

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TECHNICAL EMPLOYEES'  
ASSOCIATION,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 26738-U-14

DECISION 12632 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

*Erica Shelley Nelson*, Attorney at Law, Cline & Casillas, for the Technical Employees' Association.

*Susan N. Slonecker*, Senior Deputy Prosecuting Attorney, King County Prosecuting Attorney Daniel T. Satterberg, for King County.

*Cecilia Mena*, Union Representative, for the Professional and Technical Employees, Local 17.

On September 18, 2014, the Technical Employees' Association (TEA) filed a complaint with the Public Employment Relations Commission alleging King County (employer) refused to bargain by skimming or contracting out TEA bargaining unit work relating to transit security systems. The Commission's Unfair Labor Practice Manager issued a preliminary ruling, and the case was subsequently assigned to Examiner Jamie L. Siegel. On January 14, April 7, and May 27, 2015, TEA filed an amended, a second amended, and a third amended complaint, respectively. Each amended complaint asserts the employer skimmed or contracted out additional TEA bargaining unit work. TEA also alleges the employer refused to bargain by failing to provide requested information. I issued amended preliminary rulings finding additional causes of action, the last of which issued on June 1, 2015.

On August 25, 2015, the Professional and Technical Employees, Local 17 (PTE) filed a motion to intervene. The TEA objected. I granted the motion by letter dated August 28, 2015.

After granting several requests for continuances, I held the hearing on April 18, 19, and 20 and June 8 and 9, 2016. The parties submitted post-hearing briefs on August 19, 2016.

### ISSUES

The issues as framed by the final amended preliminary ruling are as follows:

1. Did the employer refuse to bargain in violation of RCW 41.56.140(4) and derivatively interfere with employee rights in violation of RCW 41.56.140(1) by skimming or contracting out
  - (a) transit security systems work that was previously performed by TEA bargaining unit employees, without notifying the TEA and providing an opportunity for bargaining;
  - (b) the design, permitting, and construction management of the diesel exhaust fluid system infrastructure at Metro Transit's North Base, without notifying the TEA and providing an opportunity for bargaining;
  - (c) the design, permitting, project management, and implementation of electrical modifications at Metro Transit's East Base vehicle maintenance building and Atlantic Base fuel and wash building; and
  - (d) the design, construction management, and project management of modifications and upgrades to the trolley overhead electrical systems on the "Route 48 South Electrification and 23rd Avenue Corridor Improvement" project, without notifying the TEA and providing an opportunity for bargaining.
2. Did the employer refuse to provide relevant information requested by the TEA on September 23, 2014, and clarified by the TEA on November 6, 2014, and information requested by the TEA on December 17, 2014?

I conclude the employer refused to bargain in violation of RCW 41.56.140(4) and derivatively interfered with employee rights in violation of RCW 41.56.140(1) by skimming the North Facilities transit security systems work and the electrical modification work at the Atlantic Base fuel and wash building. I dismiss the other allegations.

### BACKGROUND

The employer's Department of Transportation operates the Metro Transit Division which provides public transportation throughout King County. Metro Transit includes over a dozen separate sections. Employees working in those sections, and in multiple different bargaining units, perform a wide array of tasks to ensure the public receives safe and efficient transportation services.

The TEA represents a bargaining unit of all employees working in the Design and Construction Section, excluding supervisors, managers, confidential employees, and short-term temporary employees. During all times relevant to this matter, the employer and the TEA operated under the terms of a current collective bargaining agreement.

PTE represents a bargaining unit of employees who work in several sections of Metro Transit, including power and facilities and service development.

This case addresses five distinct projects which are described below in more detail. The work associated with each project was performed by employees in multiple bargaining units as well as, in some instances, private contractors.<sup>1</sup> The work in dispute involves the designing, planning, permitting, and project management or construction management of the projects. The following provides a brief summary of some of the Metro Transit sections and work groups within those sections that are relevant in this case.

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<sup>1</sup> The TEA does not allege the employer transferred its bargaining unit work to private contractors.

### Design and Construction

The employer's Design and Construction Section (D&C) houses several work groups, including real estate and land use/environmental planning; engineering/design; capital projects program/project management; and construction services. TEA bargaining unit employees serve as engineers and construction managers, among other job titles, within D&C. The employees in D&C help to design, engineer, build, and consult on projects to get Metro Transit's buses on the road. Generally, D&C is involved in new construction, additions, and modifications to existing structures, as well as the replacement of large equipment, such as bus lifts.

D&C engineers serve as project managers, managing many projects from initial conception through construction closeout. Ken Madden, an Engineer V and a TEA board member, described his work as a project manager in D&C as follows:

So I manage a portfolio of projects; and those capital projects are in various states of development, from initial conception or scoping, through construction closeout. So I provide a service to Metro Transit in shepherding capital projects through the original scoping phase, through design and into construction and project closeout.

### King County Information Technology

King County Information Technology (KCIT) operates independently from Metro Transit. The employees who work in KCIT provide technological leadership and support across the employer's entire operation. The record does not detail whether KCIT employees are represented and, if so, by which union.

### Power and Facilities

The employer's Power and Facilities Section (P&F) houses several separate work groups, including South Facilities, North Facilities, power distribution, tunnel facilities, capital programs, and energy management/sustainability. Power distribution maintains anything electrical that does not have wheels, including data communication systems, security systems, trolley overhead, substation, and others. Power distribution includes three work groups: trolley overhead maintenance, radio maintenance, and electrical maintenance. P&F employs licensed electricians.

P&F employees fall within several bargaining units represented by different unions, including PTE; the Amalgamated Transit Union, Local 587 (ATU); and the International Brotherhood of Electrical Workers, Local 77 (IBEW).

#### Service Development

The Service Development Section is made up of five work groups, including transit route facilities, scheduling, service planning, transit system and traffic engineering, and market development. Transit route facilities addresses facilities associated with bus routes, including bus stops, shelters, and signalization. Service planning is responsible for planning bus routes as well as strategic planning for Metro Transit. At least one employee in service development is in the PTE bargaining unit.

#### Systems Development and Operations

The Systems Development and Operations Section is made up of two work groups: Systems Development and Systems Operations. Most of the section's work involves technology capital projects. At least one employee in this section falls within a bargaining unit represented by Teamsters Local 117.

#### Vehicle Maintenance

The Vehicle Maintenance Section focuses on "keeping [Metro Transit's] rolling stock rolling." Vehicle maintenance comprises five work groups: revenue vehicle repair, transit nonrevenue vehicle maintenance, component repair, vehicle maintenance material support, and transit fleet contract management. Millwrights worked within the Vehicle Maintenance Section until the employer transferred them to P&F. The record is unclear on when that transfer occurred.

### ANALYSIS

#### Applicable Legal Standards

##### *Duty to Bargain*

Chapter 41.56 RCW requires public employers and the unions representing their employees to bargain about mandatory subjects, including wages, hours, and working conditions. RCW

41.56.030(4). The law limits the scope of mandatory subjects to those matters of direct concern to employees. *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197 (1989). Unless a union clearly waives its right to bargain, the law prohibits an employer from making unilateral changes to mandatory subjects. An employer must give a union sufficient notice of possible changes affecting mandatory subjects of bargaining and, upon union request, bargain the decision and its effects in good faith until reaching agreement or impasse.

The Commission classifies managerial decisions that only remotely affect terms and conditions of employment as permissive subjects of bargaining. *North Franklin School District*, Decision 5945-A (PECB, 1998). Parties may bargain permissive subjects but are not required to do so. If an employer's decision on a permissive subject of bargaining materially impacts wages, hours, or working conditions of bargaining unit employees, the employer must bargain with the union concerning those impacts. *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991).

#### *Transfer of Bargaining Unit Work*

Unions have a legitimate interest in preserving work that bargaining unit employees have historically performed. As a result, Commission precedent holds that it is a mandatory subject of bargaining when an employer decides to transfer work from the bargaining unit that has traditionally performed the work to employees of either a different bargaining unit (skimming) or a different employer (contracting out). *City of Snoqualmie*, Decision 9892-A (PECB, 2009). While the Commission has found employer decisions to contract out bargaining unit work to be mandatory subjects of bargaining, the Commission and its examiners still determine whether the employer had a duty to bargain on a case-by-case basis. *Central Washington University*, Decision 12305-A (PSRA, 2016).<sup>2</sup>

The Commission recently affirmed that the threshold question to answer in contracting out cases is whether the work at issue is bargaining unit work. *Id.*; *City of Snoqualmie*, Decision 9892-A. The Commission defines bargaining unit work as work that bargaining unit employees have

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<sup>2</sup> This case is currently pending in Kittitas County Superior Court, Case No. 16-2-00101-1.

historically performed. Once an employer assigns bargaining unit employees to perform a certain body of work, the work attaches to the unit and becomes bargaining unit work. *Kitsap County Fire District 7*, Decision 7064-A (PECB, 2001). To determine whether work is bargaining unit work, evidence of whether other employees have performed the work and how the work compares to bargaining unit work, such as the duties, skills, or working conditions, is relevant. *Central Washington University*, Decision 12305-A.

If the work in question is determined not to be bargaining unit work, the employer has no duty to bargain and the analysis ends. *Id.* If the work in question is determined to be bargaining unit work, the Commission and its examiners apply the new test adopted in *Central Washington University*.<sup>3</sup> The new test requires application of the *City of Richland* balancing test to analyze whether an employer was obligated to bargain its decision to transfer the work. The balancing test weighs employees' interests in wages, hours, and working conditions against the extent to which the decision lies at the core of the employer's entrepreneurial control or is a management prerogative. If the decision is a mandatory subject of bargaining, the next question is whether the employer provided the union with notice and an opportunity to bargain the decision to transfer the bargaining unit work. *Central Washington University*, Decision 12305-A. The union bears the burden of proving its allegations. WAC 391-45-270(1)(a).

#### Application of Standards

The TEA alleges the employer transferred the design, permitting, construction management, or project management of five distinct projects. Many work groups within Metro Transit maintain responsibility for delivering projects and have employees within the work group who manage projects. Work groups outside of D&C manage goods and services contracts. Bill Stockman, superintendent of the power distribution section of P&F and a PTE bargaining unit employee, testified that P&F employees regularly plan and manage projects and routinely administer contracts. Randy Witt, former D&C manager and a non-TEA bargaining unit employee, testified

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<sup>3</sup> In *Central Washington University*, the Commission recognized that its precedent used the same standard for both contracting out and skimming cases. Because the case before it only involved contracting out, the Commission indicated the new standard applied in contracting out cases but noted, "[W]e see no reason why contracting out and skimming cases should not continue to have the same standard applied to them." I agree and apply the new standard in analyzing the skimming allegations in this case.

that other work groups, including service development and vehicle maintenance, perform project management work.

The fact that employees in multiple bargaining units perform project management work does not mean that the employer may freely transfer project management work without considering its bargaining obligations. Each project at issue in this case has unique attributes. The evidence demonstrates that the scope of each project can vary considerably. As a result, I analyze each project based on its unique attributes and the work jurisdiction history of the particular type of project.

*ISSUE 1(a)—Transit Security Systems Work:* Did the employer refuse to bargain by skimming or contracting out transit security systems work that was previously performed by TEA bargaining unit employees, without notifying the TEA and providing an opportunity for bargaining?

The TEA alleges that the employer skimmed bargaining unit work when a PTE bargaining unit employee managed the installation of a security system at North Facilities. For the reasons described below, I find the North Facilities transit security systems work was TEA bargaining unit work, and the employer had an obligation to bargain with the TEA concerning the transfer of the work. The employer failed to provide the TEA with notice and an opportunity to bargain. As a result, the employer refused to bargain in violation of RCW 41.56.140(4).

#### Issue 1(a): Background

While the complaints and resulting preliminary rulings describe this allegation in broad terms, the evidence at hearing and in the parties' briefs narrow the focus to the transit security systems work at North Facilities. The TEA alleges the employer refused to bargain by skimming transit security systems work at North Facilities.

Currently, 14 transit security systems are operational at bases, parking garages, and other facilities, as well as a monitoring station. Michael Stanaszek, an Engineer V in D&C and a TEA bargaining unit employee, worked on the first transit security project in 2003 or 2004. Since then, he has



served as the project manager for all the transit security projects except the 2014 North Facilities project at issue in this case.

On March 25, 2014, Jake Jacobovitch, the superintendent of North Facilities at the time, gave Building Control Systems, Inc. (BCS), a private contractor, authorization to proceed with a project to add a security system at North Facilities. Jacobovitch worked in the employer's P&F section and served as the lead on the transit security systems project. He is in the PTE bargaining unit. As a regular part of his position, Jacobovitch has overseen work completed by contractors under maintenance contracts.

The 2014 security project at North Facilities involved adding eight card-reader doors, one pedestrian door, and two vehicle entrance gates.<sup>4</sup> The project also included the installation of six cameras, DVRs, and additional equipment.<sup>5</sup> The transit security systems all use the Andover continuum system which is integrated into cameras, card readers, gate-opening devices, and DVRs. The Andover continuum system ties the security network together and allows employees to monitor the transit facilities from the transit control center. As described in more detail below, some of the infrastructure for this project was designed and constructed under D&C project management five to eight years earlier.

When North Facilities was originally built five to eight years earlier, the employer decided not to include a security system but anticipated adding it in the future and planned for it. Stanaszek consulted on the project and testified about his work:

[C]ontemplating that there could be security systems in the future, I was asked to provide consultation for where a buried conduit would be appropriate, where conduit in walls that might be useful to connect . . . where a server room might—if we have a server room . . . what that might need, to be able to run a security system. And then those conduits, as I understand, were built . . . by a contractor that was working. And Metro design and construction was managing that construction of

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<sup>4</sup> Card readers allow employees to use their badges to gain access to an area. The card reader sees the badge and sends a signal to an Andover control which in turn searches its database to confirm permission from the system to unlock the door and allow entry.

<sup>5</sup> Jacobovitch testified that when he learned the project was being contested, he stopped the work, which remained incomplete during the time of the hearing.

the original facility. And I was asked to consult as to what would be the appropriate infrastructure to build in the event that sometime in the future we build security systems. So I did that.

The infrastructure added to North Facilities at that time, however, was insufficient for the transit security systems project which began in 2014. In his testimony, Jacobovitch acknowledged that the infrastructure was insufficient and that BCS had to supplement it.

The TEA learned of this project in the spring of 2014 when Gerald Williams, a Construction Manager IV in D&C and a TEA board member, noticed the Andover controls and a DVR at North Facilities. On April 23, 2014, the TEA submitted a request for information regarding the employer's contract for design and construction work with BCS. The TEA filed the unfair labor practice complaint in this matter on September 18, 2014.

Williams worked on numerous security projects, including projects where existing facilities were upgraded with security systems. With respect to the North Facilities project, he testified that while some conduit was already in place from both gate locations and some other areas, to make the system operational, BCS had to add conduit, wire, junction boxes, and rexes in addition to the security-specific equipment such as the server, head-in Andover equipment, DVR, cameras, and card readers. No TEA bargaining unit employees were involved in managing this work.

In addition to those represented by the TEA, other employee work groups play important roles with security projects. P&F employees are responsible for maintaining the security systems and manage a maintenance contract with BCS. KCIT ensures that signals come over the networks and that the computers and other technologies are in place to allow for transmission of security and access control signals.

#### Issue 1(a): Application of Standards

In applying the standards set forth in *Central Washington University*, I first determine whether the work in question is bargaining unit work and, finding that it is, I next apply the balancing test to determine whether the employer had an obligation to bargain with the TEA prior to transferring the work.

a. Bargaining Unit Work

In *Central Washington University*, the Commission explained that in determining whether work is bargaining unit work, evidence of whether other employees have performed the work and how the work compares to bargaining unit work, such as the duties, skills, or working conditions, is relevant to determining whether the work in question is bargaining unit work.

When the employer constructed North Facilities, Stanaszek consulted on the necessary infrastructure for a future security system, and it appears that much of the infrastructure was built at that time. However, some of the key infrastructure, including some of the conduit and all of the wire was not included.

Stockman testified that part of P&F employees' maintenance role is to add new equipment to an existing security system, even if it includes overseeing the addition of a new card reader that requires adding electricity:

Because typically the way I have been trained here, and historically what we have done, if the infrastructure exists and we are just adding a card reader, we are just adding a camera here or there, or something, that is a really normal occurrence for us; we do it all the time throughout our system.

Stockman further differentiated between adding an entirely new security system and supplementing an existing system:

[I]f you have a security system, like you do now with key card access, and you said, well, you know, I want one on my office wall, *and it's already prewired* and we are just adding one more additional thing, one more device to an elaborate system already, we [P&F] would come in add that for you and be done with it, and move on out. And it's a day's work and it's over with.

(emphasis added).

The North Facilities project, however, involved substantially more than adding one or even two additional components to an existing system or replacing equipment with newer versions. While some of the conduit had already been installed, none of the wire had been. The employer's argument that the security work was maintenance work within PTE's work jurisdiction is not

persuasive and was contradicted by the testimony of P&F's power distribution superintendent, Stockman.

The employer argues that employees from multiple bargaining units have historically performed the work involved in this project and, as a result, the TEA cannot claim exclusive jurisdiction over the work. I disagree. The scope of the North Facilities project was larger than the work PTE bargaining unit employees have regularly and historically performed.

The evidence demonstrates that since 2003 or 2004, Stanaszek has served as the project manager for all the transit security projects except the 2014 North Facilities project. Thus, the design, project management, and construction management of transit security projects fall within the TEA's historic bargaining unit work jurisdiction.<sup>6</sup> The record contains no evidence that P&F employees have served in a project manager or lead role on security projects with a scope similar to that of the North Facilities project.

b. Balancing Test

Because I find the work in question is bargaining unit work, I apply the *City of Richland* balancing test to determine whether the employer was obligated to bargain the decision to transfer the work. The balancing test weighs employees' interests in wages, hours, and working conditions against the extent to which the decision lies at the core of the employer's entrepreneurial control or is a management prerogative.

In addition to the TEA employees' interest in preserving their bargaining unit work, the TEA bargaining unit employees who testified expressed an interest in ensuring that work is done in a safe and uniform manner that meets established standards. Williams also testified that when D&C employees perform the work, they update the master facility drawings: "So in the future when we come into the facility, we're going to do an upgrade or a remodel, they have something to start from; they have a base plan. They have a plan and they can see what's already there."

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<sup>6</sup> I reach this conclusion with no consideration of Exhibits 159 through 163. I admitted these exhibits over the employer's objection and find it unnecessary to consider them in reaching this decision.

The employer articulates its interests as follows: “Assignment of work to employees is at the heart of an employers’ [sic] entrepreneurial control. Where there is no change to working conditions because the employer has historically assigned work to employees in more than one bargaining unit, the balance tips in favor of the [employer].”

I disagree with the employer and find that the balance tips in favor of the TEA. The preservation of bargaining unit work is a very strong and fundamental interest of union-represented employees. The employer has not presented a compelling interest to tip the balance in its favor.

The employer was obligated to bargain with the TEA over the transfer of work involving the project management of the installation of the security system at North Facilities. The employer did not give the TEA notice and an opportunity to bargain the transfer of this work. The employer refused to bargain in violation of RCW 41.56.140(4).

*ISSUE 1(b)—Diesel Exhaust Fluid System Infrastructure:* Did the employer refuse to bargain by skimming or contracting out the design, permitting, and construction management of the diesel exhaust fluid system infrastructure at Metro Transit’s North Base, without notifying the TEA and providing an opportunity for bargaining?

The TEA alleges that the employer skimmed bargaining unit work in 2014 when non-TEA bargaining unit employees managed the installation of the diesel exhaust fluid system infrastructure at North Base. For the reasons described below, I find that the TEA did not establish that the design, permitting,<sup>7</sup> or construction management of the diesel exhaust fluid system infrastructure at North Base was TEA bargaining unit work. As a result, I conclude that the employer did not refuse to bargain with the TEA.

#### Issue 1(b): Background

The Environmental Protection Agency imposed new standards in 2010 for certain diesel vehicles, requiring those vehicles to use an additive referred to as diesel exhaust fluid (DEF). Initially in

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<sup>7</sup> The evidence does not establish that permits were required for this project.

2010, the employer purchased DEF in 500 gallon portable containers called totes. In order to dispense DEF from the totes, the millwrights purchased kits with hoses and pumps and connected them. Millwrights work within P&F and are represented by ATU.<sup>8</sup>

Over the next five years, as the need for DEF increased, the employer transitioned from dispensing DEF from totes to dispensing DEF from fixed tanks at all seven bases. The evidence demonstrates that over that five-year period, employees in multiple bargaining units worked on various aspects of the DEF project, including the design and construction management of the DEF system infrastructure at North Base.

In preparing to transition from totes to fixed tanks, fleet engineering employees from vehicle maintenance and millwrights worked together to develop and implement a plan. Pete Chailante from fleet engineering took the lead in working with the millwrights and the base superintendents.<sup>9</sup> The installations Chailante managed took place first at South Base, then at East Base, and finally at Atlantic Base.

After some of the initial transition work, the millwrights requested that D&C review the South Base project. In an e-mail dated June 24, 2010, the South Base superintendent communicated that the millwrights requested D&C “be involved to ensure the system met all design, product and installation requirements. Some of the work ha[d] been completed and most of the materials purchased.”

In July 2010, Jon Zak, an Engineer IV with D&C and a TEA bargaining unit employee, was assigned to develop an estimate for the South Base DEF project. Zak is a mechanical engineer. After researching DEF and considering options, Zak completed the estimate. Lyle McFarland, an Engineer IV with D&C and a TEA bargaining unit employee, completed an estimate for the electrical part of the project; McFarland is an electrical engineer. Dave Crippen, a D&C manager

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<sup>8</sup> Formerly, the millwrights worked in vehicle maintenance. Millwrights maintain and repair equipment, including tools, bay doors, hydraulic lifts, fixed equipment, and wheeled equipment. They also maintain fueling systems, air supply systems, and vehicle exhaust systems.

<sup>9</sup> It is not clear from the record which bargaining unit Chailante was in; he was not in the TEA bargaining unit.

and not a TEA bargaining unit employee, e-mailed Randy Winders, the vehicle maintenance manager, and stated, "D&C can take the lead on designing the installation and coordinating with P&F regarding the installation of the equipment. However, we will need funding authorization for this work."

At some point after providing the estimate for South Base, Zak was asked to fill in for a D&C manager at a meeting about the DEF project attended by at least some of the base superintendents. Zak shared the cost estimate with the meeting participants and they responded that they could not afford it.

The DEF system installations at East and South Bases continued without D&C managing the projects. The evidence shows Zak remained involved at a consulting level and made recommendations on some of the equipment. In a November 22, 2010, e-mail, Zak recommended a particular pump which would require D&C electrical engineer design work for it to function properly. By December 2011, the DEF system installations were complete at East and South Bases. No TEA bargaining unit employees managed those DEF system infrastructure projects.

In April 2012, Elizabeth Wright, an Engineer V with D&C and a TEA bargaining unit employee, was asked to develop an estimate for a project to store and distribute DEF at the transit bases. Some of the bases were still dispensing DEF from the temporary totes. After completing research, Wright prepared an estimate for a permanent installation at each base. Wright testified that she understood the project was put on hold and would possibly be considered in the next budget cycle. When she visited North Base in 2014, Wright saw a completed DEF system installation. As a result of Wright's observation, the TEA requested information from the employer regarding the design, permitting, and construction of the DEF system by letter dated September 23, 2014. The TEA then filed an amended complaint in this matter, adding the DEF project allegation.

At approximately the same time that Wright was putting together the budget estimate, non-TEA employees were working on acquiring equipment for the Ryerson Base DEF project. The evidence reflects that Joseph Fahlgren, a millwright and ATU bargaining unit employee, planned the installation of and installed the DEF system at Ryerson Base.

Beginning in 2014, Wendy Chin managed the remaining DEF projects including three bases and remedial needs with the objective “to standardize, to the extent possible, DEF operations, training and maintenance for staff.” Chin serves as a project/program manager in P&F’s capital planning work group; she is a PTE bargaining unit employee. Her job includes developing capital work plans to add, replace, or renovate fixed assets. Fixed assets include buildings, building systems, infrastructure, equipment, et cetera.

Chin teamed with Fahlgren and Troy Jager, a constructor within P&F’s facilities work group, to plan and implement the project.<sup>10</sup> According to Fahlgren’s testimony, he and Jager looked at the bases to see where the lines for the installations could run, made drawings, ordered parts, and installed them. Fahlgren testified that millwrights add systems, but it is rare that they do so.

Larry Ward, superintendent of vehicle maintenance and a PTE bargaining unit employee, testified that the project was appropriately assigned to the millwrights and constructors, and it was consistent with their historic bargaining unit work. DEF was a new product, but dispensing bulk products was not new for them. Fahlgren had experience installing air-supply systems and plumbing to supply fluids, such as motor oil, antifreeze, and transmission fluid, to different drop points throughout the shops. Fahlgren and Jager just had to determine how they would dispense the DEF.

#### Issue 1(b): Application of Standards

In applying the standards set forth in *Central Washington University*, I determine the design and construction management of the DEF system infrastructure at North Base is not bargaining unit work. Additionally, the record does not establish that permits were required for the work.

The evidence highlighted the employer’s approach to dispensing DEF as it transitioned from using totes to using fixed tanks. Over the course of the employer’s five-year history with DEF, the record shows that non-TEA bargaining unit employees from at least three different work groups played a

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<sup>10</sup> Constructors perform basic repair to building systems, including plumbing and carpentry work. They focus on the waterside of projects and maintain plumbing, drains, fire systems, some equipment, and shelters. It is not clear from the record which bargaining unit Jager is in; he is not in the TEA bargaining unit.



role in managing at least one of the DEF projects prior to the North Base DEF system installation. Chin, who managed the financial aspects of the DEF project beginning in 2014, routinely manages transit projects. Fahlgren planned and installed the DEF system at Ryerson Base prior to doing so at North Base. Chailante managed the installations at South, East, and Atlantic Bases.<sup>11</sup>

In contrast, no TEA bargaining unit employee managed any of the DEF system installations. TEA bargaining unit employees engaged in limited work on the DEF projects. Zak and Wright both prepared cost estimates; Zak consulted on several issues in 2010. The employer did not fund either of these employees' cost estimates and, instead, assigned the work to non-TEA bargaining unit employees. The design and construction management work never attached to the TEA bargaining unit.

In support of its argument that the DEF system design and construction management work belonged to the TEA bargaining unit, the TEA argues the work was similar to the interior fall protection project Wright was working on. During her testimony, Wright referenced the comparison but did not provide detail on how the projects were similar and why managing that project, or any other project, should result in a finding that managing the DEF system installations is TEA bargaining unit work. I do not find the comparison persuasive.

The TEA did not establish that the design or construction management of the DEF system infrastructure at North Base was work historically performed by TEA bargaining unit employees. As a result, the employer did not refuse to bargain with the TEA when it assigned the DEF project work to employees outside of the TEA bargaining unit.

*ISSUE 1(c)—Electrical Modifications at East Base and Atlantic Base:* Did the employer refuse to bargain by skimming or contracting out the design, permitting, project management, and implementation of electrical modifications at Metro Transit's (a) East Base vehicle maintenance building and (b) Atlantic Base fuel and wash building?

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<sup>11</sup> The testimony revealed mistakes were made on some of the earlier DEF projects, such as using PVC pipes instead of stainless steel. The quality of work does not factor into determining whether the work belongs to a particular bargaining unit.

The electrical modification projects at issue are two distinct projects: a base automation project at the East Base vehicle maintenance building and an upgrade of the radiant heating system at the Atlantic Base fuel and wash building.

*a. East Base Vehicle Maintenance Building*

The TEA alleges that the employer skimmed bargaining unit work in 2014 when a non-TEA bargaining unit employee managed the base automation project at the East Base vehicle maintenance building. For the reasons described below, I find that the TEA did not establish that the design, permitting,<sup>12</sup> project management, and implementation of the electrical modifications involved in the base automation was TEA bargaining unit work. As a result, I conclude that the employer did not refuse to bargain with the TEA.

Issue 1(c)(a): Background

The base automation project involved making computers available to the vehicle maintenance work group at each bus base as well as the component supply center and nonrevenue vehicles (NRV). As part of the project, new workstations, network infrastructure, computers, printers, and software were installed.

Kathleen McMurray, system development supervisor in the Systems Development and Operations Section and a PTE bargaining unit employee, oversaw the base automation project. Her work involves technology capital projects. McMurray acknowledged that this project differed from her work group's typical projects because it involved putting in workstations throughout the buildings; most of the work group's projects tend to be software-related.

Greg Debo, IT project manager, served as the project manager for the base automation project.<sup>13</sup> He managed the budget and schedules and coordinated with vehicle maintenance, KCIT, and others.

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<sup>12</sup> The evidence does not establish that permits were required for this project.

<sup>13</sup> Debo was a term-limited temporary employee whose position fell within the PTE bargaining unit.

The pilot phase of the base automation project, which included North Base and NRV, was completed in 2012. The next phase of the project included Atlantic, Central, and Ryerson Bases, and the last phase of the project included East and Bellevue Bases. The TEA's complaint only involves East Base. East Base is a large bus facility that has 10 to 12 maintenance bays.

As the base automation project progressed, Debo regularly e-mailed project updates to a group of individuals, including Stanaszek and Charlie Reynolds, a D&C electrical supervisor who is in the Teamsters bargaining unit. Debo's e-mails detailed the project accomplishments and what was "in the works" at the different bases.

In July 2014, the employer contracted with Cochran, Inc., a private company, to install network infrastructure and perform low-voltage electrical work at the project's final two bases, Bellevue and East Bases. The scope of the work included furnishing and installing conduit paths, receptacles, cables, and J-boxes for cables in addition to several other tasks. The plan involved using existing network infrastructure where possible.

In the fall of 2014, Williams was at East Base preparing for a fire alarm project when he noticed new data outlets and electrical line voltage (120-volt) work. The panel powering the new electrical outlets preexisted the project; it was not new. After Williams reported what he saw to Madden, the TEA requested information on the East Base electrical modification work by letter to the employer dated December 17, 2014. The TEA amended its complaint to add the skimming allegation related to this project on April 7, 2015.

The low-voltage data work involved with this project, including the oversight of the installation of fiber, data cabling, data outlets, and wireless access points, is not at issue. The TEA acknowledges that employees who are not TEA bargaining unit employees have regularly and historically managed the installation of low-voltage data work. The TEA asserts that managing the 120-volt work, along with the installation of new conduit, falls within the TEA bargaining unit's work jurisdiction. Williams testified that TEA bargaining unit employees manage all of the new installation and upgrades of 120-volt work at the bases, while P&F employees normally handle maintenance involving "like-and-kind" replacements, such as replacing motors, light fixtures,

ballasts, or pumps. Williams described the work he saw at East Base as “fairly substantial,” requiring many hours of work.

Issue 1(c)(a): Application of Standards

This project focused on adding computer technology to places that historically had none. The TEA stakes no claim to much of the East Base project. The TEA recognizes that much of the project, including overseeing the installation of fiber, data cabling, data outlets, and wireless access points, falls within the work jurisdiction of other employees. Instead, the TEA alleges the employer skimmed the project management work involved in the installation of 120-volt outlets. The record lacks clarity about how many 120-volt outlets were installed and by whom. It is also unclear how much conduit was installed for electricity as opposed to data. No electrical panels were added. Additionally, Stockman testified that P&F employees install 120-volt outlets and sometimes supervise others who install them.

Although the base automation work differed from McMurray’s typical projects, by the time the TEA filed its amended complaint on April 7, 2015, McMurray and Debo had been overseeing and managing base automation projects for over two years. The record reflects that in April 2013, the TEA raised a concern that Debo was skimming bargaining unit work with respect to the NRV portion of the base automation project. It appears the concern resolved and McMurray and Debo continued to manage the project.

Basing my conclusion on the record before me, I find that the TEA did not establish that the design, project management, or implementation of electrical modification work at East Base as part of the base automation project was work historically performed by TEA bargaining unit employees. Therefore, the employer did not refuse to bargain with the TEA when it assigned the East Base project management work to PTE bargaining unit employees.

*b. Atlantic Base Fuel and Wash Building*

The TEA alleges that the employer skimmed bargaining unit work when a Teamsters bargaining unit employee managed the design, project management, and implementation of electrical modifications at the Atlantic Base fuel and wash building. For the reasons described below, I find

the work was TEA bargaining unit work, and the employer had an obligation to bargain with the TEA concerning the transfer of the work. The employer failed to provide the TEA with notice and an opportunity to bargain. As a result, the employer refused to bargain in violation of RCW 41.56.140(4).

Issue 1(c)(b): Background

The Atlantic Base fuel and wash building project involved making the radiant heating system more energy efficient. Lisa Parriott, a resource energy conservation manager in P&F and a Teamsters bargaining unit employee, served as the project and construction manager. Phil Johnson—a licensed electrician, lead operating engineer in P&F's facilities maintenance work group, and an ATU bargaining unit employee—oversaw the installation of the new Siemens controls for the heating system. The employer contracted with Siemens, a private contractor, to perform the installation. Siemens is the sole source provider for HVAC controls, and Johnson manages the annual service contract with Siemens. Johnson testified that he oversees anything dealing with HVAC systems that Siemens controls.

The radiant heating system project included changing out the existing control system (thermostat) and migrating the controls to the Siemens control system with more advanced technology. The more advanced technology allows the users to look at the system remotely and monitor operations, including reprogramming remotely. In addition to replacing the existing control system, several new control points needed to be added, including internal zone temperature sensors, bus bay door switches, and an outside air temperature sensor.

The TEA learned of this project when Williams was fueling his work van at Atlantic Base. He noticed a Static Energy work van and saw someone installing conduit, wire, and control panels. He estimated the contractor installed several hundred feet of conduit for the project. After Williams reported what he saw to Madden, Madden confirmed that no TEA bargaining unit employee was managing the project. The TEA requested information on the project from the employer by letter dated December 17, 2014. The TEA amended its complaint to add the skimming allegation related to this project on April 7, 2015.

Williams testified that TEA bargaining unit employees have been responsible for many projects at Atlantic Base, such as projects involving the radiant heating system, fuel control system upgrades, installation of an emergency generator, exhaust fan replacements, and a SCADA-system upgrade. Williams testified that he was an inspector for D&C when it previously managed the removal and installation of a new radiant heating system.

John Wright, who worked as a construction manager in D&C until November 2015 and was a TEA bargaining unit employee, was involved in the installation of a radiant heating system at the Atlantic Base's tire and millwright shop. He was also involved in the installation of a new radiant heating system at Bellevue Base, among other places.

Parriott testified that the heating system project did not involve new work; instead, it involved maintaining the existing function of the equipment that was already there and migrating the controls to more current technology. The mechanical system and the control system both existed. Parriott, a civil engineer who previously worked in D&C supervising project managers, recognizes D&C employees as "the in-house experts in designing and constructing projects of technical expertise." Parriott testified that whether a program manager brings D&C into a project depends on a variety of factors, including the complexity of the project, its size, and the technical needs. With respect to the Atlantic Base project, she testified that D&C project management would have added no value.

#### Issue 1(c)(b): Application of Standards

In applying the standards set forth in *Central Washington University*, I first determine whether the work in question is bargaining unit work and, finding that it is, I next apply the balancing test to determine whether the employer had an obligation to bargain with the TEA prior to transferring the work.

##### a. Bargaining Unit Work

The evidence demonstrates that this project involved more than switching out the existing control system. This project involved adding several new control points, sensors, and switches, as well as installing hundreds of feet of conduit and wire.

While P&F employees have regularly and historically overseen the work of Siemens and have managed a work order contract with Siemens, the evidence does not demonstrate that P&F or other non-TEA bargaining unit employees have regularly designed, managed, and implemented electrical modifications of radiant heating systems with a scope similar to that of this project. As testified to by Williams and Wright, the designing, managing, and implementing of the electrical work involved with this project has been historically performed by D&C.<sup>14</sup>

b. Balancing Test

Because I find the work in question is bargaining unit work, I apply the *City of Richland* balancing test to determine whether the employer was obligated to bargain the decision to transfer the work.

In addition to the TEA employees' interest in preserving their bargaining unit work, the TEA bargaining unit employees who testified expressed an interest in ensuring that the work is done in a safe and uniform manner that meets established standards. Williams also testified that when D&C employees perform the work, they update the master facility drawings, which is helpful for their future work at the site. Madden testified about the importance of TEA bargaining unit employees performing this particular project:

[D]esign and construction ensures that projects are designed, constructed to comply with codes and standards. So electrical modifications at the Atlantic fuel and wash building . . . present considerable safety hazards to workers within the fuel and wash building. And so our primary concern is safety. The Atlantic fuel/wash building supports not only diesel buses, but also trolley coaches. Trolley coaches run on 700 DC. There is an extremely high risk of injury and accidents within the Atlantic fuel/wash building, and so safety is paramount. And our engineers ensure that safety standards are met, and codes are complied with, with the design and construction of projects, such as electrical modifications at Atlantic fuel/wash.

The employer argues that employees from multiple bargaining units have historically performed the work involved in this project and, as a result, the TEA cannot claim exclusive jurisdiction over the work. The employer further argues, "Assignment of work to employees is at the heart of an employers' [sic] entrepreneurial control. Where there is no change to working conditions because

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<sup>14</sup> The record does not establish that permitting was required for this project.

the employer has historically assigned work to employees in more than one bargaining unit, the balance tips in favor of the [employer].”

I disagree with the employer and find that the balance tips in favor of the TEA. The preservation of bargaining unit work is a very strong and fundamental interest of union-represented employees. The employer has not presented a compelling interest to tip the balance in its favor.

The employer was obligated to bargain with the TEA over the transfer of work involving the project management of the electrical modifications at the Atlantic Base fuel and wash building. The employer did not give the TEA notice and an opportunity to bargain the transfer of this work. Thus, the employer refused to bargain in violation of RCW 41.56.140(4).

*ISSUE 1(d)—Route 48 South Electrification and 23rd Avenue Corridor Improvement:* Did the employer refuse to bargain by skimming or contracting out the design, construction management, and project management of modifications and upgrades to the trolley overhead electrical systems on the “Route 48 South Electrification and 23rd Avenue Corridor Improvement” project, without notifying the TEA and providing an opportunity for bargaining?

The TEA alleges that the employer skimmed bargaining unit work in 2014 when a PTE bargaining unit employee managed the “Route 48 South Electrification and 23rd Avenue Corridor Improvement” project. For the reasons described below, I find that the TEA did not establish the work performed was exclusive TEA bargaining unit work. As a result, I conclude that the employer did not refuse to bargain with the TEA.

Issue 1(d): Background

In addition to its fleet of diesel buses, the employer also runs a trolley system that uses an overhead electrical system. The project at issue involves two parts: (1) rebuilding the 23rd Avenue Corridor and (2) preparing 23rd Avenue for future trolley service. Bus Route 48 runs along 23rd Avenue using diesel buses. The scope of this project was to construct the infrastructure necessary for electric trolleys to replace diesel buses on Bus Route 48.



The project was originally focused on trolley work on 23rd Avenue. In 2012, Garrett Stronks, an Engineer V in D&C and a TEA bargaining unit employee, prepared a grant request to fund trolley work on 23rd Avenue. The project funding was not approved. Stronks testified that after funding was not approved, he lost interest in the project.

In August 2013, the City of Seattle (the city) initiated plans to improve the 23rd Avenue Corridor and, as part of the street reconstruction, close the gaps that existed in the trolley overhead wire so that trolley service on that street could be an option. The rebuilding of 23rd Avenue involved improving roads, moving bus stops, and making improvements to bus stops and signalization. It also involved designing new poles and other activities for future trolley electrification.

David Cantey, a PTE bargaining unit employee, started the project in late 2013 or early 2014 as the “project contact” for the 23rd Avenue Corridor improvement project. At that time, Cantey worked as a Transportation Planner III in the transit route facilities work group in service development. Some communications within Metro Transit refer to Cantey as the project manager. As a transportation planner, Cantey serves as a project manager. He testified that he has managed certain elements of transit capital programs assigned to his work group, including shelter and lighting programs, corridor projects, and the RapidRide program.

Cantey explained that when the city undertakes corridor or street improvement projects on streets where the employer has bus service, the employer’s Service Development Section regularly serves as the project lead in coordinating with the city. Service development addresses bus stop locations, signalization improvements, layover improvements, and the proper location of trolley wire movement when wire is involved.

The record demonstrates that until August 2015, Cantey managed the “Route 48 South Electrification and 23rd Avenue Corridor Improvement” project on behalf of Metro Transit. He coordinated meetings and communication among stakeholders in the city and in Metro Transit, and he drafted the letter of agreement with the city.

Cantey drafted agreements as a regular part of his position, such as letters of understanding with the city like the one involved in this project. He testified about several of them, including agreements with the city for RapidRide lines on Aurora Avenue, the Market/Northwest 45th Street Corridor, and Stewart Avenue. He also drafted several agreements for projects that involved trolley wire. Cantey explained that the determination of who prepares agreements depends on the circumstances: “So typically what we do, is you try to look at the scope of the effort, who has time, which group has the most effort; and that group usually takes the lead in drafting MOUs [memoranda of understanding] or letters of understanding.”

Cantey personally performed no design review. Instead, he routed the plans to others in Metro Transit who performed design work, coordinated their comments, and transmitted the comments to the city. McFarland managed the substation design standards for the project.

According to Cantey, the work he did on this project is the same type of work he has historically performed in his position as a transportation planner. He acknowledged that either D&C or service development had the capability to do the work. However, he thought it appropriate for service development to lead the effort because its role in a project—siting bus stops and working with the city on installing real-time information signs, fiber communication infrastructure, and layover locations—has more of an overall impact.

While Cantey served on this project, Stronks provided assistance and coordinated assistance. Stronks testified that in 2014, his supervisor asked him to provide assistance to Cantey. Stronks came up with a budget of hours D&C could use to support Cantey. Stronks testified that although he was providing assistance to Cantey, he was not paying attention to the scope of the project:

Q. . . . Did you have any specific reaction when you learned that he [Cantey] was serving as a project manager on the route 48 electrification project?

A: Like I said, I was busy, and I didn't have any ideas. I mean, like I said, I didn't know the scope. He had written the agreement, and I didn't really know what was going on.

I just: Okay, fine. Just here; I'll get the consultant; I'll get the design help; and I'll do agreements; whatever you want me to do. I moved on. So I didn't understand the depth and the scope of what was going on.

It's—the cross between what [Cantey] does and what we do sometimes gets blurred, but I didn't—I didn't try to draw the line. I just said: Okay, whatever.

The TEA board learned of this project from Alex Wolak, an Engineer IV in D&C and a TEA bargaining unit employee. Wolak received a copy of an e-mail dated April 30, 2015, from Cantey announcing a preconstruction conference for phase one of the project. The TEA filed an amended complaint on May 27, 2015, to add the skimming allegation related to this project. In August 2015, the employer assigned Stronks to serve as the project manager. According to Cantey, the transition occurred because Cantey assumed a new supervisory position.

Witt testified about how Cantey's work group and D&C would both be involved in planning bus system projects that interface with the city, with the lead role switching between the two:

Where the planner is leading the effort, we want to make sure that what the planner envisions and what is proposed and planned and eventually budget[ed] is something we can deliver. Then it becomes a project where, essentially, we would become the lead, typically. And then we want . . . the planners along to make sure that whatever they had envisioned and were building, we are giving them what they want. There will be changes to the project. We want them to be comfortable with the changes that are necessary as you go from planning to design and construction.

#### Issue 1(d): Application of Standards

In applying the standards set forth in *Central Washington University*, I determine that the TEA did not establish that the work performed by Cantey was work exclusively performed by TEA bargaining unit employees. As a result, the employer did not refuse to bargain with the TEA when it assigned Cantey to manage the project.

It is undisputed that projects involving trolley modifications and upgrades can be complex and certain D&C employees have extensive experience and skill with such projects. The hearing transcript includes many pages highlighting the complexity of trolley modification projects. Beside the technical aspects of the wire work, part of what makes the trolley projects so complex

is the coordination often required among the city, multiple work groups within Metro Transit, and utilities, as well as other service providers.

D&C maintains a trolley modifications work group that includes the section's experts in trolley design, engineering, and project management. Three of the engineers in the work group include Madden, Ron Moattar, and Stronks, each a TEA bargaining unit employee. Each testified that TEA bargaining unit employees have historically managed projects involving new or significant upgrades to trolley overhead electrical systems. Between Madden, Moattar, and Stronks, they have managed or been involved in 16 to 18 trolley projects.

This project, however, was not simply a trolley project. Cantey unequivocally stated "I don't do that work" when he was asked on cross-examination how many new or significant upgrades relating to trolley overhead electrical systems projects he had managed.

When the project came to Metro Transit and Cantey from the city in August 2013, the project's scope focused on making improvements to the 23rd Avenue Corridor. The work Cantey did on this project is the same type of work he has historically performed as a transportation planner. As detailed above, when the city undertakes corridor or street improvement projects on streets where the employer has bus service, Cantey regularly serves as the project lead in coordinating with the city and addressing issues involving bus stop locations, signalization improvements, layover improvements, and the proper location of trolley wire movement when wire is involved. The evidence demonstrates that managing such projects falls within the PTE bargaining unit's work jurisdiction.

Clearly, creating the infrastructure for future trolley service was an important part of this project. D&C employees were involved in the project as team members and, eventually, the project management responsibility shifted to Stronks. Stronks acknowledged that the line between his work and Cantey's work blurs at times. From the testimony of Witt, it appears that the transition of leadership from Cantey to Stronks is typical in such projects.

The TEA did not establish that the “Route 48 South Electrification and 23rd Avenue Corridor Improvement” project work performed by Cantey was work exclusively performed by TEA bargaining unit employees. As a result, the employer did not refuse to bargain with the TEA when it assigned Cantey to manage the project.

*ISSUE 2—Information Request:* Did the employer refuse to provide relevant information requested by the TEA on September 23, 2014, and clarified by the TEA on November 6, 2014, and information requested by the TEA on December 17, 2014?

The TEA introduced very limited evidence to support this allegation at hearing and did not address the allegation in its post-hearing brief. It appears the TEA elected to abandon this allegation. The record contains insufficient evidence to find a violation.

### CONCLUSION

The employer refused to bargain with the TEA in violation of RCW 41.56.140(4) and derivatively interfered with employee rights in violation of RCW 41.56.140(1) by skimming the project management of the North Facilities transit security systems work and the design, project management, and implementation of the electrical modifications at the Atlantic Base fuel and wash building. The TEA did not establish that the other work at issue was TEA bargaining unit work, and I dismiss the allegations involving the management of the DEF system infrastructure project at North Base, the management of the electrical modification project at the East Base vehicle maintenance building, and the management of the “Route 48 Electrification and 23rd Avenue Corridor Improvement” project.

### REMEDY

Washington State law grants the Commission and its examiners the authority to issue appropriate orders to remedy unfair labor practices. RCW 41.56.160. The standard remedy for an unfair labor practice violation includes ordering the offending party to cease and desist and, if necessary, to restore the status quo; make employees whole; post notice of the violation; publicly read the notice;

and order the parties to bargain from the status quo. *State – Corrections*, Decision 11060-A (PSRA, 2012); *City of Anacortes*, Decision 6863-B (PECB, 2001).

The TEA seeks the standard remedies, including a return to the status quo “to the extent feasible” and make-whole remedies. The TEA also seeks the award of attorney fees, arguing that “the [employer’s] unlawful actions, including blatantly taking away TEA’s bargaining unit work over a short period of time, without providing the union with any notice or opportunity to bargain warrants further remedies, including an award of attorney’s fees.”

The award of attorney fees constitutes an extraordinary remedy. The Commission and its examiners award attorney fees only when a defense is frivolous or when the respondent has engaged in a pattern of conduct showing a patent disregard of its good faith bargaining obligation. *State – Corrections*, Decision 11060-A; *Seattle School District*, Decision 5542-C (PECB, 1997).

I award the TEA the standard remedies. If the North Facilities transit security systems project remains incomplete, the employer is ordered to transfer the skimmed work back to the TEA. Before making any future changes to the assignment of this work, the employer must give the TEA notice and an opportunity to bargain the transfer of the work outside of the TEA bargaining unit. The TEA does not present a persuasive basis to award attorney fees and I reject the request.

#### FINDINGS OF FACT

1. King County is a public employer within the meaning of RCW 41.56.030(12). King County’s Department of Transportation operates the Metro Transit Division which provides public transportation throughout King County.
2. The Technical Employees’ Association (TEA) is a bargaining representative within the meaning of RCW 41.56.030(2) and represents a bargaining unit of all employees working in Metro Transit’s design and construction section (D&C), excluding supervisors, managers, confidential employees, and short-term temporary employees.

3. During all times relevant to this matter, the employer and the TEA operated under the terms of a current collective bargaining agreement.

Transit Security Systems Work

4. Currently, 14 transit security systems are operational at bases, parking garages, and other facilities, as well as a monitoring station. Since 2003 or 2004, Michael Stanaszek, an Engineer V in D&C and a TEA bargaining unit employee, has served as the project manager for all the transit security projects except the 2014 North Facilities project.
5. On March 25, 2014, Jake Jacobovitch, the superintendent of North Facilities at the time, gave Building Control Systems, Inc. (BCS), a private contractor, authorization to proceed with a project to add a security system at North Facilities. Jacobovitch worked in the employer's P&F section and served as the lead on the transit security systems project. He is in the PTE bargaining unit. As a regular part of his position, Jacobovitch has overseen work completed by contractors under maintenance contracts.
6. The 2014 security project at North Facilities involved adding eight card-reader doors, one pedestrian door, and two vehicle entrance gates. The project also included the installation of six cameras, DVRs, and additional equipment.
7. When North Facilities was originally built five to eight years earlier, the employer decided not to include a security system but anticipated adding it in the future and planned for it. Stanaszek consulted on the project and the employer added infrastructure. The infrastructure was insufficient for the transit security systems project which began in 2014. To make the system operational, BCS had to add conduit, wire, junction boxes, and rexes in addition to the security-specific equipment such as the server, head-in Andover equipment, DVR, cameras, and card readers.
8. Part of P&F employees' maintenance role is to add new equipment to an existing security system, even if it includes overseeing the addition of a new card reader that requires adding electricity. The North Facilities project, however, involved substantially more than adding

one or even two additional component to an existing system or replacing equipment with newer versions. The record includes no evidence that P&F employees have served in a project manager or lead role on security projects with a scope similar to that of the North Facilities project. The scope of the North Facilities project was larger than the work PTE bargaining unit employees have regularly and historically performed.

9. The design, project management, and construction management of transit security projects is the TEA's historic bargaining unit work.
10. The employer did not give the TEA notice and an opportunity to bargain the transfer of the transit security systems work at North Facilities.

#### Diesel Exhaust Fluid System Infrastructure

11. The Environmental Protection Agency imposed new standards in 2010 for certain diesel vehicles, requiring those vehicles to use an additive referred to as diesel exhaust fluid (DEF). Initially in 2010, the employer purchased DEF in 500 gallon portable containers called totes. In order to dispense DEF from the totes, the millwrights purchased kits with hoses and pumps and connected them.
12. Over the next five years, as the need for DEF increased, the employer transitioned from dispensing DEF from totes to dispensing DEF from fixed tanks at all seven bases. Over that five-year period, employees in multiple bargaining units worked on various aspects of the DEF project, including the design and construction management of the DEF system infrastructure at North Base.
13. In preparing to transition from totes to fixed tanks, fleet engineering employees from vehicle maintenance and millwrights worked together to develop and implement a plan. Pete Chailante from fleet engineering took the lead in working with the millwrights and the base superintendents. The installations Chailante managed took place first at South Base, then at East Base, and finally at Atlantic Base.



14. After some of the initial transition work, the millwrights requested that D&C review the South Base project. In an e-mail dated June 24, 2010, the South Base superintendent communicated that the millwrights requested D&C “be involved to ensure the system met all design, product and installation requirements. Some of the work ha[d] been completed and most of the materials purchased.”
15. In July 2010, Jon Zak, an Engineer IV with D&C and a TEA bargaining unit employee, was assigned to develop an estimate for the South Base DEF project. Zak is a mechanical engineer. After researching DEF and considering options, Zak completed the estimate. Lyle McFarland, an Engineer IV with D&C and a TEA bargaining unit employee, completed an estimate for the electrical part of the project. At some point after providing the estimate for South Base, Zak was asked to fill in for a D&C manager at a meeting about the DEF project attended by at least some of the base superintendents. Zak shared the cost estimate with the meeting participants and they responded that they could not afford it.
16. The DEF system installations at East and South Bases continued without D&C managing the projects. Zak remained involved at a consulting level and made recommendations on some of the equipment. By December 2011, the DEF system installations were complete at East and South Bases. No TEA bargaining unit employees managed those DEF system infrastructure projects.
17. In April 2012, Elizabeth Wright, an Engineer V with D&C and a TEA bargaining unit employee, was asked to develop an estimate for a project to store and distribute DEF at the transit bases. After completing research, Wright prepared an estimate for a permanent installation at each base. Wright understood the project was put on hold and would possibly be considered in the next budget cycle.
18. At approximately the same time that Wright was putting together the budget estimate, non-TEA employees were working on acquiring equipment for the Ryerson Base DEF project. Joseph Fahlgren, a millwright and ATU bargaining unit employee, planned the installation of and installed the DEF system at Ryerson Base.

19. Beginning in 2014, Wendy Chin managed the remaining DEF projects including three bases and remedial needs with the objective “to standardize, to the extent possible, DEF operations, training and maintenance for staff.” Chin serves as a project/program manager in P&F’s capital planning work group; she is a PTE bargaining unit employee. Her job includes developing capital work plans to add, replace, or renovate fixed assets.
20. Chin teamed with Fahlgren, and Troy Jager, a constructor within P&F’s facilities work group, to plan and implement the project. Fahlgren and Jager looked at the bases to see where the lines for the installations could run, made drawings, ordered parts, and installed them.
21. Millwrights add systems, but it is rare that they do so. The DEF system installation project was consistent with the millwrights’ and constructors’ historic bargaining unit work. DEF was a new product, but dispensing bulk products was not new for them. Fahlgren had experience installing air-supply systems and plumbing to supply fluids, such as motor oil, antifreeze, and transmission fluid, to different drop points throughout the shops.
22. No TEA bargaining unit employee managed any of the DEF system installations. TEA bargaining unit employees engaged in limited work on the DEF projects. Non-TEA bargaining unit employees managed those projects. The design and construction management work never attached to the TEA bargaining unit. The design and construction management of the DEF system infrastructure at North Base was not TEA bargaining unit work.

#### East Base Vehicle Maintenance Building

23. The base automation project involved making computers available to the vehicle maintenance work group at each bus base as well as the component supply center and nonrevenue vehicles (NRV). As part of the project, new workstations, network infrastructure, computers, printers, and software were installed.

24. Kathleen McMurray, system development supervisor in the Systems Development and Operations Section and a PTE bargaining unit employee, oversaw the base automation project. Her work involves technology capital projects. McMurray acknowledged that this project differed from her work group's typical projects because it involved putting in workstations throughout the buildings; most of the work group's projects tend to be software-related.
25. Greg Debo, IT project manager, served as the project manager for the base automation project. He managed the budget and schedules and coordinated with vehicle maintenance, KCIT, and others.
26. The pilot phase of the base automation project, which included North Base and NRV, was completed in 2012. The next phase of the project included Atlantic, Central, and Ryerson Bases, and the last phase of the project included East and Bellevue Bases. The TEA's complaint only involves East Base. East Base is a large bus facility that has 10 to 12 maintenance bays.
27. As the base automation project progressed, Debo regularly e-mailed project updates to a group of individuals, including Stanaszek and Charlie Reynolds, a D&C electrical supervisor who is in the Teamsters bargaining unit. Debo's e-mails detailed the project accomplishments and what was "in the works" at the different bases.
28. In July 2014, the employer contracted with Cochran, Inc., a private company, to install network infrastructure and perform low-voltage electrical work at the project's final two bases, Bellevue and East Bases. The scope of the work included furnishing and installing conduit paths, receptacles, cables, and J-boxes for cables in addition to several other tasks. The plan involved using existing network infrastructure where possible.
29. In the fall of 2014, Gerald Williams, a Construction Manager IV in D&C and a TEA board member, was at East Base preparing for a fire alarm project when he noticed new data outlets and electrical line voltage (120-volt) work. The panel powering the new electrical

outlets preexisted the project; it was not new. Williams described the work he saw at East Base as “fairly substantial,” requiring many hours of work.

30. Employees who are not TEA bargaining unit employees have regularly and historically managed the installation of low-voltage data work. The TEA stakes no claim to much of the East Base project. The TEA recognizes that much of the project, including overseeing the installation of fiber, data cabling, data outlets, and wireless access points, falls within the work jurisdiction of other employees.
31. The record lacks clarity about how many 120-volt outlets were installed as part of the base automation project at East Base and by whom. It is also unclear how much conduit was installed for electricity as opposed to data.
32. Bill Stockman, superintendent of the power distribution section of P&F and a PTE bargaining unit employee, testified that P&F employees install 120-volt outlets and sometimes supervise others who install them.
33. Although the base automation work differed from McMurray’s typical projects, by the time the TEA filed its amended complaint on April 7, 2015, McMurray and Debo had been overseeing and managing base automation projects for over two years. In April 2013, the TEA raised a concern that Debo was skimming bargaining unit work with respect to the NRV portion of the base automation project. It appears the concern resolved and McMurray and Debo continued to manage the project.
34. The TEA did not establish that the design, project management, or implementation of electrical modification work at East Base as part of the base automation project was work historically performed by TEA bargaining unit employees.

#### Atlantic Base Fuel and Wash Building

35. The Atlantic Base fuel and wash building project involved making the radiant heating system more energy efficient. Lisa Parriott, a resource energy conservation manager in P&F and a Teamsters bargaining unit employee, served as the project and construction

manager. Phil Johnson—a licensed electrician, lead operating engineer in P&F’s facilities maintenance work group, and an ATU bargaining unit employee—oversaw the installation of the new Siemens controls for the heating system. The employer contracted with Siemens, a private contractor, to perform the installation. Siemens is the sole source provider for HVAC controls, and Johnson manages the annual service contract with Siemens. Johnson testified that he oversees anything dealing with HVAC systems that Siemens controls.

36. The radiant heating system project included changing out the existing control system (thermostat) and migrating the controls to the Siemens control system with more advanced technology. The more advanced technology allows the users to look at the system remotely and monitor operations, including reprogramming remotely. In addition to replacing the existing control system, several new control points needed to be added, including internal zone temperature sensors, bus bay door switches, and an outside air temperature sensor. Additionally, this project involved installing hundreds of feet of conduit and wire.
37. TEA bargaining unit employees have been responsible for many projects at Atlantic Base, such as projects involving the radiant heating system, fuel control system upgrades, installation of an emergency generator, exhaust fan replacements, and a SCADA-system upgrade.
38. While P&F employees have regularly and historically overseen the work of Siemens and have managed a work order contract with Siemens, the evidence does not demonstrate that P&F or other non-TEA bargaining unit employees have regularly designed, managed, and implemented electrical modifications of radiant heating systems with a scope similar to that of this project.
39. The designing, managing, and implementing of the electrical work involved with the Atlantic Base fuel and wash building project has been historically performed by D&C.

40. The employer did not give the TEA notice and an opportunity to bargain the transfer of the work involving the design, project management, and implementation of electrical modifications at the Atlantic Base fuel and wash building.

Route 48 South Electrification and 23rd Avenue Corridor Improvement

41. In addition to its fleet of diesel buses, the employer also runs a trolley system that uses an overhead electrical system. The project at issue involves two parts: (1) rebuilding the 23rd Avenue Corridor and (2) preparing 23rd Avenue for future trolley service. Bus Route 48 runs along 23rd Avenue using diesel buses. The scope of this project was to construct the infrastructure necessary for electric trolleys to replace diesel buses on Bus Route 48.
42. The project was originally focused on trolley work on 23rd Avenue. In 2012, Garrett Stronks, an Engineer V in D&C and a TEA bargaining unit employee, prepared a grant request to fund trolley work on 23rd Avenue. The project funding was not approved. Stronks testified that after funding was not approved, he lost interest in the project.
43. In August 2013, the City of Seattle (the city) initiated plans to improve the 23rd Avenue Corridor and, as part of the street reconstruction, close the gaps that existed in the trolley overhead wire so that trolley service on that street could be an option. The rebuilding of 23rd Avenue involved improving roads, moving bus stops, and making improvements to bus stops and signalization. It also involved designing new poles and other activities for future trolley electrification.
44. David Cantey, a PTE bargaining unit employee, started the project in late 2013 or early 2014 as the "project contact" for the 23rd Avenue Corridor improvement project. At that time, Cantey worked as a Transportation Planner III in the transit route facilities work group in service development. As a transportation planner, Cantey serves as a project manager. He has managed certain elements of transit capital programs assigned to his work group, including shelter and lighting programs, corridor projects, and the RapidRide program.

45. When the city undertakes corridor or street improvement projects on streets where the employer has bus service, the employer's Service Development Section regularly serves as the project lead in coordinating with the city. Service development addresses bus stop locations, signalization improvements, layover improvements, and the proper location of trolley wire movement when wire is involved.
46. Until August 2015, Cantey managed the "Route 48 South Electrification and 23rd Avenue Corridor Improvement" project on behalf of Metro Transit. He coordinated meetings and communication among stakeholders in the city and in Metro Transit, and he drafted the letter of agreement with the city. Cantey drafted agreements as a regular part of his position, such as letters of understanding with the city like the one involved in this project.
47. Cantey personally performed no design review. Instead, he routed the plans to others in Metro Transit who performed design work, coordinated their comments, and transmitted the comments to the city. McFarland managed the substation design standards for the project.
48. The work Cantey did on this project is the same type of work he has historically performed in his position as a transportation planner.
49. While Cantey served on this project, Stronks provided assistance and coordinated assistance. Stronks testified that in 2014, his supervisor asked him to provide assistance to Cantey. Stronks came up with a budget of hours D&C could use to support Cantey.
50. In August 2015, after the TEA filed an amended complaint to add the skimming allegation related to this project, the employer assigned Stronks to serve as the project manager. According to Cantey, the transition occurred because Cantey assumed a new supervisory position.
51. Randy Witt, former D&C manager and a non-TEA bargaining unit employee, testified about how Cantey's work group and D&C would both be involved in planning bus system projects that interface with the city, with the lead role switching between the two:

Where the planner is leading the effort, we want to make sure that what the planner envisions and what is proposed and planned and eventually budget[ed] is something we can deliver. Then it becomes a project where, essentially, we would become the lead, typically. And then we want . . . the planners along to make sure that whatever they had envisioned and were building, we are giving them what they want. There will be changes to the project. We want them to be comfortable with the changes that are necessary as you go from planning to design and construction.

52. D&C maintains a trolley modifications work group that includes the section's experts in trolley design, engineering, and project management. Three of the engineers in the work group include Ken Madden, an Engineer V and a TEA board member; Ron Moattar; and Stronks, each a TEA bargaining unit employee. Each testified that TEA bargaining unit employees have historically managed projects involving new or significant upgrades to trolley overhead electrical systems. Between Madden, Moattar, and Stronks, they have managed or been involved in 16 to 18 trolley projects.
53. This project was not simply a trolley project. Cantey unequivocally stated "I don't do that work" when he was asked on cross-examination how many new or significant upgrades relating to trolley overhead electrical systems projects he had managed.
54. When the project came to Metro Transit and Cantey from the city in August 2013, the project's scope focused on making improvements to the 23rd Avenue Corridor. The work Cantey did on this project is the same type of work he has historically performed as a transportation planner. When the city undertakes corridor or street improvement projects on streets where the employer has bus service, Cantey regularly serves as the project lead in coordinating with the city and addressing issues involving bus stop locations, signalization improvements, layover improvements, and the proper location of trolley wire movement when wire is involved. The evidence demonstrates that managing such projects falls within the PTE bargaining unit's work jurisdiction.
55. Creating the infrastructure for future trolley service was an important part of this project. D&C employees were involved in the project as team members and, eventually, the project management responsibility shifted to Stronks. Stronks acknowledged that the line between



his work and Cantey's work blurs at times. From the testimony of Witt, it appears that the transition of leadership from Cantey to Stronks is typical in such projects.

56. The TEA did not establish that the "Route 48 South Electrification and 23rd Avenue Corridor Improvement" project work performed by Cantey was work exclusively performed by TEA bargaining unit employees.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.
2. By transferring the project management of the transit security systems work at North Base to employees who were not TEA bargaining unit employees without providing the TEA with notice and an opportunity to bargain as described in Findings of Fact 4 through 10, the employer refused to bargain in violation of RCW 41.56.140(4) and derivatively interfered with employee rights in violation of RCW 41.56.140(1).
3. By transferring the design, project management, and implementation of electrical modifications at the Atlantic Base fuel and wash building to employees who were not TEA bargaining unit employees without providing the TEA with notice and an opportunity to bargain as described in Findings of Fact 35 through 40, the employer refused to bargain in violation of RCW 41.56.140(4) and derivatively interfered with employee rights in violation of RCW 41.56.140(1).
4. By its actions described in Findings of Fact 11 through 22, the employer did not skim the design, permitting, or construction management of the diesel exhaust fluid system infrastructure at North Base.
5. By its actions described in Findings of Fact 23 through 34, the employer did not skim the design, permitting, project management, or implementation of electrical modifications at the East Base vehicle maintenance building.

6. By its actions described in Findings of Fact 41 through 56, the employer did not skim the design, construction management, or project management of modifications and upgrades to the trolley overhead electrical systems on the “Route 48 South Electrification and 23rd Avenue Corridor Improvement” project without notifying the TEA and providing an opportunity for bargaining.
7. The TEA did not establish that the employer refused to provide relevant information requested by the TEA on September 23, 2014, and clarified by the TEA on November 6, 2014, and information requested by the TEA on December 17, 2014.

### ORDER

King County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
  - a. Skimming work historically performed by employees in the TEA bargaining unit, without notifying the TEA and providing it with an opportunity to bargain.
  - b. Refusing to bargain with the TEA regarding the transfer of bargaining unit work to employees in other bargaining units.
  - c. 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. Give notice to and, upon request, negotiate in good faith with the TEA before transferring bargaining unit work outside the bargaining unit or implementing any

changes in the wages, hours, and working conditions of its employees represented by the TEA.

- b. Restore the *status quo ante* by returning to the TEA bargaining unit all ongoing work that was the bargaining unit work of employees represented by the TEA prior to the skimming found unlawful in these proceedings. If the North Facilities transit security systems project remains incomplete, transfer the skimmed work back to the TEA bargaining unit.
- c. Within 20 days of the date this order becomes final, 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.
- d. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the King County Council, 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.
- e. Make whole, with interest, any eligible employees in the bargaining unit represented by the TEA by payment to them of the wages and benefits lost as a result of the skimming at issue in these proceedings. Such payments shall be computed in accordance with WAC 391-45-410.
- f. Notify the complainant, in writing, within 20 days following the date this order becomes final 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 this order becomes final 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 18th day of November, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
JAMIE L. SIEGEL, 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.



**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 AND RULED THAT KING COUNTY COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:**

The Technical Employees' Association (TEA) represents a bargaining unit of all employees working in the Design and Construction Section, excluding supervisors, managers, confidential employees, and short-term temporary employees.

WE UNLAWFULLY removed work involving the project management of the transit security systems project at North Base from the TEA bargaining unit and assigned it to employees in a different bargaining unit, without providing the TEA with notice and an opportunity to bargain.

WE UNLAWFULLY removed work involving the design, project management, and implementation of electrical modifications at the Atlantic Base fuel and wash building from the TEA bargaining unit and assigned it to employees in a different bargaining unit, without providing the TEA with notice and an opportunity to bargain.

**TO REMEDY OUR UNFAIR LABOR PRACTICES:**

WE WILL give notice to and, upon request, WE WILL negotiate in good faith with the TEA prior to removing and reassigning bargaining unit work.

WE WILL restore the *status quo ante* by returning to the TEA bargaining unit all ongoing work that was the bargaining unit work of employees represented by the TEA prior to the skimming found unlawful in these proceedings. If the North Facilities transit security systems project remains incomplete, WE WILL transfer the skimmed work back to the TEA bargaining unit.

WE WILL make whole, with interest, any eligible employees in the bargaining unit represented by the TEA by payment to them of the wages and benefits lost as a result of the skimming of bargaining unit work at issue in these proceedings. Such payments shall be computed in accordance with WAC 391-45-410.

WE WILL NOT remove work from the TEA bargaining unit and assign it to employees in other bargaining units without first notifying the union and providing it with an opportunity to bargain.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our 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](http://www.perc.wa.gov).



## PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

### RECORD OF SERVICE - ISSUED 11/18/2016

DECISION 12632 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:



BY: VANESSA SMITH

CASE NUMBER: 26738-U-14

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