

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL LONGSHORE AND  
WAREHOUSE UNION, LOCAL 7,

Complainant,

vs.

PORT OF BELLINGHAM,

Respondent.

CASE 26373-U-14

DECISION 12317-A - PORT

DECISION OF COMMISSION

Schwerin Campbell Barnard Iglitzin & Lavitt, LLP, by *Terrance M. Costello*,  
Attorney at Law, for the International Longshore and Warehouse Union, Local 7.

Chmelik Sitkin & Davis P.S., by *Richard A. Davis III*, Attorney at Law, for the Port  
of Bellingham.

The International Longshore and Warehouse Union, Local 7 (union) filed an unfair labor practice complaint against the Port of Bellingham (employer) alleging the employer skimmed bargaining unit work when it assigned daily visual inspections of the baggage handling system to employees in another bargaining unit. Examiner Emily H. Martin conducted a hearing and issued a decision concluding that the inspections were bargaining unit work but that the employer did not have an obligation to bargain the decision to assign the work to another bargaining unit.<sup>1</sup> The union appealed the examiner's conclusion that the employer did not have an obligation to bargain the decision. The employer cross-appealed the examiner's findings of fact that the work was bargaining unit work.

The employer is divided into three districts (airport, maritime, and real estate) and two divisions (finance and facilities). Within the employer's facilities division is the maintenance department. Maintenance Technicians maintain the employer's mechanical systems and equipment. The union

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<sup>1</sup> *Port of Bellingham*, Decision 12317 (PORT, 2015).

represents maintenance department employees. The employer's Airport Operations Specialists work at the airport. Airport Operations Specialists respond to fires and keep the airport operationally ready. The International Association of Fire Fighters, Local 106 represents the Airport Operations Specialists.

As part of renovating the airport, the employer purchased a new baggage handling system from Glidepath. The new baggage handling system required visual inspections before it began operating each day.

The issue before the Commission is whether the daily visual inspections of the baggage handling system, conducted before the airport opened, were bargaining unit work. Substantial evidence does not support the examiner's findings of fact that the daily visual inspections were bargaining unit work. The daily visual inspections of the baggage handling system were not bargaining unit work; therefore, the employer did not have a duty to bargain the decision to assign daily visual inspections to the Airport Operations Specialists.

### LEGAL STANDARDS

The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the examiner's conclusions of law. *C-Tran (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Id.* The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000).

When determining whether an employer has violated its collective bargaining obligation by skimming bargaining unit work, the first question is whether the work in question is bargaining unit work. *City of Snoqualmie*, Decision 9892-A (PECB, 2009). If the work in question is

bargaining unit work, we would then apply a five-factor test. However, if the work is not bargaining unit work, our analysis stops there.<sup>2</sup>

### APPLICATION OF LEGAL STANDARDS

To determine whether the employer had an obligation to bargain with the union over the decision to assign the daily pre-opening visual inspections of the baggage handling system to the Airport Operations Specialists, we must first determine whether the daily pre-opening visual inspections of the baggage handling system were bargaining unit work. The examiner concluded preventative maintenance was bargaining unit work and “inspections were a component of preventative maintenance;” therefore, inspections were bargaining unit work. The examiner also concluded that the employer “unbundled” daily inspections from preventative maintenance and assigned the daily inspections to the Airport Operations Specialists. Substantial evidence does not support the examiner’s conclusion that the employer “unbundled” daily inspections from preventative maintenance.

The record contains evidence of a sufficient quantity to persuade a fair-minded, rational person that daily pre-opening visual inspections were different from preventative maintenance and not bargaining unit work. Daily pre-opening visual inspections of the baggage handling system were new work that did not exist until the employer purchased the new baggage handling system. Until February 2014, the employer had not assigned the new work.

The new baggage handling system required daily visual inspections before becoming operational each day, in addition to routine preventative maintenance. Substantial evidence supports finding that daily pre-opening visual inspections were conducted by Glidepath employees, by Glidepath employees with the Airport Operations Specialists, and by Glidepath employees with the Maintenance Technicians.

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<sup>2</sup> The Commissioners recognize Commission precedent has developed and applied a five-factor test for both skimming and contracting-out cases, but we do not agree that its continued vitality should be presumed in all cases.

Glidepath employees were at the airport until February 10, 2014. As part of training, the Maintenance Technicians and the Airport Operations Specialists shadowed Glidepath employees. Progressively, the Maintenance Technicians and the Airport Operations Specialists assumed more responsibility.

Glidepath employees visually inspected the baggage handling system multiple times per day: first, with the Airport Operations Specialists at 3:30 a.m., before the airport opened for the day; and second, with the Maintenance Technicians when those employees came on shift, the earliest of which started at 7:00 a.m., after the airport was open and operational. Glidepath employees and the Maintenance Technicians performed any necessary maintenance on the new baggage handling system when they performed the visual inspection.

Preventative maintenance included an initial inspection, repairing, oiling, tightening bolts, aligning belts, checking photo eyes, and cleaning. The manufacturer recommended different tasks at different intervals, such as weekly or monthly, of preventative maintenance. Before performing any preventative maintenance, the employee inspected the baggage handling system. The employer assigned preventative maintenance of the baggage handling system to maintenance employees.

In contrast to the inspection done as part of preventative maintenance, the daily pre-opening visual inspection stands alone. To perform an inspection, the employee turned on the baggage handling system, placed a plastic bin on the baggage belt, and ran the bin through the system. During the inspection, the employee looked, listened, and smelled for signs of a problem with the baggage handling system. If the Airport Operations Specialist discovered any problems with the baggage handling system, the employee reported those problems, the Airport Operations Supervisor created a work order, and a maintenance employee repaired the baggage handling system. The employer assigned the daily visual inspections to the Airport Operations Specialists on February 7, 2014.

Daily pre-opening visual inspections of the baggage handling system were never bundled with preventative maintenance. While maintenance employees performed inspections as part of preventative maintenance, the daily pre-opening visual inspections of the baggage handling system

are distinguishable. The daily pre-opening visual inspection was a stand-alone inspection to ensure the baggage handling system was functioning properly before the airport opened. While Glidepath employees may have visually inspected the baggage handling system and performed preventative maintenance with the Maintenance Technicians, doing so did not entwine daily pre-opening visual inspections and preventative maintenance such that the tasks were indistinguishably one.

### CONCLUSION

The daily pre-opening visual inspections of the baggage handling system the employer assigned to the Airport Operations Specialists was new work that had never been solely the provenance of the union. The daily pre-opening visual inspections of the baggage handling system were not bargaining unit work; therefore, the employer was not obligated to bargain the decision to assign daily pre-opening visual inspections of the baggage handling system to the Airport Operations Specialists.

NOW, THEREFORE, it is

### ORDERED

Findings of Fact 1 through 8 entered by Examiner Emily H. Martin are AFFIRMED and adopted as the Findings of Fact of the Commission. Findings of Fact 9 through 13 entered by Examiner Martin are VACATED and the following Findings of Fact are substituted:

9. Glidepath employees inspected the baggage handling system multiple times a day: first, with the Airport Operations Specialists at 3:30 a.m., before the airport opened for the day; and second, with the Maintenance Technicians when those employees came on shift.
10. While maintenance employees performed inspections as part of preventative maintenance, the daily pre-opening visual inspections of the baggage handling system are distinguishable. Daily pre-opening visual inspections of the baggage handling system were not bargaining unit work.

11. In February 2014, the employer decided to assign daily pre-opening inspections of the baggage handling system to the Airport Operations Specialists. The employer continued to assign preventative maintenance to the maintenance employees. The employer did not assign the preventative maintenance inspection to the Airport Operations Specialists.

Conclusion of Law 1 issued by Examiner Martin is AFFIRMED and adopted as the Conclusion of Law of the Commission. Conclusion of Law 2 is modified as follows:

2. Based on Findings of Fact 3 through 11, the employer did not refuse to bargain in violation of RCW 41.56.140(4) or (1).

The Order issued by Examiner Martin is AFFIRMED and adopted as the Order of the Commission.

ISSUED at Olympia, Washington, this 6th day of October, 2015.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
MARILYN GLENN SAYAN, Chairperson

  
THOMAS W. McLANE, Commissioner

  
MARK E. BRENNAN, Commissioner



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