

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION,)	
LOCAL 1576,)	
)	
Complainant,)	CASE 19775-U-05-5013
)	
vs.)	DECISION 9783 - PECB
)	
COMMUNITY TRANSIT,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	AND ORDER
_____)	

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for the union.

Summit Law Group, PLLC, by *Shannon E. Phillips*, for the
employer.

The Amalgamated Transit Union, Local 1576, (ATU) filed an unfair labor practice complaint against Community Transit (employer) charging employer interference with employee rights in violation of RCW 41.56.140(1) and refusal to bargain in violation of RCW 41.56.140(4). The Commission issued a preliminary ruling on September 8, 2005, finding that a cause of action existed concerning refusal to bargain in violation of RCW 41.56.140(4) by "skimming" of training work previously performed by dispatchers and coach operator instructors (coach instructors), without providing an opportunity for bargaining. Examiner Paul T. Schwendiman held a hearing on April 18 and 19, 2006, in Everett, Washington. The parties filed post-hearing briefs.

ISSUE PRESENTED

Did the employer "skim" training work previously performed by ATU-represented employees to a new operations instructor position outside of the ATU bargaining unit in violation of RCW 41.56.140(4)?

The Examiner concludes the employer did not refuse to bargain with the ATU when it created a new operations instructor position to perform training work.

APPLICABLE LEGAL STANDARD

The Public Employees Collective Bargaining Act imposes a duty to bargain. RCW 41.56.030(4). 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. The complainant has the burden of proving an unfair labor practice allegation. WAC 391-45-270.

The potential subjects for bargaining are traditionally divided into categories labeled as "mandatory," "permissive," and "illegal" subjects. 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. 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. *Port of Seattle, Decision*

7271-B (PECB, 2003). Where a subject both relates to conditions of employment and is a managerial prerogative, the focus of inquiry in determining whether the subject is a mandatory subject for collective bargaining is to determine which characteristic predominates. *State - Office of Financial Management*, Decision 8761-A (PSRA, 2005); *International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 197 (1989).

The employer's transfer of bargaining unit work to other employees without fulfilling its bargaining obligations results in uncertainty about whether there would be any jobs to fill and is exceedingly detrimental to the statutory purpose of peaceful labor-management relations. 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. Under these circumstances, the interests of employees clearly predominate over the employer's interests. *Port of Seattle*, Decision 7271-B. Thus, the Commission has often found the removal, or "skimming," of bargaining unit work to employees outside the bargaining unit is a mandatory subject of bargaining. *Skagit County*, Decision 8746-A (PECB, 2006); *Port of Seattle*, Decision 7271-B; *City of Anacortes*, Decision 6863-B (PECB, 2001).

The actual loss of work is not the yardstick by which "skimming" of bargaining unit work is to be measured. When an employer, for reasons of its own, expands or intensifies a program so as to need additional hours of work performed or additional employees to perform the work, the work will normally be performed by the bargaining unit of employees already performing similar work. The exclusive bargaining representative of the employees doing that

type of work will have a claim of work jurisdiction. *Battle Ground School District*, Decision 2449-A (PECB, 1986). While increasing the amount and type of work performed by non-bargaining unit employees without prior bargaining can suffice, a change of some sort is nevertheless required. *Wishkah Valley School District* Decision 4093-A (PECB, 1993).

The Commission considers five factors when determining whether bargaining to impasse or agreement is required before transferring work out of a bargaining unit:

1. The previously established operating practice as to the work in question (*i.e.*, had non-bargaining 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 had 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.

Skagit County, Decision 8746-A.

ANALYSIS

On January 18, 2005, the employer created a new position of operations instructor in a supervisory bargaining unit represented

by the International Association of Machinists (IAM).¹ The ATU bargaining unit includes coach operators, coach operator trainees, coach operator instructors (coach instructors), and dispatchers. Like ATU-represented coach instructors, the new IAM-represented operations instructors are responsible for developing, coordinating, scheduling, and executing skills development, procedural instruction, safety and other required training programs for new and existing employees; performing employee skills evaluations, maintaining records and instructional resources; monitoring effectiveness of the employer's training programs; and evaluating employees. The difference between the duties assigned the ATU-represented coach instructors and the new IAM-represented operations instructors is that the ATU-represented coach instructors primarily teach, develop courses for, and evaluate coach operators and coach operator trainees, while the new IAM-represented operations instructors primarily teach, develop courses for, and evaluate operations supervisors² and dispatchers. The duties assigned ATU-represented dispatchers and the new IAM-represented operations instructors are largely dissimilar. The dispatchers primarily dispatch coaches and schedule coach operators. The new IAM-represented operations instructors primarily instruct and develop course materials. The first new IAM-represented operations instructor position was filled in April 2005. A second IAM-represented operations instructor position was filled later.

¹ The inclusion of this new position in the IAM supervisory unit, which includes operations supervisors, has not been contested.

² The employer has changed the operations supervisors title to transportation supervisor.

The Examiner considers the five factors relevant to "skimming" allegations specified by the Commission in *Skagit County*, Decision 8746-A:

1. The previously established practice.

ATU-represented Coach Instructors. The previously established practice is that, except for a single air brake course taught by an IAM-represented employee, coach instructors in the ATU bargaining unit conduct all coach operation-related training for coach operators and coach operator trainees. They also research, develop, prepare, and maintain course outlines and instructional aids for the classes they teach; provide on-the job training of new coach instructors; and provide training to any employee assigned to certain general classes they teach. These general classes do not involve coach operation, but instead focus on filling out I-9 and W-4 forms, sexual harassment, the Americans with Disabilities Act, drugs and alcohol, and safety and health. Unlike the coach operation-related classes, other than the air brake course, the general classes are not exclusively taught by ATU-represented coach instructors. The ATU-represented coach instructors teach all of these classes, but their supervisor and other employees outside the ATU bargaining unit routinely rotate with the ATU-represented coach instructors to teach these general courses.

ATU-represented Dispatchers. The ATU-represented dispatchers provide new dispatchers with on-the-job training for an initial six-week period. A new dispatcher receives no other training prior to being assigned regular dispatch work. Dispatchers and their supervisor have prepared a checklist of the 63 dispatcher tasks a

new dispatcher is expected to master during the six weeks of on-the-job training.

Providing on-the-job training of new dispatchers is not the dispatchers' primary job. Only five or six new dispatchers have been trained in recent years. The dispatchers' primary job is operating equipment used to assign coaches and coach operators, following various dispatch procedures, and filing required paperwork. They continue performing their primary job while training new dispatchers.

The new IAM-represented operations instructors. The operations instructor position is a new position. Thus, there is no prior history of IAM-represented operations instructors performing any training work historically performed by the ATU bargaining unit.

2. Whether the transfer of work involved a significant detriment to bargaining unit members.

The work assigned the new IAM-represented operations instructors involves no significant detriment to ATU-bargaining unit members because no ATU bargaining unit work has actually been performed by the new IAM-represented operations instructors. Additionally, course development work assigned to the new IAM-represented operations instructors to be performed in the future is not a significant detriment to the ATU-bargaining unit members, because the ATU has not proven that the assignment of course development work is beyond the course development work historically performed by the supervisor of training.

In his letter dated April 6, 2006, the employer's Chief Operating Officer James Turpie advised the ATU:

Although this job's [operations instructor] primary duties will be development and implementation of ongoing training programs for transportation supervisors (formerly called operations supervisors), we also plan to assign the person in this job the project of developing formal classroom training for both Dispatch and Training [Departments³], as time permits. We will also, on occasion, assign this person to conduct training for other Community Transit employees.

A comparison of training. The duties of the ATU-represented coach instructors and those assigned the new IAM-represented operations instructors are nearly identical as described in job descriptions,⁴ except that the ATU-represented coach instructors primarily teach, develop courses for, and evaluate coach operators and coach operator trainees; while the new IAM-represented operations instructors primarily teach, develop courses for, and evaluate operations supervisors and dispatchers.

The job descriptions state that both the new IAM-represented operations instructors and the ATU-represented coach instructors

³ The dispatch department is composed of the ATU-represented dispatchers and support personnel. The ATU-represented coach instructors, the two new IAM-represented operations instructors, and Supervisor of Training Treva Kosloski compose the training department.

⁴ Side-by-side comparison of the job descriptions might lead one to conclude that some of the language in the new operations instructor job description has been copied word-for-word from the coach instructor job description.

may be assigned the training of "other employees." The operations instructor job description also states:

[o]perations instructor shall develop, coordinate, and execute [training] programs throughout the corporation as assigned, with primary responsibility to the continuing education and certification of Operations Supervisors, Dispatchers and other employees.

Executing training programs for coach operators and coach operator trainees by the new IAM-represented operations instructors beyond that now provided by the Supervisor of Training and others outside the ATU bargaining unit, would be significantly detrimental to the ATU bargaining unit. However, the record indicates that any actual assignment of the new IAM-represented operations instructors to training of coach operators and coach operator trainees is mere speculation, rather than proven fact.

Dispatcher training. As stated in Turpie's letter, the employer assigned the new IAM-represented operations instructors the development of formal classroom training for dispatchers. But, the union has not proved that the employer has decided to replace all the on-the-job training of dispatchers with the formal classroom training. Even if the on-the-job dispatcher training were completely eliminated, the dispatchers would continue to perform the same dispatching work and shifts. Thus, the impact of the assignment of the new IAM-represented operations instructors to develop formal classroom dispatcher training and executing that training to supplement on-the-job dispatcher training involves no significant detriment to ATU-represented dispatchers.

Coach instructor training. Historically, a new coach instructor's training is provided by experienced ATU-represented coach instructors. The new coach instructors normally watch an experienced coach instructor teach a class. The new coach instructor then team teaches the class with an experienced coach instructor before teaching the class alone. Sometimes a new coach instructor has had to teach a class without even first observing the class. Experienced ATU-represented coach instructors have received no training on how and what to teach beyond the on-the-job training usually provided. Coach instructors have received very limited training provided by outside vendors such as an Evergreen Safety Council's course on defensive driving and a Burlington Railroad safety course.

The evidence is insufficient to conclude that the employer has decided to discontinue the on-the-job observation and team teaching now provided by ATU-represented coach instructors to new coach instructors. However, even if the initial on-the-job observation and team teaching by a new coach instructor were entirely replaced with classroom instruction, the ATU-represented coach instructors would continue to perform their primary work of developing courses for and teaching coach operators and coach operator trainees. Thus, the assignment of the new IAM-represented operations instructors to developing and executing formal classroom training of coach instructors to supplement on-the-job training is not a significant detriment to the ATU-represented coach instructors.

Course development.

Coach Instructors. The ATU-represented coach instructors historically develop the course instructional objectives, extensive course outlines, and other required materials for the classes they teach.

However, Supervisor of Training Kosloski historically has input into collaboratively developing courses and materials with the ATU-represented coach instructors. She also maintains management oversight and approval over course content and materials.

The ATU has not proved the assignment of course development to the new IAM-represented operations instructors exceeds the collaborative input, management oversight, and approval historically provided by Kosloski. Thus, there is no significant detriment to ATU-bargaining unit members in assigning the new IAM-represented operations instructors a similar role in course development.

Dispatchers. In collaboration with their supervisor, dispatchers have prepared the checklist of 63 areas of competence the new dispatcher is expected to master during six weeks of on-the-job training. They have provided no other materials for dispatchers to use while training a new dispatcher. Unlike the ATU-represented coach instructors, the dispatchers are not professional instructors primarily employed to instruct employees, develop instruction plans, and evaluate employee performance. Preparation of training materials for dispatchers is an insignificant part of the dispatchers' work. Thus, assignment of such work to the new IAM-represented operations instructors is not a significant detriment to the ATU-bargaining unit members.

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

The employer primarily created the new operations instructor position to train and provide uniform instructional materials for operations supervisors, and to create a new employee certification program for dispatchers and supervisors. Thus, the employer's motive was not solely economic.

4. Whether there was an opportunity to bargain generally about the changes in existing practices.

On March 11, 2005, the ATU requested to bargain the transfer of any ATU-bargaining unit training work to the new operations instructor position. On April 6, 2005, the employer's Chief Operating Officer Turpie responded to the ATU:

We disagree that any work would be taken away from the bargaining unit. Nothing in the current agreement limits management's right how to best handle training needs.

. . . .
However, if ATU disputes Community Transit's belief that the new position has the greatest community of interest with the Transportation Supervisor bargaining unit, that dispute is not with Community Transit but with the IAM, and should be addressed through petition to PERC.

Rather than agreeing to bargain with the ATU as requested about the work assigned the new operations instructor position, Turpie limited the ATU's recourse to the Commission's unit clarification process.

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

ATU-represented Coach Instructors and the new IAM-represented Operations Instructors.

a) Developing and executing training for employees.

Developing training programs and training employees, whether performed by the new IAM-represented operations instructors or the ATU-represented coach instructors, is fundamentally the same kind of work and requires similar skills. Both the ATU-represented

coach instructors and the new IAM-represented operations instructors are required to have knowledge of transit coach operating practices and procedures; and to have knowledge of standard operating procedures related to road operations, the Community Transit system, and state and federal regulations regarding motor vehicles and public transportation. Both are required to have skills in analyzing training needs; developing, identifying, and acquiring appropriate training programs; oral and written communications; communication and interpersonal relations; training and making presentations; and computer keyboarding. Both also must have the ability to design and implement training programs and related lesson plans; conduct classes of instruction and evaluate participants; write clear, concise and accurate correspondence; communicate effectively; and effectively manage multiple projects and tasks to completion in a timely manner. Thus, the work assigned the IAM-represented operations instructors is not fundamentally different from the work assigned ATU-represented coach instructors in developing and executing training, in terms of the nature of the skills required to develop and execute training for employees.

b) Training instructors.

While the ATU-represented coach instructors currently provide on-the-job training to new coach instructors, the skills of the IAM-represented operations instructors to provide formal classroom training of coach instructors on how to instruct and develop the courses they teach are fundamentally different from the skills of the ATU-represented coach instructors. Unlike ATU-represented coach instructors, the new IAM-represented operations instructors are required to have knowledge of principles and techniques of

modern adult education programs. Such knowledge allows the IAM-represented operations instructors to provide classroom instruction to the coach instructors that supplements the on-the-job instructor training currently provided by ATU-represented coach instructors on how to teach and how to develop the courses to be taught. Thus, the nature of the duties and skills of the new IAM-represented operations instructors and the ATU-represented coach instructors in relation to formal classroom training of instructors, is fundamentally different.

ATU-represented dispatchers and the new IAM-represented operations instructors.

While the ATU-represented coach instructors and the IAM-represented operations instructors work is fundamentally the same work of developing and executing employee skills development programs, the work of the ATU-represented dispatchers and the IAM-represented operations instructors is fundamentally different in terms of the nature of the duties and skills. Dispatchers routinely operate radios and other equipment, and execute procedures required for efficient operation of the dispatch office. Dispatchers are not primarily instructors.

Experienced dispatchers do provide six weeks of on-the-job training to every new dispatcher while the experienced dispatcher performs his or her regular dispatch work. Unlike both the ATU-represented coach instructors and IAM-represented operations instructors, no special instructing or course development skills are required of dispatchers. Thus, the nature of the duties, skills and working conditions of the new IAM-represented operations instructors in relation to the training of dispatchers, is fundamentally different from those of the ATU-represented dispatchers.

CONCLUSION

Considering all five factors, the Examiner concludes that the employer did not commit the alleged "skimming" violation of RCW 41.56.140(4).

FINDINGS OF FACT

1. Community Transit is a public employer within the meaning of RCW 41.56.030(1).
2. Amalgamated Transit Union, Local 1576, (ATU) is a bargaining representative within the meaning of RCW 41.56.030(3).
3. The ATU is the exclusive bargaining representative of a bargaining unit which includes the employer's coach operators, coach operators trainees, coach operator instructors (coach instructors) and dispatchers.
4. The employer's decision to assign ATU bargaining unit work outside that unit is a mandatory subject of bargaining.
5. The coach instructors in the ATU bargaining unit historically teach coach operation related training to coach operators and coach operator trainees. Coach instructors also evaluate and audit coach operator skill development.
6. ATU-represented coach instructors historically research, develop, prepare, and maintain course outlines, instructional aids, and other materials used for the classes they teach.

They recommend course content and outlines to Supervisor of Training Treva Kosloski, for additional input, collaboration, and final approval.

7. ATU-represented coach instructors historically provide on-the-job training to new coach instructors on how to instruct the classes they teach. Outside providers also historically provide limited training to coach instructors on how to instruct specific courses.
8. ATU-represented dispatchers historically provide new dispatchers with all training related to dispatching work during six weeks of on-the-the job training. The experienced dispatcher performs his or her regular job as a dispatcher while training a new dispatcher.
9. On January 18, 2005, the employer created a new operations instructor position and included that position in an International Association of Machinists represented supervisory unit. The first new position was filled in April, 2005. A second position was filled later.
10. The duties assigned the new IAM-represented operations instructors are developing; coordinating; scheduling and executing skills development, procedural instruction, safety and required training programs; performing skills evaluations; maintaining training records and instructional resources; and monitoring the effectiveness of training programs for employees with primary responsibility for the continuing education and certification of operations supervisors, dispatchers and other employees.

11. The duties assigned the new IAM-represented operations instructors include a project of developing formal classroom training to supplement on-the-job training now provided for dispatchers and coach instructors.
12. The nature of the duties and skills required of the new IAM-represented operations instructors and the ATU-represented coach instructors to teach and develop courses for coach operators are fundamentally similar.
13. The nature of the duties and skills required of the new IAM-represented operations instructors to provide formal classroom training of coach instructors on how to teach and how to develop the courses they teach are fundamentally different from the duties and skills required of ATU-represented coach instructors.
14. The nature of the duties and skills required of the new IAM-represented operations instructors to provide formal classroom training of dispatchers are fundamentally different from the duties and skills of the ATU-represented dispatchers.
15. The employer's motive in creating the new operations instructor position was not solely economic.
16. The ATU requested bargaining of the employer-proposed work assigned to the new operations instructor.
17. The employer did not provide the ATU with an opportunity to bargain.

18. No ATU bargaining unit work has actually been performed by the new IAM-represented operations instructors.

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. Community Transit did not refuse to bargain with Amalgamated Transit Union, Local 1576, by "skimming" training work previously performed by ATU-represented employees to a new operations instructor position outside of the ATU bargaining unit, and did not violate RCW 41.56.140(4).

NOW, THEREFORE, it is

ORDERED

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

ISSUED at Olympia, Washington, this 29th day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


for PAUL T. SCHWENDIMAN, 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.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: S/ ROBBIE DUFFIELD

CASE NUMBER: 19775-U-05-05013 FILED: 09/08/2005 FILED BY: PARTY 2
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BAR UNIT: TRANSIT BUS
DETAILS: Skimming Training Work
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