STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS UNION, LOCAL 117, Complainant,	)	CASE 15114-U-00-3814
vs.	)	DECISION 7271-B - PECB
PORT OF SEATTLE, Respondent.	)	DECISION OF COMMISSION

Spencer Nathan Thal, Attorney at Law, for the union.

Preston, Gates & Ellis, LLP, by *J. Markam Marshall,* Attorney at Law, for the employer.

This case comes before the Commission on an appeal filed by Teamsters Union, Local 117 (union), seeking to overturn findings of fact, conclusions of law, and an order of dismissal issued by Examiner Rex L. Lacy.[1] We reverse the Examiner's decision and rule that the employer committed an unfair labor practice. A remedial order is entered.

PROCEDURAL BACKGROUND

On March 27, 2000, the union filed a complaint charging unfair labor practices naming the Port of Seattle (employer) as respondent. The union alleged the employer had unilaterally contracted out work historically performed by employees in a bargaining unit

[1] *Port of Seattle*, Decision 7271-A (PECB, 2002).

represented by the union, in violation of RCW 41.56.140(1) and (4). After a hearing held on April 19, 2001, Examiner Lacy ruled that the employer did not commit any unfair labor practice. On January 22, 2002, the union filed a timely notice of appeal.

FACTUAL BACKGROUND

The Examiner's decision fully details the facts. The facts are thus set forth here only as particularly relevant to the appeal.

The employer is a public port district operating under Title 53 RCW in King County, Washington. It provides a variety of functions, including airport and seaport operations, and has its own law enforcement workforce responsible for maintaining order at various employer facilities. The union is the exclusive bargaining representative of three separate bargaining units within the employer's law enforcement operation: A unit of rank-and-file police officers; a unit limited to police sergeants; and a unit limited to police lieutenants and police captains. The employer and union have been parties to a series of collective bargaining agreements. At the time of the hearing, their latest agreement had expired on December 31, 1999.[2]

Persons outside of the employer's law enforcement operation have historically provided some security functions at the employer's facilities. At and prior to the time of the hearing, screening of passengers within the Seattle-Tacoma International Airport terminal (including electronic scanning of passengers and their carry-on

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[2] The parties were engaged in interest arbitration at the time of the hearing. That interest arbitration has since been concluded.

items) was performed by private firms hired by the various airlines.[3] The employees of those private firms did not have the power of arrest, and law enforcement officers represented by the union continued to patrol the airport facility and to make arrests, when necessary.

For many years, only a limited number of passenger ships arrived at and departed from Seattle. On those few and sporadic occasions, the passenger ships docked variously at Piers 25, 30, 46, or 48 (on the south end of the Seattle waterfront) or at Piers 90 or 91 (on the north end of the Seattle waterfront). The employer assigned its law enforcement personnel to work at those facilities on an as-needed basis. The employer would typically assign four to five police officers and a sergeant to be present during the port calls, and the bargaining unit employees provided general patrol, traffic control and law enforcement. Apart from the assignment of law enforcement officers, there were no consistent practices in regard to passengers and their baggage, and embarking passengers did not pass through any electronic monitoring devices at those facilities.

The Renovation of Pier 66

In the 1990's, the employer renovated its facilities at Pier 66 on the central Seattle waterfront, including development of the Bell Street Terminal for use by passenger ships. By 1998 and 1999, increasing numbers of passenger ships calling at Seattle used Pier 66 exclusively for loading and unloading both passengers and their baggage. Passenger traffic through Seattle increased dramatically, from about 10,820 persons in 1993 to about 119,000 persons in 2000.

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[3] In the aftermath of the events of September 11, 2001, those functions are now performed by a federal agency, the Transportation Security Administration.

The United States Coast Guard regulates the operation of vessels and terminals throughout the United States, and Coast Guard regulations cover both "Protection and Security of Vessels, Harbors, and Waterfront Facilities" (at 33 CFR Chapter 1, Part 6) and the "Security of Passenger Vessels" (at 33 CFR Chapter 1, Part 120). Pier 66 is identified as a passenger terminal within the meaning of the applicable federal rules. As such, it is required to have a security plan approved by the Coast Guard.

Prior to the contracting at issue in this case, law enforcement employees represented by the union were assigned to be present whenever passenger ships called at the new Pier 66 terminal. The union filed a grievance on the one occasion when other employees were utilized to perform security functions, and the parties resolved that grievance to the apparent satisfaction of the union.[4]

The Disputed Contracting

On March 24, 2000, the employer entered into a contract with Cruise Terminals of America (CTA) for the operation of the terminal at Pier 66. That contract included:

> CTA shall manage and coordinate all activities related to the berthing of ships ("Ship Activities"), which will principally be cruise ship activities at the facility including:
>
> ....
> (B) SECURITY. Manage the security operations at the Facility, on cruise ship days and for non-cruise ships, as necessary. This will include security staff who will provide security guards and security equipment operators for terminal security.

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[4] Even then, the grievance merely involved using a supervisor, instead of another police officer, to relieve the police officers on duty for their breaks.

Within days after that contract was signed, the union filed the complaint to initiate this unfair labor practice proceeding.

The security plan developed by the CTA for the Port of Seattle has been approved by the Coast Guard. Under that plan, CTA employees are recognized by the Coast Guard as "security" personnel without the power of arrest. The Coast Guard recommended that one police officer be assigned to Pier 66 when one passenger ship is present, and that two police officers be assigned when two passenger ships are present. In fact, the employer's practice has been to assign a minimum of two of its law enforcement officers to Pier 66 whenever any passenger ships are present.

POSITIONS OF THE PARTIES

On appeal, the union contends the Examiner erroneously accepted the employer's premise that the work at Pier 66 parallels the passenger screening work performed at the airport, and therefore is outside of the work jurisdiction of the bargaining unit. The union argues the Examiner erred in concluding that all of the security work performed by CTA employees is new work, and it distinguishes the general security work historically performed by the bargaining unit from the passenger screening work (over which it has not asserted jurisdiction). It claims the evidence establishes that bargaining unit employees have historically performed the general security work at the facilities used by passenger ships. The union thus asserts that the employer has contracted with CTA for general security work that belongs to the bargaining unit it represents.

The employer argues that the Examiner correctly determined that its substantial capital investment in Pier 66 constituted major change in the scope, nature and direction of the employer's passenger ship

business. It contends the change in use of Pier 66 from a "port of call" to a "home port" for cruise vessels resulted in a change in the type of services required for the ships berthed at the pier, and thus was an entrepreurial decision not subject to bargaining.

DISCUSSION

The issue presented on appeal is whether the employer violated RCW 41.56.140(1) and (4), by unilaterally contracting out work historically done by employees in a bargaining unit represented by the union. The Commission holds that, by making the decision to contract out work historically performed by the bargaining unit without giving notice of its intent to the exclusive bargaining agent, the employer violated its statutory bargaining obligation and interfered with the rights of bargaining unit members.

The Duty to Bargain

The Public Employees' Collective Bargaining Act imposes a duty to bargain. RCW 41.56.030(4). The rights, obligations and procedures of Chapter 41.56 RCW are applicable to these parties, absent any contrary provisions in Chapter 53.18 RCW. RCW 53.18.015. The duty to bargain is enforced through RCW 41.56.140(4), and unfair labor practices are processed under RCW 41.56.160 and Chapter 391-45 WAC.

Where an unfair labor practice is alleged, the complainant has the burden of proof. WAC 391-45-270. The determination as to whether a duty to bargain exists is a question of law and fact for the Commission to decide. WAC 391-45-550. Thus, it is necessary for us to determine if the correct legal standard has been applied and if there is substantial evidence in the record to support the Examiner's findings.

Absence of Federal Preemption -

We hold that the recommendation of the United States Coast Guard regarding the police presence at the passenger ship facility does not absolve the Port of Seattle from its obligation to bargain under state law with the union representing its employees. The Coast Guard recommendation established a bare minimum; the employer retained discretion to assign more and/or different personnel than that minimum, and has in fact assigned more of its employees than required by the Coast Guard. Where an employer has and exercises discretion in a matter, there may be room for the duty to bargain to operate.[5]

Subjects of Bargaining -

The potential subjects for bargaining are traditionally divided into categories labeled as "mandatory" subjects, "permissive" subjects, and "illegal" subjects. *Federal Way School District*, citing *NLRB v. Wooster Division of Borg Warner*, 356 U.S. 342 (1958). In determining whether a particular matter is a mandatory subject of bargaining, the Commission initially determines whether it directly impacts the wages, hours or working conditions of bargaining unit employees. *Lower Snoqualmie Valley School District*, Decision 1602 (EDUC, 1983); *City of Olympia*, Decision 3194 (PECB, 1989).

When a subject does not directly affect wages, hours or working conditions, the Commission utilizes a balancing test, analyzing the employer's need for entrepreneurial judgment against the employees' interest in their terms and conditions of employment. *Federal Way*

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[5] The opposite is demonstrated by *City of Seattle*, Decisions 4687-B, (PECB, 1997), *aff'd* 93 Wn. App. 235 (1998), where the Commission and courts found there was no duty to bargain about a subject matter that had been pre-empted by another state statute.

School District, Decision 232-A (EDUC, 1977). This balancing test was endorsed by the Supreme Court of the State of Washington in *IAFF v. PERC (City of Richland)*, 113 Wn.2d 197 (1989), and can be traced to *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964), where the Supreme Court of the United States held that an employer is required to bargain on the decision to contract out work historically performed by bargaining unit employees.

Unilateral Changes -

The prohibition of "refusal to bargain" conduct as unfair labor practices under RCW 41.56.140(4) and 41.56.150(4) is aimed at protecting the process of communication between labor and management, rather than at prescribing particular results. There is no duty to agree, but the desired communications cannot result in an agreement unless the process is given a chance to operate. As the National Labor Relations Board (NLRB) has stated:

> [A]n employer's obligation to bargain does not include the obligation to agree, but solely to engage in a full and frank discussion with the collective bargaining representative in which a bona fide effort will be made to explore possible alternatives, if any, that may achieve a mutually satisfactory accommodation of the interests of both the employer and the employees. If such efforts fail, the employer is wholly free to make and effectuate his decision. Hence, to compel an employer to bargain is not to deprive him of the freedom to manage his business.

Awrey Bakeries, Inc., 217 NLRB 730 (1975); *Stone & Thomas*, 221 NLRB 567 (1975); *Dixie Ohio Express Co.*, 167 NLRB 573 (1967). Longstanding Commission precedent also establishes that the duty to bargain includes a duty to give notice and provide an opportunity for bargaining *prior to* implementing changes concerning mandatory subjects of bargaining. *City of Anacortes*, Decision 6863-B (PECB, 2001); *Yakima County*, Decision 6594-C (PECB, 1999); *Spokane Fire*

District 9, Decision 3482-A (PECB, 1991); *South Kitsap School District*.

Skimming and Contracting Out -

Whether a job is or will continue to be available is at the core of the employer-employee relationship, and directly affects employees' wages, hours and working conditions. On numerous occasions, the Commission has considered five factors when determining whether a duty to bargain exists concerning the transfer of bargaining unit work. *City of Anacortes; Spokane County Fire District 9; Clover Park School District*, Decision 2560-B (PECB, 1988). They include:

1. The previously established operating practice as to the work in question (*i.e.*, had nonbargaining unit personnel performed such work before?);

2. Whether the transfer of work involved a significant detriment to bargaining unit members (*e.g.*, by changing conditions of employment or significantly impairing reasonably anticipated work opportunities);

3. Whether the employer's motivation was solely economic;

4. Whether there been an opportunity to bargain generally about the changes in existing practices; and

5. Whether the work was fundamentally different from regular bargaining unit work in terms of the nature of the duties, skills, or working conditions.

An employer thus committed an unfair labor practice by insisting upon a waiver of bargaining rights concerning contracting out:

> While the duty to bargain subcontracting decisions and their effects have been the subject of numerous Commis-

> sion decisions, (See: *South Kitsap School District*, Decision 472 (PECB, 1978); *City of Vancouver*, Decision 808 (PECB, 1980); . . . and *City of Mercer Island*, Decision 1026-A (PECB, 1981) to name a few), in this particular situation such a provision would be akin to a sword of Damocles poised over the heads of the bargaining unit employees and their union. Any effort by the employees or their union to enforce employee rights would risk the employer being sufficiently offended to dump the employees and subcontract their work.

City of Snohomish, Decision 1661-A (PECB, 1984). If employers could transfer or contract out bargaining unit work without fulfilling their bargaining obligations, the resulting uncertainty about whether there would be any jobs to fill would be exceedingly detrimental to the statutory purpose of peaceful labor-management relations. Under these circumstances, the interests of employees clearly predominate over the employer's interests. *See also City of Seattle*, Decision 4163 (PECB, 1992).

The Entreprenurial Decision Defense

The employer argues that its actions "constitute a major change in the scope, nature and direction of the Port's cruise ship business." Employer's Appeal Brief at 2. In his concurring opinion in *Fibreboard*, Justice Stewart defined the employer side of the balancing test as follows:

> Decisions concerning the volume and kind of advertising expenditures, product design, the manner of financing, and of sales, all may bear upon the security of the workers' jobs. Yet it is hardly conceivable that such decisions so involve "conditions of employment" that they must be negotiated with the employees' bargaining representative.
>
> Nothing the Court holds today should be understood as imposing a duty to bargain collectively regarding such managerial decisions, which lie at the core of entrepreneurial control. Decisions concerning the commitment of

> investment capital and the basic scope of the enterprise are not in themselves primarily about conditions of employment . . .
>
> . . . those managerial decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security should be excluded from the area.

We are mindful of the employer's argument and the view expressed by Justice Stewart, but we also consider Commission precedents dating back to *South Kitsap School District,* Decision 472 (PECB, 1978), holding that the legislature curbed the absolute freedom of employers subject to the Act, in order to further labor tranquility and to provide collective bargaining rights to employees.

The employer cites *Fibreboard* in arguing that its contract with CTA implemented a capital investment and constituted a major change in the employer's passenger ship business different from the "the subcontracting 'did not alter the Company's basic operation [and that no capital investment was contemplated'." We are not persuaded by the employer's effort to distinguish *Fibreboard*. The changes at Pier 66, while costing a substantial amount of money, do not indicate a change in the basic direction or scope of the employer's business. The employer was operating a seaport, and it is still operating a seaport. The increase in the number of passenger ships making port calls in Seattle is a difference in degree, not of kind.

The decision to contract the terminal operation to CTA did not materially change the direction of the services offered by the Port of Seattle. Employees performed general security functions in the past at the employer's facilities, and employees continue to provide the same general security services to the public, albeit on an expanded level. After the signing of the CTA contract, some of

the work historically performed by the employer's law enforcement officers is now performed by CTS employees. In *Clover Park School District*, Decision 2560-A (PECB, 1988), the Commission affirmed an Examiner's conclusion "that the nature of the work to be performed was not so extraordinary as to negate bargaining obligations."

Application of the Five Factors

In this case, the Examiner did not consider the five factors in his analysis of the work performed by the bargaining unit and the work now performed by CTA employees. We now consider those factors.

Past Practice -

The employer would define the bargaining unit work as that of commissioned police officers with the power to arrest, and maintains it did not contract out work historically performed by the bargaining unit. We reject the contention that it did not have to bargain the decision to contract with CTA for security services.

The employer had been assigning four to five police officers and one sergeant to perform "fixed post general security" work at Pier 66. Transcript 149-150. Even if the employer came to believe that level of staffing was excessive, or that the police officers were over-qualified for the actual need, its own practice of assigning bargaining unit members at Pier 66 gave the union a legitimate interest in bargaining over both the decision and effects that contracting out may have had on its members. *Community Transit*, Decision 3069 (PECB, 1988). We uphold the principles set forth in *City of Kennewick*, Decision 482-B (PECB, 1980); *City of Vancouver*, Decision 808 (PECB, 1980) and *Community Transit*, that the employer's argument fails because it remained in business as a governmental entity which would continue to provide funding for

port security services, even if another entity was to provide additional personnel for expanded security services. As stated by the NLRB:

> The authority, duties, and prerogatives of a bargaining representative are dictated by the statute and they are not subject to diminution or modification because of any employer's good faith or economic necessity.

Ozark Trailers, Inc., 161 NLRB 561 (1966). The Examiner erroneously concluded that the general security work (which is the same or similar to the work previously performed by the bargaining unit employees, and is now performed by CTA employees) was new work outside of the union's historical work jurisdiction.[6] Thus, there is substantial evidence in the record to support finding that the contract with CTA changed the employer's past practices concerning bargaining unit work.

Significant Detriment to Bargaining Unit Members -
The employer maintains the CTA contract increased work opportunities for bargaining unit members, and that it: (a) was not an erosion of work; (b) was not a loss of promotional opportunities; and (c) had no adverse effect on the bargaining unit members' job security. Response to Complainant's Appeal Brief at 5-6. The union counters that the assignment of police officers to Pier 66 has declined from five union-represented employees to two, and that CTA employees now perform general security work historically performed by union-represented employees. The union asserts that the increase in passengers and ships supports the need for more police officers, not less.

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[6] We agree that the electronic monitoring/screening work conceded by the union as new work is outside of the union's historical work jurisdiction.

The initial inquiry is whether there has been a change. *Anacortes; Battle Ground School District*, Decision 2449-A (PECB, 1986); *Evergreen School District*, Decision 3954 (PECB, 1991). Once the union proves a change in practice occurred that reasonably can be inferred to have reduced bargaining unit work, the Commission views the obligation as shifting to the employer to demonstrate that the change did not have a significant impact. *Anacortes*.

When an employer expands, intensifies or changes a program so as to need additional hours of work performed or additional workers to perform the work, the additional work will normally be performed by or accreted to the bargaining unit of employees already performing similar work, and the exclusive bargaining representative of the employees doing that type of work will have a claim of work jurisdiction. *Anacortes* quoting from *Battle Ground*.

The evidence substantiates the tremendous growth in passenger traffic by the year 2000. The increase in the number of passengers and ships visiting the Port of Seattle began in 1993, and has increased every year since. By 1999, cruise ships began to use Pier 66 exclusively and bargaining unit members were assigned the general security work associated with that activity. Importantly, however, the employer assigned bargaining unit employees to perform general security functions through all of that period of growth (including work at Pier 66 after the renovation of that facility) up to March 24, 2000, when it signed the contract with CTA. Although no specific evidence concerning increased work or promotional opportunities was presented by either party, we find it reasonable to infer that both the general security work and promotional opportunities associated with that work would have increased commensurate with the increase in passenger traffic moving through the employer's facilities.

The employer's Response to the Appeal Brief states, at page 5, "the work opportunities for members of the POSPD bargaining units have increased." However, the union presented (and the employer did not controvert) testimony that the work opportunities for police officers at Pier 66 have *decreased* by approximately 50% since the signing of the contract between the employer and CTA. We infer by these numbers that nonbargaining unit personnel are performing work that could have been performed by bargaining unit personnel. Therefore, this transfer of work was a change that created a significant detriment for bargaining unit members.

Solely Economic Motivation -

In its Brief in Response to Complainant's Appeal, the employer claims that it was not motivated to save money in contracting with CTA, rather it invested substantial capital in the development of Pier 66.

No Opportunity to Bargain -

The employer claims it had no duty to bargain with the union because the substantial capital investment in the development of Pier 66 "constituted a major change in the scope, nature and direction of the Port's cruise ship business." Brief in Response to Complainant's Appeal at 6. Thus, the union had no claim to the work. Further, the parties were engaged in collective negotiations throughout 2000 for a successor agreement and the union did not raise the issue of the security work at Pier 66.

The union asserts the employer did have an obligation to bargain because the bargaining unit had performed the general security work in the years immediately preceding the signing of the CTA contract. The union claimed it only discovered the existence of the CTA contract by chance and then after it was signed by the employer.

In *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998), our conclusion that the union had been presented with a *fait accompli* was based, in part, because that employer had approached the issue from the beginning as if its policies were outside the collective bargaining process. We find that same employer behavior in this case.

As we stated in *Skagit County*, Decision 6348-A (PECB, 1998):

> In those instances where an employer contemplates a change and takes action toward the goal of introducing the change without allowing the union an opportunity for bargaining which could influence the employer's planned course of action and the employer's behavior seems inconsistent with a willingness to bargain, a *fait accompli* could be found.

And in *Washington Public Power Supply System*:

> If the employer's action has already occurred when the union is given notice, the notice would not be considered timely and the union will be excused from the need to demand bargaining on a *fait accompli*.

See also *Clover Park School District*, Decision 3266 (PECB, 1989) and the decisions cited therein; *City of Centralia*, Decision 1534-A (PECB, 1983).

The record in this case shows that the union was presented with a *fait accompli* and is thus excused from demanding to bargain concerning the security work at Pier 66. We find that the employer clearly took action to contract for security services with CTA

without notifying the union of its intention. Thus, the employer violated its duty to bargain by failing to give notice to and an opportunity for bargaining, upon request, with the exclusive bargaining representative of its employees prior to transferring bargaining unit work to persons outside the bargaining unit. See *Anacortes; Yakima County*.

Work Not Fundamentally Different -

Both the security officers employed by CTA and the bargaining unit police officers perform duties, and have skills or working conditions of the same nature or type. The bargaining unit police officers perform commissioned law enforcement work that the CTA personnel do not perform. However, that distinction although relied upon by the employer in its arguments is not relevant in this case. The record shows the bargaining unit police officers were assigned the general security work at Pier 66 that CTA personnel now perform prior to the contract between CTA and the employer. The work is not changed by the fact that one group who performed the work consists of fully commissioned law officers or that those commissioned officers may perform some duties not performed by the CTA personnel. The issue is whether the work was historically performed by bargaining unit employees. The record shows it was.

Substantial Evidence -

When considering appeals from this agency, Washington courts look for substantial evidence supporting our decisions. *City of Federal Way v. PERC*, 93 Wn. App. 509 (1998). Likewise, the Commission has reversed decisions issued by staff members in cases where after reviewing the record on appeal, we find the Examiner did not apply the correct legal standard and there was not substantial evidence to support the Examiner's findings. The record in this case

contains evidence of sufficient quantity to persuade a fair-minded, rational person that the employer assigned general security work at Pier 66 to the bargaining unit prior to signing the contract with CTA. The Examiner erred in not differentiating the general security work from the screening work. The issue of general security work was not sufficiently addressed by the Examiner.

The employer argues in its response to the complainant's appeal that "copious evidence supports its argument" that the "build out" of Pier 66 "constituted a major change in the scope, nature and direction of the Port's cruise ship business." Response to Appeal Brief at 2. We disagree. We agree the port spent a substantial amount of money to improve Pier 66; however, we do not agree that the fundamental business of the employer was changed by this monetary investment. At the same time the work of the bargaining unit was decreased, the employer's business was enhanced and increased as evidenced by the number of passengers flowing through Pier 66.

NOW, THEREFORE, the

ORDERED

The decision issued in the above-captioned matter by Examiner Rex L. Lacy is REVERSED, and the Commission makes and issues the following:

AMENDED FINDINGS OF FACT

1. The Port of Seattle is a public port district of the state of Washington, created under Title 53 RCW, and is a "public employer" within the meaning of RCW 41.56.030(1). The

employer provides services normally associated with port districts, including the operation and maintenance of commercial airport and a cruise ship terminal, and has its own law enforcement department responsible for making arrests for misconduct at the airport and cruise ship terminal.

2. Teamsters Union, Local 117, a "bargaining representative" within the meaning of RCW 41.56.030(3) is the exclusive bargaining representative of three separate units of law enforcement officers employed by the Port of Seattle. Units consisting of police officers and sergeants are involved in this proceeding.

3. The employer and union have been parties to a series of collective bargaining agreements, the agreement existing at the time of the hearing was effective through December 31, 1999.

4. Over a period of several years prior to March 24, 2000, the employer made improvements to its facilities at Pier 66 on the central Seattle waterfront and developed a terminal for passenger ship operations, resulting in a consolidation of cruise ship traffic formerly operated at several piers and an eleven-fold increase in passenger traffic from 1993 to 2000. The cruise ship terminal is operated under United States Coast Guard regulations which include provisions for security screening of embarking passengers.

5. Prior to March 24, 2000, the employer assigned law enforcement officers in the bargaining units represented by the union to be present at the piers during the port calls of passenger

ships, but never assigned those employees to screen embarking passengers by means of electronic monitoring devices.

6. On March 24, 2000, the employer contracted with Cruise Terminals of America (CTA) to operate the cruise ship terminal. CTA provides its own employees to monitor the ingress and egress of materials and personnel at a number of gates to the cruise ship facility.

7. The work associated with screening cruise line passengers through the use of electronic monitoring devices (magnetometers) is not work historically performed by bargaining unit members. The union has no work jurisdiction claim over that work.

8. Since March 24, 2000, the employer has reduced the number of law enforcement officers in the bargaining units represented by the union to be present at the cruise ship terminal facility during the port calls of passenger ships, and those employees continue to make arrests that are necessary.

9. The general security work performed by CTA employees is work of a type that has been historically performed in the past by law enforcement officers represented by the union, so that the union has a work jurisdiction claim as to those duties.

CONCLUSIONS OF LAW

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

2. By the events described in paragraphs 5 through 7 of the foregoing findings of fact, the Port of Seattle has contracted out work properly claimed by the bargaining units of law enforcement employees represented by the Teamsters Union, Local 117, and has committed an unfair labor practice under RCW 41.56.140(1) and (4).

AMENDED ORDER

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

1. CEASE AND DESIST from:

   a. Interfering with, restraining or coercing its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

   b. Failing to notify the union of an intent to subcontract work, a mandatory subject of bargaining.

   c. Failing to afford the union an opportunity to bargain prior to implementing any changes in working conditions.

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

   a. Bargain in good faith with the Teamsters, Local 117 concerning the decision and its effects of contracting with CTA for general security work at Pier 66. It would be inappropriate to order a return to the status quo by removing the CTA contract, since the parties may find a

way to address their concerns without termination of the contract to manage the terminal.

b. Back pay, if any, to be paid to employees for lost work or promotional opportunities shall be addressed in bargaining. It would also be inappropriate for the Commission to artificially impose a settlement of such negotiations.

c. In the event agreement cannot be reached after a reasonable period of good faith negotiations, either party shall submit outstanding issues to mediation and final and binding arbitration pursuant to RCW 41.56.430.

d. Immediately upon receipt of this order restore the assignment of no fewer than five police officers and one sergeant to work at Pier 66. This work assignment shall remain in effect until such time as bargaining as ordered in the preceding paragraph concludes and the resulting agreement is signed.

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

f. 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 attached to this order.

g. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

Issued at Olympia, Washington, on the 12th day of March, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

SAM KINVILLE, Commissioner

JOSEPH W. DUFFY, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

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

WE WILL give notice to and, upon request, bargain in good faith with Teamsters Local 117 regarding any contracting out of work historically performed by employees represented by that union.

WE WILL restore to employees represented by Teamsters Local 117 the work opportunities unlawfully contracted out to Cruise Terminals of America, and will make those employees whole for any loss of pay and benefits they suffered.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____

PORT OF SEATTLE

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300.