STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY CORRECTIONS GUILD, Complainant, vs. SNOHOMISH COUNTY, Respondent.	CASE 128432-U-16 DECISION 12826 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On September 14, 2016, the Snohomish County Corrections Guild (union) filed a complaint with the Public Employment Relations Commission alleging unfair labor practices against Snohomish County (employer). On September 28, 2016, the Commission's unfair labor practice manager issued a preliminary ruling finding causes of action to exist for allegations of employer refusal to bargain. On December 23, 2016, the matter was assigned to Examiner Stephen W. Irvin.

On May 3, 2017, the union refiled an amended complaint that was incorrectly filed on February 17, 2017.[1] In its amended complaint, the union charged the employer with an additional unfair labor practice. I reviewed the amended complaint under WAC 391-45-070 and WAC 391-45-110 and granted the union's motion to amend its complaint. I issued an amended preliminary ruling on May 10, 2017, that found a cause of action to exist for an additional allegation of employer refusal to bargain. I presided over a hearing on June 28, 29, and 30, 2017; July 10, 11, 12, and 13,

[1] The union attempted to file its amended complaint with the Examiner but did not use the correct e-mail address. The certificate of service indicates that the union sent a copy of the amended complaint to the employer on February 17, 2017, but the union did not simultaneously file its amended complaint via the Public Employment Relations Commission's electronic filing address (filing@perc.wa.gov).

2017; and August 3, 2017.[2] The parties filed post-hearing briefs on October 27, 2017, to complete the record.

ISSUES

As framed by the amended preliminary ruling, the issues presented in the amended complaint are as follows:

1. Did the employer refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally taking the following actions without bargaining with the union to agreement or reaching a lawful impasse and resolving the matter in interest arbitration?

   (a) Since April 28, 2016, reducing the number of Response/Emergency Officers[3] available to respond to emergencies in the jail;

   (b) Since April 28, 2016, reducing the number of corrections deputies on some jail transports;

   (c) Since July 1, 2016, altering the bidding and selection process for the technology specialist[4] position;

   (d) Since April 25, 2016, unilaterally ending the practice of providing bargaining unit employees working on the graveyard shift with hot meals and instead providing employees with cold, sack lunches;

   (e) Since April 11, 2016, unilaterally eliminating per diem meal reimbursements for corrections deputies who are out on transport during a meal period;

   (f) Since May 2, 2016, unilaterally requiring corrections deputies to perform urine analysis testing on inmates;

   (g) Since May 2016, unilaterally reducing the number of vest carriers the county provides to employees as part of the corrections deputy uniform;

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2 The final day of the hearing involved telephonic testimony from one witness.

3 The correct job title pertaining to the allegation in Issue 1(a) is Response and Escort Officer.

4 The technology specialist position in Issue 1(c) has also been referred to as jail management system and technology specialist or technology deputy.

(h) Since June 2016, unilaterally requiring corrections deputies to perform blood draws on inmates; and

(i) Since November 24, 2016, unilaterally ending the practice of providing corrections deputies working on Thanksgiving and Christmas Day with hot meals and instead providing corrections deputies with a cold meal.

2. Did the employer refuse to bargain since March 31, 2016, by

(a) skimming corrections deputy work and assigning non-bargaining unit maintenance employees to supervise inmate work crews performing work at the fairgrounds, without providing the union with an opportunity for bargaining; and

(b) skimming corrections deputy work and assigning non-bargaining unit sergeants and lieutenants to supervise inmate work release,[5] without providing the union with an opportunity for bargaining?

3. Did the employer refuse to bargain since March 14, 2016, by engaging in surface and regressive bargaining, refusing to discuss proposed changes to mandatory subjects of bargaining, and unilaterally canceling bargaining sessions with its employees' exclusive bargaining representative?

Issue 1(a)

The employer's interest in managing its workforce in addition to providing increased and more efficient training for its deputies outweighs the union's workload, safety, and overtime compensation interests. The union did not meet its burden to prove that the employer's decision to utilize Response and Escort Officers for training relief had a demonstratedly direct relationship to workload and safety, and the union's remaining interest in overtime compensation does not outweigh the employer's interest in determining employee work assignments. The employer's assignment of duties in this case is not a mandatory subject of bargaining, and the employer's unilateral change did not lead to an obligation to bargain.

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[5] The union's complaint in Issue 2(b) involves the supervision of inmates in what was commonly known as the employer's work release building. The building was also known as the community corrections building before the employer eliminated its community corrections division on December 31, 2016.

Issue 1(b)

The employer's managerial prerogative in managing the scheduling of its transport deputies outweighs the employees' interests in workload and safety. The union did not meet its burden to prove that the employer's decision to utilize single-deputy transports for some court appearances had a demonstratedly direct relationship to workload and safety. The employer's use of single-deputy transports in this case is not a mandatory subject of bargaining and did not lead to an obligation to bargain.

Issue 1(c)

The union established that the employer made a meaningful change to a mandatory subject of bargaining when it added a testing component to the bid application process for the technology deputy position on June 30, 2016, and August 18, 2016. The employer provided notice of the proposed change to the union during two labor-management meetings in March 2016, and the record indicates that the union did not object to the addition of testing or its members' participation in the development of the test before the employer made its bid announcements. As a result, the employer did not unlawfully refuse to bargain when it added a testing component to the bid application process.

Issue 1(d)

The union established that the employer made a meaningful change to a mandatory subject of bargaining on May 5, 2016, when it provided a cold, sack meal for breakfast to employees working the graveyard shift instead of a freshly prepared meal that included hot items. The employer did not provide notice to the union nor did it provide an opportunity for bargaining before making the change resulting in a *fait accompli*. The employer did not meet its burden of proving that the union made a conscious, clear, and unmistakable waiver of its right to bargain the change, which renders its actions unlawful under Chapter 41.56 RCW.

Issue 1(e)

The union established that, prior to the revision of the employer's travel expenses policy in 2006, the parties had a practice of reimbursing deputies from petty cash for meals purchased while on a transport during a meal period if the deputies submitted a receipt. After the policy revision, the

practice changed so that meal reimbursement was subject to the three-hour rule, which requires employees to be in travel status for at least three hours beyond their regular shift in order to receive reimbursement for meal expenses. The union failed to meet its burden of proving that meal reimbursement for deputies who were out on transport during a meal period without meeting the three-hour rule was a consistent and mutually accepted past practice concerning a mandatory subject of bargaining. The employer did not commit an unfair labor practice when it denied meal reimbursement requests for deputies who were out on transport during a meal period in 2016.

Issue 1(f)

The employer's interest in providing a safe and secure environment by discouraging intoxicant use in the jail outweighs the employees' workload and liability interests. The employer's decision to use deputies to perform random urinalysis on inmate workers beginning in May 2016 was not a mandatory subject of bargaining and, as such, the employer's unilateral change did not lead to an obligation to bargain.

Issue 1(g)

The union was unable to meet its burden of establishing that the parties had a past practice regarding a mandatory subject of bargaining that was consistent, known by both parties, and mutually accepted as it pertained to the number of vest carriers provided with ballistic vest orders. As a result, the employer did not violate Chapter 41.56 RCW.

Issue 1(h)

The union was unable to establish that the employer made a meaningful change to a mandatory subject of bargaining when it assigned booking deputies to oversee inmate blood draws performed by medical staff in June 2016. The deputies' oversight of blood draws was similar to their oversight of other medical procedures and Breathalyzer tests performed in booking, in that deputies were expected to stand by and use force if necessary to ensure inmates' compliance. The employer's unilateral decision to use deputies to observe blood draws in booking since June 2016 was not a violation of Chapter 41.56 RCW.

Issue 1(i)

The jail's meal provider, Aramark, provided hot meals on all shifts for deputies who worked on Thanksgiving and Christmas Day in 2014 and 2015. Based on budgetary considerations, Aramark decided not to provide hot holiday meals for deputies on all shifts in 2016. Aramark's contract with the employer clearly states that the contractor is not an agent of the employer and that the contractor has the right to direct and control its activities in providing meal services. Thus, Aramark's 2016 decision cannot be attributed to the employer, and there was no violation of Chapter 41.56 RCW.

Issue 2(a)

The union established that the transportation and supervision of minimum security resident inmate work crews to the fairgrounds is bargaining unit work. The direct relationship of the work to deputies' wages, hours, and working conditions makes the employer's decision to contract with other county departments to use civilian county employees to transport and supervise these inmates a mandatory subject of bargaining. The record demonstrates that the employer did not provide the union with notice or an opportunity for meaningful bargaining before making a unilateral change to a mandatory subject of bargaining. As a result, the union met its burden of proving that the employer unlawfully refused to bargain by skimming bargaining unit work.

Issue 2(b)

The union failed to establish that the employer made a change to the relevant status quo regarding inmate supervision in the community corrections unit or that the employer transferred bargaining unit work from deputies to sergeants and lieutenants.

Issue 3

The union established by a totality of the circumstances that the employer unlawfully refused to bargain in good faith by refusing to discuss proposed changes to mandatory subjects of bargaining. The employer's decision to unilaterally change its practices regarding graveyard deputy meals and work crew transportation and supervision, without notice to the union and without bargaining to agreement or impasse, is evidence of the employer's predetermined resolve not to alter its initial position that is inconsistent with good faith bargaining. The union failed to establish that the

employer unlawfully refused to bargain in good faith by engaging in surface and regressive bargaining, and unilaterally canceling bargaining sessions with its employees' exclusive bargaining representative.

BACKGROUND

The Corrections Bureau of the Snohomish County Sheriff's Office oversees the Snohomish County Jail in Everett, Washington. Tony Aston is the Corrections Bureau Chief and reports to Sheriff Ty Trenary. In 2016, Major Jamie Kane was second-in-command in the Corrections Bureau, which also includes captains, lieutenants, sergeants, and corrections deputies.

The union represents all full-time and regular part-time custody officers and corrections officers below the rank of sergeant of the Snohomish County Department of Corrections, excluding supervisors, confidential employees, and all other employees. *Snohomish County*, Decision 8805 (PECB, 2004). At some point after the union's certification, the employer changed the custody officer and corrections officer job titles to corrections deputy.

The employer and union were parties to a collective bargaining agreement (CBA) in effect from January 1, 2015, through December 31, 2017. The bargaining unit in this case consists of "uniformed personnel" within the meaning of RCW 41.56.030(13), and the parties' bargaining relationship is subject to the interest arbitration provisions of RCW 41.56.430 - .470 which require the creation of an interest arbitration panel to resolve disputes that remain following a reasonable period of negotiations and mediation.

In January 2016, the union elected five deputies to its executive board. Charles Carrell was elected president of the board, which included new members Randall Williams and Robert Butchart along with Gregory Barnett and Scott Griffith, who were members of the previous executive board led by Jacob Hoff.

At the time of the events in question, the Snohomish County Jail consisted of operations in two buildings and was staffed by more than 200 employees. The majority of the jail's deputies worked

in the main building, which contained inmates who lived in housing modules 24 hours a day while detained. Deputies also worked in the community corrections building, which contained minimum security resident (MSR) and work release inmates whose sentences allowed them to leave the facility for work during the day and return to the jail in the evening.

Deputies at the jail work three shifts: day shift from 8 a.m. to 4 p.m., swing shift from 4 p.m. to midnight, or graveyard shift from midnight to 8 a.m. Deputies select shift/days off assignments by seniority, which is also used in the deputies' quarterly bidding for work assignments (posts).

ANALYSIS

Applicable Legal Standards

Duty to Bargain

A public employer has a duty to bargain with the exclusive bargaining representative of its employees over mandatory subjects of bargaining. RCW 41.56.030(4); *King County*, Decision 12451-A (PECB, 2016). "[N]either party shall be compelled to agree to a proposal or be required to make a concession . . . ." RCW 41.56.030(4). Thus, a balance must be struck to reflect the natural tension between the parties' obligations to bargain in good faith and the statutory admonition that parties are not required to make concessions or reach an agreement. *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A (PECB, 2017); *Walla Walla County*, Decision 2932-A (PECB, 1988); *City of Snohomish*, Decision 1661-A (PECB, 1984).

Distinguishing between good faith and bad faith bargaining can be difficult. *Mansfield School District*, Decision 4552-B (EDUC, 1995); *Spokane County*, Decision 2167-A (PECB, 1985). A party may violate its duty to bargain in good faith by one per se violation, such as a refusal to meet at reasonable times and places or refusing to make counterproposals. *Snohomish County*, Decision 9834-B (PECB, 2008). A party may also violate its duty to bargain in good faith through a series of questionable acts which when examined as a whole demonstrate a lack of good faith bargaining but none of which by themselves would be per se violations. *Id.* When analyzing conduct during negotiations, the Commission examines the totality of the circumstances to determine whether an

unfair labor practice has occurred. *Kitsap County*, Decision 11675-A (PECB, 2013), *citing Shelton School District*, Decision 579-B (EDUC, 1984).

Good faith is inconsistent with a predetermined resolve not to budge from an initial position. However, a party may stand firm on a position, and an adamant insistence on a bargaining position is not, by itself, a refusal to bargain. *Mansfield School District*, Decision 4552-B, *citing Atlanta Hilton and Tower*, 271 NLRB 1600 (1984).

Mandatory Subjects of Bargaining

Whether a particular item is a mandatory subject of bargaining is a mixed question of law and fact for the Commission to decide. WAC 391-45-550; *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A. To decide, the Commission balances "the relationship the subject bears to [the] 'wages, hours and working conditions'" of employees and "the extent to which the subject lies 'at the core of entrepreneurial control' or is a management prerogative." *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197, 203 (1989).

While the balancing test calls upon the Commission and its examiners to balance these two principal considerations, the actual application of this test is more nuanced and is not strictly black-and-white. Subjects of bargaining fall along a continuum. At one end of the spectrum are grievance procedures and "personnel matters, including wages, hours and working conditions," also known as mandatory subjects of bargaining. RCW 41.56.030(4). At the other end of the spectrum are matters "at the core of entrepreneurial control" or management prerogatives, which are permissive subjects of bargaining. *City of Richland*, 113 Wn.2d at 203. In between are other matters, which must be weighed on the specific facts of each case. One case may result in a finding that a subject is a mandatory subject of bargaining, while the same subject, under different facts, may be considered permissive. The decision focuses on which characteristic predominates. *Id.*

Unilateral Change

The parties' collective bargaining obligations require that the status quo be maintained regarding all mandatory subjects of bargaining, except when any changes to mandatory subjects of

bargaining are made in conformity with the statutory collective bargaining obligation or terms of a collective bargaining agreement. *King County*, Decision 12451-A, *citing City of Yakima*, Decision 3503-A (PECB, 1990), *aff'd*, *City of Yakima v. International Association of Fire Fighters, Local 469*, 117 Wn.2d 655 (1991); *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991). As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*, Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010), *citing Skagit County*, Decision 8746-A (PECB, 2006).

To prove a unilateral change, the complainant must prove that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain. *Kitsap County*, Decision 8292-B (PECB, 2007). A complaint alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990). For a unilateral change to be unlawful, the change must have a material and substantial impact on the terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007), *citing King County*, Decision 4893-A (PECB, 1995).

The Commission focuses on the circumstances as a whole and on whether an opportunity for meaningful bargaining existed. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998). If the employer's action has already occurred when the employer notifies the union (a *fait accompli*), the notice would not be considered timely and the union would be excused from the need to demand bargaining. *Id.* If the union is adequately notified of a contemplated change at a time when there is still an opportunity for bargaining which could influence the employer's planned course of action, and the employer's behavior does not seem inconsistent with a willingness to bargain, if requested, then a *fait accompli* will not be found. *Id.*, *citing Lake Washington Technical College*, Decision 4721-A (PECB, 1995).

If the bargaining unit employees are eligible for interest arbitration, an employer may not unilaterally change a mandatory subject of bargaining without bargaining to impasse and obtaining an award through interest arbitration. *King County*, Decision 12632-A (PECB, 2017), *citing Snohomish County*, Decision 9770-A (PECB, 2008). Interest arbitration is applicable when an employer desires to make a midterm contract change to a mandatory subject of bargaining. *City of Yakima*, Decision 9062-A (PECB, 2006).

Skimming

A complaint alleging a unilateral change, such as a skimming violation, must establish both: (1) the existence of a relevant status quo; and (2) a change of employee wages, hours, or working conditions. *Lake Washington School District*, Decision 11913-A (PECB, 2014), *citing Seattle School District*, Decision 11161-A (PECB, 2013); *City of Kalama*, Decision 6773-A. If there is no change in the status quo, then there has not been skimming. *Seattle School District*, Decision 11161-A, *citing City of Anacortes*, Decision 6863-B (PECB, 2001); *Evergreen School District*, Decision 3954 (PECB, 1991); *City of Seattle*, Decision 2935 (PECB, 1988). There must be an actual unilateral change for a cause of action for skimming to exist. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011).

The threshold question in a skimming case is whether the work that was assigned to non-bargaining unit employees was bargaining unit work. If the work was not bargaining unit work, then the analysis stops and the employer would not have had an obligation to bargain its decision to assign the work. If the work was bargaining unit work, then we apply the *City of Richland* balancing test to determine whether the decision to assign bargaining unit work to non-bargaining unit employees is a mandatory subject of bargaining. *King County*, Decision 12632-A, *citing Central Washington University*, Decision 12305-A (PSRA, 2016).

The *City of Richland* balancing test weighs the competing interests of the employees in wages, hours, and working conditions against "the extent to which the subject lies 'at the core of [the employer's] entrepreneurial control' or is a management prerogative." Recognizing that public sector employers are not "entrepreneurs" in the same sense as private sector employers, when weighing entrepreneurial control the balancing test should consider the right of a public sector

employer, as an elected representative of the people, to control the management and direction of government. *See Unified School District No. 1 of Racine County v. Wisconsin Employment Relations Commission*, 81 Wis.2d 89, 95 (1977).

If the decision is a mandatory subject of bargaining, then the next question is whether the employer provided notice and an opportunity to bargain the decision. If the employer did not, then the union will have met its burden of proving that the employer refused to bargain by skimming bargaining unit work.

ISSUE 1(a): Did the employer refuse to bargain, since April 28, 2016, by reducing the number of Response and Escort Officers available to respond to emergencies in the jail?

Background

Break Relief for Training

Response and Escort Officer (REO) is one of a number of posts deputies are able to select during annual bidding by seniority, but unlike other posts, REOs are not assigned a set work location. The REO's primary responsibilities include providing break coverage for deputies, emergency response, and inmate transport throughout the jail. REOs are also assigned other administrative functions that occur in the facility during the day on an as-needed basis. The employer's break schedule for REOs at any given time indicates whether the REO is providing break relief at a specific post, on his or her own break, or available for other duties.

On November 25, 2015, Major Kane forwarded draft versions of the 2016 break/training schedule to the union. One version of the schedule was based on having all posts filled ("full ops" version), and the other was based on not having a fourth deputy in booking in order to address an expected revenue shortfall. In the forwarded e-mail, Kane stated, "This is your opportunity to give input (we can still sit down and discuss it prior to final implementation 1st quarter of 2016)."

The primary change to the schedule was the assignment of REOs to provide training relief twice a week during the first 75 minutes of the day, swing, and graveyard shifts, instead of having all the REOs available for emergency response or other assignments during that time. The change reduced the number of REOs listed as available on the break schedule, but provided more organized instructor-led training that Kane understood met interests expressed by the union, met standards for mandatory training in the parties' CBA, and also met state standards for in-service training. Before the change, deputies could participate in training during their regularly scheduled shifts, or they could earn overtime compensation by training on a shift extension or on a regularly scheduled day off.

In the "full ops" version of the break/training schedule, four of the eight REOs on day shift and five of the eight REOs on swing shift were scheduled for training relief during the first 75 minutes of their shift on Monday and Wednesday. Four of the six REOs on graveyard shift were scheduled for training relief during the first 75 minutes of their shift on Tuesday and Thursday. On days when no training relief was scheduled, all REOs were available during the first 75 minutes of each shift. As is the case during any other relief assignment, the REO providing training relief were not available for emergency response, but the deputies they relieved and other personnel were similarly trained in emergency response and available to respond.

On January 25, 2016, Kane informed the union's executive board via e-mail that the employer would again fill the fourth booking deputy post on all three shifts because of an increase in the inmate population. In addition, Kane wrote that the "full ops" version of the break schedule first sent on November 25, 2015, was in effect, with the exception being that the training relief posts for REOs on the break schedule would not begin until January 31, 2016.

The union did not demand to bargain the changes to the break schedule during the two months between Kane's November and January e-mails, and the union did not broach the subject during the parties' six labor-management meetings in February, March, and April after the changes were implemented. On May 26, 2016, union President Carrell sent a letter to Trenary that included "[i]ncrease work load for REO's [sic] due to a reduction of staff and adding new assignments" on

a list of items the union was demanding to bargain with the employer. Carrell's letter did not include any other reference to REOs or the break schedule.

Laundry Supervision

In early 2015, the employer's laundry facilities were open from 8 a.m. to 4 p.m., and inmate workers were supervised by a deputy who bid for that specific day shift post. Laundry operations closed from 4 p.m. to 6:30 p.m., at which time a REO4 on swing shift oversaw operations until midnight. The laundry facility was closed during the graveyard shift.

On October 1, 2015, Kane sent an e-mail to the union with an attached break schedule that did not include a fourth booking deputy. Kane's e-mail stated that laundry supervision performed by a REO4 between 4 p.m. and 8 p.m. would be moved to graveyard shift from 4:15 a.m. to 8 a.m. Kane sent a revised e-mail to all staff on October 5, 2015, that clarified that a REO4 would supervise laundry operations on graveyard shift and included a draft version of the break matrix that indicated that a REO4 would supervise laundry operations from 4:15 a.m. to 8 a.m., and laundry operations would be closed during swing shift.

Union legal representative Becky Gallagher sent the employer a demand to bargain the laundry operation and REO assignment changes on October 8, 2015, stating "[T]he change in REO duties and decision to pull REOs also violates past practice, violates the parties' Collective Bargaining Agreement (CBA) on post bidding, and creates on-the-job safety issues for Deputies."

The parties met on October 22, 2015, and reached a settlement agreement for the union's October 8, 2015, demand to bargain. As it pertained to laundry operations, the settlement agreement stated that "[i]nmate workers shall do bin boxes in laundry under a deputy's supervision." There was no mention of the employer's proposed change of laundry supervision from swing shift to graveyard shift. Kane and Hoff signed the agreement on November 6, 2015.

When Kane informed the union on January 25, 2016, that the "full ops" version of the break matrix was in effect, the laundry facility was open during day shift, and on graveyard shift from 4:15 a.m.

to 8 a.m. The laundry facility was closed during swing shift unless it was necessary to open it, at which point a REO4 would supervise operations.

Application of Standards

Citing *City of Clarkston*, Decision 3286 (PECB, 1989), the union argues that assignments of work, and modifications of those assignments, are mandatory subjects of bargaining, and that the employer unlawfully reassigned REOs to cover for training and supervise laundry operations without providing the union notice and an opportunity to bargain. The employer counters that neither shift staffing, nor assignments of work, are mandatory subjects of bargaining, citing *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A.[6] As a result, the employer contends that it was under no obligation to bargain its decision to reassign REOs in that manner.

The record demonstrates that the employer provided notice to the union of its proposed changes to laundry supervision, and subsequently bargained to agreement with the union on the subject. As a result, the application of the *City of Richland* balancing test will be limited to the employer's decision to utilize REOs to provide training relief.

The City of Richland Application

The Union's Interests

The union asserts that the employer's use of REOs to provide training relief for other deputies reduces the number of REOs available for emergency response, and compromises deputy safety as a result. Additionally, the employer's use of REOs in this manner reduces deputies' potential to earn overtime compensation, because training is now done exclusively during the shift instead of before or after the shift.

According to the testimony of Carrell and Deputy Derek Henry, the employer's decision to utilize REOs to provide training relief eliminated the ability of REOs assigned to those duties to be able to respond to emergencies and put deputies at greater risk for injury in those situations. The

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[6] This case is on appeal is currently on appeal in the Washington State Court of Appeals Division 1, Docket Number 77831-5-1.

deputies testified that, unlike REOs who are readily available for response, deputies who are in training are slower to respond because they frequently turn off their radios and remove their protective gear while in training, and have to don that gear again before responding to an emergency call.

Testimony by both parties' witnesses indicated that the employer's decision affected deputies' potential for overtime compensation for training. In the past, deputies could participate in training during their regularly scheduled shifts, or they could earn overtime compensation by training on a shift extension or on a regularly scheduled day off. Having training during regularly scheduled shifts eliminated the ability to earn overtime compensation in this manner.

The Employer's Interests

The employer asserts that its interest in the efficient and effective assignment of its workforce outweighs the union's safety and compensation interests. The REO position, the employer contends, is specifically designed to provide flexibility, whether it be substituting for deputies on breaks, escorting inmates in the jail, performing other tasks on an as-needed basis, or as in this case, filling in for deputies receiving training. The employer also argues that having REOs provide training relief has no effect on employee safety, since the deputy in training is as available for emergency responses as the REO would have been if the REO had not been providing training relief.

Kane, who first began revising the break schedule when he became operations captain in 2014, testified that the break schedule he sent to the union in November 2015 was designed to increase the amount of instructor-led training available to deputies, to better organize the delivery of that training, and to provide REOs a measure of advance notice that they would be providing relief at a post. The changes in training met the employer's interest of having a more highly trained group of deputies, and allowed the employer to meet contractual and state standards for training.

The Balance

In *City of Everett (International Association of Fire Fighters, Local 46)*,, the Commission cited *City of Richland* in stating that "[g]eneral staffing levels are fundamental prerogatives of

management." *City of Richland*, 113 Wn.2d at 205. However, the Commission added that shift or general staffing levels are not exclusively management rights.

> If a union presents evidence that the shift staffing relates to workload and safety, as the union in this case did, then we must balance how the minimum shift staffing relates to employees' wages, hours, and working conditions against the employer's interest in entrepreneurial control or managerial prerogatives. If a union is able to show that the shift staffing level had a "demonstratedly direct relationship to employee workload and safety," then requiring an employer to bargain staffing will result in a balance of the interests of the public, employer, and union in furtherance of the public employment collective bargaining laws. *City of Richland*, 113 Wn.2d at 204.

The union in *City of Everett (International Association of Fire Fighters, Local 46)* presented detailed evidence that the employer's decision to not increase staffing levels led to firefighters being more fatigued and less effective due to responding to more calls during their shift. Staffing levels were also shown to have a negative effect on response time, as well as the firefighters' ability to participate in training and complete inspections. Taking this evidence into account, the Commission found that the employer had an obligation to bargain staffing levels with the union.

The union in the present case provided no documentary evidence to support its claim that the employer's decision to utilize REOs to provide training relief and laundry supervision had a demonstratedly direct relationship to employee workload and safety, instead relying solely on the testimony of Carrell and Henry. These witnesses testified that having REOs tethered to a post while other deputies received training increased response time to emergency calls and put deputies at greater risk for injury.

Kane's testimony cast doubt on the union witnesses' contentions, in addition to highlighting the employer's interest in creating structure for training that had been provided sporadically and included training relief from REOs in the past. Kane testified that deputies are issued a radio each day, and are expected to leave them on no matter where they are in the jail in order to be aware of emergency calls. Kane also testified that in the trainings he observed, deputies had their radios on and were in uniform.

When emergencies occur at the jail, the record demonstrates that the responsibility to respond rests with all employees who are not assigned to a post, including captains, lieutenants, and sergeants. When REOs are relieving a deputy at a post for training or a break, the REO is not available for emergency response, but the deputy who is relieved is available to respond and is expected to do so. There is no reduction in the number of personnel available for emergency response.

The union's use of *City of Clarkston* to support the assertion that the employer had an obligation to bargain its decision is also not persuasive. In *City of Clarkston*, the Examiner found that the employer had an obligation to bargain over its decision to change firefighters' work schedule by adding drills and special projects on the weekend, as well as assigning them to community event coverage at various times throughout the year. In this case, the record demonstrates that REOs providing relief for deputies in training were performing work that REOs did on a daily basis when providing break relief.

After taking the record and the parties' arguments into account, I find that the employer's reassignment of REOs is not a mandatory subject of bargaining. The union did not meet its burden to prove that the employer's decision to utilize REOs for training relief and laundry supervision had a demonstratedly direct relationship to workload and safety, and the union's remaining interest in overtime compensation does not outweigh the employer's interest in managing a flexible portion of its workforce in addition to providing increased and more efficient training for its deputies.

Conclusion

The employer's interest in managing its workforce in addition to providing increased and more efficient training for its deputies outweighs the union's workload, safety, and overtime compensation interests. The union did not meet its burden to prove that the employer's decision to utilize REOs for training relief had a demonstratedly direct relationship to workload and safety, and the union's remaining interest in overtime compensation does not outweigh the employer's interest in determining employee work assignments. The employer's assignment of duties in this case is not a mandatory subject of bargaining, and the employer's unilateral change did not lead to an obligation to bargain.

ISSUE 1(b): Did the employer refuse to bargain, since April 28, 2016, by reducing the number of corrections deputies on some jail transports?

Background

Deputies may bid onto the transport team as part of the shift bidding process. Members of the team are responsible for transporting inmates to video courtroom appearances within the jail, court appearances at Snohomish County Superior Court, and court appearances in other district courts within Snohomish County. Team members also transport inmates to psychological evaluation centers, such as Western State Hospital, and occasionally to local hospitals for medical appointments or emergency treatment.[7]

More than 20 deputies are on the transport team, which is supervised by a lieutenant and a sergeant. The transport sergeant schedules daily transports by taking a number of factors into account, including the inmate's charges, behavior while in custody, the nature of the hearing, and the publicity accompanying the hearing. During the time of the events in question, Dan Young was the transport sergeant until he was replaced by Michael Miller in early 2016.

Since 2000, the employer's policy for transporting prisoners outside the jail states:

> A. Transport Sergeant Sets Staff/Prisoner Ratio
> Normally one officer will supervise a maximum of four (4) prisoners. This ratio of officers to prisoners will increase and/or decrease at the discretion of the Sergeant based upon the prisoner(s) security level, charges and prior history, type of appearance and location of appearance.

Each transport customarily involves two or more deputies, although there are circumstances when a transport will involve only one deputy. When transporting inmates outside of the jail, deputies must be weapons-qualified, carry a weapon, and wear protective vests; when transporting inmates inside of the jail, deputies do not wear protective vests, but do carry a taser and pepper spray. Transports to Snohomish County Superior Court involve walking an inmate through a tunnel that

[7] Transports to local hospitals are most often performed by the junior weapons-qualified deputy on a particular shift.

connects the jail to the courthouse, but other transports outside of the jail use a secure county vehicle for the transport, unless a medical emergency requires the use of an ambulance.

In late 2015, the union sought to bargain with the employer regarding single-deputy transports. The union's concern revolved around what it perceived to be an increased use of single-deputy transports for criminal proceedings, which the union considered a deputy safety issue. The parties met in January 2016, at which time Kane – who had served as transport sergeant as late as June 2014 – stated that there was no change to the past practice, but that he would review the transport schedule and work with Young to ensure that future assignments conformed to the past practice.

In February 2016, Miller replaced Young as Transport Sergeant, and the parties revisited the single-deputy transport issue in March 2016. During that March meeting, the union expressed its position that there should be no fewer than two deputies assigned to court transports, unless the employer could provide set criteria for single-deputy transports. The employer responded that court transports would continue to be assessed on a case-by-case basis, and asked the union to provide input regarding criteria so the issue could be discussed at a future date.

The parties discussed transport issues again during labor-management meetings on March 31, 2016, and April 28, 2016. The union asked for a status on a risk assessment for transport operations during the March meeting, and was told it was on hold until the employer's transport policy was updated. The employer again asked the union for input on transport issues. In April, the union expressed a concern that an inmate who was normally assigned two deputies for transport was transported to the hospital with just one deputy, and discussed another incident in which an inmate was transported to Burien by a single deputy.

The parties disagree whether they were scheduled to meet on May 12, 2016, to further discuss single-deputy transports. The union contends that the parties scheduled a meeting, and the employer contends there was no meeting scheduled. No meeting occurred, and the next communication regarding single-deputy transports came in the form of a May 17, 2016, e-mail from Aston to the union. Aston wrote, "With regard to the issue of staffing numbers for Transport

Deputies, the [Snohomish County Sheriff's Office] is willing to listen to the Guild's concerns, but does not concede that this is a mandatory subject of bargaining."

On June 17, 2016, Operations Captain Kevin Young e-mailed a new operations directive to all staff that established a procedure for changing an inmate's security status to a two-deputy detail. Staff members requesting such a change were expected to document the request on a report form and submit it to an employee ranked Sergeant or higher for approval.

Application of Standards

The union contends that staffing levels of transports are a mandatory subject of bargaining, citing *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A, because staffing has a direct relationship with workload and safety. As such, the union alleges that the employer unlawfully changed a past practice without notice and an opportunity to bargain when it began utilizing one-deputy transports for court appearances. The employer argues that determining the number of deputies assigned to a transport is a management prerogative, and that the Commission confirmed that for this bargaining unit 10 years ago in *Snohomish County*, Decision 9291-A (PECB, 2007).

The City of Richland Application

The Union's Interests

Through testimony of several witnesses, the union asserts that there are inherent risks for deputies who transport inmates, and that those risks are magnified when inmates are transported outside of the jail for court appearances or medical reasons. In addition to their responsibility for the inmate's care and safety while on a transport, deputies must also be alert to their surroundings in order to protect themselves and the public.

When more than one deputy is assigned to a transport, the deputies share those responsibilities. In addition, a deputy who must intervene during an altercation or other unforeseen incidents has at least one other deputy who can provide assistance and help restore order. A deputy working alone on a transport does not have that assistance, which creates a safety concern for the deputy and the inmate, according to the union.

The Employer's Interests

The employer does not disagree with the union's premise that having more deputies involved on a single transport is safer for deputies. However, the employer has a finite number of transport deputies at its disposal to accomplish the task of transporting inmates to various locations inside and outside of the jail on any given day. The employer argues that it has to be able to make informed decisions about how best to use the resources at its disposal, and adds that requiring at least two deputies on every court transport robs the employer of the flexibility it needs to fulfill its obligations.

The Balance

In 2007, an Examiner found in *Snohomish County* that the employer did not unlawfully take work away from the corrections bargaining unit when two marshals were used in addition to two transport officers during a high profile case. The union argued that the employer's past practice was to assign four transport officers to high profile cases, but the Examiner found that the employer's determination of the number of transport officers needed based on the nature of the hearing was part of its managerial prerogative.

While instructive, the Examiner's decision in *Snohomish County* does not negate the need to weigh the interests of the union and employer in order to determine whether transport staffing is a mandatory subject of bargaining under the current set of facts. The union's contention that *City of Everett (International Association of Fire Fighters, Local 46)* amounts to a blanket statement by the Commission that staffing levels constitute a mandatory subject of bargaining is also insufficient.

As stated in Issue 1(a), the union in *City of Everett (International Association of Fire Fighters, Local 46)* was able to establish that staffing levels had a "demonstratedly direct impact on workload and safety." It did so by presenting evidence on the number of firefighter calls per shift and response time for those calls, as well as evidence on the ability of firefighters to participate in training and complete inspections. The union in the present case again bases its workload and safety argument on witness testimony with little in the way of documented safety impacts of the employer's decision.

The union provided transport schedules indicating that there were more than 30 instances of single-deputy transports for court appearances from October 1, 2015, through June 30, 2016.[8] It is not unreasonable to expect that there would be a documented report of some sort if a deputy on one of those transports had been involved in a use of force or had been injured at some point during a transport, but the union provided no evidence of the kind.[9] Union witnesses Richard Hecht and Mark Morgenstern were assigned single-deputy court transports between October 2015 and July 2016, but neither testified about any safety-related issues arising out of those transports.

After taking the record and the parties' arguments into account, I find that the employer's transport staffing is not a mandatory subject of bargaining. The union did not meet its burden to prove that the employer's decision to utilize single-deputy transports for court appearances had a demonstratedly direct relationship to workload and safety. The union's workload and safety interests do not outweigh the employer's interest in managing the scheduling of its transport deputies in order to meet its court obligations.

Conclusion

The employer's managerial prerogative in managing the scheduling of its transport deputies outweighs the employees' interests in workload and safety. The union did not meet its burden to prove that the employer's decision to utilize single-deputy transports for some court appearances had a demonstratedly direct relationship to workload and safety. The employer's use of single-deputy transports in this case is not a mandatory subject of bargaining, and did not lead to an obligation to bargain.

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8 Miller succeeded Young as transport sergeant in February 2016. From March 1, 2016, through June 30, 2016, the transport schedules in evidence showed the employer assigned just one single-deputy transport for court appearances.

9 The union provided a February 22, 2016, e-mail from Corrections Deputy Javier Diaz that detailed a use of force incident with an inmate while on a single-deputy emergency hospital transport. I have not given this evidence weight in connection with this issue because both parties acknowledge that the employer often utilizes single-deputy transports to the hospital.

ISSUE 1(c): Did the employer refuse to bargain, since July 1, 2016, by altering the bidding and selection process for the technology specialist position?

Background

Article 6.6 of the parties' CBA memorializes the parties' agreement on shift bidding and the method of filling job vacancies when they occur.

> Shift/Days Off Assignments – Shift/days off assignments shall be selected on the basis of seniority in classification. 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 position and call for bids from regular full-time employees who might be interested in filling the position. Posting shall be made on the personnel bulletin boards in the jail and work release in a designated space. Bidding shall close seven (7) calendar days following such notice. The most senior bidder shall be transferred to the vacancy unless such assignment would deprive the Employer of the needed skills, experience, gender and/or training on either shift affected by the proposed transfer. An employee who successfully bids for a vacant position shall be prohibited from bidding for another vacant position for a period of three (3) calendar months. Sections 6.5, 6.6, 6.6.1, 6.6.2 and 6.6.3 are not intended to limit the Employers [sic] right to change shift schedules and/or shift staffing. This bid process shall apply to the entire bargaining unit.

In addition, Article 6.6.1 states that "a vacancy occurs when an employee terminates, resigns, retires, or successfully bids to an open position; or a new position is established; or a position's assigned shift and/or days off change."

In early 2014, the employer determined that it needed to temporarily assign a deputy to assist the technology lieutenant as the lieutenant worked to replace the employer's jail management software systems with New World Systems software that would connect Corrections Bureau operations to more than 50 law enforcement, fire, emergency medical service, and emergency dispatch agencies in Snohomish County.

In May 2014, the employer sought bids for the temporary position, which was expected to be staffed through the end of 2014, but extended beyond that because of problems that caused delays in New World Systems implementation. The skills and characteristics necessary for the position

included an understanding of Microsoft Windows in addition to proficiency with Microsoft PowerPoint, Excel, and Word. The employer awarded the position to Deputy Dave Hall, who was the most senior bidder.

In early 2015, the technological challenges of implementing New World Systems convinced the employer to create an additional temporary duty assignment in the technology unit. The employer awarded the assignment to Butchart, who was one of a number of "subject matter experts" trained on the New World Systems software and tasked with teaching deputies how to use the new software.

The New World Systems software implemented in October 2015 still contained several bugs and corrections that needed to be made in order for the software to be fully operational at the jail. The employer determined there would be benefits to keeping Hall and Butchart in the technology positions on a more permanent basis in order to deal with issues that arose during daily operations, and could not be resolved by other subject matter experts.

Kane created a technology deputy announcement in December 2015 that stated that the new position would be awarded to the most senior bidder who passed a written qualification test. The test for the position, which had a three-year term, required applicants to be prepared for questions regarding New World Systems and other programs.

Kane provided a draft of the announcement to the union, and the parties reached agreement in January 2016 on a memorandum of understanding (MOU) that changed contract language in order to accommodate creation of the technology deputy position. The parties also agreed the position would be awarded to the most senior bidder who passed a written qualification test and would have a three-year term. However, Kane later withdrew the agreement because the employer did not want the position to be limited to three years.

On March 11, 2016, Kane posted a bid announcement for two jail management system and technology specialist positions, one of which was expected to be permanent and would be filled annually, and the other a temporary position expected to last six to nine months. Qualifications

required to bid for the position included New World Systems training, experience working with the Joint Public Safety Answering Point Aegis Coordination Committee, and the ability to instruct and support groups and individuals on technology related subjects. The positions would be awarded to qualified bidders with the most seniority.

The union objected to the March 11, 2016, bid announcement during a labor-management meeting on March 17, 2016, the day before the closing date for bid submission. The union's concerns revolved around the specialized qualifications and training for the positions that could only be met by Hall and Butchart, who were later hired for the positions. Kane expressed to the union that the announcement was written as it was because the continuing issues with implementation of the New World Systems required expertise that would take months for someone new to the position to acquire. The employer stated that future openings would include less stringent qualifications, and the parties discussed the need for deputies to pursue training opportunities and prepare for a test as part of the application process.

In a labor-management meeting on March 31, 2016, the union asked the employer to re-post the technology deputy position and use a competitive testing process to determine who would fill the positions. Minutes from the meeting indicate that the union stated that the employer should devise the test based on the requirements for the position, and that it had no issue with Hall and Butchart – both of whom were on the union's executive board at the time – being involved in test development. The employer agreed to have a testing process proposal by the end of April, but did not re-post the position.

On May 26, 2016, the union included the technology deputy posting in the demand to bargain letter Carrell sent to Trenary, specifically taking issue with "creating new criteria for the position that undermines our bid process for this position." The record does not indicate that the parties met to discuss the issue before June 30, 2016, when Operations Captain Kevin Young sent a bid announcement for the technology deputy position vacated by Hall when Hall was promoted to sergeant.

The June 30, 2016, announcement stated that "[t]his position will be awarded to the most qualified senior bidder who passes a written qualification test." The announcement for the three-year position provided areas that would be covered on the pass-fail test, with New World Systems being the first bulleted topic on the list, followed by "TeleStaff, SharePoint, VOIP, Network Protocol, Microsoft Office Suite (Word, Excel, OneNote, PowerPoint, Access, Outlook), Public Speaking Skills, Teamwork Skills, Jail Security System Concepts, Teaching Ability, Analytical and Problem Solving Skills, and Microsoft Operating Systems."

Both parties acknowledged in testimony that the qualifications required to bid for the position were less rigorous than those contained in the March 11, 2016, bid announcement. On July 15, 2016, Young announced that Butchart had been selected for the opening because he was the "most senior qualified candidate."

The parties discussed testing again during their labor-management meeting on August 4, 2016. According to meeting minutes, the union objected to deviating from the contractual bidding process to fill the second technology deputy position due to the aspects of the test that were not directly related to technology. On August 18, 2016, Young sent a bid announcement that was similarly worded to the June 30, 2016, bid announcement. On September 8, 2016, Young announced that Deputy Sam Leslie was selected for that opening, which had a three-year term.

Application of Standards

The union asserts that the employer unilaterally changed a mandatory subject of bargaining without bargaining when it altered the qualifications required to successfully bid for the technology specialist position instead of awarding the position to the most senior bidder as prescribed by the CBA. The employer contends that it fulfilled its bargaining obligations with the union while also addressing the employer's needs for the position. The employer also makes two timeliness arguments, stating that the March 11, 2016, bid announcement was outside of the agency's six-month statute of limitations, and that the June 30, 2016, bid announcement was outside of the July 1, 2016, time frame detailed in the preliminary ruling. As such, the employer argues that neither bid announcement should be considered.

Addressing the employer's timeliness arguments, the statute of limitations in an unfair labor practice case begins six months before the filing date of the complaint. RCW 41.80.120(1). The union filed its unfair labor practice complaint on September 14, 2016, making events that occurred prior to March 14, 2016, outside of the statute of limitations. The employer's March 11, 2016, bid announcement will not be considered in determining the merits of the union's allegation.

As for the employer's timeliness argument regarding the June 30, 2016, bid announcement, the employer relies on WAC 391-45-110(2)(b), which states that "[t]he preliminary ruling limits the causes of action before an examiner and the commission. A complainant who claims that the preliminary ruling failed to address one or more causes of action it sought to advance in the complaint must, prior to the issuance of a notice of hearing, seek clarification from the person that issued the preliminary ruling."

There is no dispute regarding the cause of action in this case. The union's complaint was clear in its allegation that the employer added a testing requirement in the bid announcement to replace Hall, and the employer admitted that it did as much in its answer. Furthermore, the employer did not object on timeliness grounds when the union sought to enter the June 30, 2016, bid announcement into evidence at hearing. To preclude a determination of the merits of the union's allegation based on an imprecise preliminary ruling would unfairly prejudice the union.

The record establishes that the parties' status quo pertaining to vacancies for existing or new positions is covered by Article 6.6. Specifically, Article 6.6 states that "[w]hen a vacancy occurs, the Employer shall post a notice that the position is vacant, specify the qualifications of the position and call for bids from regular full-time employees who might be interested in filling the position." It further states that "[t]he most senior bidder shall be transferred to the vacancy unless such assignment would deprive the Employer of the needed skills, experience, gender and/or training on either shift affected by the proposed transfer."

Bidding for shifts and assignments is a mandatory subject of bargaining, due to the direct relationship it has on employees' wages, hours, and working conditions. The employer's technology deputy bid announcements on June 30, 2016, and August 18, 2016, contained a testing

component that did not exist prior to those announcements. The employer's decision to utilize testing in determining successful bidders for the Technology Deputy position was a meaningful change to a mandatory subject of bargaining.

The record demonstrates that the employer provided the union notice of its desire to use testing as part of the application process after the union objected to the stringent qualifications contained in the employer's March 11, 2016, bid announcement. The parties discussed testing as part of the application process during their March 17, 2016, labor-management meeting, and the union did not object to testing as part of the process when the parties discussed testing in greater detail at their March 31, 2016, labor-management meeting. Additionally, the union stated that it had no objection to Hall and Butchart – two of its executive board members – being involved in the development of the test. Although the parties did not memorialize the addition of testing to the bid application process or determine what form testing would take, it can be reasonably inferred from the record that the parties were not at odds over the concept of testing being a part of the bid process.

Conclusion

The union established that the employer made a meaningful change to a mandatory subject of bargaining when it added a testing component to the bid application process for the technology deputy position on June 30, 2016, and August 18, 2016. The employer provided notice of the proposed change to the union during two labor-management meetings in March 2016, and the record indicates that the union did not object to the addition of testing or its members' participation in the development of the test before the employer made its bid announcements. As a result, the employer did not unlawfully refuse to bargain when it added a testing component to the bid application process.

ISSUE 1(d): Did the employer refuse to bargain, since April 25, 2016, by ending the practice of providing bargaining unit employees working on the graveyard shift with hot meals and instead providing employees with cold, sack lunches?

Background

At the time of the events in question, the employer contracted with Aramark Correctional Services, L.L.C., to provide food service management for the jail. The $7 million contract, which began April 1, 2013, and runs through March 31, 2018, requires Aramark to do the following:

A. Provide day to day food service supervision by a full-time on site supervisor (Kitchen Manager).
B. Provide adequate staff in addition to two county employee cooks and inmate workers to prepare three meals per day for all prisoners and one meal per shift for staff.
C. Provide menu plans and recipes.
D. Provide ongoing review of standard menus and diet alternatives by a licensed nutritional consultant.
E. Provide and order food and implement an inventory system.
F. Train kitchen staff in nutrition methods, special diet requirements, and security in working with inmates as well as food handling and sanitation practices.
G. Provide specialized dietary meals for individuals with medically necessary restrictions and/or ingredients.
H. Provide a barista services that offers coffee drinks, baked goods and supplemental meal opportunities for sale to staff.

Appendix A.4 of the CBA in effect between the employer and the union at the time of the events in question covers employer-provided meals for employees:

> Meals – The Employer shall make available to the employee the meal provided to the confined jail inmates for each day the employee is on duty and remains within the jail facilities during the meal period. The Employer shall also provide a meal at no cost to the employee for those officers performing bargaining unit work outside of the Corrections facilities (i.e. hospital, etc.).

Prior to May 2016, the breakfast meal Aramark provided staff working the graveyard shift and inmates included one or more hot items each day. During a one-week period, for example, the menu included hot cereal, biscuits with gravy, pancakes, breakfast sausage, hash brown potatoes,

and cottage fries. The record demonstrates that while some jail employees who worked graveyard shift chose to eat the prepared meal, others chose to bring or purchase their own food.

Administrative Captain Daniel Stites oversees the Aramark contract as part of his responsibilities. On April 25, 2016, Stites sent a memorandum to all staff stating that, effective May 5, 2016, the employer would provide a cold, sack meal for inmate breakfast, and that the inmate worker shift hours for the kitchen would be from 5 a.m. to 8 p.m. The new breakfast menu did not include the hot items that were part of the previous breakfast menu. During a one-week period, the new menu included a breakfast bar, corn flakes, turkey or ham bologna, biscuits, coffee cake, cinnamon rolls, and fruit.

Stites' memorandum stated that "[t]his has been a coordinated effort with Aramark and will alleviate many of the issues in relation to breakfast service in the facility and its timeliness. In addition, there will be a reduction in energy and water usage for the facility as well as wear and tear on kitchen equipment."

Providing a cold, sack meal allowed kitchen staff to prepare the breakfast meal the previous day instead of cooking breakfast beginning at 4 a.m., which was the practice prior to the change. Stites testified that breakfast delivery was more uniform as a result, and delays in breakfast delivery were less likely to occur and affect jail operations such as court transports or work release.

Stites' memorandum did not state that there would be any change to the breakfast meal provided to employees working the graveyard shift. The union learned of the change on May 5, 2016, when deputies on the graveyard shift were provided cold, sack lunches. In an e-mail to Stites that morning, Carrell stated that the union did not receive notice of the change, and demanded to bargain if the employer's intent was to change the graveyard deputies' breakfast meal from a hot meal to a cold meal.

Carrell also sent a demand to bargain letter to Aston that sought the return of hot meals for graveyard deputies until the parties negotiated the issue. The employer continued to provide a

cold breakfast meal to its graveyard shift employees, and the parties met to bargain over breakfast meals on July 29, 2016.

According to minutes taken at that meeting, the employer stated that "[m]anagement's right to oversee expenditures was the primary reason for the change. Though food costs remain equal, the change provided significant savings in labor costs by being able to replace the last full-time Cook FTE with a half-time Aramark employee."

The union proposed a compromise that would provide graveyard shift employees a pre-packaged meal daily that would be similar to the meal the inmates received once a week. The employer indicated that doing so would violate the contractual provision that employees receive the inmate meal, and that it could not agree to the union's proposal unless the union provided written authorization to violate the CBA. The parties did not reach an agreement at the meeting, and the employer continued to provide cold, sack lunches to employees working the graveyard shift.

Application of Standards

The union argues that the employer's provision of meals is a mandatory subject of bargaining, because of its direct link to employee wages and working conditions. The union further states that the employer unlawfully ended a long-standing practice of providing hot breakfast items for graveyard shift employees without notice or an opportunity to bargain. The employer counters that there has been no change in practice, because the employer continues to act in accordance with the contractual provision that employees receive the same meal provided to inmates. The employer also asserts that the CBA's silence on the nature of the breakfast meal amounts to a waiver by contract by the union.

Unlike employees at other workplaces, jail employees are unable to leave the facility to obtain a meal during their breaks. Being able to take advantage of the meal provided by the employer saves jail employees the money and time involved in purchasing a meal prior to starting their shift or preparing a meal to bring from home. Therefore, there is a direct connection between the employer's provision of a meal and an employee's wages, which makes employee meal provision a mandatory subject of bargaining in this case.

The record shows no dispute that prior to May 5, 2016, the employer had an established practice of providing freshly prepared breakfast meals that often included at least one hot item for employees working the graveyard shift and inmates. The employer made a meaningful change to that practice when it decided to provide employees working the graveyard shift cold, sack breakfast meals that were prepared the previous day.

The employer made the change to the breakfast meal without notice to the union, despite the fact that Stites signed off on the new breakfast menus on March 8, 2016, and exchanged e-mails with Aramark Food Service Director Pamela Munoz regarding the breakfast meal changes in early April. When Stites announced the changes to the inmate breakfast meal in his April 25, 2016, memorandum, he did not mention that the change would also affect employees. The implementation of the change on May 5, 2016, amounts to a *fait accompli* and a violation of Chapter 41.56 RCW unless the employer is able to establish an affirmative defense.

The employer claims that the parties' bargaining history indicates that the union waived its right to bargain over the nature of the meals provided to deputies. The employer points to the fact that the language in Appendix A.4 has not changed throughout several contracts as evidence that the union did not intend to be more specific about the nature of that contractual benefit. The union counters that the language in Appendix A.4 operates as a floor for employee meal provision, but it is not an intentional or specific relinquishment of the right to bargain over changes made or envisioned by the employer.

A contractual waiver of statutory collective bargaining rights must be consciously made, must be clear, and must be unmistakable. *City of Yakima*, Decision 11352-A (PECB, 2013), *citing City of Yakima*, Decision 3564-A (PECB, 1991). When a knowing, specific, and intentional contractual waiver exists, an employer may lawfully make changes as long as those changes conform to the contractual waiver. *City of Wenatchee*, Decision 6517-A (PECB, 1999). The burden of proving the existence of the waiver is on the party seeking enforcement of the waiver. *Lakewood School District*, Decision 755-A (PECB, 1980).

The employer in this case has not met its burden of proving that the union made a conscious, clear, and unmistakable waiver of its right to bargain changes to employer-provided meals. Testimony from union and employer witnesses provides ample evidence that a freshly prepared meal that included warm items has been the status quo for several years on all three shifts. Because the practice was widely acknowledged and accepted by both parties, the union foresaw no need to codify the practice in the CBA, and the employer provided no evidence that the subject was ever discussed by the parties during contract negotiations.

Conclusion

The union established that the employer made a change to a mandatory subject of bargaining on May 5, 2016, when it provided a cold, sack meal for breakfast to employees working the graveyard shift instead of a freshly prepared meal that included hot items. The employer did not provide notice to the union, nor did it provide an opportunity for bargaining, before making the change, resulting in a *fait accompli*. The employer did not meet its burden of proving that the union made a conscious, clear, and unmistakable waiver of its right to bargain the change, which renders its actions unlawful under Chapter 41.56 RCW.

ISSUE 1(e): Did the employer refuse to bargain, since April 11, 2016, by eliminating per diem meal reimbursements for corrections deputies who are out on transport during a meal period?

Background

In addition to transporting inmates within Snohomish County, deputies on the transport team occasionally transport them to other facilities throughout the state, such as Western State Hospital in Lakewood, Eastern State Hospital in Spokane, and competency restoration centers in Yakima and Centralia. While on those transports, deputies are away from the jail during their meal period.

Appendix A.4 of the parties' CBA states in relevant part that "[t]he Employer shall also provide a meal at no cost to the employee for those officers performing bargaining unit work outside of the Corrections facilities (i.e. hospital, etc.)." To conform to this language, the employer offers

transport deputies the same sack meal that is provided to the inmates being transported. Deputies can also bring their own food, or purchase a meal as time permits.

Meal reimbursement for Snohomish County employees is covered in its travel expenses policy (Policy 1211), which was effective in 1995 and last revised on December 1, 2006. The "Meals – Day Travel" portion of the policy states:

> The County will reimburse county employees and elected officials for meal expenses incurred in conjunction with official county business when in appropriate travel status (away from both the official residence and the official work station) and the three hour rule is met (number of travel hours before and/or after regularly scheduled working hours of any one day total three or more, see item 2d and 2e in this section for more information and examples).

Prior to 2006, deputies who purchased meals while on longer transports would bring a receipt to the sheriff's office's accounting department and receive reimbursement from the department's petty cash fund. After Policy 1211 was revised in 2006, employees seeking reimbursement from the petty cash fund had to complete a form and obtain authorization from their supervisor in order to be reimbursed. Meal reimbursement was done in accordance with the policy.

On March 29, 2016, Deputy Mark Morgenstern sent an e-mail to Sally Reyes, an accounting technician in the sheriff's office, regarding reimbursement for a meal he purchased while on a transport to Yakima. Morgenstern submitted a receipt for his meal, but had not been reimbursed. Reyes responded on April 6, 2016, that she needed to research lunch reimbursement but added "[p]er travel and meal policy, it does not look like I can just reimburse you."

A similar situation occurred when Deputy Donald Miller submitted receipts for meals purchased during transports to Yakima. On May 13, 2016, Miller e-mailed Reyes to ask if he was reimbursed. Miller and Morgenstern were not reimbursed for their meal expenses, because their travel did not meet the three-hour rule.

In his demand to bargain letter to Trenary on May 26, 2016, Carrell included "[d]eputies not being reimbursed for meals doing all day transports away from the facility" as one of the items that the union wanted to bargain.

Application of Standards

The union asserts that the employer changed a mandatory subject of bargaining without providing notice and an opportunity to bargain when it ceased its practice of reimbursing deputies who are away from the jail during their meal period. The union claims that deputies were reimbursed for meals missed after Policy 1211 was revised in 2006 until Miller and Morgenstern were denied reimbursement in 2016. The employer counters that its practice since 2006 has been to apply Policy 1211 in determining whether to reimburse deputies for meals, and that the 2016 reimbursement denials were a continuation of that practice.

To qualify as a past practice, the practice must have been consistent, known by both parties, and mutually accepted. *City of Renton*, Decision 12563-A (PECB, 2016), *citing Whatcom County*, Decision 7288-A. The union bears the burden of proving that a past practice exists. The union provided ample testimony to establish that there was a past practice of deputy meal reimbursement prior to 2006, when Policy 1211 was revised. It is apparent from the record that the practice changed when Policy 1211 was revised.

The union's evidence supporting its claim that the pre-2006 past practice continues consists of the testimony of Deputies Kenneth Anstett and Miller.[10] Anstett testified that he submitted receipts and received meal reimbursement for transports in 2013 or 2014, but on cross-examination he testified that his last memory of submitting receipts was in the late 1990's. Miller testified that the last time he submitted a receipt and received meal reimbursement was in 2007.

The employer's witnesses testified that any reimbursement out of petty cash after Policy 1211 was revised in 2006 required employees to submit a completed form with supervisor approval. The county's records retention policy requires the employer to retain all such records for six years. If

[10] The union introduced evidence and argument that deputies received meal reimbursement during training away from the jail. The evidence and argument have not been considered in determining whether an unfair labor practice occurred, as these facts were not subject to the preliminary ruling.

these reimbursements occurred, it would be reasonable to expect that the union would have been able to obtain and present documentation of the reimbursements. The union did not present any such documentation, and its witnesses' testimony is insufficient to meet its burden of proof that meal reimbursement for deputies who are out on transport during a meal period was a consistent and mutually accepted practice after 2006.

Conclusion

The union established that, prior to the revision of the employer's travel expenses policy in 2006, the parties had a practice of reimbursing deputies from petty cash for meals purchased while on a transport if the deputies submitted a receipt. After the policy revision, the practice changed so that meal reimbursement was subject to the three-hour rule, which requires employees to be in travel status for at least three hours beyond their regular shift in order to receive reimbursement for meal expenses. The union failed to meet its burden of proving that meal reimbursement for deputies who are out on transport during a meal period without meeting the three-hour rule was a consistent and mutually accepted past practice concerning a mandatory subject of bargaining. The employer did not commit an unfair labor practice when it denied meal reimbursement requests for deputies who were out on transport during a meal period in 2016.

ISSUE 1(f): Did the employer refuse to bargain, since May 2, 2016, by requiring corrections deputies to perform urine analysis testing on inmates?

Background

Snohomish County Jail inmates undergo urinalysis testing by medical staff when they enter the jail as part of a health assessment. Once incarcerated, inmates are also subject to urinalysis when there is a suspicion that the inmate is using intoxicants in violation of jail rules. When the employer's community corrections division operated prior to the end of 2016, inmates on work release were subject to random urinalysis.

Deputies perform urinalysis testing when it is done to determine if jail rules have been violated, and deputies also performed the tests when they were done randomly to inmates on work release. Among the essential duties of the position listed in the deputies' job description, which was last

revised in November 2015, is "administers or arranges for breathalyzer or urinalysis to detect suspected drug or alcohol use."

Deputies who bid into the REO post escort inmates who are undergoing urinalysis to a specially equipped bathroom and observe them filling a specimen cup, which is designed to indicate the presence of intoxicants. If the inmate cannot provide a sample, the REO escorts the inmate to a holding cell, provides the inmate water, and performs other duties until returning approximately an hour later to give the inmate another chance to provide a specimen. Inmates who do not provide a specimen commit a rules violation. No matter what the results of the test are, the deputy is responsible for completing paperwork.

On April 13, 2016, Deputy John Hatchell e-mailed Carrell and Williams an Excel spreadsheet that Hatchell had prepared for Operations Captain Kevin Young to use for random inmate urinalysis of male and female inmate workers, and inmates in module E3. Hatchell's e-mail concluded by saying that "[Young] would not tell me who would be doing the testing but I thinks [sic] it's obvious."

On April 21, 2016, Young e-mailed a copy of a Conducting Urinalysis Testing post order to the union that extended random urinalysis to inmates housed in inmate worker modules in the main jail. The order, which had an effective date of April 10, 2016, provided procedures for testing and stated that "[u]rinalysis testing shall happen at various times on a random schedule as set by the drug search schedule. This includes random selected times and/or any time staff believes there is reasonable cause to do so."

Minutes of the parties' April 28, 2016, labor-management meeting indicate that the parties discussed the matter, stating that "Captain Young updated the Guild on implementation of the UA policy for the main jail. The Prosecutor's Office has reviewed the policy and determined that UA screenings do not meet the definition of a strip search."

On May 2, 2016, Young e-mailed the post order to all staff. As background, Young wrote that "[t]here have been an increasing amount of drugs being introduced into our facility. These drugs

are typically being transported or moved around the facility by inmate workers." Young's e-mail informed staff that inmates in the inmate worker housing units would be randomly tested beginning May 8, 2016, and that the shift sergeant would ensure that "at least" one random test would occur on each shift based on an Excel form, although sergeants could require additional tests if they received information that warranted additional testing. Training on use of the specimen cup was provided online.

On or about May 9, 2016, Carrell demanded to bargain the issue in a letter to Aston, writing that "[t]his was done within a very short time period and with no reasonable expectation that the Guild would have time to have any meaningful discussions on the matter. The Guild is demanding that management return to the status quo of having medical staff perform the UA's until we have time to bargain the issue."

On May 13, 2016, Young sent a revised post order that reorganized the process for securing the urine sample. Later that day, Kane sent an e-mail to all staff, clarifying that "medical performs UA's for healthcare/medical screenings and assessments, while deputies perform them for evidentiary purposes, security, and accountability."

On May 16, 2016, the employer informed the union it would be available to meet regarding the union's demand to bargain the urinalysis policy on June 24, 2016, and asked the union to confirm its availability. Meeting minutes of the parties' labor-management meeting on July 7, 2016, state that the employer asked the union to contact the employer in order to schedule an additional meeting on the subject.

Application of Standards

The union contends that assignments of work, and modifications of those assignments, are mandatory subjects of bargaining. The union alleges that the employer did not fulfill its duty to bargain when it unilaterally implemented random urinalysis testing for inmate workers, which added a new duty and increased workload and liability for deputies who performed the tests. The employer disputes the union's contention, stating that the employer's interest in using random drug testing as part of its efforts to maintain a safe jail environment for inmates and employees

outweighs the union's workload interest. The employer also argues that there has been no change to the status quo, because deputies have always performed urinalysis tests for reasonable suspicion throughout the jail or randomly for inmates on work release.

The City of Richland Application

The Union's Interests

The union argues that random urinalysis for inmate workers in the main jail has a meaningful impact on the workload of the deputies whose responsibility it is to accompany the inmate to the testing area, wait and observe while a urine specimen is provided, analyze the specimen, and complete the necessary paperwork following completion of the test. Several witnesses credibly testified that the amount of time necessary for urinalysis can range from approximately 15 minutes, in the best-case scenario, to an hour if the inmate is unable or refuses to produce a specimen. While performing urinalysis, REOs are unable to perform other tasks that they might be assigned during the course of their shift, leading to a backlog of work to complete.

The union concedes that deputies have performed urinalysis tests in the past, but asserts that the scope of the work has increased with the addition of at least one daily random test of inmate workers per shift. In addition, the union contends that an increased number of tests leads to increased liability for deputies who have to observe inmate genitalia during the test and thus have increased exposure to a Prison Rape Elimination Act complaint.

The Employer's Interests

The employer argues that it has a duty to ensure the jail is safe and secure for inmates and employees, and one of the means the employer utilizes to fulfill its duty is urinalysis in order to detect the use of intoxicants by inmates. Deputies have traditionally performed urinalysis at the jail, based on reasonable suspicion or on a random basis, and the employer contends that its managerial prerogative to have deputies perform urinalysis on inmate workers is no different than its ability to direct deputies to search inmates' cells for contraband or make regular rounds to ensure jail rules are being followed.

The Balance

The parties agree that deputies have historically performed urinalysis on inmates on a random basis or based on reasonable suspicion to dissuade inmates from using intoxicants in jail. Having deputies perform random urinalysis on inmate workers who have greater freedom to move within the jail aligns with the employer's primary responsibility to ensure a safe and secure environment for inmates and employees. The union's workload and liability interests do not outweigh the employer's interest in fulfilling its primary responsibility by attempting to curtail intoxicant use by its inmates. The employer's decision to utilize deputies to perform random urinalysis on inmate workers in this case is not a mandatory subject of bargaining.

Conclusion

The employer's interest in providing a safe and secure environment by discouraging intoxicant use in the jail outweighs the employees' workload and liability interests. The employer's decision to use deputies to perform random urinalysis on inmate workers beginning in May 2016 is not a mandatory subject of bargaining, and as such, the employer's unilateral change did not lead to an obligation to bargain.

ISSUE 1(g): Did the employer refuse to bargain, since May 2016, by reducing the number of vest carriers the county provides to employees as part of the Corrections Deputy uniform?

Background

Deputies who are qualified to carry weapons are provided a protective ballistic vest along with a firearm. Members of the transport team, and other deputies who work outside of the jail, are required by policy to wear protective vests when they are outside of the facility. The protective vests are held in place by a cloth vest carrier.

Deputies are custom-fitted for a ballistic vest by Blumenthal Uniforms, and in the past deputies received two vest carriers with each vest from the vendor. Having a second vest carrier available allowed deputies to perform their duties outside of the jail if their vest carrier was damaged or contaminated. If a deputy's vest carrier was damaged or contaminated, and the deputy did not

have a second vest carrier available, the deputy would be assigned to transports or other duties within the jail.

Vests and vest carriers are covered by Article 11.1.1 of the parties' CBA, which states in part that "[i]tems which become worn out and/or items which become lost or destroyed as a direct result of the performance of the employee's duties, or as a result of an occurrence not due to the employee's intentional act or negligence shall be replaced by the Employer."

In May 2016, Carrell received one vest carrier along with his replacement vest. At the parties' labor-management meeting on June 23, 2016, the union asked why deputies were no longer provided a second vest carrier. According to meeting minutes, the employer stated that Blumenthal Uniforms was using an outside vendor for this equipment and it was "unclear whether the change was a mistake or part of [Blumenthal Uniforms'] agreement with the vendor." The employer committed to providing the union an update on the issue.

At the parties' labor-management meeting on July 7, 2016, the employer informed the union that deputies received one vest carrier instead of two as a result of Blumenthal Uniforms' contract with its outside vendor. Stites testified that his conversations with Blumenthal Uniforms indicated that its decision to provide one vest carrier was tied to the increased cost of the carriers, which were made with more durable materials than previous vest carriers.

The cost of an additional vest carrier, according to testimony from Stites and Carrell, was between $125 and $175, which would have been an additional cost for the employer. The employer informed the union that deputies would receive one vest carrier with future vest orders, a point that was reiterated by the employer at the parties' August 4, 2016, labor-management meeting.

Application of Standards

The union asserts that the employer made a meaningful change to a mandatory subject of bargaining when it unilaterally reduced the number of vest carriers it provided to deputies from two to one. The union contends that the employer's decision is detrimental to employee safety, because the lack of a second vest carrier leads to more wear and tear on the lone vest carrier that

holds the protective vest in place. The union also states that compensation opportunities are potentially lost by deputies who are unable to perform transport duties while their worn or damaged vest carrier is being replaced.

The employer does not dispute that safety equipment constitutes a mandatory subject of bargaining, but the employer counters that there is not a consistent past practice of deputies being provided two vest carriers, and that the reduction in the number of vest carriers provided was a result of the vendor's decision and not attributable to the employer's actions. The employer also argues that the reduction in the number of vest carriers provided to deputies is not a material change to a mandatory subject of bargaining, because not all deputies who wear ballistic vests use the second vest carrier.

For the union to meet its burden of proving that the employer had a relevant status quo or past practice regarding the number of vest carriers provided to deputies with their ballistic vests, the union must demonstrate that the practice was consistent, known by both parties, and mutually accepted. The record indicates a lack of consistency and mutual knowledge of a past practice as it pertains to vest carriers.

Although Carrell and Hecht credibly testified that they had received two vest carriers with each of their ballistic vest orders prior to 2016, Kane credibly testified that he had received just one vest carrier with a vest order on more than one occasion during his 17 years with the employer. The witnesses' accounts point to an inconsistency in the parties' past practice.

In addition, the union's post-hearing brief states that "[a]lthough the practice of issuing only one vest carrier appears to have been implemented some time in 2014 or 2015, even the Sheriff's Office admits that it was not aware that deputies were only receiving one until it was brought to their attention by the Guild."

Stites testified that when he performed quartermaster duties from 2010 to 2013, vest orders were not opened to verify the contents before the sealed boxes were picked up by deputies. Stites' testimony and the parties' labor-management meeting minutes are evidence that the employer was

unaware of the number of vest carriers deputies received with their vest orders, which lends weight to the argument for a lack of mutual knowledge or mutual acceptance of a past practice.

Conclusion

The union was unable to meet its burden of establishing that the parties had a past practice regarding a mandatory subject of bargaining that was consistent, known by both parties, and mutually accepted as it pertained to the number of vest carriers provided with ballistic vest orders. As a result, the employer did not violate Chapter 41.56 RCW.

ISSUE 1(h): Did the employer refuse to bargain, since June 2016, by requiring corrections deputies to perform blood draws on inmates?

Background

One of the posts available for deputies to bid into is in the booking area of the jail, where inmates are taken following arrest. Booking deputies perform tasks such as processing arrest paperwork, taking fingerprints and photographs, conducting searches, storing inmates' property, and providing inmates a jail uniform and other items.

During the booking process, inmates are also examined by jail medical staff as part of a health assessment. Deputies in the booking area are present to protect medical staff during medical procedures, which have occasionally included blood draws in the past. Deputies have also assisted the Washington State Patrol (WSP) on an as-needed basis during Breathalyzer (BAC) tests used to determine if someone is driving under the influence of alcohol (DUI).

If an inmate fails to comply during a medical procedure, a BAC test, or any other portion of the booking process, one or more deputies occasionally use force to gain compliance, including strapping inmates into a restraint chair that restricts movement of the inmate's arms and legs. Deputies who are involved in the use of force on an inmate are required to write a report detailing the use of force, and the circumstances leading up to it.

On June 16, 2016, Sergeant Roxanne Marler sent an e-mail to jail supervisors regarding medical staff performing WSP blood draws, which require a court order to complete:

> Tonight a WSP Trooper met with our medical staff and discussed the procedures and laws regarding our medical staff taking blood draws for DUI's.
>
> It was decided by [Health Services Administrator Nikki] Behner and WSP that it would be routinely best to have the compliant inmate (defendant) placed into the restraint chair with one arm handcuffed to the restraint chair, while the Trooper stands by the Nurse with the loose arm.
>
> If the inmate is combative, then both arms and both legs would be restrained to the chair. The Trooper would still stand by and the booking sergeant and deputies may be utilized. Also, if necessary, additional WSP Troopers may be called in to assist.

On June 23, 2016, the parties discussed the issue at a labor-management meeting at the request of the union, which had learned that blood draws would be conducted at the jail instead of Providence Regional Medical Center in Everett. The union sought the rationale for the decision and the impact it might have on its members. According to the minutes of the meeting, the employer told the union that Providence asked for assistance because of the increasing number of blood draws. The meeting minutes also stated:

> The arresting officer is responsible for obtaining the required warrant and will remain with the inmate until the blood is drawn and he can take custody of it. Deputies will have no more involvement in the process than they currently do with BAC tests. As usual, deputies will continue to assist law enforcement if they need help in dealing with an inmate in booking.

The parties discussed blood draws again at their labor-management meeting on July 7, 2016. Meeting minutes stated that the union "agreed this agenda item had been discussed and completed to their satisfaction at the last labor-management meeting held on 6/23/16."

That same day, Behner sent an e-mail to supervisors and jail medical staff to remind them that medical staff were "only drawing blood with a court order presented by the Washington State Patrol. Apparently in the past few days officers from other agencies have presented with a court order – and nurses were asked to/and did draw the blood." Behner's e-mail said non-WSP officers

should be directed to Providence's emergency room until the service is expanded to other law enforcement agencies.

Application of Standards

As was the case with urinalysis testing discussed in Issue 1(f), the union contends that assignments of work, and modifications of those assignments, are mandatory subjects of bargaining. The union argues that the employer's unilateral decision to involve deputies in blood draws has increased their workload, as well as their exposure to physical harm and discipline that occasionally results from using force on an inmate. The employer asserts that it has a managerial prerogative to use deputies to oversee inmates during blood draws, and that its decision to do so is not a mandatory subject of bargaining. In addition, the employer states that using deputies to oversee inmates during blood draws represents no change to the status quo for deputies who work in booking, and does not give rise to the obligation to bargain.

The City of Richland Application

The Union's Interests

The union states that the potential for deputies to be involved in physical confrontations with inmates while assisting with a court-ordered blood draw has a direct impact on deputies' working conditions. Inmates undergoing blood draws are often uncooperative and combative, the union maintains, which requires one or more deputies to intervene in order for the blood draw to occur. When deputies intervene, they are unable to attend to other booking duties and then must complete a report regarding the use of force. Intervention also increases deputies' potential to be physically harmed, and could result in discipline as a result of their actions during a use of force.

The Employer's Interests

The employer contends that it has a managerial right to decide to have jail medical staff perform court-ordered blood draws on inmates in order to assist in the prosecution of DUI cases. The employer further contends that its managerial right extends to requiring booking deputies to oversee blood draws and intervene in a manner similar to what occurs during other medical or booking procedures when an inmate is not compliant.

The Balance

The record indicates that blood draws in the jail's booking area carry inherent physical risks for deputies when inmates are not willing to cooperate with the procedure, and add to deputies' workload due to the amount of time it takes for one or more deputies to restrain an uncooperative inmate and document the use of force afterward. The employees' workload and safety interests outweigh the employer's interests in managing its operations, which makes booking deputies' participation in inmate blood draws a mandatory subject of bargaining.

Finding that the subject is a mandatory subject of bargaining leaves the union with the burden of proving that there was a meaningful change to the status quo or past practice in order for an unfair labor practice to be found. The union argues that there has been a marked increase in blood draws performed at the jail since the employer's decision, pointing to evidence that there were 22 blood draws performed in the jail in June 2016, 27 in July 2016, 23 in August 2016, and 23 in September 2016.[11] The union did not provide any documentary evidence regarding how many blood draws were done prior to June 2016. The union also did not provide documentary evidence that demonstrates how many blood draws after June 2016 required deputies to use force on inmates in order to gain compliance.

The employer argues that the union has an excessively narrow conception of the status quo, and that having booking deputies stand by as medical staff perform inmate blood draws is no different than having them stand by during any other medical procedure that occurs in booking. The employer maintains that deputies' primary function is to ensure inmates' compliance with jail regulations, and to use force if necessary when inmates choose not to comply.

For a unilateral change to be unlawful, the union must establish that the change had a material and substantial impact on the terms and conditions of employment. The union seeks to do this by relying on evidence of the number of blood draws performed in booking since June 2016, and a contention that deputies often have to use force to gain inmates' compliance during the process, including a documented use of force on August 18, 2016, that involved multiple deputies.

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[11] The union provided blood draw data from October 2016 through June 2017, but that post-complaint evidence is not part of this analysis.

The record lends little credence to the union's argument that the deputies' role in blood draws had a material and substantial impact on their working conditions. The core function of booking deputies is to observe all parts of the booking process and to ensure that inmates comply with jail regulations. In the past, that has included deputies standing by during procedures performed by medical staff and BAC tests performed by WSP troopers, and occasionally using force to gain an inmate's compliance. The employer's use of deputies to oversee blood draws performed by medical staff is a logical extension of the deputies' duties and does not have a material and substantial impact on their working conditions.

Documentary evidence also casts doubt on the union's claims that overseeing blood draws created a material and substantial impact on deputies' working conditions. On average, there was less than one blood draw performed per day from June 2016 to September 2016, the relevant time period for the union's unfair labor practice allegation. If an inmate's lack of compliance during the blood draws resulted in an increased number of uses of force, it would be reasonable to expect that the union would have more than one documented incident to present as evidence.

Conclusion

The union was unable to establish that the employer made a meaningful change to a mandatory subject of bargaining when it assigned booking deputies to oversee inmate blood draws performed by medical staff in June 2016. The deputies' oversight of blood draws was similar to their oversight of other medical procedures and BAC tests performed in booking, in that deputies were expected to stand by and use force if necessary to ensure inmates' compliance. The employer's unilateral decision to use deputies to observe blood draws in booking since June 2016 was not a violation of Chapter 41.56 RCW.

ISSUE 1(i): Did the employer refuse to bargain, since November 24, 2016, by ending the practice of providing corrections deputies working on Thanksgiving and

Christmas Day with hot meals and instead providing corrections deputies with a cold meal?

Background

On Thanksgiving and Christmas Day, inmates are provided a hot meal during their lunch hour that includes turkey and other traditional holiday foods. The inmates' holiday meal is served during employees' day shift. Appendix A.4 of the parties' CBA states that the employer "shall make available to the employee the meal provided to the confined jail inmates," but in 2014 and 2015, Aramark provided a holiday meal similar to the inmates' meal on all three shifts for employees who worked on Thanksgiving and Christmas Day.

The employer's contract with Aramark does not require the contractor to provide a hot holiday meal to deputies on all shifts, but Aramark has done so at its own expense when there is room in its budget. The record is unclear on how long Aramark has provided hot holiday meals for deputies on all shifts. Witnesses also offered varying accounts of how long the deputies had received holiday meals that were different than those served to the inmates, and whether there were some years in which no special holiday meal was served to deputies.

In June or July of 2016, Aramark Food Service Director Munoz began to consider the upcoming holiday meals and her ability to provide hot holiday meals for deputies on all three shifts within the constraints of her budget. Munoz testified that, because her budget was tight, she discussed the situation with Stites and was told that her contract only required her to provide deputies the same meal that was provided to inmates.

At some point after the conversation with Stites, Munoz determined she did not have enough money in her budget to provide hot holiday meals for deputies on all three shifts. Munoz informed Stites of her decision to not provide the hot holiday meals for deputies on all shifts, but Stites did not inform the union of the change.

On November 24, 2016, deputies on graveyard shift and swing shift received the cold, sack meals the inmates received. Deputies on day shift received the same hot Thanksgiving meal the inmates received. Aramark did the same on Christmas Day in 2016.

Deputies Clint Postlethwaite and Randal Johnson submitted grievances on November 24, 2016, regarding the meal provided to the deputies on swing shift, which included a bologna sandwich, chips, and cookies. The deputies stated in their grievances that the employer had a longstanding past practice of providing a hot Thanksgiving meal to deputies, and they sought a return to that practice as a remedy.

Application of Standards

The union argues that the 2016 move away from providing a hot holiday meal to deputies on all shifts was a unilateral change of a mandatory subject of bargaining that the employer made without notice or an opportunity to bargain. The union states that the provision of a hot holiday meal is a financial benefit for employees who do not have to spend time and money purchasing or making their own meals. The employer maintains that it played no part in the provision of holiday meals, and that the decision to not provide hot holiday meals to deputies on all shifts in 2016 was made by Aramark based on the contractor's budget. Had Aramark decided to continue to provide hot holiday meals to deputies on all shifts, the employer argues that it would have allowed it to do so.

The foundational question to be answered is whether Aramark's actions regarding holiday meals are attributable to the employer. In *Snohomish County Public Utility District*, Decision 8727-A (PECB, 2006), the Commission wrote:

> In proceedings before the National Labor Relations Board (NLRB), "responsibility attaches [to a principal] if, 'applying the ordinary law of agency,' it is made to appear the . . . *agent* was acting in his capacity as such." *Teamsters Local 886* (*Lee Way Motor Freight*), 229 NLRB 832 (1977)(emphasis in original). Similarly, in proceedings before this Commission, we apply the common law rules of principal/agent when called upon to determine if the actions of a purported agent can be imputed to the principal upon whose behalf they are acting. *See, e.g., Community College District 13*, Decision 8117-B (PSRA, 2005)(holding that non-member union supporters' actions may be imputed upon the union).

> Under Washington's common law rules of agency, an agent's authority to bind his principal may be either actual or apparent. *Deers, Inc. v. DeRuyter*, 9 Wn. App. 240, 242 (1973)(citing 3 Am.Jur.2d Agency sec. 71 (1962)). With actual authority, the principal's objective manifestations are made to the agent; with apparent authority, they are made to a third person or party. *Smith v. Hansen, Hansen, Johnson, Inc.*, 63 Wn. App. 355, 363 (1991) review denied, 118 Wn.2d 1023 (1992). Implied authority is actual authority, circumstantially proved, which the principal is deemed to have actually intended the agent to possess. *King v. Riveland*, 125 Wn.2d 500 (1994). Washington courts have held that the "authority to perform particular services for a principal carries with it the implied authority to perform the usual and necessary acts essential to carry out the authorized services." *Walker v. Pacific Mobile Homes, Inc.*, 68 Wn.2d 347, 351 (1966).

In *Snohomish County PUD*, the Commission found that the evidence demonstrated that a VEBA committee was "the alter-ego of the employer, so that actions of the VEBA committee can properly be attributed to the employer." Among the evidence the Commission relied upon to make its determination was that the VEBA Articles of Association specified that the committee shall act as the agent of the district, in addition to the employer having control of the committee through its appointees, and the employer's board of commissioners having ultimate authority over the actions of the committee.

In the current case, the employer's contract with Aramark demonstrates that the contractor is acting with far more autonomy. The relevant portion of Section 4 of the agreement reads as follows:

> Independent Contractor: The Contractor agrees that Contractor will perform the services under this Agreement as an independent contractor and not as an agent, employee, or servant of the County. This agreement neither constitutes nor creates an employer-employee relationship. The parties agree that the Contractor is not entitled to any benefits or rights enjoyed by employees of the County. The Contractor specifically has the right to direct and control Contractor's own activities in providing the agreed services in accordance with the specifications set out in this Agreement. The County shall only have the right to ensure performance. Nothing in this Agreement shall be construed to render the parties partners or joint venturers.

Aramark's "right to direct and control Contractor's own activities in providing the agreed services" extends to Munoz's decision to not provide hot holiday meals for deputies on all shifts on Thanksgiving and Christmas Day in 2016. Munoz made her decision based on budgetary

considerations, and she complied with the provisions of the parties' CBA by providing deputies the same meals provided to inmates on Thanksgiving and Christmas Day.

Aside from Stites informing Munoz that she was under no contractual obligation to provide hot holiday meals to deputies on all shifts, the employer played no role in Munoz's decision. This contrasts with the hot breakfast meal allegation described in Issue 1(d), where the employer's unilateral decision to switch from a freshly prepared breakfast that included at least one hot item to a cold, sack meal prepared the day before was found to be unlawful.

Conclusion

Aramark provided hot holiday meals on all shifts for deputies who worked on Thanksgiving and Christmas Day in 2014 and 2015. Based on budgetary considerations, Aramark decided not to provide hot holiday meals for deputies on all shifts in 2016. Aramark's contract with the employer clearly states that the contractor is not an agent of the employer, and that the contractor has the right to direct and control its activities in providing meal services. As such, Aramark's 2016 decision cannot be attributed to the employer, and there was no violation of Chapter 41.56 RCW.

ISSUE 2(a): Did the employer refuse to bargain, since March 31, 2016, by skimming correction deputy work and assigning non-bargaining unit maintenance employees to supervise inmate work crews performing work at the fairgrounds, without providing the union with an opportunity for bargaining?

Background

The employer eliminated its community corrections division on December 31, 2016. Prior to eliminating the division, minimum security resident (MSR) inmates housed in the jail's community corrections building performed work outside of the jail, including the Evergreen State Fairgrounds in Monroe, the Stillaguamish Tribal Hatchery, and county parks.

Deputies transported MSR inmate work crews to the fairgrounds and other sites mentioned, and remained on site to oversee the inmates' work and ensure jail regulations were followed. MSR inmates also performed landscaping work outside of the perimeter of the jail, and car washing and

detailing in the county's fleet management department that did not require a deputy to transport or oversee the inmates.

On January 22, 2015, Lieutenant Clint Moll stated that he and Sergeant Bernard Moody "have been tasked with stripping our work crew program down to its frame and rebuilding it" in an e-mail to Snohomish County Parks Ranger John Tucker that was copied to Operations Captain Kevin Young and Moody.

Moll's e-mail also stated that "[w]e want to ensure community safety first but will also be considering a few other things. For instance, the size of a crew, type of work being done, how an MSR inmate is screened for program eligibility, what type of supervision is needed, transportation and financial sustainability."

Between January 2015 and August 2015, Moll developed an Intra-County Service Agreement for Use of Inmate Labor that allowed other departments in the county to select whether they wanted to pay for a deputy to transport and supervise MSR inmate work crews, or provide their own transportation and supervision after civilian county employees cleared a background check and received inmate supervision training.

On August 11, 2015, Moll e-mailed a packet of information to Mark Miller, the maintenance lead at the Evergreen State Fairgrounds, in anticipation of deploying an inmate crew to work at the fairgrounds. Moll's e-mail said, "[w]e've recently redeveloped how we deploy our inmate workers, who is responsible for them, costs, risk management, etc." The attached information included the Intra-County Service Agreement for Use of Inmate Labor.

The agreement required users of MSR inmate work crews to select from two different types of services. In "Option A," deputies would transport the inmates to and from the work site, and assist county employees in supervising the inmates at the work site. The daily cost for the option was $471.63, which included eight hours at the deputy's overtime rate and the cost of benefits, but did not include the county's mileage reimbursement rate.

In "Option B," users would provide a supervising county employee who would be responsible for the transportation and supervision of the inmates. Supervising county employees were required to pass a background check, attend a mandatory training at the Corrections Bureau's training facility, and attend civilian supervisor training once per calendar year. This option had a one-time cost of $323.85, which included eight hours of class time at the deputy's regular hourly rate plus three percent and the cost of benefits.

Snohomish County Parks and Recreation Department Director Tom Teigen committed funds for the agreement on August 14, 2015. Fairgrounds Maintenance Supervisor Bob Leonard selected Option A when he signed the agreement on August 18, 2015, which ran through December 31, 2015. Deputies transported inmates and directly supervised them when they worked at the fairgrounds.

By the end of 2015, Leonard and Moll were in contact regarding background checks and inmate supervision training for county employees, and on January 11, 2016, Leonard sent Moll a list of eight employees for training that would allow them to transport inmates and added that "[w]e will also have more staff we would like to get trained in March and April."

On February 10, 2016, Programs Assistant Susie McQueen e-mailed Moll a list of 21 names of county employees who had submitted civilian supervisor applications and had successfully cleared the background check. Selected county employees received an e-mail on February 26, 2016, informing them that civilian supervisor training classes were scheduled for March 7, 2016, and March 21, 2016. Another class was later scheduled for April 4, 2016.

The employer did not inform the union about training county employees to transport and supervise inmates outside of the jail. When the union learned of the training in March 2016, it sought information from the employer during the parties' labor-management meeting on March 17, 2016. During that meeting, the employer contended that the use of inmate work crews without deputy supervision was a long-standing past practice until deputy supervision of inmate work crews was required during the tenure of Sheriff John Lovick (2007-2013).

On March 29, 2016, Teigen signed service agreements for the fairgrounds and parks division that Aston signed for the employer on March 30, 2016. Both agreements ran through the end of 2016, with Teigen selecting Option A and B for the fairgrounds, and only Option B for the parks division.

In the parties' labor-management meeting on March 31, 2016, the union objected to employees other than deputies transporting and supervising inmate work crews, and the union added the issue to the demand to bargain letter it sent to the employer on May 26, 2016. Between March 31, 2016, and the September 14, 2016, filing of the unfair labor practice complaint, the county work crew schedule showed 21 instances in which county fairgrounds workers were approved to transport inmates from the jail. The work crew program ended when the community corrections division was eliminated on December 31, 2016.

Application of Standards

The union argues that transporting MSR inmate work crews to the fairgrounds and supervising the inmate workers while away from the jail has long been bargaining unit work assigned to deputies. This work is a mandatory subject of bargaining, according to the union, because of the impact work assignments and overtime opportunities have on employees' wages, hours, and working conditions. Finally, the union maintains that the employer made a unilateral decision to allow county employees outside of the bargaining unit to transport and supervise inmates without notice or the opportunity to bargain. The employer contends that the work in question is not exclusively bargaining unit work, pointing out that even when deputies transported inmates to the fairgrounds, the tasks the inmates performed there were directly supervised by civilians.

Is the Work in Question Bargaining Unit Work?

As stated in *Central Washington University*, Decision 12305-A, and most recently in *King County*, Decision 12632-A, the threshold question in a skimming case is whether the work that was assigned to non-bargaining unit employees was bargaining unit work. A union is not required to prove that the work is "exclusive" bargaining unit work. Whether other employees have performed the work is something for an examiner to consider when determining whether the work is bargaining unit work. *King County*, Decision 12632-A. If the work was bargaining unit work,

application of the *City of Richland* balancing test determines whether the decision to assign bargaining unit work to non-bargaining unit employees is a mandatory subject of bargaining.

Ample witness testimony demonstrates that deputies transported MSR inmate work crews to the fairgrounds for years, in addition to supervising the inmates' work during their time away from the jail. The employer said as much during the March 17, 2016, labor-management meeting when it informed the union that having deputies supervise MSR work crews was a practice adopted by Lovick. Prior to Lovick's tenure, the employer allowed other county departments to use inmate work crews without deputy supervision.

The practice that began during Lovick's tenure continued until 2016. Therefore, I find that transporting inmate work crews to the fairgrounds and supervising the inmate workers while away from the jail is bargaining unit work. The employer allowed non-bargaining unit employees to perform the work when it unilaterally decided to allow other county employees to transport and supervise inmate work crews.

The City of Richland Application

The Union's Interests

The union contends that the transport and oversight of MSR inmate work crews traditionally performed by deputies at the fairgrounds provided a significant number of work and overtime assignments. Having other county workers perform these duties had a substantial effect on the deputies' wages, hours, and working conditions.

The Employer's Interests

Relying on the argument that the supervision of MSR inmate workers is not the exclusive work of deputies, the employer did not make an argument regarding the transport and oversight of MSR inmate work crews as a mandatory subject of bargaining.

The Balance

The union's contention is supported by evidence that civilian county employees performed more than 20 transports of MSR inmates to the fairgrounds during the relevant period of the unfair labor

practice complaint. During the Snohomish County Fair, MSR inmate work crews were transported to the fairgrounds during swing shift and returned to the jail during the graveyard shift. Transport deputies, who are day shift workers, were offered overtime opportunities for MSR inmate work crew transport and supervision in 2016, but the employer's decision to allow the work to be performed by civilian county employees during that time limited those opportunities. The effect of the employer's decision on wages, hours, and working conditions makes MSR inmate work crew transportation and supervision at the fairgrounds a mandatory subject of bargaining.

Notice and Opportunity to Bargain

Because transporting MSR inmate work crews to the fairgrounds and supervising the inmate workers while away from the jail is bargaining unit work and a mandatory subject of bargaining, the analysis turns to whether the employer provided the union notice and an opportunity to bargain its decision to allow civilian county employees to perform bargaining unit work.

The record demonstrates that the employer began laying the foundation for civilian county employees to transport and supervise MSR inmate crews to the fairgrounds and other work sites in the county as early as January 2015. Between January 2015 and August 2015, Moll created a contract that offered the option for county departments to use inmate work crews without deputy supervision, and Moll was in contact with at least one county department official regarding inmate supervision training for civilian county employees by the end of 2015.

Background checks and training for civilian county employees were underway in March 2016 when the union learned of the employer's decision. The union sought information about the decision during a labor-management meeting on March 17, 2016, and was told that the employer was determined to change the past practice of deputies transporting and supervising MSR inmate work crews at the fairgrounds and other work sites.

Less than two weeks later, the employer entered into contracts with the county's fairgrounds and parks divisions that allowed civilian county employees to transport and supervise MSR inmate work crews. Over the union's objections, the first of those civilian transports occurred in April 2016, and fairgrounds transports began in May 2016.

The employer did not provide notice to the union regarding MSR inmate worker transport and supervision prior to its decision to train civilian county employees to supervise inmates and contract with other county departments to allow them to do so. Once the union learned of the employer's decision, the employer plowed ahead without providing an opportunity for meaningful bargaining, resulting in a *fait accompli*. As a result, the union met its burden of proving that the employer refused to bargain by skimming bargaining unit work.

Conclusion

The union established that transportation of MSR inmate work crews to the fairgrounds and supervision of inmate workers while away from the jail is bargaining unit work. The employer allowed non-bargaining unit employees to perform the work when it unilaterally decided to allow civilian county employees to transport and supervise inmate work crews. The effect of the employer's decision on wages, hours, and working conditions makes inmate work crew transportation and supervision at the fairgrounds a mandatory subject of bargaining. The record demonstrates that the employer did not provide the union notice or an opportunity for meaningful bargaining before making a unilateral change to a mandatory subject of bargaining. As a result, the union met its burden of proving that the employer unlawfully refused to bargain by skimming bargaining unit work.

ISSUE 2(b): Did the employer refuse to bargain, since March 31, 2016, by skimming corrections deputy work and assigning non-bargaining unit sergeants and lieutenants to supervise inmate work release, without providing the union with an opportunity for bargaining?

Background

Prior to December 31, 2016, deputies bid by seniority to posts overseeing the employer's community corrections facility, which housed inmates who were part of the jail's alternative sentencing programs. A lieutenant and a sergeant supervised community corrections operations. The community corrections facility included MSR inmates who performed work outside of the jail, and work release inmates who left the facility to work at their regular jobs during the day. Both groups of inmates returned to the unit in the evening to sleep.

The community corrections facility housed male and female inmates, with the male inmates on the first floor that was accessible through the facility's main entrance, and the female inmates on the second floor. Male and female inmates were able to interact in the day room, kitchen, or other areas of the facility, but were not permitted inside the opposite gender's dormitories. The facility's first floor included a reception area, the sergeant's office, and work spaces for two deputies. The second floor included the lieutenant's office, a deputy work space, the day room, and the kitchen. When three community corrections deputies were available on a shift, one deputy would be stationed at a reception area on the first floor, one would oversee male inmates on the first floor, and one would oversee female inmates on the second floor. Surveillance cameras allowed deputies to oversee activity on both floors of the unit facility via a monitor on the first floor.

On March 18, 2015, Moll sent an e-mail to supervisors and community corrections deputies that provided minimum staffing guidelines for the facility that were to be implemented immediately. Minimum staffing for the day shift, when most inmates were working outside of the facility, consisted of three deputies six days a week and two deputies on Fridays. Minimum staffing was three deputies for the swing shift and two deputies for the graveyard shift.

Moll's e-mail detailed other instances in which the facility would operate with two deputies. If the third deputy during day shift was out on sick leave or on vacation, Moll's e-mail stated that supervisors were not allowed to fill the third position with a deputy on overtime, as they would be required to do during swing shift. The e-mail also stated that the third community corrections deputy could be moved to fill a post in the main jail in order to avoid a situation in which a deputy from the graveyard shift would be held over on mandatory overtime to fill the post.

Almost a year later, the parties discussed community corrections staffing during a labor-management meeting. According to minutes of the March 17, 2016, meeting, the union contended that having one deputy oversee both floors of the unit when the other deputy on a two-deputy detail was assigned to an outside work crew was insufficient. The employer agreed to reevaluate the situation, but acknowledged there would be short periods of time when only one deputy would be in the facility, such as during breaks or when inmates were transferred to the main jail.

The parties revisited the topic during their March 31, 2016, labor-management meeting after a deputy's supervision of an outside work crew left one deputy to oversee the facility. According to meeting minutes, the employer stated that the staffing situation occurred as a result of a miscommunication that had since been corrected. The employer emphasized that breaks and inmate escorts would continue to lead to occasions where only one deputy was left to oversee the unit. The employer had a similar message for the union during the parties' April 28, 2016, labor-management meeting after the union again voiced its concerns about a single deputy overseeing the facility.

Application of Standards

The union maintains that overseeing and supervising inmates in the community corrections facility was bargaining unit work performed by deputies, and that the employer skimmed bargaining unit work by regularly using non-bargaining unit sergeants or lieutenants to perform deputies' work when there was just one deputy available in the facility. The union claims the employer unilaterally changed a mandatory subject of bargaining without notice or an opportunity to bargain by utilizing sergeants or lieutenants in this manner. The employer argues that the union failed to meet its burden of proving that there was an actual transfer of bargaining unit work.

For the union to prevail, it must establish that there was a relevant status quo and that the employer changed it. The union's reliance on the testimony of Williams, its second vice president, was insufficient for that purpose. Williams testified that he had never worked in community corrections, and stated that "there ha[d] always been a minimum of three officers" working in the unit. This statement is contradicted by Moll's March 2015 e-mail. Since March 2015, minimum staffing for day shift consisted of two deputies on Fridays, and Moll's e-mail detailed other instances in which the facility would be able to operate with two deputies on day shift. Moll's e-mail also demonstrates that minimum staffing was two deputies on graveyard shift.

Furthermore, Williams' knowledge of non-bargaining unit sergeants and/or lieutenants performing bargaining unit work was based on a conversation with a member of the bargaining unit who stated that a sergeant covered his duties while the deputy was on a break. Williams could not remember which deputy provided him the information, or any other specifics surrounding the situation. The

union presented no other evidence to show that non-bargaining unit sergeants and lieutenants were performing the work of deputies in the community corrections facility.

Conclusion

The union failed to establish that the employer made a change to the relevant status quo regarding inmate supervision in the community corrections unit, or that the employer transferred bargaining unit work from deputies to non-bargaining unit sergeants and lieutenants. Without a change to the status quo, there cannot be a skimming violation.

ISSUE 3: Did the employer refuse to bargain since March 14, 2016, by engaging in surface and regressive bargaining, refusing to discuss proposed changes to mandatory subjects of bargaining, and unilaterally canceling bargaining sessions with its employees' exclusive bargaining representative?

Background

The union changed leadership in January 2016, with Carrell elected to succeed Hoff as president, and two new members of the executive board joining two members from the previous board. On January 21, 2016, Chief Aston sent an e-mail to the newly elected executive board that extended an invitation to continue to meet twice monthly, as the previous board had. The regular meetings took the form of a labor-management committee described in Article 14 of the parties' CBA.

> Labor/Management Committee – The Employer and the Guild shall establish a Labor/Management Committee which shall be comprised of an equal number of participants from both the Employer and the Guild. The function of the Committee shall be to meet on the call of either party to discuss issues of mutual interest or concern for the purpose of alleviating potential grievances and establishing a harmonious working relationship between the employees, the Employer, and the Guild. No less than a one (1) week notice of a requested meeting shall be given and no less than three (3) days before the meeting the parties shall exchange agendas for the meeting.

The employer and the new executive board began labor-management meetings on February 4, 2016, and meetings were scheduled every other Thursday from 2:30 p.m. to 4 p.m. The parties' labor-management meetings included issues where there was disagreement between the parties, as

detailed in the issues discussed above in this decision. The meetings also involved sharing information on operational topics, and requests for more information by one party or the other.

Topics from one labor-management meeting sometimes carried over to later meetings. For example, community corrections staffing was a topic on four labor-management agendas beginning on March 17, 2016, when the union objected to having one deputy supervise both floors of the unit, and continuing on March 31, 2016, and April 28, 2016.[12] The employer took the union's concerns into account during those meetings, but stated that there would be short periods when there would be only one deputy in the facility, such as during breaks or when inmates were transferred to the main jail.

The parties' March 17, 2106, and March 31, 2016, meetings also included discussions of the job announcement for the technology deputy position and the employer's decision to allow civilian county workers to transport and supervise MSR inmate work crews. In the March 31, 2016, meeting, the parties appeared to agree to a competitive testing process for the technology deputy position, but they continued to be at odds over MSR inmate crew transportation and supervision.

In the summer, the parties used multiple labor-management meetings to discuss deputies' participation in blood draws in booking, and the number of vest carriers provided with ballistic vest orders. On July 7, 2016, meeting minutes indicate the issue of blood draws had been discussed and completed to the union's satisfaction after the union raised the issue at the June 23, 2016, meeting. After informing the employer during the June 23, 2016, meeting that deputies were receiving just one vest carrier with ballistic vest orders instead of two, the employer responded in the July 7, 2016, and August 4, 2016, meetings that the change was a result of Blumenthal Uniforms' new contract with an outside vendor.

Four subjects at issue in this unfair labor practice proceeding were discussed once in labor-management meetings during the relevant six-month time period of the complaint.

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[12] The agenda for the parties' August 4, 2016, meeting includes "Community Corrections Minimum Staffing Levels 2016," but the record does not indicate that the subject was discussed during that meeting.

- On March 31, 2016, the union sought assessment criteria for single-deputy transports. The employer informed the union that Kane was working on a policy, and asked the union for input and recommendations.
- On April 28, 2016, the employer updated the union on implementation of the urinalysis policy for the main jail, and informed the union that the county prosecutor's office had determined that urinalysis screening did not meet the definition of a strip search.
- On May 12, 2016, the union requested meal reimbursement for deputies on all-day transports. The employer informed the union that the trips did not meet the criteria for reimbursement, and that deputies on all-day transports could receive sack lunches from the kitchen.
- On May 12, 2016, the parties agreed to table the discussion of cold, sack meals for graveyard deputies until the parties could schedule a meeting regarding the union's demand to bargain over the issue.

The parties' April 28, 2016, and May 12, 2016, labor-management meetings were particularly troubling to the union, according to Carrell's testimony, which indicated that the employer was not memorializing agreements reached during the meetings. Minutes from the April 28, 2016, meeting read:

> Sending out correction letters when things are resolved. The Guild requested Management provide them with documentation memorializing actions taken during the bi-weekly Guild/Management meetings. When appropriate, Management will inform staff of any decisions made at the meetings through updated directives, turnover notes, or email but will not be sending out letters to the Guild board.

Minutes from the May 12, 2016, meeting read:

> Review of previous Labor Management meetings from 02-04 through 03-31. The Guild asked that Management identify areas of disagreement in the meeting minutes they previously provided for review. Management reminded the Guild that the bi-weekly meetings were set up as a time to discuss concerns on a social and informal platform and not set up as bargaining sessions. Because the meetings are informal, there is no requirement for Management and the Guild to come to a consensus on official meeting minutes.

On May 26, 2016, Carrell sent a letter to Trenary expressing the union's frustration with the parties' labor-management meetings and demanding to bargain certain subjects.

> During these Labor Management [meetings] we were given verbal agreements and led to believe that many of these items had been resolved. Because of this the Guild didn't feel there was any reason to do any official demand to bargain letters for these items.
>
> But instead of formalizing our agreements in writing, we have received all-hands notices by management that items were being implemented that both parties had agreed to discuss prior to implementation. It is now apparent that this was simply a deceptive tactic by management so they could do a *fait accompli* on matters they wanted to implement without negotiating.
>
> Given the fact that Chief Aston is unwilling to document or abide by the agreements that we believed he had made during Labor/Management meetings, the Guild is sending you a list of items below that we are demanding to bargain.
>
> We are also demanding that the Corrections Bureau return to the status quo that existed on these matters prior to the changes that were implemented by management without negotiating.
>
> - UA policy – previously handled by medical staff and now being done by Deputies.
> - Removing county issued cell phones from the Transport Deputies.
> - One note system for evaluations
> - Tablet system for visitations and media. One meeting set for May 20th.
> - Providing adequate gun locker storage for Deputies.
> - Implementing kitchen boot policy
> - Skimming bargaining unit work with the Fairgrounds.
> - Skimming bargaining unit work with Field checks by supervisors.
> - Technology Deputy posting – creating new criteria for the position that undermines our bid process for this position.
> - Deputies on Graveyard now being served sack lunches for meals
> - Deputies not being reimbursed for meals doing all day transports away from the facility.
> - Increase work load for REO's due to a reduction of staff and adding new assignments.

The parties participated in negotiations that arose from the previous union executive board's demand to bargain over issues surrounding New World Systems and single-deputy transports in

March 2016. The union demanded to bargain the graveyard meal issue in early May 2016, and the parties met on that issue and the employer's urinalysis policy in June and July of 2016 in addition to continuing negotiations around New World Systems and single-deputy transports. The record does not indicate that the parties reached agreement on these issues during those meetings, nor does it contain written proposals from the parties regarding the issues.

During the relevant time period for the unfair labor practice charges, the parties occasionally canceled meetings that had been scheduled. Following a disagreement over whether the parties were scheduled to meet on May 12, 2016, regarding New World Systems and single-deputy transports, the parties rescheduled that meeting for May 20, 2016, and added an agenda topic pertaining to the use of tablet computers in the jail.

On May 10, 2016, Carrell e-mailed the employer a request to reschedule the discussion of New World Systems and single-deputy transports because the union's attorney was unavailable, but indicated that the union would still like to discuss the use of tablet computers on May 20, 2016. The employer canceled the May 20, 2016, meeting after communicating to the union that its demand to bargain over the use of tablet computers was premature because the employer was not considering using the technology.

The parties scheduled a meeting to discuss New World Systems and single-deputy transports on June 10, 2016, only to reschedule that meeting for June 14, 2016, because the union's attorney was unavailable. The parties also rescheduled negotiations over the graveyard meal from July 15, 2016, to July 29, 2016, at the union's request.

The parties continued to hold labor-management meetings after Carrell's letter to Trenary, albeit less frequently. Of the nine labor-management meetings scheduled every other week from early February 2016 through the end of the May 2016, the employer canceled two meetings. The employer canceled the April 14, 2016, meeting on April 11, 2016, because Aston was needed in a mediation meeting and Kane was unavailable, and the employer canceled the May 26, 2016, meeting because Aston and Kane were required to attend an arbitration hearing.

The parties were scheduled for eight labor-management meetings between Carrell's letter and September 15, 2016, the day after the union filed its unfair labor complaint, but only met on five occasions. The employer canceled meetings one day prior to the June 9, 2016, and July 21, 2016, meetings because the union did not submit agenda items as required by Article 14 of the CBA. The union canceled the September 1, 2016, meeting on the day of the meeting because Carrell was sick and Williams was on vacation.

At the end of the September 15, 2016, meeting, Aston expressed frustration with the parties' inability to work together to reach resolutions on topics of mutual interest and concern. During the meeting, the union identified eight agenda items that involved alleged violations of the parties' CBA, and Aston requested that the union identify those in writing so the employer could formally address them.

Following the parties' September 15, 2016, meeting, Kane sent an e-mail to the union that stated that "[t]he regularly scheduled bi-weekly labor management committee meetings are canceled and will be held on an as needed basis. Please reach out to Administrative Coordinator Beth Taylor if/when you choose to schedule one in the future."

Application of Standards

The union argues that the totality of the employer's behavior demonstrates a lack of good faith, specifically by canceling meetings without notice, frustrating bargaining by regularly demanding information from the union or more time to research issues, and failing to bargain to agreement over mandatory subjects or restore the status quo at the union's request. The employer counters that it had frequent and meaningful discussions with the union regarding items of mutual concern, and adds that it provided the union sufficient notice and reasons for meeting cancellations. The employer contends that there was no refusal to discuss mandatory subjects of bargaining, because many of the issues the union sought to negotiate were not mandatory subjects of bargaining, were changes that had not yet been made, or were changes that pre-date the six-month period relevant to the unfair labor practice complaint or were made following bargaining with the union's previous executive board.

The first two portions of the union's argument are unconvincing. First, the record indicates that both parties canceled meetings for their own valid reasons between March 2016 and September 2016, and both sides made efforts to reschedule bargaining on items that the union formally demanded to bargain. Second, the duty to bargain includes an obligation to provide relevant information needed by the opposite party for the proper performance of its duties in the collective bargaining process. *Island County*, Decision 11946-A (PECB, 2014), citing *City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992). In order to properly understand and address the union's concerns, the employer needed the union to provide the information necessary for the employer to research the problem.

Equally unconvincing is the employer's argument that it did not refuse to discuss changes in mandatory subjects of bargaining. This is especially true as it pertains to the employer's decision to allow civilian county employees to transport and supervise MSR inmate work crews, and its decision to change the graveyard deputies' meal, both of which were found to be unlawful unilateral changes to mandatory subjects of bargaining.

In the case of MSR inmate work crew transportation and supervision, the employer did not provide notice to the union of its intent to allow civilian county employees to perform bargaining unit work despite more than a year of planning. When the union heard of the employer's plan, it discussed it with the employer during two labor-management meetings in March 2016, and was told that Trenary was returning to a past practice of not requiring deputies to transport and supervise MSR inmate work crews. The employer proceeded with its plan over the union's objections, and the record does not indicate that the employer bargained the issue with the union despite the union's demand to bargain on May 26, 2016.

The change in the graveyard meal was similarly surprising to the union, which received notice that the employer was changing the inmates' breakfast meal to a cold, sack meal on May 5, 2016, but was not informed that the change would also affect graveyard deputies who had a long-standing practice of receiving a freshly prepared meal with at least one hot item. After the union made an immediate demand to bargain, the record demonstrates that the employer was not available to meet

on the matter until two months after the change and had not bargained to agreement or impasse on the issue prior to the union's filing of its unfair labor practice complaint.

These significant missteps by the employer outweigh the employer's valid argument that a significant number of topics that the parties have found themselves at odds over during their contentious relationship are managerial prerogatives, or do not represent meaningful changes to past practices. An examination of the totality of the circumstances demonstrates that the employer has violated its duty to bargain in good faith.

Conclusion

The union established by a totality of the circumstances that the employer unlawfully refused to bargain in good faith since March 14, 2016, by refusing to discuss proposed changes to mandatory subjects of bargaining. The employer's decision to unilaterally change its practices regarding graveyard deputy meals and work crew transportation and supervision, without notice to the union and without bargaining to agreement or impasse, is evidence of the employer's predetermined resolve not to alter its initial position that is inconsistent with good faith bargaining. The union failed to establish that the employer unlawfully refused to bargain in good faith by engaging in surface and regressive bargaining, and unilaterally canceling bargaining sessions with its employees' exclusive bargaining representative.

REMEDY

The employer refused to bargain by making a unilateral change to the practice of providing bargaining unit employees working on the graveyard shift a freshly prepared meal with hot items in May 2016 as described in Issue 1(d). The employer also refused to bargain since March 2016 by skimming corrections deputy bargaining unit work at the fairgrounds as described in Issue 2(a), and by refusing to discuss proposed changes to mandatory subjects of bargaining as described in Issue 3.

The standard remedy for a unilateral change violation is restoring the status quo that existed prior to the unilateral change, making employees whole for any loss to wages, benefits, or working

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

The employer is ordered to return to the *status quo ante* regarding meals provided to graveyard shift employees until such time as the parties are able to bargain in good faith over the issue to agreement or impasse. As was the case prior to the employer's unilateral change in May 2016, graveyard employees will be provided a freshly prepared meal with at least one hot item. Should the parties not be able to reach an agreement in bargaining, the issue will be submitted to an arbitrator for a final, binding award.

In regard to the employer's unlawful skimming of corrections deputy bargaining unit work at the fairgrounds, an immediate return to the *status quo ante* is not possible because the employer eliminated its community corrections unit on December 31, 2016. However, should the employer revive its inmate work crew program in the future, the employer is ordered to preserve bargaining unit work by assigning deputies to transport and supervise the work crews. In order to make employees whole for the employer's unlawful actions, I grant the union's request for compensation to deputies for all overtime lost for transporting inmate work crews to the fairgrounds through December 31, 2016.

The employer is also ordered to cease and desist from making unilateral changes to mandatory subjects of bargaining without first providing the union notice of such changes and the opportunity to request bargaining.

FINDINGS OF FACT

1. Snohomish County (employer) is a public employer within the meaning of RCW 41.56.030(12).

2. The Snohomish County Corrections Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The Corrections Bureau of the Snohomish County Sheriff's Office oversees the Snohomish County Jail in Everett, Washington. Tony Aston is the Corrections Bureau Chief and reports to Sheriff Ty Trenary. In 2016, Major Jamie Kane was second-in-command in the Corrections Bureau, which also includes captains, lieutenants, sergeants, and corrections deputies.

4. The union represents all full-time and regular part-time custody officers and corrections officers below the rank of sergeant of the Snohomish County Department of Corrections, excluding supervisors, confidential employees, and all other employees. At some point after the union's certification, the employer changed the custody officer and corrections officer job titles to corrections deputy.

5. The employer and union were parties to a collective bargaining agreement (CBA) in effect from January 1, 2015, through December 31, 2017. The bargaining unit in this case consists of "uniformed personnel" within the meaning of RCW 41.56.030(13), and the parties' bargaining relationship is subject to the interest arbitration provisions of RCW 41.56.430 - .470 which require the creation of an interest arbitration panel to resolve disputes that remain following a reasonable period of negotiations and mediation.

6. In January 2016, the union elected five deputies to its executive board. Charles Carrell was elected president of the board, which included new members Randall Williams and Robert Butchart along with Gregory Barnett and Scott Griffith, who were members of the previous executive board led by Jacob Hoff.

7. At the time of the events relevant to the instant case, the Snohomish County Jail consisted of operations in two buildings and was staffed by more than 200 employees. The majority of the jail's deputies worked in the main building, which contained inmates who lived in housing modules 24 hours a day while detained. Deputies also worked in the community corrections building, which contained minimum security resident and work release inmates whose sentences allowed them to leave the facility for work during the day and return to the jail in the evening.

8. Deputies at the jail work three shifts: day shift from 8 a.m. to 4 p.m., swing shift from 4 p.m. to midnight, or graveyard shift from midnight to 8 a.m. Deputies select shift/days off assignments by seniority, which is also used in the deputies' quarterly bidding for work assignments (posts).

Issue 1(a)

9. Response and Escort Officer (REO) is one of a number of posts deputies are able to select during annual bidding by seniority. REOs are not assigned a set work location. The REO's primary responsibilities include providing break coverage for deputies, emergency response, and inmate transport throughout the jail. REOs are also assigned other administrative functions that occur in the facility on an as-needed basis. The employer's break schedule for REOs at any given time indicates whether the REO is providing break relief at a specific post, on his or her own break, or available for other duties.

10. On November 25, 2015, Kane forwarded draft versions of the 2016 break/training schedule to the union. One version of the schedule was based on having all posts filled ("full ops" version), and the other was based on not having a fourth deputy in booking in order to address an expected revenue shortfall. In the forwarded e-mail, Kane stated, "This is your opportunity to give input (we can still sit down and discuss it prior to final implementation 1st quarter of 2016)."

11. The primary change to the schedule was the assignment of REOs to provide training relief twice a week during the first 75 minutes of the day, swing, and graveyard shifts, instead of

having all the REOs available for emergency response or other assignments during that time.

12. The change reduced the number of REOs listed as available on the break schedule, but provided more organized instructor-led training that met interests expressed by the union, met standards for mandatory training in the parties' CBA, and also met state standards for in-service training.

13. Before the change, deputies could participate in training during their regularly scheduled shifts, or they could earn overtime compensation by training on a shift extension or on a regularly scheduled day off.

14. In the "full ops" version of the break/training schedule, four of the eight REOs on day shift and five of the eight REOs on swing shift were scheduled for training relief during the first 75 minutes of their shift on Monday and Wednesday. Four of the six REOs on graveyard shift were scheduled for training relief during the first 75 minutes of their shift on Tuesday and Thursday. On days when no training relief was scheduled, all REOs were available during the first 75 minutes of each shift.

15. As was the case during any other relief assignment, the REO providing training relief was not available for emergency response, but the deputies they relieved and other personnel were similarly trained in emergency response and available to respond.

16. On January 25, 2016, Kane informed the union's executive board via e-mail that the "full ops" version of the break schedule first sent on November 25, 2015, was in effect, with the exception being that the training relief posts for REOs on the break schedule would not begin until January 31, 2016.

17. The union did not demand to bargain the changes to the break schedule during the two months between Kane's November and January e-mails, and the union did not broach the

subject during the parties' six labor-management meetings in February, March, and April after the changes were implemented.

18. On May 26, 2016, Carrell sent a letter to Trenary that included "[i]ncrease work load for REO's [sic] due to a reduction of staff and adding new assignments" on a list of items the union was demanding to bargain with the employer. Carrell's letter did not include any other reference to REOs or the break schedule.

19. In early 2015, the employer's laundry facilities were open from 8 a.m. to 4 p.m., and inmate workers were supervised by a deputy who bid for that specific day shift post. Laundry operations closed from 4 p.m. to 6:30 p.m., at which time a REO4 on swing shift oversaw operations until midnight. The laundry facility was closed during the graveyard shift.

20. On October 1, 2015, Kane sent an e-mail to the union with an attached break schedule that did not include a fourth booking deputy. Kane's e-mail stated that laundry supervision performed by a REO4 between 4 p.m. and 8 p.m. would be moved to graveyard shift from 4:15 a.m. to 8 a.m.

21. Kane sent a revised e-mail to all staff on October 5, 2015, that clarified that a REO4 would supervise laundry operations on graveyard shift and included a draft version of the break matrix that indicated that a REO4 would supervise laundry operations from 4:15 a.m. to 8 a.m., and laundry operations would be closed during swing shift.

22. Union legal representative Becky Gallagher sent the employer a demand to bargain the laundry operation and REO assignment changes on October 8, 2015.

23. The parties met on October 22, 2015, and reached a settlement agreement for the union's October 8, 2015, demand to bargain. There was no mention in the agreement of the employer's proposed change of laundry supervision from swing shift to graveyard shift. Kane and Hoff signed the agreement on November 6, 2015.

24. When Kane informed the union on January 25, 2016, that the "full ops" version of the break matrix was in effect, the laundry facility was open during day shift, and on graveyard shift from 4:15 a.m. to 8 a.m. The laundry facility was closed during swing shift unless it was necessary to open it, at which point a REO4 would supervise operations.

Issue 1(b)

25. Deputies may bid onto the transport team as part of the shift bidding process. Members of the team are responsible for transporting inmates to video courtroom appearances within the jail, court appearances at Snohomish County Superior Court, and court appearances in other district courts within Snohomish County. Team members also transport inmates to psychological evaluation centers, such as Western State Hospital, and occasionally to local hospitals for medical appointments or emergency treatment.

26. The transport sergeant schedules daily transports by taking a number of factors into account, including the inmate's charges, behavior while in custody, the nature of the hearing, and the publicity accompanying the hearing. During the time of the events in question, Dan Young was the transport sergeant until he was replaced by Michael Miller in early 2016.

27. Each transport customarily involves two or more deputies, although there are circumstances when a transport will involve only one deputy. When transporting inmates outside of the jail, deputies must be weapons-qualified, carry a weapon, and wear protective vests; when transporting inmates inside of the jail, deputies do not wear protective vests, but do carry a taser and pepper spray.

28. Transports to Snohomish County Superior Court involve walking an inmate through a tunnel that connects the jail to the courthouse, but other transports outside of the jail use a secure county vehicle for the transport, unless a medical emergency requires the use of an ambulance.

29. In late 2015, the union sought to bargain with the employer regarding single-deputy transports. The union's concern revolved around what it perceived to be an increased use of single-deputy transports for criminal proceedings, which the union considered a deputy safety issue. The parties met in January 2016, at which time Kane stated that there was no change to the past practice, but that he would review the transport schedule and work with Young to ensure that future assignments conformed to the past practice.

30. In February 2016, Miller replaced Young as Transport Sergeant, and the parties revisited the single-deputy transport issue in March 2016. During that March meeting, the union expressed its position that there should be no fewer than two deputies assigned to court transports, unless the employer could provide set criteria for single-deputy transports. The employer responded that court transports would continue to be assessed on a case-by-case basis, and asked the union to provide input regarding criteria so the issue could be discussed at a future date.

Issue 1(c)

31. Article 6.6 of the parties' CBA memorializes the parties' agreement on shift bidding and the method of filling job vacancies when they occur. Among other items, the article states that "shifts/days off assignments shall be selected on the basis of seniority in classification" and "[t]he most senior bidder shall be transferred to the vacancy unless such assignment would deprive the Employer of the needed skills, experience, gender and/or training on either shift affected by the proposed transfer."

32. In early 2014, the employer determined that it needed to temporarily assign a deputy to assist the technology lieutenant as the lieutenant worked to replace the employer's jail management software systems with New World Systems software that would connect Corrections Bureau operations to more than 50 law enforcement, fire, emergency medical service, and emergency dispatch agencies in Snohomish County.

33. In May 2014, the employer sought bids for the temporary position, which was expected to be staffed through the end of 2014, but extended beyond that because of problems that

caused delays in New World Systems implementation. The skills and characteristics necessary for the position included an understanding of Microsoft Windows in addition to proficiency with Microsoft PowerPoint, Excel, and Word. The employer awarded the position to Deputy Dave Hall, who was the most senior bidder.

34. In early 2015, the technological challenges of implementing New World Systems convinced the employer to create an additional temporary duty assignment in the technology unit. The employer awarded the assignment to Butchart, who was one of a number of "subject matter experts" trained on the New World Systems software and tasked with teaching deputies how to use the new software.

35. The New World Systems software implemented in October 2015 still contained several bugs and corrections that needed to be made in order for the software to be fully operational at the jail. The employer determined there would be benefits to keeping Hall and Butchart in the technology positions on a more permanent basis in order to deal with issues that arose during daily operations, and could not be resolved by other subject matter experts.

36. Kane created a technology deputy announcement in December 2015 that stated that the new position would be awarded to the most senior bidder who passed a written qualification test. The test for the position, which had a three-year term, required applicants to be prepared for questions regarding New World Systems and other programs.

37. Kane provided a draft of the announcement to the union, and the parties reached agreement in January 2016 on a memorandum of understanding (MOU) that changed contract language in order to accommodate creation of the technology deputy position. The parties also agreed the position would be awarded to the most senior bidder who passed a written qualification test and would have a three-year term. However, Kane later withdrew the agreement because the employer did not want the position to be limited to three years.

38. On March 11, 2016, Kane posted a bid announcement for two jail management system and technology specialist positions, one of which was expected to be permanent and would be

filled annually, and the other a temporary position expected to last six to nine months. Qualifications required to bid for the position included New World Systems training, experience working with the Joint Public Safety Answering Point Aegis Coordination Committee, and the ability to instruct and support groups and individuals on technology related subjects. The positions would be awarded to qualified bidders with the most seniority.

39. The union objected to the March 11, 2016, bid announcement during a labor-management meeting on March 17, 2016. The union's concerns revolved around the specialized qualifications and training for the positions that could only be met by Hall and Butchart, who were later hired for the positions. Kane expressed to the union that the announcement was written as it was because the continuing issues with implementation of the New World Systems required expertise that would take months for someone new to the position to acquire. The employer stated that future openings would include less stringent qualifications, and the parties discussed the need for deputies to pursue training opportunities and prepare for a test as part of the application process.

40. In a labor-management meeting on March 31, 2016, the union asked the employer to re-post the technology deputy position and use a competitive testing process to determine who would fill the positions. Minutes from the meeting indicate that the union stated that the employer should devise the test based on the requirements for the position, and that it had no issue with Hall and Butchart – both of whom were on the union's executive board at the time – being involved in test development. The employer agreed to have a testing process proposal by the end of April, but did not re-post the position.

41. On May 26, 2016, the union included the technology deputy posting in the demand to bargain letter Carrell sent to Trenary, specifically taking issue with "creating new criteria for the position that undermines our bid process for this position." The record does not indicate that the parties met to discuss the issue before June 30, 2016, when Operations Captain Kevin Young sent a bid announcement for the technology deputy position vacated by Hall when Hall was promoted to sergeant.

42. The June 30, 2016, announcement stated that "[t]his position will be awarded to the most qualified senior bidder who passes a written qualification test." The announcement for the three-year position provided areas that would be covered on the pass-fail test, with New World Systems being the first bulleted topic on the list, followed by "TeleStaff, SharePoint, VOIP, Network Protocol, Microsoft Office Suite (Word, Excel, OneNote, PowerPoint, Access, Outlook), Public Speaking Skills, Teamwork Skills, Jail Security System Concepts, Teaching Ability, Analytical and Problem Solving Skills, and Microsoft Operating Systems."

43. Both parties acknowledged in testimony that the qualifications required to bid for the position were less rigorous than those contained in the March 11, 2016, bid announcement. On July 15, 2016, Young announced that Butchart had been selected for the opening because he was the "most senior qualified candidate."

44. The parties discussed testing again during their labor-management meeting on August 4, 2016. According to meeting minutes, the union objected to deviating from the contractual bidding process to fill the second technology deputy position due to the aspects of the test that were not directly related to technology.

45. On August 18, 2016, Young sent a bid announcement that was similarly worded to the June 30, 2016, bid announcement. Deputy Sam Leslie was selected for that opening, which had a three-year term.

Issue 1(d)

46. The employer contracted with Aramark Correctional Services, L.L.C., to provide food service management for the jail. The $7 million contract began April 1, 2013, and runs through March 31, 2018.

47. Appendix A.4 of the CBA states that the employer shall make the meal provided to inmates available to employees on duty who remain within the jail during the meal period.

48. Prior to May 2016, the breakfast meal Aramark provided staff working the graveyard shift and inmates included one or more hot items each day. During a one-week period, for example, the menu included hot cereal, biscuits with gravy, pancakes, breakfast sausage, hash brown potatoes, and cottage fries. The record demonstrates that while some jail employees who worked graveyard shift chose to eat the prepared meal, others chose to bring or purchase their own food.

49. Administrative Captain Daniel Stites oversees the Aramark contract as part of his responsibilities. On April 25, 2016, Stites sent a memorandum to all staff stating that, effective May 5, 2016, the employer would provide a cold, sack meal for inmate breakfast, and that the inmate worker shift hours for the kitchen would be from 5 a.m. to 8 p.m. The new breakfast menu did not include the hot items that were part of the previous breakfast menu. Stites' memorandum did not state that there would be any change to the breakfast meal provided to employees working the graveyard shift.

50. The union learned of the change on May 5, 2016, when deputies on the graveyard shift were provided cold, sack lunches. The union demanded to bargain the change in an e-mail to Stites and a letter to Aston in which the union sought the return of hot meals for graveyard deputies until the parties negotiated the issue.

51. The employer continued to provide a cold breakfast meal to its graveyard shift employees, and the parties met to bargain over breakfast meals on July 29, 2016. According to minutes taken at that meeting, the employer stated that "[m]anagement's right to oversee expenditures was the primary reason for the change."

52. The union proposed a compromise that would provide graveyard shift employees a pre-packaged meal daily that would be similar to the meal the inmates received once a week. The employer indicated that doing so would violate the contractual provision that employees receive the inmate meal, and that it could not agree to the union's proposal unless the union provided written authorization to violate the CBA. The parties did not

reach an agreement at the meeting, and the employer continued to provide cold, sack lunches to employees working the graveyard shift.

Issue 1(e)

53. Deputies on the transport team occasionally transport inmates to other facilities throughout the state, such as Western State Hospital in Lakewood, Eastern State Hospital in Spokane, and competency restoration centers in Yakima and Centralia. While on those transports, deputies are away from the jail during their meal period.

54. Appendix A.4 of the parties' CBA states in relevant part that the employer shall provide a meal at no cost for employees working outside of the jail. To conform to this language, the employer offers transport deputies the same sack meal that is provided to the inmates being transported. Deputies can also bring their own food, or purchase a meal as time permits.

55. Meal reimbursement for Snohomish County employees is covered in its travel expenses policy (Policy 1211), which was effective in 1995 and last revised on December 1, 2006. The "Meals – Day Travel" portion of the policy states that employees will be reimbursed for meal expenses when they are away from their official work station or residence for three or more hours beyond their regularly scheduled working hours.

56. Prior to 2006, deputies who purchased meals while on longer transports would bring a receipt to the sheriff's office's accounting department and receive reimbursement from the department's petty cash fund. After Policy 1211 was revised in 2006, employees seeking reimbursement from the petty cash fund had to complete a form and obtain authorization from their supervisor in order to be reimbursed. Meal reimbursement was done in accordance with the policy.

57. On March 29, 2016, Deputy Mark Morgenstern sent an e-mail to Sally Reyes, an accounting technician in the sheriff's office, regarding reimbursement for a meal he purchased while on a transport to Yakima. Morgenstern submitted a receipt for his meal, but had not been reimbursed. Reyes responded on April 6, 2016, that she needed to

research lunch reimbursement but added "[p]er travel and meal policy, it does not look like I can just reimburse you."

58. A similar situation occurred when Deputy Donald Miller submitted receipts for meals purchased during transports to Yakima. On May 13, 2016, Miller e-mailed Reyes to ask if he was reimbursed. Miller and Morgenstern were not reimbursed for their meal expenses, because their travel did not meet the three-hour rule.

59. In his demand to bargain letter to Trenary on May 26, 2016, Carrell included "[d]eputies not being reimbursed for meals doing all day transports away from the facility" as one of the items that the union wanted to bargain.

Issue 1(f)

60. Jail inmates undergo urinalysis testing by medical staff when they enter the jail as part of a health assessment. Once incarcerated, inmates are also subject to urinalysis when there is a suspicion that the inmate is using intoxicants in violation of jail rules. When the employer's community corrections division operated prior to the end of 2016, inmates on work release were subject to random urinalysis.

61. Deputies perform urinalysis testing when it is done to determine if jail rules have been violated, and deputies also performed the tests when they were done randomly to inmates on work release. Among the essential duties of the position listed in the deputies' job description, which was last revised in November 2015, is "administers or arranges for breathalyzer or urinalysis to detect suspected drug or alcohol use."

62. Deputies who bid into the REO post escort inmates who are undergoing urinalysis to a specially equipped bathroom and observe them filling a specimen cup, which is designed to indicate the presence of intoxicants. If the inmate cannot provide a sample, the REO escorts the inmate to a holding cell, provides the inmate water, and performs other duties until returning approximately an hour later to give the inmate another chance to provide a

specimen. Inmates who do not provide a specimen commit a rules violation. No matter what the results of the test are, the deputy is responsible for completing paperwork.

63. On April 21, 2016, Operations Captain Kevin Young e-mailed a copy of a Conducting Urinalysis Testing post order to the union that extended random urinalysis to inmates housed in inmate worker modules in the main jail.

64. Minutes of the parties' April 28, 2016, labor-management meeting indicate that the parties discussed the matter, stating that "Captain Young updated the Guild on implementation of the UA policy for the main jail."

65. On May 2, 2016, Young e-mailed the post order to all staff. Young's e-mail informed staff that inmates in the inmate worker housing units would be randomly tested beginning May 8, 2016, and that the shift sergeant would ensure that "at least" one random test would occur on each shift based on an Excel form, although sergeants could require additional tests if they received information that warranted additional testing. Training on use of the specimen cup was provided online.

66. On or about May 9, 2016, Carrell demanded to bargain the issue in a letter to Aston, writing that "[t]he Guild is demanding that management return to the status quo of having medical staff perform the UA's until we have time to bargain the issue."

67. On May 13, 2016, Young sent a revised post order that reorganized the process for securing the urine sample. Later that day, Kane sent an e-mail to all staff, clarifying that "medical performs UA's for healthcare/medical screenings and assessments, while deputies perform them for evidentiary purposes, security, and accountability."

68. On May 16, 2016, the employer informed the union it would be available to meet regarding the union's demand to bargain the urinalysis policy on June 24, 2016, and asked the union to confirm its availability. Meeting minutes of the parties' labor-management meeting on

July 7, 2016, state that the employer asked the union to contact the employer in order to schedule an additional meeting on the subject.

Issue 1(g)

69. Deputies who are qualified to carry weapons are provided a protective ballistic vest along with a firearm. Members of the transport team, and other deputies who work outside of the jail, are required by policy to wear protective vests when they are outside of the facility. The protective vests are held in place by a cloth vest carrier.

70. Deputies are custom-fitted for a ballistic vest by Blumenthal Uniforms, and in the past deputies received two vest carriers with each vest from the vendor. Having a second vest carrier available allowed deputies to perform their duties outside of the jail if their vest carrier was damaged or contaminated. If a deputy's vest carrier was damaged or contaminated, and the deputy did not have a second vest carrier available, the deputy would be assigned to transports or other duties within the jail.

71. In May 2016, Carrell received one vest carrier along with his replacement vest. At the parties' labor-management meeting on June 23, 2016, the union asked why deputies were no longer provided a second vest carrier. According to meeting minutes, the employer stated that Blumenthal Uniforms was using an outside vendor for this equipment and it was "unclear whether the change was a mistake or part of [Blumenthal Uniforms'] agreement with the vendor." The employer committed to providing the union an update on the issue.

72. At the parties' labor-management meeting on July 7, 2016, the employer informed the union that deputies received one vest carrier instead of two as a result of Blumenthal Uniforms' contract with its outside vendor. Stites testified that his conversations with Blumenthal Uniforms indicated that its decision to provide one vest carrier was tied to the increased cost of the carriers, which were made with more durable materials than previous vest carriers.

73. The employer informed the union at the July 7, 2016, labor-management meeting that deputies would receive one vest carrier with future vest orders, a point that was reiterated by the employer at the parties' August 4, 2016, labor-management meeting.

Issue 1(h)

74. One of the posts available for deputies to bid into is in the booking area of the jail, where inmates are taken following arrest. Booking deputies perform tasks such as processing arrest paperwork, taking fingerprints and photographs, conducting searches, storing inmates' property, and providing inmates a jail uniform and other items.

75. During the booking process, inmates are also examined by jail medical staff as part of a health assessment. Deputies in the booking area are present to protect medical staff during medical procedures, which have occasionally included blood draws in the past. Deputies have also assisted the Washington State Patrol (WSP) on an as-needed basis during Breathalyzer (BAC) tests used to determine if someone is driving under the influence of alcohol (DUI).

76. If an inmate fails to comply during a medical procedure, a BAC test, or any other portion of the booking process, one or more deputies occasionally use force to gain compliance, including strapping inmates into a restraint chair that restricts movement of the inmate's arms and legs. Deputies who are involved in the use of force on an inmate are required to write a report detailing the use of force, and the circumstances leading up to it.

77. On June 16, 2016, Sergeant Roxanne Marler sent an e-mail to jail supervisors regarding medical staff performing WSP blood draws, which require a court order to complete. Marler's e-mail stated that the booking sergeant and deputies may be utilized to restrain an inmate who becomes combative during the process.

78. On June 23, 2016, the parties discussed the issue at a labor-management meeting. The union sought the rationale for the decision and the impact it might have on its members. According to the minutes of the meeting, the employer told the union that "[d]eputies will

have no more involvement in the process than they currently do with BAC tests. As usual, deputies will continue to assist law enforcement if they need help in dealing with an inmate in booking."

79. The parties discussed blood draws again at their labor-management meeting on July 7, 2016. Meeting minutes stated that the union "agreed this agenda item had been discussed and completed to their satisfaction at the last labor-management meeting held on 6/23/16."

Issue 1(i)

80. On Thanksgiving and Christmas Day, inmates are provided a hot meal during their lunch hour that includes turkey and other traditional holiday foods. The inmates' holiday meal is served during employees' day shift. Appendix A.4 of the parties' CBA states that the employer shall make the meal provided to the inmates available to employees, but in 2014 and 2015, Aramark provided a holiday meal similar to the inmates' meal on all three shifts for employees who worked on Thanksgiving and Christmas Day.

81. The employer's contract with Aramark does not require the contractor to provide a hot holiday meal to deputies on all shifts, but Aramark has done so at its own expense when there is room in its budget.

82. In June or July of 2016, Aramark Food Service Director Pamela Munoz began to consider the upcoming holiday meals and her ability to provide hot holiday meals for deputies on all three shifts within the constraints of her budget. Munoz discussed the situation with Stites, who told her that the contract only required her to provide deputies the same meal that was provided to inmates.

83. At some point after the conversation with Stites, Munoz determined she did not have enough money in her budget to provide hot holiday meals for deputies on all three shifts. Munoz informed Stites of her decision to not provide the hot holiday meals for deputies on all shifts, but Stites did not inform the union of the change.

84. On November 24, 2016, deputies on graveyard shift and swing shift received the cold, sack meals the inmates received. Deputies on day shift received the same hot Thanksgiving meal the inmates received. Aramark did the same on Christmas Day in 2016.

Issue 2(a)

85. Prior to the employer's elimination of the community corrections division on December 31, 2016, minimum security resident (MSR) inmates housed in the jail's community corrections building performed work outside of the jail, including the Evergreen State Fairgrounds in Monroe, the Stillaguamish Tribal Hatchery, and county parks.

86. Deputies transported MSR inmate work crews to the fairgrounds and other sites mentioned, and remained on site to oversee the inmates' work and ensure jail regulations were followed. MSR inmates also performed landscaping work outside of the perimeter of the jail, and car washing and detailing in the county's fleet management department that did not require a deputy to transport or oversee the inmates.

87. Between January 2015 and August 2015, community corrections Lieutenant Clint Moll developed an Intra-County Service Agreement for Use of Inmate Labor that allowed other departments in the county to select whether they wanted to pay for a deputy to transport and supervise MSR inmate work crews, or provide their own transportation and supervision after civilian county employees cleared a background check and received inmate supervision training.

88. The agreement required users of MSR inmate work crews to select from two different types of services. In "Option A," deputies would transport the inmates to and from the work site, and assist county employees in supervising the inmates at the work site. In "Option B," users would provide a supervising county employee who would be responsible for the transportation and supervision of the inmates. Supervising county employees were required to pass a background check, attend a mandatory training at the Corrections Bureau's training facility, and attend civilian supervisor training once per calendar year.

89. Snohomish County Parks and Recreation Department Director Tom Teigen committed funds for the agreement on August 14, 2015. Fairgrounds Maintenance Supervisor Bob Leonard selected Option A when he signed the agreement on August 18, 2015, which ran through December 31, 2015. Deputies transported inmates and directly supervised them when they worked at the fairgrounds.

90. By the end of 2015, Leonard and Moll were in contact regarding background checks and inmate supervision training for county employees, and on January 11, 2016, Leonard sent Moll a list of eight employees for training that would allow them to transport inmates.

91. On February 10, 2016, Programs Assistant Susie McQueen e-mailed Moll a list of 21 names of county employees who had submitted civilian supervisor applications and had successfully cleared the background check. Selected county employees received an e-mail on February 26, 2016, informing them that civilian supervisor training classes were scheduled for March 7, 2016, and March 21, 2016. Another class was later scheduled for April 4, 2016.

92. The employer did not inform the union about training county employees to transport and supervise inmates outside of the jail. When the union learned of the training in March 2016, it sought information from the employer during the parties' labor-management meeting on March 17, 2016. During that meeting, the employer contended that the use of inmate work crews without deputy supervision was a long-standing past practice until deputy supervision of inmate work crews was required during the tenure of Sheriff John Lovick (2007-2013).

93. On March 29, 2016, Teigen signed service agreements for the fairgrounds and parks division that Aston signed for the employer on March 30, 2016. Both agreements ran through the end of 2016, with Teigen selecting Option A and B for the fairgrounds, and only Option B for the parks division.

94. In the parties' labor-management meeting on March 31, 2016, the union objected to employees other than deputies transporting and supervising inmate work crews, and the union added the issue to the demand to bargain letter it sent to the employer on May 26, 2016.

95. Between March 31, 2016, and the September 14, 2016, filing of the unfair labor practice complaint, the county work crew schedule showed 21 instances in which county fairgrounds workers were approved to transport inmates from the jail. The work crew program ended when the community corrections division was eliminated on December 31, 2016.

Issue 2(b)

96. Prior to December 31, 2016, deputies bid by seniority to posts overseeing the employer's community corrections facility, which housed inmates who were part of the jail's alternative sentencing programs. A lieutenant and a sergeant supervised community corrections operations. The community corrections facility included MSR inmates who performed work outside of the jail, and work release inmates who left the facility to work at their regular jobs during the day. Both groups of inmates returned to the unit in the evening to sleep.

97. The community corrections facility housed male and female inmates, with the male inmates on the first floor that was accessible through the facility's main entrance, and the female inmates on the second floor. Male and female inmates were able to interact in the day room, kitchen, or other areas of the facility, but were not permitted inside the opposite gender's dormitories.

98. The facility's first floor included a reception area, the sergeant's office, and work spaces for two deputies. The second floor included the lieutenant's office, a deputy work space, the day room, and the kitchen.

99. When three community corrections deputies were available on a shift, one deputy would be stationed at a reception area on the first floor, one would oversee male inmates on the first floor, and one would oversee female inmates on the second floor. Surveillance cameras allowed deputies to oversee activity on both floors of the unit facility via a monitor on the first floor.

100. On March 18, 2015, Moll sent an e-mail to supervisors and community corrections deputies that provided minimum staffing guidelines for the facility that were to be implemented immediately. Minimum staffing for the day shift, when most inmates were working outside of the facility, consisted of three deputies six days a week and two deputies on Fridays. Minimum staffing was three deputies for the swing shift and two deputies for the graveyard shift.

101. Moll's e-mail detailed other instances in which the facility would operate with two deputies. If the third deputy during day shift was out on sick leave or on vacation, Moll's e-mail stated that supervisors were not allowed to fill the third position with a deputy on overtime, as they would be required to do during swing shift. The e-mail also stated that the third community corrections deputy could be moved to fill a post in the main jail in order to avoid a situation in which a deputy from the graveyard shift would be held over on mandatory overtime to fill the post.

102. Almost a year later, the parties discussed community corrections staffing during a labor-management meeting. According to minutes of the March 17, 2016, meeting, the union contended that having one deputy oversee both floors of the unit when the other deputy on a two-deputy detail was assigned to an outside work crew was insufficient. The employer agreed to reevaluate the situation, but acknowledged there would be short periods of time when only one deputy would be in the facility, such as during breaks or when inmates were transferred to the main jail.

103. The parties revisited the topic during their March 31, 2016, labor-management meeting after a deputy's supervision of an outside work crew left one deputy to oversee the facility.

According to meeting minutes, the employer stated that the staffing situation occurred as a result of a miscommunication that had since been corrected. The employer emphasized that breaks and inmate escorts would continue to lead to occasions where only one deputy was left to oversee the unit. The employer had a similar message for the union during the parties' April 28, 2016, labor-management meeting after the union again voiced its concerns about a single deputy overseeing the facility.

Issue 3

104. On January 21, 2016, Aston sent an e-mail to the newly elected executive board that extended an invitation to continue to meet twice monthly, as the previous board had. The regular meetings took the form of a labor-management committee described in Article 14 of the parties' CBA, which allowed either party to call for a meeting with a least a week's notice and required the parties to provide agenda items no less than three days before the meeting.

105. The employer and the new executive board began labor-management meetings on February 4, 2016, and meetings were scheduled every other Thursday from 2:30 p.m. to 4 p.m. The parties' labor-management meetings included issues where there was disagreement between the parties. The meetings also involved sharing information on operational topics, and requests for more information by one party or the other.

106. Topics from one labor-management meeting sometimes carried over to later meetings. Among the topics that were discussed in multiple labor-management meetings were community corrections staffing, the technology deputy position, deputies' participation in blood draws in booking, transport and supervision of MSR inmate work crews, and the number of vest carriers provided with ballistic vest orders.

107. The parties would occasionally reach agreement on disputed issues during labor-management meetings, and the labor-management meetings would also lead to demands to bargain by the union if agreement could not be reached.

108. After seven labor-management meetings between early February and late May, the union grew frustrated that the employer was not memorializing agreements reached during the meetings. On May 26, 2016, Carrell sent a letter to Trenary expressing the union's frustration with the meetings and demanding to bargain certain subjects.

109. The parties participated in negotiations that arose from the previous union executive board's demand to bargain over issues surrounding New World Systems and single-deputy transports in March 2016. The union demanded to bargain the graveyard meal issue in early May 2016, and the parties met on that issue and the employer's urinalysis policy in June and July of 2016 in addition to continuing negotiations around New World Systems and single-deputy transports. The record does not indicate that the parties reached agreement on these issues during those meetings, nor does it contain written proposals from the parties regarding the issues.

110. During the relevant time period for the unfair labor practice charges, the parties occasionally canceled meetings that had been scheduled. Following a disagreement over whether the parties were scheduled to meet on May 12, 2016, regarding New World Systems and single-deputy transports, the parties rescheduled that meeting for May 20, 2016, and added an agenda topic pertaining to the use of tablet computers in the jail.

111. On May 10, 2016, Carrell e-mailed the employer a request to reschedule the discussion of New World Systems and single-deputy transports because the union's attorney was unavailable, but indicated that the union would still like to discuss the use of tablet computers on May 20, 2016. The employer canceled the May 20, 2016, meeting after communicating to the union that its demand to bargain over the use of tablet computers was premature because the employer was not considering using the technology.

112. The parties scheduled a meeting to discuss New World Systems and single-deputy transports on June 10, 2016, only to reschedule that meeting for June 14, 2016, because the union's attorney was unavailable. The parties also rescheduled negotiations over the graveyard meal from July 15, 2016, to July 29, 2016, at the union's request.

113. Of the nine labor-management meetings scheduled every other week from early February 2016 through the end of the May 2016, the employer canceled two meetings. The employer canceled the April 14, 2016, meeting on April 11, 2016, because Aston was needed in a mediation meeting and Kane was unavailable, and the employer canceled the May 26, 2016, meeting because Aston and Kane were required to attend an arbitration hearing.

114. The parties were scheduled for eight labor-management meetings between Carrell's letter and September 15, 2016, the day after the union filed its unfair labor complaint, but only met on five occasions. The employer canceled meetings one day prior to the June 9, 2016, and July 21, 2016, meetings because the union did not submit agenda items as required by Article 14 of the CBA. The union canceled the September 1, 2016, meeting on the day of the meeting because Carrell was sick and Williams was on vacation.

CONCLUSIONS OF LAW

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

2. By its actions described in Findings of Fact 10, 11, 16, and 24, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally reducing the number of Response and Escort Officers available to respond to emergencies in the jail.

3. By its actions described in Findings of Fact 29 and 30, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally reducing the number of corrections deputies on some jail transports.

4. By its actions described in Findings of Fact 39 through 43, and 45, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally altering the bidding and selection process for the technology specialist position.

5. By its actions described in Findings of Fact 48 through 52, the employer refused to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally ending the practice of providing bargaining unit employees working on the graveyard shift with hot meals and instead providing employees with cold, sack lunches.

6. By its actions described in Findings of Fact 56 through 58, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally eliminating per diem meal reimbursements for corrections deputies who are out on transport during a meal period.

7. By its actions described in Findings of Fact 61 through 65, 67, and 68, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally requiring corrections deputies to perform urine analysis testing on inmates.

8. By its actions described in Findings of Fact 70 through 73, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally reducing the number of vest carriers the county provides to employees as part of the corrections deputy uniform.

9. By its actions described in Findings of Fact 75 through 79, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally requiring corrections deputies to perform blood draws on inmates.

10. By its actions described in Findings of Fact 80 through 84, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally ending the practice of providing corrections deputies working on Thanksgiving and Christmas Day with hot meals and instead providing corrections deputies with a cold meal.

11. By its actions described in Findings of Fact 86 through 88, and 90 through 95, the employer refused to bargain in violation of RCW 41.56.140(4) and (1) by skimming corrections deputy work and assigning non-bargaining unit maintenance employees to supervise

inmate work crews performing work at the fairgrounds, without providing the union with an opportunity for bargaining.

12. By its actions described in Findings of Fact 100 through 103, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by skimming corrections deputy work and assigning non-bargaining unit sergeants and lieutenants to supervise inmate work release, without providing the union with an opportunity for bargaining.

13. By its actions described in Findings of Fact 48 through 52, 86 through 88, and 90 through 95, the employer refused to bargain in violation of RCW 41.56.140(4) and (1) by refusing to discuss proposed changes to mandatory subjects of bargaining.

14. By its actions described in Findings of Fact 105 through 107, 109 through 111, 113, and 114, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by engaging in surface and regressive bargaining, and unilaterally canceling bargaining sessions with its employees' exclusive bargaining representative.

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. Unlawfully implementing changes to meals provided (a mandatory subject of bargaining) for employees represented by the Snohomish County Corrections Guild without providing the guild notice and opportunity to bargain.

   b. Skimming work historically performed by employees represented by the Snohomish County Corrections Guild, without providing the guild notice and opportunity to bargain.

c. Making unilateral changes to mandatory subjects of bargaining without first providing the guild notice and opportunity to bargain.

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

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

a. Restore the *status quo ante* by reinstating the wages, hours, and working conditions which existed for the employees in the affected bargaining unit prior to the unilateral change in employee meal provision found unlawful in this order.

b. Give notice to and, upon request, negotiate in good faith with the Snohomish County Corrections Guild, before making changes to employee meal provision, or transferring bargaining unit work outside the bargaining unit.

c. Give notice to and, upon request, negotiate in good faith with the Snohomish County Corrections Guild, before transferring bargaining unit work outside the bargaining unit or implementing any changes in the wages, hours, and working conditions of its employees represented by the guild.

d. Compensate employees in the affected bargaining unit for overtime lost for transporting inmate work crews to the fairgrounds through December 31, 2016, as a result of the employer's transfer of bargaining unit work outside the bargaining unit found unlawful in this order.

e. Contact the Compliance Officer at the Public Employment Relations Commission to receive official copies of the required notice posting. Post copies of the notice provided by the Compliance Officer in conspicuous places on the employer's

premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

f. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the County Council of Snohomish County, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

g. 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 provided by the Compliance Officer.

h. Notify the Compliance Officer, 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 her with a signed copy of the notice she provides.

ISSUED at Olympia, Washington, this 26th day of January, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

STEPHEN W. IRVIN, Examiner

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

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MARILYN GLENN SAYAN, CHAIRPERSON
MARK E. BRENNAN, COMMISSIONER
MARK R. BUSTO, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 01/26/2018

DECISION 12826 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 128432-U-16

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PARTY 2: SNOHOMISH COUNTY CORRECTIONS GUILD

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