STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY, Complainant, vs. AMALGAMATED TRANSIT UNION, LOCAL 587, Respondent.	CASE 26736-U-14 DECISION 12505 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On September 18, 2014, King County (employer) filed an unfair labor practice complaint alleging the Amalgamated Transit Union, Local 587 (union) breached its good faith bargaining obligations by submitting to interest arbitration a permissive subject of bargaining and conditioning settlement of contract negotiations on resolution of that permissive subject. The employer amended its complaint on June 10, 2015.

The complaints assert that during contract negotiations, the employer proposed to reorganize its workforce by moving the Millwright job class in the Metro Transit Division's Vehicle Maintenance Section to the same division's Power & Facilities Section.[1] Employees in both sections are in the same bargaining unit. The employer claims the union insisted on submitting the decision to move those employees to interest arbitration for final resolution. The employer

[1] The Power & Facilities Section is called two different names in the record. The employer's organizational chart and complaints refer to the section as the Power & Facilities Section. The parties' collective bargaining agreement refers to the section as Facilities Maintenance. This decision will refer to the section as the Power & Facilities Section.

asserts its decision to move the Millwrights from the Vehicle Maintenance Section to the Power & Facilities Section is a managerial prerogative. On September 9 and 10, 2015, Examiner Dario de la Rosa held a hearing. The parties filed post-hearing briefs on November 18, 2015.

The issue to be decided in this case, as framed by the preliminary ruling, is whether the union violated RCW 41.56.150(4) and (1) by insisting to bargain to impasse the employer's decision to reorganize its workforce and move the Millwrights from the Vehicle Maintenance Section to the Power & Facilities Section. Based upon the record presented, the employer's decision to reorganize its workforce was a managerial prerogative. The decision to move the Millwrights from the Vehicle Maintenance Section to the Power & Facilities Section did not by itself impact employees' wages, hours, and working conditions in such a manner that triggered a bargaining obligation. Accordingly, the union committed an unfair labor practice when it submitted that issue to interest arbitration.

BACKGROUND

The employer's Metro Transit Division operates a public passenger transportation system. The union represents a mixed-class bargaining unit of transit employees within that division. Employees in the bargaining unit are employees of a public passenger transportation system within the meaning of RCW 41.56.492, and the parties' collective bargaining relationship is subject to the interest arbitration provisions of RCW 41.56.430, RCW 41.56.450 through RCW 41.56.470, and RCW 41.56.480 through RCW 41.56.492. The employer and union were parties to a collective bargaining agreement effective from November 1, 2010, through October 31, 2013.

The Metro Transit Division is divided into numerous sections. The parties' collective bargaining agreement contains provisions that are generally applicable to all employees in the bargaining unit. The agreement also contains provisions that are specific to employees in certain sections within the Metro Transit Division, including the Vehicle Maintenance and Power & Facilities Sections.

The Vehicle Maintenance Section is responsible for maintaining the rolling stock used by the Metro Transit Division, such as buses, trolleys, light rail vehicles, and other street cars. The section

is also responsible for maintaining the division's non-revenue support vehicles, such as base cars and maintenance vehicles. Article 17 of the 2010-2013 collective bargaining agreement is specific to employees in the Vehicle Maintenance Section and contains special terms and conditions of employment applicable only to the Vehicle Maintenance employees. The agreement also specifies the job classes that are covered by Article 17.

The Vehicle Maintenance Section has historically included employees in the Millwright job class. Millwrights are responsible for the maintenance and repair of fixed equipment, such as hoists, washers, jacks, steam cleaners, pumps, and hydraulics. The Millwrights are also responsible for installing, removing, relocating, aligning, and anchoring various types of equipment. The Millwrights conduct major overhauls of equipment as specified by equipment manufacturers. The Millwrights in the Vehicle Maintenance Section have specific terms and conditions of employment that are governed by Article 17 of the 2010-2013 collective bargaining agreement.

The Power & Facilities Section is responsible for maintaining the infrastructure of the Metro Transit Division and is divided into two general departments: power and facilities. The power department is responsible for maintaining the overhead wires that deliver electricity to the employer's trolley system. The facilities department is responsible for maintaining the employer's buildings, including bus shelters and park and ride facilities. Article 18 of the parties' 2010-2013 collective bargaining agreement is specific to employees in the Power & Facilities Section and contains special terms and conditions of employment applicable only to the employees the Power & Facilities Section. The agreement also specifies the job classes that are covered by Article 18. The Maintenance Constructor job class is included in the Power & Facilities Section and employees in that job class perform work that is similar to that of the Millwrights.

Employer's First Attempt to Reorganize the Millwrights

In 2011 the employer began exploring the possibility of moving the Millwrights in the Vehicle Maintenance Section to the Power & Facilities Section. The employer found that the work performed by the Millwrights was on fixed equipment attached to the employer's facilities. The employer also found that this work was similar to the facilities maintenance work performed by employees in the Power & Facilities Section, such as the Maintenance Constructor job class.

Based upon the similarities of duties and other factors, such as the work order system used to assign maintenance tasks, the employer rationalized that it made more sense for the Vehicle Maintenance Millwrights to be included in the Power & Facilities Section.

On August 16, 2011, King County Labor Negotiator David Levin wrote a letter to then Union President Paul Bachtel informing him that the employer intended to move supervision of the Millwrights from the Vehicle Maintenance Section to the Power & Facilities Section effective January 1, 2012. The letter invited the union to bargain the change. The letter also noted that, unless the parties bargained something different, only the reporting structure for the Millwrights would change and Article 17 would still apply to the Millwrights after the reorganization. The union demanded to bargain the organizational change that same day.

On August 30, 2011, the employer and union met to discuss the proposed reorganization. Levin testified that the employer believed the decision to move supervision of the Millwrights to the Power & Facilities Section was a permissive subject but that it was obligated to bargain any effects the decision had on mandatory subjects. Levin also testified that the employer believed it was required to bargain with the union before changing the terms of employment for the Millwrights, such as moving them from under Article 17 to Article 18 of the collective bargaining agreement. The parties did not agree on the topic during these discussions.

On December 23, 2011, John Alley, the Assistant Section Manager of the Vehicle Maintenance Section, sent an e-mail stating that the Millwrights would be under the "command, control and communications" of the Power & Facilities Section effective January 7, 2012, but daily operational control of the Millwrights would remain with the Vehicle Maintenance Section until a later date. Union Vice President Don MacAdam replied to Alley and claimed the employer's action was illegal. MacAdam also asserted that the employer needed to negotiate with the union's president about the proposed change. The employer once again insisted the decision to move the employees from one section to another was a managerial prerogative and that it remained available to negotiate the impacts of its decision.

The parties continued to discuss the Millwright issue in April and May of 2012 and exchanged proposals regarding the subject. The employer's proposals reflect a continued insistence that the Millwrights would be moved under the supervision of the Power & Facilities Section but the terms and conditions of employment for the Millwrights would continue to be governed by Article 17 of the existing collective bargaining agreement. The employer also proposed that the parties enter into a pilot project that would test the proposed move for a one-year period. The union rejected the employer's proposals to move the Millwrights out of the Vehicle Maintenance Section. The employer also asked this agency to provide a mediator to assist the parties in resolving the dispute. Those mediation efforts were not successful.

In June 2012 the parties jointly recognized that the terms of the existing collective bargaining agreement might preclude the employer from moving the Millwrights out of the Vehicle Maintenance Section. The union withdrew its demand to bargain and the parties agreed to submit the issue to arbitration. On April 15, 2013, Arbitrator Michael Beck issued an award interpreting the existing collective bargaining agreement as precluding the Millwrights from being either transferred to or managed by the Power & Facilities Section. The award directed the employer to move the Millwrights back under the Vehicle Maintenance Section reporting chain. The employer complied with the award. The arbitrator's award did not comment on whether the contract provisions could be changed in the future or whether the decision to move the Millwrights to the Power & Facilities Section was a mandatory or permissive subject of bargaining.

Employer's Second Attempt to Reorganize the Millwrights

Following the issuance of the arbitration award, the employer determined that it still wanted to move the Millwrights to the Power & Facilities Section. At the same time, the employer and union were in the process of negotiating a successor collective bargaining agreement.

On July 26, 2013, the employer presented a what-if proposal to the union that would have moved the Millwrights to the Power & Facilities Section. Levin explained that this proposal would have also changed the terms and conditions of employment for the Millwrights because the employer intended for the Millwrights to be governed by Article 18 of the agreement. Levin also stated that the employer was willing to negotiate new provisions in Article 18 that would apply to the

Millwrights. The union offered a counterproposal that kept the Millwrights in the Vehicle Maintenance Section. The parties exchanged additional proposals but did not resolve the matter.

The employer's negotiating strategy shifted in October 2013. The employer presented a what-if proposal to the union that would merge the Millwright and Maintenance Constructor job classes into a new Transit Facilities Maintenance Technician job class. Levin testified that if the Millwrights were in the same job class as the Maintenance Constructors, the work jurisdiction issues between the two job classes that had plagued the employer in the past would be avoided. The new Transit Facilities Maintenance Technician job class would report to the Power & Facilities Section. Additionally, the terms and conditions for the Transit Facilities Maintenance Technician job class would be governed by Article 18 of the newly negotiated contract. The employer's proposal also added to Article 18 certain Article 17 provisions that applied to the Millwrights.

The union countered the employer's October 2013 what-if proposal. The union's counterproposal was predicated on a determination by a competent authority as to whether the decision to move the Millwrights to the Power & Facilities Section was a mandatory or permissive subject of bargaining. If the competent authority found the move to be mandatory, then the union proposed keeping the Millwrights in the Vehicle Maintenance Section. If the competent authority found the decision to be permissive, then the union proposed various changes to Article 18. Neither the employer's proposal nor the union's counterproposal was accepted.

Agreement to Continue Negotiating the Millwright Issue

By November 2013 the parties had not reached agreement on the Millwright issue. The parties were close to reaching a tentative agreement on the successor collective bargaining agreement for 2013 through 2016. The parties entered into an agreement to continue discussions about the Millwright issue separate and apart from the negotiations about the master collective bargaining agreement. The union's membership rejected the tentative master collective bargaining agreement and the parties continued to negotiate both the master agreement and the Millwright issue separately. The union continued to insist on the Millwrights staying in the Vehicle Maintenance Section and under Article 17 of the contract during these negotiations.

On April 4, 2014, King County Labor Negotiator Cynthia McNabb sent a letter to Bachtel and then Union Second Vice President Clinton DeVoss demanding that the union withdraw or modify its proposal on the Millwright issue. The employer once again claimed the decision to move the Millwrights to the Power & Facilities Section was a managerial prerogative and that it was not obligated to bargain that decision. The employer reiterated its objection to the union's insistence on keeping the Millwrights in the Vehicle Maintenance Section. McNabb's letter indicated that the employer was still open to bargaining the effects of its decision to move the Millwrights but would not bargain the decision itself. The union did not withdraw or modify its Millwright proposal.

The parties reached a second tentative agreement for the master contract which was also voted down by the union's membership. The parties submitted their outstanding issues to a non-agency mediator for certification to interest arbitration.[2] The Millwright issue was not on the list of issues submitted to interest arbitration because of the parties' November 2013 agreement to continue discussions on that issue.

The Employer's Unfair Labor Practice Complaint

On September 18, 2014, the employer filed the instant unfair labor practice complaint alleging the union was unlawfully insisting to bargain to impasse the employer's decision to move the Millwrights from the Vehicle Maintenance Section to Power & Facilities Section. On October 6, 2014, Unfair Labor Practice Manager Jessica Bradley issued a preliminary ruling forwarding the employer's complaint to hearing.

Following the issuance of the preliminary ruling, the parties recognized that the employer's complaint was premature because the Millwright issue had not actually been certified to interest arbitration by a mediator and asked that processing of the complaint be delayed. The parties requested additional mediation services from this agency on March 5, 2015, and were once again unable to resolve their differences on the Millwright issue. On May 22, 2015, the mediator certified the Millwright issue to interest arbitration as follows:

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[2] Although the employer and union could have requested mediation services from this agency, RCW 41.56.492(1) permitted the parties to hire a non-agency mediator of their choice at their own expense.

> King County proposes to move employees in the Millwrights job classification from its Vehicle Maintenance Section to the Power and Facilities Section.

On June 1, 2015, Levin sent an e-mail to the union demanding that it withdraw the permissive elements of its proposal on the Millwright issue as explained in McNabb's April 4, 2014, letter. The union once again refused to modify its proposal. The employer then amended its complaint to reflect that the Millwright issue had been certified to interest arbitration and that the union refused to modify its proposal to withdraw the permissive elements. On June 22, 2015, the examiner originally assigned to hear this matter sent the parties an e-mail stating that he would not be issuing a new preliminary ruling because the amended complaint fell within the scope of the original complaint. Based on the amended complaint and original preliminary ruling, the mediator suspended the Millwright issue from the interest arbitration proceeding under WAC 391-55-265.

DISCUSSION

Applicable Legal Standards

Under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, 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 or permissive subject of bargaining is a question of law and fact for the Commission to decide. WAC 391-45-550. The Commission, on a case-by-case basis, 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" when determining whether a subject of bargaining is mandatory or permissive. *International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 197, 203 (1989). 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*, 113 Wn.2d 197 at 203. 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.

An interest arbitration eligible party can bargain to impasse and seek interest arbitration on mandatory subjects of bargaining. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A (MRNE, 2015). Interest arbitration eligible parties are also free to discuss and negotiate permissive subjects of bargaining, but each party is free to bargain or not to bargain and to agree or not to agree about those permissive subjects. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A, *citing Pasco Police Officers' Association v. City of Pasco*, 132 Wn.2d 450, 460 (1997); *Whatcom County,* Decision 7244-B (PECB, 2004). An interest arbitration eligible party commits an unfair labor practice violation when it seeks interest arbitration on a permissive subject of bargaining. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A, *citing Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d 338 (1986).

If the parties agree to include a permissive subject of bargaining in a collective bargaining agreement, the parties' agreement does not render that subject mandatory. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A; *see also Allied Chemical and Alkali Workers of America, Local 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). Agreements on permissive subjects of bargaining "must be a product of renewed mutual consent" and expire with the parties' collective bargaining agreement. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A, *citing Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d 338 at 344.

Suspension of Interest Arbitration

If a party believes that a permissive subject of bargaining is being advanced to interest arbitration, it may file an unfair labor practice complaint against the party that insisted to impasse on the permissive subject. The party claiming that a permissive subject of bargaining is being advanced to interest arbitration must have communicated its concerns to the other party "during bilateral negotiations and/or mediation." WAC 391-55-265(1)(a); *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A.

The objecting party must file and process an unfair labor practice complaint prior to the conclusion of the interest arbitration proceeding if the party advancing the proposal has not withdrawn or

cured the proposal. WAC 391-55-265(1)(a). If a preliminary ruling is issued under WAC 391-45-110, the mediator must suspend the certification of the disputed issue for interest arbitration. WAC 391-55-265(1)(c).

The suspension of the issue remains in effect until a final ruling is made on the unfair labor practice complaint. *Id.* If the issue was unlawfully advanced or affected by unlawful conduct, the issue shall be stricken from the certification issued under WAC 391-55-200, and the party advancing the proposal shall only be permitted to submit a modified proposal that complies with the remedial order in the unfair labor practice proceeding. WAC 391-55-265(2)(a). If the suspended issue was lawfully advanced, the suspension shall be terminated and the issue shall be remanded to the interest arbitration panel for a ruling on the merits. WAC 391-55-265(2)(b).

Application of Legal Standards

Although the mediator certified the employer's proposal to move the Millwrights from the Vehicle Maintenance Section to the Power & Facilities section to interest arbitration, the record demonstrates that there were two different elements to that proposal discussed by the parties. The first element of the proposal was the organizational change. This element involved changing the supervision for the Millwrights from the Vehicle Maintenance Section to the Power & Facilities Section and amending position descriptions and organizational charts to reflect the new reporting structure. The second element of the proposal involved changing the terms and conditions of employment of the Millwrights by moving them from under Article 17 to Article 18 of the collective bargaining agreement.

During negotiations the employer consistently maintained that the first element was a managerial prerogative and a permissive subject of bargaining. The employer also consistently maintained that the second element was a mandatory subject of bargaining that it was willing to negotiate with the union. The union maintained that both elements were mandatory subjects of bargaining and demanded decision bargaining over both elements. The employer's complaint objects only to the union's insistence on bargaining the first element, the organizational change of moving the Millwrights from the Vehicle Maintenance Section to the Power & Facilities Section.

In determining whether the union impermissibly bargained a permissive subject to impasse, the good faith bargaining analysis asks for a determination on three separate issues: (1) whether the objecting party communicated its concerns about the permissive nature of the topic to the other party during bilateral negotiations and/or mediation, (2) whether the respondent attempted to bargain that issue to impasse by submitting the issue to interest arbitration, and (3) whether the issue being bargained was a mandatory or permissive subject of bargaining.

When conducting this analysis for interest arbitration eligible employees, the first and second elements are threshold issues. As to the notice requirement, during negotiations and mediation the complaining party must place the responding party on notice that it is attempting to bargain what the complaining party believes is a permissive or illegal subject of bargaining. In the absence of such notice, a complaint must be dismissed. *King County Fire District 39*, Decision 2328 (PECB, 1985). This standard was codified in 1999 when WAC 391-55-265 was adopted.

With respect to bargaining to impasse, the Commission previously explained that for interest arbitration eligible employees, "a refusal to bargain by insisting to impasse only occurs where the party advances a [permissive] subject of bargaining to interest arbitration." *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A, *citing City of Lynnwood*, Decision 7637 (PECB, 2002) *and City of Richland (International Association of Fire Fighters, Local 1052)*, Decision 1225 (PECB, 1981). The evidence of this insistence is generally demonstrated through the responding party's inclusion of the disputed issue on its list of issues submitted to the mediator that are to be certified to interest arbitration as required by WAC 391-55-200(1)(b). If a bargaining topic does not appear on the responding party's list of issues to be certified to interest arbitration, the respondent did not attempt to bargain that issue to impasse and therefore no unfair labor practice violation could be found. *Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A; *Cowlitz County*, Decision 12483 (PECB, 2015).

Employer Placed the Union on Notice

In this case the record clearly demonstrates that, during its negotiations with the union both before and after issuance of the April 15, 2013, arbitration award, the employer consistently asserted its

belief that the decision to reorganize the Millwrights was a permissive subject of bargaining. McNabb's April 4, 2014, letter also placed the union on notice that the employer believed its decision to reorganize the Millwrights was a permissive subject, and the union continued to demand to bargain the issue. Thus, the record supports a finding that the employer placed the union on notice that it was potentially bargaining a permissive subject.

Union Insisted on Bargaining the Millwright Reorganization to Impasse

The record also supports a finding that the union attempted to submit the employer's decision to move the Millwrights to the Power & Facilities Section to interest arbitration. Neither party submitted into evidence the list of issues that were supposed to be submitted to the mediator as required by WAC 391-55-200(1)(b). Additionally, the mediation and interest arbitration case files maintained by this agency do not contain the lists of outstanding issues that each party submitted to the mediator in anticipation of the certification to interest arbitration.[3]

Despite the absence of formal lists of issues submitted to the mediator, the facts clearly establish that the union insisted on submitting the employer's decision to move the Millwrights to the Power & Facilities Section to interest arbitration. The union's April 15, 2015, proposal to the employer clearly stated that it wanted to bargain that decision. The mediator's May 22, 2015, list of certified bargaining issues clearly stated that the employer "proposes to move employees in the Millwrights job classification from its Vehicle Maintenance Section to the Power and Facilities Section" and that the issue would be submitted to interest arbitration. The employer's June 1, 2015, e-mail to the union clearly demanded the union withdraw that portion of its proposal. The union clearly refused to modify its proposal and on August 12, 2015, the mediator suspended the Millwright issue from any upcoming interest arbitration proceeding based upon the employer's amended complaint.

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[3] Administrative notice is taken of Case 27071-M-15; the parties' March 5, 2015, joint request for mediation services; and Case 27245-I-15, the case that forwarded the unresolved issues from mediation to interest arbitration.

Decision to Reorganize the Millwrights Was a Managerial Prerogative

Having determined that the employer placed the union on notice that the employer believed the Millwright issue was a permissive subject and that the union attempted to submit that issue to interest arbitration, the next step in the analysis is to determine whether the employer's decision was mandatory or permissive in nature. Applying the balancing test to the record in this case demonstrates that the employer's decision to move the Millwrights from the Vehicle Maintenance Section to the Power & Facilities Section was a managerial prerogative that only remotely impacted employees' terms and conditions of employment.

The employer articulated several specific reasons as to why the Power & Facilities Section was a better organizational fit for the Millwrights. For example, the employer had expressed ongoing concerns about work assignment issues that existed between the Millwrights and other employees in the Power & Facilities Section. These assignment issues occurred due to the similarity of work between the two groups of employees. The employer also asserted that it has the inherent right to reorganize its workforce in any manner of its choosing. These reasons strongly weigh in favor of the decision being a managerial prerogative.

Moving the Millwrights to the Power & Facilities Section would not degrade the union's historical work jurisdiction. The employees in the Power & Facilities Section are in the same bargaining unit as the Vehicle Maintenance Section employees, so it cannot be said that the employer's proposed move transferred any work from the bargaining unit. *See, e.g., City of Snoqualmie*, Decision 9892-A (PECB, 2009) (one factor in determining if bargaining unit work was unlawfully transferred from a bargaining unit is to examine whether the transfer involved a significant detriment to bargaining unit members). Rather, the move would potentially alleviate some of the intra-bargaining unit issues that the employer historically experienced and bolsters the conclusion that the decision to move the Millwrights is a managerial prerogative.

Finally, if the Millwrights were moved to the Power & Facilities Section, the record establishes that they would report to a new chain of supervision and be part of a different section of the employer's workforce. Aside from these changes, the record does not establish that any other

terms and conditions of employment for the Millwrights would be impacted by the *decision* to reorganize the Millwrights to the Power & Facilities Section.

In its brief, the union points to the April 15, 2013, arbitration award as support for its contention that the decision to reorganize and move the Millwrights to the Power & Facilities Section is a mandatory subject of bargaining.[4] The union cites to those portions of the award explaining how the Millwrights lost at least 18 tasks and duties when the employer first attempted to the move the Millwrights. The union also points to the differences between Articles 17 and 18 and claims that the Millwrights would lose numerous benefits if they were moved to the Power & Facilities Section. These arguments are not persuasive.

As previously stated, the employer's objections to the union's bargaining position is limited to the union's insistence that the Millwrights remain in the Vehicle Maintenance Section. The union's insistence on bargaining the various changes to terms and conditions of employment that apply to the Millwrights, such as those outlined Article 17 and Article 18 of the previous collective bargaining agreement, is outside the scope of this complaint and remain viable issues for any interest arbitration proceeding between the parties. Therefore, the examples cited by the union do not support its argument that the *decision* to reorganize the Millwrights was a mandatory subject.

Existing agency precedent also supports the conclusion that the employer's decision to reorganize its Millwrights is a permissive subject of bargaining. In *City of Yakima*, Decision 1130 (PECB, 1981), an examiner held that an employer's decision to allocate resources and to determine levels of service is a managerial prerogative. In *City of Bellevue*, Decision 3343-A (PECB, 1990), the Commission held that adding new employees to a particular work shift was a managerial prerogative. In those cases the workforce decisions made by the employers only remotely impacted employee wages, hours, and working conditions, such as changes to the leadership structure of the workforce, changes in employee duties, and changes to career opportunities for employees. None of those changes tipped the balance for that subject toward being mandatory in

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[4] Although the April 15, 2013, arbitration award restricted the employer's ability to reorganize its workforce, that restriction was a product of the 2011-2013 contract and expired with that agreement because there was no mutual agreement to extend that restriction to the Millwrights. *See Washington State Ferries (Inlandboatmen's Union of the Pacific)*, Decision 12134-A.

nature. The instant case is similar. Only the lines of supervision for the Millwrights would change and that decision is part of the employer's strategic plan to allocate its resources.

CONCLUSION

The employer's decision to reorganize the Millwrights by moving them to the Power & Facilities Section was a permissive subject of bargaining. The union bargained in bad faith and committed an unfair labor practice when it insisted on submitting that issue to interest arbitration.

Remedy

If a permissive subject of bargaining is unlawfully advanced to interest arbitration, WAC 391-55-265(2)(a) requires that the unlawful proposal be stricken from the certification. The party advancing the proposal shall only be permitted to advance a proposal that is modified in a manner that is in compliance with any issued remedial order. This special remedial requirement is in addition to the standard remedy of ordering the offending party to cease and desist from the offending behavior, post notice of the violation in the workplace, and to publicly read the notice at the regular meeting of organization. *See, e.g., University of Washington*, Decision 11499-A (PSRA, 2013) (discussing remedial orders).

FINDINGS OF FACT

1. King County (employer) is a public employer within the meaning of RCW 41.56.030(12).

2. The Amalgamated Transit Union, Local 587 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union represents a mixed-class bargaining unit of transit employees in the employer's Metro Transit Division. Employees in the bargaining unit are employees of a public passenger transportation system who are eligible for interest arbitration within the meaning of RCW 41.56.492, and the parties' collective bargaining relationship is subject to the

interest arbitration provisions of RCW 41.56.430, RCW 41.56.450 through RCW 41.56.470, and RCW 41.56.480 through RCW 41.56.492.

4. The employer and union were parties to a collective bargaining agreement effective from November 1, 2010, through October 31, 2013.

5. The Metro Transit Division is divided into numerous sections, including the Vehicle Maintenance and Power & Facilities Sections.

6. The Vehicle Maintenance Section is responsible for maintaining the rolling stock used by the Metro Transit Division, such as buses, trolleys, light rail vehicles, and other street cars.

7. The Vehicle Maintenance Section has historically included employees in the Millwright job class. Millwrights are responsible for the maintenance and repair of fixed equipment, such as hoists, washers, jacks, steam cleaners, pumps, and hydraulics.

8. Article 17 of the 2010-2013 collective bargaining agreement described in Finding of Fact 4 is specific to employees in the Vehicle Maintenance Section and contains special terms and conditions of employment applicable only to the Vehicle Maintenance employees.

9. The Power & Facilities Section is responsible for maintaining the infrastructure of the Metro Transit Division and is divided into two general departments: power and facilities.

10. The Maintenance Constructor job class is included in the Power & Facilities Section and employees in that job class perform work that is similar to that of the Millwrights.

11. Article 18 of the parties' 2010-2013 collective bargaining agreement is specific to employees in the Power & Facilities Section and contains special terms and conditions of employment applicable only to the employees the Power & Facilities Section.

12. In 2011 the employer began exploring the possibility of moving the Millwrights in the Vehicle Maintenance Section to the Power & Facilities Section. The employer found that the work performed by the Millwrights was on fixed equipment attached to the employer's facilities. The employer also found that this work was similar to the facilities maintenance work performed by employees in the Power & Facilities Section, such as the Maintenance Constructor job class.

13. The employer had expressed ongoing concerns about work assignment issues that existed between the Millwrights and other employees in the Power & Facilities Section. These assignment issues occurred due to the similarity of work between the two groups of employees. The employer also asserted that it has the inherent right to reorganize its workforce in any manner of its choosing.

14. The employer's decision to move the Millwrights to the Power & Facilities Section would not degrade the union's historical work jurisdiction.

15. On August 16, 2011, the employer informed the union that the employer intended to move supervision of the Millwrights from the Vehicle Maintenance Section to the Power & Facilities Section effective January 1, 2012. The union demanded to bargain the organizational change that same day.

16. On August 30, 2011, the employer and union met to discuss the proposed reorganization. The employer believed the decision to move supervision of the Millwrights to the Power & Facilities Section was a permissive subject but that it was obligated to bargain any effects the decision had on mandatory subjects. The employer also believed it was required to bargain with the union before changing the terms of employment for the Millwrights, such as moving them from under Article 17 to Article 18 of the collective bargaining agreement. The parties did not agree on the topic during these discussions.

17. The parties continued to discuss the Millwright issue in April and May of 2012 and exchanged proposals regarding the subject.

18. On April 15, 2013, Arbitrator Michael Beck issued an award interpreting the existing collective bargaining agreement as precluding the Millwrights from being either transferred to or managed by the Power & Facilities Section. The award directed the employer to move the Millwrights back under the Vehicle Maintenance Section reporting chain. The employer complied with the award.

19. On July 26, 2013, the employer presented a what-if proposal to the union that would have moved the Millwrights to the Power & Facilities Section. This proposal would have also changed the terms and conditions of employment for the Millwrights by moving them to be governed by Article 18 of the agreement. The parties exchanged proposals but did not resolve the matter.

20. In October 2013 the employer presented a what-if proposal to the union that would merge the Millwright and Maintenance Constructor job classes into a new Transit Facilities Maintenance Technician job class. The terms and conditions for the Transit Facilities Maintenance Technician job class would be governed by Article 18 of the newly negotiated contract. The employer's proposal also added to Article 18 certain Article 17 provisions that applied to the Millwrights. The union countered the employer's October 2013 what-if proposal. The union's proposal was predicated on a determination by a competent authority as to whether the decision to move the Millwrights to the Power & Facilities Section was a mandatory or permissive subject of bargaining. Neither of the October 2013 proposals were accepted.

21. In November 2013 the parties entered into an agreement to continue discussions about the Millwright issue separate and apart from the negotiations about the master collective bargaining agreement.

22. On April 4, 2014, the employer sent a letter to the union demanding that the union withdraw or modify its proposal on the Millwright issue. The employer once again claimed the decision to move the Millwrights to the Power & Facilities Section was a managerial

prerogative and that it was not obligated to bargain that decision. The union did not withdraw or modify its Millwright proposal.

23. The parties requested additional mediation services from this agency on March 5, 2015, and were once again unable to resolve their differences on the Millwright issue.

24. On May 22, 2015, the mediator certified the Millwright issue to interest arbitration as follows: "King County proposes to move employees in the Millwrights job classification from its Vehicle Maintenance Section to the Power and Facilities Section."

25. On June 1, 2015, the employer sent an e-mail to the union demanding that it withdraw the permissive elements of its proposal. The union once again refused to modify its proposal.

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. Based upon Findings of Fact 12 through 14, the employer's decision to move the Millwrights in the Vehicle Maintenance Section described in Finding of Fact 6 to the Power & Facilities Section described in Finding of Fact 9 was a permissive subject of bargaining.

3. Based upon Findings of Fact 16 through 25 and Conclusion of Law 2, the union unlawfully submitted to interest arbitration a permissive subject of bargaining in violation of Chapter 41.56 RCW.

ORDER

The Amalgamated Transit Union, Local 587, 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 King County by insisting on submitting to interest arbitration King County's decision to move the Millwrights in the Vehicle Maintenance Section to the Power & Facilities Section.

   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. Cease and desist from bargaining to impasse and seeking interest arbitration over King County's decision to move the Millwrights in the Vehicle Maintenance Section to the Power & Facilities Section. Notify the interest arbitrator in writing that this issue, which was certified for arbitration in a letter dated May 22, 2015, is being removed from the list of issues certified for his or her consideration.

   b. Contact the Compliance Officer at the Public Employment Relations Commission to receive official copies of the required notice posting. Post copies of the notice provided by the Compliance Officer 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.

   c. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the elected governing body of the Amalgamated Transit Union,

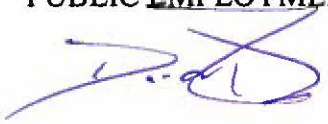
Local 587, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

d. 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.

e. 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 her with a signed copy of the notice she provides.

ISSUED at Olympia, Washington, this 14th day of December, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, 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 26736-U-14
DECISION 12505 - 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 STATE PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING, RULED THAT THE AMALGAMATED TRANSIT UNION, LOCAL 587 COMMITTED AN UNFAIR LABOR PRACTICE, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY refused to bargain collectively with your employer by insisting on submitting King County's decision to move the Millwrights in the Vehicle Maintenance Section to the Power & Facilities Section to interest arbitration.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL notify the interest arbitrator that the issue concerning King County's decision to move employees in the Millwright job classification from the Vehicle Maintenance Section to the Power & Facilities Section is being withdrawn from consideration.

WE WILL NOT bargain to impasse and seek interest arbitration over King County's decision to move the Millwrights in the Vehicle Maintenance Section to the Power & Facilities Section or any other permissive subject of bargaining.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce 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.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
THOMAS W. McLANE, COMMISSIONER
MARK E. BRENNAN, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 12/14/2015

DECISION 12505 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 26736-U-14

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REP BY: PATTI COLE TINDALL
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