STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SKAGIT COUNTY DEPUTY SHERIFF'S GUILD,	)	
Complainant,	)	CASE 15551-U-00-3936
vs.	)	DECISION 7554 - PECB
SKAGIT COUNTY,	)	FINDINGS OF FACT,
Respondent.	)	CONCLUSIONS OF LAW AND ORDER

Karyl Elinski, Labor Consultant, Cline & Associates, represented the petitioner.

Bruce L. Schroeder, Attorney at Law, Summit Law Group, represented the respondent.

On December 28, 2000, the Skagit County Deputy Sheriff's Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, naming Skagit County (employer) as respondent. The complaint was reviewed under WAC 391-45-110, and a preliminary ruling issued March 6, 2001, found a cause of action to exist on allegations of:

> Employer refusal to bargain in violation of RCW 41.56.140(4) (and derivative "interference" in violation of RCW 41.56.140(1)), by its unilateral change in weekly work schedules without providing an opportunity for bargaining.

The employer moved for dismissal, arguing the union was merely attempting to enforce contract language. The employer was offered

an opportunity to request deferral of the complaint to arbitration, so the contract language could be interpreted by an arbitrator, but it declined to request deferral. A hearing was held July 17, 2001, before Examiner Jack T. Cowan. The parties filed briefs on September 10, 2001.

Based on the evidence presented at the hearing and the parties' arguments, the Examiner rules that the union failed to substantiate its allegations. The complaint is dismissed.

BACKGROUND

Ed Goodman is the elected sheriff of Skagit County. Dave Corrion is the chief of field services for the Skagit County Sheriff's Department, and supervises patrol deputies. Corrion worked in the bargaining unit over 11 years before promotion to his present position.

The union is the exclusive bargaining representative of a bargaining unit of about 40 law enforcement employees, including deputy sheriffs, detectives, and sergeants. George Smith, a 20-year employee, has been union president during the last two years.

Bargaining unit members assigned to patrol duties normally work ten-hour shifts for four consecutive days or nights (either Monday through Thursday or Thursday through Sunday) followed by three consecutive days off. A schedule for the full year is posted before the year begins. This dispute concerns the employer's ability to adjust patrol work days for special events requiring more coverage than usual, when patrol deputies are rescheduled to work on what had originally been a day off (without extra compensa-

tion) and to take a different day off. Both parties agree the relevant contract language states, in relevant part:

> ARTICLE 6 -
> WORK PERIOD, OVERTIME, AND CALLBACK
>
> . . . .
>
> 6.2 The Employer shall have the authority to alter the weekly work schedule in a manner consistent with providing all regular employees their fair share of regularly scheduled available work hours. Any such schedule change shall be posted not less than three (3) days in advance of a change.
>
> The work period shall not exceed twenty-eight (28) days.
>
> The duty schedule shall provide for not more than eight (8) consecutive days of duty without a minimum of two (2) consecutive regularly scheduled days off at each interval. Only work on the regularly scheduled days off shall be compensated at the overtime rate.
>
> Overtime pay shall be paid, except as provided in 6.3 [permitting compensatory time], for any work authorized and performed in excess of that provided by this article or by the employee's established duty schedule, to be paid at the rate of time and one half (1 ½) the employee's regular hourly rate of pay. There shall be no compounding or pyramiding of overtime. Holidays paid but not worked shall not count as hours worked for the purposes of calculating overtime for that workweek.

This particular dispute concerns the employer's rescheduling of about 12 bargaining unit members to work without overtime compensation on July 3, 2000, which would otherwise have been one of their three consecutive days off.

POSITIONS OF THE PARTIES

The union claims the past practice has been to use schedule changes with three-day notice (Article 6.2 changes) solely for long-term reassignments or adjusting the starting or ending hours of shifts. It contends Article 6.2 does not permit the employer to adjust employees' work schedules within a work week, so they work on what would have been their days off without extra compensation. Asserting that the work schedule is a mandatory subject of bargaining, the union reasons the employer had to give it prior notice and an opportunity to bargain before changing this practice involving work schedules.

The employer contends the union is trying to avoid clear language in the parties' collective bargaining agreement. The employer asserts that the union failed to produce evidence of the existence of any past practice contrary to the language of Article 6.2. Instead, the employer asserts that the record establishes consistent use of Article 6.2 to make the kind of schedule adjustments involved here. Thus, the employer reasons, the union has waived any bargaining rights over Article 6.2 changes.

DISCUSSION

The Law to be Applied

The union is claiming here that the employer violated its statutory duty to bargain, by unilaterally changing the way Article 6.2 of the parties' contract was applied, with the result that the work schedules of bargaining unit members were changed and they worked without extra compensation on what had originally been their scheduled days off. It is well established that "[e]mployers are

prohibited from unilaterally changing mandatory subjects of bargaining." *Cowlitz County,* Decision 7007-A (PECB, 2000).

Any element of "wages, hours and working conditions" is a mandatory subject of collective bargaining under RCW 41.56.030(4). An employer satisfies its bargaining obligation if it gives a union notice and an opportunity for bargaining before changing a mandatory subject of bargaining. *Seattle School District,* Decision 5733-B (PECB, 1998).

In order for there to be a unilateral change giving rise to a duty to bargain, there must be some change from the status quo. *Seattle School District, supra.* A union waives its bargaining rights by contract language, so that employer actions in conformity with the parties' contract will not be an unlawful unilateral change. *Seattle School District, supra.*

Application of Standard

Mandatory Subject -

Deputy Annette Lindquist testified her schedule was changed for the week which included July 3, 2000, so that she worked on Monday, was off duty on Tuesday through Thursday, and then worked on Friday through Sunday. The union does not claim the employer gave less than the three days advance notice required by Article 6.2 of the parties' current collective bargaining agreement.

Shift schedules and days off are closely related to "hours," and are clearly mandatory subjects. *Kitsap County,* Decision 6192 (PECB, 1998). Overtime pay affects "wages," and also fits neatly within the mandatory subjects of bargaining. The union has thus established that the matter in dispute is a mandatory subject of bargaining.

Change in the Status Quo -

The record does not support the union's contentions that: (1) the schedule change during the week of July 3, 2000, was different from previous schedule changes made under Article 6.2 for special events; and (2) that Article 6.2 was used only to effect long-term or permanent schedule changes.

Deputy Lindquist had worked in the traffic unit, and testified that she was accustomed to her days off being changed because of increased traffic during the annual Tulip Festival.

Although the union president, George Smith, testified under direct examination that Article 6.2 only permitted work shift changes in cases of illness, extended injury leave, and vacations, he acknowledged under cross-examination that no language expressing such a limited interpretation is to be found in Article 6.2. Smith also acknowledged that he had not surveyed the workforce to verify the kinds of situations in which the employer used Article 6.2, and that there was no past practice limiting the use of Article 6.2 to permanent changes of the work schedule.

A former union president, Paul Arroyos, testified that Article 6.2 was used for adjusting shift hours and days off, and that overtime pay was not owed after an Article 6.2 change of work days so long as the revised work week did not exceed 40 hours. He distinguished long-term changes of work schedules as requiring 90 days notice.

Dave Corrion, a 15-year employee who has been chief of field services the last three years, listed the annual events for which work schedules have been adjusted under Article 6.2, including the Independence Day holiday, the Tulip Festival held each April, and an Oyster Run event held on the last Sunday of September. Corrion confirmed that the scheduled work days and days off of bargaining

unit employees have been changed for those events under Article 6.2 to reduce the amount of overtime. He also testified that patrol deputies never were paid overtime solely for working former days off as a result of Article 6.2 changes.

Another former union president, Sergeant Will Reichardt, testified that his understanding of Article 6.2 conformed with that of Arroyos and Corrion. Reichardt added that deputies whose days off had been changed under Article 6.2 did receive overtime if they worked more than 40 hours in a week.

Both Smith and Arroyos testified that no grievances were filed and pursued to challenge the employer's use of Article 6.2 during their terms as union president.

Because the employer did not change the status quo when it changed the days off for certain deputies the week of July 3, 2000, the second element of a unilateral change unfair labor practice case is missing.

Additional Arguments

Although the conclusion that there was not change disposes of this case, it may be instructive to respond to additional arguments by the union and employer.

The union contends that the experiences of traffic deputies having their schedules changed for the Tulip Festival is irrelevant to this case, because traffic deputies are different from patrol deputies. There is no separate contract language concerning the traffic deputies, and the only evidence suggesting a difference between traffic and patrol deputies is Reichardt's testimony that deputies who seek assignments in the traffic unit know in advance

that they will have to work at times when other deputies don't have to work. Given the evidence that schedules of patrol deputies have been changed in the past, Reichardt's testimony does not support a conclusion that the practices are different for the two groups.

The employer aptly argues that the union waived its right to demand bargaining by agreeing to Article 6.2. The language giving the employer the latitude to change employee work shifts on three days notice has appeared unchanged in the last three contracts, covering the period from January 1, 1993, through December 31, 2001. The evidence in this record indicates that Article 6.2 was discussed in the negotiations for the current contract, when the employer initially proposed to reduce the notice requirement from three days to two but eventually abandoned that position. Article 6.2 contains no limits on the employer's authority other than giving three days notice.

FINDINGS OF FACT

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

2. Skagit County Deputy Sheriff's Guild, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate unit of law enforcement employees of Skagit County working in the classifications of deputy sheriff, detective, and sergeant.

3. Skagit County and the Skagit County Deputy Sheriff's Guild are parties to a collective bargaining agreement effective from March 16, 1999, through December 31, 2001. At Article 6.2, that contract authorizes the employer to alter the work

schedules of bargaining unit employees upon giving three days notice. Identical language appeared in Article 6.2 of the parties' previous contract, covering the period from February 1, 1996, through December 31, 1998.

4. During the term of the current and predecessor contracts, Skagit County has routinely implemented Article 6.2 to adjust the work schedules of employees represented by the Skagit County Deputy Sheriff's Guild to provide additional coverage for annual Tulip Festival, Independence Day, and Oyster Run events. The Skagit County Deputy Sheriff's Guild has not filed and pursued any grievance protesting the implementation of Article 6.2 in that manner.

5. Skagit County gave timely notice under Article 6.2 to certain members of the bargaining unit represented by the Skagit County Deputy Sheriff's Guild, so that more than the usual number of employees were scheduled to work on July 3, 2000. The work schedules of the affected employees were adjusted so that they received no additional compensation for working on what had originally been scheduled as their days off. The change of work schedules described in this paragraph was consistent with, and did not constitute a change of, past practice.

CONCLUSIONS OF LAW

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

2. The Skagit County Deputy Sheriff's Guild has failed to prove that Skagit County changed the status quo when it implemented

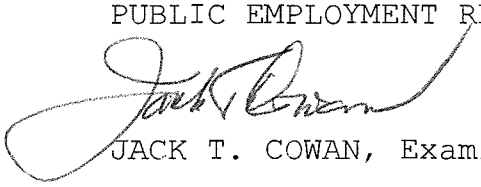
Article 6.2 of the parties' collective bargaining agreement to change the work schedules of certain bargaining unit employees, so that no unfair labor practice has been established under RCW 41.56.140(4) or (1).

ORDER

The unfair labor practice complaint filed in this matter is hereby DISMISSED on its merits.

DATED at Olympia, Washington, this 14th day of November, 2001.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, 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.