STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PIERCE COUNTY CORRECTIONS GUILD, Complainant, vs. PIERCE COUNTY, Respondent.	CASE 132799-U-20 DECISION 13300 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Mark A. Anderson and *Troy Thornton*, Attorneys at Law, Cline & Associates, for the Pierce County Corrections Guild.

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

On May 15, 2020, the Pierce County Corrections Guild (union) filed an unfair labor practice complaint against Pierce County (employer). The complaint alleges that the employer violated its bargaining obligation by unilaterally changing certain training policies.

On May 21, 2020, an unfair labor practice administrator issued a preliminary ruling finding a cause of action. The undersigned held a hearing conducted by videoconference in the matter on October 6, 2020. The parties filed briefs on December 9, 2020, to complete the record.

ISSUE

The sole issue in this proceeding is whether the employer refused to bargain in violation of RCW 41.56.140(4), and derivatively RCW 41.56.140(1), by unilaterally changing the timing of firearms training for new employees without providing the union with notice and an opportunity for bargaining.

The date on which new hires receive firearms training bears a significant relationship to employees' wages, hours, and working conditions. It is a mandatory subject of bargaining. The employer violated its bargaining obligation when it changed when new employees receive firearms training without first bargaining with the union and reaching agreement or utilizing the statutory impasse procedures.

BACKGROUND

The employer operates the Pierce County Corrections and Detention Center in Tacoma. Jail operations fall under the responsibility of the elected sheriff. The union represents a bargaining unit of Corrections Deputies and Sergeants employed at the correctional facility. Employees in the bargaining unit are considered uniformed personnel within the meaning of RCW 41.56.030(14). They are eligible for interest arbitration. The union and employer were unable to resolve various disputes concerning the terms of a collective bargaining agreement effective from January 1, 2016, to December 31, 2018, and utilized the statutory interest arbitration process.

The Corrections Deputies are generally responsible for the care and custody of adult prisoners, as well as maintaining order and discipline at the facility. The employer is required to staff the jail 24 hours a day, 7 days a week. Employees are assigned to one of three shifts: day, swing, or graveyard. An essential function of the Corrections Deputy position is the ability to deal with physical confrontation and combative situations through the use of defensive tactics. Corrections Deputies are also required to be trained in the use of employer-issued firearms and have the ability to accurately and safely discharge a firearm with either hand. This training, along with training on a wide range of other subjects, occurs during employees' first year of employment when they are considered probationary. The probationary Corrections Deputies disproportionately work the swing shift.

During the interest arbitration proceeding for the 2016–18 collective bargaining agreement, the employer proposed creating a pilot program permitting a limited number of Corrections Deputies to opt out of firearms training. The union opposed the proposal. In the award issued on

June 28, 2018, the arbitrator rejected the employer's proposal. All Corrections Deputies must still undergo training on the use of firearms.

Firearms training is important for several reasons. First, in the event of a riot or other major disturbance, Corrections Deputies may be called upon to respond to the incident using employer-provided riot gear and firearms. Local law enforcement, such as SWAT team members, may also respond. Their response times are not immediate. Until backup law enforcement officers arrive, Corrections Deputies are solely responsible for securing the perimeter of the facility and the area of the disturbance. Bargaining unit employees assigned to certain posts are also required to either carry their firearms, or have them immediately available, depending on the type of work performed. Certain posts in booking are considered armed posts, as are those involved with transporting inmates to the hospital or medical appointments. Corrections Deputies are required to be armed while in uniform and out in public, such as when transporting an inmate. Employees working as a booking escort securely store their firearms in a nearby locker. The Corrections Deputies working in booking escort are considered first responders within the jail.

The security risks involved with working in the jail have been heightened since the start of the COVID-19 outbreak. As a result of the pandemic, a significant number of lower level offenders have been released. The remaining inmates are more likely to have been convicted of, or are awaiting trial for, a felony.

Firearms Training

For many years, newly hired employees have undergone training on the use of employer-provided firearms during the first four to five weeks of their employment. The initial training takes 40 hours. It occurs at the range operated by the employer in Roy, Washington. The program is designed to accommodate individuals with a wide range of experience: from those who have never held or fired a gun, to people with substantial familiarity with firearms. Over the course of the week at the range, each employee is expected to fire approximately 1,225 rounds. The cost of the ammunition for training newly hired employees is approximately $245 per student. At the end of the five-day training period, employees are expected to be able to qualify with their service firearms. In this same time period, employees are also custom fitted with a bulletproof vest. Each vest costs

approximately $800. After the initial training and test, employees must requalify annually. The employer provides them with a specified amount of ammunition in order to assist in this process. The employees are expected to practice at the range on their own time.

Providing firearms training to newly hired employees during their first several months allows the employees to be assigned to both armed and unarmed posts, thereby increasing their opportunity to train throughout the detention facility. For example, employees hired between March 2018 and December 2019 worked an average of about six shifts during their one year probationary period—more than an entire workweek—on an assignment where they were expected to have access to their firearms. If employees are not firearms-qualified and their field training officer (FTO) is assigned an armed post, such as a hospital duty, they would be unable to accompany their FTO on the assignment. The probationary employees without the firearms qualification would lose the chance to gain experience working while armed but still in the FTO phase of their probationary period.

Change to Timing of Firearms Training

The long-standing practice of providing firearms training to new employees during their first quarter of employment caused several problems from the employer's perspective. First, the employer experiences significant turnover among newly hired employees during their first year of employment. Of the 34 individuals who left employment as Corrections Deputies between 2015 and 2020, 29 departed during their probationary period. Of those, 24 left during their first two quarters of employment. By providing firearms training during employees' first two months, the employer incurred the cost of the training and bulletproof vests for many whose tenure would not extend beyond their probationary period.

The employer was also concerned about the impact that training new employees on the use of firearms so early in their employment had on their ability to retain other information. Jail operations are complex. It takes time to learn the role and responsibilities of a Corrections Deputy. The majority of Corrections Deputies do not frequently work armed posts and do not typically need to access their firearms. The employer believed that probationary employees would be safer

if they spent more of their first several months of employment focused on learning the tasks immediately relevant to their anticipated day-to-day job duties.

On or around November 15, 2019, the employer's Corrections Bureau chief, Patti Jackson, met with the union's president, Lisa Shanahan. During their meeting Jackson explained she was considering changing the timeframe during which new employees received weapons training. Jackson later sent Shanahan an email on November 23, 2019. The email explained in full:

> As informed last Friday, I am directing (corrections) training staff to schedule weapons training/qualifications and equipment issuance to the last quarter (9th month +) versus first couple weeks of their probationary period. Please note, this will not reduce the amount of time spent in training program, the change is taking place for the following reasons:
>
> > 1. The last 27 deputies seperated (sic) from employment with our Bureau took place within the first six months of hire date;
> >
> > 2. Probationary deputies have a lot of information thrown at them in the first 11 weeks of employment. IF they run into live opportunity to transport inmate to hospital under FTO guidance, they forget what they learned by the time they are assigned to hospital or armed post;
> >
> > 3. As you've (and many supervisors) asked, our lieutenants use best efforts to refrain from assigning probationary deputies to armed posts to afford them opportunity to learn as much about operations as possible;
> >
> > 4. Since probationary deputies are seldom assigned to armed posts, our probationary deputies are not getting benefit of handling their weapons on regular basis before going back to range for annual training;
> >
> > 5. We are not getting full benefit of ballistic vest life as deputies are not wearing them for most of first full year of employment;
>
> Effective next hire group (12.2.19), the five deputies will be assigned to attend the range in their 3rd quarter of employment. Once weapon qualified, the probationary deputy will be assigned to a Field Training Deputy to learn / experience assignments to armed posts (Tour to local hospitals; reception booth (purposes of giving breaks); court escort team observation, etc.
>
> I will review this practice on 9.30.20 – or before if challenges arise as a result.

Shanahan responded on November 25, 2019, objecting to the proposed change. On November 29, 2019, she sent an email requesting to bargain. Following the demand to bargain, Shanahan and Jackson discussed the issue during at least one labor-management meeting. Jackson explained to Shanahan that she had been informed by human resources staff with the employer that she was not obligated to bargain the change. The parties did not reach an agreement or utilize the statutory impasse resolution procedures prior to the employer implementing the change.

Corrections Deputies hired since December 2019 have not received firearms training during their first quarter of employment. When she decided in November 2019 to change the training date, Jackson intended for it to occur during the third quarter of employment, or around the ninth month. The COVID-19 pandemic, however, caused the employer to temporarily cease offering firearms training to Corrections Deputies.[1] As a result, the first group of employees hired since the change did not have their firearms training until around their eleventh month of employment.

The employer's change to the firearms training schedule has meant that most probationary employees have not been afforded the opportunity to work certain armed assignments, such as transport, court escort, and hospital duty. While most have continued to work a booking escort post on occasion, in contrast to other firearms-qualified Corrections Deputies, the probationary employees who lack similar training do not have access to service firearms in the event they are needed.

ANALYSIS

Applicable Legal Standards

Duty to Bargain

Chapter 41.56 RCW requires a public employer to bargain with the exclusive bargaining representative of its employees. The duty to bargain extends to mandatory subjects of bargaining.

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[1] Neither party raised the issue of whether the employer was privileged to unilaterally cease providing firearms training on a temporary basis in response to the public health emergency. It is therefore not addressed here.

RCW 41.56.030(4). The law limits the scope of mandatory subjects to those matters of direct concern to employees. *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission* (*City of Richland*), 113 Wn.2d 197, 200 (1989). Unless a union clearly waives its right to bargain, an employer is prohibited from making unilateral changes to mandatory subjects. An employer must give a union sufficient notice of possible changes affecting mandatory subjects of bargaining and, upon union request, bargain in good faith. When a bargaining unit is eligible for interest arbitration, an employer may not unilaterally implement a proposal upon impasse, but instead it must resolve the dispute through the interest arbitration procedures described in chapter 41.56 RCW and chapter 391-55 WAC. *City of Walla Walla*, Decision 12348-A (PECB, 2015). The requirements of RCW 41.56.440 extend to mid-contract changes. *City of Yakima*, Decision 9062-B (PECB, 2008).

The Commission applies a balancing test on a case-by-case basis to determine whether an issue is a mandatory subject of bargaining. In deciding whether a duty to bargain exists, there are two principal considerations: (1) the extent to which managerial action impacts the wages, hours, or working conditions of employees, and (2) the extent to which the subject lies "at the core of entrepreneurial control" or is a management prerogative. *City of Richland*, 113 Wn.2d at 203. The inquiry focuses on which characteristic predominates. *Id*. The Supreme Court has explained that that "the scope of mandatory bargaining thus is limited to matters of direct concern to employees" and that "[m]anagerial decisions that only remotely affect 'personnel matters', and decisions that are predominately 'managerial prerogatives', are classified as nonmandatory subjects." *Id*. at 200.

A complaint alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002). For a unilateral change to be unlawful, the change must have a material and substantial impact on employees' terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007) (citing *King County*, Decision 4893-A (PECB, 1995)).

The Commission focuses on the circumstances as a whole to assess whether an opportunity for meaningful bargaining existed. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998). If the employer's action had already occurred when the employer notified 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 was adequately notified of a contemplated change at a time when there was 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, then a *fait accompli* will not be found. *Lake Washington Technical College*, Decision 4721-A (PECB, 1995).

Attorney Fees

"Where the Commission finds that a party has committed an unfair labor practice, it must 'issue [an] appropriate remedial order[].'" *Amalgamated Transit Union, Local 1384 v. Kitsap Transit*, 187 Wn. App. 113, 127 (2015) (citing RCW 41.56.160(1)). The Commission's standard remedial orders require the offending party to cease and desist from the unfair labor practice and to take such affirmative action as will effectuate the purposes and policy of chapter 41.56 RCW. RCW 41.56.160(2). In situations involving unilateral changes, the remedy involves restoring the status quo that existed prior to the change. *City of Tukwila*, Decision 10536-B (PECB, 2010).

Included in the Commission's remedial authority is the ability to award attorney fees. *Washington Federation of State Employees v. Board of Trustees*, 93 Wn.2d 60, 69 (1980). An award of attorney fees should not be commonplace; it should be reserved for cases in which a defense to an unfair labor practice charge can be characterized as frivolous or meritless. *Id*. "The term 'meritless' has been defined as meaning groundless or without foundation." *Id.* Attorney fees can be granted if (1) such an award is necessary to make the Commission's orders effective, and (2) the defense to the unfair labor practice charge was meritless or frivolous, or the respondent has engaged in a pattern of conduct showing a patent disregard of its good faith bargaining obligations. *Benton County*, Decision 12920-A (PECB, 2019).

Application of Standards

The general timeline for firearms training is a mandatory subject of bargaining. By changing when employees receive the training without bargaining with the union to agreement or utilizing the statutory impasse resolution procedures, the employer violated RCW 41.56.140(4).

The Employer Changed a Past Practice

A past practice is "a course of dealing acknowledged by the parties over an extended period of time, becoming so well understood that its inclusion in a collective bargaining agreement is deemed superfluous." *Whatcom County*, Decision 7288-A (citing *City of Pasco*, Decision 4197-A (PECB, 1994)). Neither party disputes that prior to December 2019 the employer had a well-established past practice of providing firearms training to new employees during their first quarter of employment. Beginning with the group of employees that started on December 2, 2019, the employer changed when initial firearms training occurred. Other aspects of the training program remained the same, such as the content and overall duration. The date on which newly hired employees received the training, however, indisputably moved from the first to the third or fourth quarter of employment. Jackson's November 23, 2019, email makes this abundantly clear. The employer, therefore, changed a mutually recognized past practice.

The Past Practice Involved a Mandatory Subject of Bargaining

The timing of new employee firearms training has a significant impact on bargaining unit employees' terms and conditions of employment and constitutes a mandatory subject of bargaining.

Issues relating to safety effect working conditions. *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A (PECB, 2017), *aff'd*, *City of Everett v. Public Employment Relations Commission*, 11 Wn. App. 2d 1 (2019); *Snohomish County*, Decision 9770-A (PECB, 2008). Both parties acknowledge that delaying firearms training for newly hired employees from their first quarter of employment to their third or fourth quarter implicates workplace safety. First, from the union's perspective, it expands the number of people who lack the ability to respond to an emergency with a firearm, such as a riot—potentially jeopardizing the safety for all employees in the bargaining unit. It also limits the number of employees who can respond to smaller-scale emergencies. Probationary employees are often assigned to work as booking escorts, a position considered as a "first responder" in the jail. In the event of a less than facility-wide incident, the booking escorts may be called to respond. Newly hired employees working this post without employer-issued firearms have one less tool at their

disposal. Both of these safety concerns are exacerbated by the fact that the swing shift is composed of a disproportionate number of probationary employees.

The employer articulated an additional reason as to why the timing of firearms training impacts workplace safety. By delaying the training to the end of the probationary period, the employer hoped that employees would be able to spend more time focusing on the core aspects of their job. It concluded that limiting the amount of new material introduced to the employees would permit them to more thoroughly learn jail operations and how to work in a safe manner.

The date on which new employees receive firearms training does not constitute a subject that lies at the core of the employer's entrepreneurial control. Topics typically found to fall within the inherent right of the employer to unilaterally decide often relate to those directly impacting the employer's overall operation or services. These include the scope of services to be provided, *City of Kelso*, Decision 2120-A (PECB, 1985); the type of services to be provided, *Wenatchee School District*, Decision 3240-A (PECB, 1990); and the size of an employer's budget, *Federal Way School District*, Decision 232-A (EDUC, 1977). In certain contexts, the decision of whether to permit firearms in a workplace at all may be a managerial prerogative. *Tacoma School District*, Decision 12975 (PECB, 2019). In *Tacoma School District*, however, the nature of the workplace and the related considerations were qualitatively different than those addressed here.

In contrast to those subjects found to fall within an inherent management right, the timing of when new employees are trained on the use of firearms bears little relationship to the overarching size, scope, or nature of the employer's operation. The primary concern articulated by the employer unrelated to basic safety issues involved cost. After receiving training and equipment during their first quarter of employment, a significant number of newly hired employees either quit or were fired before the employer was able to enjoy the benefit of their training. In a time of limited financial resources for public employers, this concern is not unfounded. The Commission, however, has consistently rejected attempts by employers to rely primarily on cost considerations as a basis for establishing a particular subject was a managerial prerogative. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998); *City of Brier*, Decision 5089-A

(PECB, 1995); *City of Centralia*, Decision 5282-A (PECB, 1996); *Kitsap County Fire District 7*, Decision 2872-A (PECB, 1988). I find the cost argument unpersuasive here for the same reasons.

The *City of Richland* balancing test requires me to weigh the impact the change to the firearms training program has on employees' terms and conditions of employment with the extent to which it involves a managerial prerogative. On weighing the two considerations, I find that the relationship the change has to employees' wages, hours, and working conditions predominates. Delaying the date that newly hired Corrections Deputies receive firearms training has a substantial impact on workplace safety. It limits the number of employees who are able to mount an armed response to both a large scale incident within the facility as well as more localized incidents. The employer similarly articulates a safety concern, noting that moving the date could make the training process more effective. The fact that both parties point to workplace safety in support of their positions provides strong evidence that the matter is related to working conditions. *King County*, Decision 5810-A (PECB, 1997), *aff'd, King County v. Public Employment Relations Commission*, 94 Wn. App. 431 (1999) (both parties' identification of safety concerns provides "persuasive support for a finding that issues surrounding the ID badges are a mandatory subject of bargaining"). In contrast to the strong relationship the date of firearms training bears to working conditions, the impact on managerial interests is comparatively slight. Employees' interests in the subject therefore predominate, and it constitutes a mandatory subject of bargaining.

The impact of the change is also more than *de minimis*. No duty to bargain arises from a reiteration of established policy or from a change that has no material effect on employee wages, hours, or working conditions. *City of Yakima*, Decision 3564-A (PECB, 1991). In addition to the safety concerns explained above, delaying firearms training also impacts newly hired employees' ability to gain experience working in a variety of posts. Employees without firearms training are typically not assigned to work certain armed positions, such as transport. Moving the firearms training to the end of their first year of employment decreased their opportunity to work a range of posts. These cumulative impacts are sufficiently material, substantial, and significant to give rise to a duty to bargain.

The Employer Did Not Meet Its Bargaining Obligation

The employer failed to provide a meaningful opportunity for bargaining to occur. On November 23, 2019, it informed the union that it had made the decision to change the timing of firearms training, effective December 2019. In response, the union requested to bargain. The language of the email as well as the employer's subsequent actions, such as informing the union that it was not obligated to bargain the change, made clear that the decision was presented as a *fait accompli*. I recognize that the parties subsequently discussed the matter during a labor-management meeting on at least one occasion. There is some dispute over the extent to which these discussions constituted bargaining as contemplated by the Public Employees' Collective Bargaining Act. Assuming, arguendo, that the discussions did constitute bargaining, the employer implemented the change prior to the completion of bargaining. Implementing a proposed change during the bargaining process constitutes an unlawful unilateral change. *Whatcom County*, Decision 13082-A (PECB, 2020). As a group eligible for interest arbitration, following the union's demand to bargain the employer cannot implement its desired change without bargaining to impasse and obtaining an award through interest arbitration. *Snohomish County*, Decision 9770-A.

By altering its long-standing past practice of providing firearms training to newly hired employees within their first quarter of employment without fully satisfying its bargaining obligation, the employer refused to bargain in violation of RCW 41.56.140(4).

Attorney Fees

Pointing to the employer's position in the interest arbitration proceeding for the 2016–18 collective bargaining agreement, the union argues the employer's change to the firearms policy involved an attempt to circumvent the bargaining process. It then concludes that extraordinary remedies are required. I disagree. An award of attorney fees as an additional remedy in this case is not warranted. During the parties' recent interest arbitration, the employer sought language permitting it to waive firearms training for some Corrections Deputies. It did not propose changing the firearms training program itself. The dispute in the instant case is not sufficiently related to that litigated by the parties in 2018 to serve as a basis for an award of attorney fees. I also do not find that the employer's defense to this complaint was frivolous. Finally, there is no evidence that the employer

has engaged in recidivist conduct. The Commission's standard remedy in unilateral change refusal to bargain cases is sufficient.

CONCLUSION

The employer had a long-standing practice of providing firearms training to newly hired employees during their first quarter of employment. The date on which the training occurs bears a substantial relationship to employees' working conditions and is a mandatory subject of bargaining. When the employer moved the training to the end of the probationary period without bargaining with the union to agreement or utilizing the statutory interest arbitration procedure, it unlawfully refused to bargain.

FINDINGS OF FACT

1. Pierce County (employer) is a public employer within the meaning of RCW 41.56.030(13).

2. The Pierce County Corrections Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The employer operates the Pierce County Corrections and Detention Center in Tacoma. Jail operations fall under the responsibility of the elected sheriff. The union represents a bargaining unit of Corrections Deputies and Sergeants employed at the correctional facility. Employees in the bargaining unit are considered uniformed personnel within the meaning of RCW 41.56.030(14). They are eligible for interest arbitration. The union and employer were unable to resolve various disputes concerning the terms of a collective bargaining agreement effective from January 1, 2016, to December 31, 2018, and utilized the statutory interest arbitration process.

4. The Corrections Deputies are generally responsible for the care and custody of adult prisoners, as well as maintaining order and discipline at the facility. The employer is required to staff the jail 24 hours a day, 7 days a week. Employees are assigned to one of three shifts: day, swing, or graveyard. An essential function of the Corrections Deputy

position is the ability to deal with physical confrontation and combative situations through the use of defensive tactics. Corrections Deputies are also required to be trained in the use of employer-issued firearms and have the ability to accurately and safely discharge a firearm with either hand. This training, along with training on a wide range of other subjects, occurs during employees' first year of employment when they are considered probationary. The probationary Corrections Deputies disproportionately work the swing shift.

5. Firearms training is important for several reasons. First, in the event of a riot or other major disturbance, Corrections Deputies may be called upon to respond to the incident using employer-provided riot gear and firearms. Local law enforcement, such as SWAT team members, may also respond. Their response times are not immediate. Until backup law enforcement officers arrive, Corrections Deputies are solely responsible for securing the perimeter of the facility and the area of the disturbance.

6. Bargaining unit employees assigned to certain posts are also required to either carry their firearms, or have them immediately available, depending on the type of work performed. Certain posts in booking are considered armed posts, as are those involved with transporting inmates to the hospital or medical appointments. Corrections Deputies are required to be armed while in uniform and out in public, such as when transporting an inmate. Employees working as a booking escort securely store their firearms in a nearby locker. The Corrections Deputies working in booking escort are considered first responders within the jail.

7. The security risks involved with working in the jail have been heightened since the start of the COVID-19 outbreak. As a result of the pandemic, a significant number of lower level offenders have been released. The remaining inmates are more likely to have been convicted of, or are awaiting trial for, a felony.

8. For many years, newly hired employees have undergone training on the use of employer-provided firearms during the first four to five weeks of their employment.

9. Over the course of the week at the range, each employee is expected to fire approximately 1,225 rounds. The cost of the ammunition for training newly hired employees is approximately $245 per student. At the end of the five-day training period, employees are expected to be able to qualify with their service firearms. In this same time period, employees are also custom fitted with a bulletproof vest. Each vest costs approximately $800.

10. Providing firearms training to newly hired employees during their first several months allows the employees to be assigned to both armed and unarmed posts, thereby increasing their opportunity to train throughout the detention facility.

11. Employees hired between March 2018 and December 2019 worked an average of about six shifts during their one year probationary period—more than an entire workweek—on an assignment where they were expected to have access to their firearms.

12. If employees are not firearms-qualified and their field training officer (FTO) is assigned an armed post, such as a hospital duty, they would be unable to accompany their FTO on the assignment. The probationary employees without the firearms qualification would lose the chance to gain experience working while armed but still in the FTO phase of their probationary period.

13. The long-standing practice of providing firearms training to new employees during their first quarter of employment caused several problems from the employer's perspective. First, the employer experiences significant turnover among newly hired employees during their first year of employment. By providing firearms training during employees' first two months, the employer incurred the cost of the training and bulletproof vests for many whose tenure would not extend beyond their probationary period.

14. The employer was also concerned about the impact that training new employees on the use of firearms so early in their employment had on their ability to retain other information. Jail operations are complex. It takes time to learn the role and responsibilities of a Corrections Deputy. The majority of Corrections Deputies do not frequently work armed

posts and do not typically need to access their firearms. The employer believed that probationary employees would be safer if they spent more of their first several months of employment focused on learning the tasks immediately relevant to their anticipated day-to-day job duties.

15. On or around November 15, 2019, the employer's Corrections Bureau chief, Patti Jackson, met with the union's president, Lisa Shanahan. During their meeting Jackson explained she was considering changing the timeframe during which new employees received weapons training.

16. Jackson later sent Shanahan an email on November 23, 2019, informing Shanahan that Jackson "was directing (corrections) training staff to schedule weapons training/qualifications and equipment issuance to the last quarter (9th month +) versus first couple weeks of their probationary period."

17. The email also explained:

> Effective next hire group (12.2.19), the five deputies will be assigned to attend the range in their 3rd quarter of employment. Once weapon qualified, the probationary deputy will be assigned to a Field Training Deputy to learn / experience assignments to armed posts (Tour to local hospitals; reception booth (purposes of giving breaks); court escort team observation, etc.

18. Shanahan responded on November 25, 2019, objecting to the proposed change. On November 29, 2019, she sent an email requesting to bargain. Following the demand to bargain, Shanahan and Jackson discussed the issue during at least one labor-management meeting. Jackson explained to Shanahan that she had been informed by human resources staff with the employer that she was not obligated to bargain the change. The parties did not reach an agreement or utilize the statutory impasse resolution procedures prior to the employer implementing the change.

19. Corrections Deputies hired since December 2019 have not received firearms training during their first quarter of employment.

20. The employer's change to the firearms training schedule has meant that most probationary employees have not been afforded the opportunity to work certain armed assignments, such as transport, court escort, and hospital duty. While most have continued to work a booking escort post on occasion, in contrast to other firearms-qualified Corrections Deputies, the probationary employees who lack similar training do not have access to service firearms in the event they are needed.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has statutory jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-45 WAC.

2. By the actions described in findings of fact 16–19, the employer refused to bargain in violation of RCW 41.56.140(4), and derivatively RCW 41.56.140(1), by unilaterally changing the timing of firearms training for new employees without providing the union with notice and an opportunity for bargaining.

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. Unilaterally changing the date on which new employees receive firearms training.

   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 to the date on which new employees receive firearms training found unlawful in this order.

b. Give notice to and, upon request, negotiate in good faith with the Pierce County Corrections Guild before changing the date on which new employees receive firearms training.

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 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 4th day of February, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL SNYDER, 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 02/04/2021

DECISION 13300 - 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 132799-U-20

EMPLOYER: PIERCE COUNTY

REP BY:

JOE CARRILLO
PIERCE COUNTY
BUDGET AND FINANCE
950 FAWCETT AVE STE 100
TACOMA, WA 98402-5603
joe.carrillo@piercecountywa.gov

JANA R. HARTMAN
PIERCE COUNTY
955 TACOMA AVE S STE 301
TACOMA, WA 98402-2160
jana.hartman@piercecountywa.gov

PARTY 2: PIERCE COUNTY CORRECTIONS GUILD

REP BY:

LISA SHANAHAN
PIERCE COUNTY CORRECTIONS GUILD
1001 YAKIMA AVE S STE 11B
TACOMA, WA 98405
lshanah@co.pierce.wa.us

TROY THORNTON
CLINE & ASSOCIATES
520 PIKE ST STE 1125
SEATTLE, WA 98101
tthornton@clinelawfirm.com

MARK A. ANDERSON
CLINE & ASSOCIATES
520 PIKE ST STE 1125
SEATTLE, WA 98101
manderson@clinelawfirm.com