

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PIERCE COUNTY CORRECTIONS
GUILD,

Complainant,

vs.

PIERCE COUNTY,

Respondent.

CASE 132452-U-20

DECISION 13276 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

*Mark A. Anderson and James M. Cline, Attorneys at Law, Cline & Associates, for
Pierce County Corrections Guild.*

*Jana R. Hartman, Deputy Prosecuting Attorney, Pierce County Prosecuting
Attorney Mary E. Robnett, for Pierce County.*

On January 6, 2020, the Pierce County Corrections Guild (union) filed an unfair labor practice complaint alleging that Pierce County (employer) contracted out bargaining unit work related to staffing a security booth that controls vehicle access to a newly secured area of county property adjacent to the jail. A preliminary ruling was issued on January 27, 2020, finding a cause of action. A hearing was conducted by videoconference on July 29 and 30, 2020, and the parties subsequently filed written arguments to close the record.

ISSUES

Was the complaint timely filed within the statute of limitations provided for in chapter 41.56 RCW?

For the reasons described more fully below, I find that the complaint was timely filed. The employer assigned the alleged bargaining unit work outside the bargaining unit on

December 3, 2019, which began the statute of limitations period. Therefore, the complaint was timely filed on January 6, 2020, within the six-month statute of limitations.

Did the employer refuse to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)] by unilaterally contracting out and/or skimming bargaining unit work by staffing secured areas of the Pierce County Jail campus with non-bargaining unit employees?

I conclude that the employer did not refuse to bargain by unilaterally contracting out staffing for the security booth entrance to the newly secured Nollmeyer area. The Nollmeyer area is not secured at the same level as the jail and secured yard. Staffing the booth is not bargaining unit work.

BACKGROUND

The employer operates a jail in Tacoma, and the union represents a collective bargaining unit that includes the corrections deputies who work at the jail. Adjacent to the jail is an open area that the employer secured by fencing it in and adding a gate.

This dispute concerns the issue of whether staffing of the security booth that controls vehicle access to the open area is bargaining unit work. The union contends that once the employer secured the open area, the area became part of the jail and the work of controlling access to the jail belongs to the bargaining unit. The employer argues that the area is not a part of the jail and is not secured at the same high level as the jail. Therefore, the employer contends that it did not have an obligation to give notice and bargain with the union before assigning the security booth work to an outside contractor.

The jail is part of a complex of government buildings and parking lots in downtown Tacoma. The jail itself comprises two buildings and a small, secured yard between the jail buildings. Included in the union-represented bargaining unit are control deputies who oversee access to the secured

areas of the jail, including the two buildings and secured yard. Control deputies take 140 hours of specialized training regarding jail security in order to be certified to serve in that role.

Adjacent to the jail is the County-City Building, which includes the courthouse. The two jail buildings, the County-City Building, and a line of trees are situated in a way that creates a triangular-shaped open area. This triangular area is accessed by Nollmeyer Lane, a short street that connects from Yakima Avenue, a major road, and dead ends after approximately 50 yards into the triangular area. The status of this triangular area is the focus of this dispute and for ease of reference will be referred to as the Nollmeyer area.

The Nollmeyer area serves as a major access point for the jail buildings and secured yard. It includes three loading areas used for deliveries: one that serves the jail directly from the Nollmeyer area; one that serves the County-City Building directly from the Nollmeyer area; and one that serves the jail from the secured yard between the jail buildings but is accessed through the Nollmeyer area. The Nollmeyer area also contains the entrance to an underground parking garage primarily used by judges and county executives.

The Nollmeyer area is active with many people coming and going, both in vehicles and on foot. Inmates access the Nollmeyer area while accompanied by corrections deputies when, for example, they unload deliveries, take out garbage, and load and unload vans when they are taken out to work on road crews. Members of the public, including inmates' family and friends, also enter the Nollmeyer area when visiting inmates or retrieving them when they have been released from the jail. The area is also accessed by delivery drivers, judges, and county executives when driving through to park their cars in the underground garage. Other county employees pass through the area to access the County-City Building. The Nollmeyer area also includes an open parking area where the employer parks a small fleet of check-out vehicles.

The crux of this dispute centers on who should staff a security booth entrance to the Nollmeyer area after the employer made changes to add security to the area on December 3, 2019.

Access to the Nollmeyer Area before December 3, 2019

Prior to the December 3, 2019, changes, the Nollmeyer area had minimal security. The area was not fenced in or gated. When a vehicle turned off Yakima Avenue onto Nollmeyer Lane, it immediately encountered a security booth located in the middle of the street before the Nollmeyer area. The security booth was equipped with a simple raisable mechanical arm similar to those commonly found at entrances to paid parking garages.

During business hours, the security booth was staffed by an employee of a third-party contractor whose focus was on permitting access and giving directions to a public parking lot. The lot entrance was just beyond the security booth and required a left turn to enter it. However, after passing the booth, vehicles could also continue straight down Nollmeyer Lane into the Nollmeyer area next to the jail and County-City Building. No other barrier blocked access to the Nollmeyer area.

In addition to the vehicle access that was loosely controlled by the security booth, pedestrians could enter the Nollmeyer area at any time without checking in at the security booth.

After business hours and on weekends, the security booth was not staffed at all. When the booth was unstaffed, the mechanical arm was left in the up position, allowing unrestricted vehicle and pedestrian access to the Nollmeyer area.

Determination that the Nollmeyer Area Needed More Security

In January 2016, the employer's facilities department conducted a security risk assessment that included the Nollmeyer area. As part of that assessment, employees expressed concerns about the relatively unfettered access to the Nollmeyer area given the high-risk individuals that frequent the adjacent jail and courthouse facilities. Another concern was raised that the easy access allowed unknown vehicles to get close to the jail buildings and the County-City Building, all of which are considered critical infrastructure according to Department of Homeland Security directives.

Based on the concerns raised in the risk assessment, the employer developed a plan to add security and limit access to the Nollmeyer area. Those changes were implemented on December 3, 2019.

Security Enhancements Made to the Nollmeyer Area Starting December 3, 2019

The employer's plan to increase security included installing fencing around the Nollmeyer area, moving the security booth approximately 25 yards in from Yakima Avenue and replacing the moveable mechanical arm with a more substantial gate for vehicle access. Three pedestrian access points with their own electronically controlled gates were also created.

Since the security enhancements, there are now three ways to access the Nollmeyer area. The first is with an employer-issued security badge or access card that electronically opens the vehicle gate or pedestrian access point. The employer's facilities department determines who should have that level of access and issues the badges and cards. The second way is to gain admittance from the individual staffing the security booth, who is supposed to ensure that the vehicle or individual has a legitimate reason to access the Nollmeyer area. The third way to access the Nollmeyer area is by using a video phone at one of the access points.

The video phones are answered by an operator employed by the third-party contractor that staffs the employer's 24/7 security operations center. An operator verifies the person's identity and purpose for accessing the Nollmeyer area, remotely opens the gate to permit entry, and then monitors via cameras to ensure the individual goes to the appropriate location. If a problem arises, the operator dispatches a security officer (during business hours) or a contracted security service (after hours) to respond. If the situation escalates, Pierce County Sheriff deputies would be contacted.

Since the changes were implemented, the security booth continues to be staffed with employees of the third-party contractor. While the contract between the employer and contractor provides that the contracted employees will receive some security related training, the contracted employees are not corrections deputies and do not take the 140-hour control deputy training that union-represented employees undergo before being charged with controlling access to the jail buildings and secured yard.

The secured perimeter of the jail buildings and secured yard were not changed as part of the December 3, 2019, security enhancements to the Nollmeyer area. Union-represented deputies still control access to those areas in the same way as before the Nollmeyer area changes.

ANALYSIS

Applicable Legal Standards

Timeliness

“[A] complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission” RCW 41.56.160(1). A cause of action accrues, and the statute of limitations begins to run, at the earliest point in time that the complaint concerning the alleged wrong could be filed. *Municipality of Metropolitan Seattle (METRO)*, Decision 1356-A (PECB, 1982) (citing *Edison Oyster Co. v. Pioneer Oyster Co.*, 22 Wn.2d 616 (1945)). The start of the six-month period, also called the triggering event, occurs when a potential complainant has “actual or constructive notice” of the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

A complaint alleging a unilateral change, such as a contracting out violation, must establish both: (1) the existence of a relevant status quo; and (2) a change of employee wages, hours, or working conditions. *Seattle School District*, Decision 11161-A (PECB, 2013) (citing *City of Kalama*, Decision 6773-A (PECB, 2000)). If there is no change in the status quo, then there has not been contracting out. *Seattle School District*, Decision 11161-A (citing *City of Anacortes*, Decision 6863-B (PECB, 2001)); *Evergreen School District*, Decision 3954 (PECB, 1991); *City of Seattle*, Decision 2935 (PECB, 1988).

There must be an actual unilateral change for a cause of action for skimming to exist. *State – Office of the Governor*, Decision 10948-A (PSRA, 2011). Thus, in a contracting out case, as with a skimming case, the statute of limitations begins to run when bargaining unit work is assigned outside of the bargaining unit. *Lake Washington School District*, Decision 11913-A (PECB, 2014).

Contracting Out

The threshold question in a contracting out case is whether the contracted work was bargaining unit work. *Central Washington University*, Decision 12305-A (PSRA, 2016).

The Commission defines bargaining unit work as work that bargaining unit employees have 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). This applies to all bargaining unit work, whether the work is entry level, at the highest level, or new bargaining unit work. *City of Snoqualmie*, 9892-A (PECB, 2009) (citing *Community Transit*, Decision 3069 (PECB, 1988)) (concluding new bus route can be bargaining unit work if it is the type of work that bus drivers normally would have performed).

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 is not bargaining unit work, then the analysis stops, and the employer has no obligation to give notice and an opportunity to bargain its decision to contract the work to a third party. *Id.* If the work is bargaining unit work, then the Commission applies the *City of Richland*¹ balancing test to determine whether the decision to contract the work is a mandatory subject of bargaining.

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.” *City of Richland*, 113 Wn.2d at 203. Recognizing that public sector employers are not “entrepreneurs” in the same sense as private sector employers, when weighing entrepreneurial control the balancing test should

¹ *City of Richland (International Association of Fire Fighters, Local 1052)*, Decision 2448-B (PECB, 1987), remanded, *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 113 Wn.2d 197 (1989).

consider the right of a public employer, as an elected representative of the people, to control the 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, 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 contracting out bargaining unit work.

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

Timeliness

The employer argues that the complaint is untimely under the six-month statute of limitations. In support, the employer points to the fact that the union made demands to bargain the decision of how to staff the security booth on March 28, 2019, and October 29, 2019. There were also discussions between various representatives of both parties earlier in 2019 where the union indicated its belief that staffing the booth was its work. The employer contends that those facts demonstrate that the union knew much earlier than December 3, 2019, that the employer was at least considering contracting out that work.

For contracting out cases, the triggering event that begins the limitations period is when the employer assigns bargaining unit work to non-bargaining unit employees. *Lake Washington School District*, Decision 11913-A. The work at issue in this case is the staffing of the security booth after the Nollmeyer area was secured. The employer assigned that work to the contractor on December 3, 2019. The complaint was filed just over a month later on January 6, 2020. It was therefore timely filed within the six-month statute of limitations.

Contracting Out

The threshold question in a contracting out case is to determine whether the work at issue is bargaining unit work. Typically, this requires an analysis of who has historically performed the work. In cases of new work, an evaluation must occur of whether the new work is of the same type as historical bargaining unit work, including whether the new work requires similar duties, skills, or working conditions as existing work. *City of Snoqualmie*, 9892-A (citing *Community Transit*, Decision 3069).

Here, the work at issue is staffing the security booth that permits vehicle access to the newly secured Nollmeyer area. Union-represented employees have never staffed a similar type of booth. Therefore, the work of staffing the booth would be new bargaining unit work and its similarity to historical existing bargaining unit work must be evaluated.

The union's bargaining unit work that is closest in nature to staffing the security booth is the work of the control deputies who control access to secured parts of the jail buildings and yard. No one enters the jail without control deputies being aware of it. Because of this important role, control deputies undergo 140 hours of specialized training in jail security and evacuation routes. They are an integral part of the jail's security and closely monitor who is allowed to enter the secured areas of the jail. Other corrections deputies have peace of mind knowing that a trained, professional, union-represented control deputy is making sure that the secured jail areas are free from unknown individuals who might cause harm.

The union argues that the employer extended the boundaries of the jail by fortifying and adding security to the Nollmeyer area. As a result, the union contends that controlling access to the newly secured area falls within its historical work jurisdiction.

The evidence does not support a conclusion that the newly secured Nollmeyer area became part of the jail after December 3, 2019. Comparing the Nollmeyer area to the acknowledged secured jail buildings and secured yard illustrates the differences. A key difference is that—unlike secured jail areas—many other county employees and nonemployees access the Nollmeyer area. The county facilities department determines who should have access to the area and issues electronic access

badges to employees who work in the County-City Building that allow them to access the Nollmeyer area. Judges and county executives drive through the Nollmeyer area to enter the parking garage. Delivery drivers use the area when making deliveries to the loading docks. Inmate family and friends also access the area. There is no example of similarly broad and relatively casual access to the secured jail buildings and secured yard.

The security of the Nollmeyer area is more akin to the adjacent County-City Building than to the jail and secured yard. There, the same third-party contractor that currently staffs the security booth also staffs the secured entrances to that building, which is also accessed by a similarly broad spectrum of individuals as the Nollmeyer area. Corrections deputies accompany inmates when they go to the County-City Building in a similar manner as to how corrections deputies accompany and oversee inmates when they are in the Nollmeyer area.

The union emphasized the fact that inmates are allowed in the Nollmeyer area, making the area more like the secured areas of the jail. But inmates were also allowed in the Nollmeyer area before the December 3, 2019, changes as well—under the same circumstances and under corrections deputy supervision.

Union witnesses testified to feeling unsafe in the Nollmeyer area, both before and after the December 3, 2019, changes. However, they differentiate that the new system gives them a false sense of safety that causes them to let their guard down. Given their role in dealing with high-risk individuals in dangerous environments, it is understandable that corrections officers are keenly aware of anything that would impact the safety of doing their job. However, nothing substantial was identified as a decline in their actual safety because of the change. For example, inmates were allowed in the Nollmeyer area when supervised by a corrections deputy both before and after the December 3, 2019, changes. Also, the perimeter of the jail and secured yard are still controlled by corrections deputies in the same way as before.

CONCLUSION

The Nollmeyer area is not a secured part of the jail and staffing the security booth at the gate to the Nollmeyer area is not bargaining unit work. Because it is not bargaining unit work, the employer did not commit an unfair labor practice when it assigned that work to a contractor. Because I find that security booth staffing is not bargaining unit work, it is unnecessary to continue the analysis to determine whether the decision to contract out the work was mandatory or whether the employer gave notice and an opportunity to bargain before assigning the work to a contractor. The complaint is dismissed.

FINDINGS OF FACT

1. Pierce County (employer) is a public employer as defined by RCW 41.56.030(13). The employer operates a jail in Tacoma.
2. Pierce County Corrections Guild (union) is a bargaining representative as defined by RCW 41.56.030(2).
3. The union represents a collective bargaining unit of corrections deputies who work at the jail. The bargaining unit includes control deputies who oversee access to the secured parts of the jail. Control deputies take 140 hours of specialized training regarding jail security in order to be certified to serve in that role.
4. The jail includes two buildings and a secured yard. Adjacent to the jail is the County-City Building, which includes the courthouse. The two jail buildings, the County-City Building, and a line of trees are situated in a way that creates a triangular-shaped open area referred to as the Nollmeyer area.
5. The Nollmeyer area is active with many people coming and going, both in vehicles and on foot. Inmates access the Nollmeyer area while accompanied by corrections deputies when, for example, they unload deliveries, take out garbage, and load and unload vans when they are taken out to work on road crews. Members of the public, including inmates' family and

friends, also enter the Nollmeyer area when visiting inmates or retrieving them when they are released from the jail. The area is also accessed by delivery drivers, judges, and county executives when driving through to park their cars in the underground garage. Other county employees pass through the area to access the County-City Building. The Nollmeyer area also includes an open parking area where the employer parks a small fleet of check-out vehicles.

6. Prior to December 3, 2019, the Nollmeyer area had minimal security. The area was not fenced in or gated. A security booth with a simple raisable mechanical arm similar to those commonly found at entrances to paid parking garages was at the entrance to the area. During business hours, the security booth was staffed by an employee of a third-party contractor whose focus was on permitting access and giving directions to a public parking lot.
7. After passing the booth, vehicles could continue into the Nollmeyer area next to the jail and County-City Building. No other barrier blocked access to the Nollmeyer area.
8. In addition to the vehicle access that was loosely controlled by the security booth, pedestrians could enter the Nollmeyer area at any time without checking in at the security booth. After business hours and on weekends, the security booth was not staffed at all. When the booth was unstaffed, the mechanical arm was left in the up position, allowing unrestricted vehicle and pedestrian access to the Nollmeyer area.
9. In January 2016, the employer's facilities department conducted a security risk assessment that included the Nollmeyer area and concluded that the area needed security enhancements. The security enhancements were implemented on December 3, 2019.
10. The security enhancements included installing fencing around the Nollmeyer area, moving the security booth approximately 25 yards closer to the Nollmeyer area and replacing the moveable mechanical arm with a much more substantial gate for vehicle access. Three pedestrian access points with their own electronically controlled gates were also created.

11. After the security enhancements, there are three ways to access the Nollmeyer area. The first way is with an employer-issued security badge or access card that electronically opens the vehicle gate or pedestrian access point. The employer's facilities department determines who should have that level of access and issues the badges and cards. The second way is to gain admittance from the individual staffing the security booth, who is supposed to ensure that the vehicle or individual has a legitimate reason to access the Nollmeyer area. The third way to access the Nollmeyer area is by using a video phone at one of the access points.
12. The security booth continues to be staffed with employees of the third-party contractor. While the contract between the employer and contractor provides that the contracted employees will receive some security-related training, the contracted employees are not corrections deputies and do not take the 140-hour control deputy training that union represented employees undergo before being charged with controlling access to the jail buildings and secured yard.
13. Unlike the secured jail areas where control deputies determine who should have access, the county facilities department determines who should have access to the Nollmeyer area and issues electronic access badges to provide that access.
14. Also unlike secured jail areas, many other county employees and nonemployees access the Nollmeyer area, including employees who work in the County-City Building, judges and county executives who drive through to enter the parking garage, and delivery drivers who use the area when making deliveries to the loading docks. Inmate family and friends also access the area before being admitted to the secured jail areas.
15. The security of the Nollmeyer area is more akin to the adjacent County-City Building than to the jail and secured yard. There, the same third-party contractor that currently staffs the security booth also staffs the secured entrances to that building, which is also accessed by a similarly broad spectrum of individuals as the Nollmeyer area. Corrections deputies accompany inmates when they go to the County-City Building in a similar manner as to

how corrections deputies accompany and oversee inmates when they are in the Nollmeyer area.

16. The employer assigned the work of staffing the security booth entrance to the newly secured Nollmeyer area to a third-party contractor on December 3, 2019.
17. The union filed its complaint on January 6, 2020, less than six-months after the statute of limitations period began.

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. As described in findings of fact 16 and 17, the complaint was timely filed.
3. As described in findings of fact 1 through 16, the employer did not refuse to bargain in violation of RCW 41.56.140(4) by unilaterally contracting out bargaining unit work by staffing the Nollmeyer area security booth with non-bargaining unit employees.

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is DISMISSED.

ISSUED at Olympia, Washington, this 17th day of December, 2020.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


E. MATTHEW GREER, 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 12/17/2020

DECISION 13276 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

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CASE 132452-U-20

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