STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PORT OF PASCO POLICE OFFICERS ASSOCIATION,	)	CASE 7965-U-89-1726
Complainant,	)	DECISION 4021 - PECB
vs.	)	
PORT OF PASCO,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Critchlow, Williams, Schuster, Malone & Skalbania, by Scott N. Naccarato, Attorney at Law, appeared on behalf of the union.

McKinlay, Hultgrenn & Vanderschoor, by Edward H. McKinlay, Attorney at Law, appeared on behalf of the employer.

On May 11, 1989, the Port of Pasco Police Officers Association (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission, alleging that the Port of Pasco (employer) had violated RCW 41.56.140(1), (2) and (4), by unilaterally changing its practices concerning parking for law enforcement employees represented by the union. A hearing was conducted in Pasco, Washington, on July 31, 1991, before Examiner Mark S. Downing. The parties filed post-hearing briefs.

BACKGROUND

Under the general policy direction of an elected three-member Board of Commissioners, the Port of Pasco operates several transportation-related facilities in and around Pasco, Washington. In addition to a sizable marine and industrial facility located on the Columbia River, the employer operates the Tri-Cities Airport.

Overall port operations are supervised by General Manager Paul Vick.

The Tri-Cities Airport serves as a regional air terminal, with several commercial airlines providing regular service. Jim Morasch serves as director of airports, and Ron Foraker is the assistant director of airports. The employer purchased the airport from the City of Pasco in 1962, and accounting for the airport is maintained separately from the employer's other activities. In addition to the runways and taxiways, the airport facility consists of a passenger terminal, a control tower, a fire station, air freight buildings, and an industrial area where private businesses lease building space. The airport receives operational funds from several sources, including landing fees charged to commercial airlines. The airport also receives capital improvement funds from the federal government for activities such as terminal construction, runway and taxi-way repair, and snow removal equipment.[1]

In response to Federal Aviation Agency (FAA) requirements concerning airport security, the employer maintains a workforce consisting of three commissioned police officers. Those officers are responsible for security in the passenger boarding areas, main terminal building and parking areas.

On July 21, 1988, the Public Employment Relations Commission certified the Port of Pasco Police Officers Association as the exclusive bargaining representative of the employer's commissioned law enforcement officers, excluding supervisors. Port of Pasco, Decision 2974 (PECB, 1988).

On November 14, 1988, the employer and union commenced collective bargaining negotiations. The negotiating team for the union

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[1] The record indicates that the federal monies arrive in the form of "dedicated funds", which must be spent for specific improvement projects.

included police officers Sam Hansen and Carl Vance. The employer's negotiating team included Morasch, Foraker and Chief of Police Dee Carson. Although both parties' initial contract proposals touched on the subject, parking did not become a topic of discussion between the parties until March 6, 1989, during their ninth negotiation meeting.

Shortly before noon on March 6, Morasch entered the conference room where negotiations were taking place, and informed union president Hansen that bargaining unit employees were no longer allowed to park in the "News Media/Police" spaces located adjacent to the south end of the terminal building. In response to the union's inquiry as to the reason for this new directive, Morasch stated that General Manager Vick told him to relay this information to the union, and that the issue was not negotiable. As a result of this directive, employees were only allowed to park in an employee parking lot area located somewhat farther away.

The issue of parking remained a topic of discussion between the parties. On April 18, 1989, at the twelfth bargaining session, the employer made a proposal to allow employees to park in an area near the airport fire station, in addition to the employee parking lot. The fire station is even farther from the police office than the employee parking lot.

On May 11, 1989, while the parties were still in contract negotiations, the union filed the instant complaint, challenging the employer's March 6, 1989 action as a unilateral change. The union requested that the status quo concerning parking practices be restored until collective bargaining negotiations between the parties were completed.

In the fall of 1989, a mediator was appointed from the Commission staff to assist the parties with their contract negotiations. Mediation efforts continued during the 1990 calendar year, with a

number of issues remaining in dispute between the parties, including parking.

On December 5, 1990, the employer made another proposal concerning parking, expanding its previous proposal to include utilization of two "corporate" parking spaces by law enforcement employees. Those spaces were closer than the parking spaces at the fire station, but still farther from the police office than the employee parking lot. The employer's proposal was rejected by the union.

On December 13, 1990, the employer presented to the union a written "final settlement offer" on all outstanding issues. That offer stated, as follows:

> Attached is the Port's final settlement proposal on items remaining at issue, together with all tentative agreements signed in our bargaining session of December 5, 1990, as well as those previously settled.
>
> You will find included, the Port's modified offer concerning miscellaneous facilities which contains the offer to furnish ... two corporate parking spaces ...
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> Finally, with the retroactive pay matter settled, together with the additional corporate parking spaces offered, the Port concludes that the two unfair labor practice charges filed on these matters are thereby rendered moot and must be withdrawn in writing as a feature of this settlement.[2]

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[2] The Examiner cannot overlook this blatant interference violation by the employer. The Commission has held that it is an unfair labor practice for a party to condition a negotiations proposal on the withdrawal of unfair labor practice complaints. See, Clark County Public Utility District, Decisions 2045-A, 2045-B (PECB, 1989), where an employer's insistence on withdrawal of unfair labor practice charges as a condition of settlement was found to be unlawful.

The employer received no response from the union to its offer and, on December 31, 1990, Morasch notified the union that the terms and conditions of the employer's December 13, 1990 offer were being implemented, effective January 1, 1991.

POSITIONS OF THE PARTIES

The union alleges that the employer unilaterally changed parking areas available to employees during the course of collective bargaining negotiations, thereby committing a "refusal to bargain" unfair labor practice violation. The union asserts that employees had consistently used the designated "News Media/Police" parking spaces in the past, with the employer's knowledge and acquiescence. The union argues that the employer's action of eliminating parking for employees adjacent to the building in which they work interfered with employee as well as union rights, and were taken in retaliation for Hansen's protected activities in organizing the union. The union asserts that, although the issue was discussed during contract negotiations, no agreement was reached between the parties concerning parking, as evidenced by the employer's December 31, 1990 implementation of certain conditions of employment for employees.

The employer argues that employees were never given permission to use the "News Media/Police" parking spaces, as those spaces were reserved for media representatives attending functions or press conferences at the airport and for "outside" law enforcement agencies. Although the employer admits that it knew employees were making "casual" use of the "News Media/Police" parking spaces, the employer claims that it was not aware that employees were using those spaces for "extended" periods of time. The employer contends that it bargained in good faith concerning the parking issue, as evidenced by several counterproposals it presented to the union during the course of contract negotiations. In the alternative,

the employer argues that allocation of parking areas is a management prerogative, and is not a mandatory subject of bargaining. The employer argues that the union waived its rights to object to the employer's final settlement offer, by accepting benefits under that proposal. The employer believes that the complaint is frivolous, and requests that attorney fees be assessed against the union.

DISCUSSION

The Legislature has established, in the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, a framework outlining the duties and responsibilities of public employers and of unions holding status as the exclusive bargaining representatives of public employees, to engage in collective bargaining negotiations. RCW 53.18.015 makes those obligations applicable to port districts and the unions representing their employees. RCW 41.56.030(4) defines those obligations 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. ... [emphasis supplied]

The subject areas of "grievance procedures and ... personnel matters, including wages, hours and working conditions" have come to be known as the **mandatory subjects of bargaining.** Under RCW 41.56.140(4), an employer commits an unfair labor practice

violation if it refuses to engage in collective negotiations with the union concerning mandatory subjects of bargaining.

Unilateral Changes in Working Conditions

An employer violates its bargaining obligation if it makes changes in mandatory subjects of bargaining, without first giving notice to the union and, upon request, bargains in good faith concerning the contemplated changes. Clover Park School District, Decision 3266 (PECB, 1989); Evergreen School District, Decision 3954 (PECB, 1991); Rochester Institute of Technology, 264 NLRB 1020 (1982).

Unilateral changes by employers derogate the status of the employees' chosen exclusive bargaining representative and interfere with the employees' right of self-organization, by emphasizing that there is no necessity for the union. May Department Stores Co. v. NLRB, 326 U.S. 376 (1945). Unilateral changes are prohibited regardless of the subjective intent of the employer. In the words of the Supreme Court of the United States:

> The duty "to bargain collectively" enjoined by Section 8(a)(5) is defined by Section 8(d) as the duty to "meet ... and confer in good faith with respect to wages, hours, and other terms and conditions of employment." Clearly, the duty thus defined may be violated without a general failure of subjective good faith; for there is no occasion to consider the issue of good faith if a party has refused even to negotiate in fact -- "to meet ... and confer" -- about any of the mandatory subjects. A refusal to negotiate in fact as to any subject which is within Section 8(d), and about which the union seeks to negotiate, violates Section 8(a)(5) though the employer has every desire to reach agreement with the union upon an over-all collective agreement and earnestly and in all good faith bargains to that end. We hold that an employer's unilateral change in conditions of employment under negotiation is similarly a violation of Section 8(a)(5), for it is a circumvention of the duty to

> negotiate which frustrates the objectives of Section 8(a)(5) much as does a flat refusal. [emphasis in original]
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> NLRB v. Katz, 369 U.S. 736 (1962), at pages 742-743.

Section 8(a)(5) of the National Labor Relations Act (NLRA) is the private sector labor law counterpart to RCW 41.56.140(4). Section 8(d) of the NLRA parallels the definition of collective bargaining found at RCW 41.56.030(4). Both the NLRA and Chapter 41.56 RCW prohibit unilateral changes by employers concerning mandatory subjects of bargaining.

Notice must be given to the union sufficiently in advance of the change so as to afford an opportunity for the union to make counter arguments or proposals. City of Vancouver, Decision 808 (PECB, 1980); NLRB v. Citizens Hotel Company, 326 F.2d 501 (5th Cir. 1964); NLRB v. W. R. Grace and Co., 571 F.2d 279 (5th Cir. 1978); Gresham Transfer, 272 NLRB 484 (1984). Presenting the union with a fait accompli is not sufficient, for notice is only of value if given before the action is taken by the employer. City of Centralia, Decision 1534-A (PECB, 1983); Clover Park School District, supra; Rose Arbor Manor, 242 NLRB 795 (1979); Winn-Dixie Stores, Inc., 243 NLRB 972 (1979).

Did the Employer Make a Substantial Change?

There is no occasion for collective bargaining, and no need to rule on whether the matter at issue was a mandatory subject of bargaining, unless the employer has actually made a change which affected bargaining unit employees. Clark County Fire District 6, Decision 3428 (PECB, 1990); City of Yakima, Decision 3564-A (PECB, 1991); Evergreen School District, Decision 3954 (PECB, 1991). The Examiner has thus chosen to address the employer's argument that the union failed to establish that a practice existed concerning police officers' use of the "News Media/Police" parking spaces. Both the union and the employer base their arguments on the

individual parking habits of police officer Hansen. Neither party presented evidence concerning the parking practices of the other two bargaining unit employees.

The Basic Geography -

The terminal building is a rectangular-shaped structure, housing various airline ticket counters and other assorted airline-related businesses. The shorter sides of the structure are generally referred to as the north and south ends of the building. The longer sides of the terminal building are generally known as the west and east sides of the building. The west side also serves as the front entrance to the building, with three doors to accommodate passengers being dropped off or picked up. The east side of the terminal building looks out over the airport runways and taxiways.

Paid parking areas for airport users, divided into short-term and long-term parking, are located to the west of the building, opposite the front entrance.

The "News Media/Police" parking spaces are among nine designated parking spaces located just outside the terminal building, on the south end. At the time of the alleged change at issue in this matter, signs designated spaces 1 through 3 as "News Media/Police" parking spots; space 4 was marked with a "Port of Pasco Official" designation; spaces 5, 6 and 7 were specified as "Airline Manager Only"; spaces 8 and 9 had signs indicating "Port of Pasco Management Only". The south end of the terminal building only has one door for ingress and egress. A very short sidewalk connects that door to the nine parking spaces.[3] Using that door and sidewalk, a distance of 206 feet separates the "News Media/Police" parking spaces from the police officers' work office.

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[3] If extended into the parking area, that sidewalk would lead directly into parking space 2.

The employee parking lot is located to the southwest of the terminal building. Using the south door of the terminal building and the previously described sidewalk, and then walking past a car rental parking area, the distance from the police officers' work station to the employee parking lot is 604 feet. Officer Hansen was issued a parking tag for the employee parking lot when he was hired on November 15, 1986.

The Practice Relied Upon by the Union -
Shortly after his date of hire, Hansen began to park in space 3, a "News Media/Police" parking space. Hansen acknowledged that he never received any verbal or written permission to use this space. Hansen utilized space 3 for eight-hour periods of time during his work week, on an average of three times per week. He also made use of space 3 for shorter periods while off-duty, such as when he came in to discuss union business with other employees, to have coffee or lunch at the restaurant, or to attend negotiation sessions. Hansen used space 3 in that manner for more than two years, until the employer's parking directive was announced by Morasch at the March 6, 1989 negotiations meeting.

The union asserts that Hansen's use of space 3 during negotiations meetings had to be particularly obvious to Morasch and Foraker, citing the circumstances surrounding the parties' negotiation sessions. Those meetings were held in the morning hours. Hansen testified that Morasch and Foraker would walk out to their vehicles with him after those meetings concluded, and that Foraker parked his car in space 2 (i.e., right next to Hansen's car) while Morasch would get into his car parked in space 9.

The union also believes that management officials were aware of Hansen's use of space 3, due to the overlapping nature of their work hours. Hansen's normal work week was Saturday through Wednesday, with Thursdays and Fridays as his days off. On the first four days of his work week, Hansen reported to duty at 1:00 p.m. On

Wednesdays, Hansen reported to work at 4:00 p.m. On several different occasions, Hansen saw Morasch and Foraker at the terminal building on weekends, when Hansen's car was parked in the disputed space.

Management officials admitted that they could identify Hansen's vehicle, but indicated a belief that Hansen only used space 3 on a casual basis. Although Foraker parked in space 2 and left the terminal building up to 15 times per day in his role as assistant director of airports, he claimed to have never seen Hansen's car in space 3 for more than a casual length of time, such as payday or some associated in-and-out type of business. Foraker denied that Hansen's car was ever parked in space 3 during Hansen's work hours. Although Morasch parked in spaces 1 or 2, he testified that he had only seen Hansen parking in spaces 5, 6 and 7 for 15-minute periods on payday "or if there was some reason for him to be at the building for short-term use".

Testimony from two other Port of Pasco employees was also heard in this proceeding:

Rob Puckett, a maintenance employee for nine years, stated that spaces 1 through 9 were often used by vehicles other than those specifically listed on the signs for the spots. He stated that the spaces were used by port vehicles, the Coca Cola truck and the building inspector. Hansen indicated that the spots were also used by vehicles from the City of Pasco and AT&T, and by outside police officers, both on and off duty, using the terminal building restaurant or picking up passengers. Hansen stated that fire department vehicles also used the designated parking spaces when at the terminal building for non-emergency reasons.

Robert McDonald, a former Port of Pasco police officer who retired just after Hansen was hired, testified that he was issued

a parking tag for the employee parking lot in early 1986.[4] He also testified of his understanding that "News Media/Police" parking spaces were reserved for official vehicles used by law enforcement employees of outside agencies. Although McDonald had filled-in for absent police officers on a part-time basis since his retirement, he did not have the opportunity to observe Hansen's parking practices, as he worked a different shift than Hansen.

No evidence was presented indicating that Chief of Police Carson ever issued any citations to police officers for parking in the "News Media/Police" spaces.[5] Nor was any evidence submitted indicating that Carson ever objected to usage of the "News Media/Police" spaces by bargaining unit employees.

The employer admits that Hansen's usage of a "News Media/Police" parking space was brought to the attention of General Manager Vick by a port commissioner on March 2, 1989. The commissioner informed Vick that he had noticed Hansen's car parked there during the course of bargaining. The employer failed to raise the issue at a negotiations meeting held by the parties on March 2, 1989.

It is clear to the Examiner that the designations listed for parking spaces 1 through 9 were not enforced by the employer. Both Morasch and Foraker used "News Media/Police" spots, while various other individuals also made use of these spaces.[6]

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[4] According to Morasch, the employee parking lot was opened on June 1, 1985, after completion of a terminal expansion project.

[5] Carson, as well as police officers, had the authority to issue parking tickets for illegally parked vehicles.

[6] Hansen testified that the driver of a City of Pasco pick-up truck told him that Chief of Police Carson gave him permission to park in the disputed parking spaces.

Faced with obvious conflicts between union witnesses and employer witnesses concerning Hansen's parking practices, it is critical for the Examiner to draw reasoned conclusions concerning the credibility of witnesses.

Hansen's testimony was very detailed and straight-forward regarding his usage of space 3 for more than two years.

In contrast, the testimony of management officials was of a more generalized nature, and was also often inconsistent and illogical. Foraker indicated that he never saw Hansen park in space 3 "for more than ... a casual length of time", while Morasch testified that he noticed Hansen's vehicle in the designated parking area "for short-term use", although he was not aware that Hansen was parking there "for extended periods of time" or "on any regular basis."[7] Morasch stated that his observations of Hansen's parking practices in the designated parking area consisted of 15-minute periods in spaces 5, 6 and 7, while Foraker stated that Hansen used space 3. No evidence was presented indicating that Morasch left his office to monitor Hansen's parking practices, or the basis for his computing the claimed 15-minute periods of time. Although Foraker did leave the terminal building on a frequent basis, his claim that he never saw Hansen's vehicle parked in space 3 during Hansen's work hours is incomprehensible, given Hansen's frequent usage of space 3 and the fact that Foraker parked his car in space 2.

The testimony concerning Hansen's parking practices during negotiation meetings was particularly important. Given the undisputed fact that Hansen, Foraker and Morasch would walk out of the terminal building together after those meetings, and that all of them parked their vehicles in the disputed parking area, Foraker and Morasch would have had to be blind not to observe Hansen's

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[7] The Examiner observed that Morasch showed many signs of nervousness during his testimony. These included his swallowing hard when stating that he was never aware that Hansen used space 3 on any regular basis.

vehicle parked in space 3. That space is immediately outside the only exit on the south end of the terminal building. But neither Foraker or Morasch acknowledged seeing Hansen's vehicle at the conclusion of negotiation meetings, instead insisting that they only saw his vehicle parked in the designated parking area on payday, or for short-term use. Further, the testimony of the employer officials was in potential conflict with one another, as Foraker confirmed his use of space 2, while Morasch testified that he used space 1 or 2.

Other circumstances convince the Examiner that the employer must have known of Hansen's parking practice. The Examiner infers that both Morasch and Foraker work a "day shift" schedule, Monday through Friday, so that Hansen's vehicle would have been clearly visible to both of them on Monday and Tuesday afternoons (and possibly on Wednesdays) as they exited the terminal building at the conclusion of their work days. It is also inconceivable that Hansen's use of a "News Media/Police" parking space for more than two years was not known to Chief of Police Carson, who is part of the management team.[8]

The Examiner concludes that the employer knew of Hansen's use of the disputed parking space, and acquiesced in that usage, for more than two years. The union thus established a practice of unit employees utilizing "News Media/Police" parking spaces on a regular basis.

On March 6, 1989, Vick saw Hansen's car parked in one of the "News Media/Police" spaces, and instructed Morasch to tell the union that employee parking in that area must cease. Morasch carried that message to the union during the negotiation session on that very same day. The immediate effect was to require bargaining unit

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[8] In contrast, the testimony of Puckett and McDonald was of little assistance, as neither witness had occasion to be aware of Hansen's parking practices.

employees to use the "employee parking lot" at a walking distance more than three times the distance between the "News Media/Police" spaces and the employees' work station. It follows that the employer's parking directive of March 6, 1989 did constitute a significant and material change of practice. The question remains as to whether it was a "working condition" within RCW 41.56.030(4).

Mandatory Subjects of Bargaining

Unilateral changes regarding matters that are not mandatory subjects of bargaining do not violate the statute. Spokane County Fire District 9, Decision 3021 (PECB, 1988) [entrepreneurial decision to computerize recordkeeping]; King County Fire District 16, Decision 3714 (PECB, 1991) [entrepreneurial decision to upgrade level of emergency medical services offered]; Chemical Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971) [benefits for already-retired employees]. The employer argues that allocation of parking areas for employees is a management prerogative, and is not a mandatory subject of bargaining.

The Commission has utilized a balancing approach to determine whether a particular matter is a mandatory subject of bargaining. That approach was endorsed by the Supreme Court of the State of Washington in IAFF Local 1052 v. PERC (City of Richland), 113 Wn.2d 197 (1989), as follows:

> On one side of the balance is the relationship the subject bears to "wages, hours and working conditions". On the other side is the extent to which the subject lies "at the core of entrepreneurial control" or is a management prerogative. [citations omitted] Where a subject both relates to conditions of employment and is a managerial prerogative, the focus of inquiry is to determine which of these characteristics predominates. [citation omitted]

Richland, at page 203.

The Court's adoption of a balancing test to decide which matters are mandatory subjects of bargaining was consistent with previous Commission rulings. See, Lower Snoqualmie Valley School District, Decision 1602 (EDUC, 1983); City of Olympia, Decision 3194 (PECB, 1989).

The issue of whether parking practices are a mandatory subject of bargaining is a question of first impression for the Commission. All of the parking locations offered by the employer in this case are without cost to the employees, so that there is no "wage" effect or detriment. The sole "working condition" concerns are: (1) the distance employees must walk between their parking space and their work station daily, at shift change times; (2) the safety of the employees' cars in the spaces offered by the employer; and (3) the distance employees must walk on the (somewhat infrequent) occasions when they must use their personal vehicles for emergency responses.[9]

Related Commission Precedent -
The Commission examined a somewhat related issue, that of usage of employer-owned vehicles, in Pierce County, Decision 1710 (PECB, 1983). In that case, the employer had a practice of allowing certain employees to take home assigned vehicles at night. Relying on several National Labor Relations Board (NLRB) decisions, the Examiner in that case held that this practice was of financial benefit to employees and constituted a significant working condition, and so was a mandatory subject of bargaining.

Related Rulings by the NLRB -
The issues of parking practices and use of company vehicles has been extensively examined by the NLRB over the years.

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[9] The latter is in the context that the employer has no official "police" vehicles for use by its employees.

In Wil-Kil Pest Control Co., 181 NLRB 749 (1970), aff'd 440 F.2d 371 (7th Cir. 1971), the Board examined an employer's practice of allowing employees to use company cars to drive to and from home, at no expense to themselves. This practice was found to be a valuable condition of employment, and the employer's unilateral adoption of new rules was found to violate section 8(a)(5) and (1) of the NLRA.[10]

The use of a reserved parking space on the employer's premises was at issue in Diversified Industries, 208 NLRB 233 (1974). After the union president assisted another employee in filing a grievance, the employer removed certain benefits enjoyed by her, including a parking space. The employer's conduct was found to constitute both a discrimination and interference violation.

The employer involved in George Webel d/b/a Pike Transit Co., 217 NLRB 815 (1975), was engaged in the manufacture, processing and distribution of livestock feed and related products. Two days after the election leading to the union's certification as exclusive bargaining representative for the company's employees, the employer informed employees that company trucks could no longer be driven to the employee's home for lunch, errands, or at night, except with written advance authorization. The Board held that these changes adversely affected employees' conditions of employment, and rejected the employer's contentions that the changes were de minimis. The Board stated:

> ... the opportunity to use a company vehicle for personal transportation is a meaningful employment benefit.
>
> George Webel d/b/a Pike Transit Co., at page 820.

The changes instituted by the employer were found to constitute a "unilateral change - refusal to bargain" violation.

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[10] Section 8(a)(1) of the Act parallels the "interference" provisions of RCW 41.56.140(1).

In Rudy's Farm Co., 245 NLRB 43 (1979), some employees' cars had bumper stickers advocating a consumer boycott of the Winn-Dixie grocery chain. The employer (which produced packaged sausage for Winn-Dixie) unilaterally promulgated a rule forbidding employees to park vehicles bearing those bumper stickers in the employee parking lot. The Board held that the employer was under a duty to bargain the adoption and enforcement of a rule of this nature.

Related Rulings by Other State Labor Relations Boards - The Examiner has also reviewed decisions of other state labor relations boards on the issue of parking practices. While the absence of full-text reporting must be considered in analyzing the precedential value of NPER case summaries,[11] the views of other agencies are often instructive and helpful in examining issues of this nature.

In County of Nassau, 4 NPER 33-13083 (N.Y.PERB, 1981), the New York State Public Employment Relations Board determined that an employer violated its bargaining obligation by refusing to negotiate the issue of restoration of employees' parking privileges, after relocation of the employer's office. The Board's ruling was upheld by three separate appellate courts.[12]

The Massachusetts Labor Relations Commission has held that parking is a mandatory subject of bargaining on two separate occasions. In Commonwealth of Massachusetts, 5 NPER 22-14038 (Mass.LRC, 1983), an employer violated its bargaining obligation by unilaterally revoking parking privileges for certain employees. A similar conclusion was reached in City of Lynn, 6 NPER 22-15019 (Mass.LRC, 1984), where an employer unilaterally discontinued its

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[11] Summaries of selected decisions from such boards are published in the National Public Employment Reporter (NPER).

[12] See, 4 NPER 33-17002 (N.Y. Supreme Ct., Nassau Cty., 1982); 5 NPER 33-17025 (N.Y. Supreme Ct., Appellate Div., 1982); and 5 NPER 33-17030 (N.Y. Ct. of Appeals, 1982).

established practice of permitting firefighters to park their personal vehicles in an extra space within the firehouse.

In University of Maine, 5 NPER 20-13030 (Me.LRB, 1982), an employer violated its bargaining obligation by unilaterally increasing on-campus parking fees for employees. Such fees were held to be mandatorily negotiable, because the increase materially or significantly affected employees' conditions of employment, as there was little, if any, alternate off-campus parking available.

In Milwaukee Board of School Directors, 6 NPER 51-15006 (Wis.ERC, 1983), a union proposal to have the school board attempt to obtain permission from traffic control authorities for parking during emergencies was held to be a mandatory subject of bargaining. The proposal was held to be a matter relating to the wages, hours and working conditions of employees.

The California Public Employment Relations Board had an opportunity to examine the question of unilateral increases in parking fees in University of California, 6 NPER 05-14288 (Cal. PERB, 1983). Notwithstanding the employer's past practice of determining employees' parking fees unilaterally, the Board concluded that the employer violated its duty to bargain by increasing parking fees without negotiations with the union.

The issue of parking was also held to be a mandatory subject of bargaining by the Oregon Employment Relations Board in Oregon Executive Dept. and Oregon Health Sciences University, 11 NPER OR-20023 (Ore.ERB, 1989). The employer had refused to bargain over the union's proposals concerning employee parking.

In Jersey City Medical Center, 12 NPER NJ-21124 (N.J.PERC, 1990), the employer unilaterally imposed a monthly charge for parking, eliminating its practice of allowing employees to park free of charge on a first-come, first-served basis. The employer's actions were held to constitute a refusal to bargain violation.

The lone decision among NPER case summaries holding a contrary view on the issue of parking is Borough of Naugatuck, 13 NPER CT-22000 (Conn.SBLR, 1990). The Board held that a change in police

officers' parking facilities which resulted in employees being required to park their cars in a lot across from the police station, rather than in a covered lot next to the station, was so de minimis as to not require mandatory bargaining.

In the case at hand, the employer relies in its post-hearing brief on Cheltenham Township v. Cheltenham Township Police Dept., 312 A.2d 835 (Penna.Commonwealth Ct., 1973), as support for its argument that parking practices are not a mandatory subject of bargaining. The employer in Cheltenham had a practice of using police vehicles to pick up and deliver police officers to their homes incident to going on- and off-duty. A Pennsylvania state statute gave police officers the right to bargain collectively concerning "the terms and conditions of their employment, including compensation, hours, working conditions, retirement, pensions and other benefits ..." It was contended that the language "other benefits" should be read to include this practice, because it was "of advantage or profit to" the affected employees. The court disagreed, holding that transportation costs to and from work were a personal expense for employees, and concluding:

> We do not believe the Legislature intended terms and conditions of employment including "benefits" to be so broad and all inclusive. To do so would afford broader meaning to this language than has apparently been accorded similar language as to mandated bargainable issues applicable to the private sector. Appellee has pointed to no judicial decision or NLRB ruling, nor has our research disclosed any, which required good faith bargaining between employer and employe on an issue of transportation to and from work on a personal basis by use of employer vehicles manned by other employes. Such a service bears no rational relationship to performance of their duties by these township policemen and reaches a subject outside the course of their employment.

Cheltenham Township v. Cheltenham Township Police Dept., at page 839.

The court ruled that the employer's pickup and delivery service was not a bargainable issue under the statute.

The Examiner has considered Cheltenham, but does not find it to be controlling. The practice at issue in that case involved a substantial financial expense to the employer and substantial financial benefit to the employees. Further, in contrast to the absence of precedent described by that court in its ruling, the Examiner finds ample case precedent from the NLRB and other state labor relations boards holding that parking practices, as opposed to transportation costs to and from work, are a mandatory subject of bargaining.

Application of the Balancing Test -
The balancing test mandated by our Supreme Court in Richland requires an examination of both employee and employer interests concerning parking practices.

Police officers expressed concerns about the distance involved between their parking spaces and the location of their work office. The union asserts that employees often have to carry various articles from their cars to the office. Examples cited included briefcases, lunches, extra jackets or clothes for cold or inclement weather, and uniforms being transported between home and work for laundering. The employer minimizes this concern, indicating that lockers are provided in the work office for employees' use. The port police office is located in roughly the center of the terminal building. The "News Media/Police" parking spaces claimed by police officers are located adjacent to the south end of the same building, a distance of 206 feet from the employees' work office. The distance from the work office to the employee parking lot is 604 feet. Although the employer might dismiss the difference as being only 7.5% of a mile, when viewed from the employees' perspective the change to the employee parking lot required the

employees to walk almost three times as far. The employees' interest in the issue cannot be totally disregarded.

Police officers indicated that the distance between the work office and the employees' parking spaces is of heightened concern in this matter, because the employer does not provide official police vehicles for use of its police officers. The employer minimizes the problem, by noting that the duties of police officers are generally confined to the terminal building and parking areas, which can generally be patrolled on foot. Testimony was presented, however, that employees are occasionally required to use their private vehicles to respond to emergencies outside of the terminal building and parking areas. On one occasion, Hansen tried to stop a vehicle in the parking lot while on foot. When the vehicle sped away, Hansen radioed for assistance from the City of Pasco Police Department. The vehicle was stopped a short distance from the airport, and the city police instructed Hansen to come to the scene to identify any suspects. Hansen responded in his private vehicle, which was parked on that occasion just outside the terminal building. In a similar incident, Chief of Police Carson used his private vehicle to take Hansen to an off-airport location to identify suspects for a stop made by city police. Hansen has also used his private vehicle to respond to alarms at the airport's toll booth, since that was the fastest method available to respond to those calls. Police officers have also been required to respond to emergency calls while off-duty, as in the case of drug seizures. In Hansen's mind, it is essential for police officers to have a close parking place so they can get into the terminal building as soon as possible during such emergencies. Under the circumstances presented in this case, those employee concerns are substantial concerns related directly to their employment.

Police officers also expressed concerns about the safety of their vehicles left in the employee parking lot. Hansen indicated that some vehicles left in that lot had been vandalized, scratched with

keys or had doors kicked in. A concern was voiced regarding airline employees who park in that lot possibly being upset after being issued a parking ticket, but management officials testified that they could not recall any such acts of vandalism over the years directed at the private vehicles of police officers. Nevertheless, parking lot security is, in fact, one of the functions of this bargaining unit, and the security of employer-provided parking space is a concern that is closely related to the employment of these and other employees.

Against the interests of its employees, the employer asserts that the designated "News Media/Police" parking spaces were reserved for media representatives attending functions or press conferences at the airport, and for outside law enforcement agencies. However, the evidence does not sustain such limited usage either before or after the unilateral change at issue in this case. Even after the employer's March 6, 1989 directive, these spaces were used by individuals other than news media personnel and outside law enforcement agencies. In 1990, after the complaint in this matter was filed, parking space 3 was changed to a "Port Official" designation, and was used thereafter by port commissioners. Contrary to the employer's contention (in its answer) that it was essential to keep the designated "News Media/Police" spaces available for outside agencies during emergencies, the evidence at the hearing revealed that emergency vehicles utilize the front entrance on the west side of the terminal building, rather than the disputed spaces.

Mandatory subjects of bargaining usually involve events or actions that occur during employees' hours of work, but that is not always the case. In Ford Motor Co. v. NLRB, 441 U.S. 488 (1979), the issue of in-plant prices and services for cafeteria and vending machine food was held to be a mandatory subject of bargaining. The plant's lack of proximity to nearby restaurants made it difficult for employees to eat away from the plant during their 30-minute

unpaid lunch periods. The employer also did not provide refrigerated storage facilities on-site for workers who brought their own lunches. The Court held that the terms and conditions under which food was available on the job were plainly germane to the "working environment", and were not among those "managerial decisions, which lie at the core of entrepreneurial control." Although the food services were actually provided by a subcontractor, the employer had the right to review and approve of the quality, quantity and price of the food served.

In the instant complaint, parking is an issue of direct concern to police officers, affecting the conditions under which they work. Parking affects significant employee working conditions, such as proximity to the work office, security of personal vehicles, and ability to perform the duties of their position in a prompt manner. The employer's interests of reserving certain parking spaces for the convenience of non-airport employees are not compelled by any outside force or regulation, but rather appear to have been an effort to achieve good public relations with the news media during a remodeling project. The employer did not advance any interests which lie at the core of entrepreneurial control, such as policy decisions related to the allocation of resources, what services to provide, or at what level those services should be provided. The interests of employees concerning parking practices clearly predominate over interests of the employer. The employer's parking practices affecting unit employees are a mandatory subject of bargaining.

The Subsequent Bargaining -
The employer's claim of having provided alternatives, and of subsequent good faith bargaining (i.e., after the presentation of the fait accompli), are not persuasive. The alternatives offered by the employer in subsequent negotiations are even less advantageous to the employees than the employee lot. The corporate parking spaces offered by the employer were some 719 feet from the

employees' work station, or well over three times the distance from the disputed "News Media/Police" spaces; the parking spaces near the airport fire station are 1308 feet from the police office by a circuitous route through the air operations area of the airport, or more than six times the distance from the disputed spaces.

Conclusion

The employer's conduct constituted a "unilateral change - refusal to bargain" violation of RCW 41.56.140(4).

FINDINGS OF FACT

1. The Port of Pasco operates several transportation-related facilities in and around Pasco, Washington, and is a "public employer" within the meaning of RCW 53.18.010 and RCW 41.56-.030(1). Among other facilities under its direction, the Port of Pasco operates the Tri-Cities Airport. The airport serves as a regional air transportation and cargo facility. Overall port operations are supervised by General Manager Paul Vick. James Morasch serves as director of airports, while Ron Foraker is employed as assistant director of airports.

2. The employer maintains a workforce of three commissioned police officers who are responsible for security in the passenger boarding areas, terminal building and parking areas of the airport.

3. On July 21, 1988, the Public Employment Relations Commission certified the Port of Pasco Police Officers Association as the exclusive bargaining representative of the employer's police officers.

4. Prior to March 6, 1989, Port of Pasco police officers were allowed by the employer to park in designated "News Media/ Police" parking spaces adjacent to the south end of the terminal building.

5. During a negotiating session between the parties on March 6, 1989, Morasch announced that police officers would no longer be allowed to park in the "News Media/Police" spaces. Parking was provided in an employee parking lot located farther away from the police work office than the "News Media/Police" spaces. Such change of policy was implemented immediately, without providing opportunity for bargaining.

6. In later negotiation meetings, the employer made proposals to the union to allow parking at the airport fire station and in the corporate parking area. Those areas are located even farther away from the police work office than the "News Media/Police" spaces and the employee parking lot.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW, Chapter 53.18 RCW, and Chapter 391-45 WAC.

2. In balancing the interests of employees and the employer with respect to the employer's parking practices, employees' concerns of proximity to work office, security of personal vehicles, and ability to perform duties of position, predominate over employer interests of reserving certain parking spaces for convenience of non-airport employees. The employer's parking practices affect working conditions of unit employees, and are mandatory subject of collective bargaining pursuant to RCW 41.56.030(4).

3. By unilaterally discontinuing its practice of allowing police officers represented by the Port of Pasco Police Officers Association to park in designated "News Media/Police" spaces, without having given notice and, upon request, bargaining collectively with that organization as the exclusive bargaining representative of its employees, the Port of Pasco made a significant and material change in employees' working conditions, and has committed unfair labor practices in violation of RCW 41.56.140(1) and (4).

ORDER

The Port of Pasco, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Giving effect to the directive issued on March 6, 1989 concerning the parking practices of police officers represented by the Port of Pasco Police Officers Association.

   b. Refusing to bargain collectively in good faith with the Port of Pasco Police Officers Association, concerning the wages, hours and working conditions, including parking practices, of its police officers represented by the union.

   c. In any other manner interfering with, restraining or coercing its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS to remedy the unfair labor practices and effectuate the purposes and policies of Chapter 53.18 RCW, and Chapter 41.56 RCW:

   a. Give notice to and, upon request, bargain collectively in good faith with the Port of Pasco Police Officers Association, prior to implementing any changes in the wages, hours and working conditions of its police officers represented by the union.

   b. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

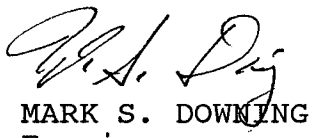
   c. Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

   d. Notify the Executive Director 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 Executive Director with a signed copy of the notice required by this order.

Entered at Olympia, Washington, on the 30th day of March, 1992.

PUBLIC EMPLOYMENT
RELATIONS COMMISSION



MARK S. DOWNING
Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL, upon request, bargain collectively in good faith with the Port of Pasco Police Officers Association, concerning the wages, hours and working conditions of our police officers represented by the union.

WE WILL NOT give effect to the directive issued on March 6, 1989 concerning the parking practices of police officers represented by the Port of Pasco Police Officers Association.

WE WILL NOT refuse to bargain collectively in good faith with the Port of Pasco Police Officers Association, concerning the wages, hours and working conditions of our police officers represented by the union.

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: _____

PORT OF PASCO

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, P.O. Box 40919, Olympia, Washington 98504-0919. Telephone: (206) 753-3444.