yakima County*, Decision 11621-A, *citing Lakewood School District,* Decision 755-A

(PECB, 1980). The burden of proving the existence of the waiver is on the party seeking enforcement of the waiver.

Discrimination

It is an unfair labor practice for an employer to discriminate against employees for engaging in protected union activity. RCW 41.56.140(1). An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by Chapter 41.56 RCW. *Kitsap County*, Decision 12022-A (PECB, 2014), *citing Educational Service District 114*, Decision 4361-A (PECB, 1994). The complainant maintains the burden of proof in discrimination cases. To prove discrimination, the complainant must first set forth a *prima facie* case establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute, or communicated to the employer an intent to do so;
2. The employer deprived the employee of some ascertainable right, benefit, or status; and
3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

Kitsap County, Decision 12022-A.

Ordinarily, an employee may use circumstantial evidence to establish the *prima facie* case because respondents do not typically announce a discriminatory motive for their actions. *Kitsap County*, Decision 12022-A, *citing Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances which according to the common experience give rise to a reasonable inference of the truth of the fact sought to be proved. *Kitsap County*, Decision 12022-A, *see also Seattle Public Health Hospital*, Decision 1911-C (PECB, 1984).

In response to a complainant's *prima facie* case of discrimination, the respondent need only articulate its nondiscriminatory reasons for acting in such a manner. The respondent does not bear the burden of proof to establish those reasons. *Kitsap County*, Decision 12022-A, *citing Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the complainant to prove

either that the employer's reasons were pretextual, or that union animus was a substantial motivating factor behind the employer's actions. *Id.*

To prove an employer's stated nondiscriminatory reason was pretextual or substantially motivated by union animus, a union must "prove by a preponderance of the evidence that the disputed action was in retaliation for" exercising statutorily protected rights. *State – Corrections,* Decision 12002-A (PSRA, 2014), *citing Central Washington University*, Decision 10118-A (PSRA, 2010); *Clark County*, Decision 9127-A (PECB, 2007).

Analysis

Statute of Limitations

The union filed its complaint on February 24, 2014, which limits the scope of the work schedule change issue to events occurring on or after August 24, 2013. The employer contends that the union's complaint is untimely because the union knew, or should have known, that the employer was going to revert to the 5/8s schedule when Mills e-mailed SNOPAC employees on July 11, 2013, to express the "need to return to eight hour schedules."

The July 11, 2013, e-mail merely served as the employer's notice that it was reopening the schedule change provision of the CBA. The parties met five times after July 11, 2013, to explore options for keeping the 4/10s schedule before the employer gave the union clear and unambiguous notice on August 27, 2013, that it would revert to the 5/8s schedule on January 1, 2014. As such, the union's complaint is timely.

Deferral to Arbitration

The employer argues that the issue is an alleged violation of the CBA that should be dealt with through the grievance process and that interpretation of language in the CBA is not properly before PERC in an unfair labor practice proceeding. The employer's argument is unconvincing.

Early in its history, the Commission ruled that deferral to arbitration is a matter of policy, rather than a matter of law, and that agreements between parties cannot restrict the jurisdiction of the Commission. *City of Wenatchee*, Decision 6517-A, *citing City of Seattle*, Decision 809-A (PECB,

1980). The Commission has the authority to refuse to defer to arbitration any unfair labor practice case, and may interpret any collective bargaining agreement to the extent necessary to decide a pending unfair labor practice case. *City of Wenatchee*, Decision 6517-A. The preliminary ruling issued in this case on March 7, 2014, stated that "[a]lthough the preliminary ruling includes causes of action for unilateral changes, the remaining causes of action concern statutory claims that are not subject to deferral. The Commission does not bifurcate unfair labor practice complaints. This case will not be deferred to arbitration in whole or in part."

Unilateral Change

The union established that the 4/10s schedule was the status quo at the time of the events that led to the union's unfair labor practice complaint. It has been long held in Washington that shift schedules are a mandatory subject of bargaining, as schedules involve the "hours" of employees. *City of Tukwila,* Decision 10536-A (PECB, 2010), *citing City of Yakima*, Decision 767-A (PECB, 1980). The union also established that the parties did not bargain to agreement before the employer made a meaningful change to a mandatory subject of bargaining by implementing the 5/8s schedule in January 2014.

Although the employer provided the union notice of the change in a manner that allowed time to permit bargaining on the subject and subsequently bargained in good faith, the fact that the parties bargained for slightly more than a month on a subject as important to the parties as the work schedule leads to the conclusion that the parties did not bargain to impasse. In his e-mail to SNOPAC employees on September 6, 2013, Mills appeared to concede there was more to discuss on the issue when he wrote that "[a]lthough we are making this move, I am open to revisiting schedule changes in the future if we are able to address the obstacles that are preventing the schedule from working today."

As a result of the union establishing the elements of proof for a unilateral change, the burden of proof shifts to the employer to establish an affirmative defense that the change was allowed either by a waiver by contract, a waiver by inaction, or a business necessity. In this case, the unfair labor practice complaint rests upon the determination of whether the language in Article 5.1.2 of the

parties' CBA constitutes a waiver of the union's right to negotiate that would allow the employer to take unilateral action.

Waiver by Contract

The union makes a three-point argument that the employer did not meet the narrow preconditions of Article 5.1.2(a), which permits either party to reopen the agreement if the 4/10s schedule "results in unforeseen additional operating costs or other operational problems," and adds that the union's agreement to meet with the employer and discuss the schedule issue does not mean that the employer satisfied the preconditions that would allow the reopener.

First, the union states that the employer experienced no additional operating costs as a result of the 4/10s schedule, because mandatory overtime costs no more than any other overtime. Second, the union states that the operational problems the employer experienced were a function of the contractual method for determining overtime and not a direct result of the 4/10s schedule. Third, the union states that there was nothing unforeseen about any of the issues the employer struggled with in 2013, because mandatory overtime has been a constant for the employer due to vacancies and the amount of time it takes to train new employees.

The employer argues that it was within its contractual rights to reopen the agreement based on operational problems evidenced by the increase in mandatory overtime in the first half of 2013 and complaints from union leadership and other bargaining unit employees that accompanied the increase in mandatory overtime. When there was no mutual agreement on continuing the 4/10s schedule after six weeks of discussions with the union, the employer believes it was contractually permitted to convert from the 4/10s schedule to the 5/8s schedule after providing the union 45 days' notice.

The Washington courts have adhered to an objective manifestation theory in construing words and acts of contractual parties, and impute to a person an intention corresponding to the reasonable meaning of the words and acts. *City of Wenatchee*, Decision 8802-A (PECB, 2006), *citing Plumbing Shop, Inc. v. Pitts*, 67 Wn.2d 514 (1965). Emphasizing the outward manifestation of assent by each party to the other, courts have found the subjective intention of the parties irrelevant.

City of Wenatchee, Decision 8802-A, *citing City of Everett v. Estate of Sumstad*, 95 Wn.2d 853 (1981). Contract provisions are not ambiguous merely because the parties disagree about their particular meaning. When the contract terms themselves evidence a meeting of the minds, we need go no further to determine what was intended. *City of Wenatchee*, Decision 8802-A.

In the instant case, the dispute revolves around whether the 4/10s schedule in effect resulted in *"unforeseen additional operating costs or other operational problems"* that would allow either party to reopen the schedule change provision (emphasis added). The conjunction "or" indicates that "unforeseen additional operating costs" and "other operational problems" are two distinct alternatives envisioned by the parties in their agreement, and the analysis will proceed with that in mind.

The record lends considerable weight to the employer's argument that the 4/10s schedule led to problems tied to mandatory overtime in the first half of 2013 that gave the employer the ability to reopen the agreement. It is difficult to imagine a scenario where a 2,346 percent increase in mandatory overtime, when comparing the first half of 2013 to the first half of 2012, would not be an operational problem for the employer. The problem was compounded when management and STCs received regular complaints from employees about mandatory overtime and how it was distributed.

To assess the union's claim that the operational problems the employer experienced were a function of the contractual method for determining overtime and not a direct result of the 4/10s schedule, it is necessary to turn to Article 5.3.1 of the parties' CBA, which states that overtime "shall normally be assigned on a voluntary basis, and shall be required, where necessary, among *qualified employees*, consistent with procedures defined herein" (emphasis added).

Article 5.3.1(a) details how the parties agreed to address immediate overtime needs with less than 12 hours' notice. The employer first seeks volunteers from employees on duty to fill the overtime need, and if that does not work, contacts off-duty employees who have made themselves available by putting their names on voluntary sign-up lists. If no volunteers are found to fill the vacant shift, mandatory overtime is assigned based on qualifications and number of overtime hours worked.

Unless no other employee can work, Article 5.3.1(a) states that employees are exempt from mandatory overtime during a week in which they have been assigned mandatory overtime once, or in which they have volunteered for two or more overtime assignments. Employees who have 25 years or more with the employer, or are working on their regularly scheduled day off, are exempt from mandatory overtime unless no other employee can work.

Article 5.3.1(b) specifies how the parties agreed to address planned overtime needs with more than 12 hours' notice. If no volunteers are found within 13 hours of the time of need, the mandatory overtime provisions of Article 5.3.1(a) apply. Employees who have worked overtime or are scheduled to work overtime on a given day are exempt from mandatory overtime under Article 5.3.1(b) unless no other employees are available in an emergency. Employees who have worked 12 consecutive hours are also exempt from mandatory overtime, and employees will not have to work mandatory overtime if their extended shift ends less than 12 hours before they are scheduled to return for their next shift.

The key piece of the parties' overtime language is "qualified employees." When overtime is needed to fill a police dispatcher vacancy at SNOPAC, only an employee trained as a police dispatcher is qualified to fill that vacancy. The same restriction exists with fire dispatcher vacancies, because only employees trained as fire dispatchers are qualified to fill those vacancies. Calltakers and dispatchers can fill in when a calltaker vacancy arises.

The lack of cross-training at SNOPAC limited the pool of potential employees for dispatcher overtime, but the nature of the 4/10s schedule imposed further limits. When the 4/10s schedule was in effect, employees came on and off shift in two-hour increments. The two-hour rotation of starting and ending times meant that it was not unusual to have just one or two police dispatchers or fire dispatchers coming off shift at any one time who were qualified and available to fill an immediate dispatcher overtime need if volunteers could not be located. By contrast, under the 5/8s schedule implemented in January 2014, no fewer than seven police dispatchers and three fire dispatchers were coming off shift at one time and qualified to work mandatory overtime in order to fill an immediate dispatcher overtime need.

Christian, who worked on creating and administering the 4/10s schedule both as a member of the union and SNOPAC administration, testified that the number of employees who were being assigned mandatory overtime repeatedly was as much of a concern to the employer as the increase in the number of mandatory overtime hours in the first half of 2013:

> [C]ertain people were getting mandatoried continually due to just the situation of the schedule.
>
> And we saw that as a burden on those particular people that they were not able to get the downtime away from work that they should. And that it was – you know, there was no opportunity to mandatory other people, because of the way the shift schedule was set up with the shifts coming and going every two hours.
>
> We – even though there are guidelines in the collective bargaining agreement for the assignment of mandatory overtime and who should be assigned first, second, third, et cetera, those were pretty much a moot point. Because when it came to that particular time frame, there may have only been one person who was qualified to cover the shift of somebody that was off on extended leave or whatever the circumstances were.

Spromberg – who was on the scheduling committee that created the 4/10s schedule implemented in 2010, served on the union's bargaining team for the parties' current CBA, and oversaw scheduling before leaving the employer in 2014 – testified that mandatory overtime assignments created a considerable amount of animosity among employees. As an STC, Spromberg said she received daily complaints from employees who felt they were assigned mandatory overtime excessively in mid-2013, and there were instances when administrators had to be called to the dispatch floor to resolve disputes among employees who challenged mandatory overtime assignments.

> I would say it was pretty significant. There were a lot of complaints. People are not happy being mandatoried multiple times. . . . But it's the last-minute stuff that, you know, really adds to the day, makes it [a] little bit longer. Especially for the ones that are getting hit [with mandatory overtime] a couple different times in a row a week.

There was ample testimony and evidence presented at hearing to support Spromberg's testimony that mandatory overtime complaints were not uncommon events. Within a month after the parties reached a tentative agreement on their current CBA, administrators received e-mails from employees who were concerned about repeated mandatory overtime assignments. The union's last

two presidents, Tate and Boone, testified that the issue was a legitimate concern because of the morale problems caused by unequal mandatory overtime distribution.

The union argues that the employer did little more than conduct a cursory analysis of mandatory overtime data before determining an operational problem existed that would allow the employer to reopen the schedule change provisions. Furthermore, the union claims that the employer "relied on rumor, complaint, and innuendo" instead of making an effort to determine who was being assigned mandatory overtime and if their complaints were valid.

The record indicates that, even though the employer did not conduct an all-encompassing analysis of mandatory overtime, it was not necessary to do such an analysis to determine an operational problem existed as a result of the 4/10s schedule. Union and employer witnesses alike testified that the employer faced a legitimate morale problem as a result of the assignment of mandatory overtime. Ideally, the parties' overtime distribution procedures would have evened the overtime load and solved the problem, but often those procedures were negated by the nature of the 4/10s schedule. As a result, the employer was within its contractual rights to reopen Article 5.1.2 in order to determine if it would be necessary to return to the 5/8s schedule. The "other operational problems" language of Article 5.1.2 served as a contractual waiver to allow the employer to reopen the agreement and eventually make changes to the work schedule.

Discrimination

In attempting to set forth its *prima facie* case to prove its discrimination claim, the union established that its employees participated in a protected activity when they engaged in bargaining with the employer about the potential change from a 4/10s schedule to a 5/8s schedule during July and August 2013. The union also established that the employer deprived bargaining unit employees of an ascertainable benefit when the employer implemented the change to the 5/8s schedule in January 2014.

The union's *prima facie* case falls short, however, when it comes to establishing a causal connection between the employees' participation in a protected activity and the employer's action. It is not reasonable to infer that the employer's decision to change the schedule was tied to the

employees' participation in the protected activity of bargaining. Instead, as was stated in the preceding unilateral change analysis, the employer's decision to change the work schedule was based on operational problems regarding mandatory overtime and its distribution that arose as a result of the 4/10s schedule.

Conclusion

The employer did not commit an unfair labor practice by unilaterally implementing a 5/8s work schedule in January 2014, nor did it discriminate by changing the wages, hours, and working conditions of all bargaining unit employees in implementing the 5/8s work schedule.

The provisions contained in Article 5.1.2 of the parties' CBA allowed either party to reopen the agreement if the 4/10s schedule resulted in unforeseen additional costs or other operational problems. Employee complaints and morale issues associated with employees being assigned mandatory overtime repeatedly as a result of the rotating 4/10s schedule constituted an operational problem that allowed the employer to reopen the agreement for the purpose of negotiating additional changes to the schedule. When the parties did not reach agreement, the employer was able to implement the 5/8s schedule after giving the union 45 days' notice.

The union did not make its *prima facie* case for discrimination regarding the employer's implementation of the 5/8s schedule. Although the employer's schedule change deprived employees of a benefit after employees participated in the protected activity of bargaining over the proposed change, the union did not establish that there was a causal connection between the two events.

ISSUES 3 AND 4: Did the employer refuse to bargain by making unilateral changes to (a) the minimum staffing formula, (b) the break policy, (c) bidding by seniority, (d) the pre-disciplinary notice procedure, and (e) the grievance and arbitration procedure? Did the employer discriminate by changing the wages, hours, and working conditions of all bargaining unit employees in making changes to (a) the minimum staffing formula, (b) the break policy, and (c) bidding by seniority?

Background

Minimum Staffing

The employer has determined a minimum number of employees necessary for each shift in order to be able to provide its dispatch services. When the 5/8s schedule was implemented in January 2014, minimum staffing required between 15 and 17 employees for day shift (seven police dispatchers, four fire dispatchers, and four or six calltakers depending on the time of day); 17 employees for swing shift (seven police dispatchers, four fire dispatchers, and six calltakers); and 14 for night shift (seven police dispatchers, three fire dispatchers, and four calltakers). The parties' CBA contains no language restricting the employer's ability to determine minimum staffing levels.

On occasions when the employer has more employees on a shift than minimum staffing requires, employees can request paid time off (PTO) if they have sufficient hours in their leave banks. Article 9.3 of the parties' current CBA provides the framework for PTO requests made between seven and 30 days before the date of the requested leave:

> 9.3 **PTO Requests.** PTO requests for leave other than annual vacations may be submitted no more than thirty (30) days prior to the day(s) requested for leave. Requests submitted at least seven (7) days prior to the date of the requested leave shall be returned to the employee, approved or disapproved, by the Employer not less than five (5) calendar days before commencement of the leave. . . .

There is no language in the parties' CBA pertaining to PTO requests received less than seven days in advance. STCs have discretion to approve or deny PTO requests down to minimum staffing in these situations, based upon operational needs.

The concept of optimal staffing, which has also been referred to as optimum staffing, is at the center of the parties' dispute on the minimum staffing issue. STC Erin Walters testified that she attended a meeting in November 2013 with Christian and STC Roger Brinkman in which the STCs were directed to approve or deny PTO requests based on an optimal staffing standard that required shifts to have one extra employee above minimum staffing. Walters testified that she and Brinkman expressed that optimal staffing represented a change in practice and that they asked Christian to send a notice to employees explaining the new practice.

Christian testified that he neither defined optimal staffing as minimum staffing plus one in the meeting with Walters and Brinkman nor propagated the idea to other STCs that PTO requests could be handled in a formulaic manner. To illustrate his point, Christian testified that he counseled one STC who perfunctorily denied a PTO request based on using the minimum staffing plus one formula instead of fully assessing the center's operational needs for the day.

Christian did not send employees any written material regarding optimal staffing following the meeting with Walters and Brinkman. In the months after the meeting, Christian continued to field inquiries from STCs regarding the criteria to use when determining whether to approve or deny PTO requests that came in less than seven days before the requested leave.

For example, on November 14, 2013, STC Kevin Hanrahan e-mailed Christian for guidance regarding optimal staffing and pending PTO requests. Christian responded later in the day, writing that "[t]here are continuing discussions within the Management and OPS team on how we will officially address this concept." He advised Hanrahan that it might be wise to stay above minimum staffing because of tours occurring at the center and the potential for bad weather during the shift. Hanrahan then denied the PTO requests.

On January 24, 2014, Walters sent an e-mail to Christian and Operations Coordinator Crystal Ayco in which she asked if her understanding was correct that optimal staffing on swing shift was seven calltakers, one over the minimum of six, and that she was to deny PTO if it took staffing down to minimum on the phones. The record does not indicate that Walters received a response from Christian or Ayco, but Ayco forwarded the e-mail to Christian and wrote, "[t]he unwritten rules of 'optimal staffing levels' continues [sic] to cause confusion for leaders and their teams. I recommend providing them with something solid in writing they can fall back to. ASAP[.]"

Break Policy

Article 5.2.1 of the parties' CBA governs rest breaks for employees who work eight-hour, 10-hour, or 12-hour schedules:

> 5.2.1 **Rest Periods.** The parties agree to paid meal and rest periods that vary from and supersede the requirements of WAC 296-126-092. The Employer shall

> "make a good faith effort" to provide the employees working an eight (8) hour day with a total of one (1) hour paid break time, typically in the form of a thirty (30) minute meal period and two (2) fifteen (15) minute rest breaks. . . . These breaks shall be provided as the workload allows, but employees must remain within the area subject to immediate callback should the workload require. If an employee is not provided the major portion of the meal breaks or rest breaks, he/she shall be compensated at the overtime rate of pay for that portion of the meal periods or rest periods missed. Major portion of the break shall be defined as two-thirds (2/3rds) of the break or more.

SNOPAC's minimum staffing for police dispatchers is seven per shift, which includes one police dispatcher who is assigned as the "breaker" and covers for the other police dispatchers when they take their breaks. When the dispatch center is at minimum staffing, seven hours are necessary each shift for all police dispatchers to take full rest breaks. Under the 5/8s schedule, being at minimum staffing requires police dispatcher breaks to begin 30 minutes into the shift and as late as 30 minutes before the end of the shift. When the employer utilized the 4/10s schedule from the spring of 2010 through the end of 2013, the first police dispatcher rest breaks occurred approximately two hours into the shift and the second rest break began with more time remaining before the end of the shift.

The parties did not discuss the timing of rest breaks in the 5/8s schedule prior to implementation of the new schedule in 2014, although Spromberg – a member of the bargaining unit – created a break schedule matrix that she e-mailed to Christian on December 30, 2013. As part of that e-mail, Spromberg wrote, "BTW, this is a great example of 'optimum staffing'. Without the 2nd breaker for police, breaks will be really tight. Keeping any 'overages' in staffing allows people to have breaks at a more reasonable time."

On January 2, 2014, Ayco e-mailed an informational bulletin to SNOPAC employees that included guidelines for the timing and scheduling of rest breaks for dispatchers and calltakers on the 5/8s schedule. For police dispatchers, Ayco wrote:

> It has been awhile since we had to coordinate 7 hours of police breaks in an 8 hour shift. As it was before, once everyone is on an 8 hour day, the breaks start at [sic] for police dispatchers 30 minutes into shift and rotate non-stop until 30 minutes before end of shift, if we are at minimum staffing levels. (0730 & 1530 & 2330).

> When staffing allows (over the minimum 7 police dispatchers per shift), a second break person will be assigned to assist with break coverage.

Within two hours of sending the informational bulletin, Ayco received an e-mail from a bargaining unit employee who expressed concern about the timing of rest breaks in the 5/8s schedule. Later that day, Ayco e-mailed Christian after researching how the employer handled police dispatcher breaks in 2009 and 2010 before the 4/10s schedule went into effect:

> The last 4 hours of every shift we allowed OT coverage if staffing didn't allow for a 2nd breaker. That would put breaks starting early but not nearly as early. I still believe we need a 2nd breaker the entire shift, but feel that 4 hours is a good compromise. It would be achieved if we were at full staffing... currently it's not with our staffing levels.

On January 6, 2014, Ayco sent an updated informational bulletin to SNOPAC employees that modified the details of police dispatcher breaks, stating:

> When staffing allows (over the minimum 7 police dispatchers per shift), a second break person will be assigned to assist with break coverage. If there is no additional staffing to allow for a second breaker, 4 hours of VOLUNTARY overtime is approved for the last half of each shift to assist in break schedule coverage on police dispatch. If there is no second breaker due to staffing (vacations, leaves, training etc), then breaks start for police dispatchers 30 minutes into shift and rotate non-stop until 30 minutes before end of shift, if we are at minimum staffing levels. (0730 & 1530 & 2330).

Bidding by Seniority

The parties' CBA details the procedure for bidding for annual vacation.

> 9.2 **Annual Vacation.** Annual vacation will be selected by bid in accordance with Article 6 [Seniority] and this Article. If an employee has insufficient PTO for a pre-approved vacation, the employee's vacation will be reduced to the number of full shifts covered by the employee's available PTO; in all other cases, once approved, an employee's annual vacation will not be cancelled absent a major catastrophic event. Employees who incur non-refundable expenses such as hotel accommodations, airline or other tickets, etc., because of the cancellation of a vacation by the Employer due to a major catastrophic event will be reimbursed for such expenses within thirty (30) days of the cancellation.

Utilizing TeleStaff, dispatchers and calltakers bid for annual vacation in the upcoming year among other members of their shifts in three stages. The most senior employee on each shift receives the first opportunity to select annual vacation dates, with subsequent selections made in descending order of seniority. The TeleStaff program is designed to allow up to two employees per shift to sign up for annual vacation on a particular day. If two employees are signed up for a particular date, TeleStaff blocks future requests for that date.

Prior to January 2014, STCs and lead dispatchers did not bid for annual vacation in the same manner as dispatchers and calltakers. Instead of bidding for annual vacation strictly by seniority within their shifts, STCs and lead dispatchers scheduled annual vacations among themselves, without using TeleStaff, until they manually entered annual vacation dates into TeleStaff prior to the requested vacation dates. When annual vacation requests were entered in this manner, neither the employees nor the operations staff member approving the requests could tell immediately via TeleStaff whether other STC or lead dispatcher annual vacation was scheduled on the date(s) requested.

The key consideration for the STCs and lead dispatchers in scheduling annual vacation was ensuring adequate supervisory coverage for the center's floor staff. Although lead dispatchers can fill in for STCs, having STCs present on each shift is particularly important to the employer because STCs are solely responsible for coaching, counseling, and dealing with employee performance issues. When lead dispatchers fill in for STCs, it also has an impact on the dispatch floor because lead dispatchers are unavailable for the dispatch and calltaking duties they occasionally perform.

In December 2013, the STCs and lead dispatchers scheduled their annual vacations in a way that overlapped and left the center without STCs for portions of some shifts. Christian approved these annual vacation requests, based in part on trust that the STCs and lead dispatchers had continued to ensure adequate coverage, and in part on his belief that the CBA did not allow him to deny annual vacation requests absent a major catastrophic event.

To prevent a recurrence of the problem, Mills decided the STCs and lead dispatchers would bid for annual vacation in accordance with the language in Article 9.2. At a meeting on January 15, 2014, Christian informed STCs and lead dispatchers of the change to annual vacation bidding and added that a module would be created in TeleStaff for that purpose. Sometime after the meeting, the STCs and lead dispatchers began the first of three stages of annual vacation bidding in TeleStaff.

The employer did not notify the union that it was considering changing the annual vacation bidding procedure for STCs and lead dispatchers prior to the meeting on January 15. On February 6, 2014, Boone wrote an e-mail to Christian expressing concerns STCs and lead dispatchers had about the change to annual vacation bidding. Boone attached a proposed MOA that preserved the previous method of annual vacation bidding and read, in relevant part:

> Article 9.2 of the CBA dated November 15, 2012 shall be modified to clarify and update the process of vacation bidding for the Supervisor and Lead Dispatch staff
>
> (9.2 a) Each Supervisor and Lead Dispatcher will have three (3) vacation choices per year.
>
> A Supervisory team shall be defined as a Supervisor and Lead Dispatcher working the same days and hours on the dispatch floor. Supervisors working in the Office of Training and Standards will be considered one team.
>
> Each supervisory team shall have no more than one (1) Supervisor or Lead Dispatcher off at a time, except on the supervisory staff's common work day, provided there is one (1) Supervisor or Lead Dispatcher working their normal day who can cover Supervisory needs for each shift.
>
> Each supervisory team shall coordinate shift supervisory coverage and vacation choices internally as per past practice. Should a team be unable to come to an agreement amongst themselves, vacation choices shall be chosen via seniority.

The employer did not agree to the proposed MOA, and the union filed a grievance on the annual vacation bidding change on February 10, 2014. Baird e-mailed Boone on February 18, 2014, indicating the employer's willingness to discuss the issue and to suspend the timeline on the grievance in order to give the parties an opportunity to meet.

Pre-disciplinary Notice Procedure

On February 19, 2014, Christian wrote a letter to calltaker Mara Anderton directing her to report to his office on February 24, 2014, for a pre-disciplinary meeting:

> At this meeting you will be given the opportunity to provide any extenuating circumstances that you feel are relevant to the investigation regarding improper 9-1-1 call interrogation, the ability to meet performance standards, and failing to sustain the and [sic] expectations of a previously assigned Performance Improvement Plan (PIP).
>
> If it is your wish to have an ASE representative present during this meeting, it is incumbent upon you to make the request directly to the ASE.

The parties' practice regarding pre-disciplinary notices was that the notices were delivered to the employee and the union. The parties' CBA does not require the union to be notified of pre-disciplinary meetings. In this instance, the notice was delivered to Anderton but was not delivered to the union. Boone testified that, based on his experience, the lack of notice to the union was an isolated incident. Anderton contacted Boone regarding the meeting, and Boone attended the meeting along with Anderton and union attorney Mitchell Riese.

Applicable Legal Standards

The legal standards enumerated on pages 12 through 16 are also applicable to these issues.

Analysis

Minimum Staffing

The union argues that the employer unilaterally implemented an optimal staffing formula defined as minimum staffing plus one employee. The union states that the employer has instructed STCs to use the optimal staffing formula when considering employee requests for PTO and to deny PTO requests that would leave the center at minimum staffing. The employer contends that optimal staffing has never been defined as narrowly as the union claims. Rather, the employer asserts that an optimal staffing concept has been used in the past to explain to STCs that they need to take the center's operational needs into account before approving PTO requests that would leave the center at minimum staffing.

Exhibits produced at hearing indicated that the concept of taking operational needs into account before granting PTO requests existed prior to 2013 and had been a topic of discussion for the employer's management team and its STCs. Minutes of STC meetings on November 30, 2011, and January 25, 2012, included discussions of STC discretion in granting PTO. A November 21, 2012, e-mail from Mills to STC Jackie Davis that was forwarded to STCs and lead dispatchers did the same:

> The Supervisors have the discretion to make operational decisions on staffing. They must consider far more than just minimum staffing levels or they aren't doing their job. Although the supervisor may choose to offer an explanation to an employee on what's driving their decision, [they] are under no obligation to do so. The Sups have both my and Operations [sic] support to make wise decisions on staffing focused on achieving our mission.
>
> The minimum staffing levels are just what they say they are, minimums. For a center our size, anytime we operate at minimum we operate at risk should someone have to leave unexpectedly. By design our 10-hour schedules allow us to routinely operate at more optimum staffing levels above minimums.

The parties' established practice is that STCs are expected to use discretion when deciding whether to approve or deny employee PTO requests. While there may be confusion among STCs about the criteria for exercising their discretion, documentary evidence and credible testimony from Christian, Ayco, and Mills illustrate that the employer expected its STCs to consider operational needs when making leave decisions, and continued to do so during the period relevant to the union's unfair labor practice complaint.

Walters' testimony that the employer replaced STC discretion with a strict "minimum staffing plus one" formula is not supported by documentation or other witnesses. The evidence shows that the employer continued to empower its STCs to use discretion in the manner which it had prior to November 2013. There was no meaningful change to a mandatory subject of bargaining, and therefore the allegation is dismissed.

Break Policy

The union contends that following implementation of the 5/8s schedule in January 2014, the employer unilaterally changed working conditions by requiring police dispatchers to take rest

breaks as early as 30 minutes into the shift and as late as 30 minutes before the end of the shift. The employer counters that there has been no meaningful change to the scheduling of rest periods for police dispatchers under the 5/8s schedule and points to the parties' practice before the 4/10s schedule was implemented in the spring of 2010. The timing of rest breaks, the employer argues, has been and continues to be related to the number of employees available on each shift.

Under the 4/10s schedule in effect from the spring of 2010 through the end of 2013, the record demonstrates that police dispatchers were able to take breaks later in the shift when the center was at the minimum staffing level of seven police dispatchers because there was a longer period of time in which to spread seven hours of required breaks.

When the employer implemented the 5/8s schedule in January 2014, the timing of police dispatcher rest breaks had to change by necessity because there were fewer hours available for the same number of breaks when the center was at minimum staffing. The employer researched the practice for rest breaks on the 5/8s schedule prior to the implementation of the 4/10s schedule in 2010 and followed that pattern when it determined how to proceed in 2014.

Union and employer witnesses alike testified that the past practice for the pre-2010 5/8s schedule was that rest breaks occurred as early as a half-hour into the shift when the center was at the minimum staffing level of seven police dispatchers. Police dispatchers were able to start breaks later in their shifts when staffing was above the minimum, or when the employer was able to augment its staff with a second breaker on voluntary overtime.

Nothing in the record differentiates the pre-2010 and post-2014 rest break practices for police dispatchers on the 5/8s schedule. The past practice for the 5/8s schedule was consistent. The union did not establish that the employer made a meaningful change to a mandatory subject of bargaining, so the allegation is dismissed.

Bidding by Seniority

The record is replete with evidence that the employer's January 2014 decision to require STCs and lead dispatchers to bid for annual vacation according to the language of the CBA was a change to

the parties' past practice. Prior to the employer's decision, STCs and lead dispatchers arranged their annual vacation schedules among themselves. Only after this practice was mishandled in December 2013 did the employer decide to enforce the CBA language. The employer announced the change at a meeting of STCs and lead dispatchers on January 15, 2014, and bidding in a new TeleStaff module began shortly afterward.

The scheduling of vacation and other leave has long been held to be a mandatory subject of bargaining, and this case is no different because vacation bidding has a direct effect on wages, hours, and working conditions. The union met its burden of proving that the employer had an established practice on annual vacation bidding for STCs and lead dispatchers. The union also established that the employer implemented a change to annual vacation bidding without giving sufficient notice to the union that provided an opportunity to bargain before the final decision was made. The employer received a proposed annual vacation bidding MOA from the union in February, but the employer rejected the MOA, and the parties did not subsequently bargain to agreement or impasse on the matter.

In its affirmative defense, the employer argues it was within its rights to comply with the terms of the CBA and require STCs and lead dispatchers to bid for annual vacation as the center's other employees do. The employer's argument is unpersuasive, as it requires that years of established past practice be ignored. The record demonstrates the existence of a consistent way of dealing with STC and lead dispatcher annual vacation bidding that was known and accepted by both parties. Changing the practice without bargaining is an unfair labor practice.

Pre-disciplinary Notice Procedure

The union contends that the employer unilaterally changed pre-disciplinary notice procedures when it did not provide the union with notice of Anderton's investigatory interview. The employer's past practice has been to provide notice of pre-disciplinary meetings to the employee and the union. Boone testified that the oversight in Anderton's case was an isolated incident, and the union provided no further evidence pointing to a change in practice. For that reason, the union did not establish that the employer made a meaningful change to a mandatory subject of bargaining, and the allegation is dismissed.

Grievance and Arbitration Procedure

The union's amended unfair labor practice complaint and the preliminary ruling refer to allegations that the employer unilaterally changed its grievance and arbitration procedure. The union did not provide evidence of any changes at hearing, and the allegation is dismissed.

Discrimination Allegations Tied to Minimum Staffing, Break Policy, and Bidding by Seniority

The union argues that the grievance it filed in November 2013 regarding the employer's change from the 4/10s schedule to the 5/8s schedule, in addition to a change in its legal representative, set in motion a series of retaliatory unilateral actions that involved (a) forcing STCs and lead dispatchers to bid for annual vacation by seniority instead of arranging annual vacation among themselves, (b) changing from minimum staffing to optimal staffing as the standard by which PTO requests are approved or denied, and (c) changing the rest break policy to force employees to take breaks earlier in the shift.

Applying the test for discrimination to the employer's change to the annual vacation bidding process for STCs and lead dispatchers, the union's filing of a grievance on the schedule change constituted participation in an activity protected by the collective bargaining statute. The employer deprived STCs and lead dispatchers of an ascertainable right when it forced STCs and lead dispatchers to bid for annual vacation according to the terms of the CBA instead of continuing the practice of allowing them to arrange annual vacations among themselves.

In order to establish a *prima facie* case of discrimination, the union must demonstrate a causal connection exists between the filing of the schedule change grievance in November 2013 and the employer's decision two months later to force the STCs and lead dispatchers to bid for annual vacation according to the terms of the CBA.

There is nothing in the record suggesting a causal connection between the two events, other than the fact that one followed the other. In fact, it is highly likely the STC and lead dispatcher annual vacation bidding practice would have never been changed if the practice hadn't left the center without adequate floor supervision in December 2013. Because there is no causal connection

between the protected union activity and the employer's action, the union did not make its *prima facie* case, and the allegation is dismissed.

Applying the test for discrimination to the employer's actions surrounding minimum/optimal staffing and the rest break policy, there was no meaningful change to the status quo in either case. The employer did not deprive employees of an ascertainable right, benefit, or status regarding those issues. The union did not make its *prima facie* case, and those allegations are also dismissed.

Conclusion

The employer did not refuse to bargain by making unilateral changes to the minimum staffing formula, the break policy, the pre-disciplinary notice procedure, or the grievance and arbitration procedure. The union did not establish that the employer made meaningful changes to the status quo in any of those areas.

The union established that the employer refused to bargain by making a unilateral change to the annual vacation bidding procedure for STCs and lead dispatchers. The employer changed the status quo and a longstanding past practice by requiring STCs and lead dispatchers to bid for annual vacation according to the terms of the parties' CBA. The employer did so without giving sufficient notice to the union that provided an opportunity to bargain before the final decision was made and did not bargain to agreement or impasse on the matter.

The union did not make its *prima facie* case for discrimination as it pertains to the employer's changes to the minimum staffing formula, the break policy, or annual vacation bidding by STCs and lead dispatchers. As stated above, there was no meaningful change to the status quo regarding the minimum staffing formula or break policy, and the union did not establish that there was a causal connection between its filing of the schedule change grievance and the employer's decision to change the annual vacation bidding process for STCs and lead dispatchers.

ISSUE 5: Did the employer interfere with employee rights, by threats of reprisal or force or promises of benefit made, in connection with union activities, to (a) Gina Knapp, for requesting union representation in a proposed investigatory interview (*Weingarten* right); (b) Mara Anderton,

regarding a pre-disciplinary notice; and (c) all bargaining unit employees, in making changes to the pre-disciplinary notice procedure, and the grievance and arbitration procedure?

Background

Gina Knapp

Knapp has been employed at SNOPAC since 1998. Knapp was a calltaker until she became a police dispatcher in 2007. Knapp's direct supervisor was STC Greg Benson during the time of the events in question.

In mid-November, Knapp met with Benson regarding Knapp's use of PTO and leave under the Family Medical Leave Act (FMLA). Knapp testified that Benson "suggested that I watch myself" regarding what Benson indicated was a pattern of sick leave use that coincided with denial of PTO requests. On November 13, 2013, Knapp e-mailed Benson a detailed explanation of the reasons behind a number of absences and copied the e-mail to Human Resources Coordinator Karli Ryan and members of the union's executive board. Knapp's e-mail also stated that "the issue of my 'patterned absences after PTO having been denied' was something that was already addressed" earlier in the year.

On November 14, 2013, Finance and Administrative Services Manager Baird e-mailed Knapp to request a meeting to discuss the conversation Knapp had with Benson:

> I have been informed by Ops that your supervisor has reported there have been some recent conversations/interactions that you are not satisfied with. I don't have many details, but what I'm hearing is that you are currently frustrated. Since I don't have all the information, I'm looking to you to help me understand what's going on. I have not spoken to your supervisor, as I would like to hear your perspective directly from you. I know you're on graves, however this conversation will not be effective by email. Therefore, [i]f you are willing to come meet with me during business hours, I will authorize the OT for you. My goal is to ensure that you have a chance to be heard, answer questions, provide you with any additional information I'm able to, and help resolve any remaining issues.

Knapp replied later in the day that she was not interested in meeting with Baird.

On November 18, 2013, Ryan responded to Knapp's November 13 e-mail and expressed a desire to discuss the matter with her further. Later that day, Knapp responded that "[a]t this point I feel there is nothing to discuss" and that "[i]f it is a mandatory meeting I will be expecting to have an ASE representative present."

On November 19, 2013, Ryan responded:

> I will still plan to meet with you on Wednesday night at 1930. This is a discussion, not an investigation regarding your attendance, so an ASE representative will not be needed.
>
> There are several assertions in the email you sent on November 13th. As an employer, we want to hear from you and help work through situations like these. I understand that you have met with Greg and there are still lingering issues after that conversation. It is not a waste of my time to come in to have a conversation with you, and I am happy to do so.

On November 20, 2013, Knapp was not accompanied by a union representative when she met with Ryan. Knapp testified that the meeting revolved around Benson's behavior during his conversations with Knapp and did not focus on her use of leave.

Mara Anderton

Anderton was a calltaker at SNOPAC from 2007 until she left the job in 2014. In 2013 and early 2014, Anderton received a number of performance improvement plans, verbal warnings, and documented coaching and counseling for errors she made while processing calls. Neither verbal warnings nor documented coaching and counseling are considered disciplinary actions according to the terms of the parties' CBA.

From January 21, 2014, through February 12, 2014, Ayco conducted an investigation into Anderton's job performance in relation to the call processing errors. Ayco's investigation report concluded that Anderton did not consistently meet job performance standards and that the report should be reviewed for possible disciplinary action, which could include a letter of reprimand, suspension, demotion, or termination.

In a letter dated February 19, 2014, Christian directed Anderton to report to his office on February 24, 2014, for a pre-disciplinary meeting. In addition to informing Anderton that she had the ability to provide any extenuating circumstances relevant to the investigation, Christian's letter stated that Anderton needed to make arrangements with the union if she wished to have a representative present at the meeting.

Boone, who represented Anderton at the meeting at her request along with union attorney Mitchell Riese, testified that the union did not receive a copy of Christian's February 19 letter. He also testified that the lack of notice was an isolated deviation from the employer's past practice of providing notice of pre-disciplinary meetings to the employee and the union. On March 6, 2014, the employer issued Anderton a letter of reprimand and assigned her another performance improvement plan.

Applicable Legal Standard

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). The burden of proving unlawful interference with the exercise of rights protected by Chapter 41.56 RCW rests with the complainant. *Seattle School District,* Decision 10732-A (PECB, 2012). To prove interference, the complainant must prove, by a preponderance of the evidence, the employer's conduct interfered with protected employee rights. *City of Mountlake Terrace,* Decision 11831-A, (PECB, 2014), *see also Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, 98 Wn. App. 809 (2000) (remedy affirmed).

An interference violation exists 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. *Seattle School District,* Decision 10732-A; *see also Kennewick School District,* Decision 5632-A (PECB, 1996). The complainant is not required to demonstrate the employer intended or was motivated to interfere with employees' protected collective bargaining rights. 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. *Seattle School District,* Decision 10732-A*; see also City of Tacoma,* Decision 6793-A (PECB, 2000).

Weingarten Rights

In *NLRB v. Weingarten,* 420 U.S. 251 (1975) (*Weingarten*), the Supreme Court of the United States affirmed a National Labor Relations Board (NLRB) decision holding that under the National Labor Relations Act (NLRA), employees have the right to be accompanied and assisted by their union representatives at investigatory meetings that the employee reasonably believes may result in disciplinary action. *Seattle School District,* Decision 10732-A. In *Okanogan County,* Decision 2252-A (PECB, 1986), the Commission held that the rights announced in *Weingarten* are applicable to employees who exercise collective bargaining rights under Chapter 41.56 RCW. *Seattle School District,* Decision 10732-A; *see also Methow Valley School District,* Decision 8400-A (PECB, 2004).

When an employee makes a valid request for union representation, an employer has three options: (1) grant the request; (2) discontinue the interview; or (3) offer the employee the choice of continuing the interview unrepresented, or having no interview at all, thereby forgoing any benefit that the interview might have conferred upon the employee. *Seattle School District,* Decision 10732-A, *citing Roadway Express, Inc.,* 246 NLRB 1127 (1979). An employer may not continue the interview with an unrepresented employee who has asserted his or her *Weingarten* rights unless the employee voluntarily agrees to continue the interview unrepresented and the employer has made the employee aware of the choices described above. *Seattle School District,* Decision 10732-A, *citing U.S. Postal Service,* 241 NLRB 141 (1979).

Analysis

Gina Knapp

The union asserts that Ryan forced Knapp to attend a meeting without union representation when Knapp reasonably believed that disciplinary action could result from the meeting. The employer counters that Ryan's expressed reason for meeting with Knapp was not investigatory and, as a result, there was no violation of Knapp's *Weingarten* rights by holding the meeting without a union representative present. To assess whether Knapp held a reasonable belief that disciplinary action

could result from the meeting, the events leading up to the meeting with Ryan must be taken into account.

When Knapp received Baird's request for a meeting on November 14, she was just days removed from a conversation with her immediate supervisor in which she was advised that her pattern of sick leave use was at issue. The first sentence of Baird's e-mail tied her knowledge of the situation to SNOPAC management, who contacted Baird after receiving a report from Benson. Baird's e-mail indicated that she wanted more information on the interaction between Knapp and her supervisor and that the meeting would be part of a process in which both employees would answer questions about that interaction.

Four days after declining Baird's offer to meet, Knapp received Ryan's request to meet about the same matter. Knapp responded that she did not feel there was more to discuss and that she expected a union representative present if the meeting was mandatory. While not labeling the meeting mandatory, Ryan's response left little doubt that the meeting would occur and indicated that she did not consider it necessary for Knapp to have a union representative with her.

Ryan's assurance to Knapp that the meeting was "a discussion, not an investigation" does not negate Knapp's right to have a union representative present at a meeting in which the employer is seeking information and the employee reasonably believes discipline could result. Knapp's reasonable belief was based on (a) her supervisor resurrecting a performance issue that had been dealt with months earlier, (b) Baird's e-mail indicating that the employer wanted more information on Knapp's interaction with her supervisor, and (c) Ryan's insistence on a meeting to discuss the matter.

After Knapp's valid request for union representation, Ryan could have granted the request, discontinued the interview, or offered Knapp the choice of continuing the interview unrepresented or having no interview at all. Ryan pursued none of these options, and the record does not indicate that Ryan made Knapp aware of her choices before continuing the interview. The employer violated Knapp's *Weingarten* right.

Mara Anderton

The union argues that the employer interfered with Anderton's protected employee rights when the employer did not provide notice of Anderton's pre-disciplinary meeting to the union, as per its past practice. The employer counters that the isolated oversight did not interfere with Anderton's employee rights, as the employer advised her of her right to representation and she was accompanied by a union representative and an attorney at the meeting.

The union did not establish that the employer's oversight interfered with Anderton's protected employee rights. The employer's action could not be reasonably perceived to be a threat of reprisal or force associated with Anderton's union activity. Anderton was informed in the pre-disciplinary meeting notice that she would need to contact a union representative if she wanted to have one present at the meeting, and she was represented at the meeting after doing so. The allegation is dismissed.

Pre-disciplinary Notice Procedure and Grievance and Arbitration Procedure

The union asserts that the employer interfered with all bargaining unit employees' rights by not providing a pre-disciplinary meeting notice to the union in Anderton's case. The union also alleged in its amended unfair labor practice complaint that the employer interfered with employee rights by changing its grievance and arbitration procedure. The employer argues that the Anderton case was an isolated instance and not an actual change in practice, and contends that the union presented no evidence to support the allegations that the employer changed its grievance and arbitration procedure.

The record supports the employer's argument. One instance of the employer not providing the union with notice of a pre-disciplinary meeting does not rise to the preponderance of evidence standard required to prove interference, and the union provided no evidence at hearing regarding changes to the parties' grievance and arbitration procedure. As a result, these allegations are dismissed.

Conclusion

The union established that the employer interfered with the exercise of Knapp's statutory and *Weingarten* rights when the employer did not grant Knapp's request to have union representation at her meeting with Ryan.

The union did not establish that the employer interfered with Anderton's protected employee rights by not providing notice of Anderton's pre-disciplinary meeting to the union. Nor did the union establish that the employer interfered with bargaining unit employees' protected rights regarding the pre-disciplinary notice procedure and the grievance and arbitration procedure.

ISSUES 6 AND 7: Did the employer interfere with employee rights by denying Marsha Schumann's right to union representation (*Weingarten* right) in connection with an investigatory interview? Did the employer discriminate by terminating Schumann's employment in reprisal for protected union activities?

Background

Schumann is a former SNOPAC employee who worked for one year as a calltaker and five years as a police dispatcher before she resigned on November 20, 2013.[3] In January 2013, Schumann's mother-in-law was diagnosed with cancer and she was hospitalized in September 2013 when her condition worsened.

In order to help care for her mother-in-law, Schumann asked her floor supervisor about the possibility of working a different shift or taking a part-time position. Requests for changes in an employee's work schedule must be made through SNOPAC management or human resources, and neither request was made in that manner. Neither request was approved.

Schumann also sought to take leave under the FMLA to care for her mother-in-law, but was told by Ryan that she was ineligible to use FMLA leave in that manner because care for in-laws is not

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3 Unless otherwise noted, all dates pertaining to Issues 6 and 7 are from 2013.

covered by the Act. Ryan told Schumann she would be able to take leave under the Washington Family Care Act (WFCA) if she had paid leave available.

On October 3, Schumann met with Ryan and was given the same information regarding FMLA and WFCA leave. At the end of the meeting, Schumann told Ryan that she would not report to work for her next scheduled shift on October 7. Schumann's mother-in-law died on October 6. Five hours of the 10-hour shift Schumann missed on October 7 were classified as WFCA leave, and the other five hours were classified as unauthorized, unpaid time off. Schumann then used contractual bereavement leave to cover her absences from October 7 through October 9.

Schumann's next scheduled shift was on October 13, but she missed that shift and was also absent from work without authorization from October 14 through 16. In each case, Schumann notified her floor supervisor that she would be absent but did not notify the human resources office as directed.

Schumann returned to work on October 21. One day later, Ayco sent Schumann a letter informing her that she was under investigation for unauthorized absences and directing her to attend an investigation meeting on October 30. Vinnedge and Walters attended the meeting with Schumann, who was asked questions regarding her unauthorized absences.

Near the end of the meeting, Schumann asked Ayco if it would be easier for her if Schumann quit instead of proceeding with the investigation. Ayco did not answer the question before Vinnedge left the room with Schumann. Schumann testified that Vinnedge told her it would be best to wait before deciding to quit and that he believed the employer was going to terminate her.

Later that day, Vinnedge met separately with Ayco, who testified that Vinnedge inquired about an agreement in which Schumann would resign and receive unemployment benefits. Ayco testified that she told Vinnedge she did not have the authority to make that agreement and that Mills would be the appropriate person to address the issue.

On November 4, Schumann's floor supervisor directed her to meet with Ayco. Schumann testified that she asked to have a union representative present for the meeting because she felt it might be related to the investigation, but Ayco told her a union representative would not be necessary. Ayco testified that she offered Schumann the opportunity to have a union representative present, but Schumann declined.

At the November 4 meeting, Ayco asked Schumann a follow-up question regarding the subjects covered at the October 30 investigation meeting and also asked if the rumors that Schumann was planning to resign were true. Schumann answered the second question by saying that Vinnedge was working with Mills on the details of her resignation. Later that day, Vinnedge sent Mills an e-mail proposing that the employer allow Schumann to receive unemployment benefits if Schumann agreed to resign on November 20. Mills' e-mail reply to Vinnedge on November 6 stated that the only role the employer played in the unemployment benefit process was to provide truthful information if requested.

On November 5, Schumann's floor supervisor directed her to a meeting with Baird and Ryan. Schumann testified that she was uncertain about the purpose of the meeting and asked for a union representative to be present, but she was told it was unnecessary. Ryan testified that Schumann did not request to have a union representative present at the meeting. Baird was not asked during her testimony if Schumann requested a union representative. Schumann was asked during the meeting to clarify her intentions regarding her resignation, and she confirmed that November 20 would be her last day of work. Mills accepted Schumann's resignation on November 5, and Ryan e-mailed the resignation acceptance letter to Schumann later that day.

Applicable Legal Standards

The legal standard for *Weingarten* rights enumerated on page 39, and the legal standard for discrimination enumerated on pages 15 and 16 are also applicable to these issues.

Analysis

Weingarten Rights

The questions to be answered revolve around Schumann's beliefs about the nature of the November 4 and 5 meetings, and whether she made valid requests for union representation at those meetings that were denied by the employer. The employer asserts that Schumann waived her right to union representation when she met individually with Ayco on November 4, and would not have considered having union representation important because she had already decided to resign. The employer also contends Schumann did not request union representation at her November 5 meeting with Baird and Ryan. Finally, the employer argues that the November 5 meeting was not investigatory in nature, and therefore *Weingarten* protections would not apply.[4]

The October 30 investigation meeting set the tone for the November 4 and 5 meetings. At the October 30 meeting with Ayco, it became clear to Schumann that she was going to be disciplined for her unauthorized absences, and she offered to quit before Vinnedge took her out of the meeting. After conferring with Vinnedge, she left the meeting with a clear impression from Vinnedge that termination would be a likely result of the investigation.

Less than a week later, Schumann was told by her floor supervisor that Ayco needed to ask her more questions. Schumann testified that she was extremely concerned about another meeting with the management official who was in charge of the investigation. Because the investigation was ongoing, it was entirely reasonable for Schumann to believe the follow-up meeting had the potential to result in discipline. Schumann's concern lends credence to her testimony that she asked for a union representative and was told by Ayco that it wouldn't be necessary because she just had "a couple quick questions." One of those questions was directly tied to the investigation interview.

One day after the November 4 meeting with Ayco, Schumann was asked to attend another meeting, this time with Baird and Ryan. Schumann testified that she did not know the reason for the meeting

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[4] In its post-hearing brief, the union alleges that the employer interfered with Schumann's rights by directly dealing with her in connection with her resignation. The direct dealing allegation was not included in the union's amended complaint or the preliminary ruling. As such, it will not be considered in this decision.

or if the meeting had a connection to her previous meetings with Ayco. Although the meeting concerned Schumann's resignation and had nothing to do with the investigation, Schumann had no idea that would be the case before it began. Schumann had a reasonable belief – based on her previous interviews with Ayco – that her unauthorized absences were at issue, that discipline could result from the meeting, and that she would need union representation.

Schumann credibly testified that she made valid requests for union representation at the November 4 and 5 meetings. At that point, the employer's representatives' options were to grant Schumann's request, discontinue the interview, or offer Schumann the choice of continuing the interview unrepresented or having no interview at all. Nothing in the record indicates that the employer offered Schumann any of these options. The employer violated Schumann's *Weingarten* right.

Discrimination

The union alleges that the employer discriminated against Schumann by terminating her employment. In order to establish a *prima facie* case, the union must show that Schumann was deprived of an ascertainable right, status, or benefit. In a letter to the Washington State Employment Security Department (ESD) on April 4, 2014, Schumann wrote to support the determination made at her March 4, 2014, ESD hearing that she had voluntarily quit and was not discharged for misconduct. The union did not make a *prima facie* case for discrimination, and the allegation is dismissed.

Conclusion

The union established that the employer interfered with the exercise of Schumann's statutory and *Weingarten* rights when the employer did not grant Schumann's requests to have union representation at her November 4 meeting with Ayco and her November 5 meeting with Baird and Ryan. The union's discrimination allegation is dismissed based on the fact that Schumann resigned and was not terminated.

CONCLUSION

Issues 1 and 2

The employer did not commit an unfair labor practice by unilaterally implementing a 5/8s work schedule in January 2014, nor did it discriminate by changing the wages, hours, and working conditions of all bargaining unit employees in implementing the 5/8s work schedule.

The provisions contained in Article 5.1.2 of the parties' CBA allowed either party to reopen the agreement if the 4/10s schedule resulted in unforeseen additional costs or other operational problems. Employee complaints and morale issues associated with employees being assigned mandatory overtime repeatedly as a result of the rotating 4/10s schedule constituted an operational problem that allowed the employer to reopen the agreement for the purpose of negotiating additional changes to the schedule. When the parties did not reach agreement, the employer was able to implement the 5/8s schedule after giving the union 45 days' notice.

The union did not make its *prima facie* case for discrimination regarding the employer's implementation of the 5/8s schedule. Although the employer's schedule change deprived employees of a benefit after employees participated in the protected activity of bargaining over the proposed change, the union did not establish that there was a causal connection between the two events.

Issues 3 and 4

The employer did not refuse to bargain by making unilateral changes to the minimum staffing formula, the break policy, the pre-disciplinary notice procedure, or the grievance and arbitration procedure. The union did not establish that the employer made meaningful changes to the status quo in any of those areas.

The union established that the employer refused to bargain by making a unilateral change to the annual vacation bidding procedure for STCs and lead dispatchers. The employer changed the status quo and a longstanding past practice by requiring STCs and lead dispatchers to bid for vacation according to the terms of the parties' CBA. The employer did so without giving sufficient

notice to the union that provided an opportunity to bargain before the final decision was made, and did not bargain to agreement or impasse on the matter.

The union did not make its *prima facie* case for discrimination as it pertains to the employer's changes to the minimum staffing formula, the break policy, or vacation bidding by STCs and lead dispatchers. As stated above, there was no meaningful change to the status quo regarding the minimum staffing formula or break policy, and the union did not meet its burden of proving that there was a causal connection between its filing of the schedule change grievance and the employer's decision to change the vacation bidding process for STCs and lead dispatchers.

Issue 5

The union established that the employer interfered with the exercise of Gina Knapp's statutory and *Weingarten* rights when the employer did not grant Knapp's request to have union representation at a proposed investigatory meeting.

The union did not establish that the employer interfered with Mara Anderton's protected employee rights when the employer did not provide notice of Anderton's pre-disciplinary meeting to the union. Nor did the union meet its burden of proof by providing evidence that the employer interfered with bargaining unit employees' protected employee rights regarding the pre-disciplinary notice procedure and the grievance and arbitration procedure.

Issues 6 and 7

The union established that the employer interfered with the exercise of Marsha Schumann's statutory and *Weingarten* rights when the employer did not grant Schumann's requests to have union representation in connection with an investigatory interview. The union's discrimination allegation is dismissed based on the fact that Schumann resigned and was not terminated.

REMEDY

The employer refused to bargain by making a unilateral change to the annual vacation bidding procedure for STCs and lead dispatchers in January 2014. The standard remedy for a unilateral

change violation is restoring the status quo that existed prior to the unilateral change, making employees whole for any loss to wages, benefits, or working conditions as a result of the employer's unlawful act, posting a notice of the violation, and reading that notice into the record at a public meeting of the employer's governing body. *Kitsap County,* Decision 10836-A (PECB, 2011), *citing City of Anacortes*, Decision 6863-A (PECB, 2000); *Seattle School District*, Decision 5733-A (PECB, 1997), *aff'd*, Decision 5733-B (PECB, 1998). The typical order also instructs the employer to cease and desist from making unilateral changes to mandatory subjects of bargaining unless the employer first provides the complainant union with notice of such changes and the opportunity to request bargaining over the proposed change. *Kitsap County,* Decision 10836-A.

The employer is ordered to return to the *status quo ante* regarding annual vacation bidding for STCs and lead dispatchers until such time as the parties are able to bargain in good faith over the issue. As they did prior to the employer's unilateral change in January 2014, STCs and lead dispatchers will arrange annual vacation among themselves for the annual vacation bidding period beginning on or after January 1, 2016. The delayed return to the *status quo ante* is necessary in order to ensure that employees who have already bid for annual vacation in 2015 are not adversely affected by this remedy. The employer is also ordered to cease and desist from making unilateral changes to mandatory subjects of bargaining without first providing the union notice of such changes and the opportunity to request bargaining.

A cease and desist order is also appropriate in connection with the employer's violation of Gina Knapp's and Marsha Schumann's *Weingarten* rights. The employer needs to be mindful of employees' right to representation and should err to the side of caution when there is doubt about whether union representation is necessary in order to avoid future violations. The union argues that Schumann should be reinstated with back pay. The remedy for a *Weingarten* violation is to void the resulting discipline, but Schumann was not disciplined prior to voluntarily leaving SNOPAC on November 20, 2013. No extraordinary remedy is warranted.

FINDINGS OF FACT

1. The Snohomish County Police Staff and Auxiliary Services Center (employer or SNOPAC) is a public employer within the meaning of RCW 41.56.030(12).

2. The Association of SNOPAC Employees (union or ASE) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The employer operates an emergency dispatch center based in Everett that receives 911 emergency calls and dispatches police, fire, and emergency medical services for 37 police and fire agencies in Snohomish County. The employer operates its dispatch center 24 hours a day, seven days a week. The employer's operations are funded by assessments charged to the agencies it serves. Kurt Mills serves as the employer's executive director.

4. The union represents all full-time and regular part-time non-supervisory employees of SNOPAC, excluding the director, confidential employees, and supervisors. *Snohomish County Police Staff and Auxiliary Services Center*, Decision 4313-A (PECB, 1993).

5. At the time of the events in question, the union and employer were parties to a collective bargaining agreement (CBA) in effect from April 1, 2012, through March 31, 2016.

6. From the spring of 2010 until January 2014, the bargaining unit employees' regular work schedule consisted of four 10-hour shifts per week (4/10s schedule). Prior to adoption of the 4/10s schedule, the employer's calltakers, police dispatchers, fire dispatchers, and lead dispatchers worked five eight-hour shifts per week (5/8s schedule). Supervisor/training coordinators (STCs) were the only bargaining unit employees working the 4/10s schedule prior to the spring of 2010.

7. Calltakers and dispatchers working the 4/10s schedule reported to work in staggered shifts, with a new group of employees starting a shift every two hours. STCs and lead dispatchers

had three distinct starting times that corresponded to day shift, swing shift, and graveyard shift.

8. Because of a contractual 12-hour limit on daily hours worked, employees on the 4/10s schedule could work no more than two hours of overtime. Employees on the 5/8s schedule could work as many as four hours of overtime under the same 12-hour limit.

9. At the time the agreement that was in effect from January 1, 2010, through March 31, 2012, was signed, the parties were still in the process of developing a 4/10s schedule. The language in Article 5.1.2 of the CBA reflected the parties' interests in having flexibility to revisit the schedule issue should circumstances warrant.

> **5.1.2 Schedule Change.** During the first quarter of 2010, the Employer will change the schedules for all Calltakers, Dispatchers and Lead Dispatchers to the 4/10s Schedule. All Supervisors and Training Coordinators will remain on the 4/10s Schedule. Part-time and relief employers [sic] may, at the Employer's discretion, be required to work/continue working eight (8) hour or alternative length shifts. This schedule change shall be subject to the following:
>
> (a) In the event that the Employer fails to implement the schedule change described in this section by the end of the first quarter of 2010, the Association may reopen this Agreement.
>
> (b) Either party may reopen the Agreement on or before the implementation of the schedule change for the limited purpose of making any changes to the provisions of Section 5.3 necessary for the effective and efficient operation of the 4/10s Schedule.
>
> (c) In the event that the 4/10s schedule results in unforeseen additional operating costs or other operational problems, either party may reopen the Agreement for the purpose of negotiating additional changes to the schedule.
>
> (d) In the absence of a mutual agreement between the parties to continue the 4/10s Schedule, all Calltakers, Dispatchers and Lead Dispatchers will return to the 5/8s Schedule effective January 1, 2012. Supervisors will remain on the 4/10s Schedule.

10. On October 28, 2011, the parties signed a memorandum of agreement (MOA) that modified the existing CBA and extended the 4/10s schedule. It read, in relevant part:

> The parties will continue the 4/10s schedule beyond January 1, 2012. In the event that the 4/10s schedule results in unforeseen additional operating costs or other operational problems, either party may reopen the Agreement for the purpose of negotiating additional changes to the schedule.
>
> In the absence of a mutual agreement between the parties to maintain the 4/10's schedule, all Call Takers and Dispatchers will return to the 5/8s schedule following a 45 day advanced notice to the ASE. Supervisors and Leads will remain on the 4/10 schedule.

11. Negotiations for the parties' successor CBA began in early 2012. During the process, the parties agreed to carry over the language from the 2011 MOA into Section 5.1.2 of the successor agreement, with the only alterations being the omission of the January 1, 2012, reference and a clarification that STCs and lead dispatchers would stay on the 4/10s schedule if the calltakers and dispatchers returned to the 5/8s schedule.

12. On November 15, 2012, the parties signed a CBA effective from April 1, 2012, through March 31, 2016. Article 5.1.2 (Schedule Change) reads as follows:

> **5.1.2 Schedule Change.**
>
> a) In the event that the 4/10s schedule in effect as of the effective date of this Agreement results in unforeseen additional operating costs or other operational problems, either party may reopen the Agreement for the purpose of negotiating additional changes to the schedule.
>
> b) In the absence of a mutual agreement between the parties to continue the 4/10s Schedule, all Calltakers and Dispatchers will return to the 5/8s Schedule following a forty-five (45) day notice from the Employer to the Union. Supervisors and Lead Dispatchers will remain on the 4/10s Schedule.

13. On June 12, 2013, Finance and Administrative Services Manager Angie Baird sent an e-mail to union president Melissa Tate, requesting to schedule a labor relations meeting

and identifying "10-Hour Schedules vs. 8-Hour Schedules" as one of the employer's desired topics to be discussed.

14. The parties met on July 9, 2013. Tate represented the union at the meeting along with Chris Boone, who succeeded Tate as union president in 2014, and other members of the union's executive board. Mills, Baird, and Operations Manager Karl Christian represented the employer at the meeting.

15. The employer informed the union at the meeting that it was considering a return to the 5/8s schedule for calltakers and dispatchers, primarily because of a marked increase in mandatory overtime during the first six months of 2013 as compared to the first six months of 2012, and also because of complaints from employees that mandatory overtime was being assigned repeatedly to certain individuals as a result of the 4/10s schedule.

16. A report produced with the TeleStaff scheduling program before the meeting showed 929.75 mandatory overtime hours were assigned in the first six months of 2013 as compared to 38 hours assigned in the first six months of 2012, an increase of 2,346 percent.

17. On July 11, 2013, Mills e-mailed SNOPAC employees regarding the meeting. Mills' e-mail announced that the employer planned to reduce the number of fire dispatcher positions without laying off any bargaining unit employees. The employer planned to accomplish this by having three fire dispatchers during the graveyard shift instead of four and not filling three existing fire dispatcher vacancies. Mills' e-mail next notified employees that "[a]fter much great consideration and discussion on options we have determined a need to return to eight hour schedules" and also read, in relevant part:

> There was a time when we were at or near full-staffing when the schedule seemed to be working, however if we fall below a certain number of vacancies it becomes increasingly difficult and impractical to administer the schedule and staff our positions. Additionally the number of staff being assigned mandatory OT [overtime] is not acceptable. The 10-hour schedules limit the available staff for OT, which as most of you know, results in many people being hit by mandatory OT week after week.

18. Mills' e-mail did not specify a date for either of the changes he identified and stated near the end of the e-mail that "[w]e are still in discussions with the ASE on the details and intend to continue sharing information with you as it becomes available."

19. The parties participated in five labor management meetings between Mills' July 11 e-mail and the end of August 2013, when the parties agreed to arrive at a final decision on the schedule in order to have time to make any necessary changes to the TeleStaff scheduling program for shift bidding and annual vacation bidding for 2014. Attorney Syd Vinnedge joined the union team in the meetings with the employer team of Mills, Christian, and Baird as the parties shared perspectives on the operational challenges surrounding the 4/10s schedule and potential solutions that would allow the schedule to remain in place.

20. In an attempt to discern whether there was a different way to operate the 4/10s schedule and overcome the issues the employer identified in early July, the employer sent Tate, Christian, and STC Amy Spromberg to visit the Valley Communications Center in Kent, which also utilizes a 4/10s schedule. The group reported that the 4/10s schedule worked there largely because the Valley Communications Center had far more cross-trained employees who could perform at all of the work stations, which made it easier to fill openings that arose in the normal course of business.

21. Few employees at SNOPAC were cross-trained at the time, which influenced the number of employees who could work overtime when needed. For example, if overtime was necessary to fill a police dispatcher or fire dispatcher vacancy, only an employee trained as a police dispatcher or a fire dispatcher would be able to do that work. If the employer could not fill an overtime need through voluntary overtime, it would have to assign mandatory overtime to the employee qualified to do the work.

22. Following the trip to the Valley Communications Center, the parties held a labor management meeting on August 20, 2013.

23. A day before the August 20, 2013, meeting, Vinnedge e-mailed Mills a "what-if" proposal that included a 4/10s schedule designed by bargaining unit employee James Torgerson. The primary change in the Torgerson schedule, according to multiple witnesses at hearing, was to shift the day of heavy staffing from Wednesday to Friday, when the union felt more staffing was necessary. The union's what-if proposal also included an escape clause that allowed the employer to implement a 5/8s schedule on July 1, 2014, if the Torgerson schedule did not work.

24. The Torgerson schedule was one of a number of proposals the union made to address the employer's concerns about the 4/10s schedule, but it was the only proposal the union committed to writing. Prior to proposing the Torgerson schedule, the union proposed a shift cascade that would fill holes in the schedule based on employees' shift preferences, and the union also proposed a voluntary overtime sign-up list that would be posted on a bulletin board instead of using TeleStaff for voluntary overtime purposes. The employer expressed to the union that it did not believe either unwritten proposal would solve the problems with the 4/10s schedule.

25. The employer indicated to the union at the August 20, 2013, meeting that it did not have enough time to fully assess the Torgerson schedule in order to provide feedback at that meeting.

26. On August 21, 2013, Christian met with Spromberg and STC Jeff Phillips, who had both been forwarded the proposed schedule and asked to give their input by the management team. Spromberg and Phillips agreed with Christian that the Torgerson schedule would not solve the mandatory overtime issues identified with the 4/10s schedule but instead would shift the problem to a different day. Christian discussed this information with Mills later in the day.

27. On August 27, 2013, the employer met with the union and stated that the Torgerson proposal was not a viable alternative for resolving the employer's problems with the 4/10s

schedule. The employer also stated that it would be switching to the 5/8s schedule in January 2014.

28. Mills announced the final decision to switch schedules in an e-mail to all SNOPAC employees on September 6, 2013, and near the end of the e-mail wrote, "Although we are making this move, I am open to revisiting schedule changes in the future if we are able to address the obstacles that are preventing the schedule from working today."

29. The parties did not meet about the schedule change after the employer announced its decision to revert to the 5/8s schedule, and the employer implemented the schedule change in January 2014.

30. On November 19, 2013, the union filed a grievance regarding the employer's decision to revert from the 4/10s schedule to the 5/8s schedule. Baird denied the grievance in a letter to the union on December 2, 2013. As of the dates of the hearing, the grievance had not been before an arbitrator.

31. On February 24, 2014, the union filed this unfair labor practice complaint.

32. The employer has determined a minimum number of employees necessary for each shift in order to be able to provide its dispatch services. When the 5/8s schedule was implemented in January 2014, minimum staffing required between 15 and 17 employees for day shift (seven police dispatchers, four fire dispatchers, and four or six calltakers depending on the time of day); 17 employees for swing shift (seven police dispatchers, four fire dispatchers, and six calltakers); and 14 for night shift (seven police dispatchers, three fire dispatchers, and four calltakers). The parties' CBA contains no language restricting the employer's ability to determine minimum staffing levels.

33. On occasions when the employer has more employees on a shift than minimum staffing requires, employees can request paid time off (PTO) if they have sufficient hours in their

leave banks. Article 9.3 of the parties' current CBA provides the framework for PTO requests made between seven and 30 days before the date of the requested leave:

> 9.3 **PTO Requests.** PTO requests for leave other than annual vacations may be submitted no more than thirty (30) days prior to the day(s) requested for leave. Requests submitted at least seven (7) days prior to the date of the requested leave shall be returned to the employee, approved or disapproved, by the Employer not less than five (5) calendar days before commencement of the leave. . . .

34. There is no language in the parties' CBA pertaining to PTO requests received less than seven days in advance. STCs have discretion to approve or deny PTO requests down to minimum staffing in these situations, based upon operational needs.

35. Article 5.2.1 of the parties' CBA governs rest breaks for employees who work eight-hour, 10-hour, or 12-hour schedules:

> 5.2.1 **Rest Periods.** The parties agree to paid meal and rest periods that vary from and supersede the requirements of WAC 296-126-092. The Employer shall "make a good faith effort" to provide the employees working an eight (8) hour day with a total of one (1) hour paid break time, typically in the form of a thirty (30) minute meal period and two (2) fifteen (15) minute rest breaks. . . . These breaks shall be provided as the workload allows, but employees must remain within the area subject to immediate callback should the workload require. If an employee is not provided the major portion of the meal breaks or rest breaks, he/she shall be compensated at the overtime rate of pay for that portion of the meal periods or rest periods missed. Major portion of the break shall be defined as two-thirds (2/3rds) of the break or more.

36. SNOPAC's minimum staffing for police dispatchers is seven per shift, which includes one police dispatcher who is assigned as the "breaker" and covers for the other police dispatchers when they take their breaks. When the dispatch center is at minimum staffing, seven hours are necessary each shift for all police dispatchers to take full rest breaks.

37. Under the 5/8s schedule, being at minimum staffing requires police dispatcher breaks to begin 30 minutes into the shift and as late as 30 minutes before the end of the shift. When

the employer utilized the 4/10s schedule from the spring of 2010 through the end of 2013, the first police dispatcher rest breaks occurred approximately two hours into the shift and the second rest break began with more time remaining before the end of the shift.

38. The parties did not discuss the timing of rest breaks in the 5/8s schedule prior to implementation of the new schedule in 2014, although Spromberg – a member of the bargaining unit – created a break schedule matrix that she e-mailed to Christian on December 30, 2013.

39. On January 2, 2014, Operations Coordinator Crystal Ayco e-mailed an informational bulletin to SNOPAC employees that included guidelines for the timing and scheduling of rest breaks for dispatchers and calltakers on the 5/8s schedule. For police dispatchers, Ayco wrote:

> It has been awhile since we had to coordinate 7 hours of police breaks in an 8 hour shift. As it was before, once everyone is on an 8 hour day, the breaks start at [sic] for police dispatchers 30 minutes into shift and rotate non-stop until 30 minutes before end of shift, if we are at minimum staffing levels. (0730 & 1530 & 2330). When staffing allows (over the minimum 7 police dispatchers per shift), a second break person will be assigned to assist with break coverage.

40. Within two hours of sending the informational bulletin, Ayco received an e-mail from a bargaining unit employee who expressed concern about the timing of rest breaks in the 5/8s schedule. Later that day, Ayco e-mailed Christian after researching how the employer handled police dispatcher breaks in 2009 and 2010 before the 4/10s schedule went into effect:

> The last 4 hours of every shift we allowed OT coverage if staffing didn't allow for a 2nd breaker. That would put breaks starting early but not nearly as early. I still believe we need a 2nd breaker the entire shift, but feel that 4 hours is a good compromise. It would be achieved if we were at full staffing… currently it's not with our staffing levels.

41. On January 6, 2014, Ayco sent an updated informational bulletin to SNOPAC employees that modified the details of police dispatcher breaks, stating:

> When staffing allows (over the minimum 7 police dispatchers per shift), a second break person will be assigned to assist with break coverage. If there is no additional staffing to allow for a second breaker, 4 hours of VOLUNTARY overtime is approved for the last half of each shift to assist in break schedule coverage on police dispatch. If there is no second breaker due to staffing (vacations, leaves, training etc), then breaks start for police dispatchers 30 minutes into shift and rotate non-stop until 30 minutes before end of shift, if we are at minimum staffing levels. (0730 & 1530 & 2330).

42. The parties' CBA details the procedure for bidding for annual vacation.

> 9.2 **Annual Vacation.** Annual vacation will be selected by bid in accordance with Article 6 [Seniority] and this Article. If an employee has insufficient PTO for a pre-approved vacation, the employee's vacation will be reduced to the number of full shifts covered by the employee's available PTO; in all other cases, once approved, an employee's annual vacation will not be cancelled absent a major catastrophic event. Employees who incur non-refundable expenses such as hotel accommodations, airline or other tickets, etc., because of the cancellation of a vacation by the Employer due to a major catastrophic event will be reimbursed for such expenses within thirty (30) days of the cancellation.

43. Utilizing TeleStaff, dispatchers and calltakers bid for annual vacation in the upcoming year among other members of their shifts in three stages. The most senior employee on each shift receives the first opportunity to select annual vacation dates, with subsequent selections made in descending order of seniority. The TeleStaff program is designed to allow up to two employees per shift to sign up for annual vacation on a particular day. If two employees are signed up for a particular date, TeleStaff blocks future requests for that date.

44. Prior to January 2014, STCs and lead dispatchers did not bid for annual vacation in the same manner as dispatchers and calltakers. Instead of bidding for annual vacation strictly by seniority within their shifts, STCs and lead dispatchers scheduled annual vacations among themselves, without using TeleStaff, until they manually entered annual vacation dates into TeleStaff prior to the requested vacation dates. When annual vacation requests were entered in this manner, neither the employees nor the operations staff member

approving the requests could tell immediately via TeleStaff whether other STC or lead dispatcher annual vacation was scheduled on the date(s) requested.

45. The key consideration for the STCs and lead dispatchers in scheduling annual vacation was ensuring adequate supervisory coverage for the center's floor staff. Although lead dispatchers can fill in for STCs, having STCs present on each shift is particularly important to the employer because STCs are solely responsible for coaching, counseling, and dealing with employee performance issues. When lead dispatchers fill in for STCs, it also has an impact on the dispatch floor because lead dispatchers are unavailable for the dispatch and calltaking duties they occasionally perform.

46. In December 2013, the STCs and lead dispatchers scheduled their annual vacations in a way that overlapped and left the center without STCs for portions of some shifts. Christian approved these annual vacation requests, based in part on trust that the STCs and lead dispatchers had continued to ensure adequate coverage, and in part on his belief that the CBA did not allow him to deny annual vacation requests absent a major catastrophic event.

47. To prevent a recurrence of the problem, Mills decided the STCs and lead dispatchers would bid for annual vacation in accordance with the language in Article 9.2.

48. At a meeting on January 15, 2014, Christian informed STCs and lead dispatchers of the change to annual vacation bidding and added that a module would be created in TeleStaff for that purpose. Sometime after the meeting, the STCs and lead dispatchers began the first of three stages of annual vacation bidding in TeleStaff.

49. The employer did not notify the union that it was considering changing the annual vacation bidding procedure for STCs and lead dispatchers prior to the meeting on January 15.

50. On February 6, 2014, Boone wrote an e-mail to Christian expressing concerns STCs and lead dispatchers had about the change to annual vacation bidding. Boone attached an MOA that preserved the previous method of annual vacation bidding and read, in relevant part:

> Article 9.2 of the CBA dated November 15, 2012 shall be modified to clarify and update the process of vacation bidding for the Supervisor and Lead Dispatch staff
>
> (9.2 a) Each Supervisor and Lead Dispatcher will have three (3) vacation choices per year.
>
> A Supervisory team shall be defined as a Supervisor and Lead Dispatcher working the same days and hours on the dispatch floor. Supervisors working in the Office of Training and Standards will be considered one team.
>
> Each supervisory team shall have no more than one (1) Supervisor or Lead Dispatcher off at a time, except on the supervisory staff's common work day, provided there is one (1) Supervisor or Lead Dispatcher working their normal day who can cover Supervisory needs for each shift.
>
> Each supervisory team shall coordinate shift supervisory coverage and vacation choices internally as per past practice. Should a team be unable to come to an agreement amongst themselves, vacation choices shall be chosen via seniority.

51. The employer did not agree to the proposed MOA, and the union filed a grievance on the annual vacation bidding change on February 10, 2014.

52. On February 19, 2014, Christian wrote a letter to calltaker Mara Anderton directing her to report to his office on February 24, 2014, for a pre-disciplinary meeting:

> At this meeting you will be given the opportunity to provide any extenuating circumstances that you feel are relevant to the investigation regarding improper 9-1-1 call interrogation, the ability to meet performance standards, and failing to sustain the and [sic] expectations of a previously assigned Performance Improvement Plan (PIP).
>
> If it is your wish to have an ASE representative present during this meeting, it is incumbent upon you to make the request directly to the ASE.

53. The parties' practice regarding pre-disciplinary notices was that the notices were delivered to the employee and the union. The parties' CBA does not require the union to be notified of pre-disciplinary meetings.

54. In this instance, the notice was delivered to Anderton but was not delivered to the union. Boone testified that, based on his experience, the lack of notice to the union was an isolated incident.

55. Anderton contacted Boone regarding the meeting, and Boone attended the meeting along with Anderton and union attorney Mitchell Riese.

56. Gina Knapp has been employed at SNOPAC since 1998. Knapp was a calltaker until she became a police dispatcher in 2007. Knapp's direct supervisor was STC Greg Benson during the time of the events in question.

57. In mid-November, Knapp met with Benson regarding Knapp's use of PTO and leave under the Family Medical Leave Act (FMLA). Knapp testified that Benson "suggested that I watch myself" regarding what Benson indicated was a pattern of sick leave use that coincided with denial of PTO requests.

58. On November 13, 2013, Knapp e-mailed Benson a detailed explanation of the reasons behind a number of absences and copied the e-mail to Human Resources Coordinator Karli Ryan and members of the union's executive board. Knapp's e-mail also stated that "the issue of my 'patterned absences after PTO having been denied' was something that was already addressed" earlier in the year.

59. On November 14, 2013, Finance and Administrative Services Manager Baird e-mailed Knapp to request a meeting to discuss the conversation Knapp had with Benson:

> I have been informed by Ops that your supervisor has reported there have been some recent conversations/interactions that you are not satisfied with. I don't have many details, but what I'm hearing is that you are currently frustrated. Since I don't have all the information, I'm looking to you to help me understand what's going on. I have not spoken to your supervisor, as I would like to hear your perspective directly from you. I know you're on graves, however this conversation will not be effective by email. Therefore, if you are willing to come meet with me during business hours, I will authorize the OT for you. My goal is to ensure that you have a chance to

> be heard, answer questions, provide you with any additional information I'm able to, and help resolve any remaining issues.

60. Knapp replied later in the day that she was not interested in meeting with Baird.

61. On November 18, 2013, Ryan responded to Knapp's November 13 e-mail and expressed a desire to discuss the matter with her further. Later that day, Knapp responded that "[a]t this point I feel there is nothing to discuss" and that "[i]f it is a mandatory meeting I will be expecting to have an ASE representative present."

62. On November 19, 2013, Ryan responded:

> I will still plan to meet with you on Wednesday night at 1930. This is a discussion, not an investigation regarding your attendance, so an ASE representative will not be needed.
>
> There are several assertions in the email you sent on November 13th. As an employer, we want to hear from you and help work through situations like these. I understand that you have met with Greg and there are still lingering issues after that conversation. It is not a waste of my time to come in to have a conversation with you, and I am happy to do so.

63. On November 20, 2013, Knapp was not accompanied by a union representative when she met with Ryan for an interview that Knapp reasonably believed could lead to discipline. Knapp testified that the meeting revolved around Benson's behavior during his conversations with Knapp and did not focus on her use of leave.

64. Marsha Schumann is a former SNOPAC employee who worked for one year as a calltaker and five years as a police dispatcher before she resigned on November 20, 2013.

65. In January 2013, Schumann's mother-in-law was diagnosed with cancer and she was hospitalized in September 2013 when her condition worsened. Schumann sought to take leave under the FMLA to care for her mother-in-law, but was told by Ryan that she was ineligible to use FMLA leave in that manner because care for in-laws is not covered by the

Act. Ryan told Schumann she would be able to take leave under the Washington Family Care Act (WFCA) if she had paid leave available.

66. On October 3, 2013, Schumann met with Ryan and was given the same information regarding FMLA and WFCA leave. At the end of the meeting, Schumann told Ryan that she would not report to work for her next scheduled shift on October 7, 2013.

67. Schumann's mother-in-law died on October 6, 2013. Five hours of the 10-hour shift Schumann missed on October 7 were classified as WFCA leave, and the other five hours were classified as unauthorized, unpaid time off. Schumann then used contractual bereavement leave to cover her absences from October 7 through October 9.

68. Schumann's next scheduled shift was on October 13, 2013, but she missed that shift and was also absent from work without authorization from October 14 through October 16. In each case, Schumann notified her floor supervisor that she would be absent, but did not notify the human resources office as directed.

69. Schumann returned to work on October 21, 2013. One day later, Ayco sent Schumann a letter informing her that she was under investigation for unauthorized absences and directing her to attend an investigation meeting on October 30, 2013.

70. Vinnedge and STC Erin Walters attended the meeting with Schumann, who was asked questions regarding her unauthorized absences.

71. Near the end of the meeting, Schumann asked Ayco if it would be easier for her if Schumann quit instead of proceeding with the investigation. Ayco did not answer the question before Vinnedge left the room with Schumann. Schumann testified that Vinnedge told her it would be best to wait before deciding to quit and that he believed the employer was going to terminate her.

72. Later that day, Vinnedge met separately with Ayco, who testified that Vinnedge inquired about an agreement in which Schumann would resign and receive unemployment benefits. Ayco testified that she told Vinnedge she did not have the authority to make that agreement and that Mills would be the appropriate person to address the issue.

73. On November 4, 2013, Schumann's floor supervisor directed her to meet with Ayco. Schumann credibly testified that she asked to have a union representative present for the meeting because she felt it might be related to the investigation and that discipline could result from the meeting, but Ayco told her a union representative would not be necessary.

74. At the November 4 meeting, Ayco asked Schumann a follow-up question regarding the subjects covered at the October 30 investigation meeting and also asked if the rumors that Schumann was planning to resign were true. Schumann answered the second question by saying that Vinnedge was working with Mills on the details of her resignation. The meeting was investigatory in nature.

75. Later that day, Vinnedge sent Mills an e-mail proposing that the employer allow Schumann to receive unemployment benefits if Schumann agreed to resign on November 20, 2013. Mills' e-mail reply to Vinnedge on November 6, 2013, stated that the only role the employer played in the unemployment benefit process was to provide truthful information if requested.

76. On November 5, 2013, Schumann's floor supervisor directed her to a meeting with Baird and Ryan. Schumann credibly testified that she was uncertain about the purpose of the meeting and asked for a union representative to be present, but she was told it was unnecessary.

77. Schumann was asked during the meeting to clarify her intentions regarding her resignation, and she confirmed that November 20, 2013, would be her last day of work. The meeting was investigatory in nature.

78. Mills accepted Schumann's resignation on November 5, 2013, and Ryan e-mailed the resignation acceptance letter to Schumann later that day.

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. As described in Findings of Fact 27 and 31, the union's unfair labor practice complaint was timely filed under RCW 41.56.160(1).

3. By its actions described in Findings of Fact 12 through 29, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by implementing a 5/8s schedule.

4. By its actions described in Findings of Fact 12 through 29, the employer did not discriminate against all bargaining unit employees in violation of RCW 41.56.140(1) by implementing a 5/8s schedule.

5. By its actions described in Findings of Fact 32 through 41, and 52 through 55, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by making unilateral changes to (a) the minimum staffing formula, (b) the break policy, (c) the pre-disciplinary notice procedure, and (d) the grievance and arbitration procedure.

6. By its actions described in Findings of Fact 42 through 51, the employer refused to bargain in violation of RCW 41.56.140(4) and (1) by making unilateral changes to bidding by seniority, a mandatory subject of bargaining.

7. By its actions described in Findings of Fact 32 through 49, the employer did not discriminate against all bargaining unit employees in violation of RCW 41.56.140(1) by making changes to (a) the minimum staffing formula, (b) the break policy, and (c) bidding by seniority.

8. By its actions described in Findings of Fact 56 through 63, 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, in connection with union activities, to Gina Knapp, for requesting union representation (*Weingarten* right) in a proposed investigatory interview.

9. By its actions described in Findings of Fact 52 through 55, the employer did not interfere with employee rights in violation of RCW 41.56.140(1) by threats of reprisal or force or promises of benefit made, in connection with union activities, to (a) Mara Anderton, regarding a pre-disciplinary notice; and (b) all bargaining unit employees, in making changes to the pre-disciplinary notice procedure, and the grievance and arbitration procedure.

10. By its actions described in Findings of Fact 64, and 69 through 78, the employer interfered with employee rights in violation of RCW 41.56.140(1) by denying Marsha Schumann's right to union representation (*Weingarten* right) in connection with an investigatory interview.

11. By its actions described in Findings of Fact 64, 69 through 78, the employer did not discriminate against Marsha Schumann in violation of RCW 41.56.140(1) by terminating her employment, in reprisal for union activities protected by Chapter 41.56 RCW.

ORDER

The Snohomish County Police Staff and Auxiliary Services Center (SNOPAC), its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Unlawfully announcing and implementing changes to the annual vacation bidding procedure (a mandatory subject of bargaining) for supervisor/training coordinators

and lead dispatchers without fulfilling its duty to bargain in good faith with its employees' exclusive bargaining representative.

b. Interfering with, restraining, or coercing its employees in their exercise of their rights to union representation (*Weingarten* rights) in connection with an investigatory interview.

c. 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 41.56 RCW:

a. Restore the *status quo ante* for annual vacation bidding by reinstating the annual vacation bidding procedure for supervisor/training coordinators and lead dispatchers which existed prior to the implementation of changes to annual vacation bidding in January 2014 found unlawful in this order and detailed in Finding of Fact 48. The return to the *status quo ante* will take effect for the annual vacation bidding period beginning on or after January 1, 2016.

b. Give notice to and, upon request, negotiate in good faith with the Association of SNOPAC Employees, before changing the annual vacation bidding procedure for supervisor/training coordinators and lead dispatchers.

c. Contact the Compliance Officer at the Public Employment Relations Commission to receive official copies of the required notice posting. 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.

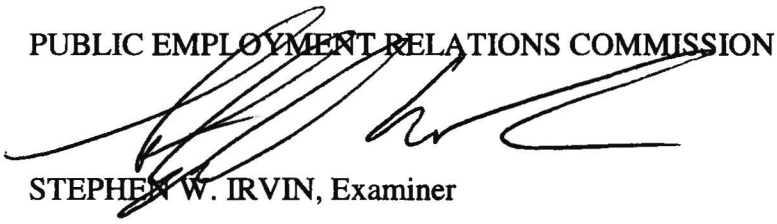
d. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Board of Directors of the Snohomish County Police Staff and Auxiliary Services Center, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

e. Notify the complainant, in writing, within 20 days following the date 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.

f. 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 a signed copy of the notice provided by the Compliance Officer.

ISSUED at Olympia, Washington, this 22nd day of May, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



STEPHEN W. IRVIN, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

CASE 26313-U-14-6717
DECISION 12342 - PECB

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

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

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT THE SNOHOMISH COUNTY POLICE STAFF AND AUXILIARY SERVICES CENTER COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY changed the annual vacation bidding procedure for supervisor/training coordinators and lead dispatchers without fulfilling our duty to notify the Association of SNOPAC Employees and provide an opportunity for bargaining.

WE UNLAWFULLY interfered with Gina Knapp's and Marsha Schumann's rights to union representation (*Weingarten* rights) when we did not allow them to have union representation at investigatory interviews.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL give notice to and, upon request, negotiate in good faith with the Association of SNOPAC Employees before changing the annual vacation bidding procedure for supervisor/training coordinators and lead dispatchers.

WE WILL NOT unilaterally implement changes to vacation bidding or any other mandatory subject of bargaining.

WE WILL honor employee requests to have union representation during investigatory interviews.

WE WILL NOT ignore or refuse the requests of our employees for union representation at investigatory interviews, including follow-up meetings, where the employee reasonably believes that discipline might result from the interview.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DO NOT POST OR PUBLICLY READ THIS NOTICE.

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

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

RECORD OF SERVICE - ISSUED 05/22/2015

The attached document identified as: DECISION 12342 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ VANESSA SMITH

CASE NUMBER:	26313-U-14-06717	FILED:	02/24/2014	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	DISPATCHERS				
DETAILS:	26739-S-14-0433				
COMMENTS:					

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