STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CLARK COUNTY SHERIFF'S OFFICE SUPPORT GUILD, Complainant, vs. CLARK COUNTY, Respondent.	CASE 23419-U-10-5970 DECISION 11065 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Garretson, Gallagher, Fenrich and Makler by *Daryl Garretson*, Attorney at Law, appeared for the union at the hearing, and Makler, Lemoine and Goldberg, by *Sean Lemoine*, appeared for the union by submitting the closing brief.

Tony Golik, Prosecuting Attorney, by *Gene A. Pearce*, Deputy Prosecuting Attorney, for the employer.

On August 2, 2010, the Clark County Sheriff's Office Support Guild (union) filed a complaint charging unfair labor practices against Clark County (employer). After a preliminary review, the Unfair Labor Practice Manager found that the complaint, as filed, was deficient. The union was allowed the opportunity to amend the complaint, and on August 18, 2010, the union submitted a timely amendment.

On September 3, 2010, the Unfair Labor Practice Manager issued a preliminary ruling on the amended complaint, finding that a cause of action existed as to allegations that the employer refused to bargain concerning a unilateral change in the job description of the "Jail Industry Coordinator" and breached its good faith bargaining obligations by implementing the change prior to the expiration of the collective bargaining agreement under RCW 41.56.123.

A hearing was conducted in Vancouver, Washington, on January 19, 2011, before Examiner Kenneth J. Latsch. The parties submitted closing briefs on March 10, 2011.

ISSUES

1. Did the employer engage in a course of bad faith bargaining by unilaterally changing the job description of the Jail Industry Coordinator without prior notice or negotiations with the union?

2. Did the employer violate RCW 41.56.123 by changing the job description of the Jail Industry Coordinator position within the one-year period specified by the statute?

I find that the employer did not unilaterally change the duties associated with the position of Jail Industry Coordinator because the coordinator already performed the disputed duties. I further conclude that the employer did not breach any bargaining duty concerning the position description at issue, and did not violate RCW 41.56.123 by issuing the updated job description when it did.

APPLICABLE LEGAL STANDARDS

In RCW 41.56.030(4), the Public Employees' Collective Bargaining Act imposes a duty to bargain on "wages, hours and working conditions." 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. WAC 391-45-270.

RCW 41.56.160 specifies that the complainant must file a complaint in a specific period of time:

> The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. . . .

Matters affecting employee wages, hours and working conditions referred to in RCW 41.56.030(4) are considered to be mandatory subjects of bargaining. *See Federal Way School*

District, Decision 232-A (EDUC, 1977). In determining whether a topic is a mandatory subject of bargaining, the Commission balances (1) the relationship of the subject to wages, hours and working conditions, and (2) the extent to which the subject lies at the core of entrepreneurial control or is a management prerogative. *City of Richland*, Decision 2448-B (PECB, 1987), remanded, 113 Wn.2d 197 (1989). *Richland* requires application of the balancing test to the particular facts of the case at hand. The critical consideration in determining whether an employer has a duty to bargain is the nature of the impact on the bargaining unit. *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991).

Permissive subjects of bargaining are matters considered to be remote from employee wages, hours and working conditions, including matters which are regarded as prerogatives of employers or unions. If an issue is found to be permissive, the parties may engage in bargaining on that subject, but neither side can insist on that issue to the point of impasse. *See Renton School District*, Decision 706 (EDUC, 1979). In *Seattle School District*, Decision 2079 (PECB, 1984), the Commission ruled that rewriting the job description for the "assistant custodian" position was within the district's management rights. In that case, the examiner held that the union's right to bargain was limited to the wage rate assigned to the newly created job. Similar results can be found in *Lakewood School District*, Decision 755 (PECB, 1979) and *City of DuPont*, Decision 4959-B (PECB, 1995), where the Commission clearly ruled that the creation or modification of a job description is not a mandatory subject of bargaining, and that the bargaining obligation attaches only to changes in wages, hours or conditions of employment caused by the new or modified job description.

It is well established that the duty to bargain imposes 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. *Municipality of Metropolitan Seattle (METRO)*, Decision 2746-B (PECB, 1990). However, the determination as to whether a duty to bargain exists is a question of law and fact for the Commission to decide. WAC 391-45-550.

Where a unilateral change is alleged, the complainant must prove that the dispute involves a mandatory subject of bargaining and that the employer made a decision giving rise to the duty to

bargain. *Municipality of Metropolitan Seattle (METRO).* No violation exists where there is no change to an established past practice. *King County*, Decision 4893-A (PECB, 1995); *City of Pasco*, Decision 4197-A (PECB, 1994). In order for a unilateral change to be unlawful, the change must have a "material and substantial" impact on the terms and conditions of employment. *King County.*

In order to evaluate whether or not an employer has made a unilateral change in a mandatory subject of bargaining, it is critical to first understand the established practice. As the Commission explained in *Kitsap County*, Decision 8893-A (PECB, 2007):

> For a "past practice" to exist, two basic elements are required: (1) a prior course of conduct; and (2) an understanding by the parties that such conduct is the proper response to the circumstances.

In order to meet the test described above "It must . . . be shown that the [prior course of] conduct was known and mutually accepted by the parties." *Kitsap County.* The Commission also considers the impact a change has on employees. To constitute an unfair labor practice, a change in the status quo must be meaningful and have a "material and substantial" impact on employees' terms and conditions of employment. *Kitsap County*, citing *City of Kalama*, Decision 6773-A (PECB, 2000) and *King County*, Decision 4893-A (PECB, 1995).

Furthermore, "[t]o be part of the status quo, a rule or policy must be a precedent which the employer has used during the relevant past, not merely a written policy which is pulled off the shelf just in time to fend off an unfair labor practice charge." *King County*, Decision 5810-A (PECB, 1997), *aff'd*, 94 Wn. App. 431 (1999).

ANALYSIS

Bargaining History Concerning the Disputed Position

Clark County Sheriff's Office is composed of three divisions–Enforcement, Custody, and Civil–and has approximately 400 employees. The Sheriff's Office has collective bargaining relationships with several employee organizations, including the Clark County Sheriff's Office Support Guild. The union represents a bargaining unit of "non-sworn" employees working in all

of the office's divisions. The present controversy deals with job duties assigned to a bargaining unit employee holding the position of Jail Industry Coordinator, specifically dealing with the handling of jail laundry.

Prior to 2000, jail laundry was processed in two county facilities; the Clark County Jail and the Clark County Juvenile Center. Jail trustees washed the laundry under the direction of correctional officers. In April 2000, the Jail Work Center (JWC) was opened. The JWC was created to centralize several support functions associated with jail operations, including laundry service. Laundry service was transferred to the JWC over the course of several years. In late 2000, the JWC's laundry facility became fully operational, but the old jail laundry was not finally closed until 2002, with all laundry then directed to the JWC. The laundry was hauled to the JWC and left on loading docks for sorting and cleaning.

Jail laundry is comprised of soiled linens and towels that often have blood, other bodily fluids, or human waste on them. Much of the fluids and waste are deemed to be biohazards, and on September 28, 2000, the employer implemented a policy to address handling of laundry contaminated with biohazards. The policy was followed by a department directive concerning biohazards on May 20, 2001, which set out detailed instructions for handling contaminated laundry items. The policy and the directive apply whenever jail laundry is handled by staff.

The position of Jail Industries Technician was created to coordinate jail laundry work. The position was later changed to Jail Industries Coordinator, the title held during the events leading to the instant unfair labor practice complaint. The employer adopted a job description for the Jail Industries Coordinator position on March 28, 2001. At the time of hearing, Becky Breitmayer and Dori Lane held the two Jail Industries Coordinator positions at the Jail Work Center.

During the course of bargaining for the 2008-2010 contract, the union and the employer agreed that the employer would conduct a classification review for the Jail Industries Coordinator position. As part of the review, Breitmayer and Lane were interviewed, and both stated that they had experience handling laundry containing biohazards. They also wanted more recognition for the work they performed and a salary increase for the work they performed. Breitmayer and Lane further wanted a specific reference to biohazards added to their position description. The

classification review, completed on April 30, 2009, did not support a wage increase for the Jail Industries Coordinator position.

On April 30, 2009, the employer issued an updated job description for the Jail Industries Coordinator position. The updated description specifically required the position to "handle various sanitation/biohazard materials and cleaning supplies."

On May 5, 2009, the union sent a letter to the employer's Human Resources Director Francine Reis, stating its belief that the new job description added biohazard processing work as a new duty without bargaining. The letter went on to demand bargaining on the subject. The union sent a second bargaining demand in a letter to Reis dated June 2, 2009. The letter went on to say that if the employer did not respond, the union would have to file a complaint charging unfair labor practices with the Public Employment Relations Commission.

The parties met in a Labor/Management meeting on June 23, 2009, and the union reiterated its demand to bargain about the disputed job classification. Human Resource Manager Candy Arata attended the meeting on behalf of the employer, and she expressed a willingness to discuss the issue with guild representatives. On July 2, 2009, the union sent Arata a letter confirming that a meeting should be scheduled on the matter as soon as possible. During the course of bargaining, the union said that it would supply comparables showing a wage increase was necessary for the Jail Industries Coordinator position, but never presented that information to the employer.

The record is silent as to what transpired between the parties until November 2009. On November 19, 2009, the employer agreed to meet with the union to discuss the job description issue. Their settlement efforts were unsuccessful. The parties engaged in mediation on the issue but were unable to reach agreement. The parties met again on April 12, 2010, in an effort to resolve the dispute, but their underlying disagreements remained. On the same day, the employer implemented the revised job description for the Jail Industries Coordinator position. On April 15, 2010, the union sent a letter to Human Resource Manager Arata, stating, in part:

> Please be advised that the Clark County Sheriff's Office Support Guild takes the Position that under the provisions of RCW 41.56.123, the Sheriff's Office cannot unilaterally implement the classification change until one year after the expiration of the current Collective Bargaining Agreement.

The collective bargaining agreement between the union and the employer was in effect from January 1, 2008, through December 31, 2010. The union filed the instant unfair labor practice on August 2, 2010.

Application of Legal Standards

The union's complaint alleges that the employer unilateral changed in the Jail Industries Coordinator job description by adding biohazard duties without making a commensurate wage adjustment for the new work. To successfully prove the allegation, the union must show that there was, in fact, a change in a mandatory bargaining issue.

As noted in *King County*, Decision 4893-A (PECB, 1995), the change must have a "material and substantial" impact on the terms and conditions of employment. The question here is whether the updated job description really defined a change in the duties expected of the Jail Industries Coordinator. The record shows that the employer anticipated the existence of biohazards in jail laundry as early as 2000 when it issued a policy on the matter. The policy was followed by a directive in 2001, giving more specificity on the subject. It must also be noted that both employees holding the Jail Industries Coordinator position stated that they had to deal with biohazards even before they took the new position, and that the biohazard work continued once they became coordinators.

Taken together, these events show that the union did not prove that a "material and substantial" change took place when the employer implemented the updated job description in April 2010. The updated job description provided a more complete listing of work expected of the Jail Industries Coordinator position, but it did not add anything of substance to the work already expected of the incumbents in that position. At most, it appears that the union wanted to use the updated job description as evidence that the employer should grant a pay increase for the two Jail Industries Coordinators. The employer disagreed about the need for an increase, and negotiations about a wage increase ended without any change in compensation. The union did not prove that the updated job description required the employer to make any change in compensation level, and the record indicates that meetings on the issue took place. In addition, the employer presented credible evidence that the parties met several times to negotiate about the

appropriate wage rate for the disputed position, and had reached the point of impasse in those negotiations before the new job description was implemented in April 2010.

Turning to the union's argument that the employer violated RCW 41.56.123 by changing the job description, I must conclude that the union has not met its burden of proof. As noted in *Grant County Public Hospital District No. 1,* Decision 8460 (PECB, 2004), RCW 41.56.123 was added to the statute in 1989, and has only rarely been interpreted or applied. The statute reads, in pertinent part:

> (1) After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bargaining agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

It must be noted that the events described in the instant unfair labor practice complaint took place while a collective bargaining agreement was in effect between the parties. RCW 41.56.123 specifies that changes cannot be made after the termination date of the agreement. Since the instant matter occurred during the life of the contract, the employer's actions must be judged in light of existing Commission precedent concerning the implementation of unilateral changes in mandatory subjects of bargaining without reference to RCW 41.56.123. As noted above, the union has not proven that the employer, in fact, made any changes in a mandatory bargaining subject by updating the disputed job position. The unfair labor practice must be dismissed.

FINDINGS OF FACT

1. Clark County is a public employer within the meaning of RCW 41.56.030(13). The county operates several detention facilities under the direction of the Clark County Sheriff's Office.

2. The Clark County Sheriff's Office Support Guild is a bargaining representative within the meaning of RCW 41.56.030(2), and represents a bargaining unit of non-uniformed employees working in the Clark County Sheriff's Office. At the time of this unfair labor practice hearing, the parties were covered by a collective bargaining agreement in effect from January 1, 2008, through December 31, 2010.

3. As part of its detention responsibilities, the employer operates a jail laundry service. Prior to 2000, jail laundry was handled at each of the two detention facilities. In April 2000, the employer opened the Jail Work Center (JWC), a facility intended to centralize a number of jail support activities, including jail laundry services.

4. Jail laundry service was transferred to the JWC in phases over several years, and by 2002, the JWC was the main laundry service for the employer's detention facilities.

5. Jail laundry is comprised of soiled linens and towels that often have blood, other bodily fluids, or human waste on them. Because the fluids and waste were deemed to be biohazards, he Clark County Sheriff's Office implemented a policy to address handling of laundry contaminated with biohazards on September 28, 2000. The policy was followed by a department directive concerning biohazards on May 20, 2001, which set out detailed instructions for any employees required to handle contaminated laundry items. The policy and the directive apply whenever jail laundry is handled by staff.

6. The position of Jail Industries Technician was created to coordinate jail laundry work. The position was later changed to Jail Industries Coordinator, and the employer adopted a job description for the Jail Industries Coordinator position on March 28, 2001. At the time of hearing, Becky Breitmayer and Dori Lane held the two Jail Industries Coordinator positions at the Jail Work Center.

7. During the course of bargaining for the 2008-2010 contract, the union and the employer agreed that the employer would conduct a classification review for the Jail Industries Coordinator position. As part of the review, Breitmayer and Lane were interviewed. Both confirmed that they had regular contact with laundry containing biohazards. Breitmayer and Lane also told the interviewer that they wanted more recognition for the work they performed as Jail Industries Coordinators and a salary increase. They also wanted a specific reference to biohazards added to their position description.

8. The classification review, completed on April 30, 2009, did not support a wage increase for the Jail Industries Coordinator position.

9. On April 30, 2009, the employer issued an updated job description for the Jail Industries Coordinator position, specifically stating that the position was to "handle various sanitation/biohazard materials and cleaning supplies" as part of its regular duties.

10. On May 5, 2009, the union sent a letter to Clark County Human Resources Director Francine Reis, demanding to bargain the addition of biohazard duties to the Jail Industries Coordinator position. The union sent a second bargaining demand in a letter to Reis dated June 2, 2009.

11. The parties met in a Labor/Management meeting on June 23, 2009, and the union reiterated its demand to bargain about the disputed job classification. Human Resource Manager Candy Arata attended the meeting on behalf of the employer, and she expressed a willingness to discuss the issue with guild representatives. On July 2, 2009, the union sent Arata a letter confirming that a meeting should be scheduled on the matter as soon as possible.

12. The parties discussed the issue at several meetings, but were unable to agree on a salary increase for the Jail Industries Coordinators. Finally, on April 12, 2010, the employer implemented the new job description.

13. The updated job description did not materially change the job duties associated with the position of Jail Industries Coordinator.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. By events described in Findings of Fact 8 through 12 above, Clark County did not commit an unfair labor practice by implementing an updated job description for the position of Jail Industries Coordinator on April 12, 2010.

ORDER

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

ISSUED at Olympia, Washington, this 12th day of May, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

KENNETH J. LATSCH, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

CASE NUMBER:	23419-U-10-05970	FILED:	08/02/2010	FILED BY:	PARTY 2
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BAR UNIT:	ALL EMPLOYEES				
DETAILS:	-				
COMMENTS:					

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