

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 77,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 135403-U-22

DECISION 13961 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

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On July 25, 2022, the International Brotherhood of Electrical Workers, Local 77 (IBEW or union) filed an unfair labor practice complaint against King County (employer). The complaint alleged a unilateral change by creating a new position and setting terms and conditions for the position without providing the union an opportunity to bargain the decision or effects. On January 22, 2024, the union moved to amend its complaint to add an alternate unilateral change theory based on the existing facts of its complaint: that the employer unilaterally changed the terms and conditions of an existing position. The undersigned Examiner allowed the amendment.

A virtual hearing was conducted on April 23-24, 2024. The parties filed briefs on June 24, 2024, to complete the record.

ISSUES

The issue outlined in the amended cause of action statement is

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 creating a new position and setting terms and

conditions of employment for the position or changing the terms and conditions of the existing [Rail Electrical Worker] position without providing the union an opportunity to bargain the decision or effects.

After careful consideration of the evidence, I find that the employer had an obligation to bargain the minimum certification requirements for the Railway Electrical Worker (REW) position and unilaterally changed terms and conditions of the REW position without providing the union an opportunity to bargain the decision or effects.

BACKGROUND

The union represents a bargaining unit of transit power workers within the employer's Metro Transit Department. There are two divisions or "sides" to the department that union members work in: a bus power side and a rail side. REWs, who are at the center of the instant dispute, work on the rail side performing maintenance and repair on the overhead high-voltage lines and substation equipment that power the Sound Transit Link light rail system.

REW Classification History 2007-2017

The REW position dates back to 2007 when the employer entered into a partnership with Sound Transit to service the up-and-coming Link light rail system. The employer conceived of the REW position to perform the system electrical work and identified that the position could share a community of interest with the union's transit power bargaining unit.

The parties discussed the job description for this new position. Dueling testimony was offered regarding whether the description and its minimum certification requirements were bargained by the union and employer in 2007 or whether the employer had merely presented a draft position description to the union for input that could be accepted at the employer's discretion. Senior Labor Negotiator David Levin, who has worked for the employer since 2001 and has represented the employer in labor relations with the union at various times including in 2007, testified that he believes the employer has approximately 1,100 to 1,200 job classifications. He stated that the employer does not typically negotiate these class specifications with unions because

We feel it's a fundamental function of the employer of the government to design the jobs in our work system that we want We need this position. We're going to decide what it does. We're going to decide what the qualifications are, and then

ultimately we're going to decide who we hire into that position. And if we need to terminate somebody from that position, we're going to make that decision too. This is kind of the line that is clearly for the employer to do.

Nonetheless, both parties' witnesses corroborated that there were mutual discussions during which the employer shared a draft of the initial position description with union representatives and listened to feedback. The parties then entered into an accretion agreement in May 2007 recognizing the position as part of the union's bargaining unit.

The initial job description, shown to the union and attached to the accretion agreement, required REWs to have a Washington State Journey Electrician Certificate as a minimum certification requirement. A Washington State Journey Electrician Certificate, also called an EL01 or 01 license, is a certification that an electrician can receive from the state by completing 8,000 documented hours of on-the-job training and passing a state-administered examination.

The parties continued to discuss the minimum certification requirements for the position even after the accretion agreement was executed, and the initial REW position description was amended in 2007 to state that a "Washington State Journey Electrician Certificate or Journey Line Worker Certificate or equivalent may be required." A Journey Line Worker Certificate is a certification issued by the IBEW that an electrician can receive by completing 8,000 documented apprenticeship hours, undergoing classroom education, being observed and recommended by three journey workers, and passing an IBEW-administered examination.

Joe Simpson, a retired union Business Representative who represented the bargaining unit in 2007, testified to the genesis of both amendments during the parties' discussions, which related to the employer's recruitment interests. Simpson recalled that, during the parties' discussions about the minimum qualifications, employer representatives were "adamant" about being able to hire linemen from other parts of its operation over to the rail side. The union had responded that the linemen must be journey level to perform high-voltage work on hot lines.

The employer was also in talks to hire experienced workers from another light rail system, the San Diego Trolley, to lead its first crews of REWs. None of the San Diego recruits held Washington State Journey Electrician Certificates or Journey Line Worker Certificates. Instead, they held rail-specific certificates that did not exist in Washington: wayside line worker certificates. Both

Simpson and Raul Rico, who was one of the San Diego recruits and has since been promoted into a management position as Power Superintendent, testified to meetings between Rico and the union at which the employer had Rico explain the San Diego wayside line worker apprenticeship to the union and present copies of his apprenticeship hours and wayside line worker certificate. Rico and Simpson both testified that, after Rico's presentation, the union ultimately agreed that the San Diego certificate was an equivalent certificate to a Washington State Journey Electrician Certificate or Journey Line Worker Certificate. The position description was finalized, and the employer hired its first batch of REWs.

No evidence was offered of changes or discussions between 2007-2017 regarding the REW minimum certification requirements. Nor was there evidence of any further discussions between the parties regarding REW candidates with equivalent certifications. After the San Diego hires, the union believed that the employer was only hiring individuals with a Washington State Journey Electrician Certificate or a Journey Line Worker Certificate to be REWs. The union learned after the instant dispute arose that on one unspecified occasion between 2007 and 2022, the employer had hired an REW who lacked either certification. Union Business Representative Jonathan Finch testified that he was unaware of the individual's lack of certifications until after the instant unfair labor practice dispute arose. There was no evidence that the union had been notified of the individual's hiring or lack of certification.

The REW position description was revisited by the parties in 2017. Due to the growth of the Link light rail system and the employer's associated electrical work needs, the employer decided to expand the REW position into a four-position classification series to include the REW position plus an REW Helper, an REW Lead, and an REW Crew Chief. The parties entered into a memorandum of agreement (MOA) accreting the additional positions into the union's bargaining unit. The employer furnished the union with an updated "1/2017 version" of the journey-level REW position description, which the parties ultimately agreed to attach to the MOA. The minimum certification requirement language was changed from "Washington State Journey Electrician Certificate or Journey Line Worker Certificate or equivalent may be required" to "Washington State Journey Electrician Certificate or Journey Line Worker Certificate or equivalent is required." The MOA noted that "The Union raises no issues about the revisions to the classification specification" for the REW position.

Apprenticeship Program

In 2019, the parties worked together to establish a registered REW apprenticeship program as an alternate way for individuals to become journey-level REWs. The apprenticeship program consists of 144 hours of classroom education, 8,000 hours of supervised on-the-job training, and 242 annual hours of related supplemental instruction. It is a four-year program. REW apprentices are members of the bargaining unit with terms and conditions negotiated by the parties.

During the 8,000 on-the-job hours, REW apprentices work alongside experienced journey-level REWs. They spend approximately 500 on-the-job hours learning fundamental skills, 4,500 hours learning to work with traction power substations, 2,000 hours learning to work with the overhead contact system for the trains, and 1,000 hours learning miscellaneous systems. Apprentices must score 75 percent or better on classroom tests to advance in the apprenticeship curriculum and may be subject to discipline or dismissal for failing to maintain passing grades.

By the terms of the parties' MOA establishing the apprenticeship, each apprentice must be supervised by one journey-level REW for low-voltage work and two journey-level REWs for high-voltage work. The parties agreed that, overall, the employer may not employ any more than one apprentice for every three journey-level REWs on staff. The apprenticeship is managed by the Joint Apprenticeship Committee (JAC) comprised of labor and management representatives. JAC chair and REW Lead Terry Simmons testified at hearing that the purpose of these ratios is to ensure safety, so that "if something happens, [they've] got three minds to figure out what to do to try to help this person . . . save their lives. . . ."

The parties negotiated an eight-step escalating wage progression for apprentices based on their documented on-the-job hours. At each step, an apprentice earns an increasing percentage of a journey-level REW's wage. A new apprentice (less than 1,000 hours worked) earns 67 percent of a journey-level REW's wage while an apprentice who has nearly completed the program and is on the final step (7,000-8,000 hours worked) earns 95 percent of a journey-level REW's wage.

Apprentices do not immediately begin accruing seniority when they start the program. Instead, when an apprentice graduates from the program and becomes a journey-level REW, their seniority as an REW is backdated to one year prior to their graduation date.

Between the inception of the apprenticeship program and the processing of this unfair labor practice case, the employer had accepted three applicants into the apprenticeship program, including Michael Enebrad. Enebrad had been a Rail Electromechanic and Relief Lead Electromechanic with the employer before applying to the REW apprenticeship.¹ Another Electromechanic named Ralph Fishburn, whom Enebrad had at times supervised as a Relief Lead, also applied to the REW apprenticeship but was not accepted. Rico testified that, generally, the employer has not accepted more apprentices because it lacks sufficient journey-level REWs to sustain the three-to-one journey-REW-to-apprentice staffing ratio that it had bargained with the union.

Enebrad began his apprenticeship on or around August 2019. As of April 2022, the time that the unfair labor practice is alleged to have occurred, Enebrad was only partway through the apprenticeship program, had not graduated into a journey-level REW position, and did not have a seniority date.

2022 Changes and Hiring

The Link light rail system has undergone continuous expansions since first coming online. In 2022, expansion projects were ongoing to bring the system farther north, south, and east. The number of residents serviced by the light rail system was expected to double between 2022 and 2025. The total number of system full time equivalent employees (FTEs) was expected to increase from 700 to 1,000 during the same period, though it is not clear how REWs factor into those totals.² Rail

¹ Electromechanics troubleshoot, maintain, and repair light rail vehicles. Their work involves hydraulics, mechanical work, and work on electronic equipment like monitors. Electromechanics' work is performed on light rail vehicles while they are deenergized, but Electromechanics are the ones who deenergize the vehicles via a switch.

² Perhaps because of the long pendency of this unfair labor practice case while the parties explored settlement mediation, the introduction of post-complaint evidence was a recurring issue in this hearing. Events that post-date a complaint cannot form the basis of an unfair labor practice, but post-complaint evidence is neither inherently inadmissible nor admissible as evidence otherwise and may have relevance in some cases. *Spokane County*, Decision 13510-B (PECB, 2022); *Snohomish County Police Staff and Auxiliary Services Center*, Decision 12342-A (PECB, 2016). Some of the post-complaint evidence was objected to, and some was not, and I ultimately gave the parties a bit of latitude in making their case presentations. On this topic, the employer offered other detailed evidence about the status and scope of Link light rail expansions, but the evidence appeared to focus on its status and scope at the time of hearing in April 2024, two years after the events in question. The other specific expansion project details offered by Inkster are therefore not helpful to my understanding of the employer's motivations in 2022 and are not recounted here.

Division Director Evan Inkster explained the staffing challenges the employer has faced, especially in the wake of the COVID-19 pandemic stating,

Boy, the demand from the public for us to accelerate all of these [light rail line] openings and compress these openings has been a real tough time for us, especially around coming out of COVID. You know, that has really minimized our workforce and . . . who we have within this region to be able to hire and to recruit. . . .

Inkster also testified that the continuous cycle of expansions has limited the pool of qualified applicants for positions maintaining the system, as the employer would like to hire the tradespeople who have built sections of the system into these permanent maintenance roles, but those individuals often move on to the next expansion project.

At some point, the employer came to believe that the minimum certification requirements for the REW position were limiting its ability to recruit REWs, especially from other locations. Inkster testified that there are “several properties around the country” that hire electrical workers without certifications, including the employer’s light rail counterpart in Tacoma. According to Inkster’s testimony, the Tacoma light rail has not had a reportable electrical incident since 2003. So, when the employer drafted a new career REW job posting in 2021, it expanded the list of acceptable required certifications from the “1/2017” version to include any of the following: “Washington State Journey Electrician Certificate (EL01), Journey Level Line Worker Certificate, High Voltage Journey Level Certificate or equivalent high voltage certification.”

Around the same time, the employer was rolling out a growth management plan called the Here We Grow initiative. One goal of Here We Grow was to “[d]evelop and implement [a] comprehensive Training/Onboarding and Orientation model” for employees. As Inkster explained, the employer has hired employees in waves as the light rail system has expanded, and employees’ onboarding training has varied depending on when they were hired. The employer wanted to create greater consistency in onboarding across its workforce.

Before 2022, newly hired journey-level REWs were often permitted to perform the full spectrum of REW duties within just a few weeks of being hired. Rico had observed that this led to errors on the job. He wanted to ensure that, no matter the background of new REWs, they were familiar with

the specifics of working in rail. The employer therefore came up with the idea of enhancing its “familiarization” or “familiarity” training for REWs.³

At some point before the employer made hires with the new job posting, Rico approached union Business Representative Steve Kovac for a “very short conversation.” Rico and Kovac both testified to their recollections of the meeting. Rico testified that he had presented Kovac with the updated 2021 job posting and informed him that the employer would be enhancing its REW familiarization training. He described the conversation as follows:

We discussed the [REW] requirements and how we were going to add more minimum requirements. And if I remember correctly, we were discussing the Class A license and then also equivalency of the high voltage certificate.

Kovac corroborated that such a discussion occurred. He testified that he had asserted explicitly to Rico that the employer would need to bargain changes to the REW minimum qualifications. Kovac stated that the union would sit down with the employer and bargain but that the union’s position that journey-level REWs would need either a Washington State Journey Electrician Certificate or a Journey Line Worker Certificate or to have completed the REW apprenticeship “wouldn’t be negotiable.”

Rico did not agree that Kovac had explicitly demanded bargaining, but he recalled Kovac expressing concerns about the REW job posting, specifically “the EL01 license. . . . [t]hat they must have one.” Rico testified that he had asserted back to Kovac that the license does not necessarily give someone the full ability to work as an REW. Rico did not testify as to how the parties concluded the conversation, and particularly, did not testify that Kovac had assented to the employer’s change. He stated that this was his only conversation with Kovac about the issue. Kovac testified that no one from the employer contacted him to engage in bargaining before the

³ According to Finch, who had a career as a high-voltage electrician with another local employer before representing REWs for the past five years with the union, familiarization training is a common type of training in electrical work designed to onboard electricians to the specifics of a workplace. In his experience, typical subjects for familiarization training include how switching is done there, where a crew meets, how to fill out the timesheets for that employer, and what types of vehicles the employer uses.

employer moved forward with the changes to the REW job posting and hired employees with the posting.

The employer opened a hiring process and made two new REW hires in April 2022. One of the hires was Fishburn, who had previously applied to and been rejected by the REW apprenticeship program. Fishburn was hired into a journey-level REW position and paid at the journey REW rate. Fishburn did not have a Washington State Journey Electrician Certificate or a Journey Line Worker Certificate. He also did not have a High Voltage Journey Level Certificate or equivalent high voltage certification, as the employer's updated job posting stated was required for the position.

The parties offered detailed evidence about Fishburn's professional background and the reasons for his hiring. However, it is undisputed that Fishburn was just the first in a series of journey-level REW hires the employer made starting in April 2022 who lacked Washington State Journey Electrician Certificates, Journey Line Worker Certificates, or equivalent certificates and had not completed an REW apprenticeship. The employer acknowledges in its post-hearing brief that it altered the minimum certification requirements for the REW position and argues that it had a management prerogative to do so. Therefore, the undersigned will merely summarize that Fishburn's background as an Electromechanic, his prior work and certification with low-voltage aviation air frame and power systems, his completion of several private "amps, volts, Ohm's" classes, and his associate's degree as a Maintenance Technician were among the reasons Inkster believed him "qualified to come into [the employer's] familiarity program."

When the employer hired Fishburn, it rolled out its enhanced familiarization training. On April 28, 2022, Rico sent an email to the lead REWs providing instruction regarding how to treat Fishburn and the other new REW hired at the same time who held a Washington State Journey Electrician Certificate. Rico stated that the two were to work with other journey-level REWs for the time being and that they would "not be counted as . . . Qualifying REW[s] until completing probation and qualifying tasks."⁴ Rico added that he was "working with Labor and Industries to ensure all

⁴ New REWs serve a six-month probation.

qualifications and training is completed prior to deeming them ‘qualified’ to perform QREW work.”⁵

The precise contours of the training, as applied to Fishburn or to REWs generally thereafter, were not made completely clear. It is clear that the employer intended for the enhanced familiarization training to be six months or less, to be completed by the end of an REW’s probationary period. Otherwise, Rico described some of the content of the employer’s new familiarization program as electrical in nature, some pertaining to introductory workplace topics like “where the lunch break rooms are and where all the substations” are, and some pertaining to the employer’s radio communications system. Wayside Section Manager Jeff Warning described the program as “training and familiarization with the actual gear that you’re working on” as an REW, designed to bring even new hires with electrical certifications “up to that highest level of familiarization and safety.” Both Warning and Rico testified that all new journey-level REWs would need this training, regardless of their certifications, but Rico equivocated when asked whether Enebrad would need the training, having come out of the REW apprenticeship program. Rico agreed that the enhanced familiarization training is not equivalent to a full apprenticeship and testified that it was not intended to be.

Initially, the employer’s simultaneous hiring of Fishburn and its rollout of a slower onboarding process for REWs via the enhanced familiarization training caused some confusion. The union believed that the employer had unilaterally created a new position in the REW classification series, an REW trainee position. On June 21, 2022, Kovac reached out to King County’s Apprenticeship and Pathways Manager Danielle Wallace to object to the unilateral creation of the new position. He asked that the employer redirect Fishburn to the apprenticeship program or return him to the position of Electromechanic.

⁵ The Department of Labor and Industries (L&I) regulates professional electrical work via its electrical worker safety rules chapter 296-45 WAC. In this email, Rico appears to be referencing the chapter 296-45 requirement that the employer utilize “qualified electrical workers.” It is not the purpose of this hearing to determine whether Fishburn or subsequent employer hires were qualified electrical workers within the meaning of L&I’s regulations.

Employer Labor Relations Manager Diana Joy responded to Kovac on June 27, 2022, clarifying that the situation with Fishburn was related to the employer's desire to change the minimum qualifications of the REW position and "not so much about the apprenticeship program." Joy provided Kovac with "rough drafts – not yet approved or final" of an updated class specification and job posting for the REW position. Both documents made further changes to the minimum qualifications beyond the 2021 version that Rico had presented to Kovac before Fishburn's hiring. The updated draft class specification wholly struck out the line "Washington State Journey Electrician Certificate or Journey Line Worker Certificate or equivalent is required."

Joy testified that, thereafter, during the summer of 2022 when the parties were bargaining a successor collective bargaining agreement (CBA), Kovac presented proposals unsuccessfully attempting to codify minimum qualifications for the journey-level REW position into the contract.⁶ The employer rejected the proposals, and the union ultimately withdrew them. The employer continued hiring workers who lacked a Washington State Journey Electrician Certificate, Journey Line Worker Certificate, or equivalent certificate and had not completed the REW apprenticeship. As Inkster explained, the employer now views the certifications and the apprenticeship as "both great pathways to get to an REW position, but they're just pathways."

Additional Evidence Regarding Safety

Both parties presented evidence regarding the safety conditions associated with REWs' work.

It is undisputed that REWs perform regulated, high-voltage electrical work. L&I's chapter 296-45 WAC electrical workers safety rules define high-voltage work as electrical work with 601 volts or above. REWs work on catenary wires with 1,500 volts and substation equipment with up to 26,000 volts of electricity.

REWs are responsible for performing preventative maintenance and repairing problems throughout the electrical system that powers the Link light rail system. This includes the overhead

⁶ Two proposals were passed before the union filed its unfair labor practice complaint and one was passed in August, after the complaint was filed. I accepted the evidence over objection but, as discussed below, I do not ultimately find the evidence relevant to the issue of whether the employer committed a unilateral change violation in April 2022.

catenary system, traction power substations, the negative return system, the underground cabling system, and aspects of the downtown Seattle transit tunnel. REW position descriptions have consistently listed “hot line” work, in which employees work on equipment that remains energized, as a job duty of REWs. One witness testified that it is no longer typically the practice for lines to stay energized as crews work on them due to the needless level of risk. However, REWs are the ones responsible for safely and properly deenergizing electrified equipment for maintenance and repair.

For the overhead contact system, this involves “racking in” direct current feeder breakers that are attached to an energized system, and for substations, is a “complicated” process that involves deenergizing the substation breakers either via a computerized control system or manually, then fully isolating the substation from other feeds. REWs then must safely test for voltage and install safety devices that “lessen the potential for incidental shock or injuries” and keep an area from powering up while employees perform work.

Multiple REWs provided testimony about the risks inherent in their work due to high voltages and high tension on the wires with which they work. Enebrad explained,

It’s very dangerous work because we have high tension wires up there. The messenger wires are – that support the contact wire are 5,000 pounds. The contact wire itself is tensioned at 3,500 pounds. You have a lot of tension in there, and if someone was to loosen something that they weren’t sure of, they may possibly be in a bad situation where they can basically get . . . injured . . . by a wire under load. You also have electrical hazards. You’re working – a lot of times you’re opening breakers. You’re working around components that have potentially lethal voltages, so yes, it is a hazardous job.

Simmons, a licensed electrician who had completed an apprenticeship and possessed 17 years of experience before being hired by the employer in 2017 and becoming lead REW, testified, “It’s 26,000 volts on down. It’s dangerous work.” He explained that working with full utility voltages before they are stepped down is “a little bit different” from other electrical jobs. Simmons described that getting “hung up” on a system with voltages that REWs work on, such as a “480/277” lighting system, would cause a person to die. He also listed arc flashes and arc blasts as

being among the risks REWs face.⁷ Simmons emphasized the “years, not weeks, multiple years” that it takes to learn how to perform high-voltage work safely and confidently.

REWs perform work in crews of two or more people, and at times, multiple crews collaborate on complex projects. Crew members are reliant on one another’s knowledge and skills to stay safe on jobs. Enebrad testified that this involves an extension of mutual trust between REWs:

You need to be able to trust who you're working with and know what level of education and skills they have. Like I said, you're working with wires under tension, under load, potentially energized equipment so you need to know that that individual understands the hazards that they pose there. So when you go to work on whatever component you're on since -- we have two different crews for doing - - we have power down and power up crews, and we have crews that are actually working on the line. So they all need to be on the same page as far as familiarization, education, and skills.

Simmons also emphasized the importance of being able to rely on crew members’ knowledge and experience to work safely:

[W]e go out as crews. So not only are you putting yourself in danger by not being familiar with the knowledge and the skill set and the safety aspect of it, but you’re putting your fellow – you’re putting your brother or sister in harm’s way.

Finch offered testimony that high-voltage electrical work is a field in which people lose limbs and die and that he has met such individuals or their surviving families in the course of his career. And though not specific to REWs’ work, the foreword to chapter 296-45 WAC provides some salient passages about the safety-sensitive nature of regulated electrical work generally:

The purpose of this chapter is to make the workplace of electrical employees as free from recognized hazards as reasonably possible. Following these rules may sometimes require that employee safety receive a higher priority than speed and work performance. . . .

Experience has proven that the majority of injuries and deaths are preventable. . . . Electrical safety requires that the work be properly planned, executed by the use of good judgment and under the direction of intelligent supervision.

⁷ The risk of arc flashes is corroborated by the requirement listed consistently in the REW position descriptions over time that REWs possess the ability to work in arc flash protection suits.

Witnesses from both parties acknowledged that a background and skill in high-voltage electrical work alone do not guarantee safe performance or full readiness to work as an REW. The REW position has unique challenges from electrical work in other settings, including live trackways and work with rail-specific equipment. For example, Warning estimated that 40 percent of the REW job involves servicing the light rail's overhead contact system, which a certified electrician without prior experience in rail operations would not have knowledge of. Rico expressed the view that a Washington State Journey Electrician Certificate or Journey Line Worker Certificate is insufficient to prepare individuals to be REWs because it provides generic electrical certification not specific to working in rail. Simmons agreed that, despite being an experienced, certified electrician when he was hired by the employer, onboarding training that he had received from Rico orienting him to the specifics of rail was valuable. He rejected the idea that Rico's onboarding training had been the only thing keeping him safe as an REW though and asserted the "life safety" value of the electrical apprenticeship and years of certified electrical experience he had brought into the role.

Finally, the employer elicited testimony from multiple witnesses about a lack of safety-related accidents in the REW workforce.⁸ There was no evidence of any safety-related lapses due to Fishburn or the other REWs the employer has hired who lacked certifications and didn't complete the REW apprenticeship.

Role of Seniority In REWs' Terms and Conditions

There was also evidence that seniority factors into a variety of REWs' negotiated terms and conditions of employment. Pursuant to the parties' collective bargaining agreement, seniority determines shift selection and the order in which employees would be released during a reduction in force. Enebrad presented un rebutted testimony that employees' work locations and vacation leave opportunities are also determined by seniority. Enebrad testified that, amongst REWs, "[o]ne person can hold you back from having a desired shift. So every slot and seniority matters."

⁸ While some of the questioning was not specific as to time period and could be read to include the time period before the union's complaint was filed, much of the questioning was directed at the safety performance of the uncertified REWs the employer has hired since the union's complaint was filed. I allowed the testimony but, as discussed below, give it little weight as I find the logic of the employer's argument unavailing.

ANALYSISApplicable Legal Standard(s)

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.

“Whether a particular subject is mandatory or nonmandatory is a question of law and fact to be determined by the [Commission] and is not subject to waiver by the parties by their action or inaction. . . . [A] party which engages in collective bargaining with respect to a particular issue does not and cannot confer the status of a mandatory subject on a nonmandatory subject.” WAC 391-45-550; *see also, City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A (PECB, 2017).

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, and 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). A past practice is a course of dealing acknowledged by

the parties over an extended period of time, becoming so well understood that its inclusion in a collective bargaining agreement is deemed superfluous. *Id.* (citing *City of Pasco*, Decision 4197-A (PECB, 1994)). To be an established past practice, the practice must be consistent, known to all parties, and mutually accepted. *Id.*; *Snohomish County*, Decision 8852-A (PECB, 2007).

As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*, Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010) (citing *Skagit County*, Decision 8746-A (PECB, 2006)).

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

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)). No violation exists where there is no change to an established past practice. *Id.*

Application of Standard(s)

In This Case, Minimum Qualifications Were a Mandatory Subject

The parties' principal dispute is whether the minimum certification requirements for the REW position were a mandatory subject of bargaining. In certain past cases, minimum qualifications for hiring have been found to be management prerogatives not obligated to be bargained. *City of*

Pullman, Decision 7126 (PECB, 2000); *see also*, *Kitsap County Fire District 7*, Decision 2872-A (PECB, 1988) (drawing a distinction between “pre-hire qualifications” applied to applicants and qualifications affecting existing bargaining unit members as ongoing conditions of employment). The evidence in this case reveals that REWs’ and REW apprentices’ work is highly safety-sensitive and that the minimum certification requirements and the documented hours of on-the-job, high-voltage electrical experience that those requirements represent have a direct relationship to worker safety. When weighed against the employer’s evidence of its staffing challenges to meet Link light rail expansion targets, the employees’ interests in being protected from high-voltage electricity predominate.

When performing the *City of Richland* balancing test, the parties’ history of bargaining or not bargaining the subject does not come into play. While the willingness of the parties’ historians to make themselves available, including coming out of retirement, to shed light on the parties’ actions back in 2007 is sincerely appreciated and offered relevant background, it is not necessary to decide whether the parties’ past discussions regarding the minimum REW certification requirements constituted formal bargaining or mere consultation with feedback accepted at the employer’s discretion. Those actions cannot convert a non-mandatory subject into a mandatory subject or vice-versa. WAC 391-45-550; *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A.

Union’s Interests

The union’s foremost interest in bargaining the minimum certification requirements for the REW position is worker safety. Safety has been held to effect working conditions and create a bargaining obligation in numerous past cases. *See*, *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A, *aff’d sub nom.*, *City of Everett v. Public Employment Relations Commission*, 11 Wn. App. 2d 1 (2019); *Snohomish County*, Decision 9770-A (PECB, 2008); *King County*, Decision 5810-A (PECB, 1997), *aff’d sub nom. King County v. Public Employment Relations Commission*, 94 Wn. App. 431 (1999). The closer the safety interest is shown to be to a topic of bargaining, the stronger the employees’ interest in bargaining the topic through their exclusive bargaining representative is. *See, e.g.*, *City of Richland*, 113 Wn.2d at 204 (“When staffing levels have a demonstratedly direct relationship to employee workload and safety . . . requiring an employer to bargain over them will achieve the balance of public, employer and union

interests that best furthers the purposes of the public employment collective bargaining laws.”) The union also presented an interest in preserving the seniority rights of REW apprentices. The union presented cogent evidence of both interests.

The union offered multiple sources of evidence that, together, demonstrated the highly safety-sensitive nature of REWs’ work, including REWs’ testimony about their job duties and hazards, the job descriptions for the REW position, portions of Finch’s testimony, and L&I’s electrical worker safety rules from chapter 296-45 WAC. It is undisputed that the nature of REWs’ work is performing high-voltage electrical work on equipment with up to 26,000 volts and lines with high tension. The risks inherent in the work include accidental contact with live voltage, arc flashes, arc blasts, and the possibility of high-tension wires coming loose. The employer did not rebut the multiple instances of testimony in which REWs Enebrad and Simmons, as well as Finch, described the risk of injury or death associated with REWs’ high-voltage work and characterized the voltages REWs manage as “potentially lethal.”

The requirements of the REW apprenticeship program are also forceful admissions of the risks of REWs’ work and the training and experience that both parties agreed in 2019 it takes to safely work as an REW. The apprenticeship standards require candidates to train for four years, completing 8,000 on-the-job hours, 144 classroom hours with passing marks, and 242 hours of related supplemental instruction before stepping into a journey-level REW role.⁹ Under the jointly negotiated apprenticeship terms, REWs-in-training are required to work in a specified ratio under the supervision of experienced REWs, which Simmons, chair of the parties’ JAC, testified was for protective purposes, to “save their lives” if something happens. The employer offers no rational justification for why these safety measures should not be taken into consideration as evidence of the risk that both parties seem to have seen in having undertrained workers performing high-voltage electrical work just three years before the putative unilateral change.

In some job settings, it is possible that the qualifications and knowledge of other employees would have little effect on an individual worker. In this setting, however, there is evidence that the

⁹ The parties agreed that 4,500 hours was the appropriate amount of on-the-job training that it takes for an REW apprentice to become qualified in just the substation electrical work portion of the REW job.

knowledge and experience of an REW directly affects other REWs' bodily safety, as REWs perform work in crews of two or more people. Multiple crews collaborate on complex projects, with one crew taking responsibility for deenergizing a line so that the next can safely work on it. One REW's lack of skill, experience, and "confidence," as Simmons put it, risks direct harm to the other REWs working on a project alongside them.

The evidence demonstrates a commonsense connection between the certification requirements for journey-level REWs and the safety of the REWs and their colleagues working with high-voltage electrical equipment. All of the pathways for becoming a journey-level REW before the employer's 2022 changes required employees to, at a minimum, complete documented on-the-job electrical apprenticeship hours.¹⁰ Simmons testified that the skills, confidence, and therefore mutual safety that he has observed over his career come with the "years, not weeks, multiple years" that it takes people to learn the high-voltage electrical trade.

The employer downplays the role that high-voltage electrical certification and apprenticeship play in REWs' safety and particularly points to a lack of accidents to date due to uncertified workers as evidence undermining the safety interest of the union in bargaining minimum electrical certification requirements. It is true that the union offered no evidence that any safety lapses had occurred to date due to the employer's employment of REWs who lacked certifications or completion of an apprenticeship. There was also testimony from the employer that another local rail employer in Tacoma had not had a reportable electrical incident since 2003 using workers without certifications to perform electrical work. I note this evidence but find fault with the employer's logic. Evidence of safety lapses or accidents are certainly one way to show the connection between the lack of certification standards and safety risks, but I decline to find that employees whose core job function involves lethal voltages of electricity up to 26,000 volts can

¹⁰ There was no evidence of exactly how many documented apprenticeship hours Rico and his colleagues from San Diego were required to complete to receive wayside line worker certificates, however, it is clear that the hours were documented and that Rico presented the documented hours to the union. Each of the other pathways provided for by the parties' past practice required 8,000 documented hours of on-the-job electrical experience.

have no recognized interest in bargaining safety-related protections unless or until someone gets hurt.

Finally, evidence that there may be additional training or certifications that may help REWs work safely in the rail environment—on top of the minimum high-voltage, electrical-centric training and certification requirements the parties have historically used when hiring journey REWs—also does not negate the evidence above of the connection between the parties’ practice and REWs’ safety. I give weight to Simmons’ testimony on this point, that the rail orientation training he received from Rico as a new REW, though valuable, did not compare to the “life safety” value of his original electrical apprenticeship and years of certified electrician experience.

Overall, I find that the record contains detailed, logical evidence directly connecting the thousands of hours of training and experience performing electrical work that the employer has previously required of journey-level REW hires with the insulation of that new hire and their fellow crew members from risks of injury or death while they perform work on high-voltage systems.

It is also clear that the employer’s decision to change the minimum requirements and hire previously unqualified candidates who would have needed to enroll in the apprenticeship program to get on a path to become journey-level REWs disrupted the seniority rights of existing bargaining unit REW apprentices like Enebrad. The seniority terms of REW apprentices had been set through bargaining by the parties, and seniority placement determines other key terms and conditions for the duration of REWs’ career with the employer such as shift selection, work locations, vacation opportunities, and layoff protections.

Employer’s Interest

The employer focused its post-hearing arguments on the union’s lack of a valid safety interest in the minimum certification requirements and whether the parties had a history of bargaining them and did not summarize or argue the weight of its own interests to unilaterally control the requirements. Levin testified that, generally, the employer reserves the right to set minimum qualifications and other aspects of class specifications as “a fundamental function of the employer of the government to design the jobs in our work system that we want.” There is undoubtedly some support for this view in past cases, however, the Commission and reviewing courts have repeatedly

affirmed the need to weigh evidence of the parties' interests on a case-by-case basis in disputes regarding mandatory versus permissive subjects. *City of Everett v. Public Employment Relations Commission*, 11 Wn. App. 2d at 16-20 (rejecting argument that the Commission erred by performing balancing test); *City of Richland*, 113 Wn.2d at 203 (finding that the Commission "abdicated its fundamental responsibility" by failing to weigh the case-specific evidence of the parties' interests against each other).

Though the employer failed to argue its interests, this is what the undersigned sees in the record: the challenges of sufficient recruitment as the Link light rail has continuously expanded were a consistent theme in the employer's evidence. Inkster's testimony about the particular strain that the employer faced following the COVID-19 pandemic due to the coincidence of a demand for expanded public transit options with general regional staffing challenges was some of the clearest evidence of the employer's perspective. The employer was attempting to staff up from 700 total system FTEs to more than 1,000, though the record was not precise about the connection between REW recruitment and the employer's ability to meet the overall goal. The employer felt hampered in its ability to hire REWs to maintain the Link light rail system by the expansion projects' hiring from the same pool of qualified workers. Further, Rico testified that the employer has lacked sufficient journey-level REWs to fully utilize the apprenticeship program to meet its labor needs.

Decisions about the level of service to provide to the public have been held to fall closer to the core of an employer's entrepreneurial control in some cases. *See, e.g., City of Everett*, Decision 11241-A (PECB, 2013); *City of Bellevue*, Decision 10830-A (PECB, 2012). The employer's case has not drawn a clear and solid connection between the decision to change the minimum REW certification requirements and its level of service needs though.

Balance of the Parties' Interests

The *City of Richland* test calls on me to weigh the evidence supplied by the parties. Based on the record here, the balance favors the evidence of the union's interests. The extent of the union's evidence and the paramount role that safety borne through proper training and experience plays in high-voltage electrical work outweighs the employer's limited articulation of its interest in staffing up to accommodate Link light rail expansion targets. The employer's change also impacted seniority for existing bargaining unit members. The outcome of any future bargaining regarding

the minimum certification requirements for the REW position is up to the parties, but the employer was required to provide notice and an opportunity to bargain changes to the requirements before it implemented them, as well as the impacts of the changes upon seniority.

Past Practice

Between 2007 and 2019, the parties had a consistent, mutually known, and mutually affirmed practice of only hiring REWs with a Washington State Journey Electrician Certificate, a Journey Line Worker Certificate, or an equivalent certificate based on documented on-the-job hours performing high-voltage electrical work. Whether or not the parties formally “bargained” the 2007 job descriptions and minimum certification requirements, the parties’ conduct, including back-and-forth discussions when the position was being created, show a mutual commitment to hiring certified workers. During this time period, as the employer was preparing to employ its first REW crews, it went so far as to have San Diego candidates present and explain their equivalent certificate and the documented apprenticeship hours underlying the certificate to the union to allay concern that uncertified workers would be performing system electrical work.

The parties maintained this practice for over a decade. Their conduct in 2017 when the employer updated and discussed the “1/2017” REW position description with the union, resulting in an accretion agreement of related positions, demonstrates an affirmance, and even a strengthening, of the parties’ commitment to hiring only certified workers to be REWs. The position description was edited to say that “Washington State Journey Electrician Certificate or Journey Line Worker Certificate or equivalent is required” instead of “may be required.”

The parties’ mutual creation of an apprenticeship program in 2019 modified the hiring practice to provide an additional pathway for uncertified applicants to become journey-level REWs. *See, e.g., Kitsap County*, Decision 8292-B (PECB, 2007) (finding that a mutually negotiated change in language constituted a mutually accepted change in practice). The apprenticeship amended the practice to the extent that successful apprentices need not wait to formally pass a certification test before working as journey-level REWs for the employer. The addition of the apprenticeship pathway did not change the parties’ practice of only hiring journey-level REWs with documented on-the-job hours learning high-voltage work.

The evidence at hearing showed one deviation by the employer from the parties' past practice in 15 years, when the employer apparently hired a single REW who lacked a Washington State Journey Electrician Certificate, a Journey Line Worker Certificate, or equivalent certificate and had not been an REW apprentice. The circumstances of that employee's hiring were not offered into evidence at hearing. However, the union presented un rebutted evidence that the individual's lack of certification came to the union's attention only after the instant unfair labor practice dispute arose. The employer does not argue, and I do not find, that this lone deviation reflects a mutual abandonment of the parties' past practice or a waiver by inaction of the union's right to challenge the subsequent unilateral change. *City of Walla Walla*, Decision 12348-A (PECB, 2015) (stating that a waiver by inaction is an affirmative defense that a respondent must plead).

Notice and Opportunity to Bargain

The employer did not provide notice and an opportunity to bargain before making changes to the minimum certification requirements by beginning to hire individuals who lacked Washington State Journey Electrician Certificates, Journey Line Worker Certificates, or equivalent certificates and who had not completed the REW apprenticeship. The record shows that Rico presented an updated job posting to Kovac and that, at minimum, Kovac objected to the employer moving forward with the changes therein, which the employer did anyways. The 2021 job posting expanded the list of accepted certifications to add several new options for high-voltage electrical certifications. However, the job posting that the employer showed Kovac did not ultimately reflect the certification standards that the employer applied starting with its hire of Fishburn in April 2022; in reality, the employer began hiring applicants who lacked even these certifications, emphasizing the individuals' professional backgrounds and potential "to come into [the employer's] familiarity program." By these facts, no proper, timely notice can be found.

The employer offered evidence of the union's subsequent attempts to bargain the minimum certification requirements during the parties' successor CBA negotiations starting in June 2022, passing proposals that the employer did not accept and that the union ultimately withdrew. The employer did not cure its violation, and the union did not waive its unilateral change claim through these attempts to bargain. The duty to bargain requires the employer to provide proper notice and to bargain mandatory subjects upon request from the status quo *before* it enacts unilateral changes. *King County*, Decision 12451-A (PECB, 2016); *Griffin School District*, Decision 10489-A.

Material and Substantial Unilateral Change

The employer's jettisoning of the minimum certification requirements it had previously held to be the standard for journey-level REW employment, starting with its hiring of Fishburn, enacted a material and substantial change to bargaining unit REWs' and REW apprentices' working conditions.

The employer does not dispute that it made changes to the minimum certification requirements but disputes the safety effect on the existing bargaining unit. At times during the hearing and in its briefing, the employer appeared to be playing it both ways with respect to the cushioning blow its enhanced familiarity training could play on workplace safety. For example, while Rico claimed that the enhanced familiarization program was not designed to be an apprenticeship equivalent, the claim was undercut by Inkster's revealing response, when asked whether Fishburn was qualified to be an REW, that he thought Fishburn was "qualified to come into [the employer's] familiarity program." Even with the employer's plan to more thoroughly train REWs during their six-month probationary period, the employer's decision to begin putting REWs into the workforce who lacked the thousands of hours of documented on-the-job electrical experience previously required materially risks the safety of existing REWs and REW apprentices who work alongside these individuals every shift.

The change also impacted bargaining unit apprentices' negotiated seniority rights, disadvantaging employees such as Enebrad, who had committed to the intensive four-year pathway the parties jointly created in 2019 to learn the REW position.

Remedy

"Where the Commission finds that a party has committed an unfair labor practice, it must 'issue [an] appropriate remedial order.'" *Amalgamated Transit Union, Local 1384 v. Kitsap Transit*, 187 Wn. App. 113, 126 (2015) (citing RCW 41.56.160(1)). An appropriate remedial order requires the offending party "to cease and desist from [the] unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of" chapter 41.56 RCW. RCW 41.56.160(2). The standard remedy includes ordering the offending party to cease and desist and, if necessary, to restore the status quo, make employees whole, post notice of the violation, publicly read the notice, and order the parties to bargain from the status quo. *City of Anacortes*,

Decision 6863-B (PECB, 2001). In at least one unilateral change case, the Commission has found error where an Examiner failed to issue an order restoring the status quo. *Skagit County*, Decision 8886-A (PECB, 2007).

Restoring the status quo in this case poses a delicate question: what to do with those uncertified REWs hired as a result of the employer's unlawful unilateral change. The union argues that the employees should be removed from their positions as REWs and placed in other roles with the county until such time as they attain certification or enroll in the REW apprenticeship program. The employer does not address the possibility of a remedy.

The Commission's *City of Anacortes* decision is instructive. In that case, the employer had attempted to meet its service needs by unlawfully skimming bargaining unit work. The employer unilaterally created a student firefighter program and hired student firefighters to perform firefighting work alongside bargaining unit members for a monthly stipend. *City of Anacortes*, Decision 6863-B. An Examiner ordered that the employer restore the status quo, in part, by "terminating any and all student fire fighter programs." *City of Anacortes*, Decision 6863-A (PECB, 2000). On appeal, the Commission rejected an argument that that portion of the remedy was overbroad, stating,

The Commission holds that the entire program was correctly terminated. Because the employer failed to engage in good faith bargaining regarding its decision, we cannot allow any part of the implemented decision to remain in place. If the employer desires to pursue the concept of using students receiving a fixed compensation for scheduled on-duty shifts and providing first responses, it must give notice and bargain.

City of Anacortes, Decision 6863-B.

The undersigned does not take the livelihoods of the affected workers, who were hired through no fault of their own, lightly. The removal of these individuals from REW positions is needed to fully restore the status quo and remedy the harm of the employer's unilateral change, though. *Id.* The undersigned declines to instruct the employer what it must otherwise do with these individuals, but until such time as the individuals meet the minimum REW certification requirements or become REW apprentices, or the employer meets its bargaining obligations and properly changes the minimum certification requirements, the employer must not employ them as REWs.

CONCLUSION

The union has proven by a preponderance of the evidence that the employer violated RCW 41.56.140(4) by unilaterally changing the minimum certification requirements for the REW position.

FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(13).
2. The International Brotherhood of Electrical Workers Local 77 is a bargaining representative within the meaning of RCW 41.56.030(2) and represents a bargaining unit of transit power workers within the employer's Metro Transit Department.
3. There are two divisions or "sides" to the department that union members work in: a bus power side and a rail side. REWs, who are at the center of the instant dispute, work on the rail side performing maintenance and repair on the overhead high-voltage lines and substation equipment that power the Sound Transit Link light rail system.
4. The REW position dates back to 2007 when the employer entered into a partnership with Sound Transit to service the up-and-coming Link light rail system. The employer conceived of the REW position to perform the system electrical work and identified that the position could share a community of interest with the union's transit power bargaining unit.
5. The parties discussed the job description for this new position. The employer has approximately 1,100 to 1,200 job classifications and does not typically negotiate these class specifications with unions because, according to testimony from Senior Labor Negotiator David Levin, the employer "feel[s] it's a fundamental function of the employer of the government to design the jobs in [its] work system that [it] want[s]."
6. Nonetheless, there were mutual discussions during which the employer shared a draft of the initial position description with union representatives and listened to feedback. The

parties then entered into an accretion agreement in May 2007 recognizing the position as part of the union's bargaining unit.

7. The initial job description, shown to the union and attached to the accretion agreement, required REWs to have a Washington State Journey Electrician Certificate as a minimum certification requirement. A Washington State Journey Electrician Certificate, also called an EL01 or 01 license, is a certification that an electrician can receive from the state by completing 8,000 documented hours of on-the-job training and passing a state-administered examination.
8. The parties continued to discuss the minimum certification requirements for the position even after the accretion agreement was executed, and the initial REW position description was amended in 2007 to state that a "Washington State Journey Electrician Certificate or Journey Line Worker Certificate or equivalent may be required." A Journey Line Worker Certificate is a certification issued by the IBEW that an electrician can receive by completing 8,000 documented apprenticeship hours, undergoing classroom education, being observed and recommended by three journey workers, and passing an IBEW-administered examination.
9. Both amendments were discussed by the parties and related to the employer's recruitment interests. During the parties' discussions about the minimum qualifications, employer representatives were "adamant" about being able to hire linemen from other parts of its operation over to the rail side. The union had responded that the linemen must be journey level to perform high-voltage work on hot lines.
10. The employer was also in talks to hire experienced workers from another light rail system, the San Diego Trolley, to lead its first crews of REWs. None of the San Diego recruits held Washington State Journey Electrician Certificates or Journey Line Worker Certificates. Instead, they held rail-specific certificates that did not exist in Washington: wayside line worker certificates.
11. There were meetings between Rico and the union at which the employer had Rico explain the San Diego wayside line worker apprenticeship to the union and present copies of his apprenticeship hours and wayside line worker certificate. After Rico's presentation, the

union ultimately agreed that the San Diego certificate was an equivalent certificate to a Washington State Journey Electrician Certificate or Journey Line Worker Certificate. The position description was finalized, and the employer hired its first batch of REWs.

12. No evidence was offered of changes or discussions between 2007-2017 regarding the REW minimum certification requirements. Nor was there evidence of any further discussions between the parties regarding REW candidates with equivalent certifications. After the San Diego hires, the union believed that the employer was only hiring individuals with a Washington State Journey Electrician Certificate or a Journey Line Worker Certificate to be REWs.
13. The union learned after the instant dispute arose that on one unspecified occasion between 2007 and 2022, the employer had hired an REW who lacked either certification. Union Business Representative Jonathan Finch testified that he was unaware of the individual's lack of certifications until after the instant unfair labor practice dispute arose. There was no evidence that the union had been notified of the individual's hiring or lack of certification.
14. The REW position description was revisited by the parties in 2017. Due to the growth of the Link light rail system and the employer's associated electrical work needs, the employer decided to expand the REW position into a four-position classification series to include the REW position plus an REW Helper, an REW Lead, and an REW Crew Chief. The parties entered into a memorandum of agreement (MOA) accreting the additional positions into the union's bargaining unit.
15. The employer furnished the union with an updated "1/2017 version" of the journey-level REW position description, which the parties ultimately agreed to attach to the MOA. The minimum certification requirement language was changed from "Washington State Journey Electrician Certificate or Journey Line Worker Certificate or equivalent may be required" to "Washington State Journey Electrician Certificate or Journey Line Worker Certificate or equivalent is required." The MOA noted that "The Union raises no issues about the revisions to the classification specification" for the REW position.

16. In 2019, the parties worked together to establish a registered REW apprenticeship program as an alternate way for individuals to become journey-level REWs. The apprenticeship program consists of 144 hours of classroom education, 8,000 hours of supervised on-the-job training, and 242 annual hours of related supplemental instruction. It is a four-year program. REW apprentices are members of the bargaining unit with terms and conditions negotiated by the parties.
17. During the 8,000 on-the-job hours, REW apprentices work alongside experienced journey-level REWs. They spend approximately 500 on-the-job hours learning fundamental skills, 4,500 hours learning to work with traction power substations, 2,000 hours learning to work with the overhead contact system for the trains, and 1,000 hours learning miscellaneous systems. Apprentices must score 75 percent or better on classroom tests to advance in the apprenticeship curriculum and may be subject to discipline or dismissal for failing to maintain passing grades.
18. By the terms of the parties' MOA establishing the apprenticeship, each apprentice must be supervised by one journey-level REW for low-voltage work and two journey-level REWs for high-voltage work. The parties agreed that, overall, the employer may not employ any more than one apprentice for every three journey-level REWs on staff. The apprenticeship is managed by the Joint Apprenticeship Committee (JAC) comprised of labor and management representatives. The purpose of these ratios is to ensure safety, so that if something happens while an apprentice is working, there are three minds to figure out what to do to try to help this person and. save lives.
19. The parties negotiated an eight-step escalating wage progression for apprentices based on their documented on-the-job hours. At each step, an apprentice earns an increasing percentage of a journey-level REW's wage. A new apprentice (less than 1,000 hours worked) earns 67 percent of a journey-level REW's wage while an apprentice who has nearly completed the program and is on the final step (7,000-8,000 hours worked) earns 95 percent of a journey-level REW's wage.
20. Apprentices do not immediately begin accruing seniority when they start the program. Instead, when an apprentice graduates from the program and becomes a journey-level REW, their seniority as an REW is backdated to one year prior to their graduation date.

21. Between the inception of the apprenticeship program and the processing of this unfair labor practice case, the employer had accepted three applicants into the apprenticeship program, including Michael Enebrad. Enebrad had been a Rail Electromechanic and Relief Lead Electromechanic with the employer before applying to the REW apprenticeship.
22. Electromechanics troubleshoot, maintain, and repair light rail vehicles. Their work involves hydraulics, mechanical work, and work on electronic equipment like monitors. Electromechanics' work is performed on light rail vehicles while they are deenergized but Electromechanics are the ones who deenergize the vehicles via a switch.
23. Another Electromechanic named Ralph Fishburn, whom Enebrad had at times supervised as a Relief Lead, also applied to the REW apprenticeship but was not accepted. Generally, the employer has not accepted more apprentices because it lacks sufficient journey-level REWs to sustain the three-to-one journey-REW-to-apprentice staffing ratio that it had bargained with the union.
24. Enebrad began his apprenticeship on or around August 2019. As of April 2022, the time that the unfair labor practice is alleged to have occurred, Enebrad was only partway through the apprenticeship program, had not graduated into a journey-level REW position, and did not have a seniority date.
25. The Link light rail system has undergone continuous expansions since first coming online. In 2022, expansion projects were ongoing to bring the system farther north, south, and east. The number of residents serviced by the light rail system was expected to double between 2022 and 2025. The total number of system full time equivalent employees (FTEs) was expected to increase from 700 to 1,000 during the same period, though it is not clear how REWs factor into those totals.
26. The employer has faced staffing challenges especially in the wake of the COVID-19 pandemic. The demand from the public for the employer to accelerate and compress its light rail line openings has created a "real tough time" for the employer, and the pandemic has minimized its workforce and who within the region the employer is able to recruit and hire. The continuous cycle of expansions has limited the pool of qualified applicants for positions maintaining the system, as the employer would like to hire the tradespeople who

have built sections of the system into these permanent maintenance roles, but those individuals often move on to the next expansion project.

27. At some point, the employer came to believe that the minimum certification requirements for the REW position were limiting its ability to recruit REWs, especially from other locations. Several properties around the country hire electrical workers without certifications, including the employer's light rail counterpart in Tacoma. The employer believed that the Tacoma light rail has not had a reportable electrical incident since 2003.
28. When the employer drafted a new career REW job posting in 2021, it expanded the list of acceptable required certifications from the "1/2017" version to include any of the following: "Washington State Journey Electrician Certificate (EL01), Journey Level Line Worker Certificate, High Voltage Journey Level Certificate or equivalent high voltage certification."
29. Around the same time, the employer was rolling out a growth management plan called the Here We Grow initiative. One goal of Here We Grow was to "[d]evelop and implement [a] comprehensive Training/Onboarding and Orientation model" for employees. The employer has hired employees in waves as the light rail system has expanded, and employees' onboarding training has varied depending on when they were hired. The employer wanted to create greater consistency in onboarding across its workforce.
30. Before 2022, newly hired journey-level REWs were often permitted to perform the full spectrum of REW duties within just a few weeks of being hired. Rico had observed that this led to errors on the job. He wanted to ensure that, no matter the background of new REWs, they were familiar with the specifics of working in rail. The employer therefore came up with the idea of enhancing its "familiarization" or "familiarity" training for REWs.
31. Familiarization training is a common type of training in electrical work designed to onboard electricians to the specifics of a workplace. In Finch's experience, typical subjects for familiarization training include how switching is done there, where a crew meets, how to fill out the timesheets for that employer, and what types of vehicles the employer uses.

32. At some point before the employer made hires with the new job posting, Rico approached union Business Representative Steve Kovac for a very short conversation. Rico presented Kovac with the updated 2021 job posting and informed him that the employer would be enhancing its REW familiarization training. Rico and Kovac discussed the REW requirements and how the employer was going to add more to the list, as well as the Class A license and the equivalency of the high voltage certificate.
33. Kovac asserted explicitly to Rico that the employer would need to bargain changes to the REW minimum qualifications. Kovac stated that the union would sit down with the employer and bargain but that the union's position that journey-level REWs would need either a Washington State Journey Electrician Certificate or a Journey Line Worker Certificate or to have completed the REW apprenticeship "wouldn't be negotiable."
34. At minimum, Rico recalled Kovac expressing concerns about the REW job posting, specifically that workers must have an EL01 license. Rico asserted back to Kovac that the license does not necessarily give someone the full ability to work as an REW. There was no evidence that Kovac assented to the employer's change during the conversation. This was Rico's only conversation with Kovac about the issue. No one from the employer contacted Kovac to engage in bargaining before the employer moved forward with the changes to the REW job posting and hired employees with the posting.
35. The employer opened a hiring process and made two new REW hires in April 2022. One of the hires was Fishburn, who had previously applied to and been rejected by the REW apprenticeship program. Fishburn was hired into a journey-level REW position and paid at the journey REW rate. Fishburn did not have a Washington State Journey Electrician Certificate or a Journey Line Worker Certificate. He also did not have a High Voltage Journey Level Certificate or equivalent high voltage certification, as the employer's updated job posting stated was required for the position.
36. It is undisputed that Fishburn was just the first in a series of journey-level REW hires the employer made starting in April 2022 who lacked Washington State Journey Electrician Certificates, Journey Line Worker Certificates, or equivalent certificates and had not completed an REW apprenticeship. Fishburn's background as an Electromechanic, his prior work and certification with low-voltage aviation air frame and power systems, his

completion of several private “amps, volts, Ohm’s” classes, and his associate’s degree as a Maintenance Technician were among the reasons Inkster believed him qualified to come into the employer’s familiarity program.

37. When the employer hired Fishburn, it rolled out its enhanced familiarization training. On April 28, 2022, Rico sent an email to the lead REWs providing instruction regarding how to treat Fishburn and the other new REW hired at the same time who held a Washington State Journey Electrician Certificate. Rico stated that the two were to work with other journey-level REWs for the time being and that they would not be counted as Qualifying REWs until completing probation and qualifying tasks. Rico stated that he was working with Labor and Industries to ensure all qualifications and training is completed prior to deeming them ‘Qualified’ to perform QREW work.
38. It is clear that the employer intended for the enhanced familiarization training to be six months or less, to be completed by the end of an REW’s probationary period. Some of the content of the employer’s new familiarization program was described as electrical in nature, some pertaining to introductory workplace topics like where the lunch break rooms are and where all the substations are, and some pertaining to the employer’s radio communications system.
39. There was also testimony that the program involved training and familiarization with the actual gear that REWs work on and was designed to bring even new hires with electrical certifications “up to that highest level of familiarization and safety.” Both Warning and Rico testified that all new journey-level REWs would need this training, regardless of their certifications, but Rico equivocated when asked whether Enebrad would need the training, having come out of the REW apprenticeship program. Rico agreed that the enhanced familiarization training is not equivalent to a full apprenticeship and testified that it was not intended to be.
40. Initially, the employer’s simultaneous hiring of Fishburn and its rollout of a slower onboarding process for REWs via the enhanced familiarization training caused some confusion. The union believed that the employer had unilaterally created a new position in the REW classification series, an REW trainee position. On June 21, 2022, Kovac reached out to King County’s Apprenticeship and Pathways Manager Danielle Wallace to object to

the unilateral creation of the new position. He asked that the employer redirect Fishburn to the apprenticeship program or return him to the position of Electromechanic.

41. Employer Labor Relations Manager Diana Joy responded to Kovac on June 27, 2022, clarifying that the situation with Fishburn was related to the employer's desire to change the minimum qualifications of the REW position and "not so much about the apprenticeship program." Joy provided Kovac with "rough drafts – not yet approved or final" of an updated class specification and job posting for the REW position. Both documents made further changes to the minimum qualifications beyond the 2021 version that Rico had presented to Kovac before Fishburn's hiring. The updated draft class specification wholly struck out the line "Washington State Journey Electrician Certificate or Journey Line Worker Certificate or equivalent is required."
42. During the summer of 2022 when the parties were bargaining a successor collective bargaining agreement (CBA), Kovac presented proposals unsuccessfully attempting to codify minimum qualifications for the journey-level REW position into the contract. The employer rejected the proposals, and the union ultimately withdrew them.
43. The employer continued hiring workers who lacked a Washington State Journey Electrician Certificate, Journey Line Worker Certificate, or equivalent certificate and had not completed the REW apprenticeship. The employer now views the certifications and the apprenticeship as "both great pathways to get to an REW position, but they're just pathways."
44. It is undisputed that REWs perform regulated, high-voltage electrical work. L&I's chapter 296-45 WAC electrical workers safety rules define high-voltage work as electrical work with 601 volts or above. REWs work on catenary wires with 1,500 volts and substation equipment with up to 26,000 volts of electricity.
45. REWs are responsible for performing preventative maintenance and repairing problems throughout the electrical system that powers the Link light rail system. This includes the overhead catenary system, traction power substations, the negative return system, the underground cabling system, and aspects of the downtown Seattle transit tunnel.

46. REW position descriptions have consistently listed “hot line” work, in which employees work on equipment that remains energized, as a job duty of REWs. One witness testified that it is no longer typically the practice for lines to stay energized as crews work on them due to the needless level of risk. However, REWs are the ones responsible for safely and properly deenergizing electrified equipment for maintenance and repair.
47. For the overhead contact system, this involves “racking in” direct current feeder breakers that are attached to an energized system, and for substations, is a “complicated” process that involves deenergizing the substation breakers either via a computerized control system or manually, then fully isolating the substation from other feeds. REWs then must safely test for voltage and install safety devices that “lessen the potential for incidental shock or injuries” and keep an area from powering up while employees perform work.
48. Multiple REWs provided testimony about the risks inherent in their work due to high voltages and high tension on the wires with which they work. Enebrad called the work “very dangerous work” because the messenger wires that support the contact wire are 5,000 pounds and the contact wire itself is tensioned at 3,500 pounds. Enebrad testified that if someone was to loosen something that they weren’t sure of, they may possibly be in a bad situation where they could get injured by a wire under load. Enebrad also testified to electrical hazards and stated that a lot of times, REWs are opening breakers and working around components that have potentially lethal voltages.
49. Simmons testified that, with 26,000 volts on down, REWs’ work is dangerous work. He explained that working with full utility voltages before they are stepped down is a little bit different from other electrical jobs. Simmons described that getting hung up on a system with voltages that REWs work on, such as a “480/277” lighting system, would cause a person to die.
50. Arc flashes and arc blasts are among the risks REWs face. The risk of arc flashes is evidenced by the requirement listed consistently in the REW position descriptions over time that REWs possess the ability to work in arc flash protection suits.
51. REWs testified to the “years, not weeks, multiple years” that it takes to learn how to perform high-voltage work safely and confidently.

52. REWs perform work in crews of two or more people, and at times, multiple crews collaborate on complex projects. Crew members are reliant on one another's knowledge and skills to stay safe on jobs. Enebrad testified that this involves an extension of mutual trust between REWs, stating, that REWs need to be able to trust who they're working with and know what level of education and skills they have. Enebrad testified that working with wires under tension, under load, and potentially on energized equipment, REWs need to know that that individual understands the hazards posed and that when crews work together, they all need to be on the same page as far as familiarization, education, and skills.
53. Simmons also testified to the importance of being able to rely on crew members' knowledge and experience to work safely in crews, as not only is an inexperienced person putting himself in danger by not being familiar with the knowledge and the skill set and the safety aspect of it, but they are putting their fellow brother or sister in harm's way.
54. Finch offered testimony that high-voltage electrical work is a field in which people lose limbs and die and that he has met such individuals or their surviving families in the course of his career.
55. The foreword to the Department of Labor and Industries' electrical worker safety rules, chapter 296-45 WAC, also supports the safety-sensitive nature of regulated electrical work generally, stating that: "The purpose of this chapter is to make the workplace of electrical employees as free from recognized hazards as reasonably possible. Following these rules may sometimes require that employee safety receive a higher priority than speed and work performance. . . . Experience has proven that the majority of injuries and deaths are preventable. . . . Electrical safety requires that the work be properly planned, executed by the use of good judgment and under the direction of intelligent supervision"
56. There was evidence that a background and skill in high-voltage electrical work alone do not guarantee safe performance or full readiness to work as an REW. The REW position has unique challenges from electrical work in other settings, including live trackways and work with rail-specific equipment. For example, there was testimony that 40 percent of the REW job involves servicing the light rail's overhead contact system, which a certified electrician without prior experience in rail operations would not have knowledge of.

57. Rico believes that a Washington State Journey Electrician Certificate or Journey Line Worker Certificate is insufficient to prepare individuals to be REWs because it provides generic electrical certification not specific to working in rail. Simmons testified that, despite being an experienced, certified electrician when he was hired by the employer, onboarding training that he had received from Rico orienting him to the specifics of rail was valuable. However, according to Simmons' testimony, Rico's onboarding training had not been the only thing keeping him safe as an REW though, as his electrical apprenticeship and the years of certified electrical experience he had brought into the role had "life safety" value.
58. There was testimony from multiple witnesses about a lack of safety-related accidents in the REW workforce. There was no evidence of any safety-related lapses due to Fishburn or the other REWs the employer has hired who lacked certifications and didn't complete the REW apprenticeship.
59. Seniority also factors into a variety of REWs' negotiated terms and conditions of employment. Pursuant to the parties' collective bargaining agreement, seniority determines shift selection and the order in which employees would be released during a reduction in force. Employees' work locations and vacation leave opportunities are also determined by seniority. Enebrad testified that, amongst REWs, one person can hold an REW back from having a desired shift and that every slot of seniority matters.

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. As described in findings of fact 3 through 59, the employer refused to bargain by committing a unilateral change in violation of RCW 41.56.140(4), and derivatively, RCW 41.56.140(1).

ORDER

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

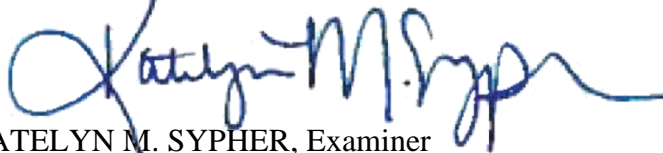
1. CEASE AND DESIST from:
 - a. Unilaterally changing the minimum certification requirements to be a Railway Electrical Worker.
 - b. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights under the laws of the State of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of chapter 41.56 RCW:
 - a. Restore the *status quo ante* working conditions that existed for the employees in the affected bargaining unit prior to the unilateral change found unlawful in this order by removing individuals who lack a Washington State Journey Electrician Certificate, a Journey Line Worker Certificate, or equivalent certificate or that have not completed the Railway Electrical Worker apprenticeship from Railway Electrical Worker positions.
 - b. Give notice to and, upon request, negotiate in good faith with the International Brotherhood of Electrical Workers, Local 77 before changing the minimum certification requirements of the Railway Electrical Worker position.
 - 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 County Council of King County, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.
- 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 23rd day of September, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "Katelyn M. Syphe", is written over the printed name.

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.