STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY CORRECTIONS GUILD,	)	
	)	
Complainant,	)	CASE 20302-U-06-5170
	)	
vs.	)	DECISION 9770 - PECB
	)	
SNOHOMISH COUNTY,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Respondent.	)	AND ORDER
	)	

Cline & Associates, by *Aaron Jeide*, Attorney at Law, for the union.

Janice E. Ellis, Prosecuting Attorney, by *Steven J. Bladek*, Deputy Prosecuting Attorney, for the employer.

On March 29, 2006, Snohomish County Corrections Guild (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission under Chapter 391-45 WAC, which named Snohomish County (employer) as respondent. The employer operates a correctional facility and the union is the exclusive bargaining representative of the employees who work in that facility. The employees in the bargaining unit had been covered under a collective bargaining agreement that expired on December 31, 2004. At the time of the hearing, the parties had not concluded negotiations for a first collective bargaining agreement and had requested interest arbitration to adjudicate contractual dispositions on which the parties could not agree. The controversies concern alleged unilateral changes in working conditions without affording the union an opportunity to bargain.

Agency staff reviewed the complaint under WAC 391-45-110 and issued a preliminary ruling, finding that a cause of action existed under

RCW 41.56.140(1). Examiner Carlos R. Carrión-Crespo held a hearing on the case on October 3 and 4, 2006, and November 7, 14, 15, 16 and 17, 2006. The parties submitted post-hearing briefs.

ISSUES PRESENTED

1. Did the employer change the working conditions of employees without affording the union an opportunity to bargain when it increased the number of inmates that employees supervise during other employees' rest breaks?

2. Did the employer change the working conditions of employees without affording the union an opportunity to bargain when it refrained from assigning Michael Smith work as field training officer pending the result of an internal investigation?

3. Did the employer change the working conditions of employees without affording the union an opportunity to bargain when it did not relieve John Rogers before he worked 18 straight hours?

4. Did the employer change the working conditions of employees without affording the union an opportunity to bargain when it did not provide rest breaks for employees in hospital transport duty?

5. Did the employer change the working conditions of employees without affording the union an opportunity to bargain when it prorated the sick leave accrual for employees who went on leave without pay?

On the basis of the record presented as a whole, the Examiner holds that the union showed that the employer unilaterally changed

working conditions regarding the use of changed the procedure to operate doors that connect the modules. The union did not show that the employer changed working conditions unilaterally in the other four instances described in the complaint.

ANALYSIS

Legal Principles Regarding Unilateral Changes in Working Conditions

In a complaint alleging a unilateral change in a mandatory subject of bargaining, the complainant must prove that the dispute affects employees' wages, hours, and working conditions, and that the employer made a decision that changes an express agreement or past practice regarding such a subject. *Kitsap County*, Decision 8292-B (PECB, January 31, 2007). Issues related to leave time and employee schedules are mandatory subjects of bargaining. *City of Yakima*, Decision 3564-A (PECB, 1991); *Clark County Public Transportation Benefit Area*, Decision 8489-A (PECB, 2004). Rest breaks also are a mandatory subject of bargaining. *City of Bellevue*, Decision 2788 (PECB, 1987).

The complainant must also establish what the relevant status quo is. *Municipality of Metropolitan Seattle*, Decision 2746-B (PECB, 1989). The complainant must then establish that the respondent has effectuated a change in the status quo and that it did not provide the complainant an opportunity to bargain regarding the change. *Kitsap County*, Decision 8292-B; *Port of Seattle*, Decision 7000-A (PECB, 2000). The nature of the impact on the bargaining unit determines whether an employer has a duty to bargain the matter. *Spokane County Fire District 9*, Decision 3661-A (PECB, 1990).

A "past practice" exists when the parties have observed a prior course of conduct and the parties have an understanding that such

conduct is the proper response to the circumstances. The practice may help to interpret ambiguous provisions of an agreement, or establish the status quo when the contract is silent as to a material issue. *Snohomish County*, Decision 8852-A (PECB, January 31, 2007). The practice that a party represents as controlling must be of the same nature as the action object of the complaint. *Snohomish County Public Utility District 1*, Decision 8727-A (PECB, 2006).

An isolated incident does not constitute a unilateral change in working conditions if there is no evidence that the employer changed a specific past practice or policy regarding a mandatory subject of bargaining. Neither does the hypothetical vulnerability of employees not involved in the incident. *Kennewick School District*, Decision 6427-A (PECB, 1998). The complainant must also show that the change was material, substantial, and significant. *City of Burlington*, Decision 5841-A (PECB, 1997).

If an employer provides timely and appropriate notice of a proposed change and the union does not request bargaining in a timely manner, the employer can argue that the union has waived by inaction the right to bargain over the change. *City of Anacortes*, Decision 9004-A (PECB, May 9, 2007). In that case, the complaint was dismissed because the union had demanded to bargain regarding a specific aspect of the employer's decision, but had failed to do so regarding the specific point addressed in the complaint. However, "[i]f the employer's action has already occurred when the union is given notice, the notice would not be considered timely and the union will be excused from the need to demand bargaining on a fait accompli." *Snohomish County Public Utility District 1*, Decision 8727-A (PECB, 2006).

Managerial decisions that only remotely affect terms and conditions of employment, and decisions that are predominantly "managerial prerogatives," are classified as permissive subjects. While management decisions concerning permissive subjects need not be bargained to impasse, the effects of such decisions on employee wages, hours, and working conditions are still "mandatory" subjects. The employer must bargain regarding a decision on a mandatory subject of bargaining and the effects of that decision, but only regarding the effects of a managerial decision on a permissive subject of bargaining. *Kitsap County*, Decision 8402-B (PECB, May 9, 2007).

Although the changes described in the complaint must be meaningful, the Commission has been reluctant to dismiss complaints based on the defense that the changes do affect mandatory subjects of bargaining, but in a minimal fashion ("de minimis"). In *Mason General Hospital*, Decision 7203 (PECB, 2000), a change in two employees' schedules from working Mondays through Fridays to working Sundays through Thursdays was not considered de minimis because it had the potential to create limitless changes in employee working conditions in the future. The defense was upheld in *City of Dayton*, Decision 1990 (PECB, 1984), where a change in medical carriers did not deprive employees of any significant insurance benefits.

Issue 1: Supervision Responsibility During Breaks

The employer opened a second jail building in March 2005. Before that date, its practice was that each employee supervised up to 79 inmates. The employer also had a practice of employing relief officers to supervise inmates during the employees' break periods. The employer's design for the new building that expanded the facility included placing "roll-up" doors between the modules,

which would allow employees to transit from one module to the next. Each module houses up to 64 inmates.

The new design was intended to allow officers to take breaks away from the modules, including lunch breaks, and to leave the modules in emergencies without calling relief officers. Employees were allowed to review and comment on the idea before it was incorporated in the final design. The employer also provided employees training on how to operate the doors before they began to work in the building. The employer did not advise the union that any of the working conditions of the employees would change.

During the initial stages of the operation of the new building, the employer required employees to work as relief officers to escort contractors during the last stages of construction, which resulted in more overtime pay than it had budgeted and more difficulty in relieving employees during their breaks. In order to alleviate these concerns, the employer instituted a trial period beginning September 14, 2005, during which the afternoon ("swing shift") employees in two specific adjacent modules would open the doors and take their breaks simultaneously. A single relief officer would substitute them during their break. Employees in the morning shift also observed the practice during weekends. On October 9, 2005, the practice became permanent on one level of the new building and two modules of another. At this time, the employer reduced by one the number of relief officers assigned to each of the two shifts. The employer notified the union about this change on October 7, 2005. There is no evidence that the union was notified of the trial period.

On October 18, 2005, the employer instructed Officer Charles Carrell to open the door between the module he supervised and the

adjacent module in order to take a morning break, instead of calling for a relief officer. Carrell objected that the modules housed different genders. Carrell did not open the door because a relief officer arrived, but he requested the employer to clarify the issue with supervisors.

According to the union, the new practice doubled the quantity of inmates that each employee supervised during the time they were open. The employer counters that the practice of limiting the number of inmates each employee supervised did not extend to the expanded facilities. The employer adds that housing units in the new building are larger, that the technology allows employees to supervise both modules, and that there are no more than 30 inmates outside their cells at a given time.

Past practice

The employer admits that there was a past practice of limiting each employee to supervise 79 inmates, but alleges that the policy did not carry into the new building. However, the Examiner finds that the fact that a working environment is different does not mean that a past practice does not apply. In fact, changing work environments carry with them the potential of new working conditions to which the existing bargaining relationship must adjust through bargaining. The practice was intended to give employees a manageable amount of work to ensure their safety. Therefore, the policy to limit the amount of inmates that each employee supervises to 79 is the relevant past practice in this case, affected working conditions and constituted a mandatory subject of bargaining.

Alleged change in working conditions

The amount of inmates under an employees' supervision during the breaks, 128, represented a substantial increase from the 79 under

the past practice. The employer argues that locking prisoners up prior to each rest break counteracts any increase in work load, but the union showed that the previous practice of limiting employees' work load to 79 inmates included those inmates who were locked up.

Managerial prerogative allowed the employer to make decisions regarding the building design and the way that breaks were administered without bargaining. However, the resulting increase in inmates that each employee supervises during the time another employee enjoys a rest break, and the resulting mix of inmates that are housed separately for security reasons increase employees' responsibility and safety risks, as the testimony provided by both parties demonstrates. The fact that the change only impacted each employee for two fifteen-minute periods every day does not reduce the importance of the change. The union presented extensive evidence that the lack of proper supervision of inmates poses severe safety risks, like the danger of riots and uncontrolled entry of visitors. Therefore, the employer's decision to assign employees to supervise two modules at a time during rest breaks constituted a meaningful change in a past practice affecting working conditions.

Fait accompli

The parties also disagree on whether the employer provided sufficient notice of the change and whether the union exercised its right to request bargaining. The evidence shows that the change was implemented on September 14, 2005, but that the union did not know until October 7, 2005, that the change had taken place. The union was not represented in any of the stages of design or building of the modules. There is no evidence that, prior to occupying the new facilities, the employer actively or constructively notified the union that it would use the doors to facilitate

rest breaks. The employer's electronic message notifying the trial period was sent to supervisors, but not to the union.

In a labor-management meeting held October 11, 2005, the union objected to the fact that the employer had conducted a trial period without notifying the union. The employer claims that the union waived its right to bargain by inaction because it only objected to the security aspects of mixing certain inmates. However, the employer does not state, nor does the evidence show, that it notified the union before implementing the change. Therefore, the union was faced with a fait accompli on October 7, 2005, and Commission precedent did not require it to request bargaining before filing the present complaint. Further, the union's witnesses testified that in labor-management meetings held in October 2005, November 2005, December 2005, and January 2006, the union requested that the employer keep the status quo, but the employer decided to keep opening the doors during rest breaks. Therefore, the union had no meaningful opportunity to bargain regarding the implemented changes. As a result, the employer committed the alleged violation.

Issue 2: Field Training Assignment Qualifications

The employer trains and evaluates new employees through Field Training Officers. As per the expired collective bargaining agreement, the employer awarded employees premium pay for the time they performed such duties, and employees had to apply to perform the duties. The employer detailed the duties of the training officers in a job description, which specified that every training officers would carry out regular corrections officer duties in an exemplary fashion, with a higher sense of ethics than other employees. A training officers was also expected to be a mentor, guide, and role model to the trainee that was assigned to work with

the Training officers. One of the requirements to apply was to have no sustained disciplinary action in the 12 months prior to applying.

On September 9, 2005, the employer initiated an internal investigation regarding an inmate complaint that Officer Michael Smith, a field trainer, used excessive force when dealing with an inmate. On September 18, 2005, the employer transferred an employee who Smith was training to another employee. The employer informed Smith that he would not train new employees during the course of the investigation. Smith filed a complaint on September 19, 2005, and the employer agreed to pay Smith for one week of training that he had been scheduled to provide. The union agreed not to submit the grievance to the next step of the grievance procedure. The employer did not assign him to train any new employees and Smith resigned his appointment as a training officer on November 20, 2005.

The union alleges that the past practice was that an employee hired as a training officer would be suspended if a disciplinary action was sustained. The union argues that the employer had the duty to provide an opportunity to bargain regarding a decision to suspend a training officers before the action was sustained. The employer counters that the training officers duties are a specialized assignment, and that it was entitled to suspend Smith as a training officer because he would not be able to concentrate on the specialized duties while preparing for the investigation, and because trainees under Smith's supervision would not be certain of his authority.

The employer's requirement that an applicant have no sustained discipline on record during the previous 12 months is a past

practice applicable to those employees who are applying for the position. However, the situation at hand concerns employees who already perform the duties of training officers. The union has not presented evidence of a past practice regarding those employees. Therefore, the union has not discharged its burden of proving that the employer changed an established past practice. Further, the assignment as training officer is occasional and is conditioned upon continuously maintaining a higher ethical standard, which might well be questioned when an employee is under investigation. The suspension of Smith's activities as a training officer cannot be construed as discipline but as the application of the higher ethical requirements spelled out in the job description.

In view of this result, the Examiner denies the union's petition for an order to compensate Smith for missed training opportunities. Smith had the right to additional compensation only when assigned to train new employees, not on a regular basis. Since the employer was not forced to assign Smith any training while under investigation, it was not bound to compensate him for any training he did not provide.

Issue 3: Overtime/Double Shifts

The employer required Officer John Rogers to work 16 straight hours on September 11, 2005; 18 straight hours on September 12, 2005; and eight hours on September 13. The afternoon of September 12, 2005, Rogers advised the employer that he would not report to work on September 13, 2005, because he only had six hours to rest. On September 21, 2005, the union filed a grievance regarding these incidents, alleging that the employer had violated Section 5.6.2 of the expired contract. Jail Director Steve Thompson denied the grievance and advised the union that he would direct supervisors to limit hospital assignments to eight hours whenever possible. The

union argues that the employer unilaterally changed its past practices on overtime.

Procedural Issue

While the union alleges that the employer changed past practice without bargaining, it also alleges that the employer applied the wrong section of the expired collective bargaining agreement to these situations. This allegation must be analyzed in light of the Commission's expressions in *Asotin County*, Decision 9549-A (May 9, 2007). In that decision, the Commission assumed jurisdiction over an alleged unilateral change to the requirement that the employer discharge employee for just cause, even though that clause was contained in an expired collective bargaining agreement.

In the present case, the parties are in negotiation for a first collective bargaining agreement, but have signed a Memorandum of Understanding which implements a grievance procedure to resolve issues while they complete negotiations. In this Memorandum, they recognized that the expired agreement was the legal status quo between the parties. The parties also agreed that if the grievance procedure did not yield a resolution, the parties would determine the steps to follow on a case-by-case basis, but did not include arbitration. The plain language of this memorandum shows that the parties expressly agreed that the arbitration procedure would not survive the expired agreement unless they bilaterally invoked it for a specific case. There is no evidence that the parties agreed to submit this overtime issue to arbitration.

The Commission does not assert authority to remedy violations of collective bargaining agreements. *Clark County Public Transportation Benefit Area*, Decision 8489-A (PECB, 2004). This is a discretionary policy that the Commission has exercised in order to harmonize its unfair labor practice jurisdiction with the grievance

arbitration process, and will assume jurisdiction if the parties have not agreed to accept an arbitration award as "final and binding." *City of Yakima*, Decision 3564-A (PECB, 1990). The Examiner will thus assert jurisdiction on this claim because there is no indication that multiple claims may be filed in different venues regarding the alleged facts.

Past practice

Section 5.6.2 of the expired agreement established that:

> [e]mployees shall not work more than two consecutive double eight (8) hour shifts. Employees must work a single regular eight (8) hour shift or have a scheduled day off between consecutive double shifts (this is a safety and security issue).

The rule spelled out in this section was the relevant past practice in this case and the record does not show that the employer had a practice of scheduling employees to work double shifts on three or more consecutive days.

The employer presented testimony that for several years, it had required employees to work in excess of 16 straight hours when there were not enough employees qualified to bear arms to provide relief. The union cites no evidence in its brief to support its claim that this had been the first time that it had happened. The employer also presented testimony that the situation had occurred when there was a discrepancy in the accounting of inmates and when law enforcement officers had to perform preliminary criminal investigations. The plain language of Section 5.6.2 did not preclude the employer from extending the shifts. The union's testimony to the contrary was limited to restating its interpretation of Section 5.6.2. The union's testimony did not cite concrete instances to support its contention beyond Carrell's general assertion that, except in emergencies, "it didn't matter who else

was there, if you were there for 16 hours you were leaving." Therefore, the past practice supported by the evidence was that an employee would not work two consecutive shifts for more than two days in a row, but could work more than 16 hours in one day.

Alleged change in working conditions

Rogers worked two consecutive double eight hour shifts on September 11 and 12, 2005, plus two additional hours on the second day. The employer explained that on September 12, 2005, there were many prisoners under hospital watch and not enough employees who were qualified to bear arms to be able to relieve Rogers. Rogers was scheduled to work a single eight-hour shift on September 13, which complied with the plain language of the second sentence of Section 5.6.2 of the expired agreement. Rogers did not work on September 13, 2005, nor was he expected to work more than a single shift on that day. Therefore, the employer did not trespass the limits that Section 5.6.2 imposed upon its authority, and Roger's 18-hour work day on September 12, 2005, followed past practice. Therefore, the employer did not commit the alleged violation.

Issue 4: Rest breaks

Rogers did not enjoy rest breaks during the hospital transport duty he performed in second eight-hour shift that he worked on September 11 nor during the entire day on September 12. Rogers remained beside an inmate at all times while in the hospital and was able to go to the restroom, but could not take full rest breaks, because the employer did not provide relief when Rogers requested it. The employer compensated Rogers for the missed rest breaks at a rate of one and a half times his regular rate of pay.

On September 21, 2005, the union filed a grievance regarding these incidents, alleging that the employer had violated Section 5.3 of

the expired contract. It stated that paying overtime for the missed rest breaks did not cover the inconvenience caused to Rogers. Director Thompson responded that he concurred that employees had a right to take rest breaks and that the department would attempt to ensure that employees could take rest breaks. However, Thompson found no contract violation and denied the grievance.

Past practice

Section 5.3 of the expired agreement states that "all employees shall receive two (2) fifteen (15) minute rest breaks during their assigned work shift." Section 5.3.1, in turn, states that the employer will compensate an employee who is denied a rest break at the rate of one and one-half times the employee's regular rate of pay for such fifteen minutes. Rogers testified that he had escorted inmates in hospitals 30 to 40 times since 1997. The employer provided relief for rest breaks at first, but stopped doing so "quite a while" before he filed his grievance. The employer, in turn, presented testimony that in the past decade employees have been allowed to take a bathroom break upon handcuffing the inmate to the bed, and have been compensated for the missed rest breaks according to the contract. Therefore, the relevant past practice is consistent with the language of the expired agreement.

Alleged change in working conditions

The employer states that Rogers' situation was not new and that it met its commitment under Section 5.3.1 by compensating Rogers time and a half for the missed rest breaks. The union alleges that the employer changed past practice by not relieving Rogers so he could take rest breaks. The union's brief does not discuss Section 5.3.1 of the expired agreement, and Roger's grievance claims that such a

remedy did not compensate his discomfort. The union's argument fails in that it rests on one clause of the expired agreement while ignoring another. Notwithstanding the discomfort that Rogers suffered, compensating employees in lieu of rest breaks did not alter the practice established both by agreement and custom. Therefore, the employer did not commit the alleged violation.[1]

Issue 5: Prorated Sick Leave

In early February 2006, Officer Camille Janssen advised the employer that she could not work her scheduled shift because she was sick. Since she did not have any sick leave, she took leave without pay. The employer awarded her a prorated amount of sick leave for the month of February 2006 because she had not worked the full month. It was the ninth time that the employer had prorated Janssen's sick leave accrual since September 1999.

Past practice

The union alleges that employees accrued eight hours of sick leave every month that they were full-time employees, regardless of the amount of time worked. Section 9.2.1 of the expired agreement stated that:

> [e]ach full time forty (40) hour per week employee shall accrue eight (8) hours sick leave for each calendar month of the employee's active service. Part-time employees shall accrue sick leave on a pro-rata basis.

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[1] The union alleges in its brief that the short rest period between the time Rogers was relieved on September 12, 2005 and the beginning of his scheduled shift on September 13, 2005, was a change in the past practice. Although the union mentioned the incident in the complaint, it did not charge that it constituted a unilateral change. Therefore, the Examiner will not discuss it in this decision.

The Snohomish County Code defines "full-time employee" as those with "a regular appointment and who are employed 20 hours per week or more."

The union contends that it was a status-based benefit, and not contingent upon working a minimum amount of hours. The employer agrees that Section 9.2.1 "has been the operative language" in the past, but alleges that it applies to "each month in which [employees] have forty hours of paid time for each week Sunday through Saturday during the month," including paid leave. The issue then is which reading of the language constitutes the past practice, even if the contract clause does not appear to sustain it.

Deborah Payne, administrative operations coordinator of the employer, testified that her job since 1999 has included crediting employees with accrued leave and that the language in Section 9.2.1 has existed since before the expired contract was signed in 2002. Payne also testified that she had considered "full-time employee" for leave accrual purposes to be an employee who had worked or enjoyed leave during 40 hours every week in a pay period, and had not been on leave without pay. The employer also submitted documents reflecting that the employer had prorated employees' sick leave accrual for being on leave without pay as early as January 1999 and as recently as October 2005. Even union president Charles Carrell had accrued prorated sick leave throughout 1999. Therefore, the evidence sustains the employer's assertion that this procedure constitutes the parties' past practice.

The union also argues that the employer did not show employees the prorated accrual when they signed the time sheets, and therefore these time sheets do not constitute evidence of a past practice to that effect. Asking employees to sign documents with erroneous

information and altering the information afterwards is certainly an unfortunate practice. However, the employer had engaged in the practice long before the collective bargaining agreement expired and the union had recourse to grievance arbitration when it occurred. Unfair labor practice proceedings cannot be a substitute for the union's lack of prosecution of these alleged contract violations.

Alleged change in working conditions

The union alleges that the employer changed past practice unilaterally when it prorated Janssen's sick leave accrual for being on leave without pay for one day. Since the employer proved that doing so was the past practice, the union's allegations really constituted a restatement of the past practice. Therefore, the employer did not contravene the statute.

Final Conclusions

The employer unilaterally changed working conditions regarding the supervision of inmates during employee breaks. The union did not prove that the employer changed working conditions unilaterally regarding work as field training officer pending an internal investigation, rest breaks during hospital transport duty, relieving employees on double shifts or prorated sick leave accrual for employees who take leave without pay.

Remedy

The union requests that the Examiner issue an order that the employer restore the situation that existed before the employer violated the statute, and that it cease and desist from refusing to bargain in good faith with the union. The Examiner adopts the

requested remedy for the single issue in which the union has prevailed. The Examiner will dismiss the remaining charges contained in the complaint.

The union also requests that the examiner grant attorney's fees. Commission and judicial precedent allows an award of attorney fees as part of a remedial order where such award is necessary to make the order effective and where the defenses are frivolous. *See Lewis County v. PERC*, 31 Wn. App. 853 (1982) and *City of Tukwila*, Decision 2434-A (PECB, 1987). Neither of those factors are present in the case at hand. Therefore, the Examiner denies the union's request for attorney's fees.

FINDINGS OF FACT

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

2. The Snohomish County Corrections Guild is a "bargaining representative" within the meaning of RCW 41.56.030(3), and is the exclusive bargaining representative of an appropriate bargaining unit of corrections officers.

3. At all pertinent times, Corrections Officers Charles Carrell, Michael Smith, John Rogers, and Camille Janssen were members of the bargaining unit described in Finding of Fact 2 above. Carrell has been union president since February 2005.

4. Beginning September 14, 2005, the employer instituted a trial period during which the afternoon ("swing shift") employees in two specific adjacent modules would open the doors between the modules and take their breaks simultaneously. A single relief officer would then substitute for them during their break.

Employees in the morning shift also observed the practice during weekends. On October 9, 2005, the practice became permanent on one level of the new building and two modules of another. At this time, the employer reduced by one the number of relief officers assigned to each of the two shifts. The employer notified the union about this change on October 7, 2005. There is no evidence that the union was notified of the trial period.

5. On September 9, 2005, the employer initiated an internal investigation regarding an inmate complaint that Officer Michael Smith used excessive force when dealing with an inmate. On September 18, 2005, the employer transferred an employee who Smith was training to another employee. The employer informed Smith that he would not train new employees during the course of the investigation. The employer paid Smith for one week of training that he had been scheduled to provide. The employer did not assign him to train any new employees until November 20, 2005, when Smith resigned his appointment as a training officer.

6. The employer required Officer John Rogers to work 16 straight hours on September 11, 2005; 18 straight hours on September 12, 2005; and eight hours on September 13.

7. Rogers did not enjoy rest breaks during the hospital transport duty he performed in second eight-hour shift that he worked on September 11 nor during the entire day on September 12. Rogers remained beside an inmate at all times while in the hospital and was able to go to the restroom but could not take full rest breaks, because the employer did not provide relief when Rogers requested it. The employer compensated Rogers for

the missed rest breaks at a rate of one and a half times his regular rate of pay.

8. In early February 2006, Officer Camille Janssen advised the employer that she could not work that day because she was sick. Since she did not have any sick leave, she took leave without pay. The employer then awarded her a prorated amount of sick leave for the month of February 2006 because she had not worked the full month.

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. By changing the procedure to provide employees with breaks as described in paragraph 4 of the foregoing findings of fact, Snohomish County failed to bargain in good faith and interfered with employee rights in violation of RCW 41.56.140(1) and (4).

3. As described in paragraphs 6, 7, and 8 of the foregoing findings of fact, the union failed to discharge its burden of proof to establish that Snohomish County breached its good faith obligation in violation of RCW 413.56.140(4) regarding work as field training officer pending an internal investigation, rest breaks in hospital transport duty, relieving employees on double shifts or prorated sick leave accrual for employees who take leave without pay.

ORDER

Snohomish County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Refusing to bargain collectively with the Snohomish County Corrections Guild, as the exclusive bargaining representative of the appropriate bargaining units described in paragraph 2 of the foregoing findings of fact.

   b. In any other 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 effectuate the purposes and policies of Chapter 41.56 RCW:

   a. Restore the *status quo ante* by reinstating the working conditions which existed for the employees in the affected bargaining unit prior to the unilateral change in the number of inmates that employees will supervise while other employees take their rest breaks, which is found unlawful in this order.

   b. Give notice to and, upon request, negotiate in good faith with the Snohomish County Corrections Guild, before increasing the number of inmates that employees will supervise while other employees take their rest breaks.

   c. Post copies of the notice attached to this order in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of

initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

d. Read the notice attached to this order into the record at a regular public meeting of the Board of Commissioners of Snohomish County, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

e. Notify the complainant, 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 attached to this order.

f. Notify the Compliance Officer 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 Compliance Officer with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, this 25th day of June, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

CARLOS R. CARRION-CRESPO, 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.

Case 20302-U-06-5170

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 violated our obligation to bargain in good faith under RCW 41.56.030(4) by unilaterally increasing the number of inmates that employees represented by the Snohomish County Corrections Guild supervised while other employees took their rest breaks.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL give notice to and, upon request, negotiate in good faith with the Snohomish County Corrections Guild, before increasing the number of inmates that employees will supervise while other employees take their rest breaks.

WE WILL NOT refuse to bargain in good faith with the Snohomish County Corrections Guild regarding changes to the number of inmates that employees represented by the Snohomish County Corrections Guild supervise while other employees take their rest breaks.

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: _____

SNOHOMISH COUNTY

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
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 06/25/2007

The attached document identified as: DECISION 9770 - 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:	20302-U-06-05170	FILED:	03/29/2006	FILED BY:	PARTY 2
DISPUTE:	ER UNILATERAL				
BAR UNIT:	JAILERS				
DETAILS:	-				
COMMENTS:					

EMPLOYER: SNOHOMISH COUNTY
ATTN: SNOHOMISH CO COUNCIL
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EVERETT, WA 98201-4046
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REP BY: AARON REARDON
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