STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY CORRECTIONS GUILD,	)	
	)	
Complainant,	)	CASE 19549-U-06-4959
	)	
vs.	)	DECISION 9291-A - PECB
	)	
SNOHOMISH COUNTY,	)	FINDINGS OF FACT,
	)	CONCLUSION OF LAW,
Respondent.	)	AND ORDER
	)	

Cline & Associates, by *Christopher J. Casillas*, Attorney at Law, and *Aaron D. Jeide*, Attorney at Law, for the union.

Snohomish County Prosecuting Attorney Janice E. Ellis, by *Steven J. Bladek*, Deputy Prosecuting Attorney, and *Doug J. Morrill,* Deputy Prosecuting Attorney, for the employer.

On June 14, 2005, the Snohomish County Corrections Guild (union) filed an unfair labor practice complaint with the Public Employment Relations Commission (Commission). The complaint encompassed over twenty-five allegations and named Snohomish County (employer) as the respondent. The union filed an amended complaint with the Commission on July 19, 2005, and a preliminary ruling was issued on July 26, 2005, finding a cause of action to exist under RCW 41.56.140. The employer filed its answer to the allegations on August 10, 2005.

The dispute between the parties concerns allegations that the employer unilaterally effectuated numerous changes which have had a detrimental effect on the working conditions of bargaining unit members. Most of the changes are alleged to have occurred in relation to the opening of a new correctional facility in 2005

known as the Oakes Street Facility, which is one of four buildings that the employer manages.[1] The present dispute also concerns allegations that the employer unlawfully interfered with employee rights by transferring bargaining unit work to positions outside the bargaining unit and by violating rights associated with the Weingarten doctrine.

Hearing Examiner Terry N. Wilson conducted a hearing on the following dates: December 12-16, 2005; February 13-15,2006; May 2-May 5, 2006; and May 9-12, 2006. During the hearing conducted on December 14, 2005, the employer sought to exclude all allegations and evidence related to forced overtime into support positions other than that of control room operator, on the basis that such allegations were beyond the scope of the hearing. The Hearing Examiner reserved ruling on the matter and directed the parties to address the motion in their post-hearing briefs. The parties filed post-hearing briefs on September 11, 2006.

ISSUES PRESENTED

1. Did the employer unilaterally change the status quo and illegally refuse to engage in collective bargaining after it removed bulletin boards from the building known as the Wall Street Facility and provided the union a new bulletin board at the Oakes Street Facility?
2. Did the employer unilaterally change the status quo and illegally refuse to engage in collective bargaining after it failed to provide bathrooms in every secure module in the Oakes Street Facility?
3. Did the employer illegally refuse to engage in collective bargaining when it continued to limit employees to two fifteen-minute breaks, despite union allegations that it was

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[1] The buildings that the employer has managed includes the Wall Street Facility, the Carnegie Building, and the Indian Ridge Facility.

taking employees 20 minutes to get to the break room from the Oakes Street Facility?

4. Did the employer illegally discontinue water cooler contracts and illegally remove water cooler dispensers from the main booking area of the Wall Street Facility and the Indian Ridge Facility, while failing to negotiate its actions with the union? In a related issue, did the employer illegally refuse to provide bottled water at the Oakes Street Facility, while failing to negotiate its refusal with the union?

5. Did the employer commit an unfair labor practice when it transferred lockers from the Oakes Street Facility to the Carnegie Building or when it provided new shower facilities at the Oakes Street Facility?

6. Did the employer commit an unfair labor practice when it removed a television from the Wall Street Facility and never replaced it?

7. Did the employer illegally issue proximity cards to employees, require employees to use them, and then refuse to negotiate its actions?

8. Did the employer commit an unfair labor practice when it replaced VHF frequency radios with 800 MHz radios, when the jail experienced a shortage of radios, and when it refused to bargain both matters?

9. Did the employer unilaterally change the status quo and commit an unfair labor practice when it provided personal digital assistant devices to employees without bargaining with the union?

10. Did the employer commit an unfair labor practice when it denied vacation leave to Officer David Kosnosky?

11. Did the employer commit an unfair labor practice when it denied Officer Auriela Jackson's special leave request?

12. Did the employer commit an unfair labor practice after the secondary vacation calendar was not completed in what the union deemed a timely manner?

13. Did the employer refuse to engage in collective bargaining when it assigned the duties of laundry, kitchen, and construction escort to union members?

14. Did the employer commit an unfair labor practice when it listed the following position description in the job application for custody officers:

    a. assist in checking outstanding warrants;

b. responsible for receipt and records of payments for bail and inmate money;

c. monitor the use of prescribed medications of inmates; and

d. assist in operating the jail control room.

Did the employer commit an unfair labor practice when it required officers to assists in those duties?

15. Did the employer commit an unfair labor practice when it ordered corrections officers to work the control room officer position?

16. In directing corrections officers to transport disabled inmates up and down the stairs, did the employer change the status quo without providing the union the opportunity to bargain, thus, committing an unfair labor practice?

17. Did the employer illegally refuse to engage in collective bargaining by directing corrections officers to serve meals to inmates?

18. Did the employer commit an unfair labor practice when it mandated that corrections officers would schedule visitations for inmates?

19. Did the employer commit an unfair labor practice when it changed the accrual of vacation, sick, and holiday leave and when it divided the cleaning allowance into equal bi-monthly installments?

20. Did the employer unilaterally alter its overtime procedures and commit an unfair labor practice when it failed to assign Officer Chris Lundi a voluntary overtime shift?

21. Did the employer unilaterally alter its overtime procedures and commit an unfair labor practice when it directed Officer William Swenson to work an overtime shift?

22. Did the employer unilaterally alter its overtime procedures and commit an unfair labor practice when it directed Officer Edwin Howard to work an overtime shift?

23. Did the employer commit an unfair labor practice when it unilaterally changed the qualifications for the field training officer?

24. Did the employer refuse to engage in collective bargaining after making when it de-activated the Indian Ridge Facility?

25. Did the employer illegally transfer bargaining work out of the bargaining unit when it utilized marshals as transport officers?

26. Did the employer illegally transfer bargaining work outside of the bargaining unit when it utilized a counselor as a transport officer?

27. Did the employer commit an unfair labor practice by transferring bargaining unit work to property clerks?

28. Did employer commit an unfair labor practice by transferring bargaining unit work to storekeepers?

29. Did the employer violate the Weingarten doctrine during individual interviews involving Officers Keith Reyes, Sherry Sigh, and Eva Frese?

30. Is the issue of requiring corrections officers to do mandatory overtime in support positions beyond the scope of the hearing? If the issue is within the scope of the hearing, did the employer commit an unfair labor practice by directing union members to perform the duties of booking agents?

On the basis of the record as a whole, the Hearing Examiner holds that the employer violated RCW 41.56.140 and committed an unfair labor practice when it:

1. discontinued contracts for providing bottled water to the booking area of the Wall Street Facility and failed to provide bottled water to the booking area of the Oakes Street Facility;

2. failed to bargain a shortage of lockers;

3. failed to bargain the effects of losing the shower facility at the Wall Street Facility;

4. failed to bargain the effects of a shortage of radios;

5. directed officers to use personal digital assistant devices;

6. unilaterally changed the manner in which leave was accrued and posted;

7. unilaterally altered the manner in which the cleaning allowance was distributed;

8. allowed a counselor to escort inmates to the library; and

9. transferred bargaining unit work to the position of storekeeper.

The Examiner finds that all the other allegations of unfair labor practices are not violations of the statute and are hereby

dismissed. In addition, the Examiner finds that the issue of mandatory overtime into support positions, other than that of the control room operator, is beyond the scope of the complaint and that allegation is also dismissed.

ANALYSIS

Applicable Legal Standards: Mandatory Subjects of Bargaining and Unilateral Changes

Under the Public Employees Collective Bargaining Act, Chapter 41.56 RCW (PECB), a public employer has a duty to bargain with the exclusive bargaining representative of its employees. The PECB states this statutory obligation as follows:

> Collective bargaining means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

Historically, all potential subjects for negotiations between unions and employers have been divided into three categories: mandatory, permissive, and illegal subjects of bargaining. *City of Richland*, Decision 2448-B (PECB, 1987), remanded,113 Wn.2d 197 (1989). Mandatory subjects of bargaining include employee wages, hours, and working conditions. Permissive subjects are matters which the Commission considers remote from wages, hours, and working conditions and include matters regarded as the prerogatives of employers or unions. *Federal Way School District*, Decision 232-

A (EDUC, 1977). Illegal subjects are matters where an agreement between an employer and union would contravene applicable statutes or court decisions. *City of Seattle*, Decision 4668-A (PECB, 1996), *aff'd, International Association of Fire Fighters, Local 27 v. City of Seattle*, 93 Wn. App. 235 (1998), *review denied*, 137 Wn.2d (1999).

The Commission decides whether a particular subject or subject matter falls into one of the categories. *City of Richland*, 113 Wn.2d at 203. When determining whether a subject is mandatory or permissive, the impact on wages, hours, and working conditions of the employee is weighed against the extent to which the subject is a managerial prerogative. *Skagit County*, Decision 8746-A (PECB, 2006). Scope of bargaining is a question of law and fact for the Commission to determine on a case-by-case basis as every case presents unique circumstances. *City of Richland*, 113 Wn.2d at 203.

It should also be noted that, RCW 41.56.140 states as follows:

> It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> . . . .
>
> (4) To refuse to engage in collective bargaining.

Thus, under the statute, a public employer who unilaterally changes the existing working conditions, wages, or hours of work of organized employees and does not provide the bargaining unit with an opportunity to negotiate, may be committing an unfair labor practice. The change, however, must represent a departure from an established, consistent practice, and it must be meaningful, substantial, and significant in order to give rise to the duty to

bargain. A one time occurrence does not necessarily equate to an actual change in policies or procedures. *See King County*, Decision 4258-A (PECB, 1994). In addition, a party alleging a unilateral change carries the burden in proving that an unfair labor practice has occurred. *See City of Tacoma*, Decision 6793-A (PECB 2000).

Applicable Legal Standards: Interference and Discrimination

The Commission is empowered to hear and determine unfair labor practice allegations and to issue appropriate remedies. RCW 41.56.160. The complainant in any unfair labor practice proceeding has the burden of proof. WAC 391-45-270(1)(a).

An "interference" violation occurs under RCW 41.56.140(1), when an employee could reasonably perceive an employer action as a threat of reprisal or force or promise of benefit associated with union activity. *Port of Tacoma*, Decision 4626-A (PECB, 1995). A finding that interference has occurred is not based on the actual feelings of a particular employee, but on whether a typical employee in the same circumstances could reasonably see the employer's actions as discouraging union activity. An employer's intentions when engaging in the disputed actions are legally irrelevant. *City of Bremerton*, Decision 2994 (PECB, 1988); *City of Seattle*, Decision 3066 (PECB, 1988), *aff'd* Decision 3066-A (PECB, 1989).

A "discrimination" violation occurs under RCW 41.56.140(1) when an employer actually takes action against an employee in reprisal for union activity. The standard for determining discrimination allegations was adopted by the Commission in *Educational Service District 114*, Decision 4631-A (PECB, 1994) and *City of Federal Way*, Decisions 4088-B and 4495-A (PECB, 1994) based on the decisions of the Supreme Court of the State of Washington in *Wilmot v. Kaiser*

Aluminum, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991).

The first step in the processing of a "discrimination" claim is for the injured party to make out a prima facie case showing retaliation. To do this, a complainant must show:

> 1. The exercise of a statutorily protected right, or communicating to the employer an intent to do so;
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> 2. That he or she was discriminated against;
>
> 3. That there was a causal connection between the exercise of the legal right and the discriminatory action.

If a plaintiff provides evidence of a causal connection, a rebuttable presumption is created in favor of the employee. While the complainant carries the burden of proof throughout the entire matter, there is a shifting of the burden of production. Once the employee establishes his or her prima facie case, the employer has the opportunity to articulate a legitimate, non-retaliatory reasons for its actions. The employee may respond to an employer's defense in one of two ways:

> 1. By showing that the employer's reason is pretextual; or
>
> 2. By showing that, although some or all of the employer's stated reason is legitimate, the employee's pursuit of protected rights was nevertheless a substantial factor motivating the employer to act in a discriminatory manner.

Educational Service District 114 Decision 4631-A. That standard has been followed in numerous subsequent decisions. *See Mansfield School District*, Decision 5238-A (EDUC, 1996); *Pasco Housing Authority*, Decisions 6248, 6248-A (PECB, 1998).

SECTION ONE - MANDATORY SUBJECTS OF BARGAINING AND COMPLAINTS CONCERNING THE PHYSICAL ENVIRONMENT OF THE JAIL FACILITIES

Issue 1: Removal of the Bulletin Boards

Prior to the December 2004, the Teamsters were the exclusive bargaining representative of the bargaining unit involved in the present dispute. At that time, the Teamsters also represented three other bargaining units at the jail. In December 2001, as the representative of corrections officers,[2] the Teamsters signed a collective bargaining agreement with the employer which contained the following provision: the employer shall provide space for a bulletin board at each station which may be used by the union.

Pursuant to this provision, the employer gave the Teamsters access to a bulletin board in the staff dining area at the Wall Street Facility (Wall Street). According to the employer, while other bulletin boards may have been utilized by the Teamsters, the bulleting board in the dining area was the only bulletin board exclusively reserved for them. Commander Chris Bly testified that the two bulletin boards located outside the administrative conference room at Wall Street were used for general safety notices, county administrative notices, and personal postings from the staff. The bulletin boards located outside the central control room of Wall Street were used for general administrative announcements and commuter information while the notice boards in the medical area and cashier area at Wall Street were used for announcements relevant to those work areas. Commander Bly also

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[2] The record reflects that the employer characterizes those officers who handle work release as "corrections officers" while characterizing all other officers as "custody officers". As both classifications are in the same bargaining unit and the differences between the two have no relevance to the present dispute, the Examiner refers to both classifications as "corrections officers".

noted that the staff dining area at Wall Street building contained a bulletin board used for safety announcements. Although union announcements occasionally appeared on these boards, Bly testified that the boards were not exclusively for union use.

In December 2004, the employer purchased a glass-encased, lockable bulletin board, estimated to be two feet by four feet, exclusively for the bargaining unit involved in the present dispute. The board was placed in the dining area of Wall Street. In March 2005, as part of a remodeling effort, the staff dining area of Wall Street was demolished, and work crews moved all the bulletin boards to the Oakes Street Facility (Oakes Street). Eventually, two bulletin boards were placed in the dining area of Oakes Street. The employer reserved one of these boards for general administrative purposes and another board for safety. The glass-encased board bought for the bargaining unit was placed in an area just outside staff dining. According to Steve Thompson, director of Snohomish County Corrections, the glass-encased board could not be mounted in the dining area because the dining area had floor to ceiling windows on all sides.

In between the time the bulletin boards were removed from Wall Street and the new glass-encased bulletin board was moved to Oakes Street, the union filed a grievance, stating that they did not have an information board. According to an attachment to the grievance, the employer and members of the bargaining unit discussed the matter. The union was not content with the size of the glass-encased board, nor its location. The union proposed that they have an four feet by eight feet bulletin board located across from the mailboxes at Oakes Street. The employer countered that they would allow a four feet by six feet board at the location suggested by the union; however, the union would have to purchase the board. The employer stated it received no farther communication from the union

and thought that the matter was resolved until the complaint was filed with the Commission in June 2005.

The union now asserts that it had access to four bulletin boards at Wall Street before the demolition of the old dining room. Officer Juan Rubio testified that one board, approximately four feet by eight feet in dimension, was located at the cashier's office while another bulletin board, approximately six feet by four feet in dimension, was located in the medical area. The last two bulletin boards, which were both approximately four feet by eight feet in dimension, were located in the staff dining room and the first floor of Wall Street, respectively. The union maintains that the employer failed to engage in collective bargaining after it unilaterally removed the bulletin boards from the old jail, provided less space for union announcements, and failed to put the union bulletin board in the dining area.

Rubio testified that the union bulletin board is now located near the offices of management and that this hampers union activity. Given the location of the bulletin board, membership may be persuaded to not participate in union activities. Rubio also asserted that bulletin boards are the most effective ways by which to communicate to union members, and by providing less than adequate space for union communications, the employer has negatively impacted membership communications.

In order to prove its allegations, the union must first demonstrate that there has been a change of a mandatory subject of bargaining. *City of Tacoma*, Decision 4539-A (PECB, 1994). In general, union use of bulletin boards is a mandatory subject of bargaining. *See King County* , Decision 7819 (PECB, 2002, citing *NLRB v. Proof Co.*, 242 F.2d 560 (CA 7, 1957). The Examiner, however, is not persuaded

that there has been a change in the past practice related to bulletin board use. The past practice was for the employer to provide one bulletin board for the exclusive use of the bargaining unit. The employer maintained that status quo when it purchased a bulletin board for the union.

Moreover, in purchasing a new bulletin board for the union, the Examiner finds that the employer's actions had a negligible impact on the employees. The evidence does not support that the size and location of the new bulletin board have affected bargaining unit members in a significant manner. As demonstrated by the voluminous e-mails submitted for the record, union members may communicate with one another through e-mails, in addition to flyers and mailing. The union argument that the bulletin board's proximity to management offices could potentially hamper union activity is rejected as no evidence was presented to prove this point of view.

Based on the on the record as a whole, the Examiner finds that the employer maintained the status quo when it purchased a new bulletin board for the union. Its actions had little impact on bargaining unit members. Therefore, the allegation concerning bulletin boards is dismissed.

Issue 2: Bathroom Access at Oakes

According to the union, before Oakes Street opened in May 2005, officers had free access to staff bathrooms located in the following secure modules of Wall Street: 2 North, 2 South, 3 North, and 3 South. When officers needed to take a bathroom break in these modules, they simply used the restroom and returned to their duties. Even on the fourth and fifth floors of Wall Street, where the bathrooms were located outside the module, correctional officers were able to use the restroom with few impediments because there were at least two corrections officers located on these

floors. If one officer needed to use the restroom, another officer stationed on the floor would be available to watch over multiple wings.

The union asserts that access to staff bathrooms changed after Oakes Street opened. There, modules located on the E, F, and G levels have no staff bathrooms within the secure modules. In addition, officers have to wait long periods of time for a relief officer, also known as a rover, to relieve them. They can no longer simply use the restroom.

The employer argues that the union's allegations are without merit. As described by Director Thompson, not all the modules at Wall Street contained staff restrooms. There were a variety of procedures by which an officer took a break in order to use the bathroom. Historically, officers in modules without staff restrooms would have someone watch the module while they were away using the restroom. With the opening of Oakes Street, that practice has not changed.

The employer also asserts that it has done its best to adhere to its practice of allowing officers to be relieved for breaks as soon as possible. The record reflects that Commander Chris Bly issued a directive to all sergeants and captains stating that officers who request relief for a bathroom break are to be relieved as soon as possible. Since that order was issued in June 2005, the employer contends that there is no evidence that it has failed to adhere to the directive. During the hearing, Officer Juan Rubio testified that, he currently only had to wait 10 to 15 minutes for a break and that sergeants have been responding to calls for breaks.

In order to prove its allegation, the union must demonstrate that the subject matter is a mandatory subject of bargaining. It is

clear that access to restrooms can potentially affect many aspects of work including employee safety, health, and productivity. Thus, the Examiner finds that, in general, access to bathrooms is a condition of work and a mandatory subject of bargaining, subject to proper notice and bargaining prior to any change.

The next determination concerns whether a unilateral action by the employer brought about a significant change in employee access to bathrooms. The employer concedes it had received complaints concerning the amount of time it was taking for an officer to get relief, but it maintains that it implemented the status quo at Oakes Street. Historically, the employer has had a variety of work stations, including stations without staff bathrooms. In addition, the employer has historically utilized relief officers.

The Hearing Examiner finds that there has been no change in the status quo. In utilizing the relief officers at Oakes Street and by having work stations that lack staff bathrooms, the employer is not implementing a new mechanism. There was not a meaningful or substantial change to the status quo.

The Examiner notes that the time required for an officer to get relief has increased. The record reflects, however, that this may be caused by a variety of reasons including officers getting used to new technology and new security features at the jail. Bly testified that the chain of command was not always properly utilized when bathroom breaks were needed. According to Bly, sometimes supervisors were not responding or were not being contacted for relief. The Examiner also notes that the union had notice of the architectural layout of Oakes Street long before it opened. At no time during the planning phase did the union request to bargain the possible effects of having modules that lacked staff bathrooms. The Examiner finds that the increase in wait time is

not solely due to the fact that some modules lack staff bathrooms, the union failed to request bargaining during the planning stage of Oakes Street, and the employer has not changed the status quo. Therefore, the union's allegation is dismissed.

Issue 3: Employee Breaks

The union argues that the employer has drastically changed the past practice regarding employee breaks. In the past, employees were given two 15 minute breaks during their shifts. These breaks began as soon as relief officers relieved the employee. Once relief arrived, an officer would only have to go through one secure door and down an elevator to the break room. Officer Juan Rubio testified that this entire process only took one minute at the most. After the opening of Oakes Street, however, there was a substantial change. The break room was now located at Oakes Street, and the process for getting through the new security doors significantly increased the travel time to the new break room. According to the union, it would take some officers approximately twenty minutes to get to and from the new break room.

The employer agrees that it has historically granted officers two 15 minute breaks during a shift and that those breaks began once the officer was relieved. However, the employer argues that officers were never required to be at the break room or dining room during their respites. The employer does concede, however, that there are some limitations where an officer can take his or her break. Officers must remain on the premises of the correctional facility. In addition, officers may not take a break near or at someone else's duty station if that staff member is working.

As demonstrated by the perspectives of the parties, the core issue in the present case is a bit more complex than simply an issue of employee breaks. The issue cited by the union is whether employees

are given enough time to travel to the break room due to the increased amount of security doors employees must now encounter. Essentially, the issue that the union is citing is how the increased number of security features at Oakes Street has caused delays and affected the travel time to the break room.

Break time clearly affects and is a significant part of the working environment of employees. Thus, contractual and statutory employee breaks and those entities which may affect them are conditions of work and mandatory subjects of bargaining subject to the notice requirements and bargaining prior to any change in the status quo. Similarly, break rooms are an important resource which promotes employee safety, rejuvenation, and health. Thus, in general, access to a break room and those things which affect that access are mandatory subjects of bargaining.

The record clearly reflects that new security features at Oakes Street have changed the amount of time it takes for corrections officers to reach the break room. Officer Rubio testified that after the changes implemented by the employer it could take an officer at least 20 minutes to reach the break room. Director Thompson conceded that it was taking longer to reach certain points in the jail, but he stated that it was mainly due to officers getting adjusted to the new technology and some technical problems that occurred, such as a computer system crashing.

The Examiner finds that the past practice has been that employees have had access to a break room as well as a dining room, the outside, or various sally ports during their breaks and that the implementation of new security features at Oakes Street impacted this past practice. Ultimately, however, the Examiner finds that managerial prerogative outweighs any impact the new security features have had on bargaining unit employees. Although access to

the break room during an employee's break time is important, security is of greater importance. The employer has duty to contain and control inmates. It is clear that the security features at Oakes Street will assist the employer in carrying out that duty. In comparison, the impact on employees is slight and has lessened with time. Travel time was improving significantly as testified by Officer Robin Haas. According to Officer Haas, it took him four minutes to travel between the dining room and the furthest point of the jail. In addition, a new break room was added to the fifth floor of Wall Street. Employees also have the option of going to sally ports, the dining hall, and outside for their breaks. Since the changes implemented by management, *i.e.*, the new security features, are deemed to be a management prerogative, the complaint involving this allegation is dismissed.

Issue 4: Drinking Water Dispensers at the Indian Ridge Facility, Wall Street, and Oakes Street

The union asserts that the employer committed an unfair labor practice when it unilaterally removed water cooler dispensers from the main booking area of the Indian Ridge Facility (Indian Ridge) and Wall Street on April 6, 2005, and when it failed to provide water cooler dispensers at Oakes Street. The union concedes that the main booking area at Wall Street no longer exists, as it has been moved to Oakes Street. The union argues, however, that the employer is obligated to follow past practice and to continue to provide water cooler dispensers at the main booking area, now located at Oakes Street. While the union notes that staff may use the reverse osmosis system at the new dining hall in Oakes Street to acquire drinking water, the travel time, it argues, is too long. Moreover, as a result of the employer's actions on April 6, 2005, officers at the Indian Ridge no longer have access to quality water. The only sources available for potable water at Indian Ridge are the bathroom and kitchen faucets.

The employer admits that around April 6, 2005, it discontinued contracts for providing water to the water cooler dispensers in the booking area of Wall Street and Indian Ridge. The employer argues that its actions were justified because it had never authorized a water contract for Indian Ridge. Moreover, the bottled water provided at Wall Street was to have occurred on a temporary basis while the booking area was remodeled in 2003.

As access to water may affect the health, safety, and welfare of employees, the Examiner finds that potable water is generally a condition of work and mandatory subject of bargaining. As to what the past practice was at Indian Ridge, the *City of Pasco*, Decision 4197-A (PECB, 1994) defines a past practice as follows:

> A past practice has been defined by the Commission to mean any course of dealing acknowledged by the parties over an extended period of time, so well understood that its inclusion in a collective bargaining agreement is deemed superfluous. The action must be consistent, and all parties must have knowledge of it.

There is undisputed testimony that a maintenance worker acquired a bottled water contract at Indian Ridge without proper authorization from the employer and intentionally hid his ill dealings from his superiors. The employer thought that it had been providing water to employees at Indian Ridge as it always had, through the kitchen building, the administration building, and inmate housing units. The employer did not have knowledge or notice that bottled water was being provided to employees at Indian Ridge. Therefore, the Examiner finds that the past practice at Indian Ridge was to provide potable water through the kitchen building, the administration building, and inmate housing units. As this practice did not change, there was no unilateral change initiated by the employer.

The Examiner, however, finds that the past practice at Wall Street was to provide potable water through bottled water at the booking area in addition to other water sources. Although the bottled water was initially put in Wall Street during a remodeling that occurred in 2003, it remained a staple of Wall Street well after the initial remodeling was complete. The employer had knowledge that bottled water was being provided to the main jail facility. Bottled water at the booking area became a part of the status quo. In taking the bottled water away from the booking area, the employer presented the union with a fait accompli. As noted by the Commission in *Clover Park School District*, Decision 3266 (PECB, 1989), a fait accompli occurs when the employer unilaterally changes the status quo without giving the union sufficient time to engage in meaningful negotiations. A fait accompli eliminates the obligation of the union to request bargaining.

Officer Charles Carrell testified that the bottled water represents a important issue to the bargaining unit. Without the bottled water, officers are more apt to have to get water from areas to which inmates have access, bring their own water, or travel longer distances to get or buy water. Based on the record as a whole, the impact on the bargaining unit is found to be significant. Because the employer did not negotiate with the bargaining unit before it removed the water cooler dispensers from Wall Street, the Examiner finds that the employer committed an unfair labor practice. As the old booking area of Wall Street has subsequently been demolished, the employer is ordered to restore the status quo ante and to provide bottled water to the booking area of Oakes Street.

Issue 5: Lockers and Showers

Before 2005, officers had access to personal lockers located at Wall Street. Some officers, it is noted, chose not to have personal lockers while others shared lockers. In addition, weapons

lockers were made available at Wall Street to those officers required to carry guns, and showers were located in the old jail facility outside of the modules, away from inmates.

In 2005 the employer sought to create an improved locker room for officers and move the weapons lockers to the entryway that led from Oakes Street to the courthouse. As a result, the areas where the lockers and showers were located underwent intense remodeling. During the remodeling, all existing lockers were moved to the Carnegie Building, which is adjacent to Wall Street, and the employer made available a locked shower area at Oakes Street.

The union argues that the employer committed an unfair labor practice when it unilaterally altered the locker room and shower area. It asserts that, as a result of the remodeling, the number of personal lockers and weapons lockers now available to unit members is inadequate. In addition, the union avers that, in contrast to the old shower facilities at Wall Street, the new shower facilities at Oakes Street are not secure from inmates.

The Examiner finds that lockers and shower facilities are a condition of work and a mandatory subjects of bargaining, particularly in a corrections facility. As stated by Officer Charles Carrell, it is common for inmates to spit and throw waste on officers and officers need to clean up after such experiences. Locker rooms and showers are a needed working conditions that promote the health and safety of corrections officers.

The employer concedes that the number of weapons lockers, at times during the remodeling, was inadequate. For a brief period, the only weapons lockers available to the officers were 35 newly installed lockers. According to the employer, this was due to unforeseen funding problems, maintenance issues, and common

problems associated with remodeling. To combat the shortages, the employer assigned only transport officers and weapons qualified officers to the new lockers. Other officers were given the option of storing the weapons in a personal locker or sharing a gun locker.

In addition, despite testimony that all the existing personal lockers were moved from Wall Street into Carnegie Building, Director Thompson testified that there may have been a period when there were not enough personal lockers because a significant number of officers had just been hired and there were remodeling issues. To combat this, officers shared personal lockers as had been the common practice for some officers in the past. According to Thompson, this was temporary. The employer notes that it did not notify the union of the changes associated with the remodeling, such as the moving of the lockers, because staff had participated in the planning of Oakes Street and should have known the general schedule of the renovation.

Based on the record as a whole, the Examiner finds that historically, more often than not, officers had access to personal and weapons lockers. The evidence does not support that every officer had their own personal or weapons locker. Rather, more often than not, officers had access to a personal locker or a weapons locker, but not necessarily their own locker. In the past, those officers who could not have their own locker shared lockers with others.

Both unforeseen and foreseen circumstances affected the number of lockers. The employer had the duty to notify the union of any changes to the status quo and bargain the effects. The Examiner is not persuaded that union had adequate notification that there would be an inadequate number of lockers for an extended period of time, nor is the Examiner persuaded that the employer attempted to

bargain with the union. Therefore, the Examiner finds that the employer failed to bargain the effects of a fewer number of lockers.

The union requests that all officers receive lockers. The Examiner notes that Thompson testified that the locker situation may be resolved. The Examiner, thus, directs that the employer meet with the union and bargain the effects, if any, of a shortage in the number of lockers.

In regard to the allegation concerning the shower area, the Examiner finds that past practice was that the employer provided secured showers for officers. With the remodeling, the old shower facilities were shut down for an extended period of time. Ultimately, the new shower facilities that were provided lacked the security of the old showers. The showers were located near inmates, and the locks on the shower doors could easily be picked by inmates.

The employer strongly suggests that the union was given notice that the showers would shut down at some point because individual bargaining unit members knew that a remodeling would occur. Notice must be clear and specific. There is no evidence that the bargaining unit members knew specifically if, when, or how long the changes would occur. The record does not support that the employer provided the bargaining unit an opportunity to bargain the effects of the having the shower facility unavailable and utilizing shower rooms that were not as secure as the old facility.

The Examiner finds that the employer failed to bargain the effects of the loss of a shower facility at Wall Street and using a less secure shower facility. It is noted that the union requests that the employer install an employee-only shower facility. The

Examiner, however, directs the employer to meet with and negotiate with bargaining unit members over the effects of the loss a secure shower facility at Wall Street.

Issue 6: Loss of the Breakroom Television

Before the 2005 remodel of the jail, the main breakroom of Wall Street had a television with access to cable networks. During their breaks, officers were able to watch television, get information regarding the weather or news, and relax. According to the union, the employer removed the television from the break room during the remodeling, and it failed to replace that television, or any television, in the new break room at Oakes.

The union argues that the employer owes them a television because they removed it from the break room. The union also believes the employer owes them a television because the employer asserted legal authority over it. A county sticker was placed on the television, and county maintenance repaired the television.

The employer not only denies that it removed the television from Wall Street, it asserts that it has never supplied a television to the bargaining unit. The television was purchased through the Snohomish County Corrections Association, with which the employer has no affiliation. The employer maintains that it only provided cable access for the television, and it would continue to provide that access if the union or the Corrections Association supplied another television. According to the employer, it played no role in the Association's decision not to provide another television in the new break room.

The Examiner finds that, historically, the employer allowed a television in the break room for which it provided access to cable networks. The status quo has remained the same. The employer

continues to provide cable and to allow a television in the break room. As the past practice has not changed, the complaint concerning replacement of the television is dismissed.

It is noted that the union not only contends that the employer removed the television, but that the employer assumed authority over the television because a county worker repaired the television and placed a county sticker on it. The Examiner finds that there is not sufficient evidence to conclude that the employer either removed or absconded with the television. In addition, the Examiner specifically rejects the premise that the employer assumed authority or ownership over the television because a county employee placed a county sticker on it or because a county employer repaired the television.

Issue 7: Proximity Cards

In the past, bargaining unit members had identification badges that displayed their picture, full name, and the last four digits of their social security number. Officer Charles Carrell testified that the purpose of the badges was to allow staff to identify other employees of the jail, thus, promoting security. Officer Carrell also testified that officers were only required to wear the badges if they entered the jail in civilian clothes.

With the opening of Oakes Street, officers were required to attain proximity cards to replace the old identification badges. The proximity cards not only contain the same information on the badges, but they have the capability of opening certain doors in the jail. The badges and the cards were of similar, if not equal, size.

According to the union, the employer ordered employees to display the badge at all times, changing prior practice. The union also

asserts that, without the cards, it is now nearly impossible to move around the jail. As a result, some officers have placed the proximity card on a lanyard while others place the card in their breast pocket for easier access. Officers complain that they find the card impractical to place in their breast pocket, and many female unit members find it humiliating to place the card in their breast pocket. Bargaining unit members have also expressed their safety concerns with wearing a card in front of inmates. The card, they argue, displays too much of their personal information in front of inmates. According to the union, the employer did not communicate any of these changes to the union, nor did it offer to bargain the change to proximity cards or the effects of such a change.

The employer asserts that the proximity cards represent only a modest technological innovation to the identification badges. The same personal information is on the cards and the badges. The only difference of any significance is that the new cards may open certain doors of the jail. Moreover, an officer is not required to display the card unless that officer was entering a secure portion of the jail while wearing civilian clothes. This is consistent with the employer's rule regarding the identification badges.

The union has not met its burden to establish that the employer committed an unfair labor practice when it replaced identification badges with proximity cards. The cards and badges at issue are virtually the same. The only difference between the badges and the cards lies within the security feature of the badges, the added capability of the cards to open certain doors. The Examiner finds that adding such a feature is an appropriate managerial decision. The employer has duty to contain and control inmates. It is clear that this security features will assist the employer in carrying out that duty. The Examiner finds that the concerns expressed by

the union such as where to place the cards on one's body does not outweigh the employer's interest in safety. The complaint concerning proximity cards is, thereby, dismissed.

Issue 8: 800 MHz Radios

According to the union, before 2005 officers had VHF-frequency radios which had a pre-programmed channel that could connect to the county 9-1-1 emergency system. Officers used the radios inside the jail to communicate with one another, contact the central control room, and trigger emergency response calls for assistance. Transport officers, in emergency situations, specifically used the VHF-frequency radio to contact the SnoPac Coalition, the dispatch center that controls dispatch services for the police and emergency agencies in Snohomish County. These radios, according to the union, were often the first line of defense when emergencies occurred in the jail.[3]

Shortly before Oakes Street opened, the employer purchased and distributed approximately 100 new radios that operated on a 800 MHz system. The employer eventually planned to substitute all the VHF-frequency radios with the new radios. Following the addition of new hires and the initial distribution of the new radios to the officers, the union alleged that there were not enough radios for all officers. This was a potentially catastrophic situation, for in emergency situations where an officer requires immediate back-up, the ability to communicate with personnel outside of a particular module could be impeded by lack of a radio. Officer

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[3] The record reflects that dispatch and 9-1-1 are two separate entities. However, they are located in the same building and room. Thus, contacting dispatch is akin to contacting 9-1-1.

Andrew Pierce testified that officers were still experiencing radio shortages a year later after the initial distribution.

The union also alleges that the new radios do not have access to the county 9-1-1 emergency system, which represents another impediment to contacting back-up personnel during emergency situations. The union asserts that the employer should not be allowed to simply unilaterally change a working condition that greatly affects the safety of officers. According to the union, the officer, not management, is more keenly aware of the workings of the radio system and the practical implications of change.

The employer provided the following background information. Approximately five years ago, SnoPac elected to transfer its emergency dispatch communications from a VHF system to an 800 MHz system. After the employer determined that it needed to acquire new radios to accommodate the expansion of the jail facility in 2005, it elected to purchase the 800 MHz radios because the VHF-frequency radios, used at the time, would soon become obsolete in the SnoPac system. The employer also stated that the old radios often encountered dead spots during communication in the jail, which obviously interfered with communication. Thus, shortly before the opening of Oakes Street, the employer purchased approximately 100 new 800 MHz radios. Each post in the jail staffed by a custody officer and each regular transport officer received an 800 MHz radio. In addition, eight new radios were provided to supervisors, and an additional eight were reserved for extra duties and high transport days. By the time Oakes Street opened, 123 new radios were available for use.

The employer concedes that at one point it experienced a shortage of radios. This shortage was due to three unexpected occurrences. First, there was an unanticipated need for additional transport

officers to escort construction workers during the transition to Oakes Street. Transport workers, the employer notes, require radios when they are transporting inmates or employees. Hence, the more transport officers that are working, the more radios that are needed. Second, there was an unexpected increase in the number of court cases, which required additional transport officers to transport prisoners. Third, there was a larger than anticipated number of student officers (new hires) working with field training officers, and as explained by Commander Chris Bly, some field training officers mistakenly took two radios when they worked with the trainees. The standard protocol, according to Commander Bly, is that a single radio is given to every officer who needs or requires a radio. Trainees are not necessarily required to have a radio. Either the trainee or the field training officer is assigned a single radio. The employer maintains, however, that all times, every post had a radio, even if every officer did not.

In regard to the ability of VHF radios to contact the county dispatch center, Bly testified that only some of the VHF radios had that ability. Those with the capability of contacting the dispatch center were given to transport officers, some supervisors, and administrators. Those VHF radios assigned to officers working inside the jail or checking the jail perimeter generally had no access to county dispatch. Bly explained that in order to contact dispatch from a VHF radio, an officer had to use a call sign when contacting SnoPac. The jail is only given a limited number of call signs, and these are only assigned to transport workers, supervisors, and administrators. The call signs have never been given to those officers assigned in the jail or working the perimeter. Thus, the inability for the new radios to contact county dispatch should not be an issue for officers in the jail. Bly also testified that, in the jail, officers either contacted the central control room for emergencies, or they used the phones to call 9-1-1.

The employer concedes, however, that the 800 MHz radios used by transport officers did not have access to county dispatch. At the time of purchase, the jail had not been granted access to contact dispatch through the 800 MHz radios. So, in addition to the 800 MHz radios, transport officers had to use the VHF radios. The employer notes that transport did not have to physically carry both radios for long periods of time. Once officers checked out a VHF radio, they could place that radio on their belts as they were going to the van. Since the vans contained a hard mount, the VHF radio could just be placed in the mount once the officer entered the van.

Although radios are a primary communication tool during emergency situations, historically, field training officers were assigned radios that did not necessarily have the ability to contact the county dispatch center. Therefore, when the employer obtained the 800 MHz radios for the corrections officers working in the jail and the perimeter of the jail, it did not commit an unfair labor practice. For officers working in the jail or checking the perimeter, the communication ability of the radios remained largely the same.

For those officers working transport, the Examiner notes that for a short period they had to check out VHF radios in addition to the 800 MHz radios. As this change was temporary, the Examiner finds that switching to 800 MHz radios was a management prerogative that had little impact on bargaining unit members. Thus, in switching to the new radios, the Examiner finds that employer did not commit an unfair labor practice.

In regard to the shortage of radios, the employer concedes there was a time when there was a shortage of radios. The employer notes two changes which occurred: increased demand of transport officers

and increased FTO's. These changes directly impacted the number of radios available. There is no evidence that the employer contacted the union about the changes or provided the union the opportunity to bargain the effects. Therefore, the Examiner finds that management committed an unfair labor practice when it failed to bargain the lack of radios available for officers. The record reflects that the availability of radios may be resolved as there may be a decrease demand in transport officers and the employer issued directives informing field training officers about the number of radios they needed to use. The Examiner, therefore, orders the employer to meet with the union to bargain over the issue of radio availability.

Issue 9: Personal Digital Assistants

Before the opening of Oakes Street in 2005, corrections officers at Wall Street utilized three mechanisms to open cell doors: a Magellus unit, keys, and contacting central control room. The Magellus unit was a touch screen device built in the wall in an officer's station. In contrast to keys, which could only open one cell at a time, the Magellus unit could either open one cell door at a time or all the cell doors within a module. Central control room, in comparison, only had the capability of opening all the cell doors within a module. It did not have the ability to open one door at a time. Once opened, most cell doors remained opened; they did not automatically shut. It is noted, however, that the cell doors in two sections of Wall Street shut automatically.

With the opening of Oakes Street, the employer, for security purposes, added new and changed some existing technologies to open doors. At Wall Street, the central control room now had the added ability to open one door at a time; however, the use of the Magellus unit and keys remained the same. At Oakes Street, the corrections officers now utilized a touch screen device akin to the

Magellus unit and a device known as a personal digital assistant (PDA) to open cell doors. A hand-held, battery-powered device three times bigger than the average blackberry, PDA's can be carried on the belts of officers and charged at officer stations.

According to the union, corrections officers were ordered to carry and use the PDA to open the cell doors. The devices, however, rarely worked, and as a result, officers were put in great risk. Officers were trapped in cell doors. The union argues that because the PDA raises significant safety concerns the employer committed an unfair labor practice when it unilaterally implemented the use of the new technology.

The union also states that, in addition to utilizing PDA's, the cell doors at Oakes now include a new locking feature, where cell doors shut automatically after three seconds, and an alarm feature, which is triggered when a key opens a cell door. As a result of the new automatic locking feature, inmates do not have access to their cells during a lock-down. If an altercation were to occur outside of an inmate's cell, the locking feature prevents an inmate not involved in the altercation from returning to his cell. This, according to the union, increases the likelihood that more inmates may become involved in the fight and injure officers. Additionally, the chances for an officer to become locked in a cell with an inmate are increased with the new locking feature.

The employer concedes that, at times, the PDA did not work due to problems with the batteries. However, the officers had access to their keys and the touch screen devices as they had before. Director Thompson testified that the PDA's were a redundant system, not put in place to take the place of, but to duplicate the touch screen devices at the work stations. PDA's are basically mobile touch screens. Thompson also explained that an audible alarm may

sound at an officer station. This does not affect the operation of the module, however, and the alarm is not loud and does not register at central control room, unless the control room has control of the module. Furthermore, the locking features now used at Oakes Street were used at Wall Street before 2005.

The record reflects that there have been problems associated with the new technologies controlling cell doors and officers were put in potentially dangerous situations. As such, the Examiner finds that the use of PDA's is a mandatory subject of bargaining, subject to notice requirements and bargaining prior to any change in the status quo. The Examiner also finds that implementing the problem-ridden PDA security features significantly impacted bargaining unit employees outweighs management's right to change security features of the jail. Officer Chuck Carrell testified that officers were ordered to use the PDA despite a lack of training on the new technology and the repeated failings of the technology when the PDA's were utilized. This is buttressed by the testimony of Captain Robin Haas, who testified that it was preferable for the officers to use the PDA as opposed to keys. The Examiner is wary of a situation in which an officer has only seconds in which to react. If an officer's first impulse is to use the PDA and the PDA fails, that officer could be put in danger.

The record does not support that the employer provided the union with an opportunity to bargain the effects of implementing the PDA. Thus, the Examiner finds that the employer committed an unfair labor practice. As the mechanical problems with the PDA's may have been resolved, the Examiner orders the employer to meet with the union to bargain the effects of PDA usage.

In utilizing the locking mechanisms at Oakes Street, the Examiner finds that this security feature is not only a part of the status

quo, it represents a managerial prerogative bearing little impact on the bargaining unit. The alarm system is also found to be a managerial prerogative, bearing little impact on the bargaining unit. As such, the complaints encompassing allegations against their usage are dismissed.

SECTION TWO - VACATION AND LEAVE

Issues 10 and 11: Special Day Off Requests of Kosnosky and Jackson

Vacation calendars are established through a multi-step process that begins no later than December 1 of the year prior to the year in which the vacations are taken.[4] In the first step, employees request primary vacation for the period between February 1 of the incumbent year and January 31 of the next year. Employees may request up to three weeks off, in five day increments.[5] In the second step, employees may request days off for the period between February 1 of the incumbent year and January 31 of the next year without regard to any increments. For example, at this stage, an employee may request 3 days off or 6 days off. In the third step, employees may submit requests for additional days off, also known as "special day off" requests.

On February 8, 2005, the employer denied the "special day off" request of Officer David Kosnosky, a transport officer. Officer Kosnosky requested leave for February 21, 2005. The employer denied his request because a transport officer training was scheduled on that day. It was later discovered that Officer Chris

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[4] The incumbent year is the year in which vacations occurs. The prior year is the year prior to which the vacations occur. The next year is the year in which the annual vacation calendar ends.

[5] Employees may request more than 5 days, but at the very least it must be five days.

Lundy, a transport officer junior to Kosnosky, had been granted leave on February 21, 2005.

On January 30, 2005, Officer Aurelia Jackson requested "special day off" leave for February 6, 2005. Captain Elysa Eby denied the leave request on February 5, 2006, based on a scheduled training and staffing shortages. Another captain, however, granted leave to Deborah Martin, a booking agent, for February 6, 2005, based on his determination that Martin was mourning the death of an officer and too distraught to work. At the hearing, Officer Jackson testified that she, too, was distraught over the death of the officer and was offended to learn that Martin had been given leave for that day.

According to the union, officers must be granted time off, following the order of seniority, as long as the staffing levels have not been compromised. The maximum number of people allowed off on the weekday is eight while the maximum number of people allowed off on the weekends is five. Although the union concedes that mandatory training is defined as training that every officer must undertake, the union asserts that a corrections officer has never been denied a vacation because it conflicted with a scheduled mandatory training. By denying the requests of Kosnosky and Jackson, the union argues that the employer unilaterally changed its past practice, without providing notice or the opportunity to bargain.

The employer maintains, however, that historically, "special day off" requests have been granted or denied at the discretion of the management. The employer also notes that Officer Lundy had originally been denied leave. Lundy, however, appealed the initial denial to Commander Bly. Ultimately, Bly granted the "special day off" request after he learned that Lundy had purchased non-refundable plane tickets.

During the hearing, the union offered, as evidence of its assertions, the testimony of veteran officers who testified that the past practice has been to grant "special day off" requests without regard to conflicts with mandatory trainings. For the most part, the veteran officers did not provide specific incidents, names, or dates to buttress their assertions. It is noted that Officer Charles Carrell testified that when he provided training to transport officers, some of the officers told him that they were allowed to miss a training day because they were taking that day off. Specific details about specific officers were not provided in Carrell's testimony, however.

A party alleging a unilateral change carries the burden in proving that an unfair labor practice occurred. *City of Tacoma*, Decision 6793-A (PECB, 2000). The union asserts that only staff levels need be considered when granting "special day off" requests. The Examiner, however, is not persuaded that management has historically been prevented from denying "special day off" requests at its discretion. As the union has not met its burden of proof, the complaints alleging that the employer committed unfair labor practices in denying special day off requests to Officer Kosnosky and Officer Jackson are dismissed.

Issue 12: Timing of the Vacation Calendar

As stated earlier, vacation calendars are established through a multi-step process that begins no later than December 1 of the prior year. In the first step, employees request primary vacation leave for the period between February 1 of the incumbent year and January 31 of the next year. Employees may request up to three weeks off, in at least five day increments. In the second step, where the secondary calendar is completed, employees may request a variety of days off for the period between February 1 of the incumbent year and January 31 of the next year. During the second

step, the employer contacts each employee on a seniority list to see what days he or she would like to take leave.

According to the union, throughout the past 14 years, the secondary calendar has started by January 31 of a given year or, on rare occasions, shortly thereafter, and it is usually completed by March. The union alleges that the employer unilaterally changed this practice in 2005 when it completed the calendar in July 2005. As a result of this delay, officers found it extremely difficult to plan and schedule vacations.

The employer counters that it made no changes in 2005 to the procedures by which the secondary calendar was completed. Furthermore, the employer alleges that any delay in completing the calendar was primarily caused by union members. Therefore, it did not commit an unfair labor practice.

The employer also notes that it actually completed the secondary calendar the first week of March 2005, which it alleges is approximately one month later than in previous years. The employer also asserts that the completion of the calendar was complicated by the fact that staff members could not always be reached. In the system currently utilized, the employer cannot skip over employees. Moreover, as the number of employees increased significantly with the new hires, it is reasonable that the completion date of the secondary calendar would take a little longer.

The record reflects that the date by which the employer completes the secondary calendar is not a fixed date. The date has varied throughout the years. Ultimately, the past practice was for the employer and the employees to participate in a defined, structured, and established procedure to complete the secondary calendar. The union has the burden to prove that the employer strayed from this

practice in 2005. Specifically, the union must demonstrate that Captain Elysa Eby, who was in charge of completing the calendar, significantly strayed from established protocol.

To buttress its assertions, the union relies heavily on the testimony of Officer Carrell. Carrell testified that, on several occasions, he confronted Captain Eby about the delay in completing the secondary calendar. According to Carrell, Eby was not responsive to his inquiries, and she told him that she was not going to worry about the calendar because she was going on vacation.

The Examiner finds that the employer did not alter the status quo. Eby took reasonable measures to ensure that the secondary calendar was completed, and moreover, she followed the past practice. She notified employees on November 24, 2004, that the primary calendar would open on November 30, 2004. She contacted people by e-mail and phone following the order of seniority to notify them that their turn in picking vacation dates was coming soon. At times when she was out of the office, the record reflects that she turned over materials to sergeants to continue the calendar process. At times when an employee was on vacation, could not be reached, or could not respond, Eby honored the past practice of not passing an employer in favor the next employee on the list. Despite her efforts, vacation scheduling was delayed.

The Examiner finds that the union has not proven that the employer significantly strayed away from established protocol in completing the secondary calendar. Also, because of the manner in which the secondary calendar is completed, the Examiner notes that completion of the calendar would naturally take a little longer with a significant number of new hires.[6] Therefore, the complaint

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[6] The employer hired approximately 40 officers.

alleging that the employer committed an unfair labor practice when it completed the secondary calendar in 2005 is dismissed.

Issue 19: Vacation Accrual

Before April 2005, payroll at the jail operated on a monthly system, running from the 16th of the month through the 15th of the next month. On the 16th of the month, the vacation leave, sick leave, and holiday leave an employee earned were posted and made available for use. The employees received their paychecks on the last business day of each month. In addition, historically, the employer gave bargaining unit members 30 dollars a month as a cleaning allowance for uniforms. The employer paid the allowance in full on the monthly payroll check which was issued on the last business day of each month.

In February 2005 the union and the employer began negotiating whether to alter the payroll system. Ultimately, the parties agreed to switch from a monthly pay cycle as described above to a bi-monthly system. With the new bi-monthly pay system, the payroll cycle would run from the 1st through the 15th of each month, with payday seven days thereafter, and from the 16th through the end of the month, with a seven day lag for payday. The parties agreed that the new system would go into effect on April 1, 2005.

In conjunction with the payroll change, the guild asserts that the employer unilaterally made two unexpected changes. The first change relates to leave. Previously, all leave accrued on one check, issued on the last day of the month. The union states that the allotted time off for vacation leave, holidays, and sick leave was now being split between the two monthly checks and that actual time off was not accruing until the checks were issued on the 7th and 22nd of each month.

The second change relates to the cleaning allowance. The employer began paying the cleaning allotment in two fifteen dollar installments issued on the seventh and the thirtieth of the month. Under the prior system, the allotments were paid in one sum at the end of the month.

As a result of the employer's actions, the union argues that employees no longer have full access to all of their monthly accrued time off by the 16th of each month. Instead, they must now wait until the 7th and 22nd of each month for the time to accrue. The union also argues that employees are more apt to finding themselves having to pay out of pocket to have their uniforms cleaned because, due to the changes unilaterally implemented by the employer, employees do not have full access to the cleaning allotment during certain periods of the month.

The employer agrees that employees had full access to the monthly leave time accrued as of the 16th of each month and that the previous payroll system posted accrued leave to an employee's account immediately upon conclusion of the pay period in which it was earned. And as stated by the union, the parties agreed to change the payroll system to a bi-monthly payroll system. The employer asserts, however, that it now allows earned leave, even if not posted, to be used immediately. That is to say, although a leave accrual may not post onto an employees' account until the 7th and 22nd of the month, an employee could now utilize the leave as they earned it. The employer denies that the allotted time off for vacation leave, holidays, and sick leave is split between the two monthly checks.

The record reflects that the employer's initial position regarding leave accrual was reflected in an April 19, 2005, e-mail authored

by Bridget Clawson, director of human resources. That e-mail, entitled "Decision regarding leave accrual", reads as follows:

> I have decided that it is congruent with our labor agreements to use accrued leave only after it posts.

At that time, leave could not be used until it was posted seven days later.

The issue regarding leave came to the union's attention in June 2005 when Officer Scott Maxey tried to call in sick. Although he had worked a full month, Officer Maxey did not have enough leave to take a sick day. The record reflects that Lawson and Janet Hall, chief of administration at the jail, had communications about the Maxey situation. As noted in one e-mail, according to the employer's policy, Maxey would not be able to use his leave, and he would have to go on leave without pay. In another e-mail exchange between Clawson and Hall, Clawson stated that the employer could make exceptions where an employee has no accrual, very little accrual, or has been hospitalized. That is, in the situations listed, the employer could grant leave before it posted. During this exchange, Hall stated that she was worried because the employer never negotiated an accrual lag.

The Examiner finds that the matters of leave accrual and cleaning allowance are mandatory subjects of bargaining, as they affect the wages of employees. As evidenced by the e-mail exchange between noted above, the employer, in contradiction to its historical practice, did not allow leave until it posted. The Examiner finds that the employer unilaterally changed the manner in which leave accrued and was posted without providing the union the opportunity to bargain. As such, the Examiner finds that the employer committed an unfair labor practice. The Examiner orders the

employer to return the manner in which leave accrued back to the status quo.

In regard to the cleaning allowance issue, the Examiner rejects the employer's argument that cited the memorandum signed by the parties in 2005. Section 1.1 of their memorandum reads that deductions will be split evenly between two pay periods. Nowhere does the memorandum specifically state that the cleaning allowance given by management to bargaining unit members will be split evenly between the two pay periods, nor does the memorandum read that additional monies or cash benefits given to bargaining unit members will be split between the two pay periods. In order for the union to be deprived of its right to bargain about a mandatory subject of bargaining, there must be a clear, unmistakable, and knowing waiver. The Examiner finds that the language in memorandum does not expressly alter the cleaning allowance schedule. Thus, by unilaterally altering the cleaning allowance schedule, the employer unilaterally changed a mandatory subject of bargaining and committed an unfair labor practice. The Examiner orders that the cleaning allowance benefit return to status quo.

SECTION THREE - ASSIGNED DUTIES CONTROVERSY

Issue 13: Laundry, Kitchen, and Construction Escort

According to the union, whenever there is a position vacancy, past practice requires the employer to post a notice of the opening and call for bids from regular full-time employees who may be interested in filling the position. The past practice, according to the union, was reflected in Article 6.6 and 6.6.1 of the expired collective bargaining agreement. Article 6.6 reads:

> Shift/Days Off Assignments - Shift/Days Off assignments shall be selected on the basis of seniority in classifi-

> cations. Vacant positions shall be posted when the decision to fill the vacancy is made. When a vacancy occurs, the employer shall post a notice that the position is vacant, specify the qualifications of the positions, and call for bids from regular full time employees . . . .

Article 6.6.1 of the expired collective bargaining agreement defines vacancy as follows:

> A vacancy occurs when:
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> an employee terminates, resigns, or successfully bids to an open position; or
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> a new position is established; or
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> a position's assigned shift and/or days off change.

In April 2005, according to the union, the employer created three new positions: laundry officers, kitchen officers, and construction escorts. The union asserts that the employer was required to post the positions and requests bids, but that it failed to do so. Instead, employees were appointed to the new positions.

The employer concedes that the past practice has been for the county to post new positions and allow employees to bid on them. The employer maintains, however, that assignments to kitchen, laundry, and construction escort do not represent new positions; rather, they are posts. Posts are akin to locations. The employer asserts that, in accordance to the past practice, it retains the right to assign employees to posts. According to the employer, the past practice permitting management to assign posts is reflected in Article 6.6.5 of the expired collective bargaining agreement, which reads:

> the employer shall have the right to assign shifts when necessary to solve operating issues and training requirements. Employees shall have the right to permanently

> exchange shifts/or days off with approval of the Employer and the union while also requiring the unanimous consent of the classification employees.

The record reflects that the core duty of officers assigned to the kitchen and laundry area is to supervise inmates in those locations. In essence, the officers ensure that the inmates act responsibly in the areas in which they work. Officers who accompany and supervise other inmate workers, such as feeders[7], have this same duty, and all corrections officers work to ensure that inmates act responsibly. Thus, in assigning corrections officers to the kitchen and laundry, the employer gave the officers duties historically associated with their jobs. New positions were not created. The assignment of kitchen and laundry represent different posts or locations in the jail. Historically, the employer has had the right to assign officers to different locations or posts in the jail. Therefore, the Examiner finds that the employer did not commit an unfair labor practice when it assigned bargaining unit members to the kitchen and laundry, and that section of the complaint is dismissed.

The record also reflects that the assignment of construction escorts was a much needed, temporary measure that occurred during the construction of and transition to Oakes Street. Construction escorts were needed when parts of the jail were being demolished to ensure that inmates did not escape and to maintain the safety of the construction workers. In addition, it is noted that the function of the construction escorts was akin to that of transport and custody officers.

Based on the record as a whole, the Examiner finds that the assignment of officers to the post of construction escort was a

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[7] Feeders, also known as trustees, are inmates who assist corrections officers in serving food to maximum security inmates.

managerial prerogative based on safety concerns. These safety concerns outweigh any impact on bargaining unit employees. Therefore, the Examiner finds that the employer did not commit an unfair labor practice when it assigned bargaining unit members as construction escorts, and that section of the complaint is dismissed.

Issue 14: New Duties Listed in Job Descriptions

The union asserts that the employer, without prior notice, assigned additional duties to bargaining unit members. In April 2005 the employer posted an updated job description for correctional officers. Shortly thereafter, the union became aware that the employer unilaterally added the following job duties to the position of correctional officers:

a. assist in checking outstanding warrants;
b. responsible for receipt and records of payments for bail and inmate money;
c. monitor the use of prescribed medications of inmates; and
d. assist in operating the jail control room.

Prior to this unilateral action by the employer, the union maintains that records clerks, cashiers, and sergeants assisted in checking warrants and handling payments of bail while the nursing staff was responsible for monitoring the use of prescriptions by inmates. The union concedes that officers have worked in the control room, but only in a voluntarily capacity or in order to relieve employees for breaks. The employer, however, had never mandated that the custody officers work in the control room. It is noted that the record does not state a specific incident when the employer actually required an officer to assist with the warrants, medication, or payments. The union states that members learned of the job duties change through reading the job application. The union does not relate a

specific incident in which the employer orders bargaining unit members to perform these duties, nor does the record reflect the extent to which the union alleges that employer is requiring officers to perform these duties.

The employer maintains, however, that the job description for the officers has remained the same since 1993. None of the duties listed in the job description are new. The employer argues that it has not changed the status quo.

Additional duties on a job description does not necessarily equate to a mandatory subject of bargaining. What is of concern to the Commission is whether the employer has altered the actual duties of bargaining unit members. Thus, in listing the job descriptions to include the duties of checking warrants, monitoring the use of medications, and managing payments for bail and inmate money, the employer did not commit an unfair labor practice. The Examiner also finds that these duties are a logical extension of the responsibilities associated with corrections officers. The duties of staff working in the jail, specifically cashiers and records, often overlap with the responsibilities of the officers in the booking and property area. Due to matters of necessity, it is not unimaginable that officers may have to assist in administrative matters. Moreover, in ensuring that inmates are safe, it is not unimaginable that officers may assist in monitoring medications as they have a tremendous amount of contact with the inmates. Therefore, in requiring officers to assist in these duties, the Examiner finds that employer did not commit an unfair labor practice.

In regard to the control room function, the record clearly reflects that the past practice has been that officers assist in operating the control room, as reflected in the job description. Thus, the Examiner finds that the employer did not change the status quo or

commit an unfair labor practice when it listed the control room duty in the job description. The issue of whether the employer can mandate officers to work in the control room area is addressed in Issue 15.

Issue 16: Transporting Inmates

The union alleges that the employer now requires corrections officers to transport inmates with a lower/lower status up and down stairs. Lower/lower is a classification given to inmates who, due to medical reasons, must bunk in a lower bunk and be housed in the lower tier of a two-tier module. According to the union, historically, during visitations, corrections officers would use an elevator to escort lower/lower inmates from the lower tier of the module to the visitation room, located on level one of the module.

The union asserts that during the jail renovation, certain levels of the jail were demolished and that officers were ordered to escort inmates classified as lower/lower up and down the stairs for scheduled video visits. The employer made this change without notifying the bargaining unit or providing them the opportunity to bargain. As a result, the safety of officers and inmates was jeopardized. Officers received no training in helping disabled inmates navigate stairs, nor have they receive gait belts, which are commonly used as a safety device to stabilize disabled persons as they walk on uneven surfaces.

The employer counters that management never ordered officers to escort inmates up and down the stairs, nor did the employer order officers to provide physical assistance to inmates as they walked up the stairs. Rather, the employer ordered the officers to walk with inmates up the stairs to the visitation room if the inmate was able. According to Commander Bly, officers had choices if they felt that an inmate was incapable of navigating the stairs, if they

were unsure about the ambulatory status of an inmate, or if they had safety concerns. For example, an officer could contact their supervisor or sergeant to make other arrangements for visitation or to voice their concerns. An officer could also escort the inmate out of the module to the elevator and proceed across the breezeway to Oakes Street, where the visitation could commence. In this way, stairs would be avoided. Bly testified that making determinations as to whether an inmate can navigate the stairs is not new to the corrections officers. Often, when an inmate informs an officer of a medical issues, officers make the initial decision as to whether to place inmates on lower/lower. This is especially true when an inmate is first admitted to the jail.

The employer also argues that officers have always escorted lower/lower inmates whether to the visitation area or elsewhere in the jail. Ultimately, the employer asserts that it has not given the officers additional duties. The job of a corrections officer is to escort inmates. If the officer did not feel that the inmate was capable of navigating the staircase, he could use the visitation area in the new facility.

Transporting inmates classified as lower/lower is a key duty and working condition, and as such, the Examiner finds that it is mandatory subject of bargaining. Thus, the question arises as to whether the employer made any significant changes in the manner in which inmates were escorted and whether the union was properly notified. The record clearly establishes the following:

1. Management held a captain's meeting in which transporting lower/lower inmates was discussed. Management decided to have the medical staff review those inmates classified as lower/lower and update their move cards.

2. With the remodeling of the jail and the demolition of certain parts of the jail, different officers inquired as to how they were suppose to handle transporting lower/lower inmates for scheduled visits.

3. On April 26, 2005, Captain Eby communicated to a corrections officer that if an inmate is ambulatory there is managerial consensus that they may be escorted up and down the stairs despite prior lower/lower status. Medical would review each lower/lower inmate.

4. On May 3, 2005, Captain Eby communicated to a corrections officer that he could use independent judgment in dealing with lower/lower inmates. She provided the following rule of thumb that he could utilize: those inmates who can navigate their module and do not depend on walking devices like a cane or walker could be escorted up and down the stairs.

5. On May 4, 2005, Commander Bly sent an all-staff e-mail that stated the following:

> All lower/lower inmates would be escorted to the visitation area. Officers could contact medical if they had a question as to whether an inmate was to remain on lower/lower status. Those inmates unable to walk up the stairs contact your captain or sergeant to make arrangements for a visit.

6. On May 16, 2005, Karen Nygard, a nurse at the facility, told an officer that a lower/lower inmate should be evaluated by medical before an officer moves the inmate up and down the stairs. In the alternative, if prior medical clearance was not given, the officer should try to contact medical and get clearance over the phone.

7. Karen Nygard testified during the hearing that some inmates classified as lower/lower were, in fact, ambulatory.

It is clear that during construction there was some confusion and concern among offices as to how to handle lower/lower inmates. The union argues that the e-mail sent by Commander Bly stating that officers had to escort lower/lower inmates up and down the stairs

proves that they were ordered to escort all lower/lower inmates, and as such, it represents a change in the status quo.

The Examiner finds, however, the e-mail must be looked at in the context of other e-mails and the record as a whole. The evidence presented is not persuasive that the employer required an officer to physically assist lower/lower inmates up and down the stairs. Officers were allowed to use their judgement in deciding whether to escort an inmate up and down the stairs. This is in line with past practice. Historically, officers have used their judgment to determine if an inmate could navigate the stairway. Therefore, the Examiner does not find that the employer made any significant changes in the manner in which inmates were escorted, and the union's charge of unfair labor practices is dismissed.

Issue 17: Serving Meals

The union asserts that the employer unilaterally changed the way maximum security inmates were fed. The employer now requires that the officers handle the food trays as opposed to trustees or feeders, inmates who are responsible for serving food. In the past, during the feeding process, trustees brought the food to the fourth floor of Wall Street. An officer would then accompany the trustees as one trustee opened up the food slot and slid the food tray through the food slot while another trustee poured a drink and passed the drink through the food slot. According to Officer Carrell and Officer Greg Barnett, at no time did an officer handle the food or pass anything through the food slot. The purpose of the old way of feeding maximum security inmates was to allow officers to observe the feeding process from an uncompromising position.

Commander Bly testified that the issue of allowing trustees to pass food trays to maximum security inmates has come to management's attention many times over the years. At some point, there has been some confusion among some officers as to what the standard practice

is. Bly testified that the standard practice for feeding maximum security inmates has remained the same over the years, however. He outlines the practice that practice as follows:

1. Trustees accompany an officer to an inmate's cell.
2. The trustees stands to the side of the officer or in front of the officer.
3. The officer unlocks the food slot on the cell door.
4. The officer receives the food tray and the drinks from the trustees and slides the items through the slot.
5. The officer closes the food slot and proceeds to the next cell.

According to Bly, the above practice is followed in order to prevent the spread or transfer of weapons and other contraband. Trustees have never been allowed to transfer the food tray to the maximum security inmates.

The Examiner finds that the union has not met its burden of proof in establishing that the employer unilaterally changed the process by which maximum security inmates are fed. The evidence presented does not persuade the Examiner that the feeding process changed. Thus, in requiring officers to handle food trays, the employer did not commit an unfair labor practice.

Even if it were found that the employer unilaterally changed the process by which inmates were fed, the Examiner notes that such a change would be a managerial prerogative. The employer has the right to and the duty to prevent the spread of contraband. In comparison, the effect on the working conditions of bargaining unit members is less significant.

Issue 18: Scheduling Inmate Visitations

According to the employer, corrections officers have always been responsible for assigning visitation times to inmates. Prior to

2005, that process was that officers working the graveyard shift would assign each inmate in their module a visitation number, which corresponded to pre-set visitation times on a separate log. Based on this information, the officer would then create a visitation schedule for the next day and send the schedule to the reception area. This was known as a fixed visitation schedule. In addition to this fixed visitation schedule, inmates were eligible for special requests visits. With special request visits, inmates could come to any officer and request a specific visitation time. The officer would try to accommodate the request if possible. Officers at Indian Ridge and the 3 South wing of Wall Street followed a process very similar to the special request procedure. Inmates would simply come up to any officer on any shift and request specific days and times. If possible, the officer would try to accommodate the inmate.

When Oakes Street opened in 2005, the employer directed that the visitation procedure used for special requests be used throughout the jail. As stated in a memo sent out on April 18, 2005, by the employer, visitation numbers would no longer be used. As a result, all officers working in modules would share in the responsibility of scheduling inmates. According to employer, the purpose of the change was to avoid the waste of time and resources they attributed to the automatic number system, which had reportedly resulted in only 25% of inmates utilizing their pre-set times.

The union asserts that the change implemented by the employer has had a significant impact on the working conditions of officers. It argues that the new system is time consuming. Each request by an inmate takes as long as 30 minutes to schedule. This is especially true at the beginning of the week when an officer must look through an entire week of logs in order to schedule a single visitation. As a result, according to the union, officer workload has drastically increased.

The union also asserts that the new system has resulted in safety problems. Since officers are busy trying to schedule visitations, they do not have as much time to supervise inmates. As a result, inmates are more likely to get into troublesome situations. The union also alleges that the new system increases the risk for double booking inmates for a time slot, which could also create a volatile situation among inmates. And lastly, the union is concerned that an officer could be subject to discipline if they over-book a time slot.

In the present case, scheduling inmate visitation has always been within the purview of bargaining unit work. That the employer has now required that all officers schedule visitation as opposed to a few officers on the graveyard shift does not equate to an unfair labor practice. The work is within scope of work usually assigned to the bargaining unit. That officers may be spending more time performing a function within the purview of their work does not equate to an unfair labor practice. The Examiner also finds that it is managerial prerogative to utilize the special request method to schedule visitation for the inmates. The method had already been utilized in the jail. The union's assertion that scheduling more visits will directly impact inmate unrest is specifically rejected. Therefore, the Examiner finds that the employer did not commit an unfair labor practice when it altered the manner in which visitation was scheduled, and that section of the complaint is dismissed.

SECTION FOUR - OVERTIME

Prior to 2004, the employer and the Teamsters, who represented this bargaining unit at the time, entered into an agreement regarding an overtime distribution system. According to their agreement, overtime would work in the following manner:

* If a particular shift is short of its required minimum staffing and there are insufficient volunteers for overtime, the schedulers for the department, typically sergeants, begin the overtime process.
* Employees working in the shift immediately preceding the shift that is short-staffed are subject to being called to work first.
* The system is seniority based, meaning the least senior person on a shift who is present will be the first to be called to work overtime.
* Persons on their days off are not subject to mandatory overtime.
* In addition, employees are permitted to volunteer for overtime assignments.
* The employees chosen to work for voluntary overtime assignments are selected based on seniority, meaning the most senior employee will be selected first.
* An officer who volunteers and works a particular overtime shift can apply that time as a credit, thereby, reducing the chance of being called in for overtime in the future.

The union alleges that the employer unilaterally changed the manner in which the overtime process was administered. On three separate occasions, in contravention to the seniority system, the union asserts that the employer used favoritism and its own subjective criteria in deciding which employee would work mandatory and voluntary overtime. These incidents involve Officer Chris Lundi, Officer William Swenson, and Officer Edwin Howard. The union also alleges that the employer retaliated against Officer Howard after he filed a grievance on this issue.

Issue 20: Officer Chris Lundi and Voluntary Overtime

On February 23, 2005, Officer Lundi, after being asked, agreed to work a voluntary overtime shift during the swing shift period. Subsequently, during the swing shift, Lundi worked overtime as a transport officer for thirty minutes. When he returned from a transport assignment, he was told by the shift supervisor that he would no longer be needed as the swing shift was covered. Lundi

went home. After arriving home, he was contacted by the shift supervisor and was told that an error had occurred. The shift supervisor asked Lundi if he could work the last four hours of the swing shift that day. Having already driven home, Lundi turned down the request.

The next day, Lundi discovered that another officer had been given the opportunity to work the overtime shift during the previous day's swing shift, while he had been sent home. The officer chosen initially to work the overtime is approximately 112 on the seniority list. Lundi, in comparison, is 31, and has much more seniority.

The union asserts that, under the overtime distribution system, Lundi, who is more senior and volunteered for the assignment, should have been given the opportunity to work the overtime slot before the junior officer. According to the union, the decision by the employer in this instance effected a unilateral change in the ratcheting system. The unilateral change also had a financial impact on a bargaining unit member, for Lundi was denied overtime monies and credit for working overtime.

According to the employer, both Lundi and another officer volunteered to work overtime. When it was discovered that the facility did not need both employees, the employer mistakenly sent Lundi home, thinking that Lundi was the only person who volunteered to work overtime. Sergeant Bradley Ream testified that he contacted Lundi and told him that the county would pay for a full shift and provide him a full credit with respect to the overtime system if he returned and worked the rest of the shift. Lundi refused and filed a grievance. Subsequently, the employer directed payroll to pay Lundi up until the point that he refused work.

The Examiner finds that overtime is a mandatory subject of bargaining, as it is both a working condition greatly affecting bargaining

unit members and a part of wages. The Examiner does not find, however, that the employer altered its past practice related to overtime in this instance. The employer, as it concedes, made a mistake. It is well established that a single instance or mistake does not equate to a change in practice. *City of Burlington*, Decision 5841-A (PECB, 1997). The evidence is not persuasive that the employer altered the overtime practice by denying Lundi overtime and thus, that section of the complaint is dismissed.

Issue 21: Officer William Swenson and Mandatory Overtime

On April 12, 2005, Officer William Swenson was ordered to work the graveyard shift at Indian Ridge, resulting in his third overtime shift in a month's period. Jan Young, an officer on duty at the time Swenson was ordered to work overtime, was lower on the seniority list and had yet to be ordered to work overtime that month. The union alleges that Officer Young was skipped by the administration in contravention of the strict seniority system due, in part, because she was the wife of Sergeant Fred Young, who helps administer the overtime process.

The employer concedes that Officer Swenson was ordered to do a full overtime shift while Officer Young had not been assigned any overtime during that same period. According to the employer, Young was scheduled to work the day shift the next day in addition to her regular swing shift. Had she worked overtime, she would have worked over 16 hours in a row. Under the established practice, no officer is permitted or required to work in excess of 16 hours in a row.

As stated earlier, overtime is a mandatory subject of bargaining, subject to notification and bargaining requirements. The union bears the burden of proving that the employer unilaterally changed past practice regarding overtime and failed to provide the bargaining unit the opportunity to bargain. In this instance, the evidence

does not support that the employer attempted to alter the past practice or violate the status quo when it ordered Swenson to work overtime. The employer claims that it could not call Young to work because of a well-established rule forbidding an officer working more than 16 hours in a row. The union asserts that this is a falsity, made as an afterthought to protect a system of favoritism. Beyond its assertion, the union, however, puts forth no credible evidence to support its allegations. The Examiner specifically notes that the union was silent as to what procedures the employer should utilize in cases where the 16 hour rule conflicts with the seniority rule. Therefore, the Examiner finds that the employer did not commit an unfair labor practice when it ordered Swenson to work overtime, and that section of the complaint is dismissed.

Issue 22: Officer Edwin Howard, Past Practice and Discrimination for Union Activities

According to the union, on April 22, 2005, the employer ordered Officer Edwin Howard, former Guild President, to work a full 8 hour over-time shift. Officer Howard subsequently discovered that three junior officers had not yet fulfilled their full overtime requirement for that period. Rather, the three junior officers had only received a half a credit for their overtime requirement. Believing that a junior officer should have been called in for overtime, Officer Howard attempted to discuss the matter with Sergeant Daniel Stites, Captain Eby, and Sergeant Hanson. According to Howard, Eby became agitated and extremely confrontational while Sergeant Hanson re-ordered him to work the overtime shift. Howard told his superiors that he would file a grievance if necessary to deal with this problem, but he preferred to solve the problem informally. He then asked Eby why was it necessary to resolve these disputes through grievances. Eby angrily responded, "Because you are Howard."

Howard eventually filed a grievance on the matter, and Director Thomas initiated an investigation concerning the confrontation involving Howard, Eby, Hanson, and Stites. The union contends that the investigation was conducted under the false premise that Howard may have acted inappropriately during the exchange between himself and Eby. The union asserts that, in actuality, the investigation was motivated by a discriminatory intent to seek retribution against a former union president still active in union affairs. As such, the employer's actions have had a chilling effect on the bargaining unit and have interfered with the collective bargaining rights of individual members. Howard testified that he felt intimidated by the tone used by his superiors, in particular, Captain Eby.

The employer asserts that it ordered Howard to work the overtime based on established procedures. According to the employer, the first available employee for a mandatory assignment is the officer who is the least senior employee who has not been called in for overtime or the officer who has been called in to work overtime the least number of times during an accounting period. An employee who has worked overtime at least two hours the prior day is considered to have been called in, for the purpose of determining the overtime schedule. The officers junior to Howard may not have worked a full overtime shift, but for the purposes of the overtime schedule, they are considered to have fulfilled their overtime requirement.

In addition, the employer contends that there was no retaliation motive in any of its actions. Howard was directed to work because of the overtime schedule. Howard was later re-ordered to work because the employer was following the overtime schedule. The quip "Because you are Howard" had nothing to do with Howard's union's activities. Rather, Eby was referring to Howard's behavior in refusing to accept the explanation given to him by his superiors. Furthermore, Director Thompson initially started the investigation

because the conversation involving Howard escalated after he refused to accept his superior's order and work. Thompson testified that initial decision to investigate Howard had nothing to do with union activity and that he immediately referred the investigation to Commander Bly to determine to whether to investigate for further discipline. There was no further investigation, and the matter was soon dropped.

Past Practice

The union has the burden of proving that the employer violated a past practice when it ordered Howard to work overtime. The Examiner finds that the union has not met that burden. The evidence is not persuasive that the past practice at the facility was that junior officers had to earn a full overtime credit before they were skipped over in the overtime system. Beyond its assertions, the union offered the Examiner little proof of their theory of this case.

Discrimination

The union also has the burden of proving that the employer ordered Howard to work the overtime due to Howard's union affiliation. The Examiner finds that the union has not met its burden of proof that the employer discriminated against or retaliated against Howard and derivatively interfered his rights. The union attempts to establish a prima facie case of discrimination based on the following union activity: Howard's meeting with his superiors in which he talked about filing a grievance. Following the meeting, the employer made Howard work overtime and began a disciplinary investigation against him.

The Examiner finds that Howard was not ordered to work overtime as a result of disciplinary action. He was ordered to work the overtime consistent with overtime procedures. Similarly, when Howard was re-ordered to work overtime, the directive was given

consistent with the overtime scheduling system. The Examiner does not find a causal link between Howard's union activity and the investigation initiated by Thomas. The evidence supports that the investigation occurred because of non-retaliatory reasons. The investigation began, the employer notes, only to determine what actions took place and whether there should be disciplinary action. Howard was alleged to have refused to accept the explanation provided and to have escalated the conversation. It is noted the investigation was soon dropped after it was referred to Commander Bly. No disciplinary action resulted. As the Examiner finds nondiscriminatory reasons for the investigation and the directive to work overtime, the Examiner holds that the employer did not discriminate against or retaliate against Howard, and thus, this section of the complaint is dismissed.

Issue 15: Overtime In Officer Support Positions

The union alleges that in March 2005 the employer unilaterally altered the basic job duties of custody officers when it began requiring officers to work mandatory overtime in various support positions such as the control room officer, booking, and property positions. These support positions are not usually covered by corrections officers, and they are under a different classification and represented by a separate bargaining unit. The union asserts that, in the past, officers worked in limited occasions in the support positions, but only on a voluntary basis, when extra help was needed. Historically, officers have never received mandatory overtime assignments to perform the work associated with these support positions.

The union also notes that there had been a memorandum of understanding signed by the parties in 2003 along with the collective bargaining agreement that addressed the subject of mandatory overtime in support positions. The union and the employer agree

that the memorandum permitted the employer to direct officers to work mandatory overtime in support positions. However, according to Officer Charles Carrell, that memorandum was never enforced. In addition, the union notes that the memorandum expired along with the collective bargaining agreement and is not part of the status quo.

During the hearing, the employer objected to evidence that referenced support positions other than that of control room officer on the basis that such evidence is beyond the scope of the complaint. The union maintained that the complaint cited specifically to control room officer positions, but merely as an example of the support positions in general. According to the union, there should be no distinction between the control room officer position and other support positions as the evidence clearly indicates that the status quo and the change was the same for all positions. Upon argument from both parties, near the close of the hearing, the union made a motion to amend its complaint to include support positions. The employer duly objected. The Examiner reserved ruling pertaining to this issue.

In addition to its objection concerning the admission of evidence relating to support positions, the employer also argues that the union misstates the legal status quo. Overtime in the detention division is assigned from a mixed seniority list consisting of several classifications including officers, booking assistants, control room officers, and corrections assistants. Utilizing the seniority list, the employer regularly has officers work in support positions on a voluntary basis, including assignments normally staffed by control room officers, booking assistants, and reception, all positions covered by another contract. And on an occasional basis, corrections officers have also worked these positions on a mandatory basis. The employer notes that an Officer Stacks was ordered to work the control tower in 2004 and an Officer Naisan was

directed to work the control room in 2000. In addition, Officer Jeff Carroll testified that officers had been ordered to work in the control room, property, booking, and reception positions during the period in which he was a acting sergeant, from May 2003 through April 2004.

Motion to Amend the Pleadings to Conform to Evidence Received

In regard to the employer's initial objection against the inclusion of evidence concerning support positions other than control room officer, the complaint filed by the union states the following:

> A fourth alteration in job duties began occurring around March of 2005 dealing with a decision by the County to mandate Custody Officers into Control Room Operation assignments on a mandatory overtime basis. The Control Room Operator is a designated job classification at the Snohomish County Corrections Department that is part of a support staff bargaining unit represented by the Teamsters. In the past, custody officers have worked in limited occasions as Control Room Operators on a volunteer basis when extra help was needed.
>
> However, in March of 2005, the County altered this historic practice by now mandating Custody Officers on an overtime basis to work one or more shifts as Control Room Operators. Historically, Custody Officers had never received mandatory overtime assignments to perform the Control Room Operator job function. In altering this practice and making these assignments mandatory, the County has unilaterally altered the basic job duties of Custody Officers, yet the County never attempted to negotiate such a change with the Guild.

The Examiner finds that the complaint is quite clear. The union filed the complaint specifically objecting to the employer's directives which required officers to work in the control room officer position. No other support positions are specifically mentioned or alluded to in the complaint. The allegations concerning support positions is, thus, beyond the scope of the hearing. Four exhibits, exhibits 100, 101, 102, and 107, will be considered

under the narrow scope that they evidence a past practice concerning the control room officer position.

In regard to the motion voiced by the union, WAC 391-45-070 (2)(c) reads as follows:

> Motions to amend complaints shall be subject to the following limitations:
> . . . .
> (c) After the opening of an evidentiary hearing, amendment may only be allowed to conform the pleadings to evidence received without objection, upon motion made prior to the close of the evidentiary hearing.

The employer objected to the expansion of the complaint to include allegations that the employer illegally mandated officers to work in support positions other than that in the control room. In accordance with the above rule, the Examiner must sustain the employer's objection to the motion. Therefore, the complaint is limited to the allegation that the employer illegally directed employees to work the CRO position.

Change In Status Quo

As noted earlier, with the expiration of a collective bargaining agreement, mandatory subjects of bargaining survive as the status quo. As such, if a party elects to change a term that is deemed a mandatory subject of bargaining, they must provide notice and the opportunity for the other party to bargain. Memorandums of understanding function in the same evidentiary manner as do bargaining agreements. Thus, conditions of work deemed mandatory subjects of bargaining survive the expiration dates.

The Examiner deems the provision that allows the employer to order officers to work overtime in the control room officer position as a mandatory subject of bargaining. The directive clearly affects

the wages and working conditions of bargaining unit members. As such, when the memorandum expires, the practice survives until the parties reach an alternative agreement. Therefore, the Examiner finds that the employer, in accord with the status quo, did not commit an unfair labor practice when it directed officers to work overtime in the control room position.

SECTION FIVE - RECRUITMENT OF FIELD TRAINING OFFICERS

Issue 23: Field Training Officers

The union provided the following background information. The employer utilizes a field training officer program in which new officers are put through a six week, on-site training given by numerous veteran officers. These trainers, known as field training officers, are appointed by the employer. They supervise and train the new officers and receive a 3% premium for the times they actually train a new corrections officer. Historically, a prerequisite to become a trainer was for an employee to have a minimum of two years of service at the jail. However, beginning in March 2005, the employer began assigning as trainers, officers, who did not meet the two-year minimum prerequisites. The union asserts that some employees designated as trainers had as little as three months of work experience at the jail.

According to the union, the change in prerequisites to become a trainer has a direct impact on wages of paid to bargaining unit members. Senior officers who had two years experience were denied opportunities to become trainers, and as a result, these senior officers were denied the 3% premium pay. The union also avers that the change unilaterally made by the employer raises safety concerns, as inexperienced officers are training other inexperienced officers. As a result, the necessary knowledge required to work in the jail will not be imparted to the new employees. The union notes that

each new employees may be responsible for up to 80 inmates, and an inexperienced, poorly-trained officer is ill-equipped to handle such a task, jeopardizing the safety of all who work in the jail. Thus, the trainer qualifications, the union argues, is a mandatory subject of bargaining because of its direct impact on wages and the jail safety, and the employer committed an unfair labor practice when it unilaterally changed the minimum qualifications for trainers without proper notification.

According to the employer, while officers voluntarily apply for the trainer positions, traditionally, the employer has had the final say in determining who would get the assignment. The employer has also had the ability to set the criteria to determine eligible candidates for the positions. For example, the employer notes that it unilaterally changed the criteria in 2004, without comment from the union. In 2004, unlike prior years, the employer required candidates to submit a writing sample. Candidates in 2004 also had to have a record that was void of sustained disciplinary action for 12 months preceding the date of the application.

In its answer to the union's complaint, the employer concedes that, in prior years it had used the two year minimum qualification as a criterium. This changed in 2005 due to three events. First, the employer hired a larger than anticipated number of new officers. Second, the trainees had to go to the Criminal Justice Training Center all at one time as opposed to groups going at various times. This resulted in an overwhelming amount of new hires coming back from the Justice Center who needed immediate training and supervision. Third, at the very time the new officers would return from training, the employer began training existing employees on how to operate the new technologies at Oakes Street. The training at Oakes Street was, for the most part, taught by experienced trainers, who worked long hours in the regular shifts and in their time as

instructors. As a result, many certified trainers actually turned down training assignments, opting instead for a break. The net effect of all these events was that there was a shortage in certified trainers.

Sergeant Mark Simonson testified that there were only about 17 trainers available for the 40 or so new hires and according to the rules, each new officer had to be assigned one trainer. To remedy the disparity, the employer sent out an e-mail to shift commanders, requesting volunteers to work as temporary trainers. The shift commanders, in turn, sent out e-mails and talked with their subordinates about volunteering. At this point, the employer utilized the same criteria, including the two year qualification, as it had in the prior year. Still, fewer than expected officers with experience beyond two years volunteered to do training. The employer notes that volunteer trainers were especially needed for the graveyard and swing shifts. It was at that point when the employer began considering officers with less than two years of experience. The employer ultimately came up with a list of temporary trainers. Only 10 officers on the list actually served as trainers, however, and of the 10, only four had less than two years of experience.

The employer notes that it took many precautions in utilizing the temporary trainers who had less than two years experience. Most important of these precautions, a new hirer would only spend four weeks with a less-experienced trainer. The last two weeks of training had to be spent with a certified trainer. Second, the reports of the temporary trainers were reviewed by at least two certified trainers within three days of them being written. Lastly, the temporary trainers had to review the field training officer manual to learn various training techniques and common pitfalls facing new officers.

The Examiner finds that the ability for management to change qualifications for a training position within the corrections classification is a managerial prerogative. Management has the knowledge to determine who is qualified for training positions, and it has the information and experience to set qualifications and to assign work. The Examiner is not persuaded that the temporary hiring of four trainers with less than two years experience significantly impacted the bargaining unit in terms of wages, especially when there is evidence that all employees received notice that the employer was looking for volunteers. In addition, given that the new hires received at least two weeks of training with a certified trainer and weeks of training at the Justice Center, the Examiner is not persuaded that the hiring of these temporary trainers significantly impacted the safety of the facility. Thus, in temporarily changing its qualifications for the position, the Examiner finds that the employer did not commit an unfair labor practice, and that section of the complaint is dismissed.

SECTION SIX - INDIAN RIDGE CLOSURE

The employer had operated Indian Ridge, a 180-bed minimum security facility in Arlington, Washington, since 2000. After a budgetary review in 2004, the employer determined that it no longer needed Indian Ridge because they were opening Oakes Street in the near future and de-activating Indian Ridge would save the county nearly $800,000. According to the employer, after the budgetary review, it provided notice to the bargaining unit about the closure. For example, in September of 2004, the employer sent an all-staff e-mail, stating that they were planning to recommend the that the de-activation of Indian Ridge occur at the end of that year. In addition, in October 2004 and January 2005, the employer conducted a labor-management retreat, and for those who attended, the employer passed out staffing plans that included information about the

closure. Additional all-staff e-mails were sent in November 2004 by Director Thomas, who noted that the shift process had been designed to accommodate the closure of Indian Ridge, and by Captain Daniel Bly, who stated that vacation calendar process had been designed to accommodate the closure of Indian Ridge. And lastly, in December 2004, the employer noted that a detailed county budget was published which included information that Indian Ridge was closing.

The union insists, however, that it did not receive official notice that Indian Ridge was closing until March 2005 when Director Thompson met with union president Charles Carrell on a different matter. Following the meeting, Carrell sent an e-mail to Thompson requesting to negotiate the closure of Indian Ridge. Carrell testified that the employer did not respond to his requests. In April 2005, Officer Eva Frese filed a grievance over the closure of Indian Ridge. In a letter dated April 27, 2005, Director Thompson denied the grievance, citing that the closure was a business decision based on the needs and resources available to the department and its obligation to provide cost-effective services that maximize available public funds. As such, Director Thomas stated that the employer did not need to negotiate the closure. In May 2005 during contract negotiations, the employer informed the union that it did not have to negotiate the closure of Indian Ridge, but it was willing to negotiate any negative impacts brought about by the closure. Subsequently, the parties conducted three meetings in which the impacts of the closure of Indian Ridge were discussed.

The union now alleges that after the third meeting, the employer refused to bargain the impacts of the closure, thereby committing an unfair labor practice. According to the union, the employer left the bargaining table despite the fact that Carrell specifically expressed that the parties were not at impasse. In addition, the

union asserts that the fact that the employer did not file for mediation exemplifies its refusal to negotiate.

The employer agrees that no further bargaining on the Indian Ridge closure occurred after the third meeting. That fact, however, is not solely due to the employer. Immediately following the meeting, the employer sent the union a letter and e-mail which detailed the employer's response to the union's proposed remedies. The letter reads in part:

> One guild team member repeatedly stated that the County has offered nothing in response to the guild's demands. In response to that, another guild team member stated that an impasse has been reached. The County's lead negotiator concurred that an impasse had been reached.

Although the parties continued to meet for contract negotiations in June and July 2005, the union did not respond to the letter, and neither party requested additional bargaining about the impacts of closing Indian Ridge.

The Commission has found that when an employer decision involves a matter at the core of entrepreneurial prerogative and when that prerogative outweighs the impact on wages, hours, or working conditions of employees, such a decision need not be bargained. *See Cowlitz County*, Decision 7007-A (PECB, 2005) and *IAFF, Local 1052 v. PERC (City of Richland)*, 113 Wn.2d 197 (1989). However, where the action has a substantive impact on wages, hours or working conditions, those impacts must be bargained upon request. *Spokane County Fire Protection District 9*, Decision 3661-A (PECB, 1992). In the present case, the Examiner finds that the closing of Indian Ridge involved a matter at the core of entrepreneurial prerogative. As such, the decision to close Indian Ridge did not need to be bargained. However, even where an employer has no duty to bargain

a particular subject due to a business defense, the employer is still required to give notice and bargain the effects of any change. *See Wenatchee School District*, Decision 3240-A (PECB, 1990); *Mukilteo School District 6*, Decision 3795 (PECB, 1991), reversed on other grounds, Decision 3795-A (PECB, 1992).

In the present case, the union argues that it did not have official notice of the closure and that this affected their ability to bargain any impacts it deemed negative. The Examiner rejects this argument. The record supports that during the fall of 2004 a flurry of all-staff e-mails were sent from management stating changes that would occur as a result of the pending Indian ridge closure. These e-mails were sent to all, including union officers. As noted by *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998), formal notice is not required. The Commission's focus is on whether an opportunity for meaningful bargaining existed. The Examiner finds that the union was adequately notified of the impending change at a time when there was still enough time to influence the employer's actions. At the latest, the union knew, or should have known, about the impending closure in the fall of 2004 as evidenced by the e-mails sent by the employer. At the very least, the union knew about the closure in March 2004 when the bargaining unit president met with Director Thompson. It is noted that the union did not request to bargain the effects of the closure until May 2005. The fact that they may have lost time at the bargaining table cannot be attributed to the employer.

The union also alleges that the employer failed to bargain the effects of the Indian Ridge closure as evidenced by the fact that the employer would not even commit to bargaining until 2005. The Examiner rejects the union's argument. The union did not request to bargain the effects of the closure until May 2005. As stated earlier, the fact that they may have lost time at the bargaining

table cannot be wholly attributed to the employer. The union bears much of the responsibility. In addition, the employer participated in three bargaining sessions in which proposals and counter-proposals were exchanged. Included in the employer's proposals were ideas as to how to resolve certain issues as well as explanations as to why it rejected certain union proposals. To bargain in good faith, a party does not have to acquiesce to another party's demand. "No" is a accepted response in bargaining. *See Port of Seattle*, Decision 7271-B (PECB, 2003).

Based on the record as a whole, the Examiner finds that the employer's actions do not constitute an unfair labor practice. Although there was testimony that the employer's behavior may not have been ideal during the last bargaining session, it did not amount to a refusal to bargain. As can happen when negotiating, voices were raised and mis-communication resulted. The employer heard impasse and immediately reacted to that. The union president's voice was lost in the turbulent process and not heard. The union argues that the employer had the obligation to request mediation or go back to the union to propose to continue negotiations. The union, however, fails to note its responsibility in the matter. It, too, could have requested mediation. The employer immediately wrote the union a letter summarizing its positions and stating that the union declared impasse and that the employer agreed. The union failed to respond to the letter and did not notify the employer that it had not called for impasse and that it did not believe the parties were at impasse.

SECTION SEVEN - SKIMMING

Applicable Legal Standards

Skimming occurs when an employer, without providing due notice and the opportunity to bargain, transfers work historically performed

by employees in one bargaining unit to employees outside of that bargaining unit. *South Kitsap School District*, Decision 472 (PECB, 1978); *Spokane County Fire District 9*, Decision 3482-A (PECB, 1991); *City of Seattle*, Decision 8313-A (PECB, 2003). In such cases, the Commission has ruled that bargaining unit has a legitimate interest in preserving the work it has historically performed. *Yakima County*, Decision 6594-C (PECB, 1999) and *Spokane Fire District 9*, Decision 3482-A (PECB, 1991). Both the decision to transfer bargaining unit work and the effects of that decision on bargaining unit employees may be mandatory subjects of bargaining. *Battle Ground School District*, Decision 2449-A (PECB, 1986).

Establishing that the work at issue is or could be bargaining unit work is a key element of proof in a skimming case. *City of Anacortes*, Decision 6830 (PECB, 2000). The Commission considers five factors when determining whether a duty to bargain exists concerning an alleged transfer of bargaining unit work. The factors are:

1. The employer's previously established operating practice as to the work in question, i.e., had non-bargaining unit personnel performed such work before;
2. Did [the transfer of work] involve a significant detriment to bargaining unit members (as by changing conditions of employment or significantly impairing reasonably anticipated work opportunities);
3. Was the employer's motivation solely economic;
4. Had there been an opportunity to bargain generally about the changes in existing practices; and
5. Was the work fundamentally different from regular bargaining unit work in terms of the nature of the duties, skills, or working conditions?

Spokane County Fire District 9, Decision 3482-A (PECB, 1991).

Another key inquiry in a skimming case is whether there has been an actual change in work assignments. Absent such a change, there is no basis to find a refusal to bargain violation. *Evergreen School District*, Decision 3954 (PECB, 1991) (citing *City of Seattle*, Decision 2935 (PECB, 1988)). If an employer merely implements or reiterates a policy that has been long-standing and was established with the union's knowledge and acquiescence, then no unilateral change in employees' terms and conditions of employment will be found. No duty to bargain arises from a change that has no material effect on wages, hours, or working conditions. *Evergreen School District*, Decision 3954 (PECB, 1991); *City of Anacortes*, Decision 6863-B (PECB, 2001).

Issue 24: Marshals & Transport Officers

It is undisputed that corrections officers assigned as transport officers are responsible for escorting inmates to and from areas outside the jail facility, including the courthouse. While they are performing this duty, transport officers are responsible for the safety and security of the inmate in their custody. In comparison, employees classified as marshals are commissioned officers under the Snohomish County Sheriff's Office whose primary responsibility is maintaining the security of the Snohomish County campus, including the courts. Marshals are not a part of the officer's bargaining unit. Officer John Reid summed up the difference between the two positions as follows, "If an emergency occurs within the courthouse, the transport officer's main concern is to safeguard the inmate and perhaps remove him while the marshal must respond to the emergency, wherever it may be."

The union alleges that the employer committed an unfair labor practice on April 5, 2005, when marshals were utilized as transport officers during a high profile case involving inmate Jerry Jones. On the day of the court case, Officer John Reid, a transport

officer, noticed that only two corrections officers were assigned to transport Jerry Jones. Subsequently, he requested that two additional officers be assigned to transport Jones as was customary with such high profile cases. Instead of following past practice, the union alleges that the employer put marshals on the transport schedule and assigned two marshals as transport officers for the hearing. Thus, the union alleges, the employer took bargaining unit work from the union.

The employer agrees with the union as to what are the primary functions of marshals and transport officers. However, the employer specifically denies that it assigned marshals as transport officers for the April 5, 2005, hearing. Prior to the hearing, Sergeant Fairbanks, who was substituting for the regular transport sergeant, was informed that an officer felt that a transport involving inmate Jerry Jones should have more than two escorts. Fairbanks communicated this information to Commander Bly, who provided the following testimony:

> I told [Fairbanks] [of] my knowledge of the case, having been in the courtroom, and that we didn't need any additional (transport) officers there, just the normal two. But that I made arrangements for the marshals to be there to provide security. I talked with the Sheriff's department and a number of detectives were going to be in the courtroom, so she didn't need to worry about the additional officers. There was going to be plenty of people there to provide security.

Bly further testified that on the day of the hearing, Fairbanks assigned two officers to transport Jerry Jones. She also made the following notation after the names of the transport officers: "(Marshals)."

Bly conceded that the notation was unusual. Customarily, only the names of the transport officers are listed on the assignment sheet.

Bly surmises that the notation was written to both allay concerns about security and to show that marshals had been alerted to be on stand by. Once there, the employer maintains that the marshals did not perform any of the duties associated with transport officers, nor did the county direct them to perform the work of transport officers. Marshals Mark San Diego and George Willoth testified that they never took control of the inmate or escorted the inmate.

The employer also that argues that in the past marshals have assisted transport officers in physically escorting inmates. Marshal Willoth stated that the marshals have filled in for transport officers 3 or 4 times over the last seven years. County marshals, by virtue of their commission with the Sheriff's office, have the authority to take inmates into custody and transport them into jail. In addition, other law enforcement agencies perform the task of transport when they borrow out inmates for questioning or bring inmates from jail to night court.

The parties agree that the Jones sentencing was high profile. As such, according to the union, the past practice at the facility dictated that more than two transport officers escort Jones to the hearing. Instead, the employer assigned two marshals and two transport officers to escort Jones as noted by the marshals who testified that a transport officer had contacted them concerning the Jones trial. The union also argues that the marshals did, in actuality, escort inmate Jerry Jones, as evidenced by a videotape, and the marshals were clearly in a position of custody of the inmate.

The Commission places a high value in promoting procedures and protocol which protect bargaining unit work. *International Association of Fire Fighters v. City of Yakima*, 91 Wn.2d 101 (1978) and *Zylstra v. Piva*, 85 Wn.2d 743 (1975). Allegations that an employer

is taking bargaining unit work away from the union are of a serious nature. The union argues that the employer was required by past practice to schedule four transport officers because the Jones hearing was high profile. The Examiner rejects that argument and finds that it is part of the managerial prerogative to decide the nature of the hearing and the number of transport officers that should be present in a given hearing. Clearly, in this instance, the employer carefully considered the circumstances in making its decision to schedule only two transport officers, and in doing so, the employer did not commit an unfair labor practice.

It is noted that the union's complaint also states that the employer assigned marshals who performed the work of transport officers. The Examiner specifically rejects the employer's argument that marshals are allowed to transport work in the present situation because law enforcement agencies perform the work of transport officers in other contexts. The Examiner also rejects the employer's argument that marshals are allowed to perform the work of transport officers in the present situation because marshals have had to fill in for transport officers in the past. Neither argument is relevant to the present dispute as transport officers were readily available for the work.

The union has the burden to establish that the employer illegally assigned transport work to marshals and that the marshals performed that work. The evidence presented did not establish to the Examiner's satisfaction that the employer expressly assigned two marshals to work as transport officers. The marshals may have been contacted in the context of securing the courtroom, and the notation may have, indeed, been written to allay fears about security. The notation was written by a sergeant who does not normally post the assignments and is not conclusive proof that the employer skimmed bargaining unit work away from the corrections officers.

The union must also demonstrate that the work in question was traditional bargaining unit work performed by employees outside the bargaining unit. *Spokane County Fire District 9*, Decision 3482-A (PECB, 1991). The Examiner is not persuaded that the marshals performed the actual work of transport officers. The role of the marshals is to secure the courtroom. As such, it is within the purview of the marshals to keep the public a safe distance away from the inmates. This duty is related to the duty of the transport officers. The main difference between the jobs is that transport officers take physical control of the inmate. The evidence did not show that the marshals took physical control of inmate Jones or escorted him.

In addition, as the duties of a marshal and a transport officer are related, occasionally, it would not be unusual for a marshal to touch an inmate escorted by transport or even help take control of an inmate in an emergency situation. The purpose of protecting bargaining unit work is not to draw boundaries so concrete that no overlap can ever occur. Sometimes, an overlap occurs inadvertently or by necessity. Based on the record a whole, the Examiner finds that the employer did not illegally transfer bargaining unit work to county marshals, and that section of the complaint is dismissed.

Issue 25: Bloss and Transport Officers

Corrections counselors at the jail are involved with hearing inmate disciplinary charges, assisting staff in determining inmate health needs, assisting staff in classifying inmates for housing, and assisting inmates with judicial issues. Corrections officers, in comparison, are responsible for keeping the facility secure, keeping the inmates safe, and occasionally escorting inmates to different areas of the jail. The union alleges that the employer committed an unfair labor practice when it allowed Terry Bloss, a counselor, to

escort prisoners to various parts of the jail, effectively taking work from the bargaining unit.

Bloss, a former corrections officer, manages the library at the jail with the assistance of trustees (minimum security inmates who were allowed to move from their modules to the library without escorts). During the construction of Oakes Street, the employer required that all inmates, including trustees, must have escorts. The employer initially informed Bloss that she could escort trustees to the library.

On April 19, 2005, Bloss picked up a trustee from his module to escort him to the library. While Bloss was escorting the trustee, two corrections officers approached her and asked her who gave her the authority to escort the inmate. Bloss informed the employer about the incident, and the employer told her not to escort any other inmates.

The next day Bloss encountered two inmates in the elevator lobby on the fourth floor of Wall Street. The inmates were waiting to enter the secure lobby area between 4 North and 4 South. According to Bloss, after she pushed the cue button on the secured door, central control room informed her that the inmates were feeders awaiting an officer to escort them inside. Bloss then suggested to the control room that the inmates could come with her to the sallie port area to wait for the officer. She would continue to her office and leave her office door open.

Applying the five factor test used by the Commission to determine if bargaining unit work has been unlawfully taken from a bargaining unit, both parties agree that escorting prisoners is under the purview of the bargaining unit. It is also undisputed that the employer told the counselor that she could escort inmates, and that,

she, in fact, escorted inmates to the library. In addition, bargaining unit members lost work, and the employer did not provide any economic rationale for its decisions. Therefore, the Examiner finds the employer committed an unfair labor practice when it sanctioned and allowed Bloss to escort prisoners to the library.

In regard to the second incident, the duty of the custody officer is to not only escort inmates from the lobby to the module, but to supervise inmates during the various parts of the escort. In taking the inmates from the lobby through the secured doors and supervising the inmates, the Examiner finds that the counselor again performed bargaining unit work. The evidence does not support, however, that the employer sanctioned Bloss' actions or told her that she could escort the inmates through the secured door. The decision to escort the inmates was a decision made by Bloss, not by the employer. Based on the record before the Examiner, she acted on her own. Therefore, the Examiner finds that the employer did not commit an unfair labor practice when Bloss escorted prisoners to the sallie port, and that part of the complaint is dismissed.

Issue 26: Booking Clerks and Corrections Officers

The union asserts that the employer has transferred duties related to inmate property from officers to booking clerks. According to the union, historically the duty of officers working in the main booking area was to pat down an inmate, remove any property, hand property to the booking clerk, and interview the inmate. The booking clerk, in comparison, handles the property, but never has direct contact with the inmate.

The union alleges that since the opening of the new jail the employer has unilaterally made significant changes to the booking procedures. The booking clerk now pats down an incoming inmate, hand inventories the property, and interviews the inmate. The level

of interaction between the booking clerk and the inmate is now much higher under the new procedures.

The employer agrees that prior to the opening of the new jail facility officers stationed in the main booking area worked with booking clerks assigned to the property clerk post. According to the employer, the booking clerks worked in the property room, which was adjacent to the main booking area. In the normal course of work, officers would escort an incoming inmate to the main booking area and then hand that inmate's property to the booking clerk in the property room through the pass-through area located below a screen. The booking clerk would then inventory the property and hand back property the inmate was allowed to have. The officer would then go through the list with the inmate. On occasion, however, the booking clerk would go over the list with the inmate while the officer was setting up booking photos. The employer asserts that this procedure is in line with the job description for the booking assistant which reads, in part, as follows:

2. Interviews prisoners to obtain needed information.
5. Receives and searches property from prisoners.

The booking area moved to Oakes Street in 2005. Although the booking clerk no longer worked in a separate room behind a window, the duties of the booking assistants, according to the employer, have remained the same. They work behind a desk, interview inmates, create property lists, and ensure that the inmates sign the property lists.

In addition, the employer concedes that there are times when the booking clerk handles the much of booking procedure, which would include the "pat down" of inmates. This occurs when an inmate comes in as a result of a street arrest, with a police officer. The

employer asserts that this has been the past practice at the jail for years.

The union has the duty to establish that the employer unilaterally changed a past practice involving bargaining unit work without notifying the bargaining unit or providing them the opportunity to bargain. Aside from its assertions, the union offered little evidence that demonstrates the employer strayed from established practices. Although the union presented testimony by officers, the union did not present testimony by property or booking clerks. In addition, the record establishes that property/booking clerks share in the responsibility of "pat downs" and interviewing inmates with corrections officers. The weight of the evidence presented by the union does not support that the employer committed an unfair labor practice in allowing booking assistants to interview, take note of property, "pat down" inmates, and hand the property back to custody officers. Therefore, the section of the complaint concerning these allegations is dismissed.

Issue 27: Storekeepers and Corrections Officers

The union asserts that the employer committed an unfair labor practice when it transferred bargaining unit work to the corrections storekeeper position. Prior to the opening of the new jail, it was the exclusive duty of corrections officers to open and search the inmates' mail. Officer John Haskell testified that custody officers on the graveyard shift had searched mail for contraband for the last six years. Although there was a mailroom clerk at one time, the mailroom clerk had no duties related to opening or storing the mail. After Oakes Street opened, the duties of opening and sorting the mail were transferred to a position outside the bargaining unit. According to the union, the employer did not provide them with an opportunity to bargain the effects of such a change, and as a

result, bargaining unit work and potential wages have been lost by bargaining unit members.

According to the employer, the jail had historically employed a corrections assistant-mail clerk position. Due to funding, the position, however, was not always filled, and when it was not filled, the employer utilized corrections officers to search the mail for contraband. In the months prior opening of Oakes Street, the employer received funding to staff a corrections assistant-mail clerk position. After re-classifying the position as a corrections storekeeper, the employer assigned the new position the exclusive responsibility of sorting through the mail in search of the contraband.

The five-factor test used by the Commission shows that the bargaining unit work in question was skimmed out of the bargaining unit. For the last six years, corrections officers on the graveyard shift were responsible for opening and sorting through the mail. This work was related to the regular duties of the officers, including delivering of the mail and searching for contraband. The employer then unilaterally took those duties away from the bargaining unit and failed to negotiate the effects of their actions, which include the loss of work and potentially, loss of money. Therefore, it is found that the employer unlawfully transferred bargaining unit work to the position of storekeeper.

The Examiner rejects the employer's argument that it occasionally utilized corrections officers to perform these duties when the position of storekeeper could not be funded. The weight of the evidence supports that the corrections officers consistently performed the work of opening and searching mail for six years. The Examiner also rejects the employer's argument that the storekeeper is allowed to search the mail simply because his job description

permits such actions. While the employer may, in some cases, unilaterally change a job description, the employer may not unilateral take work away from a bargaining unit. *City of Pasco*, Decision 4197-A (PECB, 1994). In summary, the Examiner finds that the employer committed an unfair labor practice when it transferred bargaining unit work to the position of storekeeper.

SECTION EIGHT - WEINGARTEN RIGHTS

Applicable Legal Standards: Weingarten Rights

RCW 41.56.040 guarantees the right of public employees to organize and be free from interference in the exercise of their collective bargaining rights. RCW 41.56.140(1) makes it an unfair labor practice for an employer to interfere with, restrain, or coerce public employees in the exercise of their collective bargaining rights. *Okanogan County*, Decision 2252-A (PECB, 1986), establishes that the policy enacted in the U.S. Supreme Court decision issued in *N.L.R.B. v. J. Weingarten, Inc.*, 420 U.S. 251 (1975), applies to Chapter 41.56 RCW. In *Weingarten* , the U.S. Supreme Court held that an employee had a statutory right to refuse to submit to an interview without union representation if he or she reasonably fears disciplinary action may result. Thus, under the Weingarten standard, an employer interferes with an employee's collective bargaining rights when the following occurs:

1. The employee reasonably believes that a meeting called by management is for the purpose of eliciting information which might support potential disciplinary action;
2. the employee requests union representation; and
3. the employer denies the request.

Okanogan County, Decision 2252-A (PECB, 1986).

It is noted that during the meeting called by the employer, the employer's questions must relate to alleged misconduct by the employee that the employee reasonably believes could result in disciplinary action. *Clover Park School District*, Decision 7073 (EDUC, 2000). An employee's fear of a supervisor does not translate into an automatic right to representation in all meetings with that supervisor. *Clover Park School District*. In addition, an employee's subjective perceptions do not constitute reasonable grounds for invoking Weingarten protections. Rather, objective standards based on all the circumstances of a particular case determine if the concerns are reasonable or not. *Mason County*, Decision 7048 (PECB, 2000),(citing *Spartan Stores, Inc., v. NLRB*, 628 F.2d 953 (6th Cir. 1980)). An employer's assurances that the inquiry will not be disciplinary do not protect the employer from Weingarten violations if the employer changes direction during the meeting and converts an announced non-disciplinary, "counseling" session into an investigation. *Cowlitz County*, Decision 6832-A (PECB, 1999).

Issue 28: Reyes Investigatory Interview

The union contends that the employer interfered with the union's Weingarten rights during an interview involving Officer Keith Reyes. Specifically, the union asserts that the employer effectively barred Officer/Union President Carrell from his role as a union representative during a March 11, 2005, investigatory interview of Reyes. According to the union, there was some confusion during key points of the interview. When Carrell attempted to seek clarification about questions posed by Captain Randy Harrison, he was essentially told to be quiet. Carrell testified that at one point Harrison became very agitated and admonished him saying, "At this point . . . I'll advise you that your role here is to counsel Reyes." According to the union, after the investigatory interview, Harrison told Carrell that his role was not to ask questions or be involved in the interview process. Rather, he was there to counsel the employee he

represented in accordance with the appropriate sections of the collective bargaining agreement.

The Examiner notes that it is well-established law that employees have a right to union representation at investigative interviews, where the employee has a reasonable belief that the interview may result in disciplinary action. *Morton School District*, Decision 6735 (PECB, 1999). Denial of a request for union representation is an unfair labor practice under the National Labor Relations Act. *National Labor Relations Board v. Weingarten, Inc.*, 420 U.S. 251 (1975) and under *Okanogan County*, Decision 2252-A (PECB, 1986). The Supreme Court established a union representative's right to assist and counsel represented employees during an investigative interview. According to the Supreme Court, during an investigatory interview, the employer must inform the union representative of the subject of the interrogation. The union representative must also be allowed to speak privately with the employee before the interview. During the questioning, the representative can interrupt to clarify a question or to object to confusing or intimidating tactics. The union representative may also advise an employee on how to answer a question although he or she cannot advise the employee to lie or tell the employee what specifically to say. The union representative may take notes and provide additional information to the employer at the end of questioning. Although the union representative may be expected to speak and be proactive during an investigatory interview and not be merely a silent witness, the union representative does not have the right to interfere with or disrupt the interview. The same rights have been found applicable to public employees in Washington under Chapter 41.56 RCW. *See Okanogan County*, Decision 2252-A (PECB, 1986).

In the present case, there is no dispute as to whether the Reyes interview involved Weingarten rights. Rather, at issue is whether

the employer's conduct significantly inhibited the effectiveness of the Carrell's representation. During the Reyes interview, the record establishes that the following exchange occurred:

1. Captain Harrison asked Reyes if he had ever accessed any Correctional Department policies online.

2. Carrell then interjected with the following: Captain Harrison, do you mind if I ask a question? I mean, you're getting around policies. Along this way, how many policies are on the computer to date? Do we know?

3. Harrison then responded: I don't know. But at this point . . . I'll advise you that your role here is to counsel Reyes.

4. After the interview, Carrell and Harrison had an additional exchange regarding the role of the union representative. Carrell testified that Harrison told him not to talk. Carrell also testified that Harrison raised his voice and took an aggressive tone.

The evidence does not support that the employer impaired Reyes' right to effective representation. Commission case law allows a union representative to ask clarifying questions during investigatory interviews. The Examiner finds that the questions Carrell asked were not clarifying; rather, it was an attempt to present a point or support an argument in favor of Reyes. In addition, the evidence is not persuasive that the employer impaired the union's representation through gestures, body language, or non-verbal cues. Although Harrison became more stern, the record has not established that his actions prevented the union from counseling Reyes.

Furthermore, the exchange between Harrison and Carrell after the interview does not equate to a violation of the Weingarten doctrine. First, the exchange occurred after the interview. Weingarten rights do not attach after an interview, where there is no further

representation. Second, the exchange between the two officers centered on their interpretation of the role of the union representative. A philosophical difference does not automatically surmount to a Weingarten violation. The evidence is not convincing that Harrison's behavior negatively impacted Reyes' representation.

Issue 29: Sigh Investigatory Interview

To prove its assertion that the employer violated the Weingarten rights of Officer Sherry Sigh on April 15, 2005, the union provided the following background information. Officer Sigh asked Officer Juan Rubio to represent her during an investigation interview for job performance issues on April 15, 2005. Prior to the interview, Captain Randy Harrison informed Rubio that his role was to be a silent witness and that the full extent of Rubio's role would be to caucus with his client. Rubio testified that during the interview Harrison consistently waved his hand to silence him, and after the interview, Harrison admonished him for acting outside the scope of his representation. Rubio stated that his intention was to only ask clarifying questions, but he felt his role as a representative was hampered by Harrison's attitude and actions.

Harrison, however, testified that he did nothing to impede Sigh's representation. At no time did he tell Rubio that his role was restricted to being just a silent witness, nor did he make any gestures to indicate that Rubio was not to speak. According to Harrison, Rubio actively participated in the interview.

The burden of proof is on the union to prove that the actions by the employer interfered with the representation of Sigh. The Examiner finds that the union has not met that burden. The verbatim transcript of the Sigh interview, admitted into evidence in this matter, reflects that Rubio consistently made comments and interjections. These comments ranged from argumentative points to factual

notations to objections. No disparaging comments by Harrison are noted in the transcript.

The union also argues that the conversation held between Rubio and Harrison after the interview is evidence of the employer's attempt to interfere with union representation. The Examiner finds the post-hearing discussion between Rubio and Harrison is not conclusive evidence that a Weingarten violation occurred, nor does the Examiner find that the exchange itself represent a violation of the Weingarten doctrine. The exchange, which may have been somewhat heated, centered on their interpretation of the role of the union representative. As stated earlier, a philosophical difference that occurs outside an employer-initiated meeting does not surmount to a Weingarten violation. The Weingarten doctrine is for the benefit of the employee. The evidence is not convincing that Harrison's behavior negatively impacted Sigh's representation.

Issue 30: Frese Investigatory Interview

The union asserts that the employer interfered with the Weingarten rights of Officer Eva Frese during the unemployment hearing of her former supervisor, Sergeant David Hill. According to the union, Officer Frese was ordered to file a false report by Sergeant Hill. Eventually, Captain Harrison began an investigation of Hill which led him to Officer Frese. Harrison then contacted Frese by phone and requested that she file a report describing what occurred between her and Hill to be turned in later that night. Frese, who does not remember when Harrison contacted her, testified that she requested a union representative during that phone call because she feared she would receive discipline as a result of her report. Harrison's response, according to Frese, was that she could get whoever she has there and that he could not send anybody from the main jail to her at that time. Due to the demands of her job, Frese did not file a report at that time; however, she met with Harrison for 20 minutes that night during which time he asked her questions

about her involvement with Hill. Officer Robert Mitchell, who Frese described as a witness, accompanied her to the meeting.

Frese testified that a few days later Harrison came by her post and ordered another meeting. Again, she requested union representation; however, the shop steward was not available. Once again, Officer Mitchell accompanied her to the meeting during which the events surrounding her involvement with Hill were discussed.

On July 8, 2005, the employer ordered Frese to testify at the unemployment hearing of her now-terminated superior. Frese testified that she again requested union representation because she feared that, based on the answers she would give during the hearing, she may be the subject of disciplinary action in the future. According to Frese, she requested that Officer Carrell be relieved of his duties to act as her union representative. The employer refused her request and told her that she did not need a representative because it was an unemployment hearing focusing on her former supervisor's conduct.

The union now alleges that Frese should have received union representation during the unemployment hearing. The union asserts that Frese feared that she would receive discipline based on the answers she gave. Her fear was also grounded in the fact that the employer never gave her a clear answer as to whether she would be disciplined and she had heard rumors that she was under investigation. Under the Weingarten doctrine, the union argues that Frese had the right to union representation during any interview in which questions are raised about alleged misconduct.

The employer asserts that it did not violate the Weingarten doctrine during the unemployment hearing. The employer argues that Weingarten doctrine does not apply because Frese was never called to testify. Sergeant Hill, the subject of the unemployment hearing,

never appeared, and the hearing was cancelled. In addition, the unemployment hearing, is a quasi-legal hearing where Frese would act only as a witness. She would not be the focus of discipline. Director Thompson testified that he specifically told Frese on more than one occasion that he was not planning on disciplining her for any role she had in falsifying records.

By its nature, Weingarten rights attach during employer-initiated investigatory interviews. *NLRB v. Weingarten*, 420 U.S. 251 (1975) The interview itself is an exercise of managerial prerogative designed to assist the employer in supervising employees and under the control of the employer. Weingarten rights ensure that employer conducts itself in a manner that is respectful of employees' rights, thus, minimizing the need for subsequent litigation. In regard, to the unemployment hearing of Hill, the hearing was a state-initiated proceeding. The employer did not assert control over the proceeding. Moreover, Frese had the right to bring whomever she wanted to the hearing. The employer did not have the authority to deny her representation. Similarly, had the employer subpoenaed Frese to testify in a civil matter, Frese could bring any representation she wanted to that proceeding, as the employer had no control over the proceeding. In addition, as the hearing was never conducted, the employer can assume no liability in denying Frese union representation. *University of Washington*, Decision 8794 (PECB, 2004). A cause of action under Weingarten cannot exist if no hearing or investigatory interview is held. Therefore, the union's complaint alleging that the employer violated the Weingarten violation during the unemployment hearing is dismissed.

FINDINGS OF FACT

1. Snohomish County is an employer within the meaning of RCW 41.56 and operates a jail, which, at one time, was comprised of the

Carnegie Building, the Indian Ridge Facility, the Oakes Street Facility, and the Wall Street Facility.

2. At one time, Teamsters 763 represented all full time and regular part-time officers below the rank of sergeant at the jail, and it had a collective bargaining agreement in effect from 2003 to December 2005.

3. Since December 10, 2004, the Snohomish County Corrections Guild has represented all full time and regular part-time officers below the rank of sergeant at the jail. The employer and the Guild have been unable to reach agreement on a successor collective bargaining agreement.

4. The union filed an amended complaint with the Commission on July 19, 2005, encompassing over 25 allegations, most of which came about in relation to the remodeling of the Wall Street Facility and the opening of the Oakes Street Facility. During the hearing, the union moved to amend the complaint to include allegations that the employer illegally mandated employees to work in support positions. Amendments to the complaint after a hearing has started are not permitted if the opposing party objects.

5. Since 2003, the employer has conducted extensive remodeling of the Wall Street Facility. The employer completed construction of the Oakes Street Facility in May 2005, and many of the services conducted at Wall Street were moved to Oakes Street, including booking and the cafeteria. Prior to the move, the employer sent the staff e-mails detailing the move to Oakes Street, and it provided architectural plans of the new facility to employees long before it was built. The employer provided employees the opportunity to provide comment about its planned

move. At no time during the planning phase did the union request to bargain the effects of the remodeling or the new building.

6. Historically, the bargaining unit had the exclusive use of a bulletin board. The employer purchased a glass-encased bulletin board for union use prior to the move to Oakes Street. Once Oakes opened, the employer placed the glass-encased bulletin board outside the cafeteria in the new building. The employer was unable to hang the board in the cafeteria because the cafeteria walls could not support the case.

7. Modules at the Wall Street Facility often contained bathrooms. Some modules at the Oakes Street Facility lack bathrooms. The employer has traditionally given employees two 15 minute breaks during a particular shift, during which time the employees have had access to a break room, a dining room, or various sally ports.

8. The employer has the duty to contain and control inmates. To accomplish this goal, the employer, in 2005, began using new technology at the Oakes Street Facility. With the implementation of the new technology at Oakes Street, it took officers a longer time to take a bathroom break because the technology sometimes did not allow them access to parts of the jail, officers were still adjusting to the new technology, and the correct protocol in calling for relief was not always utilized. In general, the new security features have increased the amount of time required to travel through the jail facility. However, with officers getting used to the new technology at Oakes and the addition of new break room, travel time has improved at the jail.

9. During the remodeling of the Wall Street Facility in 2003, the employer secured a contract to provide bottled water at the booking area of Wall Street. The contract was suppose to be temporary, but it became an established practice. After the booking area was moved to Oakes in 2005, the employer failed to continue to provide bottled water to the booking area. An employee garnered a bottled water contract at Indian Ridge without proper authorization. The employer had no knowledge of the employee's actions. After it learned about the unauthorized contract, the employer discontinued water delivery at Indian Ridge.

10. Lockers and showers, which, at one time, were located in the Wall Street Facility, were made available to employees. More often than not, employees had access to a locker if he or she desired. During the remodeling of Wall Street in 2005, the lockers were moved to the Carnegie Building, and employees had to use a shower facility located at the Oakes Street Facility. The new showers lack the security of the showers at the former location. Not only are the showers near inmates, but they lack strong locks.

11. There was a locker shortage for an extended period of time in 2005. The employer never attempted to negotiate any negative impacts of the new shower facility or the locker shortages with the union.

12. At one time, the employees had access to a television, which had been purchased by an employee services group. The employer provided and maintained cable for the television. During the remodeling and move to Oakes Street, the television disappeared. There is no evidence that the employer retained possession of the television.

13. With the opening of the Oakes Street Facility, officers attained proximity cards to replace the identification badges used prior to the expansion. The cards are the same size as the badges and contain the same information. The proximity cards have the added capability of opening doors at the Oakes Street Facility.

14. Prior to 2005, the employer used radios that operated on a VHF frequency. In 2005, the employer purchased radios that operated on a 800 MHz frequency in order to stay a part of the county emergency dispatch coalition. The new radios did not have access to county dispatch. Only corrections officers assigned as transport officers are required to have radios with access to county dispatch; hence, in 2005, there existed a period when transport officers had to use both a VHF frequency radio and an 800 MHz radio.

15. Due to an increased demand for transport workers and the opening of a new facility, there existed a shortage in radios in 2005. The shortage of radios impacted the ability of the employees to do their work. The employer did not negotiate the impact of the shortage with the union.

16. Prior to the opening of the Oakes Street Facility, three mechanisms were used to open security doors at the Wall Street Facility: keys, contacting the central control room, and the Magellus unit. With the opening of Oakes Street, officers were required to carry personal digital assistants (PDA's) to open cell doors. The PDA's failed on numerous occasions, endangering the lives of officers. The employer did not provide the union the opportunity to bargain the effects of PDA usage.

17. Prior to the opening of the Oakes Street Facility, some cell doors at the Wall Street Facility utilized automatic locking features. When Oakes Street opened, it utilized doors that automatically shut as well a new alarm system.

18. There exists an established process by which employees apply for leaves of absences. At one stage of the process, employees may submit "special day off" requests to their superiors. The employer has discretion to grant or deny these requests.

19. On January 30, 2005, Captain Eby denied the "special day off" request for Officer Aurelia Jackson. Another captain granted leave to an officer who is junior to Jackson. On February 8, 2005, the employer denied the "special day off" request of Officer David Kosnosky, while granting leave to an officer junior to Kosnosky.

20. Historically, the employer and bargaining unit members participate in a defined, structured, and established procedure to complete a vacation calendar. With a protocol that requires the employer to contact every union member by seniority, the date by which the calendar is completed has varied throughout the years. In 2005, the employer completed the vacation calendar approximately one month later than in the prior year.

21. The employer and the union agreed to switch the payroll from a monthly payroll system to a bi-monthly system. Prior to the change, leave was available and a cleaning allowance was paid upon the issuance of the monthly payroll check at the end of the month.

22. When the bi-monthly payroll system began, the employer unilaterally began paying the cleaning allowance in two installments. The employer also directed that accrued leave could only be used after it posts on the 7th and 22nd of each month. The employer did not provide notice to the union concerning the changes, nor did it provide them the opportunity to bargain the effects of the changes.

23. Historically, the employer has assigned officers to work in different locations or posts at the jail. In 2005, the employer mandated officers to supervise inmates in the kitchen and laundry areas, which the union regarded as a unilateral change in working conditions. During the construction and the remodeling in 2005, the employer temporarily assigned officers to work as construction escorts due to safety concerns, which the union also regarded as a unilateral change in working conditions.

24. Historically, the employer has created applications with job descriptions for custody officers. Since 1993, the job description of officers have included the following duties: assisting with outstanding warrants; monitoring the use of prescribed medications of inmates; assisting with operating the control room; and assisting with records, receipts, and payments. Assisting with these duties are a natural extension of an officer's responsibility.

25. One of the duties of corrections officers is to escort prisoners to various parts of the jail and deciding whether inmates are capable of navigating the stairs. With the remodeling of the Wall Street Facility in 2005, the old inmate visitation rooms were not available. Officers were given the choice of whether to navigate stairs as they escorted the inmate to the

new visitation room or to avoid the stairs, escorting the inmate to a different visitation venue.

26. Another duty of corrections officers is to schedule visitation for inmates. At one time, officers working the graveyard shift used a fixed system to schedule visits. Since 2005, the employer has required that all officers schedule visits using a special request system.

27. The employer uses a seniority-based system to schedule mandatory and voluntary overtime. In 2005, Officer Lundi volunteered for an overtime shift. The employer mistakenly sent Officer Lundy home instead of a less junior officer.

28. In scheduling mandatory overtime, historically, the employees did not need to have a full overtime credit to be passed over. In 2005, the employer ordered Officer Howard to work a mandatory shift over junior officers who had earned only a half credit of overtime.

29. Employees are not allowed to work over 16 consecutive hours. In 2005, Officer Swenson was ordered to work a third overtime shift over Officer Young, who had yet to work overtime. Had Young worked the overtime shift assigned to Swenson, she would have worked over 16 hours in a row. No evidence was presented during the hearing as to what the practice is when the overtime rule is in conflict with the 16 hour rule.

30. A consistent practice at the facility was that the employer could mandate employees to work overtime in the control room operator assignment.

31. In 2005, the employer changed the qualifications necessary to become a field training officer, without notifying the union or providing them the opportunity to bargain.

32. After a budgetary review in 2004, the employer determined that de-activating the Indian Ridge Building would save the county nearly $800,000. In September 2004, the employer sent employees e-mails stating that the county planned to close Indian Ridge. In May 2005, the union and the employer bargained the effects of closing Indian Ridge. Three meetings were held.

33. Marshals, who are not in the bargaining unit, safeguard the courtroom during hearings while corrections officers assigned as transport officers maintain physical control over inmates. The primary distinction between the responsibilities lies within who has physical control over the inmates. Ultimately, however, the functions of the jobs are similar, and there often is some overlap when marshals and transport officers perform their respective duties.

34. The role of jail counselors, who are not in the bargaining unit, is to provide health, judicial, and housing assistance to inmates. Jail counselors do not normally escort prisoners. Corrections officers escort inmates in the jail. The employer allowed a counselor to escort an inmate to the library on April 19, 2005. After this incident, the employer told the counselor not to escort any inmates. On April 20, 2005, the counselor escorted an inmate from the elevator to the lobby without the employer's knowledge or authorization.

35. For the last six years, bargaining unit members have opened and searched inmate letters for contraband. In 2005, The employer

unilaterally moved that work to the position of jail storekeeper, which is outside the bargaining unit.

36. Booking clerks, who are not a part of the bargaining unit, have historically interviewed inmates and inventoried property. Patting down is a task assigned to both bargaining members and booking clerks.

37. During an investigatory interview with Officer Keith Reyes in 2005, the union representative actively participated in the meeting and presented arguments. The employer did not interfere with Reyes' representation. After the interview, the union representative and the employer argued about the Weingarten doctrine and the role of a union representative during investigatory interviews.

38. During an investigatory interview with Officer Sherry Sigh, the union representative actively participated in the interview. After the interview, the union representative and the employer argued about the Weingarten doctrine and the role of a union representative during investigatory interviews.

39. Officer Eva Frese requested union representation when she was to testify at an unemployment hearing of her former supervisor. The hearing was to be conducted by the State of Washington Employment Security Department. The unemployment hearing never occurred, and Frese never testified.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW.

2. The motion to amend the complaint to include mandatory overtime in all support positions cannot be granted based upon WAC 391-070. Thus, the allegation concerning mandatory overtime in support positions, excluding that of control room operator, is beyond the scope of the present hearing.

3. The employer did not commit an unfair labor practice under RCW 41.56.140 when it purchased a new bulletin board for the union. In purchasing the bulletin board, the employer maintained the past practice, which was for the employer to provide one bulletin board for the exclusive use of the bargaining unit. The size and location of the new bulletin board had little impact on the bargaining unit. Thus, the issue of bulletin boards, as alleged by the union, is not a mandatory subject of bargaining.

4. The employer did not commit an unfair labor practice under RCW 41.56.140 when it incorporated work stations that lacked bathrooms at Oakes Street or when it mandated that relief officers be used. The use of relief officers and having stations that lack bathrooms represent a past practice at the jail. Any increase in the time it takes for an officer to go to the restroom can be attributed to new security technology, which the employer has the right to implement. Thus, the issue of bathrooms, as alleged by the union, is not a mandatory subject of bargaining.

5. The employer did not commit an unfair labor practice under RCW 41.56.140 when it maintained that the past practice of giving employees two 15 minute breaks. Any increases in the amount of time it takes an employee to reach the break room can be attributed to new security features. Adding new security features is a managerial prerogative. Thus, the issue of

bathroom breaks as alleged by the union, is not a mandatory subject of bargaining.

6. The employer did not commit an unfair labor practice under RCW 41.56.140 when it cancelled a water contract at Indian Ridge. The employer had no prior knowledge that the water contract existed. Thus, the issue of water contracts at Indian Ridge as alleged by the union is not a mandatory subject of bargaining.

7. The employer committed an unfair labor practice under RCW 41.56.140 when it removed the water cooler from the booking area. Providing potable water is a mandatory subject of bargaining, and the past practice was that the booking area had a water cooler.

8. The employer did not commit an unfair labor practice under RCW 41.56.140 when it refused to give the union a television. The past practice was that the employer provided cable access for the television, which it continued to do. Moreover, the evidence does not support that the employer retained the television after renovations. The issue of the loss of television as alleged by the union is not a mandatory subject of bargaining.

9. The employer did not commit an unfair labor practice under RCW 41.56.140 when it purchased proximity cards and required officers to use them. Implementing technology that aids the employer in increasing security is a managerial prerogative. The use of the cards has had little impact on bargaining unit members. Thus, the issue of proximity cards as alleged by the union is not a mandatory subject of bargaining.

10. The employer did not commit an unfair labor practice under RCW 41.56.140 when it switched from VHF radios to 800 MHz radios. The switch had little impact on bargaining unit members and represents a managerial prerogative.

11. The employer committed an unfair labor practice under RCW 41.56.140 when it failed to properly notify and bargain with the union the shortage of radios. Radio shortages is working condition that significantly impacted bargaining unit members and thus, is a mandatory subject of bargaining.

12. The use of PDA's is a working condition. The employer committed an unfair labor practice under RCW 41.56.140 when it implemented the use of PDA's, failed to notify the union that the PDA's often did not work, and failed to bargain the effects of PDA usage.

13. The employer did not commit an unfair labor practice under 41.56.140 when it implemented the use of automatic locks and an alarm system at Oakes. The use of the locks and the alarm system has had little impact on bargaining unit members. As they increase security, the employer has the right to implement automatic locks and alarms.

14. The union has not met its burden to prove that the employer has historically been prevented from denying "special day off" requests at its discretion. Therefore, in denying the leave requests of Officer Kosnosky, the employer did not commit an unfair labor practice under RCW 41.56.140.

15. The union has not met its burden to prove that the employer has historically been prevented from denying "special day off" requests at its discretion. Therefore, in denying the leave

requests of Officer Jackson, the employer did not commit an unfair labor practice under RCW 41.56.140.

16. The union has not met its burden to prove that the employer unilaterally changed or strayed from the established protocol in completing the vacation calendar. Thus, in completing the calendar a month later than the prior year, the employer did not commit an unfair labor practice under RCW 41.56.140.

17. Leave, as it is a working condition and it affects wages, is a mandatory subject of bargaining. In 2005, the employer unilaterally changed its procedures in which leave was accrued and posted, and thus, committed an unfair labor practice under RCW 41.56.140.

18. A cleaning allowance, as it affects wages, is a mandatory subject of bargaining. In 2005, the employer unilaterally changed the manner in which the cleaning allowance was distributed, and thus, committed an unfair labor practice under RCW 41.56.140.

19. The union has not met its burden to prove that the employer unilaterally changed the practice of assigning posts to employees. In assigning officers to different areas of the jail, the employer followed past practice.

20. The assignment of construction escorts represents a security measure that the employer has the right to implement. Thus, in assigning officers to this duty, the employer did not commit an unfair labor practice under RCW 41.56.140.

21. Listing additional job duties on a job description is not a mandatory subject of bargaining. Thus, the employer did not

commit an unfair labor practice under RCW 41.56.140 when it listed duties alleged by the union.

22. Assisting with checking outstanding warrants, assisting with medication monitoring, assisting in the control room, and helping with records and receipts for bail and inmate money represent duties which are a logical extension of officers' present duties. Thus, the employer did not commit an unfair labor practice under RCW 41.56.140 when it required that officers assist in these responsibilities.

23. The union has not met its burden of proving that the employer unilaterally changed the policy regarding escorting lower/lower inmates. Thus, in allowing officers some discretion in deciding whether inmates could navigate stairs, the employer did not commit an unfair labor practice under RCW 41.56.140.

24. The union has not met its burden of proving that the employer changed its policy regarding inmate feeding. Thus, in requiring that officers handle food trays and drinks, the employer maintained the past practice and did not commit an unfair labor practice under RCW 41.56.140. In addition, the policy regarding inmate feeding, which is designed to prevent the distribution of contraband, is a managerial prerogative that the employer has the right to change in the interests of safety.

25. Scheduling inmate visitation is within the purview of bargaining unit work. The work is within scope of work usually assigned to the bargaining unit. Thus, the employer did not commit an unfair labor practice under RCW 41.56.140 when it required that all officers schedule visitation as oppose to a few officers on the graveyard shift. The employer has the right to direct officers to use a specific system to schedule

visitation; such a directive represents managerial prerogative, bearing little impact on officers.

26. In sending Officer Lundi home, the employer made a mistake, inadvertently violating the established past practice regarding voluntary overtime. A single mistake, however, does not equate to a change in past practice. The union has not met its burden to prove that the employer unilaterally changed its policy regarding voluntary overtime. The employer did not commit an unfair labor practice under RCW 41.56.140 when it sent Lundi home.

27. In directing Officer Swenson to work overtime as opposed to directing another officer to work 16 consecutive hours, the union did not meet its burden to prove that the employer strayed away from the established past practice. Thus, the employer did not commit an unfair labor practice under RCW 41.56.140 when it directed Swenson to work overtime.

28. In directing Officer Howard to work overtime as opposed to junior officers who did not complete a full overtime credit, the union did not meet its burden in proving that the employer strayed from the established past practice. Thus, the employer did not commit an unfair labor practice under RCW 41.56.140 when it directed Howard to work overtime.

29. As the employer provided non-discriminatory reasons for its decisions, the union did not meet its burden of proving that the employer acted in a retaliatory manner and interfered with union rights when it initiated an investigation of Officer Howard or when it ordered Howard to mandatory overtime. The employer did not commit an unfair labor practice under RCW 41.56.140 when it began the investigation involving Howard.

30. The union has not met its burden to prove that the employer changed a mandatory subject of bargaining when it directed employees to work in the control room operator position. In directing employers to work the control room operator position, the employer did not commit an unfair labor practice under RCW 41.56.140.

31. Changing the qualifications of a position is a managerial prerogative. Thus, the employer did not commit an unfair labor practice under RCW 41.56.140 when it changed the qualifications for the field training officer position.

32. The union did not meet its burden of proving that the employer failed to bargain in good faith its decision to close Indian Ridge. The employer did not commit an unfair labor practice under RCW 41.56.140 when it failed to contact the union after three bargaining sessions about the Indian Ridge closure.

33. Contacting marshals to attend a hearing represents a managerial prerogative, and as such, the employer has the right to contact marshals to perform those duties legally within their purview. The union did not meet its burden to prove that the employer assigned marshals to perform the duties of transport officers.

34. The employer has the right to decide the number of transport officers that are needed for a hearing. In assigning two corrections officers to a hearing in April 2005, the employer did not commit an unfair labor practice under RCW 41.56.140.

35. On April 19, 2005, the employer committed an unfair labor practice under RCW 41.56 when it allowed a counselor to escort a prisoner to the library, illegally transferring bargaining unit work.

36. As the employer had no prior knowledge and did not give its authorization, the employer did not illegally transfer work to a counselor and commit an unfair labor practice under RCW 41.56.140 when that counselor escorted and supervised inmates from the elevator to the lobby.

37. The union did not meet its burden to prove that the employer unilaterally changed the status quo when it allowed booking agents to interact with inmates.

38. As searching inmate letters had been under the purview of bargaining unit members for six years, the employer committed an unfair labor practice under RCW 41.56.140 when it assigned that work to the storekeeper position, a position outside the bargaining unit.

39. The union did not meet its burden to prove that the employer interfered with the union representation of Officer Reyes and violated the Weingarten doctrine during Reyes' investigatory interview. In its conduct during the Reyes' interview, the employer did not commit an unfair labor practice under RCW 41.56.140.

40. The union did not meet its burden to prove that the employer interfered with the union representation of Officer Sigh and violated the Weingarten doctrine during Sigh's investigatory interview. In its conduct during the Sigh interview, the employer did not commit an unfair labor practice under RCW 41.56.140.

41. When Officer Eva Frese was directed to attend the unemployment hearing of her former supervisor, the protections associated with the Weingarten doctrine did not attach as the hearing was

not an employer-initiated hearing and the hearing did not occur. As the protections did not attach, no violation could occur. When the employer contacted Frese for the purposes of the unemployment hearing, it did not commit an unfair labor practice under RCW 41.56.140.

ORDER

SNOHOMISH COUNTY, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Unilaterally changing the manner in which leave is accrued.

   b. Unilaterally altering the manner in which the cleaning allowance is distributed.

   c. Transferring bargaining unit work to the position of storekeeper.

   d. Transferring bargaining unit work to the position of jail counselor.

   e. Refusing to bargain the effects of shortage of radios.

   f. Refusing to bargain the effects of a shortage of lockers.

   g. Refusing to bargain the effects of personal digital assistant usage.

h. Refusing to provide and maintain a water cooler in the booking area.

i. Refusing to bargain the effects of losing the shower facility at Wall Street.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

a. Provide bottled water to the booking area of Oakes.

b. Restore the *status quo ante* by reinstating the wages, hours and working conditions which existed for the employees in the affected bargaining unit prior to the unilateral change in *the manner in which leave was accrued and posted, manner in which the cleaning allowance was distributed, and the transference of bargaining unit work to positions outside the bargaining unit,* found unlawful in this order.

c. Give notice to and, upon request, negotiate in good faith with the Snohomish County Corrections Officer Guild, before transferring bargaining unit work outside the bargaining unit, changing the manner in which leave is accrued and posted, changing the manner in which the cleaning allowance is distributed, mandating employees to use personal digital assistant devices, changing the manner in which potable water is made available to the booking area, changing the number of available lockers and radios, and changing the level of safety of the employee shower facility.

d. Post copies of the notice attached to this order 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.

e. Notify the complainant, in writing, within 20 days following the date of this order, 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 attached to this order.

f. Notify the Compliance Officer of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Compliance Officer with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, this 22nd day of August, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Terry N. Wilson

TERRY N. WILSON, 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 19549-U-06-4959

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY discontinued providing bottled water to the booking area in 2005, without proving notice to and giving the union an opportunity to bargain the effects of our actions

WE UNLAWFULLY changed the manner in which leave was accrued and posted in 2005, without giving the union proper notice and the opportunity to bargain the effects of our actions.

WE UNLAWFULLY changed the manner in which the cleaning allowance was distributed in 2005, without giving the union proper notice and the opportunity to bargain the effects of our actions.

WE UNLAWFULLY skimmed bargaining unit work and transferred the work to the position of jail counselor on April 19, 2005, without providing the union the opportunity to bargain.

WE UNLAWFULLY skimmed bargaining unit work and transferred that work to the position of storekeeper, without providing the union the opportunity to bargain.

WE UNLAWFULLY failed to negotiate the effects of a shortage of radios.

WE UNLAWFULLY failed to bargain the effects of using personal digital assistant devices.

WE UNLAWFULLY failed to bargain a shortage of lockers.

WE UNLAWFULLY failed to bargain the effects of losing the shower facility at the Wall Street Facility.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL restore the status quo ante by reinstating the wages, hours and working conditions which existed for the employees in the affected bargaining unit prior to the unilateral change in the manner in which leave was accrued and posted, manner in which the cleaning allowance was distributed, and the transference of bargaining unit work to positions outside the bargaining unit, found unlawful in this order.

WE WILL provide a water cooler to the booking area.

WE WILL, upon request, bargain collectively with the Snohomish County Corrections Guild, as the exclusive representative of the bargaining unit, with respect to a shortage of radios, a shortage of lockers, the use of personal digital assistant devices, the effects of losing the shower facility at Wall Street,

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.

DATED: _____ SNOHOMISH COUNTY

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.