

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PIERCE COUNTY DEPUTY
SHERIFFS INDEPENDENT GUILD,

Complainant,

vs.

PIERCE COUNTY,

Respondent.

CASE 130869-U-18

DECISION 13057 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER OF DISMISSAL

Leann K. Paluck, Attorney at Law, Lombino Martino P.S., for the Pierce County Deputy Sheriffs Independent Guild.

Andrew F. Scott, Deputy Prosecuting Attorney, Civil Division, Pierce County Prosecuting Attorney Mary E. Robnett, for Pierce County.

The Pierce County Deputy Sheriffs Independent Guild (union) represents a bargaining unit of limited commission community service officers in the Pierce County Sheriff's Department (employer). For at least 10 years, union bargaining unit employees have performed duties related to community outreach and crime prevention efforts (community outreach work). In 2017–18, the employer created a new Community Liaison Deputy team of commissioned officers that was tasked with performing the employer's community outreach and crime prevention efforts.

On August 23, 2018, the union filed an unfair labor practice complaint claiming that the employer unlawfully skimmed and/or contracted out community service officer work without providing the union an opportunity for bargaining. A preliminary ruling was issued and on March 19, 2019, Examiner Dario de la Rosa conducted a hearing. The parties filed briefs supporting their respective arguments.

The issue in this matter is whether the employer skimmed bargaining unit work when it consolidated its community outreach work into the Community Liaison Deputy team. The

evidence and testimony demonstrate that the union's historical work jurisdiction included community outreach work. Any decision to remove community outreach work was mandatory in nature because the decision to remove bargaining unit work balances in favor of the bargaining unit employees' wages, hours, and working conditions. The employer failed to satisfy its collective bargaining obligation when it removed the community outreach work from the bargaining unit without first satisfying its collective bargaining obligations.

BACKGROUND

The employer provides law enforcement services within the unincorporated areas of Pierce County as well as in several incorporated cities that contract with the county for law enforcement services. Employer services are divided into geographic regions called detachments. The detachments are based out of Eatonville, Bonney Lake, and Gig Harbor. Each detachment contains one or more districts. A fourth geographic region is Central Patrol, which includes districts 1 through 7 plus district 25—a "catch-all" district that includes outlying areas. District 10 is part of the Eatonville detachment, district 12 is part of the Bonney Lake detachment, and districts 14 and 15 are part of the Gig Harbor detachment. Each district contains precinct stations where employees are stationed.

The union's limited commission bargaining unit was created in 2000. The employer and union were parties to a collective bargaining agreement effective from January 1, 2016, through December 31, 2017, and have successfully negotiated a successor to that agreement. There are currently two positions in the bargaining unit.

Community Service Officer Emily Isaacson

Between January 2002 and March 2018, Emily Isaacson worked as a community service officer with the employer. Her position was included in the union's limited commission bargaining unit. When first hired, Isaacson was assigned to the employer's Lakewood office.¹ Isaacson's duties included manning the front desk, conducting community outreach, and attending community meetings. She predominately performed community outreach and crime prevention duties.

¹ At that time, the City of Lakewood contracted with the employer for law enforcement services.

Community outreach work included attending community meetings and reaching out to community groups that showed interest in promoting crime prevention activities. The community service officer planned, organized, and attended outreach events to display and disseminate crime prevention activities. The position also served as an informal liaison between the employer and the public on crime prevention-related problems facing the public as well as a liaison between the employer and businesses concerning nuisance issues. Because Isaacson held a limited commission, she was allowed to wear a uniform and badge and take police reports while interacting with the public.

When the City of Lakewood ended its services contract with the employer, Isaacson transferred to the Gig Harbor detachment. At this same time, Isaacson also filled the South Hill precinct position, which is part of Central Patrol, for approximately one year. During her six-year tenure at Gig Harbor, Isaacson continued to perform community outreach work including creating crime prevention literature and attending meetings with homeowners' associations, business groups, citizen patrol groups, and the Rotary club.

In 2012, Isaacson transferred to the South Hill precinct. Initially, she did not perform any community outreach work. In 2014, the employer transferred Isaacson to the Community Support Team where she resumed her community outreach work.² The record does not describe which employees were part of the community support team other than Isaacson. Isaacson testified that while she was specially directed by her supervisors to perform community outreach work in districts 1 through 3, she still performed some community outreach work in all of Central Patrol as well as in other detachments.³ During her time as a community service officer, Isaacson developed and maintained a list of contacts and related information.

² Prior to 2008, the employer had a program called Neighborhood Patrol Deputies, where a team of commissioned officers performed some community outreach. That program was disbanded in 2008 due to budget cuts.

³ Tr. 26:12-22.

Community Liaison Deputy Team

In 2017–18, the employer announced that it was creating a Community Liaison Deputy team. Bureau Chief Jim Heishman testified that the purpose of the team was to centralize “all of the outreach from the entire department . . . to this one focal point” so that the employer could leverage all of its resources to fulfill its outreach mission.⁴ The Community Liaison Deputy team consisted of several commissioned sergeants and deputies. The employer also created a new program coordinator position to organize group and community outreach efforts in order to ensure that resources and time were not mismanaged. Many of the program coordinator job description duties mirrored those of the community service officer’s duties.⁵ Lieutenant Cynthia Butler-Fajardo, who supervised Isaacson when she was assigned to the community support team, testified that the job duties of the program coordinator mirrored those being performed by Isaacson and raised concerns about that to her supervisors. The members of the Community Liaison Deputy team asked Isaacson for, and were provided with, her list of community contacts that she had accumulated during her tenure as the community service officer.

On December 20, 2017, the union sent a demand to bargain to the employer concerning the assignment of the community service officer work to the program coordinator position. The union and employer informally discussed the community service officer work issue at labor management meetings in January and February 2018. The parties also discussed the matter during a meeting on February 27, 2018. The parties were not able to resolve the matter during those discussions.

Heishman testified that the employer intended for the commissioned deputies assigned to the Community Liaison Deputy team to be the face of the department during outreach activities.⁶ Heishman informed the union that Isaacson would be transferred to the South Hill front desk because the employer prioritized having a community service officer at that station.⁷ On March 2, 2018, Heishman sent an e-mail to employees stating that all community outreach would

⁴ Tr. 132:21–133:4.

⁵ The current program coordinator did not testify about the position’s current duties.

⁶ Tr. 139:20–23.

⁷ Tr. 148:16–149:5.

be managed and coordinated by the program coordinator. Although Isaacson resigned from the employer's workforce in March 2018, she continued to perform community outreach and crime prevention effort work until she left employment.

ANALYSIS

Applicable Legal Standards

A bargaining unit has a legitimate interest in preserving the work it has historically performed. *South Kitsap School District*, Decision 472 (PECB, 1978). Skimming of bargaining unit work occurs when an employer fails to honor its bargaining obligations before transferring work historically performed within the bargaining unit to its own employees outside of the bargaining unit. *Spokane Fire District 9*, Decision 3482-A (PECB, 1991). Both the decision to transfer bargaining unit work and the effects of that decision on bargaining unit employees may be mandatory subjects of bargaining. *King County*, Decision 12632-A (PECB, 2017).

A bargaining unit need not have lost work for an employer to be found to have skimmed bargaining unit work. *Wapato School District*, Decision 12894-A (PECB, 2019). The "actual loss of work is not, and should not be, the yardstick by which 'skimming' of bargaining unit work is to be measured." *Battle Ground School District*, Decision 2449-A (PECB, 1986). It is detrimental to a bargaining unit when an employer assigns bargaining unit work to non-bargaining unit employees, because any such assignment erodes the union's work jurisdiction, and "[u]nions have a strong interest in maintaining bargaining unit work." *Central Washington University*, Decision 12305-A. (PSRA, 2016) The extent of the impact on the union or its members is therefore an important factor. On the other side of the scale, the burden is not heavy: if the topic is found to be a mandatory subject of bargaining, the employer must notify the union and, upon request, bargain with the union in good faith to agreement or impasse.

The harmful effect of skimming results from the prejudicial effect on the status and integrity of the bargaining unit. *City of Kennewick*, Decision 482-A (PECB, 1979). The detriment from skimming may only be felt in the future, such as when transfers of bargaining unit work eventually lead to erosion of work opportunities, loss of promotional opportunities, and adverse effects on the job security of bargaining unit employees. *City of Seattle*, Decision 4163-B (PECB, 1995). Where

an employer is dealing with two bargaining units within its workforce, it is obligated to respect the separate work jurisdictions of both bargaining units, absent a tri-partite agreement. *Kitsap County Fire District 7*, Decision 7064-A (PECB, 2001).

In *King County*, Decision 12632-A, the Commission simplified the test for determining whether a skimming violation has occurred. The threshold question is whether the work that was alleged to have been skimmed was bargaining unit work. *Id.* If the work was not bargaining unit work, then the analysis would stop and the employer would not have had an obligation to bargain its decision to contract out the work. *Id.* If the work was bargaining unit work, then the *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197 (1989) balancing test should be applied to determine whether the decision to skim the bargaining unit work was a mandatory subject of bargaining.

The *City of Richland* balancing test determines whether a topic is a mandatory subject of bargaining. The balancing test would appropriately fit into the analysis of whether an employer is obligated to bargain, because the 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.” *City of Richland*, 113 Wn.2d at 203. Recognizing that public sector employers are not “entrepreneurs” in the same sense as private sector employers, entrepreneurial control should consider the right of a public sector employer, as an elected representative of the people, to control management and direction of government. *See 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, the next question is whether the employer provided notice and an opportunity to bargain the decision to remove the bargaining unit work. The Commission focuses on the circumstances as a whole and on whether an opportunity for meaningful bargaining existed. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998). If the employer’s action has already occurred when the employer notifies the union (*a fait accompli*), the notice would not be considered timely and the union would be excused from the need to demand bargaining. *Id.* If the union is adequately notified of a contemplated change

at a time when there is still an opportunity for bargaining that could influence the employer's planned course of action, and the employer's behavior does not seem inconsistent with a willingness to bargain, if requested, then a *fait accompli* will not be found. *Id.*, citing *Lake Washington Technical College*, Decision 4721-A (PECB, 1995).

Application of Standards

The union established by a preponderance of the evidence that the employer skimmed community outreach bargaining unit work in violation of chapter 41.56 RCW. The first step in the analysis is to determine whether the community outreach work was bargaining unit work. A union must show that the work is bargaining unit work. *Central Washington University*, Decision 12305-A. A union is not required to prove that the work is "exclusive" bargaining unit work. *King County*, Decision 12632-A. Whether other employees have performed the work is something for an examiner to consider when determining whether the work is bargaining unit work. *Id.*

Isaacson performed community outreach and crime prevention effort work for at least 10 of her 16 years of employment with the sheriff's office. She performed this work while stationed at the employer's former Lakewood office and also when she was assigned to the Gig Harbor detachment and the South Hill precinct. The testimony and evidence also demonstrate that while Isaacson primarily worked in and around the detachments and/or districts she was assigned to, she routinely performed community outreach and crime prevention effort work in other detachments, districts, and precincts in the employer's jurisdiction.

Furthermore, the record lacks concrete evidence demonstrating that other employees in the employer's workforce performed community outreach work during the bulk of Isaacson's tenure.⁸ While Heishman testified that the employer's reasons for creating the Community Liaison Deputy team was to centrally focus all of the employer's outreach efforts, nothing in the evidence or testimony explained the employer's other community outreach efforts, other than those described by Isaacson.

⁸ Isaacson testified that while she was assigned to the Gig Harbor detachment, she worked with program coordinator Judy Holly on outreach matters. Holly retired in 2013 and there is no evidence that the employer filled that specific program coordinator position.

Having determined that the community outreach work was bargaining unit work, the next step in the analysis is to determine whether any decision to remove that work was a mandatory subject of bargaining by applying the *City of Richland* balancing test as explained above. In this case, the record supports a conclusion that any decision to remove bargaining unit work was mandatory in nature because the decision to remove bargaining unit work balances in favor of the bargaining unit employees' wages, hours, and working conditions (and balances against this employer's right to control the management and direction of government).

Isaacson testified that she spent 80 percent of her time performing community outreach work and had performed that work for at least 10 years. Considering the limited commission bargaining unit consisted of just two employees, that work constituted approximately 40 percent of the bargaining unit's historic work jurisdiction. This was a substantial portion of the bargaining unit's work and if that work were removed it would have a substantial adverse effect on the job security of the bargaining unit's employees.

Heishman's testimony established that the employer demonstrated a legitimate interest in centralizing its community outreach work so that work was focused and coordinated. Additionally, Heishman stated that the employer wanted its commissioned deputies to be the "face" of the department in community outreach matters. While the employer articulated compelling reasons for centralizing the community outreach and crime prevention effort work, the reasons do not outweigh the union's interests in preserving a significant portion of its historic work jurisdiction.

Because any decision to remove the community outreach work from the bargaining unit was mandatory in nature, the final step is to determine whether the employer satisfied its collective bargaining obligation.

The employer announced in 2017 that it was creating the Community Liaison Deputy team.⁹ When it learned of the decision to create the team, the union sent the employer a demand to bargain on December 20, 2017. The parties' informally discussed the matter in January and February of 2018 and formally met on February 27, 2018, but were unable to reach agreement on the issue. The

⁹ The record is not clear when the employer announced the decision. The parties jointly agreed that the employer created the unit in 2017-18.

record establishes that prior to the February 27th meeting, the employer had created the Community Liaison Deputy team and had created and filled the program coordinator position. Thus, the employer had already made its decision when the employer formally announced on March 2, 2018, that non-bargaining unit employees would perform community outreach work. Thus, while the employer satisfied its obligation to meet with the union, bargaining occurred at a time when the union could not influence the employer's planned course of action.

The employer asserts that the union's complaint was not ripe because Isaacson continued to perform community outreach work up until the date of her resignation. This argument fails to take into account that it is not necessary for the union to show that work actually left the bargaining unit for a skimming violation to be found. *Battle Ground School District*, Decision 2449-A. Furthermore, the employer's argument that the program coordinator's work differed from the work performed by Isaacson because the program coordinator oversaw community outreach on a countywide level attempts to establish a distinction without a difference. The testimony and evidence established that prior to 2017, Isaacson's community service officer position was the focal point and the face of the employer's outreach work, and this position's work was performed in the community. Heishman's testimony clearly demonstrated that the employer made the unilateral decision to detach those tasks of Isaacson's job that had her interacting with the public outside of employer-operated facilities. The employer also decided to have the Community Liaison Deputy team perform that work. Those tasks included attending meetings with stakeholder groups, planning community events, and creating community outreach literature.

FINDINGS OF FACT

1. Pierce County is a public employer within the meaning of RCW 41.56.030(12).
2. The Pierce County Deputy Sheriffs Independent Guild is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The union's limited commission bargaining unit was created in 2000. The employer and union were parties to a collective bargaining agreement effective from January 1, 2016,

through December 31, 2017, and have successfully negotiated a successor to that agreement. There are currently two positions in the bargaining unit.

4. Between January 2002 and March 2018, Emily Isaacson worked as a community service officer with the employer. Her position was included in the union's limited commission bargaining unit. When first hired, Isaacson was assigned to the employer's Lakewood office. Isaacson's duties included manning the front desk, conducting community outreach, and attending community meetings. She predominately performed community outreach and crime prevention duties. Community outreach work included attending community meetings and reaching out to community groups that showed interest in promoting crime prevention activities.
5. The community service officer planned, organized, and attended outreach events to display and disseminate crime prevention activities. The position also served as an informal liaison between the employer and the public on crime prevention-related problems facing the public as well as a liaison between the employer and businesses concerning nuisance issues. Because Isaacson held a limited commission, she was allowed to wear a uniform and badge and take police reports while interacting with the public.
6. When the City of Lakewood ended its services contract with the employer, Isaacson transferred to the Gig Harbor detachment. During her six-year tenure at Gig Harbor, Isaacson continued to perform community outreach work including creating crime prevention literature and attending meetings with homeowners' associations, business groups, citizen patrol groups, and the Rotary club.
7. In 2012, Isaacson transferred to the South Hill precinct. Initially, she did not perform any community outreach work. In 2014, the employer transferred Isaacson to the Community Support Team where she resumed her community outreach work. The record does not describe which employees were part of the community support team other than Isaacson.
8. Isaacson testified that while she was specially directed by her supervisors to perform community outreach work in districts 1 through 3, she still performed some community

outreach work in all of Central Patrol as well as in other detachments. During her time as a community service officer, Isaacson developed and maintained a list of contacts and related information.

9. In 2017–18, the employer announced that it was creating a Community Liaison Deputy team. Bureau Chief Jim Heishman testified that the purpose of the team was to centralize “all of the outreach from the entire department . . . to this one focal point” so that the employer could leverage all of its resources to fulfill its outreach mission.
10. The employer also created a new program coordinator position to organize group and community outreach efforts in order to ensure that resources and time were not mismanaged. Many of the program coordinator job description duties mirrored those of the community service officer’s duties. The members of the Community Liaison Deputy team asked Isaacson for, and were provided with, her list of community contacts that she had accumulated during her tenure as the community service officer.
11. On December 20, 2017, the union sent a demand to bargain to the employer concerning the assignment of the community service officer work to the program coordinator position. The union and employer informally discussed the community service officer work issue at labor management meetings in January and February 2018. The parties also discussed the matter during a meeting on February 27, 2018. The parties were not able to resolve the matter during those discussions.
12. Heishman testified that the employer intended for the commissioned deputies assigned to the Community Liaison Deputy team to be the face of the department during outreach activities. On March 2, 2018, Heishman sent an e-mail to employees stating that all community outreach would be managed and coordinated by the program coordinator.
13. Although Isaacson resigned from the employer’s workforce in March 2018, she continued to perform community outreach and crime prevention effort work until she left employment.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW and Chapter 391-45 WAC.
2. Based on finding of fact 3 through 13, the employer violated RCW 41.56.140(4) (and derivatively interfered with employee rights in violation of RCW 41.56.140(1)) by skimming bargaining unit work previously performed by the Community Service Officer.

ORDER

PIERCE 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 Pierce County Deputy Sheriffs Independent Guild's bargaining unit, without providing the Pierce County Deputy Sheriffs Independent Guild with an opportunity to bargain.
 - 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. Restore the status quo ante by reinstating the wages, hours, and working conditions that existed for the employees in the affected bargaining unit prior to the unilateral change in transferring the community outreach work outside of the bargaining unit found unlawful in this Order.

- b. Give notice to and, upon request, negotiate in good faith with the Pierce County Deputy Sheriffs Independent Guild, before transferring bargaining unit positions or work outside the bargaining unit.
- c. Contact a compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for 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 County Council of Pierce 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.
- e. 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.

- f. 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 the compliance officer with a signed copy of the notice the compliance officer provides.

ISSUED at Olympia, Washington, this 23rd day of August, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



Dario de la Rosa, 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 08/23/2019

DECISION 13057 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 130869-U-18

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