

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY CORRECTIONS
GUILD,

Complainant,

vs.

SNOHOMISH COUNTY,

Respondent.

CASE 131012-U-18

DECISION 12941-B - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

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On October 9, 2018, the Snohomish County Corrections Guild (union) filed an unfair labor practice complaint against Snohomish County (employer). The union's complaint alleged, *inter alia*, that the employer unlawfully skimmed or contracted out the bargaining unit work of monitoring and supervising individuals at the employer's Diversion Center.¹ The case proceeded to hearing on August 4, 5, and 6, 2020, which was conducted by videoconference before Examiner Daniel Comeau. The parties closed the record on October 19, 2020, with the filing of their respective post-hearing briefs.

The issue, as set forth in the amended preliminary ruling, is as follows:

Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by unilaterally skimming and/or contracting out Diversion

¹ The union's other skimming allegation was dismissed in *Snohomish County*, Decision 13008 (PECB, 2019), where the Executive Director concluded the position at issue belonged in a different bargaining unit.

Center work previously performed by bargaining unit employees without providing the union an opportunity for bargaining.²

Based on the record, the employer did not unlawfully contract out bargaining unit work because bargaining unit employees did not historically perform the work at the Diversion Center. The Diversion Center is a new and separate program employing Resident Monitors whose duties and responsibilities significantly differ from the bargaining unit work previously performed by bargaining unit employees. Therefore, the unfair labor practice complaint is dismissed.

BACKGROUND

The union represents employees in a bargaining unit within the Corrections Bureau of the Snohomish County Sheriff's Office.³ Approximately 12-14 bargaining unit employees performed corrections work at the Community Corrections Division (Community Corrections) located at 1918 Wall Street in Everett, Washington. Citing budgetary reasons, the employer formally closed Community Corrections in 2017, and the remaining bargaining unit employees were reassigned to the Snohomish County Jail (jail).

In 2018, the employer, through its Snohomish County Human Services Department (Human Services) and in partnership with other law enforcement entities, created the Snohomish County Diversion Center (Diversion Center). Human Services contracted with Pioneer Human Services (Pioneer), a private organization, to manage the daily operation of the Diversion Center. Pioneer employs Resident Monitors to perform the daily function of monitoring and supervising the

² The union's arguments are framed as an alleged skimming violation although the evidence establishes that the employer contracted with the third party for the disputed work. However, since the preliminary ruling is drafted broadly as "skimming and/or contracting out," the evidence presented is within the scope of the ruling.

³ The employer and the union were parties to a collective bargaining agreement that was effective from January 1, 2015, to December 31, 2017.

residents participating in the Diversion Center program. These employees are not bargaining unit employees within the union's Corrections Deputies bargaining unit.

There is no dispute that the union preserved its claim upon the Community Corrections work following the closure of Community Corrections. There is also no dispute that there was no bargaining over the decision to create Diversion Center work or the impacts of that decision. Thus, the singular issue in this matter is whether the Resident Monitor work within the Diversion Center is bargaining unit work and, if so, whether the decision to contract out the work to Pioneer was a mandatory subject of bargaining.

The Community Corrections Program

Community Corrections was a set of jail-alternative programs for low-risk, minimum-security offenders and included residential and non-residential components. These programs included work/education release (work release), electronic home detention, in custody and Out-of-custody work crews (day reporters), and a program where minimum-security female offenders could transition back into the community. There was also a resident driving under the influence (DUI) offender program at the Evergreen State Fairgrounds run by Evergreen Manor, a private organization, where Corrections Deputies monitored and supervised participating offenders.

As the operational center for alternative confinement, Community Corrections was subject to statutory and programmatic criteria for eligibility. Generally, eligibility required a conviction and sentence, and that the offender be free from any violent or assaultive felony convictions. Upon entering the program each offender was required to understand and sign a Community Corrections Program Contract that set forth the conditions for participating in the program and conspicuously notified the offender that failure to comply "may result in [one's] transfer to the jail."

The conditions for remaining in the Community Corrections program included a list of behavioral expectations. For example, work/school release offenders were responsible for providing a complete work or school schedule and notifying deputies immediately upon any change to that schedule. Unauthorized deviations from that schedule (e.g., going home or stopping at a fast food restaurant) were prohibited, as was the introduction of any contraband or other unauthorized item

into the facility by offenders. They also were expected to refrain from any sexual contact under the Prison Rape Elimination Act (PREA). Any violation of these or other rules could result in disciplinary sanctions, ranging from minor (reprimand or warning) to serious (removal from the program and incarceration in secure detention).

The Corrections Deputies Work within Community Corrections

Corrections Deputies assigned to Community Corrections provided the oversight and supervision of offenders in the program. Corrections Deputies were responsible for booking offenders into the program, conducting interviews to determine any medical or other special needs, and assisting with entering the booking information into the jail computer system. In addition, the Corrections Deputies performed personal searches (including pat downs and strip searches) and property searches to ensure contraband and other unauthorized items were not entering the facility. They took fingerprints, prepared data for entry into the various law enforcement databases, and conducted checks for any outstanding warrants or criminal history.

Furthermore, Corrections Deputies were responsible for conducting an orientation explaining the rules, procedures, and conditions of remaining in the program. In regard to rule enforcement, Corrections Deputies were authorized to investigate suspected rule violations and take disciplinary action against offenders. These violations, or sanctions, ranged from minor (an oral or verbal reprimand) to serious (removal from the program and transfer to the main jail). Depending upon the circumstances and severity of the infraction, Corrections Deputies also drafted and filed reports with either the prosecutor or the court, which could result in additional charges against the offender or modification of the court sentence.⁴

In regard to the disciplinary process, Corrections Deputies were authorized to take action, as appropriate, to correct offender behavior, and they were required to write violations reports and

⁴ Bureau Chief Jamie Kane testified that the decision to follow through with further criminal processes was up to the prosecutor or the court, as Community Corrections handled rule infractions civilly, rather than criminally, within the facility by utilizing the disciplinary sanction process. *See Community Corrections Orientation Manual* at 4 (2014).

submit them to the supervisor. Under certain circumstances, offenders were entitled to a disciplinary hearing, and Corrections Deputies would participate in these proceedings as assigned. If the disciplinary board or other authority determined an offender violated a serious rule, then a Corrections Deputy arranged for the transfer of the offender into the main jail.

Corrections Deputies were additionally responsible for ensuring offenders were participating in the program. Deputy Rick Carlson testified that when he was assigned to the resident DUI program at the Evergreen Fairgrounds, an individual offender left the program prior to completion. In that situation, Carlson wrote a report that the person had escaped, and he filed it with a patrol deputy and left the matter for the court to handle.

Corrections Deputies were responsible for knowing the whereabouts of offenders in the program at all times. They monitored offenders' release to and from work, education, and treatment programs, and outside appointments. While offenders were offsite, Corrections Deputies continuously verified offenders' whereabouts through various forms of documentation and phone contact, for example, with the employer. Finally, Corrections Deputies were responsible for monitoring electronic equipment for inmates on home detention and reporting all breaches of the conditions of home confinement.

In addition to being responsible and aware of the location of offenders, Corrections Deputies, by way of their limited commission, had the authority to seek out and bring an offender back into custody. Depending upon the risks involved, a Corrections Deputy was authorized to seek and detain an offender who had, for example, wandered from a work crew. The risk analysis included the number of staff on duty, the number of offenders in custody, and whether there were public safety risks.

While transporting offenders outside of the facility, Corrections Deputies carried firearms, which required a firearm certification. While inside the facility, however, Corrections Deputies did not

carry firearms; they carried oleoresin capicum spray and Tasers.⁵ Corrections Deputies were also trained in de-escalation techniques and defensive tactics. They performed regular security checks, conducted periodic searches of offenders (particularly when returning from work). They also conducted random breathalyzer and urinalysis testing to detect any illicit drug or alcohol use.

Corrections Deputies performed other various tasks. They received, recorded, and maintained court documents (and others) related to the work release program participants. Corrections Deputies also worked with other professional and office staff to develop appropriate intervention with work release or program participants who were having family, employment, or emotional problems. Finally, they assisted in the risk/needs assessment of offenders to support case reviews for program placement.

The Diversion Center Program and Resident Monitor Work

In 2017, following the closure of Community Corrections, the employer “mothballed” the 1918 Wall Street Community Corrections location. With the location vacant, Snohomish County Human Services, along with other community groups, began discussing ideas for alternative uses for the space. These ideas ranged from housing people involved with drug court to housing individuals with chemical dependencies. At the time of these discussions, Snohomish County was experiencing a significant increase in homelessness, of which much of that population had mental health and/or chemical dependency issues.⁶ Thus, the committee decided to create in the 1918 Wall Street location a chemical dependency diversion center for the homeless.

In 2018, the employer, funded through the Snohomish County Human Services, contracted with Pioneer to provide the daily operation of the voluntary Diversion Center program. Pioneer employed a senior program manager, Claire Wilson; an assistant program manager, case managers, emergency medical technicians (EMT); shift leads; and the disputed Resident Monitors at issue in

⁵ Corrections Deputies are also required to certify in firearms in order to carry a Taser.

⁶ Cammy Hart-Anderson, division manager with Snohomish County Human Services, testified that the need stemmed from the difficulty in connecting a transient population with necessary services.

this case. There were approximately 12 full-time Resident Monitors and three on-call Resident Monitors, who worked day, swing, or night shifts.

To understand the Resident Monitor role within the Diversion Center, it is helpful to understand the Diversion Center program. Participation in the program is voluntary and each participant is recruited by a law enforcement-embedded social worker in partnership with local law enforcement officers. Wilson testified that this is the only way in which clientele are accepted into the program.⁷ Law enforcement officers, with the embedded social worker, often provide the initial transportation to the Diversion Center and, upon arrival, perform a personal search (pat down) of the individual to ensure there are no weapons or illicit items. The Resident Monitors do not perform pat-downs or any other searches of clientele.

Wilson further testified that all Diversion Center participants arrive with active substance use disorders and often co-occurring mental health disorders. Thus, the first part of the intake process involves an EMT, who measures vital signs to ensure that each participant is medically stable. Following this procedure, a Resident Monitor then meets with each participant to gather basic demographic information, go over potential mental health diagnoses, and review all of the consent and release of information forms.

Following the intake, Resident Monitor responsibilities include supervising and monitoring participants for rule compliance and ensuring that they are receiving an appropriate level of care to discharge them into either treatment or housing. Specifically, Wilson testified that the work performed by Resident Monitors focuses mainly on “acute intervention and awareness,” because individuals who are transitioning from chronic homelessness and experiencing withdrawals tend to exhibit “bizarre” behavior. One example of a Resident Monitor duty is to provide wellness checks every 90 minutes, which involve actually determining how someone is doing (recognizing

⁷ Terry Shookman, as explained below, was an example of an individual ordered to be released into the custody of a social worker so that he could be admitted into the Diversion Center. Wilson explained that there was no formal agreement or relationship with the courts, so she would not necessarily be apprised of any court order upon admission of the offender.

moods or withdrawal behaviors) so that Resident Monitors can work with a team of care providers to ensure the best referral for the client. As Wilson put it in her testimony:

[T]here is a lot of bizarre behaviors [sic] that occur, and de-escalation is really necessary to facilitate living in a communal environment, especially coming out of homeless camps and then being placed in a dorm with 10 to 15 other people can be a traumatizing experience; so de-escalation strategies are crucial for navigating those relationships in a communal setting.

This is also why Wilson sought Resident Monitors who exhibited knowledge of substance use disorders and mental health, had experience in the field of recovery or trauma-informed care, and had a sense for the types of strategies for de-escalation necessary with this particular population.

Resident Monitors carry no firearms, Tasers, or oleoresin capsicum spray while in the facility. To maintain order, Resident Monitors generally work with a shift lead or an EMT lead if participants begin behaving aggressively or violently toward one another or to a staff member. If a participant were to become seriously violent, then that participant would be given the option to leave the program, which, since the program was voluntary, did not result in a transfer to the main jail. Furthermore, if participants were to become violent toward one another, Resident Monitors would not be required to file reports or press any charges against the participants. Rather, they would simply assist shift leads in utilizing de-escalation techniques to calm the situation.⁸

Wilson testified that the doors to the Diversion Center are not locked and participants are not being held against their will. She further testified that absconding from the program had happened during her tenure with the Diversion Center. In that instance, a person left the facility for a smoke break and never returned. There was no responsibility for Diversion Center staff to look for the participant or bring that participant back into the program.

⁸ Wilson testified that Resident Monitors could file charges against participants if they, themselves, were victims but that was up to the Resident Monitor involved. Furthermore, she acknowledged that situations could escalate to the level of needing emergency 9-1-1 assistance, but Resident Monitors were still not required to file any reports or notify the court or the prosecutor.

Wilson further testified that the voluntary nature of the program is essential to the program's success. Since the program focus is centered on substance use involvement with a goal "entirely oriented towards recovery and sobriety," placing the threat of incarceration or other penalties does not place the participant in a position to succeed.

The program's purpose is, according to Wilson, to help stabilize participants and to discharge clients into treatment centers or sober outpatient housing. Thus, during a participant's stay, staff are generally focused more on linking the participant with vital services. Diversion Center staff partner with embedded social workers to schedule chemical dependency assessments as well as to assist participants with registering for services (e.g., Medicaid and Veteran benefits).

The only connection between the Diversion Center and the Corrections Bureau is a contract for the Corrections Bureau to provide meals. In this context, the food is delivered to the facility by corrections staff, but it is not searched by the Resident Monitors upon arrival or departure from the facility. Corrections staff do, however, search the food cart upon entering and departing the Diversion Center to ensure contraband is not leaving or entering the main jail. Corrections staff do not enter the Diversion Center and Bureau Chief Kane testified that corrections staff are restricted from entering that facility due to the Health Insurance Portability and Accountability Act (HIPAA) and privacy issues. Kane further testified that he would need to request permission from Wilson in order to enter the Diversion Facility and he believed Wilson would deny him permission without any compelling reason for him to be enter the premises.

The Diversion Center's Relationship to the Criminal Justice System

On January 17, 2018, Governor Jay Inslee's office issued a press release regarding a planned visit the Diversion Center, which had not become fully operational at the time. In that press release, the Diversion Center was described as a:

[S]hort-term housing residential program designed to divert non-violent, low level offenders who are homeless and addicted away from jail and into recovery/treatment.

In addition to this press release, the opening of the Snohomish Diversion Center Pilot was the subject of a study by the Washington State Department of Social and Health Services (DSHS). This study described the program as one that “serves homeless individuals with substance use or co-occurring mental health and substance use disorders who are also at risk of arrest for minor infractions” and “diverted” these individuals from jail. It reported that a small percentage of inmates were used in the initial sample size, and the results of the study indicated that the Diversion Center program could result in a reduced recidivism. However, the study further described the program as voluntary, in that participants were “free to leave the facility at any time; and participants [were] discharged into the community upon completion of the program.”

The union presented the case of Terry Shookman, who was in jail custody at the time. The Edmonds Municipal Court issued a temporary release order (TRO) placing Shookman into the custody of Rochelle Long, an embedded social worker. The additional terms of the release were that Shookman was to reside at the Diversion Center until otherwise ordered by that court, and, if Shookman were to leave the Diversion Center, the court would issue a warrant for his arrest. Long testified that she was not at the hearing or present during the issuance of the order, but she and the law enforcement officer with whom she was working picked up Shookman at the jail and checked him into the Diversion Center.

When confronted with this information at the hearing, Wilson testified that the Shookman case was the first time that the Diversion Center encountered a referral for someone on a TRO and, since that time, there had been no other known instance where an inmate was ordered by a court to reside in and participate at the Diversion Center. However, Wilson admitted that Diversion Center referrals exclusively come through embedded social workers and not directly from the court. Thus, she would not necessarily know, unless informed otherwise, that the social worker had taken an inmate to the Diversion Center while currently on a TRO.

The Shookman example precipitated an email from Anji Jorstad regarding the Diversion Center and its relationship to TROs. In that email, Jorstad explained to embedded social workers that the program was voluntary, that residents could walk away, and would not be continuously monitored while on appointments or smoke breaks. Furthermore, she explained that the judges must also

know that the Diversion Center would not “assume” custody and that Diversion Center staff did not have the capacity to wait with or supervise individuals who are transported out of the facility (e.g., for hospitalization should the participant need unique emergent medical care).⁹ If someone absconded, then Diversion Center staff would simply let the assigned social worker know.

Finally, a comparison of both the Resident Monitor and Corrections Deputy job descriptions revealed that the two were similar in essential duties. Wilson testified that the Resident Monitor job description was generally crafted such that the 50 different Pioneer Human Services programs across Washington State could utilize the position to fit its individual needs. For the Diversion Center, those needs included experience in acute behavioral intervention, motivational interviewing, and de-escalation (i.e., human services) rather than experience in detention and incarceration.

ANALYSIS

Applicable Legal Standard

Contracting Out Bargaining Unit Work

The threshold question in a skimming case is whether the contracted work 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 contract the work. If the work was bargaining unit work, then the Commission applies the *City of Richland*¹⁰ balancing test to determine whether the decision to contract the work is a mandatory subject of bargaining. *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

⁹ Under the Snohomish County job description, a Corrections Deputy “[m]aintains custody and control of inmates when confined to hospitals or other facilities as required.”

¹⁰ *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197, 203 (1989).

employer's] entrepreneurial control' or is a management prerogative." *City of Richland*, 113 Wn.2d at 203. 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 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.

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. *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).

Application of Standard

The first element in the contracting-out analysis is to determine whether the work in question was bargaining unit work. If the work was bargaining unit work, then the analysis moves to the second element, which is the *City of Richland* balancing test. If the work was not bargaining unit work, then the analysis stops and the employer was under no obligation to bargain the decision to contract out the work. In this case, the Resident Monitor work was not bargaining unit work and, therefore, there is no need for engaging in the balancing test because the employer was under no obligation to bargain the decision to contract with Pioneer Human Services.

The Diversion Center program was newly introduced in Snohomish County in 2018, and the Resident Monitor work within that program is unique and specifically targeted to a narrow cross section of the homeless population. These homeless individuals exhibit substance abuse and co-occurring mental health issues, and they are affirmatively selected through outreach by law

enforcement-embedded social workers in an effort to persuade them to voluntarily seek assistance. Resident Monitors work as part of a larger team, including EMTs, case managers, and other professionals to provide the acute level of intervention to assist in stabilizing these individuals for further treatment or sober housing.

The voluntary nature of the program, while in itself is not dispositive, accentuates the differences between the Corrections Deputies' work within Community Corrections facility and the Resident Monitors' work at the Diversion Center.¹¹ Unlike Corrections Deputies, Resident Monitors do not carry firearms, Tasers, or oleoresin capsicum spray at any time. Resident Monitors are not required to maintain custody of participants while participants are outside of the facility, and they are under no obligation to take affirmative steps to take back into custody someone who absconds from the program or to file reports with the prosecutor (or otherwise notify the courts) in these instances. Resident Monitors also are not performing personal searches upon participants' entry or exit. Nor are they performing any randomized breathalyzer or urinalysis tests.

More importantly, Wilson's testimony established that the nature of the Resident Monitor role is narrowly tailored to the goals of the Diversion Center program. Specifically, Resident Monitors need experience in trauma-informed care and in the recovery field in order to effectively perform the tasks needed to ensure success within the program. For example, Resident Monitors perform wellness checks every 90 minutes, which involve determining how someone is doing and recognizing moods and "bizarre" withdrawal behaviors. Thus, knowledge of those moods and behaviors, and how to respond and interact with them, is crucial for Resident Monitors to understand so that the case management team can ensure participants are receiving the appropriate level of care. The union witnesses failed to provide any testimony that they performed any of this

¹¹ A substantial amount of the hearing was devoted to testimony and argument regarding custodial orders and whether the Diversion Center was considered a "jail alternative." Whether or not a person was classified as an inmate or a client, or whether a person was ordered by a court to attend the program or not (e.g., Shookman), the work within the Diversion Center remained distinct from Community Corrections work. That did not change regardless of how an individual entered the program. It was, in the end, a human services, rather than a corrections, program.

specific body of work or that any of this level of experience was essential to their duties while at Community Corrections.

Furthermore, Resident Monitors are not taking participants' fingerprints and entering any information into a criminal justice database. They are also not participating in any due process hearings for rule violations or preparing any rule-violating participants for transfer into the main jail. I conclude that significant differences exist between the two bodies of work.

In its brief, the union cites to *Community Transit*, Decision 3069 (PECB, 1988), for the proposition that a duty to bargain will exist even if the work involved is new or closely related to bargaining unit work. The Examiner's decision in *Community Transit*, is distinguishable from the instant case. In *Community Transit*, the work at issue (commuter transportation between Stanwood and University Place) had been performed by bargaining unit employees. Since bargaining unit employees had provided commuter transit into Seattle, the Examiner concluded that bargaining unit members could provide transit service to University Place (i.e., within Seattle) and found the employer to be in violation of contracting out bargaining unit work. In this case, however, the evidence does not establish that Corrections Deputies had any history of providing any of the acute intervention, trauma-informed care duties described by Wilson.

The union's argument relies heavily on the apparent similarities between the two respective job descriptions, particularly as they pertain to the supervision and security functions of Resident Monitors. This approach, however, is problematic, as it ignores the specific differences in how Pioneer used the position to fit within its mission. Wilson testified that Pioneer has approximately 50 programs throughout Washington State, each of which utilizes the Resident Monitor position. Thus, the job description was written in a sufficiently general fashion to allow each program to tailor the position to its own particular needs.

Furthermore, *King County*, Decision 12952-A (PECB, 2019), is instructive in the instant case. In *King County*, the union was claiming real property acquisition work for a new King County Metro Transit police precinct building. The employer in that case assigned the work to a real property agent in a separate division and claimed that the property acquisition work was different because

it was “enterprise wide.”¹² As the disputed work was the work of acquiring real property, it was certainly the case that the real property agents within the King County Metro Transit Division *could* have done the work. However, the union did not produce any evidence that bargaining unit employees had done the work at the enterprise-wide level. Therefore, the examiner determined and the Commission affirmed that the work was not bargaining unit work and employer had no obligation to bargain the decision to assign the work outside of the bargaining unit.

Applying the principle in *King County* to the present case, the corrections deputies likely *could* perform the work of the Resident Monitors, particularly if they have experience and training in acute intervention and trauma-informed care. However, the Corrections Deputies did not establish that they historically performed the work with this particular focus. Under *Central Washington University*, Decision 12305-A, the Resident Monitor work is not bargaining unit work, the analysis stops, and there is no need to determine whether the decision to contract out the work was mandatory.

CONCLUSION

Based on the record, the employer did not unlawfully contract out bargaining unit work because bargaining unit employees did not historically perform the work at the Diversion Center. The Diversion Center is a new and separate program employing Resident Monitors whose duties and responsibilities significantly differ from the bargaining unit work previously performed by bargaining unit employees. Therefore, the unfair labor practice complaint is dismissed.

FINDINGS OF FACT

1. Snohomish County (employer) is a public employer within the meaning of RCW 41.56.030(13).

¹² “Enterprise wide” meant that the property was being acquired for use by King County rather than acquired for use within its Metro Transit subdivision.

2. The Snohomish County Corrections Guild (union), a bargaining representative within the meaning of RCW 41.56.030(2), is the exclusive bargaining representative of an appropriate bargaining unit of Snohomish County Corrections Deputies.
3. Approximately 12–14 bargaining unit employees performed corrections work at the Community Corrections Division (Community Corrections) located at 1918 Wall Street in Everett, Washington.
4. Citing budgetary reasons, the employer formally closed Community Corrections in 2017, and the remaining bargaining unit employees were reassigned to the Snohomish County Jail (jail).
5. In 2018, the employer, through its Snohomish County Human Services Department (Human Services) and in partnership with other law enforcement entities, created the Snohomish County Diversion Center (Diversion Center).
6. Human Services contracted with Pioneer Human Services (Pioneer), a private organization, to manage the daily operation of the Diversion Center. Pioneer employs Resident Monitors to perform the daily function of monitoring and supervising the residents participating in the Diversion Center program.
7. Resident Monitors are not bargaining unit employees within the union's Corrections Deputies bargaining unit.
8. Corrections Deputies assigned to Community Corrections provided the oversight and supervision of offenders in the program. Corrections Deputies were responsible for booking offenders into the program, conducting interviews to determine any medical or other special needs, and assisting with entering the booking information into the jail computer system.
9. In addition, the Corrections Deputies performed personal searches (including pat downs and strip searches) and property searches to ensure contraband and other unauthorized items were not entering the facility. They took fingerprints, prepared data for entry into the

various law enforcement databases, and conducted checks for any outstanding warrants or criminal history.

10. Corrections Deputies were responsible for conducting an orientation explaining the rules, procedures, and conditions of remaining in the program. In regard to rule enforcement, Corrections Deputies were authorized to investigate suspected rule violations and take disciplinary action against offenders. These violations, or sanctions, ranged from minor (an oral or verbal reprimand) to serious (removal from the program and transfer to the main jail).
11. Depending upon the circumstances and severity of the infraction, Corrections Deputies also drafted and filed reports with either the prosecutor or the court, which could result in additional charges against the offender or modification of the court sentence.
12. Corrections Deputies were responsible for knowing the whereabouts of offenders in the program at all times. They monitored offenders' release to and from work, education, and treatment programs, and outside appointments. While offenders were offsite, Corrections Deputies continuously verified offenders' whereabouts through various forms of documentation and phone contact, for example, with the employer.
13. Corrections Deputies, by way of their limited commission, had the authority to seek out and bring an offender back into custody. Depending upon the risks involved, a Corrections Deputy was authorized to seek and detain an offender who had, for example, wandered from a work crew. The risk analysis included the number of staff on duty, the number of offenders in custody, and whether there were public safety risks.
14. While transporting offenders outside of the facility, Corrections Deputies carried firearms, which required a firearm certification. While inside the facility, however, Corrections Deputies did not carry firearms; they carried oleoresin capicum spray and Tasers.
15. Corrections Deputies were also trained in de-escalation techniques and defensive tactics. They performed regular security checks, conducted periodic searches of offenders

(particularly when returning from work). They also conducted random breathalyzer and urinalyses testing to detect any illicit drug or alcohol use.

16. In 2018, the employer, funded through the Snohomish County Human Services, contracted with Pioneer Human Services to provide the daily operation of the voluntary Diversion Center program.
17. Pioneer Human Services employed a senior program manager, Claire Wilson; an assistant program manager, case managers, emergency medical technicians (EMT); shift leads; and the disputed Resident Monitors at issue in this case. There are approximately 12 full-time Resident Monitors and three on-call Resident Monitors, who worked day, swing, or night shifts.
18. Participation in the program is voluntary, and each participant is recruited by law enforcement-embedded social workers in partnership with local law enforcement officers.
19. The Resident Monitors do not perform pat-downs or any other searches of clientele.
20. Diversion Center participants arrive with active substance use disorders and often co-occurring mental health disorders.
21. Following the intake, Resident Monitor responsibilities include supervising and monitoring participants for rule compliance and ensuring that they are receiving an appropriate level of care to discharge them into either treatment or housing.
22. The work performed by Resident Monitors focuses mainly on acute intervention and awareness, because individuals who are transitioning from chronic homelessness and experiencing withdrawals tend to exhibit “bizarre” behavior.
23. One example of a Resident Monitor duty is to provide wellness checks every 90 minutes, which involves actually determining how someone is doing (recognizing moods or withdrawal behaviors) so that Resident Monitors can work with a team of care providers to ensure the best referral for the client.

24. Wilson sought Resident Monitors who exhibited knowledge of substance use disorders and mental health, had experience in the field of recovery or trauma-informed care, and had a sense for the types of strategies for de-escalation necessary with this particular population.
25. Resident Monitors carry no firearms, Tasers, or oleoresin capicum spray while in the facility. To maintain order, Resident Monitors generally work with a shift lead or an EMT lead if participants begin behaving aggressively or violently toward one another or to a staff member.
26. If a participant were to become seriously violent, then that participant would be given the option to leave the program, which, since the program is voluntary, does not result in a transfer to the main jail. Furthermore, if participants were to become violent toward one another, Resident Monitors are not required to file reports or press any charges against the participants but to simply assist shift leads in utilizing de-escalation techniques to calm the situation.
27. The doors to the Diversion Center are not locked and participants are not being held against their will. There was no responsibility for Diversion Center staff to look for the participant or bring that participant back into the program.
28. The Corrections Deputies did not perform acute intervention strategies that were focused on homeless individuals suffering from co-occurring substance abuse or mental health issues.
29. The Resident Monitor work is not Corrections Deputy bargaining unit work.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.

2. By contracting with Pioneer Human Services for Resident Monitor Diversion Center work as described in findings of fact 3 through 29, Snohomish County did not breach its good faith obligation or violate RCW 41.56.140(4).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 14th day of January, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DANIEL J. COMEAU, 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.



RECORD OF SERVICE

ISSUED ON 01/14/2021

DECISION 12941-B - PECB has been served electronically by the Public Employment Relations Commission to the parties and their representatives listed below. Due to COVID-19 related circumstances the hard copy of the decision will not be placed in the mail until Tuesday, January 19, 2021.

BY: AMY RIGGS

CASE 131012-U-18

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