*City of Sunnyside*, Decision 11629 (PECB, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| SUNNYSIDE POLICE OFFICERS GUILD,<br><br>Complainant,<br><br>vs.<br><br>CITY OF SUNNYSIDE,<br><br>Respondent. | CASE 24860-U-12-6348<br><br>DECISION 11629 - PECB<br><br>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER |

Emmal, Skalbania, Vinnedge, by *Patrick Emmal,* for the union.

*Anna Bullock*, Human Resources Director, for the employer.

On June 7, 2012, the Sunnyside Police Officers Guild (union) filed an unfair labor practice complaint against the City of Sunnyside (employer). The union alleged the employer refused to bargain in violation of RCW 41.56.140(4) and (1) by its unilateral change regarding take home vehicles for bargaining unit members, without providing an opportunity for bargaining. A preliminary ruling was issued June 12, 2012, stating a cause of action existed. Examiner Emily Whitney held a hearing on November 1, 2012, where the parties stipulated to facts on the record. The parties waived their right to submit briefs.

## ISSUE

Did the employer refuse to bargain by making a unilateral change regarding take home vehicles, without providing an opportunity for bargaining?

The employer violated its bargaining obligation when it made a unilateral change regarding take home vehicles without providing an opportunity for bargaining with the union.

## LEGAL STANDARD

### Summary Judgment

The Commission and its examiners may grant a motion for summary judgment "if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." WAC 10-08-135. The courts and the Commission define a material fact as one upon which the outcome of the litigation depends. *Clements v. Travelers Indem. Co.,* 121 Wn.2d 243, 249 (1993); *State - General Administration,* Decision 8087-B (PSRA, 2004). The Commission does not grant summary judgment motions lightly since doing so involves making a final determination without the benefit of a hearing. *City of Orting,* Decision 7959-A (PECB, 2003). A summary judgment is only granted when the party responding to the motion cannot or does not deny any material facts alleged by the party making the motion.

In ruling on a motion for summary judgment, the Commission must consider the material evidence and all reasonable inferences most favorably to the nonmoving party and deny the motion if reasonable people might reach different conclusions regarding the facts. *Wood v. City of Seattle,* 57 Wn.2d 469, 470 (1960).

### Duty to Bargain

Chapter 41.56 RCW requires a public employer to bargain with the exclusive bargaining representative of its employees. The duty to bargain extends to mandatory subjects of bargaining including wages, hours, and working conditions. RCW 41.56.030(4). The law limits the scope of mandatory subjects to those matters of direct concern to employees. *International Association of Fire Fighters, Local 1052 v. PERC,* 113 Wn.2d 197, 200 (1989) *(City of Richland).* The Commission has long held that the issue of take home vehicles is a mandatory subject of bargaining. *City of Kalama*, Decision 6739-A (PECB, 2001); *City of Burlington*, Decision 5840 (PECB, 1997); *City of Brier*, Decision 5089-A (PECB, 1995).

### Past Practice

"The parties' collective bargaining obligations require that the status quo be maintained regarding all mandatory subjects of bargaining, except where such changes are made in

conformity with the collective bargaining obligation or the terms of a collective bargaining agreement." *City of Edmonds*, Decision 8798-A (PECB, 2005) citing *City of Yakima*, Decision 3503-A (PECB, 1998), *aff'd*, 117 Wn.2d 655 (1991); *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991).

The status quo is defined both by the parties' collective bargaining agreement and by established past practice. As the Commission explained in *Kitsap County*, Decision 8893-A (PECB, 2007):

> Generally, the past practices of the parties are properly utilized to construe provisions of an agreement that may reasonably be considered ambiguous or where the contract is silent as to a material issue. A past practice may also occur where, in a course of the parties' dealings, a practice is acknowledged by the parties over an extended period of time, becoming so well understood that its inclusion in a collective bargaining agreement is deemed superfluous. *Whatcom County*, Decision 7288-A (PECB, 2002), citing *City of Pasco*, Decision 4197-A (PECB, 1994).

For a past practice to exist, two basic elements are required: (1) an existing prior course of conduct; and (2) an understanding by the parties that the conduct was known and mutually accepted by the parties as the proper response to the circumstances. *City of Pasco*, Decision 9181-A, citing *Whatcom County*, Decision 7288-A

Unilateral Change

Unless a union clearly waives its right to bargain, an employer is prohibited from making unilateral changes to mandatory subjects. An employer must give a union sufficient notice of possible changes affecting mandatory subjects of bargaining and, upon union request, bargain in good faith until reaching agreement or impasse. *Wapato School District*, Decision 10743-A (PECB, 2011). Therefore, an employer violates RCW 41.56.140(4) and (1) if it implements a unilateral change on a mandatory subject of bargaining without having fulfilled its bargaining obligation. *Seattle School District*, Decision 10732-A (PECB, 2012).

Derivative Interference

When the Commission finds a refusal to bargain violation under the statutes it administers, it automatically finds that the employer derivatively interferes with employee rights. *Mason*

*County*, Decision 10798-A (PECB, 2011); *Battle Ground School District*, Decision 2449-A (PECB, 1986). When an employer commits a refusal to bargain violation by making a unilateral change, the Commission finds that the action has "an intimidating and coercive effect" on employees. *Battle Ground School District*, Decision 2449-A. Thus, if an employer unlawfully implements a unilateral change to a mandatory subject of bargaining, the employer's violation of RCW 41.56.140(4) also results in a derivative violation of RCW 41.56.140(1).

ANALYSIS

The parties concurred in using summary judgment to decide this case based on the stipulated facts presented at the hearing and placed on the record. At the hearing, the union's motion for summary judgment was granted and the following analysis is based on the parties' stipulated facts.

The Sunnyside Police Officers Guild represents all regular full-time and regular part-time uniformed police officers (as defined in RCW 41.56.030) excluding Supervisors, Confidential Employees, Police Reserve Officers, Correction Officers, Dispatchers, Data Entry Clerks, Receptionists, all other employees of the City of Sunnyside, and any other volunteers such as Explorer Scouts and others. The City of Sunnyside and union were parties to a collective bargaining agreement that was effective between January 1, 2010, and December 31, 2012.

As a past practice, the Sunnyside Police Department has provided take home vehicles to certain members of the bargaining unit, including detectives and specific supervisors, in accordance with the take home vehicle policy.

In March 2012, during a state audit, it was recommended that the employer implement a change in the take home vehicle policy. On or about May 23, 2012, the union received, from the employer, a new proposed city policy which canceled the take home vehicle program and created additional restrictions on the use of city vehicles.

On or about May 24, 2012, the union met with the employer to discuss the proposed policy. As a result of the meeting, the union agreed to present the issue to its membership. The membership decided not to accept the cancellation of the take home vehicle program.

On May 25, 2012, the union sent an e-mail to acting City Manager, Frank Sweet, explaining the union's position and requesting that the status quo be maintained. The union also stated it was willing to adopt a policy regarding vehicle use issues, but would need some time to review the policy to be able to bargain over the issue. In response, on May 25, 2012, Sweet asked the union to clarify the intent of the union if the employer put the policy into effect on June 1, 2012.

On May 29, 2012, the union again contacted the employer by e-mail and re-stated its position that the status quo regarding take home vehicles be maintained and also requested an opportunity to meet with the employer to discuss the matter and bargain. Sweet responded, asking when would be a good time to meet for the union. No meeting took place.

The employer implemented the new take home vehicle policy on May 31, 2012, which eliminated the use of the take home vehicles.

Duty to Bargain/Unilateral Change

While the take home vehicle policy is not outlined in the collective bargaining agreement, the parties stipulated to the fact that as a past practice, certain members of the bargaining unit were provided a take home vehicle. The Commission has long held that take home vehicles are an economic benefit and thus a mandatory subject of bargaining. The employer gave notice to the union that changes needed to be made to the take home vehicle policy. The union responded by requesting to bargain about the take home vehicle policy. While the parties had one discussion about the policy, the parties did not complete the bargaining process and bargain in good faith. "The duty to bargain in good faith is an obligation to participate actively in the deliberations so as to indicate a present intention to find a basis for agreement." *Federal Way School District*, Decision 232-A (EDUC, 1977); *aff'd, King County Superior Court*, Case No. 830404, (1978). Here the employer explained to the union that the change in the take home vehicle policy was necessary because it was cost efficient, shift efficient, and the employer was accountable to the public and Council members. While these are valid concerns for an employer, it does not release the employer of its obligation to bargain. The employer met with the union one time to discuss the policy. The union agreed to take the proposed policy to its members. The membership voted

down the policy. After the union's second request to bargain, the employer unilaterally implemented the new take home vehicle policy, which eliminated the use of take home vehicles.

Based on repeated requests, it is clear the union wanted to bargain over the use of take home vehicles. The employer did not provide the union an opportunity to bargain when it unilaterally implemented the policy, which eliminated the use of take home vehicles.

## CONCLUSION

The employer committed an unfair labor practice when it unilaterally ordered the bargaining unit members to return the take home vehicles, eliminating their use, without providing the union with an opportunity to bargain. Because the employer refused to bargain, it derivatively interfered with the bargaining unit members rights.

## FINDINGS OF FACT

1. The City of Sunnyside (employer) is a public employer within the meaning of RCW 41.56.030(12).

2. The Sunnyside Police Officers Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2), and is the exclusive bargaining representative of the full-time and regular part-time uniformed police officers of the City of Sunnyside.

3. The union and employer were parties to a collective bargaining agreement effective between January 1, 2010, and December 31, 2012.

4. As a past practice, the Sunnyside Police Department has provided take home vehicles to certain members of the bargaining unit, including detectives and specific supervisors.

5. On May 23, 2012, the union received notice from the employer involving a new proposed city policy eliminating take home vehicles and other changes to the use of city vehicles.

6. On May 24, 2012, the union and employer met to discuss the proposed policy. As a result, the union agreed to present the issue to its membership. The membership subsequently decided not to accept the cancellation of the take home vehicle program.

7. On May 29, 2012, the union requested to bargain a policy regarding the use of take home vehicles.

8. On May 31, 2012, the employer implemented a new take home vehicle policy when it ordered the bargaining unit members to return the take home vehicles and eliminated the vehicle use.

## CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By making a unilateral change regarding take home vehicles without providing the opportunity for bargaining, as described in Findings of Fact 4 through 8, the employer refused to bargain and violated RCW 41.56.140(4) and (1).

## ORDER

City of Sunnyside, 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 Sunnyside Police Officers Guild, as the exclusive bargaining representative of the police bargaining unit, regarding the use of take home vehicles.

b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under 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 use of take home vehicles which existed for all affected bargaining unit employees prior to the unilateral change in the take home vehicle policy found unlawful in this order and by reimbursing all affected bargaining unit employees any economic losses suffered as a result of the employer's unilateral act within 60 days following the date of this order.

b. Give notice to and, upon request, negotiate in good faith with Sunnyside Police Officers Guild, before making changes to the use of the take home vehicles for bargaining unit employees.

c. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission 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 provided by the Compliance Officer into the record at a regular public meeting of the City Council of the City of Sunnyside, 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 provided by the Compliance Officer.

f. Notify the Compliance Officer, 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 him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 1st day of February, 2013.

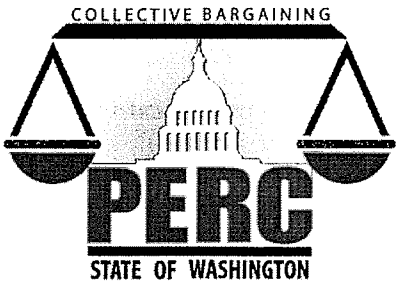
PUBLIC EMPLOYMENT RELATIONS COMMISSION

Emily K. Whitney

EMILY K. WHITNEY, 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 24860-U-12-6348
DECISION 11629 - PECB




## PUBLIC EMPLOYMENT RELATIONS COMMISSION

# NOTICE

**STATE LAW GIVES YOU THE RIGHT TO:**

- **Form, join, or assist an employee organization (union)**
- **Bargain collectively with your employer through a union chosen by a majority of employees**
- **Refrain from any or all of these activities except you may be required to make payments to a union or charity under a lawful union security provision**

**THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT THE *CITY OF SUNNYSIDE* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:**

WE UNLAWFULLY changed the use of take home vehicles without first bargaining any changes with the union.

**TO REMEDY OUR UNFAIR LABOR PRACTICES:**

WE WILL reinstate the take home vehicle policy which existed for the affected bargaining unit members prior to the change found unlawful in this order and reimburse all affected bargaining unit employees any economic losses suffered as a result of the employer's unilateral act.

WE WILL give notice to and, upon request, negotiate in good faith with the Sunnyside Police Officers Guild before making changes to the take home vehicle policy for bargaining unit employees.

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.

## DO NOT POST OR PUBLICLY READ THIS NOTICE.

## AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

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|---|---|---|---|---|---|
| CASE NUMBER: | 24860-U-12-06348 | FILED: | 06/07/2012 | FILED BY: | PARTY 2 |
| DISPUTE: | ER UNILATERAL | | | | |
| BAR UNIT: | LAW ENFORCE | | | | |
| DETAILS: | 25186-S-12-0323 | | | | |
| COMMENTS: | | | | | |

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