City of Bellevue, Decision 10830-A (PECB, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BELLEVUE POLICE SUPPORT GUILD, Complainant, vs. CITY OF BELLEVUE, Respondent.	CASE 22416-U-09-5719 DECISION 10830-A - PECB DECISION OF COMMISSION

Cline & Associates, by *Christopher J. Casillas,* Attorney at Law, for the union.

Lori M. Riordan, City Attorney, by *Cheryl A. Zakrzewski,* Attorney at Law, and *Siona D. Windsor,* Attorney at Law, for the employer.

This case comes before the Commission on a timely appeal by the Bellevue Police Support Guild (union) and a cross-appeal by the City of Bellevue (employer) seeking to overturn certain Findings of Fact, Conclusions of Law, and Order issued by Examiner Jessica J. Bradley.[1]

ISSUES

1. Did the union file its complaint alleging that the employer refused to bargain the decision to join NORCOM within the six-month statute of limitations?
2. Was the employer's decision to join NORCOM an entrepreneurial decision to cease dispatch operations or a decision to contract out dispatch operations?
3. Did the employer unlawfully refuse to bargain its decision to lay off dispatchers?

[1] *City of Bellevue*, Decision 10830 (PECB, 2010).

We agree with the Examiner that the union's complaint alleging the decision to join NORCOM was a mandatory subject of bargaining was not filed within the six-month statute of limitations. We overturn the Examiner's conclusion that the employer contracted out bargaining unit work. Rather, the employer went out of the dispatch business. Thus, the employer was not obligated to bargain the decision to cease operations.

RELEVANT FACTS

The employer operated a communications center from which it dispatched police, fire, and emergency medical calls. Seven fire districts and seven cities contracted with the employer to provide dispatch services. The union represented a bargaining unit that included employees working in the dispatch center since March 8, 2007.[2] Prior to 2007, the employees were represented by a different labor union. The employer and union began negotiating a collective bargaining agreement in May 2007 and signed an agreement on January 23, 2008, which was effective through December 31, 2009.

In 2004, the employer, in conjunction with Kirkland, Mercer Island, Clyde Hill, Medina, and Woodinville Fire and Life Safety, contracted with a consultant to study the feasibility of creating a consolidated emergency dispatch operation. In 2005, the employer, Bothell, Clyde Hill, Issaquah, Kirkland, Medina, Mercer Island, Redmond, Eastside Fire and Rescue, King County Fire District 27, King and Kittitas Counties Fire District 51, Northshore Fire District, Shoreline Fire District, and Woodinville Fire and Life Safety hired consultants to complete a second study and develop a draft governance and business services plan for a regional dispatch agency. The employer e-mailed information and updates regarding the second study to all dispatchers during 2005-2007.

In August 2007, the employer presented the proposed Interlocal Agreement (ILA) to its city council. On August 6, 2007, City Manager Steve Sarkozy sent an e-mail to employees with an attached memorandum notifying employees that the employer would consider action to execute the ILA to participate in NORCOM at that evening's city council meeting. The memorandum

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[2] *City of Bellevue*, Decision 9608 (PECB, 2007).

stated, "Bellevue's participation in NORCOM will require the City to transfer our existing communications center operations into NORCOM. We expect this transition to occur in 2008 or 2009." The memorandum additionally stated that NORCOM would make its own employment and labor decisions. The NORCOM Steering Committee developed and approved an employee and labor relations policy statement. Sarkozy pointed out that the policies included the following statements:

- The retention of current employees is critical to ensure the public safety dispatch centers and the quality of their service delivery are maintained in the transition period.
- All those dispatch employees of Principals who are employees in good standing on the date that NORCOM first issues a solicitation for applications seeking to hire dispatchers shall be guaranteed employment at NORCOM. For this purpose, "dispatch" includes call-takers, dispatch/communications, leads and supervisors.
- All management and support staff of Principals who are employees in good standing on the date that NORCOM first issues a solicitation of applications seeking to hire such positions shall be given hiring preferences over external applicants with equivalent skills and experience.

On November 1, 2007, NORCOM incorporated as a Washington not-for-profit corporation. All but two of the entities that participated in the study executed the ILA. Beginning in November 2007, NORCOM began e-mailing dispatchers a newsletter called NORCOM Dispatch. In May 2008, NORCOM began distributing a newsletter called NORCOM News to all of the employer's dispatchers.

On October 10, 2008, NORCOM sent all of the employer's dispatchers an employment solicitation letter. On October 21, 2008, union President Julie Erdmann sent the employer's Human Resources Director, Yvonne Tate, a letter demanding to bargain the decision to transfer the dispatcher's work to NORCOM and the effects of the decision. On November 22, 2008, at 4:38 p.m., Tate sent an e-mail to Erdmann and Jim Cline (Cline), the union's attorney, and included a Notice of Layoff letter. In relevant part, the letter stated:

> As you know, for quite some time the City has planned to go out of the dispatch business with the creation of a new government agency that will provide this

> service to a number of cities including Bellevue. . . . As a result of the formation of NORCOM, the City will no longer be providing dispatch services once NORCOM goes on line. This will result in all dispatchers being laid off once NORCOM commences providing this service. Because this is an entrepreneurial decision to go out of the dispatch business, there is no duty to bargain this decision. (See also Article 20.5 of the collective bargaining agreement). We are willing to engage the union in effects bargaining regarding the decision to lay off, please contact me to let me know who your bargaining team members will be and to schedule meeting times.

On October 23, 2008, at 12:49 a.m., Erdmann responded to Tate's e-mail. On October 23, 2008, at 5:26 a.m., Cline responded to Tate's e-mail. Cline reiterated that the union was demanding to bargain both the decision and the effects and took issue with the employer's reliance on the collective bargaining agreement. The union and employer subsequently engaged in effects bargaining. On April 23, 2009, the union filed this unfair labor practice complaint.

LEGAL STANDARD

Statute of Limitations

"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." RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue,* Decision 9343-A (PECB, 2007), *citing City of Bremerton,* Decision 7739-A (PECB, 2003). The start of the six-month period, also called the triggering event, occurs when "a potential complainant has actual or constructive notice of the complained-of action." *Emergency Dispatch Center,* Decision 3255-B (PECB, 1990).

In *City of Selah*, Decision 5382 (PECB, 1995), the Commission addressed the six-month statute of limitations period and noted that its "precedents in this area are consistent with the rulings of the National Labor Relations Board (NLRB) under the similar limitations under federal law." The Commission specifically cited *U.S. Postal Service*, 271 NLRB 397 (1984). In *Bryant & Stratton Business Institute,* 321 NLRB 1007 (1996), the NLRB explained its case law on the six-month statute of limitations, including its decision in *U.S. Postal Service*, as follows:

> In *U.S. Postal Service Marina Center,* 271 NLRB 397 (1984), the Board held that henceforth it would focus on the date of unequivocal notice of an allegedly unlawful act, rather than on the date the act's consequences became effective, in deciding whether the period for filing a charge under Section 10(b) of the Act has expired. However, as the Board emphasized in a subsequent decision, "Postal Service Marina Center . . . was limited to unconditional and unequivocal decisions or actions." *Stage Employees IATSE Local 659 (Paramount Pictures),* 276 NLRB 881 (1985). Further, the burden of showing such clear and unequivocal notice is on the party raising the affirmative defense of Section 10(b), the Respondent. *Service Employees Local 3036 (Linden Maintenance),* 280 NLRB 995 (1986).

Under the standard used by the NLRB and embraced by the Commission, the six-month statute of limitations period begins at the time the employer provides clear and unequivocal notice to the union. Unequivocal notice of a decision requires that a party communicate enough information about the decision or action to allow for a clear understanding. Statements that are vague or indecisive are not adequate to put a party on notice. *Community College District 17 (Spokane),* Decision 9795-A (PSRA, 2008).

In order to be clear and unambiguous, the notice must contain specific and concrete information regarding the proposed change. The six-month clock begins to run when a party gives clear and unambiguous notice of its intent to implement the action in question. *Emergency Dispatch Center,* Decision 3255-B. The only exception to the strict enforcement of the six-month statute of limitations is when the complainant had no actual or constructive notice of the acts or events which are the basis of the charges. *City of Pasco,* Decision 4197-A (PECB, 1994).

The Commission has previously rejected a continuing violation theory. In *City of Bremerton,* Decision 7739-A (PECB, 2005), the Examiner found that the union's complaint was untimely because the union was aware of the existence of a "me too" clause and a parity clause in two other collective bargaining agreements more than six months prior to filing a complaint. The union argued that it met its burden of proof to establish a continuing violation by showing that the clauses interfered with its bargaining rights. The Commission affirmed the Examiner. At any time in the future, if the "me too" clause interfered with the union's rights, it could file a

complaint. Absent actual evidence that the existing "me too" clause interfered with employee rights within the statute of limitations, the complaint was untimely.

Multiple violations, each giving rise to its own statute of limitations, may occur as part of a larger event. In *Seattle School District*, Decision 9982-A (PECB, 2009), the employer conducted an investigation of a complaint by an employee against the union representing the employee. The union filed its complaint on March 13, 2007, and the employer conducted the investigation between May 2006 and July 19, 2006. The Examiner found that events occurring before September 13, 2006, were time barred. The Commission agreed. The union was aware that the employer was investigating the complaint. The events occurring more than six months prior to the union filing its complaint were outside the statute of limitations. However, certain events, such as the issuance of the investigator's report, resulting discipline, and other procedural violations, may occur at different times and may be independent triggering events.

Mandatory Subjects of Bargaining

The Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, requires a public employer to bargain collectively with a union representing its employees. A public employer has a duty to bargain, in good faith, "personnel matters, including wages, hours and working conditions." The determination as to when the duty to bargain exists is a mixed question of law and fact for the Commission to decide. WAC 391-45-550. An employer commits an unfair labor practice when it refuses to engage in collective bargaining. RCW 41.56.140.

The Commission applies a balancing test on a case-by-case basis to determine whether an issue is a mandatory subject of bargaining. In deciding whether a duty to bargain exists, there are two principal considerations: (1) the extent to which managerial action impacts the wages, hours, or working conditions of employees, and (2) the extent to which managerial action is deemed to be an essential management prerogative. *International Association of Fire Fighters, Local 1052 v. PERC,* 113 Wn.2d 197, 200 (1989) (*City of Richland*). The inquiry focuses on which characteristic predominates. *City of Richland,* 113 Wn.2d at 200. The Supreme Court in *City of Richland* held that "the scope of mandatory bargaining is limited to matters of direct concern to employees" and that "managerial decisions that only remotely affect 'personnel matters' and

decisions that are predominately 'managerial prerogatives,' are classified as non-mandatory subjects." *City of Richland,* 113 Wn.2d at 200.

The level or types of services to be offered by an employer is generally accepted as a management prerogative and, as such, a permissive subject of bargaining. *See Federal Way School District,* Decision 232-A (PECB, 1977). This Commission recognizes that public employers have the right to "entrepreneurial" control over non-mandatory subjects of bargaining. *Snohomish County Fire District 1,* Decision 6008-A (1998); *Wenatchee School District,* Decision 3240-A (PECB, 1990).

The bargaining obligation applies to a decision on a mandatory subject of bargaining and the effects of that decision, but only applies to the effects of a managerial decision on a permissive subject of bargaining. *Central Washington University,* Decision 10413-A (PSRA, 2011), *citing Skagit County,* Decision 6348 (PECB, 1998); *City of Kelso (Kelso I),* Decision 2120-A (PECB, 1985) (the decision to contract out bargaining unit work and the effects of the decision on the employees are mandatory subjects of bargaining); *City of Kelso (Kelso II),* Decision 2633-A (PECB, 1988)(the decision to merge operations with another employer is an entrepreneurial decision that is a non-mandatory subject of bargaining, and only the effects of that decision on employee wages, hours, and working conditions are mandatory subjects of bargaining). For example, while an employer has no duty to bargain concerning a decision to reduce its budget, the effects of such decisions could be mandatory subjects of bargaining. *See Wenatchee School District,* Decision 3240-A (PECB, 1990).

When distinguishing between the decision to go out of business and the decision to contract out work, the Commission has applied United States Supreme Court precedent interpreting the National Labor Relations Act because it is similar to Chapter 41.56 RCW.[3] *City of Anacortes,* Decision 6830-A (PECB, 2000), *citing Fibreboard Paper Products Corp. v. NLRB,* 379 U.S. 203 (1964), *First National Maintenance Corp. v. NLRB,* 452 U.S. 666 (1981).

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[3] Decisions construing the National Labor Relations Act (NLRA) are persuasive in interpreting state labor acts which are similar to the NLRA. *Nucleonics Alliance v. Washington Public Power Supply System,* 101 Wn.2d 24 (1984).

In *Fibreboard*, the union asked to schedule bargaining on a successor collective bargaining agreement. *Fibreboard*, 379 U.S. at 205-206. The employer informed the union that it determined substantial savings could be achieved by contracting out work the union performed upon expiration of the collective bargaining agreement. *Fibreboard*, 379 U.S. at 206. The employer terminated the collective bargaining agreement and contracted out the work. *Fibreboard*, 379 U.S. at 206-207. The employer continued to supervise employees; assigned work to the contractor; furnished tools, supplies, and equipment to the contractor; and purchased its own tools, supplies, and equipment. *Fibreboard*, 379 U.S. at 207, 219. The maintenance work still had to be performed in the plant. The employer replaced the existing employees with those of a contractor, who performed the same work under similar conditions of employment. *See Fibreboard*, 379 U.S. at 213. In determining whether contracting out gave rise to a duty to bargain, the Court in *Fibreboard* found the following factors significant:

1. What was the employer's level of control and interaction with the new workforce?
2. What was the employer's reason for the decision to contract out the work?
3. What was the fee arrangement?
4. What is the effect on the basic operation of the company?
5. What effect would bargaining have on the employer's ability to manage the company?

The Court found the motivation to reduce labor costs to be significant. *See Fibreboard*, 379 U.S. at 213-14. The Court found it significant that the employer paid the contractor the cost of operation plus a fixed fee. *See Fibreboard*, 379 U.S. at 207, 219. The Court found that bargaining about the matter would not significantly abridge the employer's freedom to manage the business. *Fibreboard*, 379 U.S. at 213. Applying those factors, the Court held that the employer had contracted out work, and that contracting out work previously performed by members of an existing bargaining unit was a subject within the phrase "terms and conditions of employment," so that bargaining on the decision to contract out was required. *Fibreboard*, 379 U.S. at 209-210.

In contrast, in *First National Maintenance Corp.*, 452 U.S. 666 (1981), the Court found the decision to shut down part of a business for economic reasons not to be a mandatory subject of

bargaining. The employer provided housekeeping and maintenance services to commercial customers. *First National Maintenance Corp.,* 452 U.S at 668. One of the employer's customers terminated the service agreement. *First National Maintenance Corp.,* 452 U.S at 669. The employer terminated its employees that worked for the customer. *First National Maintenance Corp.,* 452 U.S at 669-70. The Court found several factors significant:

1. Would bargaining over this sort of decision advance the process of resolving conflicts between labor and management? For example, in the case of a partial plant closure, the union's practical purpose in bargaining would be to seek to delay or halt the closing. *First National Maintenance Corp.*, 452 U.S. at 2711. However, management's interest in whether it should discuss a decision of this kind is much more complex and varies with the particular circumstances. *First National Maintenance Corp.*, 452 U.S. at 2711. "Management may . . . face significant tax . . . consequences that hinge on . . . reorganization of the corporate structure. The publicity incident to the normal process of bargaining may injure the possibility of a successful transition or increase the economic damage of the business." *First National Maintenance Corp.*, 452 U.S. at 2711.
2. What was the reason for the decision? For example, labor costs were not a factor in an economic-based partial termination. *First National Maintenance Corp.*, 452 U.S. at 2706, 2712-13.
3. What control does the union have over the cause of the decision? In *First National Maintenance Corp.*, the union had no control over the amount a third party was willing to pay the employer for its services. *First National Maintenance Corp.*, 452 U.S. at 2706, 2712-13.
4. Lastly, the Court did not believe that the absence of significant investment or withdrawal of capital was crucial. The employer decided to halt work at a specific location, representing a significant change in operations. *First National Maintenance Corp.*, 452 U.S. at 2706, 2712-13.

An employer may have to bargain over the decision to contract out, but does not have to bargain when it decides to shut down part of its business for entrepreneurial reasons. *City of Anacortes,* Decision 6830-A.

In *City of Anacortes*, the employer provided emergency dispatch services to local jurisdictions. The employer was one of nine entities that signed an interlocal agreement to form a regional emergency dispatch organization (SECOM). SECOM was an independent agency, whose governing board was comprised of representatives from the nine participating agencies. SECOM controlled the employees' wages, hours, and working conditions. The employer retained no control over these matters. SECOM assumed responsibility for answering and dispatching emergency services and was liable for those services. SECOM had responsibility for determining the financial responsibility and costs of participating agencies, approving the budget, appointing and terminating the SECOM director, and maintaining insurance. The Commission determined that the employer got out of the business of providing 911 services and did not need to bargain over the decision. *City of Anacortes,* Decision 6830-A.

ANALYSIS

Issue 1: Did the union file its complaint alleging that the employer refused to bargain the decision to join NORCOM within the six-month statute of limitations?

Decision to Have NORCOM Provide Dispatch Services

We agree with the Examiner that the latest the union should have known that the employer would have NORCOM provide dispatch services was November 2007. In August 2007, the employer notified employees, some of whom were union officers, that the employer was making a decision to join NORCOM. Sarkozy sent an e-mail to the dispatchers informing them that the employer would make a decision about authorizing the ILA at the August 6, 2007 city council meeting. By informing employees that the employer was voting to authorize the ILA in August 2007, the employer provided clear and unequivocal notice that it was making a decision to join NORCOM. Sarkozy's communication provided enough information for the employees to understand that the employer was making a decision to have NORCOM provide dispatch services. The employer signed the ILA in the fall of 2007, the employer and other participating jurisdictions signed the ILA. On November 1, 2007, NORCOM incorporated. The latest the union should have known that the employer would have NORCOM provide dispatch services was November 2007. The union filed its complaint on April 23, 2009.

Decision to Lay Off

The employer argues that the union's complaint is untimely with respect to the employer's decision to lay off all emergency dispatchers. The employer argues that it is the decision date, not the effective date, that triggers the statute of limitations and that the union knew, or should have known, that the decision to join NORCOM included the decision to lay off the bargaining unit employees.

On October 21, 2008, Erdmann sent a letter to Tate that the union was "aware that the City has considered transferring" dispatch work to NORCOM. On October 22, 2008, Tate responded with a memorandum titled "Notice of Layoff." The memorandum stated, "This correspondence serves as official notice of layoff." There is no evidence in the record of other notice that the employer provided to the union that bargaining unit employees would be laid off.

In *Community College District 17 (Spokane),* Decision 9795-A (PSRA, 2008), the employer and bargaining unit members participated in meetings during which the employer's budget shortfall and a possible reduction of hours were discussed. Subsequently, the employer sent the union an e-mail stating that the budget shortfall would result in reduced hours for bargaining unit members. The parties met in labor management meetings to discuss layoffs. The employer later provided layoff letters to the employees. The union argued that the layoff letters were the triggering event. The Commission found that the e-mail informing the union that hours would be reduced was the triggering event. The triggering event was not when the adverse action occurred (receipt of the layoff notice), it was when the union had notice of the adverse action (receipt of the e-mail notifying the union that hours would be reduced).

In this case, the employer sent the union formal notice of the layoff on October 22, 2008. The union received the notice on October 23, 2008. Unlike *Community College District 17,* there is no evidence that, prior to October 23, 2008, the employer provided notice to the union that executing the ILA and joining NORCOM would result in the employer laying off all dispatchers. Sarkozy's August 6, 2007 e-mail did not clearly and unequivocally communicate to the union that bargaining unit members would be laid off. The memorandum stated, "We recognize that NORCOM's success depends on the people who will lead and staff this new agency. The

current dispatch and support staff at the Bellevue and Kirkland communications centers are a critical part of that success. . . . As an independent public agency, NORCOM will make its own employment and labor decisions. . . ." Nothing in the memorandum clearly states that employees will be laid off from their employment. We affirm the Examiner's decision that the union's complaint with respect to the decision to lay off employees is timely.

Issue 2: Was the employer's decision to join NORCOM an entrepreneurial decision to cease dispatch operations or a decision to contract out dispatch operations?

The Examiner found that the employer was obligated to bargain the decision to lay off all emergency dispatch employees. The employer argues that it was not obligated to bargain the decision to lay off all dispatch employees because the decision to stop providing dispatch services was an entrepreneurial decision. The union argues that the decision to lay off employees is a mandatory subject of bargaining. We reverse the Examiner's decision.

First, we must determine whether the employer closed a portion of its operation or contracted out bargaining unit work. In order to make that determination, we examine the factors analyzed in *City of Anacortes*, *Fibreboard*, and *First National Maintenance Corp.* Second, we apply the balancing test to determine whether the employer had an obligation to bargain.

The employer did not retain control or influence over NORCOM's work force. The wages, hours, and working conditions of NORCOM employees are established by NORCOM, not by the employer. During the formation of NORCOM, Sarkozy communicated to employees that NORCOM was responsible for its own hiring decisions. The employer's employees being offered a preference in hiring at the formation of NORCOM does not establish that the employer retained control over NORCOM's work force. NORCOM supervises and directs the employees' work, not the employer.

The employer was not motivated solely by a desire to reduce labor costs. The employer may experience a savings in labor costs. However, the motivation for forming and joining NORCOM related to the desire to regionalize dispatch operations, provide more input for agencies using

dispatch services, and increase interoperability. When the employer operated its communication center and contracted with other entities to provide dispatch services, the employer did not recover the full costs of the services it provided. The record contains sufficient evidence to convince us that the decision to join NORCOM was not motivated by a desire to reduce labor costs.

The fourteen principals and subscribers share governance of NORCOM. The employer has a member on the NORCOM governing board, has a vote in decisions affecting NORCOM, and, in some circumstances, has a weighted vote. The employer is not the sole decision maker. The employer does not approve the entire NORCOM budget. An employer does not "maintain control" over a cooperative agency merely by having a representative on the agency's board. *City of Anacortes,* Decision 6830-A, *citing Snohomish County Fire District 1,* Decision 6008-A (PECB, 1998).

NORCOM establishes the fee for principals and subscribers. Each participating principal and subscriber's governing body approves that entity's cost of participating in NORCOM. The employer does not set the cost of NORCOM's services. Rather, the employer approves its costs for participating in NORCOM. The NORCOM governing board approves the NORCOM budget.

The employer no longer operates a communications center dispatching emergency calls. In *Fibreboard*, the employer contracted out bargaining unit work. The work continued to need to be performed at that employer's facility. In this case, the dispatching of emergency response calls is performed entirely by NORCOM. The employer did not retain a need to have dispatching services provided at its facility.

The union argues that the employer could return to providing dispatch services. The ILA provides for an initial six-year commitment. The ILA also outlines how the employer may withdraw from participation in NORCOM, how the employer may change its status as a principal to a subscriber, and how NORCOM may terminate the employer's participation. The fact that the employer might someday be able to or return to providing dispatch services does not

negate the fact that the employer has gone out of the dispatch business. The employer sold its dispatch equipment to NORCOM and no longer provides dispatch services.

The employer went out of the dispatch business, it did not contract out bargaining unit work. Having determined that the employer closed its dispatch operation, we next determine whether the decision to close a portion of its operations is a mandatory subject of bargaining. Bargaining over the decision to close a portion of the employer's operations would not advance the process of resolving conflicts between labor and management. *See First National Maintenance Corp.*, 452 U.S. 666.

It is generally accepted that the level or types of services an employer provides is a management prerogative. *See Federal Way School District,* Decision 232-A. The decision to cease providing services is an entrepreneurial decision. When the employer decided to close its communications center, it made a decision to drop one service it provided. While the decision to cease operations impacts wages, hours, and working conditions of represented employees, the decision to close a portion of its operation is an essential management prerogative. The balance favors the employer's ability to determine the level of services it provides. The employer did not have a duty to bargain the decision to close its communications center.

CONCLUSION

The union's complaint alleging the employer refused to bargain the decision to join NORCOM is untimely. The union's complaint alleging the employer refused to bargain the decision to lay off employees is timely.

The employer closed its dispatch operations, thereby going out of the dispatch business. The employer did not contract out bargaining unit work. The employer's decision to go out of business is an essential management prerogative that is a permissive subject of bargaining. Thus, the employer did not have a duty to bargain the decision to close its operations. Laying off employees was a result of the decision to close its operations, not a separate decision. We do not reach the issues of whether the union waived its right to bargain the decision.

NOW, THEREFORE, it is

ORDERED

1. The Findings of Fact issued by Examiner Jessica J. Bradley are AFFIRMED and adopted as the Findings of Fact of the Commission, except that Findings of Fact 17 and 18 are VACATED.

2. The Conclusions of Law issued by Examiner Jessica J. Bradley are AFFIRMED and adopted as the Conclusions of Law of the Commission, except that Conclusions of Law 4 and 5 are amended to read as follows:

    4. The decision to stop providing emergency dispatch services was a decision to go out of business and is an essential management prerogative. The employer did not have a duty to bargain about the decision.

    5. As described in the above Findings of Fact, the actions of the employer did not constitute a refusal to bargain in violation of RCW 41.56.140(4) and (1).

3. The Order of Dismissal issued by Examiner Jessica J. Bradley is AFFIRMED.

ISSUED at Olympia, Washington, this 13th day of April, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

PAMELA G. BRADBURN, Commissioner

THOMAS W. McLANE, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBERT DUFFIELD

CASE NUMBER:	22416-U-09-05719	FILED:	04/23/2009	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	DISPATCHERS				
DETAILS:	-				
COMMENTS:					

EMPLOYER: CITY OF BELLEVUE
ATTN: DON DAVIDSON
450 110TH AVE NE
PO BOX 90012
BELLEVUE, WA 98009-9012
Ph1: 425-452-7810 Ph2: 425-452-6800

REP BY: SIONA WINDSOR
CITY OF BELLEVUE
450 110TH AVE NE
PO BOX 90012
BELLEVUE, WA 98004
Ph1: 425-452-3086 Ph2: 425-452-6829

PARTY 2: BELLEVUE POLICE SUPPORT GLD
ATTN: JULE ERDMANN
450 110TH AVE NE
BELLEVUE, WA 98004
Ph1: 425-452-6917

REP BY: CHRISTOPHER CASILLAS
CLINE AND ASSOCIATES
2003 WESTERN AVE STE 550
SEATTLE, WA 98121
Ph1: 206-838-8770 Ph2: 607-379-1828