Port of Seattle, Decision 11763-A (PORT, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 117, Complainant, vs. PORT OF SEATTLE, Respondent.	CASE 24668-U-12-6306 DECISION 11763-A - PORT DECISION OF COMMISSION

Spencer Nathan Thal, General Counsel, for the union.

Trish K. Murphy, Attorney at Law, for the employer.

On March 16, 2012, Teamsters Local 117 (union) filed a complaint alleging that the Port of Seattle (employer) refused to bargain when it unilaterally changed sergeant staffing levels. The Unfair Labor Practice Manager reviewed the complaint pursuant to WAC 391-45-110 and issued a preliminary ruling for refusal to bargain by changing the staffing level for sergeants, without providing an opportunity to bargain.

Examiner Casey King conducted a hearing and issued a decision.[1] The Examiner concluded that the level of sergeant staffing on the night shift was a management prerogative and the employer did not refuse to bargain when it decided to change the staffing level. However, the employer refused to bargain the impacts of the decision. The employer appealed the conclusion that it refused to bargain the impacts of the decision. In its appeal the employer also argued that the Examiner decided an issue outside of the scope of the preliminary ruling; that the union did not establish that the employer refused to bargain the effects of the decision to change sergeant

[1] *Port of Seattle*, Decision 11763 (PECB, 2013).

overtime staffing; and that the restoration of the *status quo ante* was inappropriate because the employer had been found to have refused to bargain only the effects.

This appeal presents three issues: (1) did the Examiner decide an issue outside of the scope of the preliminary ruling; (2) did the Examiner err when he concluded that the employer refused to bargain the effects of the decision to change the night shift sergeant staffing level when overtime is required; and (3) what is the appropriate remedy if the employer refused to bargain the mandatory effects of the decision to change the night shift sergeant staffing level when overtime is required?

We affirm the Examiner. The Examiner did not decide an issue outside of the preliminary ruling when he determined the employer refused to bargain the effects of its decision. The employer refused to bargain the effects of the managerial decision to change the night shift sergeant staffing level when overtime is required. We modify the Examiner's remedy. Restoring the *status quo ante* when an employer refuses to bargain the mandatory effects of a permissive decision is not the appropriate remedy. When an employer refuses to bargain the effects of a permissive decision and those effects include a loss of wages, a remedy ordering limited back pay is appropriate. This remedy is based upon the remedy in *Transmarine Navigation Corp. (Transmarine)*, 170 NLRB 389 (1968). The so-called *Transmarine* remedy has come to be the National Labor Relations Board's (NLRB) standard remedy in cases for an employer's refusal to bargain effects.

ISSUE 1

Did the Examiner decide an issue outside of the scope of the preliminary ruling?

CONCLUSION

The Examiner did not decide an issue outside the scope of the preliminary ruling, contrary to the employer's assertion that the preliminary ruling did not place effects bargaining at issue. The preliminary ruling put the parties on notice that effects bargaining was at issue.

ANALYSIS

The employer argued that the Examiner decided an issue outside of the scope of the preliminary ruling when he held that the employer refused to bargain the effects of the staffing decision. The union argued that the preliminary ruling was broad enough to encompass effects bargaining. We agree with the union.

In its complaint, the union alleged that the employer unilaterally implemented a change in sergeant staffing levels. The union alleged that the employer presented the union with a *fait accompli*. The union alleged that the employer violated "RCW 41.56.140(4) insofar as the Employer unilaterally altered staffing levels, impacting staff safety, without first notifying the Union and affording the union the opportunity to bargain over the decision and/or its impacts." The union's complaint put the employer on notice that the union was alleging the employer refused to bargain both the decision and the impacts of the decision.

The Unfair Labor Practice Manager reviewed the complaint according to WAC 391-45-110. When a complaint is reviewed under WAC 391-45-110, all alleged facts are assumed to be true and provable. *Whatcom County*, Decision 8246-A (PECB, 2004). The Unfair Labor Practice Manager determined that a cause of action existed and issued a preliminary ruling for:

> Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by its unilateral change to the staffing level for sergeants without providing an opportunity for bargaining.

The employer argued that the failure of the preliminary ruling to explicitly state that both decision and effects bargaining were at issue precluded the Examiner from ruling on whether the employer refused to bargain the effects. The employer alleged that other preliminary rulings have explicitly stated that both decision and effects bargaining were at issue. We disagree. The phrase "without providing an opportunity for bargaining" in the preliminary ruling is broad enough to encompass decision and effects bargaining.

ISSUE 2

Did the Examiner err when he concluded that the employer refused to bargain the effects of the decision to change the night shift sergeant staffing level when overtime is required?

CONCLUSION

A public employer has a duty to bargain with its employees' exclusive bargaining representative over mandatory subjects of bargaining. That duty includes the duty to bargain over the mandatory effects of permissive decision. While an employer need not delay implementation of a non-mandatory decision while it bargains the mandatory effects of that decision, it cannot refuse to commence effects bargaining until after the permissive decision is implemented. Nor may it refuse to bargain at all about such mandatory effects. Here, the union's request to bargain encompassed a request to bargain effects and the employer failed to fulfill its duty to bargain over the mandatory effects.

LEGAL PRINICPLES

Refusal to Bargain

A public employer has a duty to bargain with the exclusive bargaining representative of its employees. RCW 41.56.030(4). In deciding whether a duty to bargain exists, there are two principal considerations: (1) "the relationship the subject bears to the wages, hours, and working conditions" of employees, and (2) "the extent to which the subject lies 'at the core of entrepreneurial control' or is a management prerogative." *International Association of Fire Fighters, Local 1052 v. PERC* (*City of Richland*), 113 Wn.2d 197, 203 (1989). The decision focuses on which characteristic predominates. *Id.*

"The scope of mandatory bargaining is limited to matters of direct concern to employees" and "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, *citing Klauder v. San Juan County Deputy Sheriffs' Guild*, 107

Wn.2d 338, 341 (1986). Mandatory subjects of bargaining include grievance procedures, wages, hours, and working conditions. RCW 41.56.030(4). Permissive subjects of bargaining are management and union prerogatives, along with the procedures for bargaining mandatory subjects, over which the parties may negotiate. *Pasco Police Association v. City of Pasco*, 132 Wn.2d 450, 460 (1997).

An employer that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice. RCW 41.56.140(4) and (1).

Effects Bargaining

The bargaining obligation applies to a decision on a mandatory subject of bargaining as well as the effects or impacts 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); *City of Kelso (Kelso II)*, Decision 2633-A (PECB, 1988). An employer must bargain the effects of the permissive decision on mandatory subjects of bargaining. *Wenatchee School District*, Decision 3240-A (PECB, 1990). For example, while an employer has no duty to bargain concerning a decision to reduce its budget, the effects of such decisions could constitute mandatory subjects of bargaining. *See Wenatchee School District,* Decision 3240-A (PECB, 1990).[2]

An employer is not required to delay implementation of a decision on a permissive subject of bargaining while impact or effects bargaining occurs. *City of Bellevue*, Decision 3343-A (PECB, 1990); *Federal Way School District*, Decision 232-A (EDUC, 1977). An employer cannot refuse to commence effects bargaining until after the permissive decision is implemented. *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991).

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[2] Not every permissive decision requires effects bargaining. *Spokane County Fire District 9*, Decision 3661-A. If a change has no material impact on employee wages, hours, or working conditions, then there will be no duty to bargain effects of the permissive managerial action. *Spokane County Fire District 9*, Decision 3661-A, *citing Seattle School District*, Decision 2079-B (PECB, 1984).

When the effects are sufficiently foreseeable before implementation of a permissive decision, a bargaining obligation can arise. *Spokane County Fire District 9*, Decision 3661-A.

ANALYSIS

Failure to Bargain Effects

The employer argued that the union did not establish that the employer refused to bargain the effects of the decision to change sergeant overtime staffing. The employer asserted that the union's demand to bargain was not clear and coherent; the union did not include a demand to bargain the effects; the union did not identify any effects it wanted to bargain; and the union failed to establish that the employer refused to bargain the effects.

The union argued that it requested bargaining and the employer refused; the employer did not provide an opportunity to bargain the effects; the union did not have to identify specific effects; and the notice to the union of the proposed change was inadequate. The union asserted that because the bargaining unit employees were uniformed personnel eligible for interest arbitration, the employer was required to exhaust the interest arbitration procedures before making unilateral changes to mandatory subjects of bargaining.

The employer operates a police department that patrols the Port of Seattle at the SeaTac Airport and the Port of Seattle waterfront. The union represents a bargaining unit composed of uniformed personnel that includes sergeants. The employer and union were parties to a collective bargaining agreement from January 1, 2009 through December 31, 2013. The parties were engaged in negotiations for a successor collective bargaining agreement when the employer made changes to shift staffing.

The employer assigned employees to a day or a night shift. The night shift runs from either 5:00 p.m. until 5:00 a.m. or 5:30 p.m. until 5:30 a.m. On each night shift, two sergeants were scheduled. If a sergeant was absent and the absence resulted in an overtime vacancy, the employer staffed the vacant shift for the entire shift.

Sergeants assigned to the night shifts were allowed to leave their shift early. Sergeants left their shifts early for a variety of reasons, including having begun work earlier than their regularly scheduled work shift and returning to duty early to meet departmental needs. If a sergeant left his or her shift early, the result could be that one civil service sergeant remained on duty or no civil service sergeant remained on duty. If no civil service sergeant would remain on duty, the departing sergeant appointed an officer to act as sergeant for the remainder of the shift, which could result in sergeant overtime staffing.

The employer changed the staffing level of sergeants on the night shift when it scheduled second sergeant overtime staffing to end at midnight, rather than for the entire shift. On October 5, 2011, Commander John Hornbuckle (Hornbuckle) notified employees of the employer's intent to make the change when he e-mailed the night shift sergeants. Hornbuckle gave the employees two days to provide feedback. The employer did not directly inform the union of its intent to make the change.

The union requested bargaining when, on October 16, 2011, Sergeant Jason Coke, a union shop steward, e-mailed Hornbuckle and "request[ed] to discuss" the matter. The union reiterated its request to meet when Business Agent Mark Manning e-mailed Hornbuckle on October 19, 2011. Hornbuckle responded that the employer was willing to meet and requested the union provide a time to meet.

If a union focuses on bargaining a decision that is a permissive subject of bargaining and not the effects, an employer may not be found to have refused to bargain the mandatory effects of a permissive decision. In *Wenatchee School District*, Decision 3240-A (PECB, 1990), the employer made a change to its educational program. The decision, a permissive subject of bargaining, impacted employee wages, hours, and working conditions. During bargaining, the employer remained willing to bargain the effects of the decision. The union, however, focused on bargaining the decision. The absence of effects bargaining occurred as a result of the union's focus on bargaining the decision to change the educational program. The employer was found not to have refused to bargain.

Unlike the union in *Wenatchee School District*, the union in this case made a request to bargain that included effects bargaining. The October 16 and 19 e-mail messages were requests to bargain. The employer asserted that the language the union used was inadequate to request bargaining. However, the union requested a meeting and the employer agreed to meet. The union's request to meet did not limit the subject to the decision only.

The employer argued that it could not be found to have refused to bargain because the union did not identify any impacts for bargaining. Impacts appropriate for bargaining may not be foreseeable until after the change has occurred. A union is not required to identify all potential effects of a permissive decision in order to compel the employer to engage in its obligation to bargain over mandatory subjects. However, it would be prudent for a union to identify foreseeable effects when the parties discuss the changes.

On an unspecified date in November 2011, the union and the employer met. There is limited evidence about what occurred at the meeting. Witnesses for both parties agreed that the parties were not negotiating. There was no evidence that the union and employer bargained the effects of the employer's decision.

Examining the totality of the circumstances in this case, the employer did not evidence a willingness to engage in effects bargaining. The employer did not notify the union of its decision to change the night shift sergeant staffing level when overtime is required. The employer notified only the night shift sergeants. While the employer was willing to meet with the union, the evidence of the November meeting indicates that the parties did not engage in bargaining. There is no evidence as to why further discussions were not held. The matter was not addressed during the continuing contract negotiations.

While the employer is correct that implementation of a permissive decision need not be delayed while the parties bargain the impacts, employers are prohibited from implementing changes to mandatory subjects of bargaining without exhausting the bargaining process. When the employees are eligible for interest arbitration, the parties must bargain the mandatory effects of a permissive decision to agreement or impasse and proceed through statutory interest arbitration as

required by RCW 41.56.430 - .470. *City of Yakima*, Decision 11352-A (PECB, 2013). The employer was obligated to bargain the effects of its permissive decision. If the parties could not reach agreement, the parties were required to seek mediation, and if necessary, proceed to interest arbitration.

The union met its burden of proving that the employer failed to bargain the mandatory effects of its permissive decision to change staffing. The employer did not meet its statutory requirement to bargain the mandatory effects of its permissive decision or, upon impasse, proceed to interest arbitration over the mandatory effects.

ISSUE 3

What is the appropriate remedy if the employer refused to bargain the mandatory effects of the decision to change the night shift sergeant staffing level when overtime is required?

CONCLUSION

Where an employer has failed to bargain over the mandatory effects of a permissive decision, the usual remedy shall include an order to bargain over those effects and a limited back-pay award, calculated to restore the parties' bargaining positions existing when the employer breached its duty to bargain. We adopt the limited back-pay award used by the NLRB in such circumstances, modified, where, as here, the bargaining unit covers uniformed personnel to include exhaustion of the dispute resolution procedures contained in RCW 41.56.430 - .470. This remedy is based upon the remedy in *Transmarine Navigation Corp. (Transmarine)*, 170 NLRB 389 (1968), which has come to be the NLRB's standard remedy in cases for an employer's refusal to bargain effects. The remedy orders back pay from five days after the date of the Commission's order until the parties bargain to agreement, bargain to impasse, or for interest arbitration eligible employees proceed as required by RCW 41.56.430 - .470; the union fails to request bargaining; the union fails to bargain with an employer that is willing to bargain; or the union bargains in bad faith.

The Examiner ordered the employer to restore the *status quo ante* by reinstating the wages, hours, and working conditions which existed prior to the change in night shift sergeant staffing; give notice and upon request negotiate in good faith; and the other standard remedies. The restoration of the *status quo ante* was inappropriate when the employer refused to bargain the mandatory effects of the permissive decision to change the night shift sergeant staffing level when overtime is required. However, solely ordering the parties to bargain effects would be an insufficient remedy.

ANALYSIS

The Examiner ordered the employer to restore the *status quo ante* by reinstating wages, hours, and working conditions existing prior to the unilateral change. The employer asserted that a restoration of the *status quo ante* was inappropriate because the employer was found only to have refused to bargain effects of a permissive decision. The union argued that the restoration of the *status quo ante* was the appropriate remedy. The union requested that the Commission hold that when an employer has rejected a request to bargain effects, a *status quo* remedy is appropriate to at least the point in time the union requested to bargain.

The Commission has authority to remedy unfair labor practices. RCW 41.56.160(2). The Commission enjoys substantial freedom in developing remedies. *Municipality of Metro. Seattle v. Public Employment Relations Comm'n*, 118 Wn.2d 621, 634 (1992). The Commission has authority to issue appropriate orders that, in its expertise, the Commission "believes are consistent with the purposes of the act, and that are necessary to make [its] orders effective unless such orders are otherwise unlawful." *Id.* at 634-5. *See also Snohomish County*, Decision 9834-B (PECB, 2007).

Our past decisions have not clearly identified the appropriate remedy for an employer's refusal to bargain the mandatory effects of a permissive decision. Past remedies have included effects bargaining; under limited circumstances, the restoration of the *status quo ante*; no order; and the "*Transmarine* remedy," which grants employees back pay from five days after the Commission's order until certain criteria are met and placed limitations on the amount of back pay. This case

presents an opportunity to clarify the appropriate remedy when an employer refuses to bargain the mandatory effects of a permissive decision.

When an employer has refused to bargain the effects of a permissive subject of bargaining, the Commission has traditionally ordered effects bargaining without requiring the employer to undo the decision. *Wapato School District*, Decision 10743 (PECB, 2010), *aff'd*, Decision 10743-A (PECB, 2012); *Central Washington University*, Decision 10413-A (PSRA, 2011); *State – Social and Health Services*, Decision 9690-A (PSRA, 2008). In those cases, the employer acted within its statutory rights or within its entrepreneurial rights. For example, when an employer acted within its managerial prerogative to restructure how work was performed and reassigned work, the employer was ordered to bargain the effects of the decision and was not been ordered to restore the *status quo ante*. *Wapato School District*, Decision 10743 (PECB, 2010), *aff'd*, Decision 10743-A (PECB, 2012),

A *status quo ante* remedy is inappropriate when an employer has only failed to bargain the effects of a decision. *Central Washington University*, Decision 10413-A. A remedy restoring the *status quo ante* deprives the employer of its right to make changes to permissive subjects of bargaining. In *Central Washington University*, Decision 10413-A, the employer lowered the staffing level. The employer's decision to leave a position vacant was a permissive staffing decision. The Examiner ordered the employer to restore the *status quo ante*. The Commission required the employer to bargain in good faith, but did not require the employer to restore the *status quo ante*.

When an employer has committed other unfair labor practices in addition to refusing to bargain the effects of a decision, an order restoring the *status quo ante* can be appropriate. In *University of Washington*, Decision 11075-A (PSRA, 2012),[3] the employer reorganized its operation and refused to continue to recognize the union as the employees' bargaining representative. The statute granted the employer the right to reorganize its workforce. The Commission ordered the employer to bargain the effects of the decision and restore the *status quo ante* for certain effects

[3] *University of Washington*, Decision 11075-A (PSRA, 2012), is currently pending in the Court of Appeals, Division I, Case 701657.

of the change that were identified during the hearing. In *University of Washington*, Decision 11075-A, the order was crafted to remedy the employer's failure to bargain the effects and the employer removing the employees from the bargaining unit.

On limited occasions, no bargaining has been ordered. The lack of a bargaining order has occurred when the change had a minimal impact on working conditions; the employer had been willing to engage in effects bargaining, but the union did not demand bargaining on the impacts, waived the right to bargain, or focused on negotiating the decision. *Kitsap County*, Decision (PECB, 2007); *King County Fire District 16*, Decision 3714 (PECB, 1991); *Wenatchee School District*, Decision 3240-A (PECB, 1990).

The NLRB, in deciding whether employers have failed to bargain effects under the National Labor Relations Act (NLRA), has awarded back pay remedies analogous to that awarded in *Transmarine Navigation Corp.* (*Transmarine* remedy). *Rochester Gas & Electrical Corp.*, 355 NLRB 507 (2010), *aff'd, Local Union 36, Intern. Broth. Of Elec. Workers, AFL-CIO v. N.L.R.B.*, 706 F.3d 73, (2nd Cir. 2013) (employer refused to bargain the effects of its decision to discontinue take home cars); *Odebrecht Contractors of California, Inc.*, 324 NLRB 396 (1997) (employer refused to bargain effects of decision to change shift schedule); *Transmarine Navigation Corp. (Transmarine)*, 170 NLRB 389 (1968).[4] The *Transmarine* remedy is the NLRB's standard remedy in effects bargaining cases. *Local Union 36, Intern. Broth. Of Elec. Workers, AFL-CIO v. N.L.R.B.*, 706 F.3d at 91.

The *Transmarine* remedy provided the affected employees back pay from five days of the order until the parties bargained to agreement, the parties bargained to bona fide impasse, the union failed to request bargaining, the union failed to bargain with an employer who was willing to bargain, or the union engaged in bad faith bargaining. The sum paid to employees shall not exceed the amount the employee would have earned as wages from the date the employee was laid off until the time the employee was recalled or secured equivalent employment elsewhere, or the date on which the employer offered to bargain, whichever occurred first. The sum of back

[4] Decisions construing the 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).

pay shall not be less than the employee would have earned for a two-week period at the rate of their normal wages when last in the employer's employ. *Odebrecht Contractors of California, Inc.*, 324 NLRB 396 (1997).

The *Transmarine* remedy was designed to provide a meaningful remedy when it is difficult to reconstruct the environment in which bargaining would have occurred. When an employer refuses to bargain the effects of a permissive decision, employees are deprived of their statutory bargaining power. Underpinning the remedy is the concept that at times a bargaining order is insufficient to remedy the unfair labor practice. Therefore, to assure that meaningful bargaining occurs and to effectuate the purposes of the law, the *Transmarine* remedy makes employees whole for the losses suffered as a result of the unlawful act and attempts to create "a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the" employer. *Transmarine Navigation Corp.*, 170 NLRB at 390. The *Transmarine* remedy resets the balance and provides an incentive to the parties to bargain in a timely manner. *Entiat School District*, Decision 13361-A.

The Commission has ordered the *Transmarine* remedy when an employer refused to bargain the effects of a permissive decision. *State – Corrections*, Decision 11060-A (PSRA, 2012) (employer closed a facility and refused to bargain the effects of the closure); *Richland School District*, Decision 6269 (PECB, 1998) (employer refused to bargain the effects of reduction of work hours); *City of Centralia*, Decision 1534-A (PECB, 1983) (employer did not bargain layoffs); *Entiat School District*, Decision 13361-A (PECB, 1982) (the employer refused to bargain the effects of a layoff). In those cases the employers closed facilities, laid off employees, or reduced work hours without bargaining the effects of the decision. The so-called *Transmarine* remedy is appropriate when an employer has refused to bargain effects of a decision and those effects have an economic impact for employees.

If the bargaining unit employees are eligible for interest arbitration, an employer may not unilaterally implement changes to mandatory subjects of bargaining without bargaining to impasse and obtaining an award through interest arbitration. *Snohomish County*, Decision 970-A PECB, 2008). Interest arbitration is applicable when an employer desires to make a mid-term

contract change to a mandatory subject of bargaining. *City of Yakima*, Decision 9062-A (PECB, 2006). When an employer changes a permissive subject of bargaining that impacts mandatory subjects of bargaining, those mandatory impacts may not be changed until the employer and the union either bargain to agreement or bargain to impasse and proceed through the statutory interest arbitration provisions outlined in RCW 41.56.430 - .470. *See City of Kelso*, Decision 2633 (PECB, 1988), *aff'd*, Decision 2633-A (PECB, 1988). For interest arbitration eligible employees, a back pay remedy for failure to bargain effects of a decision that impacts wages continues until the parties reach agreement or obtain an award from an interest arbitrator.

In this case, the employer's decision to change staffing on the night shift of the second sergeant when overtime is required was a permissive decision. The decision impacted employee overtime opportunities. Overtime is a form of wages, thus a mandatory subject of bargaining. The employer was obligated to bargain the mandatory effects of its permissive decision. It failed to do so. As a result of the employer's refusal to bargain the mandatory effects, employees suffered an economic loss. It is appropriate to compensate the employees for their lost wages.

The employer shall pay each employee for his or her lost overtime opportunities from five days after the date of this Decision until the occurrence of the earliest of the following conditions: (1) the employer bargains to agreement with the union over the effects of the decision to change night shift staffing of the second sergeant when overtime is required; (2) the parties bargain to bona fide impasse and proceed to interest arbitration as provided in RCW 41.56.430 - .470, the date on which an arbitrator issues an award; (3) the union fails to request bargaining within five business days following the date of this Order, or to commence negotiations within five business days of the employer's notice of its desire to bargain with the union; or (4) Teamsters Local 117 fails to bargain in good faith. The sum paid to each employee shall not exceed the amount of overtime the employee would have earned from the date the employer stopped scheduling a second sergeant past midnight when overtime is required until the date on which the employer offered to bargain in good faith. However, in no event shall the sum of back pay be less than the employees would have earned in overtime for a two-week period. Back pay shall be computed in accordance with WAC 391-45-410.

NOW, THEREFORE, it is

ORDERED

The Findings of Fact issued by Examiner Casey King are Affirmed and modified:

11. In October 2011, the employer stopped scheduling overtime vacancies for the second sergeant position after midnight.

The Conclusions of Law issued by Examiner Casey King are AFFIRMED and adopted as the Conclusions of Law of the Commission.

The Order issued by Examiner Casey King is modified:

1. CEASE AND DESIST from:

   a. Failing to provide Teamsters Local 117 notice and opportunity to bargain the impacts of the employer's decision to change the night shift sergeant staffing level when overtime is required.

   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. Upon request, bargain in good faith with Teamsters Local 117 concerning the mandatory effects on bargaining unit employees of the Port of Seattle's decision to change the night shift sergeant staffing level when overtime is required.

b. Provide back pay to employees affected by the decision to change the night shift sergeant staffing level when overtime was required at the rate of their normal wages from five days after the date of this Order until the occurrence of the earliest of the following conditions: (1) the Port of Seattle bargains with the Teamsters Local 117 to agreement over the effects of the decision to change night shift staffing of the second sergeant when overtime is required; (2) the parties bargain to bona fide impasse and proceed to interest arbitration as provided in RCW 41.56.430 - .470, the date on which an arbitrator issues an award; (3) the union fails to request bargaining within five business days following the date of this Order, or to commence negotiations within five business days of the Port of Seattle's notice of its desire to bargain with the union; or (4) Teamsters Local 117 fails to bargain in good faith. The sum paid to each employee shall not exceed the amount of overtime the employee would have earned from the date the employer stopped scheduling a second sergeant past midnight when overtime is required until the date on which the employer offered to bargain in good faith. However, in no event shall the sum of back pay be less than the employees would have earned in overtime for a two-week period. Back pay shall be computed in accordance with WAC 391-45-410.

c. Preserve and, within 14 days of a request, make available for examination and copying all payroll records, social security payment records, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

d. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

e. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Port of Seattle, 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.

f. 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.

g. Notify the Compliance Officer, in writing, within 20 days following the date of this Order, as to what steps have been taken to comply with this Order, and at the same time provide him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 10th day of February, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

THOMAS W. McLANE, Commissioner

MARK E. BRENNAN, Commissioner

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ MAJEL C. BOUDIA

CASE NUMBER:	24668-U-12-06306	FILED:	03/16/2012	FILED BY:	PARTY 2
DISPUTE:	ER UNILATERAL				
BAR UNIT:	SUPERVISORS				
DETAILS:	Sergeants 25035-S-12-0303				
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