

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNITED FOOD AND COMMERCIAL
WORKERS, LOCAL 21,

Complainant,

vs.

MASON GENERAL HOSPITAL
(MASON PUBLIC HOSPITAL DISTRICT 1),

Respondent.

CASE 26951-U-15

DECISION 12397 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Streepy Law, PLLC, by *James G. McGuinness*, Attorney at Law, for United Food and Commercial Workers, Local 21.

Robert W. Johnson, P.L.L.C., by *Robert W. Johnson*, Attorney at Law, for Mason General Hospital (Mason Public Hospital District 1).

On January 13, 2015, the United Food and Commercial Workers, Local 21 (union) filed an unfair labor practice complaint with the Public Employment Relations Commission, alleging that Mason General Hospital (employer or hospital) refused to bargain by unilaterally installing a new security camera in the Diagnostic Imaging Department without providing an opportunity for bargaining. Unfair Labor Practice Manager Jessica J. Bradley reviewed the complaint under WAC 391-45-110 and on January 26, 2015, found a cause of action to exist. On February 20, 2015, the Commission assigned the matter to Stephen W. Irvin, who presided over a hearing on May 27, 2015.

ISSUE

Did the employer refuse to bargain by unilaterally installing a new security camera in the Diagnostic Imaging Department?

Based on the entirety of the record, I find that the employer's decision to install a new security camera in the Diagnostic Imaging Department was not a mandatory subject of bargaining.

Applying the balancing test, the employer's interest in monitoring a closet containing equipment directly related to patient safety outweighed employees' concerns over the new camera's audio capabilities. Because this dispute did not involve a mandatory subject of bargaining, the employer had no duty to bargain the decision to install the new security camera. Without a duty to bargain a mandatory subject, there can be no unilateral change violation by the employer. The union's unfair labor practice complaint is dismissed.

BACKGROUND

The union is the exclusive bargaining representative for the employer's registered nurses and a separate bargaining unit of the employer's technical employees. Approximately 30 employees in the technical bargaining unit work in the employer's Diagnostic Imaging (DI) Department. At the time of the events in question, Michael Gray was the director of imaging and supervised the DI department.

Employees in the DI department perform X-ray, ultrasound, and magnetic resonance imagery (MRI) procedures as part of their normal duties. The rooms where the majority of the work in the DI department is performed are located off of a main hallway. Prior to hospital expansion, a hallway leading to the Emergency Department connected to the main hallway at one end, and a hallway leading to the hospital lobby connected to the main hallway at the other. Hospital expansion included the addition of an MRI hallway¹ that connected to the main hallway approximately halfway between the other two connecting hallways.

The employer has security cameras that monitor the hospital's hallways, entrances, and parking lots.² Footage from the cameras is stored in an area accessible to the employer's information technology (IT) employees and its security director, who receives and evaluates requests from supervisors to view camera footage as part of an investigation that could result in employee

¹ The MRI hallway was completed in 2013 as part of the second phase of the employer's campus renewal construction project, according to the hospital website.

² At the time of the hearing, the hospital had 56 security cameras in place on its main level.

discipline. Although approximately 80 percent of the hospital's security cameras are capable of recording audio, these cameras are not equipped with external microphones that would make that possible, and there is no database in place where audio recordings could be stored.

The employer has had security cameras in the DI department since at least 2010. Prior to the events that led to the filing of this unfair labor practice complaint, there was one camera at each end of the DI department's main hallway. The cameras provided views of the main hallway and of the hallway that leads to the hospital lobby. Neither camera provided a view of the MRI hallway when it opened.

The MRI hallway includes an IT closet, which is accessible to the employer's maintenance, IT, and biomedical engineering employees via a keypad code. The IT closet contains a point controller used to control the hospital's wireless devices, including devices that monitor patient vital signs in the Emergency Department. On or about October 13, 2014, those devices were disabled for a period of time because the point controller was unplugged. Subsequent investigation did not reveal who unplugged the point controller.

In response to the October incident, IT Supervisor Gary Diemert testified that he decided to install a security camera that would provide a view of the IT closet and the MRI hallway. Following approval from Chief Information Officer Tom Hornburg, the IT department disabled the camera near the hallway to the Emergency Department and installed a camera on the wall midway down the DI department's main hallway. The newly installed camera is located outside a group of rooms that include a patient waiting area, Gray's office, and the office of Patient Navigator Karry Trout, who was the interim director of imaging until Gray was hired and whose scheduling practices were the subject of consternation among bargaining unit members in the DI department.

The security camera installed by the IT department³ was given to the hospital by a vendor and features a 360-degree view, which provides the ability to survey the length of the MRI hallway

³ The camera in question is the ACTi KCM-3911 4 Megapixel 360° Hemispheric IP Security Camera.

and the DI department's main hallway. The camera does not record until it senses motion, and its footage was subject to the same viewing restrictions for footage recorded by the hospital's other cameras. As is the case with a majority of the cameras in the hospital, the camera has audio capabilities, but neither the external microphone nor the back-end database required to make use of those capabilities was installed.

IT department employees did not notify Gray of the decision to install the new security camera, nor did they notify the union. At some point in November, a number of DI department employees noticed the new camera and asked Gray about it. Gray initially told employees that he believed the device was a smoke detector, but he subsequently learned that the device was a camera. Some employees took note of the camera's model number and looked up its capabilities online, which led them to be concerned about the camera's ability to record audio as well as video.

The union did not demand to bargain after learning of the new security camera's installation. On January 13, 2015, approximately three months after the camera's installation, the union filed this unfair labor practice complaint.

APPLICABLE LEGAL STANDARDS

Duty to Bargain

A public employer has a duty to bargain with the exclusive bargaining representative of its employees over mandatory subjects of bargaining. RCW 41.56.030(4). Whether a particular item is a mandatory subject of bargaining is a question of law and fact for the Commission to decide. WAC 391-45-550. To decide, the Commission applies a balancing test on a case-by-case basis. The Commission balances "the relationship the subject bears to the wages, hours, and working conditions" of employees, and "the extent to which the subject lies 'at the core of entrepreneurial control' or is a management prerogative." The decision focuses on which characteristic predominates. *City of Seattle*, Decision 12060-A (PECB, 2014), citing *International Association of Fire Fighters, Local 1052 v. PERC (City of Richland)*, 113 Wn.2d 197, 203 (1989). While the balancing test calls upon the Commission and its examiners to balance these two principal

considerations, the test is more nuanced and is not a strict black and white application. One case may result in a finding that a subject is a mandatory subject of bargaining, while the same subject, under different facts, may be considered permissive. *City of Seattle*, Decision 12060-A.

Unilateral Change

An employer violates RCW 41.56.140(4) and (1) if it implements a unilateral change of a mandatory subject of bargaining without having fulfilled its bargaining obligations. As a general rule, an employer has an obligation to refrain from unilaterally changing terms or conditions of employment unless it: (1) gives notice to the union; (2) provides an opportunity for bargaining prior to making a final decision; (3) bargains in good faith, upon request; and (4) bargains to agreement or impasse concerning any mandatory subjects of bargaining. *King County*, Decision 10547-A (PECB, 2010), *citing Skagit County*, Decision 8746-A (PECB, 2006).

A complainant alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *City of Mountlake Terrace*, Decision 11702-A (PECB, 2014), *citing Whatcom County*, Decision 7288-A (PECB, 2002); *Municipality of Metropolitan Seattle*, Decision 2746-B (PECB, 1990).

ANALYSIS

For the union to prevail in this case, it must establish that the placement of the new security camera in the main hallway of the employer's DI department was a mandatory subject of bargaining. If it is successful, the union must then establish that the employer made a meaningful change to the status quo when it placed the new camera in the DI department without fulfilling its obligation to bargain.

Citing *King County*, Decision 9495-A (PECB, 2008), the union argues that the Commission has found a duty to bargain in cases where the employer unilaterally installed new security cameras or changed the way existing cameras were utilized. Because of ongoing conflict between labor and management in the DI department, the union contends that the new camera's audio capabilities

and its placement near department managers' offices tip the scales of the balancing test in favor of the employees because of the camera's adverse impact on working conditions. Finally, the union states that the employer installed the new camera in an area of the hospital that required badge access and was not freely accessible to the public, as opposed to the employer's past practice of limiting camera use to areas of the hospital open to the public.

The employer counters that the Commission has found that employers are not generally obligated to bargain the decision to install security cameras if the technological change does not have an effect on employees' working conditions. The employer contends that placing a new camera in the DI department's main hallway had little or no effect on employee working conditions because the hallway was among other areas of the hospital where security cameras have been in use for years. The employer asserts that it has no past practice of consulting with the union on the installation, placement, or use of security cameras, which are not actively monitored or used in disciplinary actions other than as corroboration of information obtained by other means.

In *King County*, Decision 9495-A, and *City of Mountlake Terrace*, Decision 11702-A, the Commission found that changes to the ways in which employers used security cameras triggered a duty to bargain because the changes significantly affected employees' working conditions. The employer in *King County*, Decision 9495-A, committed an unfair labor practice when it installed additional cameras that would be used to "investigate suspicious activity, trespassing, vandalism, theft, or other safety and security matters" without bargaining after approximately a decade of using cameras to monitor customers. The employer in *City of Mountlake Terrace* committed an unfair labor practice when it used footage from a public safety camera system in an internal affairs investigation after stating to the union a year earlier that the camera system would not be used for discipline.

Conversely, the employer's decision to use updated video technology on its buses was not found to be a mandatory subject of bargaining in *Community Transit*, Decision 12356 (PECB, 2015). When the employer in that case first installed security cameras on its buses in 1995, the parties placed no restrictions on the use of camera footage for discipline. The parties later agreed to

contract language that allowed use of camera footage as part of disciplinary reviews initiated by an observation or an incident, and that language was still in effect when the employer purchased a number of new buses with updated video camera technology in 2013. The examiner found that the employer's interest in using current technology, as well as its interests in safety and security, outweighed the employees' interests in discipline and privacy. The examiner also determined that the information collected and used for discipline was not materially different than it was with the outdated technology.

In *Snohomish Fire District 3*, Decision 12273 (PECB, 2015), the installation of security cameras at a fire station was also not found to be a mandatory subject of bargaining. After a number of communication devices went missing at the fire station, a police detective decided to install cameras in the area where the devices were stored. The examiner determined that there was no duty for the employer to bargain, based on the facts that an outside agency utilized the cameras in connection with an investigation; that the employer did not have access to the camera footage; and that the cameras surveyed a common area where there was no expectation of privacy.

Despite the atmosphere of distrust that permeated the DI department and led employees to link the installation of the new security camera with increased surveillance of their activities, the facts in this case are much more closely aligned to *Community Transit* than they are to the Commission decisions in which employers were found to have made changes to camera use that triggered a duty to bargain.

In the instant case, the employer installed security cameras that provided views of the main hallway in the DI department in 2010. Credible testimony from employer witnesses indicated that the cameras did not record audio and that camera footage was accessible through the employer's security officer solely as corroboration of information obtained as part of an investigation. The employer's IT department determined the placement of the cameras without consulting the union.

In October 2014, a critical piece of equipment that controls patient vital sign monitors in the Emergency Department and other wireless devices in the hospital was disconnected. The IT closet

where the equipment is housed is located off of an MRI hallway that opened in 2013 and was not visible to the existing security cameras in the DI department's main hallway. Without consulting the union or the DI department director, the IT department disabled a security camera at one end of the main hallway and replaced it with a new camera in a location that allowed views of the MRI hallway and the main hallway.

Unrefuted testimony from employer witnesses indicated that an external microphone that would enable the new security camera to record audio was not installed, that the back-end database necessary to store audio recordings was nonexistent, and that the employer continued to use camera footage as it did before the new camera was installed. Without audio capabilities, the camera recorded video of activity in the main hallway of the DI department as the existing cameras had prior to installation of the new camera.

Applying the balancing test, the employer's interest in being able to monitor an IT closet containing equipment directly related to patient safety predominates over employees' misplaced concerns over the audio capabilities of the security camera in question. As a result, the employer's decision to install the new security camera in the DI department was not a mandatory subject of bargaining.

CONCLUSION

Based on the entirety of the record, I find that the employer's decision to install a new security camera in the Diagnostic Imaging Department was not a mandatory subject of bargaining. Applying the balancing test, the employer's interest in monitoring a closet containing equipment directly related to patient safety outweighed employees' concerns over the new camera's audio capabilities. Because this dispute did not involve a mandatory subject of bargaining, the employer had no duty to bargain the decision to install the new security camera. Without a duty to bargain a mandatory subject, there can be no unilateral change violation by the employer. The union's unfair labor practice complaint is dismissed.

FINDINGS OF FACT

1. Mason General Hospital (employer or hospital) is a public employer within the meaning of RCW 41.56.030(12).
2. United Food and Commercial Workers, Local 21 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union is the exclusive bargaining representative for the employer's registered nurses and a separate bargaining unit of the employer's technical employees.
4. Approximately 30 employees in the technical bargaining unit work in the employer's Diagnostic Imaging (DI) Department. At the time of the events in question, Michael Gray was the director of imaging and supervised the DI department.
5. Employees in the DI department perform X-ray, ultrasound, and magnetic resonance imagery (MRI) procedures as part of their normal duties. The rooms where the majority of the work in the DI department is performed are located off of a main hallway.
6. Prior to hospital expansion, a hallway leading to the Emergency Department connected to the main hallway at one end, and a hallway leading to the hospital lobby connected to the main hallway at the other. Hospital expansion in 2013 included the addition of an MRI hallway that connected to the main hallway approximately halfway between the other two connecting hallways.
7. The employer has security cameras that monitor the hospital's hallways, entrances, and parking lots. Footage from the cameras is stored in an area accessible to the employer's information technology (IT) employees and its security director, who receives and evaluates requests from supervisors to view camera footage as part of an investigation that could result in employee discipline.

8. Although approximately 80 percent of the hospital's security cameras are capable of recording audio, these cameras are not equipped with external microphones that would make that possible, and there is no database in place where audio recordings could be stored.
9. The employer has had security cameras in the DI department since at least 2010. Prior to the events that led to the filing of this unfair labor practice complaint, there was one camera at each end of the DI department's main hallway. The cameras provided views of the main hallway and of the hallway that leads to the hospital lobby. Neither camera provided a view of the MRI hallway when it opened.
10. The MRI hallway includes an IT closet, which is accessible to the employer's maintenance, IT, and biomedical engineering employees via a keypad code.
11. The IT closet contains a point controller used to control the hospital's wireless devices, including devices that monitor patient vital signs in the Emergency Department.
12. On or about October 13, 2014, those devices were disabled for a period of time because the point controller was unplugged. Subsequent investigation did not reveal who unplugged the point controller.
13. In response to the October incident, IT Supervisor Gary Diemert testified that he decided to install a security camera that would provide a view of the IT closet and the MRI hallway.
14. Following approval from Chief Information Officer Tom Hornburg, the IT department disabled the camera near the hallway to the Emergency Department and installed a camera on the wall midway down the DI department's main hallway.
15. The newly installed camera is located outside a group of rooms that include a patient waiting area, Gray's office, and the office of Patient Navigator Karry Trout, who was the

interim director of imaging until Gray was hired and whose scheduling practices were the subject of consternation among bargaining unit members in the DI department.

16. The security camera installed by the IT department was given to the hospital by a vendor and features a 360-degree view, which provides the ability to survey the length of the MRI hallway and the DI department's main hallway.
17. The camera does not record until it senses motion, and its footage was subject to the same viewing restrictions for footage recorded by the hospital's other cameras. As is the case with a majority of the cameras in the hospital, the camera has audio capabilities, but neither the external microphone nor the back-end database required to make use of those capabilities was installed.
18. IT department employees did not notify Gray of the decision to install the new security camera, nor did they notify the union.
19. At some point in November, a number of DI department employees noticed the new camera and asked Gray about it. Gray initially told employees that he believed the device was a smoke detector, but he subsequently learned that the device was a camera.
20. Some employees took note of the camera's model number and looked up its capabilities online, which led them to be concerned about the camera's ability to record audio as well as video.
21. The union did not demand to bargain after learning of the new security camera's installation. On January 13, 2015, approximately three months after the camera's installation, the union filed this unfair labor practice complaint.

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 its actions described in Findings of Fact 13 through 19, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by installing a new security camera in the DI department.

ORDER

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

ISSUED at Olympia, Washington, this 18th day of August, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



STEPHEN W. IRVIN, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-35.



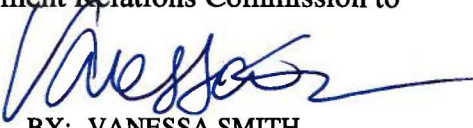
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RECORD OF SERVICE - ISSUED 08/18/2015

DECISION 12397 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:



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