

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TECHNICAL EMPLOYEES' ASSOCIATION,		CASE 128337-U-16
	Complainant,	DECISION 12952 - PECB
vs.		
KING COUNTY,		FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
	Respondent.	

Loyd Willaford, Attorney at Law, Cline & Associates, for the Technical Employees' Association.

Kristi D. Knieps, Senior Labor Negotiator, for King County.

On July 19, 2016, the Technical Employees' Association (union) filed an unfair labor practice complaint with the Public Employment Relations Commission (Commission). The union's complaint alleged that King County (employer) unlawfully skimmed bargaining unit work and refused to provide information relevant to bargaining unit work and the employer's acquisition of real property and/or interests in real property. As a result of the preliminary ruling process, this case was originally consolidated with case 128332-U-16, but that case was withdrawn by the union after the parties successfully resolved that dispute. Case 128337-U-16 proceeded to hearing on July 24, and 25, 2018, before Hearing Examiner Daniel Comeau. The parties filed post-hearing briefs on September 14, 2018, to complete the record.

ISSUES

The issues, as framed by the preliminary ruling, are as follows:

Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by:

1. Since February 3, 2016, skimming of bargaining unit property acquisition work, which was previously performed by bargaining unit employees of the Design and Construction Real Estate group, without providing an opportunity for bargaining.
2. Since February 3, 2016, refusing to provide the union with relevant information it requested related to bargaining unit work and the employer's acquisition of real property and/or interests in real property.

Based on the record, the employer did not unlawfully skim bargaining unit work when it assigned the property acquisition work for the Pennon Building because that work was not bargaining unit work. The Pennon Building did not serve a core-transportation function and the bargaining unit employees' property acquisition work was limited to property that served a core-transportation function. The employer refused to bargain by failing to timely provide requested information to the union that related to bargaining unit work.

BACKGROUND

King County (employer) provides public transportation within the county through its Department of Transportation, Metro Transit division (Metro Transit). Metro Transit operates under the supervision of General Manager Rob Gannon and employs nearly 5,000 employees, with approximately 3,000 of those employees serving as bus drivers. Underneath Gannon, Metro Transit is divided into several different sections, including General Management under Deputy General Manager Victor Obeso and Safety and Security under Managing Director Grantly Martelly. The Design and Construction unit and the Metro Transit Police fall under the General Management section and the Safety and Security section, respectively.

The union and the employer have had a collective bargaining relationship since 2001 and the union represents a bargaining unit of employees in the Design and Construction unit.¹ The Design and Construction unit contains the Real Estate, Land Use, and Environmental Planning group (Real Estate Group), which includes the job classifications of special project manager II, real property agent III, and environmental planner. The present case involves the claimed bargaining unit work of bargaining unit employees within the Real Estate Group.

The precise issue is whether the employer's decision to assign property acquisition work, without notice to the union, to nonbargaining unit employees in King County's Facilities Maintenance Division (FMD) constitutes unlawful skimming of this work from bargaining unit employees in the Real Estate Group. FMD is a separate division within King County and, by King County Code, is the sole organization responsible for the administrative processes of acquiring, disposing, inventorying, leasing, and managing real property held in the name of the county.² The FMD division consists of, among other classifications, the job classifications of real property agent III and real property agent IV, who are represented by the Teamsters Local 117.

The real property agent classification is a five-level classification that is used throughout several divisions within King County. Real property agents are utilized in FMD, the Real Estate Group in Metro Transit, Parks, Wastewater Treatment, and Water and Land Resources. Of these divisions, Metro Transit's Real Estate Group is the only division and unit that does not utilize a real property agent IV.

According to the real property agent job descriptions, real property agent III and IV are senior level and expert level classifications, respectively. Both classifications are expected to perform high level and complex real estate and permitting transactions, but the real property agent IV is the management-recognized expert responsible for handling enterprise-wide projects or programs.

¹ The collective bargaining agreement that was entered into the record was effective January 1, 2014, and expired on December 31, 2014, but the unrefuted testimony established that the bargaining relationship continues to exist and has existed since 2001.

² King County Code Section 4.56.060(A) provides for the policy establishing FMD as the property management division, and was in effect at the time the decision was made to assign the property acquisition work to FMD.

The incumbent real property agent IV is responsible for the higher level and highly specialized coordinating and strategic level work overseeing large, multi-faceted, and complex real estate management projects. The incumbent is expected to perform this work under minimal/cursory supervision.

The real property agent III classification can also perform permitting and real estate acquisition work for the employer. Under limited supervision, the incumbent in this classification can perform “complex property leasing duties which include the negotiation, management and marketing of large capital and/or real property projects throughout the County.” The incumbent can also “coordinate the acquisition of complex permits from multiple state and federal agencies” for politically sensitive enterprise-wide real estate related asset management programs.

The special project manager II classifications are also utilized by the Real Estate Group to lead capital real estate projects, and have negotiated and executed real property leases for Metro Transit.³ In 2016, Rand Juliano, Special Project Manager II in the Real Estate Group, negotiated a lease for 646 S. Holgate Street (Holgate Lease) for a lease term of five years for storage of equipment used for vehicle maintenance and construction. In 2018, Soojin Kim, another special project manager II in the Real Estate Group, negotiated the lease for 12119 East Marginal Way South (Marginal Way) to be used for vehicle maintenance and accompanying office space. Neither of these leasing examples involved Metro Transit Police or a facility that served only as a police precinct building.

Stephanie Clabaugh (formerly Stephanie Goffin), began working for the employer as a real property agent IV in FMD on April 16, 2015.⁴ She was assigned to the King County Sheriff's Office, the Department of Public Defense, and the Department of Community and Human Services. She testified that FMD's function was to oversee and maintain the county-wide portfolio of leased space, and real property agent IV's facilitated and negotiated high-level complex office

³ Real property agent IIIs and special project manager IIs are in the Real Estate Group and both could have performed property acquisition work.

⁴ There were Clabaugh e-mails introduced into the record that she had composed when she was formerly Stephanie Goffin.

leases for all King County departments and agencies. Clabaugh and Maureen Thomas, Capital Project Manager IV in FMD, testified that the employer's divisions and agencies generally search their own property inventory to fit their real estate needs, but when they were unable to do so, they would submit a property request to FMD. Their testimony was consistent with the testimony of Alton Gaskill, former union president and former real property agent IV in the Wastewater Treatment Division, who testified that real property agents are often utilized by individual departments to fit the department's needs.

Clabaugh negotiated such leases on behalf of the King County Sheriff's Office. The first lease Clabaugh negotiated on behalf of King County was on July 17, 2015, an extension of an existing lease for retail property on 17620 140th Avenue SE in Renton to be used as administrative offices. The second lease was a March 17, 2016, lease for office space to be used as a precinct building, which included administrative and law enforcement office space and a place where the public could interface with deputies at the precinct. The third lease was an August 12, 2016, lease for administrative office space for the King County Parks Division.

In the present case, the union claims that the work of acquiring an interim Metro Transit Police facility, assigned to Clabaugh in 2015, was bargaining unit work. Prior to this assignment to Clabaugh, Metro Transit Police had always shared space on Metro Transit property. Therefore, there had been no previous opportunity for either the Real Estate Group or FMD to acquire stand-alone facilities specific to the function of Metro Transit Police.

Relationship between Metro Transit and the Metro Transit Police

The King County Sheriff's Office is the employer's county-wide law enforcement agency, and has precincts throughout King County. Precinct 7 is the Metro Transit Police precinct that serves Metro Transit under an exclusive contract between Metro Transit and the King County Sheriff's Office. Metro Transit Police is led by Major Dave Jutilla, who serves as the Metro Transit Police Chief.

Jutilla testified that, as fully commissioned officers, he and his deputies have dual responsibilities to uphold both the policies and procedures of the King County Sheriff's Office and those of Metro

Transit.⁵ However, he further testified that the sheriff's office goal is to be as "customer focused" as possible and that Jutilla's goal, "more than anything," was to have Metro Transit view the Metro Transit Police as its own police agency. Jutilla worked very closely in partnership with Metro Transit management to provide general law enforcement and to collaborate on important Metro Transit initiatives, such as fare crime reduction, reducing transit related sexual misconduct, infrastructure security and transit system safety, and general crime reduction. Indeed, Jutilla himself had been selected by Kevin Desmond, former metro transit general manager.⁶

The Metro Transit Police facility is currently located at a building referred to as the Pennon Building. Prior to its current location, the Metro Transit Police worked from three separate locations: The administration office was located above the mechanics facilities in the Non-Revenue Building (NRV) on 1301 Airport Way, patrol was located in the Central Atlantic Building on Sixth Avenue, and bicycle patrol was located in the Frey Building on 1505 Sixth Avenue.⁷ Generally, having 76 deputies spread across three different locations hindered efficiencies in police command, staffing, and operation. Furthermore, the Frye Building was structurally unstable, had a noted vermin infestation, and the Central Atlantic Building carried mold. Both facilities were otherwise unsuitable for occupancy.

Given this less than optimum facilities situation, there had been informal discussions about moving the Metro Transit Police to a more suitable location. Originally, the goal was to find a permanent Metro Transit Police facility within the Metro Transit real estate portfolio. However, other Metro Transit priorities made reaching this goal difficult.

Transit Police Interim Facility Project

In 2014, Metro Transit was facing two competing interests – the need to relocate Metro Transit Police, and the need to identify existing or new real estate for the expansion of transit service to

⁵ Jutilla essentially serves two masters: Rob Gannon, General Manager of Metro Transit, and the Undersheriff of the King County Sheriff's Office.

⁶ Jutilla testified that Metro Transit's general manager had the authority to select Metro Transit's Police Chief.

⁷ The Non-Revenue Building was where non-revenue generating vehicles were maintained, which included any Metro Transit Vehicles.

meet increased service demand. Renovating existing Metro Transit real estate was too costly, and the Central Atlantic Building was set for demolition to make space for additional bus transit service. Therefore, the plan pivoted from finding a permanent location to finding an interim location for Metro Transit Police. Finding an interim location would allow Metro Transit time to complete a larger project for a more permanent Metro Transit Police location on Metro Transit property. The interim stand-alone facility would be the first time Metro Transit would be seeking off-site facilities for Metro Transit Police.

In June 2014, the Metro Transit Design and Construction unit began discussing a 2015-2016 budget item for an interim police facility. The Design and Construction unit was able to secure this budget item, although the funds were ultimately budgeted from the Unrestricted Public Transportation Fund for fiscal year 2017-2018 (\$15,500,000) and fiscal year 2019-2020 (\$1,000,000). The budget requests included approximately \$110,968 for "other county labor" to acquire an interim police facility, which was specifically earmarked to pay for FMD's staff to make this property acquisition.

On December 23, 2014, the employer created a charter for the project designated Transit Police Interim Facility (Interim Facility Project). The project was sponsored and managed by Jutilla; Randy Witt, Project Appropriation Manager, Metro Design and Construction; Captain Lance Dauber, Metro Transit Police; and Mike Stanaszek, Project Manager, Metro Design and Construction. At the time the charter was created, the decision to have FMD involved in at least some capacity had already been made, and the project charter included FMD's property acquisition as a key project deliverable.

Stanaszek had significant experience working on projects for Design and Construction, but had never before worked with either FMD or an off-site project. Gannon testified that FMD's involvement was necessary, because, as King County's property management division, its expertise would be needed to evaluate lease opportunities from conception, negotiation, and finalization through final approval by the King County Council. Furthermore, Gannon testified that the facility was a "police building" and did not, as steward of the transportation budget, have specific authority to use that budget to lease a police building.

However, the King County Code also contained a provision specifically in reference to Metro Transit's authority to acquire property. King County Code section 4.56.060(C) provided that:

Real property and interests in real property necessary for the metropolitan public transportation and metropolitan water pollution abatement functions shall be acquired and managed by the departments of transportation and natural resources and parks, respectively, as set forth in this chapter, unless the executive directs the facilities management division to make such acquisitions and/or manage such properties.

Gannon, testified that he understood his authority was limited to purchasing real property for the core transportation function, such as bus yards and maintenance facilities. He further testified that King County Executive Dow Constantine told him to have FMD manage the property acquisition function, which was within Constantine's executive authority under the code. While Gannon believed the interim "police building" was not directly or indirectly related to transit or transit infrastructure, he acknowledged Metro Transit Police to be an essential function of Metro Transit.

By May 2015, the Design and Construction unit, in collaboration with Jutilla, concluded a study and analysis of the requirements of a new Metro Transit Police facility. This analysis was prepared by Stanaszek and included the identification of the requirements for an interim police facility. Those requirements were that the facility (1) had the capacity to support a total of 90 staff through 2021, (2) was located within 15 miles of downtown Seattle, (3) had a minimum of 7,800 square feet of occupied floor space with a small storefront, and (4) had secure parking for 30 command staff and backup vehicles adjacent to the facility.

Clabaugh was assigned to be the real estate lead on the Interim Facility Project shortly after her April 2016 hire. She testified that the acquisition of the interim police facility was a complex and challenging one. After performing a market survey, she determined the market was between 1.8 percent and 4.2 percent vacancy, which she testified was "very, very tight." This required her to manage as efficiently as possible the evaluations of real estate candidates, coordinate facility tours, generate cost estimates for tenant improvements, and negotiate the final lease. Given the competitive nature of the real estate market, Clabaugh used letters of intent to secure facilities and

allow for good faith negotiations over a final lease agreement, to ensure that the landlord did not reach an agreement with another tenant prior to King County Council's approval.⁸

An additional challenge to the process was King County Council's requirement that any lease over five years or that required tenant improvements over \$50,000 needed King County Council's approval. The lease term sought by Metro Transit was for five years, but the tenant improvements of the building selected (the Pennon Building) were estimated to exceed \$50,000. Therefore, King County Council's approval was necessary to execute the lease. In order to work around this requirement, Clabaugh testified that she was able to negotiate a month-to-month lease first, in order to get through the approval process, followed by a five-year lease for the same property that was eventually approved by the King County Council. Given these requirements, the decrepit nature of the existing Metro Transit Police facilities, real estate group and the competitive real estate market, Metro Transit Police executed a phased move-in so that some of the patrol officers could move in while the building was still under renovation. Clabaugh testified that these parameters made this "one of the highest profile complex leases that the County does."

Design and Construction's Real Property Acquisition Experience

Jennifer Altschuler, Acting Supervisor for the Real Estate Group, testified that the activities Clabaugh performed in acquiring the Pennon Building were the same type of activities performed by employees in the Real Estate Group. In 2001, the Design and Construction unit negotiated and executed a lease of a parking lot at the Renton Transit Center (Renton Transit Lease), so the parking lot could serve as a park-and-ride facility that supported the transit center. This 30-year lease would have also required King County Council approval, much like the lease for the Pennon Building.

Furthermore, Altschuler believed her staff could handle complex property acquisitions and utilize the tools and techniques that Clabaugh used to secure the Pennon Building. Structuring a lease month-to-month, or utilizing letters of intent, are not uncommon and, according to Altschuler, could be used by her staff provided a landlord was willing to negotiate under those conditions.

⁸ Clabaugh testified that the project team did lose an opportunity to lease the Martin Selig building.

The real property agent III job description includes the expectation that the incumbent will have “advanced knowledge of negotiation, escrow, real estate, property management, and appraisal techniques, procedures and legislation.”

The examples of the leases negotiated and executed by the Real Estate Group did not specifically involve Metro Transit Police. However, Jerry Williams, Construction Manager IV in Design and Construction, testified that the Design and Construction unit had handled many remodels and tenant improvements relating to Metro Transit Property. Some of these projects specifically involved Metro Transit Police and nearly all of them involved the Real Estate Group to ensure the proper permits had been secured for the projects.

In 2001, the Design and Construction unit performed a complete remodel of the NRV building for Metro Transit Police. This included remodeling the interior walls, updating the security card access system, fire alarms, and data capacity. In 2006, the Design and Construction unit also remodeled the Frye Building, because the space within that building was no longer sufficient for Metro Transit Police bike patrol. The Design and Construction unit replaced walls, ceiling, carpet, fire sprinkler, lighting, and data for the secured access. This relationship between the Real Estate Group, Construction Services, and Metro Transit Police illustrated that the Design and Construction unit had some institutional knowledge of the needs of the Metro Transit Police unit.

ANALYSIS

Applicable Legal Standards

Skimming of Bargaining Unit Work

Longstanding Commission precedents establish that any decision to transfer or “skim” bargaining unit work from the bargaining unit that traditionally performed that work to a different bargaining unit or unrepresented employees is a mandatory subject of bargaining. *City of Snoqualmie*, Decision 9892-A (PECB, 2009), *citing South Kitsap School District*, Decision 472 (PECB, 1978). In reaching this conclusion, the Commission has recognized that exclusive bargaining representatives have a legitimate interest in preserving the work that their bargaining units historically perform, at least where an employer has not cut back on services and personnel. *South*

Kitsap School District, Decision 472. This obligation applies to all bargaining unit work, whether the work be entry level, at the highest level, or new bargaining unit work. *City of Snoqualmie*, 9892-A, citing *Community Transit*, Decision 3069 (PECB, 1988) (new bus route can be bargaining unit work if it is the type of work that bus drivers normally would have performed).

The threshold issue in a skimming case is whether the work that was assigned to nonbargaining unit employees was bargaining unit work. *King County*, Decision 12632-A (PECB, 2017); *Central Washington University*, Decision 12305-A (PSRA, 2016). If the work was not bargaining unit work, then the analysis stops and the employer would not have had an obligation to bargain its decision to assign the work. *King County*, Decision 12632-A. If the work was bargaining unit work, then the Commission applies the *City of Richland* balancing test to determine whether the decision to assign bargaining unit work to nonbargaining unit employees is a mandatory subject of bargaining. *Id.*; *Central Washington University*, Decision 12305-A.

The *City of Richland* balancing test weighs the competing interests of the employees in wages, hours, and working conditions against “the extent to which the subject lies ‘at the core of [the employer’s] entrepreneurial control’ or is a management prerogative.” *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197, 203 (1989). Recognizing that public sector employers are not “entrepreneurs” in the same sense as private sector employers, when weighing entrepreneurial control the balancing test should consider the right of a public sector employer, as an elected representative of the people, to control the management and direction of government. *King County*, Decision 12632-A citing *Unified School District No. 1 of Racine County v. Wisconsin Employment Relations Commission*, 81 Wis.2d 89, 95 (1977).

If the decision is a mandatory subject of bargaining, then the next question is whether the employer provided notice and an opportunity to bargain the decision. If the employer did not, then the union will have met its burden of proving that the employer refused to bargain by skimming bargaining unit work. *King County*, Decision 12632-A.

If the bargaining unit employees are eligible for interest arbitration, an employer may not unilaterally change a mandatory subject of bargaining without bargaining to impasse and obtaining an award through interest arbitration. *Snohomish County*, Decision 9770-A (PECB, 2008). Interest arbitration is applicable when an employer desires to make a midterm contract change to a mandatory subject of bargaining. *City of Yakima*, Decision 9062-A (PECB, 2006).

Application of Standards

Disputed Real Estate Acquisition Work is not Bargaining Unit Work

The first question in a skimming case is whether the work claimed, assigned to nonbargaining unit employees was bargaining unit work. *King County*, Decision 12632-A; *Central Washington University*, Decision 12305-A. Generally, the bargaining unit must have historically performed the disputed work in order for it to be deemed bargaining unit work. *Port of Bellingham*, Decision 12317-A (PORT, 2015); *King County*, Decision 12632-A; *Central Washington University*, Decision 12305-A. If the disputed work is not bargaining unit work, then the analysis ends and the employer had no obligation to bargain the decision to assign the work to nonbargaining unit members.

In cases where bargaining unit work is at issue, the nature of the work performed is crucial in the Commission's analysis. *Central Washington University*, Decision 12305-A; *Port of Bellingham*, Decision 12317-A; *King County*, Decision 12632-A; *Battle Ground School District*, Decision 2449-A (PECB, 1986); *Community Transit*, Decision 3069 (PECB, 1988); *City of Anacortes*, Decision 6863-B (PECB, 2001); *City of Snoqualmie*, Decision 9892-A. The union claims that the property acquisition work that Clabaugh performed, which included market surveys, securing property through letters of intent, the negotiation of a creative lease structure, and submittal of the lease for King County Council approval, is work that bargaining unit employees in the Real Estate Group perform. The employer does not dispute that bargaining unit employees in the Real Estate Group acquire property in this fashion.

Instead, the employer's argument is that the employer has historically assigned the responsibility of acquiring and managing King County property to the FMD, but has carved out a limited exception to this policy by allowing Metro Transit to acquire property necessary for the

transportation function. This means that the Real Estate Group would be responsible for acquiring property, or interests in property, for real estate devoted specifically to bus transit service and facilities that support transit service. The employer further argues that the Pennon Building is a police building that did not serve a core transportation function, because it did not contain buses, bus operations facilities, or bus maintenance facilities.

The employer's argument is persuasive on this record. Clabaugh and Thomas testified to their understanding of the employer's historical practice of assigning property acquisition work. They testified that real property agents in the various county divisions would first attempt to find within their own property real estate facilities that would suit their needs. In the event they were unable to identify property within their own portfolio, they would submit a request to FMD to assist in locating and acquiring additional property to meet the needs of the division. In the present case, Jutilla, Gannon, and Stanaszek all testified that there was an effort to locate facilities for Metro Transit Police on Metro Transit property prior to the decision to locate an off-site interim facility.

Furthermore, the King County Code established the general rule that the FMD "shall be the sole organization responsible for the administrative processes of acquiring, disposing, inventorying, leasing and managing real property." It also authorized the Department of Transportation, or Metro Transit, to acquire property for the transportation function, and Gannon testified that this was the limit of his authority. This King County Code was in effect at the time of the employer's decision to assign the Pennon Building acquisition work to FMD in 2015.

Ultimately, the burden was on the union to establish that property acquisition work for noncore transportation real estate had been assigned to the Real Estate Group *prior* to the Pennon Building assignment. The only union examples from that relevant time period are the 2001 Renton Transit lease for the Renton Transit park-and-ride lot and the two examples of remodels for Metro Transit Police while they were located in the NRV and Frye buildings. These examples are insufficient to establish that noncore transportation real estate had been assigned to the bargaining unit.

First, the Holgate lease was for a park-and-ride so public transit consumers could park their vehicles while connecting with public transit at the Renton Transit Center. Thus, this property was

related to the provision of core-transportation services. Second, while the remodels and security upgrades for Metro Transit Police establish that the Design and Construction unit was familiar with Metro Transit Police's facility needs, these remodels were performed on property that Metro Transit *already* owned or possessed, the NRV Building and the Frye Building. Furthermore, these remodel examples were not examples of leasing or property acquisition work.

Indeed, the Renton Transit Center lease, as well as the Holgate and Marginal Way leases, are examples of real estate leasing acquisitions for property that related to the maintenance of bus services. Both the Holgate lease and the Marginal Way lease acquired an interest in real property for the purpose of storing equipment for the maintenance of buses, even though the Holgate lease also provided for engineering office space. Thus, these examples are consistent with the employer's policy of dividing the property acquisition work and is also consistent with the practice of allowing Metro Transit to acquire its own property and interests in property.

This case should not be interpreted to mean that bargaining unit employees in the Real Estate Group are not capable of performing complex property leasing and acquisition work. If the property in question was a large, multi-functional Metro Transit base that included buses, bus maintenance facilities, as well as space within the facility in which Metro Transit Police could cooperate, then the outcome of this case could have been different. Such an arrangement would have been more in line with how Metro Transit Police had coexisted with Metro Transit before moving to the Pennon Building, and the facility would serve as a core transportation function.

However, this was not the case and the union did not meet its burden of establishing that the property acquisition work is bargaining unit work. The property acquisition work for the Pennon Building was not bargaining unit work. Since the work was not bargaining unit work, there is no need to engage in *City of Richland* balancing test to determine if the subject was a mandatory subject of bargaining.

Employer Failed to Provide Timely Information to the Union Relating to Bargaining Unit Work

The union alleges that the employer refused to provide it with relevant information it requested relating to bargaining unit work. The union submitted an information request to King County

Labor Negotiator Jim Johnson, which requested information regarding the acquisition of real property and/or interests in real property as it related to the transit police project. The employer admitted to this allegation and recited into the transcript the following stipulated facts:

So King County admits that the Union submitted the information request to Mr. Johnson, who was a labor negotiator for the County. Mr. Johnson abruptly left King County with no notice, and this information request fell through the cracks and it was not responded to.

On June 16th of 2016, TEA followed up on the request by sending an email to Sasha Alessi, asking for the information. Sasha is a labor negotiator for the County. On July 6, TEA followed up again by sending an email to Debbie Bellam, who is also a labor negotiator for the County, to remind her of the information request.

On July 10, Debbie responded and started researching to find the information. On July 22nd, Debbie sent an email apologizing for the delay, and it was on August 10th that the County started sending the responsive information. And the County sent responsive information August 10th, August 19th and August 26th, which concluded all of the information that had been requested by TEA.

So the County admits that there was a delay in responding to the information request, and we have stipulated to the standard remedy of posting a notice and reading said notice to the King County Council.

Therefore, the stipulation is accepted and the standard remedy will be ordered.

CONCLUSION

The employer did not unlawfully skim bargaining unit work when it assigned the property acquisition work for the Pennon Building because that work was not bargaining unit work. The Pennon Building did not serve a core-transportation function and the bargaining unit employees' property acquisition work was limited to property that served a core-transportation function. The employer refused to bargain by failing to timely provide requested information to the union that related to bargaining unit work.

FINDINGS OF FACT

1. King County (employer) is a public employer within the meaning of RCW 41.56.030(12).
2. The employer provides public transportation within the county through its Department of Transportation, Metro Transit division (Metro Transit). Metro Transit operates under the supervision of General Manager Rob Gannon and employs nearly 5,000 employees, with approximately 3,000 of those employees serving as bus drivers.
3. Metro Transit is divided into several different sections, including General Management under Deputy General Manager Victor Obeso and Safety and Security under Managing Director Grantly Martelly. The Design and Construction unit and the Metro Transit Police fall under the General Management section and the Safety and Security section, respectively.
4. The Technical Employees' Association (union), a bargaining representative within the meaning of RCW 41.56.030(2), is the exclusive bargaining representative of an appropriate bargaining unit of real property agent IIs, real property agent IIIs, and special project manager II's in the Design and Construction Real Estate, Land Use, and Environmental Planning group (Real Estate Group).
5. The union and the employer have had a collective bargaining relationship since 2001 and had a collective bargaining agreement in effect from January 1, 2014, to December 31, 2014. There was no dispute that the collective bargaining relationship continued up to and including the time of the hearing.
6. The real property agent classification is a five-level classification that is used throughout several divisions within King County. Real property agents III and IV are senior level and expert level classifications, respectively. Both classifications are expected to perform high level and complex real estate and permitting transactions, such as leasing and acquiring new real property for the employer.

7. In addition to the Metro Transit Real Estate Group, real property agents are utilized in the Facilities Maintenance Division (FMD), Parks, Wastewater Treatment, and Water and Land Resources.
8. The real property agent IV is the management-recognized expert responsible for handling enterprise-wide projects or programs. The incumbent real property agent IV is responsible for the higher level and highly specialized coordinating and strategic level work overseeing large, multi-faceted, and complex real estate management projects. The incumbent is expected to perform this work under minimal supervision.
9. Metro Transit's Real Estate Group is the only division and unit that does not utilize a real property agent IV.
10. FMD is a division within King County and is the sole organization responsible for the administrative processes of acquiring, disposing, inventorying, leasing, and managing real property held in the name of the county. This policy is set forth in King County Code section 4.56.060(A), which was in effect at all times relevant to the union's complaint.
11. The FMD consists of, among other classifications, the job classifications of real property agent III and real property agent IV, who are represented by the Teamsters Local 117.
12. King County Code section 4.56.060(C) states that the Department of Transportation, Metro Transit, shall acquire and manage its own real property and interests in real property for the public transportation function, unless the King County executive directs the FMD to make such acquisitions or manage such interests in property.
13. The employer's divisions and agencies generally search their own property inventory to fit their real estate needs, but when they were unable to do so, they would submit a property request to FMD.
14. The King County Sheriff's Office is the employer's county-wide law enforcement agency, and has precincts throughout King County. Precinct 7 is the Metro Transit Police precinct that serves Metro Transit under an exclusive contract between Metro Transit and the King

County Sheriff's Office. Metro Transit Police is led by Major Dave Jutilla, who serves as the Metro Transit Police Chief

15. The Metro Transit Police facility is currently located at a building referred to as the Pennon Building. Prior to its current location, the Metro Transit Police worked from three separate locations: The administration office was located above the mechanics facilities in the Non-Revenue Building (NRV) on 1301 Airport Way, patrol was located in the Central Atlantic Building on Sixth Avenue, and bicycle patrol was located in the Frey Building on 1505 Sixth Avenue.
16. Having 76 deputies spread across three different locations hindered efficiencies in police command, staffing, and operation. Furthermore, the Frye Building was structurally unstable, had a noted vermin infestation, and the Central Atlantic Building carried mold. Both facilities were otherwise unsuitable for occupancy.
17. On December 23, 2014, the employer created a charter for the project designated the Transit Police Interim Facility (Interim Facility Project).
18. The project was sponsored and managed by Jutilla, Randy Witt, Project Appropriation Manager, Metro Design and Construction, Captain Lance Dauber, Metro Transit Police, and Mike Stanaszek, Project Manager, Metro Design and Construction.
19. At the time the charter was created for the Interim Facility Project, the decision to have FMD involved in at least some capacity had already been made, and the project charter included FMD's property acquisition as a key project deliverable.
20. Real Property Agent IV Stephanie Clabaugh, who works in FMD, was assigned to be the real estate lead on the Interim Facility Project shortly after her April 2016 hire.
21. To acquire the Pennon Building lease for the Interim Facility Project, Clabaugh performed a market survey and determined the market was between 1.8 percent and 4.2 percent vacancy, which was very competitive.

22. The competitive market required Clabaugh to manage efficiently the evaluations of real estate candidates, coordinate facility tours, generate cost estimates for tenant improvements, and negotiate the final lease.
23. Clabaugh used letters of intent to secure facilities and allow for good faith negotiations over a final lease agreement, to ensure that the landlord did not reach an agreement with another tenant prior to King County Council approval.
24. Real Estate Group employees could handle complex property acquisitions and utilize the tools and techniques that Clabaugh used to secure the Pennon Building.
25. The Pennon Building served strictly as a sheriff precinct building, and did not contain any of the characteristics of a transit service building, such as a bus yard, bus maintenance, or storage facilities.
26. In 2001, the Design and Construction unit negotiated and executed a lease of a parking lot at the Renton Transit Center, so the parking lot could serve as a park-and-ride facility that supported the transit center.
27. In 2001, the Design and Construction unit performed a complete remodel of the NRV building for Metro Transit Police. This included remodeling the interior walls, updating the security card access system, fire alarms, and data capacity.
28. In 2006, the Design and Construction unit also remodeled the Frye Building. They replaced walls, ceiling, carpet, fire sprinkler, lighting, and data for the secured access so that Metro Transit Bike patrol could utilize the facility more effectively.
29. The real property acquired by the Design and Construction unit in 2001 was for the public transportation function consistent with King County Code section 4.56.060(C).
30. The remodeling duties performed by the Design and Construction unit for Metro Transit Police in 2001 and 2006 were conducted on Metro Transit property.

31. There were no other examples of the Real Estate Group acquiring any real property serving any function other than the public transportation function prior to the employer's decision to assign the Pennon Building acquisition work to Clabaugh.
32. The work Clabaugh performed in acquiring the Pennon Building was not bargaining unit work.
33. The union submitted an information request to Mr. Johnson, who was a labor negotiator for King County. Mr. Johnson abruptly left King County with no notice, and this information request fell through the cracks and it was not responded to.
34. On June 16, 2016, the union followed up on the request by sending an e-mail to Sasha Alessi, asking for the information. Sasha is a labor negotiator for the county. On July 6, 2016, the union followed up again by sending an e-mail to Debbie Bellam, who is also a labor negotiator for the county, to remind her of the information request.
35. On July 10, 2016, Bellam responded and started researching to find the information. On July 22, 2016, Bellam sent an e-mail apologizing for the delay, and the county started sending the responsive information on August 10, 2016. The county sent responsive information August 10, August 19, and August 26, 2016, which concluded all of the information that had been requested by the union.
36. The employer delayed responding to the information request.

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 assigning the Pennon Building property acquisition work as described in findings of fact 4 through 32, the employer did not unlawfully skim bargaining unit work.

3. By failing to timely provide information relevant to bargaining unit work as described in findings of fact 34 through 36, the employer refused to bargain and violated RCW 41.56.140(4) and (1).

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. Failing or refusing to provide information to the union relevant for bargaining.
 - b. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under the laws of the state of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:
 - a. 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.
 - b. Read the notice provided by the compliance officer into the record at a regular public meeting of the County Commissioners of King County, 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.

- c. Notify the complainant, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide the complainant with a signed copy of the notice provided by the compliance officer.
- d. Notify the compliance officer, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide her with a signed copy of the notice she provided.

ISSUED at Olympia, Washington, this 14th day of December, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DANIEL J. COMEAU, 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



RECORD OF SERVICE

ISSUED ON 12/14/2018

DECISION 12952 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASE 128337-U-16

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