STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 760, Complainant, vs. BEN FRANKLIN TRANSIT, Respondent.	CASE 134361-U-21 DECISION 13550 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On July 29, 2021, Teamsters Local 760 (union) filed an unfair labor practice complaint on behalf of its Transportation Supervisors (Supervisors) bargaining unit against Ben Franklin Transit (employer). An Unfair Labor Practice Administrator issued a preliminary ruling certifying claims for further processing on August 12, 2021. The employer filed an answer on September 2, 2021. The undersigned Examiner conducted a hearing via videoconference on February 28, 2022, and the parties filed post-hearing briefs on May 13, 2022, to complete the record.

ISSUES

The employer's Supervisors have long used employer-provided vehicles to respond to transit incidents while on the job. This dispute stems from the employer's 2020 purchase of new vehicles for the Supervisors and its subsequent decision to withhold the assignment of the new vehicles from the Supervisors once the vehicles had arrived. The employer's announcement of this decision followed the union's successful organization of the Supervisors and the union's victory in a pre-election unfair labor practice case against the employer.

As framed by the complaint and preliminary ruling, the issues are:

1. Did the employer refuse to bargain in violation of RCW 41.56.140(4) [and if so, derivatively interfere in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by unilaterally changing the plan to replace ten Transportation Supervisors' vehicles, without providing the union an opportunity to bargain?

2. Did the employer discriminate in violation of RCW 41.56.140(3) [and if so, derivatively interfere in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed, by not assigning replacement vehicles to the Transportation Supervisors after the union filed an unfair labor practice?

The union has not met its burden of proving the unilateral change claim but has proven that the employer engaged in unlawful discrimination.

BACKGROUND

The employer is a public transit agency serving Benton and Franklin Counties. The employer is headed by a Board of Directors. During the relevant time period, Gloria Boyce was its General Manager. Until February 2020, Ken Hamm was the employer's Operations Director. Since February 2020, Ayodeji Arojo has been its Operations Director.

The union is the exclusive bargaining representative of various employer bargaining units, including a bargaining unit of eight to ten Supervisors certified in 2021, as discussed below.

The Supervisors are employed in the employer's Operations department. Their duties include responding to incidents and accidents that occur on the employer's transit routes, arranging route detours, performing transit center checks, and investigating customer complaints. Each Supervisor is assigned a duty vehicle that they operate on a regular basis. Historically, they have been

permitted to take those vehicles home. The current Supervisor vehicles are 2008 Ford Taurus X sports utility vehicles (SUVs).

Benchmarks for Vehicle Life and Replacement

The employer has various metrics that it uses to assess the useful life of its vehicles. Some are federally mandated benchmarks, and others are internal guidelines.

The employer is required by the Federal Transit Administration (FTA) and Washington State Department of Transportation (WSDOT) to maintain a Transit Asset Management (TAM) plan. The employer offered its September 2018 TAM plan as evidence at hearing. The FTA imposes benchmarks, laid out in the TAM plan, to assist transit agencies in determining whether capital assets like vehicles remain in a state of good repair. First, the FTA provides a five-point rating scale for agencies to use when inspecting vehicles. Vehicles are rated from one to five based upon their condition; one indicates a "poor" condition vehicle with "[c]ritically damaged component(s) or in need of immediate repair" and five indicates an "excellent" condition vehicle with "[n]o visible defects, [in] new or near new condition."

Evidence regarding the effect of the five-point ratings was mixed. The employer's TAM plan states that any vehicle rated below 3 is considered past its useful life, is not in good repair, and "may require prioritization during capital programming," and specifically, states that vehicles rated 2 are in "marginal" condition, which means they have "[d]efective or deteriorated component(s)" and have "exceeded useful life." However, employer Maintenance Manager William Hale testified at hearing that absent specific safety concerns, the employer typically considers vehicles rated 2 safe and drivable and has continued to allow numerous non-revenue vehicles rated 2 to remain in use. Hale testified that when vehicles are rated 1, they are typically deemed not safe and removed from service.

The FTA also makes recommendations as to the age at which different types of vehicles should be considered beyond their useful life; however, the employer has the discretion to set extended useful life benchmarks of its own. The employer uses seven years as its useful life benchmark—rather than the FTA's recommended five years—for certain non-revenue vehicles like the Supervisor

vehicles. Generally, the employer had an internal guideline of replacing vehicles like the Supervisor vehicles at seven years or 150,000 miles. This guideline was not always followed, however, and the evidence showed that management exercised discretion in the timing and prioritization of vehicle replacement.

Replacement Vehicle Search and Purchase

In 2019, Operations Director Hamm began a project to purchase replacement vehicles for all of the Supervisors' 2008 Ford Taurus X SUVs. Hamm assigned Supervisor Jorge Velasco to explore options for vehicles that would meet certain criteria, including fuel efficiency, the ability to hold the Supervisors' equipment (e.g., shovels, traffic cones, absorbent for winter precipitation), and the ability to be purchased through a state contracts program. Velasco researched options and conferred with colleagues. Hamm had Velasco provide the other Supervisors updates on the project at weekly team meetings. After an involved search effort, Velasco decided to recommend that the agency purchase new Ford Ranger trucks from a Longview, Washington, dealership.

Velasco made the recommendation to Hamm, and Hamm sought the approval of Boyce. Boyce agreed to the selection. The employer then sought the approval of its Board of Directors in a January 2020 meeting.[1]

In a memorandum presented to the Board, Hamm requested the allocation of $395,000 to purchase 10 Ford Ranger trucks. He stated that the "new vehicles would be used to replace 9 Ford Taurus X and 1 Ford Freestar van" and that these vehicles were identified by staff to be replaced "based on age and mileage following the [employer] replacement guideline of seven years or 150,000 miles."

The Board unanimously approved the purchase via Resolution 03-2020. Resolution 03-2020 stated that the employer "has a need to replace" the Supervisor vehicles. The Board approved the

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[1] The Board agenda and a memorandum presented at the meeting identified the meeting date as January 9, 2020. The Board minutes state the date was January 6, 2020. This minor discrepancy was not reconciled at hearing.

expenditure of up to $395,000, including the cost of upfitting the trucks for equipment and agency decals.

The replacement trucks were ordered in January 2020 and were estimated to take several months for delivery. On January 27, 2020, email, Hamm thanked the employer's procurement manager for getting the trucks ordered and stated, "These vehicles will be a huge morale boost for the supervisor team."

As Hamm was approaching retirement, the employer brought on its incoming Operations Director, Ayodeji Arojo, in January 2020. Hamm's and Arojo's tenures overlapped for several months, then Arojo assumed the full duties of Operations Director.

Union Representation Petition and Unfair Labor Practice Dispute

On June 22, 2020, the union filed a representation petition to represent the Supervisors. The day the petition was filed, Arojo announced the cessation of the employer's take-home vehicle benefit for Supervisors. This led the union to file an unfair labor practice complaint on July 1, 2020, alleging interference during the pendency of a representation petition. The processing of the complaint briefly blocked the representation petition. On October 20, 2020, a PERC Examiner issued a decision finding that the employer's removal of the take-home vehicle benefit constituted interference by failing to maintain the status quo. *Ben Franklin Transit*, Decision 13249 (PECB, 2020). In his decision, the Examiner found that portions of Arojo's and Assistant Operations Director Steve Davis's testimony were not credible. The Examiner ordered the employer to restore the status quo and make employees whole for commuting expenses accrued as the result of the employer's unfair labor practice.

During the representation process, there was also a dispute over whether employee Thad Pospical, then a Supervisor, should be excluded from the bargaining unit as a confidential employee. A card-check election was held, and the union prevailed. An interim certification issued on March 18, 2021, pending further proceedings regarding Pospical's unit eligibility. *Ben Franklin Transit*, Decision 13320 (PECB, 2021). At some point, the employer withdrew its claim regarding

Pospical's confidential status, and a final unit certification was issued on June 10, 2021. *Ben Franklin Transit*, Decision 13320-A (PECB, 2021).

Thereafter, the employer promoted Pospical out of the bargaining unit into a Transportation Supervision Manager position. The Transportation Supervision Manager position directly oversees the Supervisors. Employee Gabe Martin also transferred out of a Supervisor position into a position with the Planning department, though it is not clear whether that occurred during or after the representation process.

Non-Assignment of Replacement Trucks

The replacement Supervisor trucks were delivered to the employer in June and July 2020. The employer then had the vehicles upfitted to handle the Supervisors' equipment and had decals with the employer's logo and the word "Supervisor" affixed to the doors. This was done internally, and Hale informed Arojo in approximately September or October 2020 that the vehicles were ready for use.

Arojo instructed Hale to have the trucks "badged as Supervisor's trucks," but Arojo did not immediately assign them to the Supervisors. Arojo testified that one or two were pressed into service for the agency's pandemic response work, such as additional cleaning of transit locations. Union witness Velasco also presented credible, unrebutted testimony that Pospical and Martin (the two prior Supervisors no longer in bargaining unit positions) each began driving the new trucks.[2] The majority of the replacement trucks were parked on the employer's premises and left unused.

The union and employer held their first collective bargaining session for the Supervisors on June 8 or 9, 2021. Leonard Crouch, Dave Simmons, and Pam Jennings attended for the union. Chad Crouch, Ayodeji Arojo, Jerry Otto, and Stacy Leighton attended for the employer. Chad

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[2] Employer witness Arojo vociferously asserted that Pospical and Martin had never been "assigned" replacement trucks, but when questioned further on cross-examination, Arojo stated that he had no knowledge whether Pospical and Martin had been "allowed" to drive the trucks and claimed that he could not recollect whether Pospical or Martin had actually been using the trucks. Velasco's straightforward testimony that Pospical and Martin had been using the trucks was credible.

Crouch, the employer's Labor Relations Manager (no relation to union Secretary-Treasurer Leonard Crouch), served as the employer's chief negotiator.

A proposal was passed regarding global positioning systems (GPS) on employer vehicles, which generated discussion regarding the status of the replacement Supervisor trucks. Leonard Crouch asked why the trucks had not been assigned out to the Supervisors. Arojo replied that he was not sure whether the employer would assign the trucks to the Supervisors at all and wanted to maintain the status quo.[3] In his testimony, Leonard Crouch stated that not only did Arojo refer to the status quo obligation as a reason for its withholding of the trucks, but he also referred to the union's recent unfair labor practice case against the employer. The employer did not challenge or rebut this testimony.

Leonard Crouch questioned why the employer had assigned some of the replacement trucks to employees outside the bargaining unit and whether Arojo had the authority to override the employer's Board, which had expressly authorized the purchase of the replacement trucks for the Supervisors. It is unclear if there was an immediate response. Leonard Crouch stated that he believed the employer's withholding of the replacement trucks constituted retaliation for employees' decision to organize and the unfair labor practice case. Arojo again emphasized maintaining the status quo.

The employer team called a caucus. When it returned, Chad Crouch made a statement that Arojo misunderstood labor law, and that the employer had a management right to decide whether to assign the vehicles. At hearing, Chad Crouch testified that he believed Arojo was conflating two issues: the Supervisors' ability to take cars home (over which the employer had been ordered to restore the status quo) and the issue of whether the employer assigned the new vehicles. Crouch testified that he believed Arojo referenced the status quo because he thought he was being asked about the first issue when the union was actually asking about the second issue. However, no

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[3] The employer admitted the allegation in its answer to the complaint that Arojo made the statement, "he had not yet decided if he would assign the replacement vehicles to the Transportation Supervisors."

foundation was established for Crouch's explanation regarding Arojo's thinking, nor did Arojo himself testify regarding his understanding of the union's questions or explain why he referenced the status quo.

At some point during the conversation, Leonard Crouch indicated that the union did not object to the employer assigning the replacement trucks, as they had been approved and purchased before the Supervisors organized. The employer team responded that they were going to continue doing what they were doing.

At hearing, employer witness Chad Crouch also testified that he "alluded" to the union during the meeting that "the trucks were not going to be released [then], but they would be at a future date." There was no further testimony from Crouch explaining what specific statement he made that should be interpreted as an allusion nor any corroborating evidence for this alleged allusion committing the employer to assigning the replacement trucks in future. This portion of Crouch's testimony is implausible, as committing to releasing the trucks in future runs counter to the weight of the evidence of the employer's central message at the meeting: that it had not decided what to do with the replacement trucks and might not assign them to the Supervisors.

There is no evidence that the employer made any statements during the meeting connecting the employer's delay in assigning the replacement trucks to any cost-saving motive.

Status of Supervisor Vehicles at Time of Complaint

At the time the unfair labor practice complaint was filed, the employer had not replaced any of the Supervisors' vehicles with the new trucks. It was not possible to discern from the record whether all the existing Supervisor Ford Taurus X SUVs had exceeded *both* employer replacement guidelines (seven years and 150,000 miles usage). The Taurus X SUVs, all 2008 vehicles, had exceeded the employer's seven-year age guideline, and most though not all assigned to the

Supervisors also had over 150,000 miles usage.[4] All of the vehicles were rated 2, or "marginal" condition on the FTA inspection scale, which per the TAM report, indicates that the vehicles have "exceeded useful life" with "[d]efective or deteriorated component(s)."

With the exception of the trucks being used by non-bargaining unit members such as Pospical and Martin, the replacement trucks have remained parked and waiting for use on employer property.

Evidence of Employer Cost Considerations

The employer argues that Arojo had a more fiscally-conservative approach than his predecessor, Hamm, and that Arojo still intended to put the new trucks to use as Supervisor vehicles—just one at a time, as the existing vehicles required replacement in his eyes. I cannot credit Arojo's testimony regarding his intentions for the trucks. Arojo's testimony was internally inconsistent, shifting without apparent cause in a memorable exchange with the employer's counsel at hearing. First, Arojo testified that he intended to replace all of the Supervisor vehicles at one time at some uncertain future date, stating he would do so "when those vehicles are available." When asked to clarify his answer about the vehicles' availability, as the prior evidence indicated the replacement trucks had been available since 2020, Arojo then inexplicably asserted, "[T]he plan never changed. It was just the pandemic that changed the plan of the agency. The pandemic arrangement," and said, "the plan is to replace those vehicles at once." The evidence never clearly connected the COVID-19 pandemic to the ability of the employer to assign the replacement trucks to the Supervisors, and witnesses for both parties agreed that, once delivered, the majority of the employer trucks were sitting on the employer's premises throughout the pandemic response.[5]

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[4] Either one or two of the Supervisor Ford Taurus X SUVs had less than 150,000 miles. Velasco testified that "[o]ne, if not two" of the Supervisor vehicles had met only one of the replacement criteria. Hale identified two Taurus X SUVs denoted in Employer Exhibit 4 with less than 150,000 miles (as of June 2021) as being driven by bargaining unit Supervisors, but there was also contradictory evidence that the person to whom one of the vehicles was assigned, Amanda Tipton, was not a bargaining unit Supervisor.

[5] Arojo also admitted the vehicles' general availability on cross-examination, absent the use of one or two for certain pandemic response functions.

Following Arojo's second statement that he intended to replace the Supervisor vehicles all at once, the employer's counsel paused and asked for a five-minute recess. I denied the request. Counsel then asked Arojo one more time whether he intended to put the replacement trucks into service all at once or one at a time. At that point Arojo changed his answer and stated, "Due to the data that I have, the data do not support . . . to replace them at once," and claimed that his "plan is to look at those vehicles, and then replace them as needed." There was no plausible reason for the shift in Arojo's answer nor reason to credit this version of Arojo's testimony over his prior answers.

The employer also presented a cost chart detailing various types of its vehicles and what the employer calculates as the per-mile cost to keep them in service. Hale testified that, in his opinion, the per-mile cost of the Ford Taurus X SUVs did not reach a level that should spur the employer to replace them. Hale's testimony showed that the chart exhibit was generated in May 2022, well after the filing of the complaint in this case, and there was no evidence that this had been a document Arojo considered when deciding not to put the replacement Supervisor trucks into service. The chart did not appear to indicate the per-mile cost of the replacement trucks.

Finally, the employer presented evidence of other examples of Arojo's economizing during his tenure as Operations Director, such as purchasing used vehicles from another transit agency rather than new ones. None of the examples involved the employer spending funds to purchase capital assets like vehicles, then electing not to put the assets to use.

ANALYSIS

Applicable Legal Standards

Burden of Proof

In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof all lie with the complainant. WAC 391-45-270(1)(a); *City of Seattle*, Decision 8313-B (PECB, 2004). This burden of proof requires the complainant to show, by a preponderance of the evidence, that the respondent has committed the complained-of unfair labor practice. *Whatcom County*, Decision 8512-A (PECB, 2005).

Duty to Bargain

Chapter 41.56 RCW requires public employers to bargain with the exclusive bargaining representative of its employees. The duty to bargain extends to mandatory subjects of bargaining. RCW 41.56.030(4). The law limits the scope of mandatory subjects to those matters of direct concern to employees. *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission* (*City of Richland*), 113 Wn.2d 197, 200 (1989). Unless a union clearly waives its right to bargain, an employer is prohibited from making unilateral changes to mandatory subjects. An employer must give a union sufficient notice of possible changes affecting mandatory subjects of bargaining and, upon union request, bargain in good faith.

The Commission applies a balancing test on a case-by-case basis to determine whether an issue is a mandatory subject of bargaining. In deciding whether a duty to bargain exists, there are two principal considerations: (1) the extent to which managerial action impacts the wages, hours, or working conditions of employees, and (2) the extent to which the subject lies "at the core of entrepreneurial control" or is a management prerogative. *City of Richland*, 113 Wn.2d at 203. The inquiry focuses on which characteristic predominates. *Id*. The Supreme Court has explained that "[t]he scope of mandatory bargaining thus is limited to matters of direct concern to employees" and that "[m]anagerial decisions that only remotely affect 'personnel matters', and decisions that are predominately 'managerial prerogatives', are classified as nonmandatory subjects." *Id*. at 200.

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). For a unilateral change to be unlawful, the change must have a material and substantial impact on employees' terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007) (citing *King County*, Decision 4893-A (PECB, 1995)).

Discrimination

It is an unfair labor practice for an employer to discriminate against public employees who have filed unfair labor practice charges. RCW 41.56.140(3). The complainant maintains the burden of proof in a discrimination case. To prove discrimination, the complainant must first establish a prima facie case by showing that

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

City of Vancouver v. Public Employment Relations Commission, 180 Wn. App. 333, 348–349 (2014); *Educational Service District 114*, Decision 4361-A (PECB, 1994).

A union may use circumstantial evidence to establish the prima facie case because parties do not typically announce a discriminatory motive for their actions. *Clark County*, Decision 9127-A (PECB, 2007). Circumstantial evidence consists of proof of facts or circumstances that according to the common experience gives rise to a reasonable inference of the truth of the fact sought to be proved. *State – Corrections*, Decision 10998-A (PSRA, 2011). The timing of an adverse action in relation to protected activity can serve as circumstantial evidence of a causal nexus. *Kennewick School District*, Decision 5632-A (PECB, 1996); *City of Winlock*, Decision 4784-A (PECB, 1995).

If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349; *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may articulate a legitimate, nondiscriminatory reason for the adverse employment decision. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. The employer does not bear the burden of proof to establish the reason. *Port of Tacoma*, Decision 4626-A.

If the respondent meets its burden of production, then the complainant bears the burden of persuasion to show that the employer's stated reason was either a pretext or substantially motivated by union animus. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. An articulated reason is a pretext when it is not the real reason for the adverse action and there is no legitimate business justification for the action, or when the employer's proffered explanation is unworthy of credence. *Educational Service District 114*, Decision 4361-A.

Deviations in personnel policies and changes in personnel practices have been a basis for finding pretext, where an employer provides unclear or inconsistent explanations for its actions. *City of Kalama*, Decision 7448 (PECB, 2001); *Pasco Housing Authority*, Decision 6248-A (PECB, 1998).

Discrimination against employees who file charges or give testimony in unfair labor practice cases is particularly odious, as it not only violates the express provisions of the state collective bargaining statutes but also "attacks the entire system of dispute resolution put in place by the legislature for the regulation of the collective bargaining process." *Mansfield School District*, Decision 5238-A (EDUC, 1996).

Remedies

Extraordinary remedies are used sparingly and ordered only when a defense is frivolous or when the respondent has engaged in a pattern of conduct showing a patent disregard of its good faith bargaining obligation. *University of Washington*, Decision 11499-A (PSRA, 2013); *State – Corrections*, Decision 11060-A (PSRA, 2012). Training is an appropriate extraordinary remedy when necessary to ensure that in the future an employer fully complies with its statutory obligations. *See Seattle School District*, Decision 10664-A (PECB, 2010); *Western Washington University*, Decision 9309-A (PSRA, 2008).

Application of Standards

Unilateral Change

The union alleges that the employer had a duty to provide notice and an opportunity to bargain before it decided not to assign upgraded replacement duty vehicles to the Supervisors. However, the union has not met its burden of establishing that which vehicles the employer assigned to employees was a mandatory subject of bargaining and therefore cannot prevail on this claim.

City of Richland Analysis

The issue alleged to be a mandatory subject in this case is not whether employees had access to a duty vehicle or had a take-home vehicle benefit. It is *which* duty vehicle was assigned to employees: the existing 2008 Ford Taurus X SUVs or the newly purchased Ford Ranger trucks.

The only *City of Richland* interest argued by the union in this case was employee safety, a union concern at times recognized under the Commission's case law. *See, e.g.*, *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A (PECB, 2017), *aff'd*, *City of Everett v. Public Employment Relations Commission*, 11 Wn. App. 2d 1 (2019). In *City of Everett (International Association of Fire Fighters, Local 46)*, the union presented extensive evidence that its minimum shift staffing proposal had direct health, safety, and workload effects on employees. The union offered expert testimony about the effects of fatigue on firefighters and paired the expert testimony with data and employee testimony about what firefighters were experiencing from the high call volumes associated with shift staffing levels.

By comparison to the *City of Everett* case*,* evidence regarding the union's safety interest here was limited. The employer's inspections reports dubbed the Supervisors' existing vehicles in "marginal" condition (rating 2 on a 5-point condition scale) and beyond their "useful life," with "[d]efective or deteriorated component(s)" by federally recognized standards. There was also countervailing evidence that the employer kept many vehicles in service at that rating, absent specific safety concerns. The union offered neither evidence to show any particular safety problems with the existing vehicles nor testimony from any witness articulating safety concerns held by the union or the Supervisors.

The employer argued, by contrast, that employers ordinarily have the management prerogative to determine the manner and method in which employee work is performed. *See City of Seattle*, Decision 9173 (PECB, 2005); *Port of Seattle*, Decision 4989 (PECB, 1995); *King County Fire District 16*, Decision 3714 (PECB, 1991); *Seattle School District*, Decision 2079-B (PECB, 1986). In the cited cases, employers were found to have no decision-bargaining obligation when they implemented new technology or changed the equipment used by employees to perform their work. Here, the employer contends that its fleet management choices are made in accordance with its transit support needs. For example, there was some evidence regarding Arojo's choice to put one or two of the ordered trucks into service to assist with the agency's pandemic response.

The employer also argues that it has an interest "to efficiently use public funds." Managing the expenditure of public funds is an oft-cited core management interest. It is difficult to weigh heavily

this proffered employer interest given the record in this case though. The employer offered a per-mile cost chart from May 2022 and opinion testimony that the per-mile cost of the existing Ford Taurus X Supervisor SUVs remains manageable today; the central flaws in that evidence are discussed above. The employer repeatedly characterized Arojo's decision not to let the Supervisors use the purchased replacement trucks as one of fiscal economy and claimed that Arojo plans to put the replacement trucks into service one by one in a more economical manner. Arojo's testimony regarding his plans was not credible. The employer's argument also overlooks a glaring, undisputed fact: that the funds to purchase and upfit the Ford Ranger trucks had already been expended when Arojo backed away from the plan to assign the trucks out to the Supervisors. The employer failed to persuasively present any fiscal advantage, big or small, to its course of action.

Weighing the union's stated safety interest against the employer's interest in determining the means and methods through which employees perform work presents a close case. Neither party offered considerable evidence directly tying the facts to its stated interest. The union bears the burden of proving its claim by a preponderance of the evidence, and the Commission's case law is clear that an issue is only a mandatory subject if the *City of Richland* analysis shows that it is of "direct concern" rather than "remotely" a concern to employees. *City of Richland*, 113 Wn.2d at 200. With these standards in mind, I find that the union has not met its burden of establishing that its safety interest outweighs the employer's right to decide which equipment to assign to employees. The union has not proven that the decision rose to the level of a mandatory subject of bargaining.

Discrimination

Though the equipment-assignment decision did not rise to the level of a mandatory subject of bargaining, the employer still had a statutory obligation to refrain from discrimination. The evidence clearly shows that the employer pointedly withheld the upgraded replacement trucks from employees after they exercised statutorily protected rights and that the employer's actions were motivated by discriminatory intent.

Union's Prima Facie Case

It is undisputed that the Supervisors unit filed and prevailed in an unfair labor practice claim for interference after the filing of their representation petition. *Ben Franklin Transit*, Decision 13249. To complete its prima facie case, the union must also show that the employer deprived the bargaining unit of an ascertainable right, benefit, or status, and that there is a causal connection between the unfair labor practice case and the employer's actions.

Neither chapter 41.56 RCW nor the cases outlining the Commission's discrimination test specifically defines what an "ascertainable" deprivation is. In past cases, this prong has not been met where there was either no deprivation at all or no tangible deprivation that could be precisely identified. [6] For example, in *Community College District 13 (Lower Columbia College)*, Decision 9171-A (PSRA, 2007), an employee alleged a litany of small changes in her work environment, such as being given little work and short deadlines. The Commission affirmed that, at the time of filing, the employee had not yet suffered any deprivation of an ascertainable right, status, or benefit.

I find that the employer's abrupt decision to withhold the assignment of the upgraded replacement trucks after the Supervisors became represented and prevailed in an unfair labor practice case constitutes the deprivation of an ascertainable benefit. The evidence shows that through a prolonged course of conduct—including actually purchasing replacement vehicles and outfitting them with the words "Supervisor"—the employer held out the reasonable expectation of a precise perquisite to employees. Its Operations Director Hamm acknowledged employee excitement about this benefit, calling the upgrade "a huge morale booster."

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[6] The dictionary definition of "ascertainable," means capable of being found out or learned with certainty or capable of being made certain, exact, or precise. *Ascertain*, MERRIAM-WEBSTER.COM, https://merriam-webster.com/dictionary/ascertain (last visited Aug. 5, 2022); *Able*, MERRIAM-WEBSTER.COM, https://merriam-webster.com/dictionary/able (last visited Aug. 5, 2022); *see also State – Washington State Patrol (Washington State Patrol Troopers Association)*, Decision 12967-A (PECB, 2019) (stating that absent a specific statutory definition, terms applied in cases are defined by their common dictionary definitions).

The employer's pointed conduct in then withholding the replacement trucks after employees became represented and prevailed in an unfair labor practice case against it is conduct RCW 41.56.140(3) is intended to prevent, as it undermines employees' ability to vindicate their statutory rights with this agency and attacks the system of collective bargaining dispute resolution put in place by the legislature. *Mansfield School District*, Decision 5238-A. Unlike in many cases, here, the evidence showing a causal connection between the union's unfair labor practice case and the employer's decision to withhold the replacement trucks is strong. *Clark County*, Decision 9127-A. The union presented credible, unrebutted testimony that Arojo directly stated to the union bargaining team that he was withholding the new Supervisor trucks because of the prior unfair labor practice case.

Even without Arojo's admission, the circumstantial evidence showing a logical nexus of time between the union's representation petition, its unfair labor practice case against the employer, its certification as exclusive bargaining representative, and the employer's announcement of its decision meets the union's burden. When the union filed its representation petition on June 22, 2020, all evidence suggests that the employer was proceeding with its plan to replace the existing Supervisor vehicles with the replacement trucks. The employer immediately withdrew the Supervisors' take-home vehicle benefit, and the union filed an unfair labor practice complaint on July 1, 2020. The decision finding employer interference and ordering the employer to reinstate the take-home vehicle benefit issued on October 20, 2020. The representation process then continued, concluding in June 2021; at the first bargaining session for the newly represented bargaining unit, the employer announced that it was now unsure if it would assign the replacement trucks to the Supervisors. These events all unfolded over the time span of one year, and the employer's new decision regarding the replacement trucks was announced at the parties' first formal opportunity for collective bargaining after employees' exercise of statutorily protected rights. This raises suspicions of discrimination. *See Kennewick School District*, Decision 5632-A; *City of Winlock*, Decision 4784-A.

Employer's Stated Rationale

The employer's burden to articulate a legitimate nondiscriminatory reason for its actions is a burden of production, not persuasion. *Port of Tacoma*, Decision 4626-A. Thus, the employer met its burden, stating that new Operations Director Arojo had a more cost-conscious management style than Hamm. The employer offered evidence that because the existing Supervisor vehicles were not unsafe to be driven and had a certain cost-per-mile that Maintenance Manager Hale deemed relatively low, the employer changed its thinking under Arojo's new leadership in favor of leaving the existing Supervisor vehicles in service until some uncertain future date.

Pretext

While the employer checked the box of articulating a legitimate nondiscriminatory reason for its actions, the union clearly met its burden of persuasion that the employer's stated reasons amount to pretext and the employer's withholding of the replacement trucks was at least substantially motivated by discrimination.

Shifting explanations for an employer action are a well-established indicator of pretext. *City of Kalama*, Decision 7448; *Pasco Housing Authority*, Decision 6248-A. Here, the employer asserted different justifications for its decision at the bargaining table and at hearing, and the evidence for its nondiscriminatory justification at hearing did not add up.

There was credible, unrebutted testimony that Arojo candidly blamed the union's prior unfair labor practice claim at the bargaining table for his decision to withhold the vehicles. The employer attempted to retract Arojo's statements at the table after a caucus and pivoted to a more general response regarding its management rights. No mention of alleged cost saving was made at the meeting.

At hearing, the employer then asserted that the decision to withhold the replacement trucks was due to Arojo's cost-conscious management style and claimed that Arojo planned to put the vehicles into service in the future one by one as the existing Supervisor vehicles became less safe and more costly to operate. Yet Arojo's testimony on this issue wholly failed to be credible and introduced

further shifting justifications for his actions (such as the alleged unavailability of the trucks to be assigned, which was not true as Arojo admitted on cross-examination).

Moreover, as the union pointed out, the employer's cost evidence failed to produce any plausible financial advantage to its course of action. There is no evidence the employer saves any money by now withholding the replacement trucks from service, after having invested nearly $400,000 to purchase and upfit them.

The union offered an additional piece of evidence not explained by the employer's arguments that further supports a discrimination finding: the employer's disparate treatment of Pospical and Martin, who had left the bargaining unit and were permitted to drive the replacement trucks. There was no nondiscriminatory justification offered for the disparate treatment.

In sum, the employer's explanations failed to add up to a credible business justification for its decision in light of all the evidence. *See Educational Service District 114*, Decision 4361-A. A preponderance of the evidence points to Arojo's first candid and yet discriminatory answer at the bargaining table as at least a substantial motivating factor for the employer's actions. This amounts to unlawful discrimination.

Remedy

The union seeks all remedies appropriate to effectuate the purposes of chapter 41.56 RCW. In addition to the standard remedy, I find that the extraordinary remedy of training is warranted here.

This is the second employer violation involving the newly organized Supervisors bargaining unit in a one-year period. As in the prior unfair labor practice case, this case showed Operations management making operational decisions with obvious disregard for the employer's obligations to the Supervisors' union under collective bargaining law. In both cases, the employer presented testimony from high-ranking employer decisionmakers on key issues that was found to lack credibility. Concerningly, the employer also attempted to justify discriminatory statements made by its Operations Director in this case by claiming that the Director did not understand collective bargaining law. This emerging pattern paints a portrait of the need for training to effectuate the

purposes of chapter 41.56 RCW and ensure future compliance. *See Seattle School District*, Decision 10664-A; *Western Washington University*, Decision 9309-A.

The personnel involved in the commission of this unfair labor practice, at minimum the employer's Operations Director and Labor Relations Manager, are therefore ordered to complete mandatory agency training regarding the chapter 41.56 RCW prohibitions on discrimination.

CONCLUSION

The employer did not commit an unlawful unilateral change when it changed its plan to assign replacement vehicles to the Supervisors; that claim is dismissed. The employer did engage in discrimination in violation of RCW 41.56.140(3).

FINDINGS OF FACT

1. Ben Franklin Transit is a public employer within the meaning of RCW 41.56.030(13).

2. Teamsters Local 760, a bargaining representative within the meaning of RCW 41.56.030(2), is the exclusive bargaining representative of various employer bargaining units with the employer including a bargaining unit of eight to ten Transportation Supervisors (Supervisors) certified in 2021.

3. The employer is a public transit agency serving Benton and Franklin Counties. The employer is headed by a Board of Directors. During the relevant time period, Gloria Boyce was its General Manager. Until February 2020, Ken Hamm was the employer's Operations Director. Since February 2020, Ayodeji Arojo has been its Operations Director.

4. The Supervisors are employed in the employer's Operations department. Their duties include responding to incidents and accidents that occur on the employer's transit routes, arranging route detours, performing transit center checks, and investigating customer complaints. Each Supervisor is assigned a duty vehicle that they operate on a regular basis.

Historically, they have been permitted to take those vehicles home. The current Supervisor vehicles are 2008 Ford Taurus X sports utility vehicles (SUVs).

5. The employer has various metrics that it uses to assess the useful life of its vehicles. Some are federally mandated benchmarks, and others are internal guidelines.

6. The employer is required by the Federal Transit Administration (FTA) and Washington State Department of Transportation (WSDOT) to maintain a Transit Asset Management (TAM) plan. The employer offered its September 2018 TAM plan as evidence at hearing. The FTA imposes benchmarks, laid out in the TAM plan, to assist transit agencies in determining whether capital assets like vehicles remain in a state of good repair.

7. First, the FTA provides a five-point rating scale for agencies to use when inspecting vehicles. Vehicles are rated from one to five based upon their condition; one indicates a "poor" condition vehicle with "[c]ritically damaged component(s) or in need of immediate repair" and five indicates an "excellent" condition vehicle with "[n]o visible defects, [in] new or near new condition."

8. Evidence regarding the effect of the five-point ratings was mixed. The employer's TAM plan states that any vehicle rated below 3 is considered past its useful life, is not in good repair, and "may require prioritization during capital programming," and specifically, states that vehicles rated 2 are in "marginal" condition, which means they have "[d]efective or deteriorated component(s)" and have "exceeded useful life." However, employer Maintenance Manager William Hale testified at hearing that absent specific safety concerns, the employer typically considers vehicles rated 2 safe and drivable and has continued to allow numerous non-revenue vehicles rated 2 to remain in use. Hale testified that when vehicles are rated 1, they are typically deemed not safe and removed from service.

9. The FTA also makes recommendations as to the age at which different types of vehicles should be considered beyond their useful life; however, the employer has the discretion to set extended useful life benchmarks of its own. The employer uses seven years as its useful

life benchmark—rather than the FTA's recommended five years—for certain non-revenue vehicles like the Supervisor vehicles. Generally, the employer had an internal guideline of replacing vehicles like the Supervisor vehicles at seven years or 150,000 miles. This guideline was not always followed, however, and the evidence showed that management exercised discretion in the timing and prioritization of vehicle replacement.

10. In 2019, Operations Director Hamm began a project to purchase replacement vehicles for all of the Supervisors' 2008 Ford Taurus X SUVs. Hamm assigned Supervisor Jorge Velasco to explore options for vehicles that would meet certain criteria, including fuel efficiency, the ability to hold the Supervisors' equipment (e.g., shovels, traffic cones, absorbent for winter precipitation), and the ability to be purchased through a state contracts program.

11. Velasco researched options and conferred with colleagues. Hamm had Velasco provide the other Supervisors updates on the project at weekly team meetings. After an involved search effort, Velasco decided to recommend that the agency purchase new Ford Ranger trucks from a Longview, Washington, dealership.

12. Velasco made the recommendation to Hamm, and Hamm sought the approval of Boyce. Boyce agreed to the selection. The employer then sought the approval of its Board of Directors in a January 2020 meeting.

13. In a memorandum presented to the Board, Hamm requested the allocation of $395,000 to purchase 10 Ford Ranger trucks. He stated that the "new vehicles would be used to replace 9 Ford Taurus X and 1 Ford Freestar van" and that these vehicles were identified by staff to be replaced "based on age and mileage following the [employer] replacement guideline of seven years or 150,000 miles."

14. The Board unanimously approved the purchase via Resolution 03-2020. Resolution 03-2020 stated that the employer "has a need to replace" the Supervisor vehicles. The Board approved the expenditure of up to $395,000, including the cost of upfitting the trucks for equipment and agency decals.

15. The replacement trucks were ordered in January 2020 and were estimated to take several months for delivery. On January 27, 2020, email, Hamm thanked the employer's procurement manager for getting the trucks ordered and stated, "These vehicles will be a huge morale boost for the supervisor team."

16. As Hamm was approaching retirement, the employer brought on its incoming Operations Director, Ayodeji Arojo, in January 2020. Hamm's and Arojo's tenures overlapped for several months, then Arojo assumed the full duties of Operations Director.

17. On June 22, 2020, the union filed a representation petition to represent the Supervisors. The day the petition was filed, Arojo announced the cessation of the employer's take-home vehicle benefit for Supervisors. This led the union to file an unfair labor practice complaint on July 1, 2020, alleging interference during the pendency of a representation petition. The processing of the complaint briefly blocked the representation petition.

18. On October 20, 2020, a PERC Examiner issued a decision finding that the employer's removal of the take-home vehicle benefit constituted interference by failing to maintain the status quo. *Ben Franklin Transit*, Decision 13249 (PECB, 2020). In his decision, the Examiner found that portions of Arojo's and Assistant Operations Director Steve Davis's testimony were not credible. The Examiner ordered the employer to restore the status quo and make employees whole for commuting expenses accrued as the result of the employer's unfair labor practice.

19. During the representation process, there was also a dispute over whether employee Thad Pospical, then a Supervisor, should be excluded from the bargaining unit as a confidential employee. A card-check election was held, and the union prevailed. An interim certification issued on March 18, 2021, pending further proceedings regarding Pospical's unit eligibility. *Ben Franklin Transit*, Decision 13320 (PECB, 2021). At some point, the employer withdrew its claim regarding Pospical's confidential status, and a final unit certification was issued on June 10, 2021. *Ben Franklin Transit*, Decision 13320-A (PECB, 2021).

20. Thereafter, the employer promoted Pospical out of the bargaining unit into a Transportation Supervision Manager position. The Transportation Supervision Manager position directly oversees the Supervisors. Employee Gabe Martin also transferred out of a Supervisor position into a position with the Planning department, though it is not clear whether that occurred during or after the representation process.

21. The replacement Supervisor trucks were delivered to the employer in June and July 2020. The employer then had the vehicles upfitted to handle the Supervisors' equipment and had decals with the employer's logo and the word "Supervisor" affixed to the doors. This was done internally, and Hale informed Arojo in approximately September or October 2020 that the vehicles were ready for use.

22. Arojo instructed Hale to have the trucks "badged as Supervisor's trucks," but Arojo did not immediately assign them to the Supervisors. Arojo testified that one or two were pressed into service for the agency's pandemic response work, such as additional cleaning of transit locations. Union witness Velasco also presented credible, unrebutted testimony that Pospical and Martin (the two prior Supervisors no longer in bargaining unit positions) each began driving the new trucks. Employer witness Arojo vociferously asserted that Pospical and Martin had never been "assigned" replacement trucks, but when questioned further on cross-examination, Arojo stated that he had no knowledge whether Pospical and Martin had been "allowed" to drive the trucks and claimed that he could not recollect whether Pospical or Martin had actually been using the trucks. The majority of the replacement trucks were parked on the employer's premises and left unused.

23. The union and employer held their first collective bargaining session for the Supervisors on June 8 or 9, 2021. Leonard Crouch, Dave Simmons, and Pam Jennings attended for the union. Chad Crouch, Ayodeji Arojo, Jerry Otto, and Stacy Leighton attended for the employer. Chad Crouch, the employer's Labor Relations Manager (no relation to union Secretary-Treasurer Leonard Crouch), served as the employer's chief negotiator.

24. A proposal was passed regarding global positioning systems (GPS) on employer vehicles, which generated discussion regarding the status of the replacement Supervisor trucks.

Leonard Crouch asked why the trucks had not been assigned out to the Supervisors. Arojo replied that he was not sure whether the employer would assign the trucks to the Supervisors at all and wanted to maintain the status quo. In his testimony, Leonard Crouch stated that not only did Arojo refer to the status quo obligation as a reason for its withholding of the trucks, but he also referred to the union's recent unfair labor practice case against the employer. The employer did not challenge or rebut this testimony.

25. Leonard Crouch questioned why the employer had assigned some of the replacement trucks to employees outside the bargaining unit and whether Arojo had the authority to override the employer's Board, which had expressly authorized the purchase of the replacement trucks for the Supervisors. It is unclear if there was an immediate response. Leonard Crouch stated that he believed the employer's withholding of the replacement trucks constituted retaliation for employees' decision to organize and the unfair labor practice case. Arojo again emphasized maintaining the status quo.

26. The employer team called a caucus. When it returned, Chad Crouch made a statement that Arojo misunderstood labor law, and that the employer had a management right to decide whether to assign the vehicles. At hearing, Chad Crouch testified that he believed Arojo was conflating two issues: the Supervisors' ability to take cars home (over which the employer had been ordered to restore the status quo) and the issue of whether the employer assigned the new vehicles. Crouch testified that he believed Arojo referenced the status quo because he thought he was being asked about the first issue when the union was actually asking about the second issue. However, no foundation was established for Crouch's explanation regarding Arojo's thinking, nor did Arojo himself testify regarding his understanding of the union's questions or explain why he referenced the status quo.

27. At some point during the conversation, Leonard Crouch indicated that the union did not object to the employer assigning the replacement trucks, as they had been approved and purchased before the Supervisors organized. The employer team responded that they were going to continue doing what they were doing.

28. At hearing, employer witness Chad Crouch also testified that he "alluded" to the union during the meeting that "the trucks were not going to be released [then], but they would be at a future date." There was no further testimony from Crouch explaining what specific statement he made that should be interpreted as an allusion nor any corroborating evidence for this alleged allusion committing the employer to assigning the replacement trucks in future. This portion of Crouch's testimony is implausible, as committing to releasing the trucks in future runs counter to the weight of the evidence of the employer's central message at the meeting: that it had not decided what to do with the replacement trucks and might not assign them to the Supervisors.

29. There is no evidence that the employer made any statements during the meeting connecting the employer's delay in assigning the replacement trucks to any cost-saving motive.

30. At the time the unfair labor practice complaint was filed, the employer had not replaced any of the Supervisors' vehicles with the new trucks. It was not possible to discern from the record whether all the existing Supervisor Ford Taurus X SUVs had exceeded *both* employer replacement guidelines (seven years and 150,000 miles usage). The Taurus X SUVs, all 2008 vehicles, had exceeded the employer's seven-year age guideline, and most though not all assigned to the Supervisors also had over 150,000 miles usage.

31. Either one or two of the Supervisor Ford Taurus X SUVs had less than 150,000 miles. Velasco testified that "[o]ne, if not two" of the Supervisor vehicles had met only one of the replacement criteria. Hale identified two Taurus X SUVs denoted in Employer Exhibit 4 with less than 150,000 miles (as of June 2021) as being driven by bargaining unit Supervisors, but there was also contradictory evidence that the person to whom one of the vehicles was assigned, Amanda Tipton, was not a bargaining unit Supervisor.

32. All of the vehicles were rated 2, or "marginal" condition on the FTA inspection scale, which per the TAM report, indicates that the vehicles have "exceeded useful life" with "[d]efective or deteriorated component(s)."

33. With the exception of the trucks being used by non-bargaining unit members such as Pospical and Martin, the replacement trucks have remained parked and waiting for use on employer property.

34. The employer argues that Arojo had a more fiscally-conservative approach than his predecessor, Hamm, and that Arojo still intended to put the new trucks to use as Supervisor vehicles—just one at a time, as the existing vehicles required replacement in his eyes. I cannot credit Arojo's testimony regarding his intentions for the trucks. Arojo's testimony was internally inconsistent, shifting without apparent cause in a memorable exchange with the employer's counsel at hearing. First, Arojo testified that he intended to replace all of the Supervisor vehicles at one time at some uncertain future date, stating he would do so "when those vehicles are available." When asked to clarify his answer about the vehicles' availability, as the prior evidence indicated the replacement trucks had been available since 2020, Arojo then inexplicably asserted, "[T]he plan never changed. It was just the pandemic that changed the plan of the agency. The pandemic arrangement," and said, "the plan is to replace those vehicles at once." The evidence never clearly connected the COVID-19 pandemic to the ability of the employer to assign the replacement trucks to the Supervisors, and witnesses for both parties agreed that, once delivered, the majority of the employer trucks were sitting on the employer's premises throughout the pandemic response. Arojo also admitted the vehicles' general availability on cross-examination, absent the use of one or two for certain pandemic response functions.

35. Following Arojo's second statement that he intended to replace the Supervisor vehicles all at once, the employer's counsel paused and asked for a five-minute recess. I denied the request. Counsel then asked Arojo one more time whether he intended to put the replacement trucks into service all at once or one at a time. At that point Arojo changed his answer and stated, "Due to the data that I have, the data do not support . . . to replace them at once," and claimed that his "plan is to look at those vehicles, and then replace them as needed." There was no plausible reason for the shift in Arojo's answer nor reason to credit this version of Arojo's testimony over his prior answers.

36. The employer also presented a cost chart detailing various types of its vehicles and what the employer calculates as the per-mile cost to keep them in service. Hale testified that, in his opinion, the per-mile cost of the Ford Taurus X SUVs did not reach a level that should spur the employer to replace them. Hale's testimony showed that the chart exhibit was generated in May 2022, well after the filing of the complaint in this case, and there was no evidence that this had been a document Arojo considered when deciding not to put the replacement Supervisor trucks into service. The chart did not appear to indicate the per-mile cost of the replacement trucks.

37. Finally, the employer presented evidence of other examples of Arojo's economizing during his tenure as Operations Director, such as purchasing used vehicles from another transit agency rather than new ones. None of the examples involved the employer spending funds to purchase capital assets like vehicles, then electing not to put the assets to use.

CONCLUSIONS OF LAW

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

2. By the actions described in findings of fact 4–37, the employer did not refuse to bargain by committing a unilateral change in violation of RCW 41.56.140(4), and derivatively, RCW 41.56.140(1).

3. By the actions described in findings of fact 4–37, the employer discriminated against employees in violation of RCW 41.56.140(3) [and derivatively interfere in violation of RCW 41.56.140(1)] by withholding the assignment of replacement vehicles from Supervisors after the union filed an unfair labor practice.

ORDER

Ben Franklin Transit, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Discriminating against bargaining unit Supervisors in retaliation for their exercise of rights protected by chapter 41.56 RCW.

   b. 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. Move forward with the employer's plan to replace the existing Supervisor duty vehicles with the purchased Ford Ranger replacement trucks.

   b. No later than 20 days following the date this order becomes final, contact the Executive Director at the Public Employment Relations Commission to arrange a convenient date and time for the employer's representatives to attend agency training consistent with this decision. The employer's representatives shall include, at minimum, the Operations Director and Labor Relations Manager.

   c. Contact the compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for posting. Post copies of the notice provided by the compliance officer in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

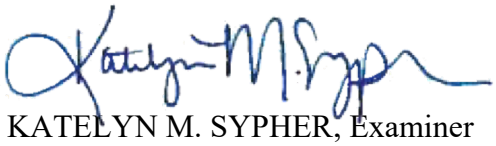
d. Read the notice provided by the compliance officer into the record at a regular public meeting of the Board of Directors of Ben Franklin Transit, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

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

f. 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 the compliance officer with a signed copy of the notice the compliance officer provides.

ISSUED at Olympia, Washington, this 11th day of August, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KATELYN M. SYPHER, 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 08/11/2022

DECISION 13550 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 134361-U-21

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