

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KITSAP COUNTY DEPUTY SHERIFF'S)	
GUILD,)	
)	
Complainant,)	CASE 17583-U-03-4547
)	
vs.)	DECISION 8402-B - PECB
)	
KITSAP COUNTY,)	
)	
Respondent.)	DECISION OF COMMISSION
)	
)	

Cline and Associates, by Christopher J. Casillas, Attorney at Law, for the union.

Russell D. Hauge, Prosecuting Attorney, by John S. Dolese, Senior Deputy Prosecuting Attorney, for the employer.

This case comes before the Commission on a timely appeal filed by Kitsap County (employer) seeking to overturn certain Findings of Fact, Conclusions of Law, and Order issued by Examiner Robin Romeo.¹ The Kitsap County Deputy Sheriff's Guild (union) filed a timely cross-appeal seeking to overturn certain other Findings of Fact, Conclusions of Law, and Order of that decision.

ISSUE PRESENTED

The sole issue before this Commission is whether or not the employer committed an unfair labor practice when it implemented an Absence Control Tracking System (ACTS) to monitor employee sick

¹ Kitsap County, Decision 8405-A (PECB, 2005).

leave without notifying the union of either its decision to implement the system or provide the union with an opportunity to bargain either the decision or the effects of its decision to implement the ACTS software.

For the reasons set forth below, we affirm the Examiner's decision that use of the ACTS software was an entrepreneurial decision that did not require bargaining. The record before this Commission demonstrates that the decision to implement the ACTS software was a managerial prerogative. We reverse the Examiner's decision finding the employer was required to bargain the effects of the decision to implement the ACTS software. Implementation of the ACTS software was not only a managerial right, but the record demonstrates adoption of the ACTS software was a technological change brought about to make the employer's operation more efficient, and use of the software did not change any existing employer policy and had no additional impact on terms and conditions of employment.

STANDARD OF REVIEW

This Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-Tran*, Decision 7088-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Renton Technical College*, Decision 7441-A (CCOL, 2002). The Commission attaches considerable weight to the factual findings and inferences, including credibil-

ity determinations, made by its examiners. Cowlitz County, Decision 7210-A (PECB, 2001).

ANALYSIS

Applicable Legal Standard

The Public Employees' Collective Bargaining Act imposes a duty to bargain on mandatory subjects of bargaining. 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. Where an unfair labor practice is alleged, the complainant has the burden of proof.

The potential subjects for bargaining between an employer and union are commonly divided into "mandatory" and "permissive" categories:

- Matters affecting employee "wages, hours, and working conditions" mentioned in RCW 41.56.030(4) are the mandatory subjects of bargaining. See *NLRB v. Wooster Division of Borg-Warner*, 356 U.S. 342 (1958), cited in *Federal Way School District*, Decision 232-A (EDUC, 1977).
- Permissive subjects are matters considered to be remote from employee wages, hours, and working conditions, including matters which are regarded as prerogatives of employers or of unions. See *Federal Way School District*, Decision 232-A; *Renton School District*, Decision 706 (EDUC, 1979).

In determining whether a particular matter is a mandatory subject of collective bargaining, the Commission initially determines whether such a matter directly impacts the wages, hours, or working conditions of bargaining unit employees. *Lower Snoqualmie Valley School District*, Decision 1602 (EDUC, 1983). Where a subject does

not directly affect employee wages, hours, or working conditions, the employer's need for entrepreneurial judgment must be weighed against the employees' interest in their terms and conditions of employment. *IAFF Local 1052 v. PERC (City of Richland)*, 113 Wn.2d 197 (1989) (mandatory bargaining subjects are limited to matters of direct concern to employees). Managerial decisions that only remotely affect terms and conditions of employment, and decisions that are predominantly "managerial prerogatives," are classified as permissive subjects. *IAFF Local 1052 v. PERC (City of Richland)*, 113 Wn.2d 197, 200. While management decisions concerning permissive subjects need not be bargained to impasse, the impacts/effects of such decisions on employee wages, hours, and working conditions are still "mandatory" subjects. See *Gray Harbor County*, Decision 8043-A (PECB, 2004). Finally, it is well established that the duty to bargain mandatory subjects includes a duty to give notice and provide opportunity for good faith bargaining prior to implementing any change of past practices concerning the wages, hours, or working conditions of bargaining unit employees. RCW 41.56.030(4); *Municipality of Metropolitan Seattle*, Decision 2746-B (PECB, 1990).

For example, in *King County Fire District 16*, Decision 3714 (PECB, 1991), the employer implemented a policy requiring all fire fighters to be certified in the use of automatic defibrillators. The union did not dispute that the employer had the authority to implement the use of automatic defibrillation. Rather, the union argued that because employees were required to be certified in the use of the new equipment, and the defibrillation machines recorded employee performance that could later be the subject of an evaluation, implementation of the program significantly impacted employee terms and conditions of employment and was therefore a mandatory subject of bargaining. The examiner in that case

disagreed, and concluded that the employer was not obligated to bargain the decision to implement the automatic defribillation program. The examiner balanced the relevant interests of both the employer and the employees and found that the employer's interest in providing life-saving services to the public served by the employer predominated the employees' interests. Thus, the employer was only obligated to bargain the impacts that the automatic defibrillation equipment program may have had on employee terms and conditions of employment.

Application of Standard

In this case, the primary purpose of the ACTS software is to track employee leave. Thus, by itself, the ACTS software does not affect employee wages, hours, and working conditions. The tracking of employee leave is an action that supervisory employees previously performed manually and, as the Examiner noted in her decision, the union freely admits this fact. We therefore agree with the Examiner's findings and conclusions with regard to the basic purpose of the ACTS software.

Furthermore, with respect to the manner and presentation of employee sick leave, this record also demonstrates that the employer's utilization of the ACTS software, rather than the prior system, did not have a meaningful impact on employee wages, hours, and working conditions. While the ACTS software is not the official record of an employee's leave usage, it is a tool that permits supervisors to record employee leave use. Little difference exists between the manual and automatic methods in storing and presenting employee sick leave.

We therefore affirm the Examiner's decision with respect to implementation of the ACTS software as an accounting device utilized by supervisors for recording employee sick leave. It was

a permissive subject of bargaining and the employer was not obligated to inform the union of its intent to utilize the software.²

Effects Bargaining

Although we conclude that the employer was not obligated to bargain over the decision to implement the ACTS software, it may still have an obligation to bargain over the effects that implementation has on mandatory subjects of bargaining. It is well settled that the bargaining obligation is applicable to a decision on a mandatory subject of bargaining and the effects of that decision, but will only be applicable to the effects of a managerial decision on a permissive subject of bargaining. *Skagit County*, Decision 6348 (PECB, 1998); *City of Kelso*, Decision 2120 (PECB, 1985) (both the decision to contract out bargaining unit work and its effects on the employees are mandatory subjects of bargaining); *City of Kelso*, Decision 2633 (PECB, 1988) (decision to merge operation with another employer is an entrepreneurial decision, and only the effects of that decision on employee wages, hours, and working conditions are mandatory subjects of bargaining).

The threshold question that we must answer here is whether the ACTS program is a technological change in the method of collecting and managing data, and whether that change altered the existing sick leave policy. The employer argues that the ACTS software has no impact on employee wages, hours, and working conditions and is simply a reiteration of a manual tracking program, and the Examiner committed reversible error when she found that the employer was required to bargain the effects of the ACTS software. We agree.

² We also note that the management rights provision of the parties' collective bargaining agreement grants the employer "the right to . . . make technological changes."

For example, in *Rust Craft Broadcasting*, 225 NLRB 327 (1976), an employer altered its existing policy of having employees manually enter the time they arrived and left work to one where the employees used a time clock to punch in and out of work. The employer argued that employees had developed a habit of simply writing their hours of work on their time card, rather than making an actual accounting of their work hours. The NLRB found that while the employer may have been "lax in its recording practices, absent discrimination, an employer is free to choose more dependable methods for enforcing workplace rules." Thus, even though the employer utilized technology to more closely track employee hours, the technology itself was simply a tool to more efficiently monitor and enforce existing employer policies.

In this case, it is clear that the ACTS program reiterates an existing policy, namely the recording of employee sick leave. While the ACTS program may flag *potential* violators of the employer's sick leave policy, the supervisor must still conduct a manual investigation to determine if the employee is, in fact, violating the existing sick leave policy³ as defined by the employer's work policies and the parties' collective bargaining agreement.⁴ The technological innovation had little if any impact on the terms and conditions of employment, and implementation of the ACTS program did not change any existing employer policy regarding employee use of sick leave.

NOW, THEREFORE, the Commission makes the following:

³ Exhibit 16.

⁴ See article 2, section C, of the 2000-2002 collective bargaining agreement.

FINDINGS OF FACT

The Findings of Fact issued by Examiner Robin Romeo are AFFIRMED and adopted as the Findings of Fact of the Commission.

AMENDED CONCLUSIONS OF LAW

The Conclusions of Law issued by Examiner Robin Romeo are AFFIRMED and adopted as the Conclusions of Law of the Commission, except Paragraph 3, which is amended to read:

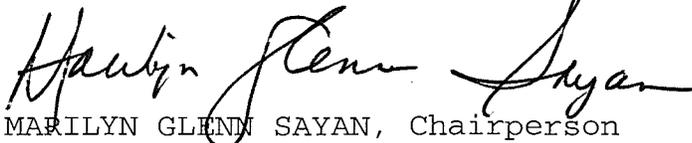
3. The failure to bargain the effect of ACTS was not a violation of the employer's obligation to bargain under RCW 41.56.140(4).

AMENDED ORDER

The complaint filed by the Kitsap County Deputy Sheriffs' Guild in the above-captioned matter is DISMISSED on its merits.

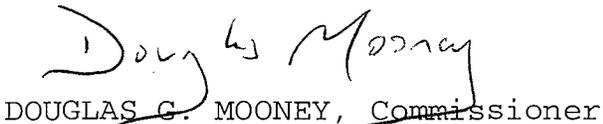
Issued at Olympia, Washington, the 9th day of May, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson



PAMELA G. BRADBURN, Commissioner


DOUGLAS G. MOONEY, Commissioner