

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF)	
FIRE FIGHTERS, LOCAL 3062,)	
)	
Complainant,)	CASE 17414-U-03-4514
)	
vs.)	DECISION 9236-A - PECB
)	
KING COUNTY FIRE DISTRICT 43,)	
)	
Respondent.)	DECISION OF COMMISSION
)	
)	

Webster, Mrak & Blumberg, by *James H. Webster*, Attorney at Law, and *Lynn D. Weir*, Attorney at Law, for the union.

Perkins Coie, L.L.P., by *Donald W. Heyrich*, Attorney at Law, for the employer.

This case comes before the Commission on a timely appeal filed by the International Association of Fire Fighters, Local 3062 (union) seeking to overturn specific Findings of Fact, Conclusions of Law, and an Order issued by Examiner Sally B. Carpenter dismissing a portion of its complaint.¹ King County Fire District 43 (employer) supports the Examiner's decision.

The Examiner found the employer committed an unfair labor practice when it unilaterally placed limitations on the scheduling of Kelly days. The employer did not appeal that decision. The Examiner dismissed the union's allegation that the employer unilaterally transferred bargaining unit work and assigned other duties to bargaining unit members. The union did not appeal the Examiner's decision to dismiss these allegations.

¹ *King County Fire District 43, Decision 9236 (PECB, 2006).*

ISSUE PRESENTED

The only issue before this Commission is whether the employer had an obligation to bargain the effects of its decision to expand its Basic Life Support (BLS) operation.

For the reasons set forth below, we reverse the Examiner's decision that the employer was not obligated to bargain the effects that the decision to expand the employer's BLS services operation had on employees. The methodology applied by the Examiner in determining whether the change had any impact on bargaining unit employees was flawed because of the inclusion of non-bargaining unit employees in that analysis. By including non-bargaining unit employees in the analysis, the Examiner skewed the actual impacts that the change had on that bargaining unit. We find that the employer's expansion of service did have a meaningful impact on employee 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 credibility determinations, made by its examiners. *Cowlitz County*, Decision 7210-A (PECB, 2001).

ANALYSISEffects Bargaining

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). 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*, 113 Wn.2d 197, 200.

While management decisions concerning permissive subjects need not be bargained to impasse, an employer still may have an obligation to bargain the impacts/effects that such decision has on employee wages, hours, and working conditions. *See Grays Harbor County*, Decision 8043-A (PECB, 2004).

Application of Effects Bargaining Standard

Neither party disputes that the employer is free to make an entrepreneurial decision regarding the level of services that it provides. Furthermore, neither party disputes that the union made a timely, unambiguous request for effects bargaining.² Thus, the only question we must answer is whether the employer's decision to increase the BLS service had an impact on the terms and conditions of employment.

² Exhibit 10. The obligations of the union and employer to communicate about matters of mutual interest include the employer's responsibility to mention proposed entrepreneurial decisions that are likely to impact mandatory subjects and the union's responsibility to specifically request effects bargaining.

The Examiner found that the evidence on the record demonstrated that there were approximately 30 BLS transports in 2002. Following the announced increase in service, the Examiner found that in 2003 the number of BLS transports increased to 140. However, the Examiner determined that although the increase in BLS transports was significant, it was spread out over the employer's workforce. When a union who represents a bargaining unit of an employer's workforce alleges that a unilateral change has occurred, that allegation is specific only to the bargaining unit, and if the union is successful in prosecuting its complaint, only bargaining unit employees are eligible for the remedy. Employees who are not represented by the complaining union are not the beneficiary of any remedy crafted by this Commission. Thus, we find that although the record supports the Examiner's findings that the number of BLS transports increased from 30 to 140 following the employer's decision, she incorrectly included non-bargaining unit employees when she made her ultimate decision regarding the impact on bargaining unit employees.

We find that the increase in BLS transport service represents a substantial impact upon the terms and conditions of employment. First, the increase in BLS transport runs from 30 to 140 by itself represents a significant increase in workload. Second, the record does not support a finding that the increase in workload is spread evenly between bargaining unit members and excluded or non-bargaining unit volunteer fire fighters. Assistant Chief Brad Doerflinger testified that, in many instances, the volunteer fire fighters augment the existing bargaining unit workforce. Thus, it cannot be said that the number of BLS transport runs made by bargaining unit employees did not dramatically increase so as to preclude effects bargaining.

NOW, THEREFORE, the Commission makes the following:

FINDINGS OF FACT

The Findings of Fact issued by Examiner Sally B. Carpenter are AFFIRMED and adopted as the Findings of Fact of the Commission.

AMENDED CONCLUSIONS OF LAW

The Conclusions of Law issued by Examiner Sally B. Carpenter are AFFIRMED and adopted as the Conclusions of Law of the Commission, except paragraph 3, which is amended as follows:

3. Based upon Findings of Fact 7 and 8, the employer did not commit an unfair labor practice in violation of RCW 41.56.140(4) by its decision to provide emergency medical transport to members of the general public under certain conditions. The extent to which the employer provides emergency transportation to the public is a decision within its entrepreneurial prerogative. The union carried its burden of proof that the increase in basic life support transports had a substantive impact on wages, hours, or working conditions. Thus, the employer had a duty to bargain the effects of its decision.

AMENDED ORDER

The Order issued by Examiner Sally B. Carpenter is AMENDED as follows:

1. CEASE AND DESIST from:
 - a. Unilaterally implementing changes in Kelly day scheduling decreasing fire fighters' the opportunity to reschedule

Kelly days, and refusing to bargain with the International Association of Fire Fighters, Local 3062.

- b. Refusing to bargain with the International Association of Fire Fighters, Local 3062, regarding the effects that the decision to expand basic life support transports has on mandatory subjects of bargaining.
 - c. In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights secured by the laws of the State of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effect the purposes and policies of Chapter 41.56 RCW:
- a. Return the Kelly day scheduling system to that existing on January 9, 2003, and bargain, upon request by the union, any proposed decision to change the system and all effects of said decision.
 - b. Upon request, bargain with the International Association of Fire Fighters, Local 3062, the effects that the decision to expand basic life support transports has on mandatory subjects of bargaining.
 - c. Post, in conspicuous places on the employer's premises where notices to all bargaining unit employees are usually posted, copies of the notice attached hereto and marked "Appendix." Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to


ensure that such notices are not removed, altered, defaced, or covered by other material.

- d. Read the notice attached and marked "Appendix" aloud at the next public meeting of the board of commissioners of King County Fire District 43 and append a copy thereof to the official minutes of said meeting.
- e. Notify the union, in writing, within 20 days following the date of this Order, as to what steps have been taken to comply with this Order, and at the same time provide the complainant with a signed copy of the notice required by the preceding paragraph.
- f. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this Order, as to what steps have been taken to comply with this Order, and at the same time provide the Executive Director with a signed copy of the notice required by this Order.

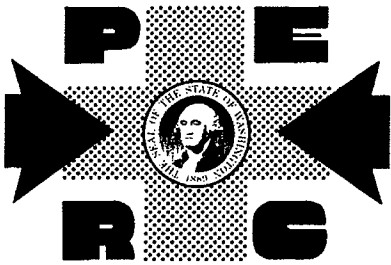
Issued at Olympia, Washington, the 11th day of July, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


MARILYN GLENN SAYAN, Chairperson


PAMELA G. BRADBURN, Commissioner


DOUGLAS G. MOONEY, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY refused to bargain in good faith the impacts of our decision to increase basic life support services.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL, upon request, bargain in good faith with the International Association of Fire Fighters, Local 3062, the impacts or effects of our decision to increase basic life support services.

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

DATED: _____

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

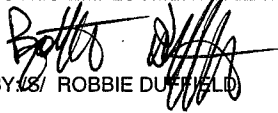
112 HENRY STREET NE
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OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
DOUGLAS G. MOONEY, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 07/11/2007

The attached document identified as: **DECISION 9236-A - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: /s/ ROBBIE DUFFIELD

CASE NUMBER: 17414-U-03-04514 FILED: 04/07/2003 FILED BY: PARTY 2

DISPUTE: ER UNILATERAL

BAR UNIT: FIREFIGHTERS

DETAILS: -

COMMENTS:

EMPLOYER: KING FIRE DIST 43
ATTN: TIMOTHY LEMON
MAPLE VALLEY FIRE
23775 SE 264TH ST
MAPLE VALLEY, WA 98038
Ph1: 206-296-4343 Ph2: 425-432-0200

REP BY: DONALD HEYRICH F/R
PERKINS COIE
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BELLEVUE, WA 98004-5579
Ph1: 425-635-1410 Ph2: 425-635-1400

PARTY 2: IAFF LOCAL 3062
ATTN: PHILIP KNOWLES
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Ph1: 206-296-4343 Ph2: 253-334-2914

REP BY: JAMES H WEBSTER
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