City of Anacortes, Decision 6830-A (PECB, 2000)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

ANACORTES POLICE GUILD,	)	
	)	
Complainant,	)	CASE 13634-U-98-03336
	)	
vs.	)	DECISION 6830-A - PECB
	)	
CITY OF ANACORTES,	)	
	)	
Respondent.	)	DECISION OF COMMISSION
	)	
	)	

Cline and Associates, by James M. Cline, Attorney at Law, appeared on behalf of the union.

Summit Law Group, by Rodney B. Younker, Attorney at Law, appeared on behalf of the employer.

This case comes before the Commission on an appeal filed by Anacortes Police Guild, seeking to overturn the Findings of Fact, Conclusions of Law, and Order issued by Examiner Walter M. Stuteville.[1] We affirm.

BACKGROUND

The facts are fully detailed in the Examiner's decision. They are incorporated by reference here, and are only summarized here in relevant part.

The City of Anacortes (employer) operates a police department. Within the police department, the employer formerly operated an

[1] City of Anacortes, Decision 6830 (PECB, 1999).

emergency dispatch center, providing "traditional 911" services. The employer provided dispatch services to, and collected revenues from, some other public entities in Skagit County. The Anacortes dispatchers performed both "dispatch" and "records" functions. The Anacortes Police Guild (union) has been the exclusive bargaining representative of all employees of the Anacortes Police Department since 1989.

In 1991, the Washington State Legislature passed legislation requiring counties to implement district-wide, county-wide, or multi-county-wide enhanced 911 emergency communication systems (E-911) by December 31, 1998. See RCW 38.52.510. E-911 is a system that allows the person answering an emergency call to determine the location of the emergency immediately without the caller needing to speak. Notes to RCW 38.52.505.

Providing E-911 service requires more advanced equipment than is needed for traditional 911 service. Portions of the 1991 legislation were referred to the electorate under a ballot title of: "Shall enhanced 911 emergency telephone dialing be provided throughout the state and be funded by a tax on telephone lines". See RCW 38.52.510. The voters approved the ballot measure. Thus, the legislation authorized counties to collect a tax and obligated counties to apply that tax to E-911 systems. See RCW 38.52.510. The state also authorized the State Military Department, through the state E-911 coordinator, to provide funding. See RCW 38.52.540.

On June 23, 1997, the employer's human resources director sent a letter notifying the union of the transition to centralized dispatching. That letter stated that, with the planned establishment of a consolidated dispatch system, the employer would no

longer provide its own dispatch service. Although the employer asserted that it was not obligated to negotiate the decision to consolidate, it indicated that it would negotiate the effects of the decision, if the union desired.

On at least four occasions between June 23, 1997, and July 17, 1998, the employer issued written invitations for the union to bargain the effects of the decision to cease providing dispatch services. During this same period, the employer also sent at least two letters to all of the Anacortes dispatchers, offering to discuss the effects and to answer questions. Although the parties had several informal conversations following the receipt of some letters, the union did not respond directly to the employer's invitations to discuss the effects.

On April 13, 1998, various public entities signed an Interlocal Cooperation Agreement for a County-Wide Public Safety Communications Center. The purpose of the new Skagit Emergency Communications Center (SECOM) formed by that agreement was stated as:

> SECOM shall provide law enforcement, fire and emergency medical services [EMS] communications support to the signatories of this Agreement and to other contract agencies. SECOM shall provide services by radio and/or telephone....

Arrangements for the governance of SECOM were described in section 4 of the same document, as follows:

> SECOM To Be Managed By The Skagit County Emergency Management Council: SECOM shall be governed by the Skagit County Emergency Management Council, hereinafter referred to as the "Council", that is composed of the following elected officials: Mayor of Anacortes,

> Mayor of Burlington, Mayor of Concrete, Mayor or Hamilton, Mayor of LaConner, Mayor of Lyman, Mayor of Mount Vernon, Mayor of Sedro-Woolley, Board of County Commissioners per County Ordinance #8859 and Interlocal Agreement. The Council shall determine the specific services to be rendered and shall:
> - Approve policies and procedures related to the operation of SECOM.
> - Determine financial responsibility and participating agency costs.
> - Approve the SECOM budget.
> - Appoint/terminate the SECOM Director.

SECOM also provides emergency communications services for entities that are not members of the council, including communities or health service providers within Skagit County.

In a letter dated April 21, 1998, the employer gave the union notice of the transfer of 911 emergency dispatch duties to a central dispatch center located in Mt. Vernon. On April 28, 1998, the newly-appointed director of the SECOM center offered Anacortes dispatchers the opportunity to apply for positions at SECOM.

In May of 1998, Dispatcher Bradford Stavig became the interim president of the union. On May 31, 1998, Stavig sent a letter to the employer acknowledging that the employer was proposing to change the job descriptions, but asserting the union's contention that such a change was a mandatory subject of bargaining and that the effects were also a mandatory subject of bargaining.

On June 2, 1998, the employer responded that the change in job descriptions had been discussed with Stavig's predecessor in the early part of May, that it was expecting further input from the union, and that it was under the impression that the parties were currently bargaining. Therefore, the employer expected that

bargaining to continue. Stavig testified that he did not respond to the employer's letter and that he was not aware of anyone else responding to the letter either.

The Proceedings Below

On December 31, 1997, the union filed a complaint charging unfair labor practices, alleging the employer had interfered with employee rights in violation of RCW 41.56.140(1), and refused to bargain in violation of RCW 41.56.140(4). The union alleged that the decision to participate in a county-wide E-911 dispatch service that would replace the employer's current dispatch service constituted a mandatory subject of collective bargaining; that it had previously demanded that the employer enter into collective bargaining about any decision to participate in the county-wide dispatch service, as well as the effects of such a decision; and that the employer had refused to bargain with the union.

On April 8, 1998, Executive Director Marvin L. Schurke issued a deficiency notice stating that the allegations were insufficient to state a cause of action. The union was allowed 14 days to file an amended complaint. On April 21, 1998, the union filed an amended complaint which stated a cause of action. A preliminary ruling was issued on the complaint, as amended, and an Examiner was assigned.

Examiner Walter M. Stuteville held a hearing in this matter and, on September 27, 1999, issued a decision dismissing the complaint. The Examiner ruled that the employer's decision to participate in the creation of SECOM and to terminate its dispatch operation in favor of participation in the county-wide E-911 system was not a mandatory subject of collective bargaining and that, by its inaction, the union waived its bargaining rights with regard to the

effects of the transfer of dispatch functions. The Examiner ruled that the employer had not committed, and was not committing, any unfair labor practices under RCW 41.56.140(4) or (1) in connection with the transfer of dispatch functions to SECOM.

On October 13, 1999, the union filed an appeal, thus bringing the case before the Commission.

DISCUSSION

Duty to Bargain the Decision

The first issue presented on appeal is whether the employer had a duty to bargain with the union over the decision to participate in the SECOM agreement.

The union believes the Examiner erred by concluding that the employer had no obligation to bargain what it describes as a "contracting out" of dispatch services. It contends that the employer committed an unfair labor practice by refusing to negotiate the decision. The employer argues that it had no duty to bargain what it describes as a decision to "get out of the 911 business" and thus committed no unfair labor practice.

The Commission holds that the employer did not have a duty to bargain the decision. The employer's decision was a nonmandatory subject of bargaining because (1) the employer's decision affected the fundamental scope of services it provided, which is a matter within the employer's entrepreneurial control, and (2) state law made the employer's decision a practical necessity.

Mandatory v. Permissive Subjects of Collective Bargaining - Under RCW 41.56.030(4), a public employer has a duty to bargain "personnel matters, including wages, hours and working conditions." The determination as to when a duty to bargain exists is a question of law and fact for the Commission to decide. WAC 391-45-550.

In deciding whether a duty to bargain exists, there are two principal considerations: (1) the extent to which managerial action impacts upon the wages, hours, or working conditions of employees, and (2) the extent to which a managerial action is deemed to be an essential management prerogative. International Association of Fire Fighters, Local 1052 v. PERC (Richland), 113 Wn.2d 197, 200 (1989). The Supreme Court held in Richland that "[t]he scope of mandatory bargaining is limited to matters of direct concern to employees," and that "managerial decisions that only remotely affect 'personnel matters,' and decisions that are predominately 'managerial prerogatives,' are classified as nonmandatory subjects." Richland at 200. The scope of what issues must be bargained over should be decided on a case-by-case basis because that approach permits application of the balancing tests generally applied by courts and labor boards to such issues. Richland at 203. Where a subject both relates to conditions of employment and is a managerial prerogative, the focus of inquiry is to determine which of those characteristics predominates. Richland at 200.

The decision as to what service or product should be offered by an employer is generally accepted by the National Labor Relations Board (NLRB) and the various state labor boards as a prerogative of management and, as such, a nonmandatory subject of bargaining. See Federal Way School District, Decision 232-A (PECB, 1977), aff'd Federal Way Education Assn. v. PERC, WPERR CD-57 (King County Superior Court, 1978). On numerous occasions, the Commission has

recognized the right of public employers to make "entrepreneurial" decisions as nonmandatory subjects of bargaining. See, e.g., Wenatchee School District, Decision 3240-A (PECB, 1990); Snohomish County Fire District 1, Decision 6008-A (PECB, 1998).

The Decision to Go out of Business -

Relying on City of Kelso, Decision 2120-A (PECB, 1985) ("Kelso I"), the union argues that the employer contracted with SECOM to provide services, and that the decision to contract out bargaining unit work is a mandatory subject of bargaining. The union argues that the Examiner misapplied Kelso I and City of Kelso 2633-A (PECB, 1988) ("Kelso II"), and improperly applies the "Dubuque test".[2] The employer argues that the Examiner correctly concluded that the decision to get out of the 911 business is a nonmandatory subject of bargaining. The employer contends that the Examiner correctly applied Kelso I and Kelso II, and that the facts would still not give rise to a duty to bargain if the "Dubuque test" were applied.

Supreme Court precedent distinguishes between decisions to contract out bargaining unit work, which can be seen as mandatory, and decision to go-out-of-business, which are nonmandatory. Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203 (1964) is of assistance in distinguishing between the two. In that case, "contracting out" gave rise to a duty to bargain where the employer decided to have an independent contractor, instead of bargaining unit employees, perform maintenance work for the company. Fibreboard at 206. The Court found several factors significant.

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[2] Because the Commission is affirming the Examiner's result on the grounds that the employer's decision was entrepreneurial and a practical necessity, the Commission does not address the applicability of Dubuque Packing Co., 303 NLRB 386 (1991) aff'd 1 F.3d 24 (D.C. Cir. 1993).

- First, the Court found the employer's level of control and interaction with the new workforce significant. For example, the employer continued to supervise employees; assigned work to the contractor; furnished tools, supplies, and equipment to the contractor; and purchased its own tools, supplies, and equipment. Fibreboard at 207, 219.

- Second, the Court found the reason for the decision significant, where the employer's motivation was to reduce labor costs. Fibreboard at 213-14.

- Third, the Court found the fee arrangement significant, where the employer paid the contractor the costs of operation plus a fixed fee of $2,250 per month. See Fibreboard at 207, 219.

- Fourth, the Court found the effect on the basic operation of the company significant, where "[t]he maintenance work still had to be performed in the plant. No capital investment was contemplated; the Company merely replaced existing employees with those of an independent contractor to do the same work under similar conditions of employment." See Fibreboard at 213.

- Finally, the Court examined the effect bargaining would have on the employer's ability to manage the company. For example, a mandatory subject of bargaining was found where bargaining about the matter would not significantly abridge the employer's freedom to manage the business. Fibreboard at 213.

Applying those factors, the Court held that employer had contracted out work, and that contracting out work previously performed by members of an existing bargaining unit was a subject within the literal meaning of the phrase "terms and conditions of employment," so that bargaining was required. Fibreboard at 209-10.

The Court emphasized in Fibreboard that determining whether something is a term or condition of employment requires a case-by-case, fact-specific, analysis. Therefore, the Court did not hold that contracting out work previously performed by bargaining unit members was always a mandatory subject of collective bargaining. On the contrary, the Court specifically held that "[o]ur decision need not and does not encompass other forms of 'contracting out' or 'subcontracting' which arise daily in our complex economy." Fibreboard at 215. The terms "contracting out" and "subcontracting" have no precise meaning. Fibreboard at 215 n.8. Justice Stewart, in his concurrence, added that the decision in Fibreboard was a limited one. Fibreboard at 217. He stated that the Court did not decide that subcontracting decisions were as a general matter subject to the duty to bargain. Fibreboard at 218.

First National Maintenance Corp. v. NLRB, 452 U.S. 666, 107 L.R.R.M. 2705 (1981), is also of assistance in distinguishing between the decision to contract out and the decision to go-out-of business. In that case, the decision to shut down part of a business for economic reasons was found not to be a mandatory subject of bargaining. The Supreme Court held:

> We conclude that the harm likely to be done to an employer's need to operate freely in deciding whether to shut down part of its business purely for economic reasons outweighs the incremental benefit that might be gained through the union's participation in making the decision, and we hold that the decision itself is not part of ... "terms and conditions."

First National, 107 L.R.R.M. at 2713.

The Supreme Court found several factors significant:

- First, the Court found it particularly important that bargaining over this sort of decision would not advance the process of resolving conflicts between labor and management. See First National at 2710. For instance, in the case of a partial plant closure, the union's practical purpose in bargaining would be to seek to delay or halt the closing. First National at 2711. However, management's interest in whether it should discuss a decision of this kind is much more complex and varies with the particular circumstances. First National at 2711. "Management may ... face significant tax ... consequences that hinge on ... reorganization of the corporate structure. The publicity incident to the normal process of bargaining may injure the possibility of a successful transition or increase the economic damage of the business." First National at 2711.

- Second, the Court noted that the reason for the decision was significant. Labor costs were not a factor in an economic-based partial termination. See First National at 2706, 2712-13.

- Third, the Court found it significant to determine whether the union has any control over the cause of the decision. First National at 2706, 2712-13. In First National, the union had no control over the amount a third party was willing to pay the employer for its services. First National at 2706, 2712-13.

- Lastly, the Court did not believe that the absence of significant investment or withdrawal of capital was crucial. That employer decided to halt work at a specific location, representing a significant change operations. First National at 2706, 2712-13.

Thus, based on the holdings of the Supreme Court of the United States in Fibreboard and First National, it is clear that an employer may have to bargain over the decision to contract out, but does not have to bargain where it decides to shut down part of its business for entrepreneurial reasons.

Commission precedent also helps explain the distinction between contracting out and going out of business.

In Kelso I, the employer entered into a terminable-at-will agreement contracting out for fire protection services from a neighboring fire district, but **continued to maintain control over the work performed.** That employer paid the neighboring fire district an amount roughly equivalent to the amount it had budgeted for fire suppression services during the previous year. The Commission characterized this as one group of workers being substituted for another to perform the same tasks. The employer maintained legal rights and responsibilities for the maintenance of those services, and thus had not truly "gone out of business", so the Commission held that employer committed an unfair labor practice by failing to bargain.

In Kelso II, the employer annexed itself to the neighboring fire district and **did not continue to maintain control.** Because the fire district took over control of the funding (by gaining the authority to collect taxes) as well as legal rights and responsibilities for the maintenance of the services, the annexation fundamentally changed the scope and direction of the enterprise. The Commission found it significant that the employer decided to relieve itself of any legal involvement whatsoever in the services it had formerly provided, and ruled that such a "go-out-of-business" decision was basic to the entrepreneurial nature of the employer and was not a mandatory subject of bargaining. See also Federal Way School District, supra.

The Commission applies the "right-of-control test" to determine whether an entity is to be considered an "employer". Snohomish County Fire District 1, Decision 6008-A (PECB, 1998). This decision examines the amount and extent of control the entity exerts over the final position on subjects of bargaining. "It is only such retained control as would be equal to a veto power, or a final say, that would trigger sufficient control to ... target the public entity as the true employer." Snohomish County Fire District 1, supra, citations omitted. See also, e.g., Tacoma School District, Decision 3314-A (PECB, 1990) [ability to set minimum wage and benefit levels and a right to require an employee's dismissal were found to be insufficient indicia of control to deem the entity an employer].

An employer does not "maintain control" over a cooperative agency merely by having a representative on the agency's board. In Snohomish County Fire District 1, supra, the employer was a member of the cooperative, but was held not to be the employer where its influence was limited: The governing board was made up of one representative from each jurisdiction; committees functioned as typical committees and made recommendations to the board; management of paramedics was controlled by a pyramid structure reporting to the director of the cooperative; the paramedic manager had no special allegiance to Fire District 1; the board determined wages, hours, and working conditions; the board had the final say over grievances; and the director handled disciplinary actions. The union argued that Fire District 1 contributed a large percentage of the cooperative's budget, but the Commission stated that the source of funds does not equate with the right to control.

The case at hand is more similar to Kelso II than to Kelso I, because this employer does not maintain control over E-911 services

at SECOM. Thus, the Commission finds that the employer was getting out of the 911 business and did not need to bargain over its decision. The Commission finds it significant that (1) the employer does not run SECOM; rather it is one of nine entities that signed the interlocal agreement to form SECOM, and SECOM is an independent operation with nine entities making up the governing council of the new agency; (2) the employer has retained no control over the wages, hours, or working conditions at the new agency, or over its personnel policies, except as a member of the governing council; (3) SECOM has assumed responsibility for answering and dispatching emergency services in Skagit County, and is liable for the quality of those services.[3] SECOM has assumed responsibly for determining the financial responsibility and participating agency costs, approving the SECOM budget, appointing and terminating the SECOM director, records access, and maintaining liability and casualty insurance policies as the council sees fit.

For additional reasons, the case at hand is more similar to Kelso II than to Kelso I. The employer contributes a share of operating SECOM along with other public entities and Skagit County, and E-911 legislation designated the county as the entity responsible for collecting the E-911 tax to fund the system. SECOM uses its own new facility that it built in Mount Vernon, its own equipment, and its own employees. While work performed at the new center is similar to work formerly performed at the Anacortes center, the work is not the same: (1) SECOM requires everyone to rotate through all positions; (2) SECOM requires all dispatchers to dispatch all

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[3] While the Examiner concluded that SECOM assumed full responsibility for dispatch services and had full liability for the quality of those services, a decision as to SECOM's level of liability is beyond the scope of this decision. RCW 38.52.180 sets forth liability, immunity, and indemnification for various entities.

three disciplines: police, fire, and emergency medical; (3) SECOM provides dispatchers with specialized training, such as over-the-phone instruction on CPR; and (4) SECOM dispatchers do not have to handle walk-in visitors or records responsibilities.

We agree with the Examiner that the theoretical possibility of the employer withdrawing from SECOM is not a sufficient basis for finding the employer had a duty to bargain the decision to join SECOM. By the terms of the interlocal agreement, the employer would need to give a minimum of six months notice to terminate the SECOM contract. Compare Snohomish County Fire District 1, supra, [decision to withdraw from a cooperative was a nonmandatory subject of bargaining, where a minimum of six months notice was required]. To meet the requirements of the state law, however, an employer withdrawing from SECOM would have to overcome the technological, capital investment, and financial hurdles discussed below. Thus, the Commission agrees with the Examiner that the possibility of the employer withdrawing from SECOM is so remote as to be a practical nullity.

In deciding to move from an independent system utilizing obsolete technology to a county-wide, centralized system utilizing state-of-the-art technology, the employer made an entrepreneurial decision beyond the scope of mandatory collective bargaining. The issue went beyond the "personnel matters" which are of direct concern to employees. See Richland. The employer did not commit an unfair labor practice when it refused to bargain with this union concerning its decision to join SECOM.

The E-911 Legislation -

The union contends that state law does not mandate centralized dispatch centers, only centralized call receiving centers, and that

the Examiner's conclusion that the disputed "decision ... was largely, if not entirely, forced" upon the employer is misplaced. It argues that no reason exists why the dispatching could not be done by the employer in Anacortes as a ring-down center (RDC) after callers are identified and located with E-911 technology in Mt. Vernon. It points out that local governments are specifically allowed by the state regulations to adopt a system involving off-site primary call answering (PSAP) and legislation allowed grants for local governments to operate independent dispatch centers.

The employer argues that the Examiner correctly determined that there was no obligation to bargain the employer's decision, because the requirements of Chapter 38.52 RCW and its related regulations effectively dictated the result. The employer contends that, while the union's argument that neither the statutes nor the regulations require that call dispatching be consolidated with call answering may be true as a matter of law, it is false as a matter of fact.

We do not agree with the Examiner that the decision in this case was preempted, but we do agree that the disputed decision, as a practical matter, was forced upon this employer and other local government entities by legislative action and the state-wide vote of the people. Under RCW 38.52.540 and WAC 365-300-040, counties were the only state jurisdictions eligible to receive funds from the E-911 account, a state treasury account. Under WAC 365-300-070(2), funding priority was given to those counties proposing to develop consolidated or regional E-911 systems.

Under the State E-911 Office Policy On Funding Radio Systems, the state considered requests for funding of radio system upgrades when such requests were part of a consolidated or regionalized E-911 system, and when the upgrade was essential to implementation of E-

911. In considering such requests, the state looked for the most cost-effective solution to the stated problem. In this same document, the state office gave examples of projects that would be favorably considered. The first example is a county that consolidates its call-answering/dispatch functions into a single PSAP site in conjunction with implementing E-911. The stated rationale is that the state has encouraged consolidation and regionalization wherever possible, because it contributes to cost-effective dispatch operations in the long run.

The state used financing to encourage counties to consolidate E-911 call-answering and dispatching services into a single PSAP. Testimony was given that if a county did not consolidate, the state would only fund the absolute minimum of equipment, i.e., it would provide equipment that displayed caller information. If a public entity chooses to leave SECOM, all of the equipment would revert to the county. The state would only assist counties in upgrading computer-aided dispatch systems and radio systems if it was consolidated, otherwise upgrading was a local responsibility. It was not the intent of the state to supplant local government responsibility for providing radio communications. However, the state agreed to subsidize upgrades because it recognized that consolidation is good government: Efficiencies are achieved and delays in the call-answering and transferring process could be removed. Thus, the employer had great economic incentives to join SECOM. Skagit County received the second largest grant among the 39 counties in the state: $3.5 million cumulative. It received money to build a facility in Mount Vernon. It also received money for radio system upgrades for various agencies so they could communicate with each other; a microwave system to tie the E-911 center to police, fire, and EMS stations; state-of-the-art

telephone equipment; a computer-aided dispatch system; radio consoles; computers; and database development.

Secondly, the disputed decision was based on economic and service reasons, and the effects of the decision were secondary. For example, the employer's decision to participate in SECOM had various quality of service implications including: the ability to have the most modern, updated equipment; a large employee pool; flexibility in scheduling; and less fragmented training.

Thirdly, if this employer decided to maintain its own dispatch center it may have had a greatly reduced customer base. Agencies that had previously contracted with this employer for dispatch services (and were a source of income covering part of the costs for the employer's "traditional 911" dispatch center) either became participants in SECOM or were contracting with SECOM for dispatch services. Testimony was given that the employer would have had to make a large capital outlay to maintain those agencies as customers at a level of service comparable to SECOM services.

Legislation mandating consolidated call-answering functions and encouraging consolidated dispatching functions makes the employer's decision in the instant case more like a decision to "go out of business", than like a decision to contract out bargaining unit work. This is because the employer chose to fundamentally change the scope and direction of its business by taking advantage of the large capital investment offered by the state and county. Additionally, because voters approved the legislation, bargaining over the employer's decision may not have advanced the neutral process of resolving conflicts and may have caused long-term economic loss to public entities within the county. The employer made the decision to get out of the E-911 business based on the

convergence of financial and logistical realities. We believe these realities made the employer's decision a practical necessity.

Duty to Bargain the Effects of the Decision

The second issue presented on appeal is whether the employer refused to bargain the effects of its decision to participate in the SECOM agreement. The Commission holds that the union waived its right to bargain through its inaction.

Both parties acknowledge the need to bargain over the effects upon the wages, hours, and working conditions of the retained employees, and we agree with them on this point. The effects of a fundamentally managerial decision, including the effects of the decision to seek annexation, are unquestionably a mandatory subject of bargaining. See Kelso II, supra; First National at 2711. The case now before the Commission arises from such a nonmandatory decision, i.e., a decision to go out of business, which includes matters of job security. Thus, the employer had a duty to bargain the effects of the decision to go out of business.

The union argues that the employer committed an unfair labor practice by refusing to negotiate, on a timely basis, impacts of the decision to contract out dispatch work. The union argues that it did not waive its right to bargain the impacts of the decision, because it claims the employer failed to provide it with meaningful opportunities to meet and negotiate the effects of the expected transition. The employer contends that it offered to bargain the effects of its decision on numerous occasions, but that the union waived its right to bargain through its inaction. The employer contends that (1) the union never requested a meeting to bargain the impacts of the employer's decision, (2) the union has never

made a proposal for an impact it wished to bargain, and (3) the employer never refused the union the opportunity to discuss any impact that could be identified or predicted.

The collective bargaining process is activated by one party notifying the other party of its desire to alter or amend a contractual provision or an existing practice. Newport School District, Decision 2153 (PECB, 1985). A party may waive its bargaining rights, however:

> When given notice of a contemplated change affecting a mandatory subject of bargaining, a union which desires to influence the employer's decision must make a timely request for bargaining. The Commission does not find waivers by inaction lightly, but a "waiver by inaction" defense asserted by an employer will likely be sustained if the union fails to request bargaining, or fails to make timely proposals for the employer to consider. ...
>
> ...[F]iling ... an unfair labor practice charge is [not] a sufficient demand for bargaining ....

Lake Washington Technical College, Decision 4721-A (PECB, 1995).

Spokane County, Decision 2377 (PECB, 1986), is instructive here even though it deals with waiver of the right to bargain over the decision to contract out bargaining unit work. In that case, the union was given notice and responded the same day with a specific statement, but then failed to take affirmative action after its initial demand until it filed an unfair labor practices complaint. The Commission ruled that, through its inaction, the union waived its right to bargain. See, also, Seattle School District, Decision 5755-A (PECB, 1998).

In this case, the union filed its original complaint on December 31, 1997. Therefore, whatever facts form the basis for the union's allegations should have occurred prior to December 31, 1997. As early as 1995, the employer notified the union that it had begun the process of consolidation. The employer formally notified the union of the transition to a consolidated center on June 23, 1997. On at least seven occasions over a 12-month period from June 23, 1997 to July 17, 1998, the employer issued written invitations to bargain the effects of the transfer of functions from the employer's police department to the new consolidated dispatch center. The employer thus gave the union over a year to raise any impacts the union wished to bargain.

Although the parties had some general discussions about the consolidation during the time period from 1995 up to July of 1998, the union never responded directly to the employer's invitations to discuss the effects, and never made any proposal to address any impacts of consolidation.[4] See Wenatchee School District, supra [no refusal to bargain occurred where union did not request to bargain effects in a clear and coherent manner, and employer did not "ferret out" the effects proposals]. As the Examiner in this case stated, "[i]t is difficult to understand what else the City was supposed to do to fulfill its [effects] bargaining obligation."

The union argues that it did not formally respond because it was not provided with enough information to make bargaining meaningful. The union offered testimony that information was not provided to it as to both the decision and the effects, but that does not justify the union's lack of response.

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[4] Testimony was given that the union only made written proposals as part of settlement negotiations in November of 1998.

First, because the employer was not running the new center, it was not the entity in control of information related to conditions at the new facility. The employer explicitly told the union that it could only bargain regarding the remaining employees, and that it could not bargain the conditions at the new facility.

Second, although not all effects could have been bargained meaningfully until the details of consolidation became clear, the evidence shows that the union had sufficient information for there to have been meaningful opportunities to meet, to make proposals, and to negotiate at least some of the effects. Stavig testified that the employer had given him all of the minutes of the emergency council meetings from June of 1995 until November of 1997 and that the employer was answering all of Stavig's questions to the best of its ability. The employer had given the union notice in November of 1995, that there was a plan for a centralized dispatch center and that some changes might potentially result. In May of 1997, the employer sent a letter to the union suggesting that vacant dispatch positions be filed on a temporary basis, in view of the planning for the consolidated dispatch center. In November of 1997, both the employer and union attended and received information at a meeting of the Skagit Emergency Management Council, the group responsible for forming SECOM. While Catlin testified that some impacts could not be known until the new entity was created, he admitted that some impacts, and particularly those involving people who would be retained by the City of Anacortes, were known. Finally, the correspondence shows that the employer was answering questions and providing information.

As the Examiner stated, one of the purposes of negotiating effects is to exchange information. In this case, the employer properly notified the union of the transition to the centralized dispatch system. For a year or more, it provided the union with what

amounted to a standing invitation to come and bargain effects. Therefore, the union needed to request a meeting to discuss issues and discover what additional information would be relevant. Instead, the testimony indicates that the union had made no effort to bargain up to the time the complaint was filed; it sat and waited both before and after its complaint was filed. The union cannot now put the onus on the employer by claiming that the employer was not forthcoming with information.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact, Conclusions of Law and Order issued by Examiner Walter M. Stuteville in the above-captioned matter on September 27, 1999, are AFFIRMED and adopted as the Findings of Fact, Conclusions of Law and Order of the Commission.

Issued at Olympia, Washington, on the 5th day of July, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

JOSEPH W. DUFFY, Commissioner