STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 117, Complainant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE 133414-U-21 DECISION 13483-A - PSRA DECISION OF COMMISSION

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Teamsters Local 117 (union) represents a bargaining unit of full-time and regular part-time police officers employed by the University of Washington (employer) in its police department.[1] On March 25, 2021, the union filed an unfair labor practice complaint against the employer alleging that it breached RCW 41.80.110(1)(e) by unilaterally "skimming" bargaining unit work without bargaining with the union. The agency issued a preliminary ruling finding that the allegations of the complaint, if true, could constitute an unfair labor practice. The employer was directed to answer the complaint and to state whether it sought deferral to arbitration. The employer filed an answer and did not seek deferral to arbitration.

Examiner Michael Snyder conducted a hearing. He found that the employer had reassigned the work of patrolling student residence halls from union police officers to a newly created classification of Campus Safety Responder (CSR) represented by the Service Employees

[1] The employer's police officers are "uniformed personnel." RCW 41.80.005(15); RCW 41.80.300. As such, if the union and employer are unable to reach agreement on a collective bargaining agreement, the unresolved issues are subject to mediation and, if necessary, binding interest arbitration. RCW 41.80.310–.320. The right to strike is not granted to uniformed personnel. RCW 41.80.370. During the pendency of the proceedings before the arbitration panel, "existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other." RCW 41.80.350.

International Union (SEIU)[2]. As the Examiner found, the police officer bargaining unit had historically had the exclusive responsibility of patrolling the student residence halls. As such, "[t]he regular dorm patrols constitute work that belongs to the Teamsters-represented employees," the Examiner held. It is noteworthy that the union and employer have negotiated over residence hall patrol assignments. Thus Article 15, Section 15.9 of the parties' collective bargaining agreement (CBA) dealing with shift assignments expressly provides for bidding by police officers on the residence hall patrols.

In addition, Section 15.9(B) of the CBA provides that "[s]hift selection shall be an appropriate subject for the Joint Labor/Management Committee." The Committee exists "to provide a forum for communication between the parties to this Agreement to deal with personnel matters of general Labor/Management concern."[3] It does not appear that the employer engaged the Joint Labor/Management Committee before transferring the work to the CSR classification.

After concluding the residence hall patrols were police officer bargaining unit work, the Examiner sought to determine whether transfer of the patrols to the CSR classification was a mandatory subject of bargaining. He decided to balance the employer's interests and the employees' interests and concluded that the employer's interest in determining the scope and direction of public safety within the residence halls outweighed the union's interest in maintaining the assignment at the residence halls. Decision 13483 at 11–12. The Examiner concluded the transfer decision was not a mandatory subject of bargaining and hence that the employer was not obligated to bargain the decision to assign CSRs to patrol the residence halls. He accordingly dismissed the unfair labor practice complaint. *Id*. at 12–13.

The union filed a timely appeal. The union and employer filed briefs to complete the record.

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[2] Like the police officers, workers in the SEIU-represented CSR classification are employed in the employer's police department. They are not "uniformed personnel" however and hence are not eligible for binding interest arbitration.

[3] Union Ex. 1, Collective Bargaining Agreement Art. 4, §4.2,

ISSUE

The issue before the Commission is whether the employer refused to bargain in violation of RCW 41.80.110(1)(e) when it assigned bargaining unit work (i.e., residence hall patrols) to non-bargaining unit employees without providing the union notice and opportunity to bargaining.

We reverse the Examiner. Patrolling the residence halls was police bargaining unit work. The employer's unilateral decision to transfer the work did not implicate a management prerogative within the scope of its entrepreneurial control. The employer was required to bargain the decision to assign bargaining unit work to non-bargaining unit employees. The employer violated RCW 41.80.110(1)(e) when it did not provide notice or an opportunity to bargain before reassigning the work.

BACKGROUND

The employer maintains a police department (UWPD). Within UWPD are fully commissioned uniformed police officers (Campus Police Officers) as well as Campus Security Guards (CSG) and Campus Security Officers (CSO), including the newly created Campus Security Responders (CSRs). The union represents uniformed police officers below the ranks of sergeant. *University of Washington*, Decision 11185 (PSRA, 2011). CSG, CSO, and CSR workers also work in the UWPD and are represented by SEIU.

At some point in 2020, the employer received a list of demands from the Black Student Union seeking changes including that the employer "disarm and divest from UWPD." On September 8, 2020, University President Ana Mari Cauce issued a letter responding to those demands. Her response communicated the employer's intent to "re-imagin[e] a more holistic approach to campus safety that minimizes armed police presence on [the] Seattle campus." (italics omitted). Cauce identified the employer's goal "to limit UWPD response to those situations where there is a threat of, or realistic possibility of, imminent harm." The employer would do this by implementing an online reporting system and allow reports to be made "to unarmed Public Safety responders." The employer planned to "initiate such a program no later than October 1st, with a goal of having it implemented robustly by the end of Winter Quarter."

Next, the employer would create a team of responders to respond to calls for non-crime related matters, such as welfare checks. In fall 2020, the employer planned to appoint a panel of experts to make recommendations "with the goal of having implementation plans in place by Fall 2021."

Additionally, the employer planned to "reduce[] the size of [its] police force by at least 20% from what it was in 2019." (italics omitted). Interim Chief of Police Randall L. West explained that the police department lost positions and permanent funding. A previous reduction to the police department budget became permanent. Rather than lay off employees to achieve further reductions, the additional reductions were achieved through attrition.

Assistant Vice President of Labor Relations/Human Resources Banks Evans emailed Cauce's September 8, 2020, letter to the union. On September 15, 2020, the employer provided the union with "formal notice" that the employer would initiate the public safety responders program by October 1 and implement the program by the end of winter quarter. At that time, the employer was working on a new job specification that would be in the SEIU 925 bargaining unit. The employer would "be in touch as that process gets further along, fulfilling all notice and bargaining obligations."

On October 13, 2020, the union responded to University President Cauce and offered to work collaboratively with the employer to examine how public safety is administered on campus.

The parties met on October 27, 2020. The meeting was informational. The parties did not exchange proposals. The record does not contain details of what the parties discussed during this meeting.

On November 24, 2020, the union demanded to bargain the assignment of bargaining unit job duties to the CSRs. The parties met in the winter of 2021. At that time, the employer had begun recruiting CSRs. The record contains scant information about what the parties discussed.

On January 22, 2021, the employer notified the union that the employer would begin hiring CSRs. The employer asked the union and SEIU 925 to seek a unit clarification from the Commission. The employer reiterated its willingness to bargain the effects of the new position.

The UWPD and Housing and Food Services (HFS) had a Memorandum of Understanding (MOU) providing for police officers to be assigned to patrol the employer's residence halls. Under the MOU, three police officers were assigned to the residence halls. One worked Sunday, Monday, and Tuesday. Two worked Thursday, Friday, and Saturday. All three police officers worked Wednesday. The police officers worked 3:00 p.m. until 1:00 a.m.

Pursuant to the collective bargaining agreement, each year in April, the police officers bid assignments. The three residence hall shifts were assigned first. Deputy Chief Craig Wilson testified officers seldom volunteered for the residence hall assignments. The residence hall assignments offered officers a certain set of days off a week. Officers who wanted a particular work assignment could volunteer for the residence hall duty. Deputy Chief Wilson noted that sometimes the residence hall assignment was "pretty popular."

The MOU between UWPD and HFS providing police officer patrols of the residence halls was effective from July 1, 2020, through June 30, 2021. In March or April 2021, HSF opted not to renew the MOU for police officers to patrol the residence halls. As a result, the residence hall patrol was not part of the April 2021 shift bid. As of July 2021, the employer did not assign police officers to patrol the residence halls. Police officers continued to respond to calls for service in the residence halls.

The police department and HFS entered a MOU effective August 1, 2021, through June 30, 2022, providing CSRs to patrol the residence halls.

ANALYSIS

Applicable Legal Standards

Standard of Review

The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. *City of Wenatchee*, Decision 8802-A (PECB, 2006). The Commission reviews findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002).

Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *City of Vancouver v. Public Employment Relations Commission*, 107 Wn. App. 694, 703 (2001); *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B. The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations made by its examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000).

Skimming

The threshold question in a skimming case is whether the work that the employer assigned to non-bargaining unit employees is bargaining unit work. *Wapato School District*, Decision 12894-A (PECB, 2019). If the work was not bargaining unit work, then the analysis stops, and the employer would not have had an obligation to bargain its decision to assign the work. *Id*. In this matter the Examiner held that the work of patrolling the residence halls was bargaining unit work, and we agree.

Inasmuch as the work was bargaining unit work, we then look to *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197 , 203 (1989)[4] to determine whether the transfer of work between units "'lies at the core of entrepreneurial control' or is a management prerogative." If the matter can be said to be a managerial prerogative as well as a matter relating to conditions of employment, then "the focus of inquiry is to determine which of these characteristics predominates." *Id.* This weighing process is used to determine whether the decision to assign bargaining unit work to non-bargaining unit employees was a mandatory subject of bargaining. The court in *City of Richland* held that the Commission failed to weight the union's interests in firefighter workload or safety against the employer's need for managerial control. *Id*. It wrote that the Commission's "facile" conclusion that the union's contract proposal was "a subject that has previously been held to be a permissive subject of bargaining" abdicated the Commission's responsibility to weigh the employer and

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[4] In *City of Richland*, the Supreme Court reversed a Commission decision holding that a firefighter union's "Standards of Safety" contract proposal was a nonmandatory subject of bargaining. The union's proposal related the level of safety of bargaining unit members to "the number and type of apparatus and the number and rank of personnel responding to alarms." 113 Wn.2d at 198–99.

union's competing interests in the matter before it. 113 Wn.2d at 207. It remanded the matter to the commission for proceedings consistent with the court's opinion. *Id.* at 208.

In its analysis, the Washington Supreme Court cited two pertinent U.S. Supreme Court opinions. In *Fibreboard Paper Products Corp. v. National Labor Relations Board*, 379 U.S. 203 (1964), the Supreme Court affirmed a decision of the National Labor Relations Board (NLRB) finding that an employer violated section 8(a)(5) of the National Labor Relations Act (NLRA) by refusing to bargain with the union representing its maintenance employees regarding its decision to replace them with employees of an independent contractor. In holding that the decision to subcontract the maintenance work was a mandatory subject of bargaining, the Court held that the decision did not fundamentally change the employer's business operation:

> The facts of the present case illustrate the propriety of submitting the dispute to collective negotiation. The Company's decision to contract out the maintenance work did not alter the Company's basic operation. The maintenance work still had to be performed in the plant. No capital investment was contemplated; the Company merely replaced existing employees with those of an independent contractor to do the same work under similar conditions of employment. Therefore, to require the employer to bargain about the matter would not significantly abridge his freedom to manage the business.

Fibreboard Paper Prods. Corp. v. National Labor Relations Board, 379 U.S. at 213. In his influential concurrence, Justice Stewart, joined by Justices Douglas and Harlan, identified three categories of management decisions. The first category involved decisions that involved "working conditions" and were therefore mandatory subjects of bargaining requiring notice and bargaining. These included hours of work, the amount of work expected during those hours, relief periods, safety practices, seniority rights, and discriminatory discharges. *Id*. at 222.

> In common parlance, the conditions of a person's employment are most obviously the various physical dimensions of his working environment. What one's hours are to be, what amount of work is expected during those hours, what periods of relief are available, what safety practices are observed, would all seem conditions of one's employment.

Id. at 222. The second category included decisions such as advertising expenditures, product design, sales, and financing, the impact of which upon the job security of employees was so "indirect and uncertain" as to make such decisions only permissive subjects of bargaining. *Id*. at 223.

The third category identified by Justice Stewart were matters lying "at the core of entrepreneurial control":

> Decisions concerning the commitment of investment capital and the basic scope of the enterprise are not in themselves primarily about conditions of employment, though the effect of the decision may be necessarily to terminate employment. If, as I think clear, the purpose of § 8 (d) is to describe a limited area subject to the duty of collective bargaining, those management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security should be excluded from that area.

Id. The decision of the employer in *Fibreboard* to contract out bargaining unit work fell within the first category, Stewart held, and hence was a mandatory subject of bargaining:

> On the facts of this case, I join the Court's judgment, because all that is involved is the substitution of one group of workers for another to perform the same task in the same plant under the ultimate control of the same employer.

Id. at 224.

In *First National Maintenance Corp. v. National Labor Relations Board,* 452 U.S. 666 (1981), also cited by the *City of Richland* court, a cleaning and maintenance employer elected to close the portion of its business located at a nursing home after it was unable to negotiate a fee increase with the owner of the home. It discharged its employees assigned to the home and refused to bargain that decision with their union. *First Nat'l Maintenance Corp. v. National Labor Relations Board*, 452 U.S. at 671–72. The NLRB held that the employer's refusal violated its duty to bargain in good faith and ordered the employees reinstated with backpay. The Second Circuit Court of Appeals enforced the Board order. *Id*. at 672.

The Supreme Court reversed, holding that the employer's economically motivated decision to partially close its business operations outweighed "the incremental benefit that might be gained through the union's participation in making the decision." *Id*. at 686. There was no claim of antiunion animus. *Id*. at 687. The Court stated that the decision to halt work at the nursing home represented a significant change in petitioner's operations, "a change not unlike opening a new line of business or going out of business entirely," neither of which would trigger a duty to bargain. *Id*. at 688. Accordingly, the Court deemed the employer's decision to close its operation at the nursing home to not be a mandatory subject of bargaining. *Id*. We conclude that before invoking the "balancing test" described by the Supreme Court in *City of Richland*, it must first be shown that the employer's action lay "at the core of entrepreneurial control" or was an exclusive management prerogative. *City of Richland*, 113 Wn.2d at 203.

If the employer's decision is deemed a mandatory subject of bargaining under these standards, then the remaining question is whether the employer provided the union with notice and an opportunity to bargain the decision. *Central Washington University*, Decision 12305-A (PSRA, 2016). If the employer did not, then the union will have met its burden of proving that the employer refused to bargain by skimming bargaining unit work. *Id*.

Application of Standards

The Examiner concluded that "Campus Police Officers have historically been assigned to patrol the employer's various residence halls. The regular dorm patrols constitute work that belongs to the Teamsters-represented employees." Decision 13483 at 11. Neither party appealed that conclusion. Decision 13483 at 11. While not entered as a numbered finding of fact, that finding of fact and all unappealed findings of fact are verities on appeal. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 347 (2014).

After concluding the residence hall patrol was bargaining unit work, the Examiner balanced the employees' and employer's interests and concluded that "[t]he decision to change its public safety model by replacing armed Campus Police Officers with unarmed, non-commissioned CSRs in the residence halls was not a mandatory subject of bargaining." Decision 13483 at 12. Therefore, the

employer did not have to bargain the reassignment of duties to the SEIU and did not skim bargaining unit work. *Id*.

On appeal, the union argues the Examiner erred when he concluded that the employer did not have a duty to bargain the decision to reassign residence hall patrols. The union asserts that the Examiner's analysis was focused on individual employees and not on the substantial overall effect on the bargaining unit. The union asserts that the Examiner gave undue weight to the employer's interest in replacing the police officers with unarmed CSRs.

In response, the employer framed the issue as whether the employer's entrepreneurial interest in providing a campus safety paradigm that ensures a safe, inclusive learning and working environment in its community, including the residence halls, outweighs the union's interest in maintaining the residence hall assignment. The employer asserts that its justification for assigning CSRs to patrol the dorms trumps the union's interests. The employer asserts that the bargaining unit has not suffered a detriment and that any effect on the bargaining unit is *de minimis.*

This appeal is limited to whether the employer violated RCW 41.80.110(1)(e) when it assigned patrol duties of the residence halls to CSRs. To determine whether the employer violated RCW 41.80.110(1)(e), we first attempt to identify an employer "managerial prerogative" lying at the "core of entrepreneurial control," which would justify a refusal to bargain about the transfer of bargaining unit work from the union to the SEIU. Only if such a clear managerial prerogative is identified will we proceed to weigh the union's interest in conditions of employment against it.

The employer's transfer of police unit work to the CSR classification is not a managerial prerogative at the core of its entrepreneurial control.

The employer was not undertaking a partial closure of its facilities such as was deemed to be a permissive subject of bargaining in *First National Maintenance Corp.* Nor is this a matter involving "the volume and kind of advertising expenditures, product design, the manner of financing, and sales" that might reasonably be classed as exclusive management prerogatives. *Fibreboard Paper Prods. Corp.*, 379 U.S. at 223. There is no evidence that the employer has altered its decision to provide accommodations to students in its residence halls, undertaken capital expenditures in support of its initiative, or altered the "basic scope" of its educational mission. *Id*.

This case more nearly resembles the facts in *Fibreboard* where the employer discharged its maintenance employees and replaced them with an outside contractor without notice or bargaining. As Justice Stewart wrote in his concurrence,

> On the facts of this case, I join the Court's judgment, because all that is involved is the substitution of one group of workers for another to perform the same task in the same plant under the ultimate control of the same employer.

Fibreboard Paper Products Corp., 379 U.S. at 224. The same is true here. The employer is merely substituting the CSR workers for the police officers in performing the same task of patrolling the same residence halls, all employed by and under the control of the police department. This is textbook skimming and cannot be overlooked by labelling it a matter of "strong managerial interest."

Even if we were required to weigh the employer's asserted managerial prerogatives against the union's interest in preserving work opportunities for the employees it represents, we would find the union's interest outweighed that of the employer. When the Commission certifies a bargaining unit, the certification establishes the work jurisdiction. *University of Washington*, Decision 11414-A (PSRA, 2013). Bargaining unit work remains unchanged until a petition to modify the bargaining unit is decided or the parties bargain to a good faith agreement or impasse about the scope of bargaining unit work. *Id*. "[A]ny decision to transfer or 'skim' bargaining unit work from the bargaining unit that traditionally performed that work to a different bargaining unit or unrepresented employees is a mandatory subject of bargaining." *Id*. (citing *South Kitsap School District*, Decision 472 (PECB, 1978); *City of Snoqualmie*, Decision 9892-A (PECB, 2009); *University of Washington*, Decision 9410 (PSRA, 2006)).

As articulated in its post-hearing and appeal briefs, the union's interest is in maintaining its work jurisdiction. 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. When employer assigned residence hall patrols to the

CSRs, the employer eliminated three shift duty assignments thereby eroding the union's work jurisdiction.

The employer counters that this loss was *de minimis* and no employees lost their jobs. 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). The exact number of police officers in the bargaining unit is unclear. However, Commission records from 2011 reveal that, when certified, the bargaining unit included 30 police officers.[5] A reduction of three assignments from a small bargaining unit is not, as the employer argues, *de minimis*. Rather it could represent up to 10 percent of the bargaining unit positions.

We disagree with the Examiner's conclusion that the employer's decision "had only a limited impact on the police officers' terms and conditions of employment." Decision 13483 at 11. The parties had negotiated language in their collective bargaining agreement covering the residence hall assignments. The erosion of a union's work jurisdiction is not a "limited impact." Removing work from the bargaining unit without bargaining undermines the bargaining representative and diminishes the perceptions of unit members as to the value of collective bargaining.

The employer's articulated interest is in ensuring a safe learning and living environment on campus. Employer's do not have an obligation to bargain decisions about the basic educational policy. *Federal Way School District*, Decision 232-A (EDUC, 1977); *Wenatchee School District*, Decision 3240-A (PECB, 1990). Here, the employer was changing its public safety model, not its educational policy or basic mission. The question before us is not whether the employer had a duty to bargain the decision to change its public safety model. The question is whether the employer had a duty to bargain the decision to remove work from the bargaining unit.

The employer cites pressure from the campus community to change its approach to campus safety as a factor in its decision to assign CSRs to patrol the residence halls. According to the employer the pressure from the campus community created a sense of urgency. Other than the letter from

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[5] In case 24217-E-11, the union filed a petition to represent 30 police officers at the employer.

Cauce to the Black Student Union listing the Black Student Union's demands, the employer has offered a dearth of evidence about what conditions necessitated an immediate change on campus. When considering whether the parties are required to bargain, pressure from a constituent group that is not a party to the collective bargaining relationship does not outweigh the employees' interests in maintaining bargaining unit work and job opportunities.

It is contended that the expiration of the MOU between the police department and HFS added to the employer's sense of urgency. But both the HFS and police department are arms of the same public employer and hence under the supervision and control of the university president. Internal accounting systems put in place by the employer cannot override the purposes of the Act as described in *City of Yakima v. International Association of Fire Fighters, Local 469*, 117 Wn.2d 655, 670 (1991). The timing of events does not create an interest sufficient to tip the balance.

The employer's asserted interest is in providing "a broader and more inclusive constellation of security services to students living in its residence halls that was more responsive to their stated concerns and effective in meeting their needs." The employer likens this interest to the employer in *Tacoma-Pierce County Health Department*, Decision 6929-A (PECB, 2001),[6] changing a program and replacing some existing employees with new employees. In *Tacoma-Pierce County Health Department*, the employer decided to reorganize a program, which changed the body of work. In finding the employer did not skim bargaining unit work and did not have a duty to bargain the decision to change its operation, the Examiner found that the employer did not "transfer [] a particular body of work from bargaining unit employees to other employees." Rather, the employer changed the work to be done.

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[6] The decision in *Tacoma-Pierce County Health Department*, a case upon which the dissent relies, was rendered by an Examiner and was not appealed to the Commission. Because the Commission did not have the opportunity to review the case, it is less persuasive than the authorities cited by the Supreme Court in *City of Richland.* In response to our dissenting colleague's contentions in footnote 8, WAC 391-45-310(2) merely states the obvious: If neither party appeals the decision of an examiner, the parties are bound by it. The code section says nothing about the precedential value of an unappealed decision in unrelated litigation before the Commission.

In this case, the employer may have changed its approach to providing public safety services, but it has not changed the work to be done; i.e., patrolling the residence halls. The employer merely changed who was doing the patrolling.

The extent of the impact on the union or its members is an important factor. *Wapato School District*, Decision 12894-A (PECB, 2019). In this case, the employer removed the three bid assignments at the residence halls from the bargaining unit. By assigning the residence hall patrols to the CSRs, the employer eroded the union's work jurisdiction, reduced work assignments, and eliminated three positions with guaranteed days off, which could have benefited some employees. The employer's interest in answering the call of its community does not tip the scale away from the obligation to bargain.

The employer asserts that it has "a strong managerial interest in responding to its students' preference for unarmed responders over armed police in their dorms . . . ." That asserted interest cannot override the employer's obligation to bargain in good faith with the union with respect to mandatory subjects of bargaining. The manner in which the police officers are outfitted and the equipment they carry are topics that in our view are amenable to bargaining with the union and, should they reach impasse, to submission to binding interest arbitration. *City of Mountlake Terrace*, Decision 11702-A (PECB, 2014) ("Interest arbitration is applicable when an employer desires to make a mid-term contract change to a mandatory subject of bargaining.").

Our dissenting colleague notes that employers are not required to bargain matters that lie at the "core of entrepreneurial control," citing *City of Richland.*[7] Such management prerogatives, which

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[7] It should again be pointed out that the Supreme Court in the *City of Richland* case, reversed what it termed the Commission's "facile" conclusion that the union's equipment staffing proposal was nonmandatory because the Commission had earlier concluded in another case that equipment staffing was a permissive subject of bargaining. The Court directed the Commission to consider each case on its individual merits "*from the facts presented to the hearing examiner,*" in order to determine whether a matter is a mandatory or permissive subject of bargaining. *City of Richland*, 113 Wn.2d at 202–3. We do not think *City of Richland* can fairly be read for the proposition that an employer's transfer of work between bargaining units can be justified by reference, as the dissent writes, to "the employer's interest in 're-imaging' its public safety model in the residence halls."

the dissent contends ought to include the employer's unilateral decision to strip the dorm patrols from the union's bargaining unit, do not trigger the duty to bargain, it is maintained.

However, the employer is not seeking to shield the dorm patrol work entirely from the duty to bargain as a matter within its exclusive "core of entrepreneurial control," What it is seeking, and what the Examiner and our dissenting colleague would countenance, is to avoid the duty to bargain with the incumbent union (with whom it has negotiated about the work for years, *see* Union Ex. 1, §15.9), in favor of instead bargaining with the SEIU-represented bargaining unit (to whom the employer unilaterally transferred the dorm work). Patrolling of dorms is thus not really a matter of protected "management prerogative" but rather of simple management druthers that the work be done henceforth by the SEIU bargaining unit. But the employer cannot have it two ways: If the dorm work is a non-mandatory subject of bargaining for the union's bargaining unit, so must it also be for the SEIU bargaining unit. If the employer is willing to bargain about the dorm patrols with the SEIU, there is no legally cognizable basis for its refusal to bargain the matter with the incumbent union.

Our dissenting colleague notes the employer's concern about instances of police misconduct around the country. However, there is no indication on this record that the members of the union's police unit have behaved improperly. Concerns about the behavior of others in distant locations cannot legally justify the employer's skimming of bargaining unit work and its unilateral transfer to another bargaining unit.

The employer did not provide adequate notice and opportunity to bargain.

Because the decision to assign residence hall patrols is a mandatory subject of bargaining, the employer was required to notify the union and, upon request, bargain with the union in good faith to agreement or impasse. *Wapato School District*, Decision 12894-A. To determine whether the employer provided notice and an opportunity to bargain, we evaluate when the employer decided to assign bargaining unit work to non-bargaining unit employees, whether the employer provided notice, and whether the union requested bargaining.

On September 15, 2020, the employer stated it would provide notice in the future about the public safety responder program. On January 22, 2021, the employer notified the union that it would be

hiring CSRs. As Chief West explained, he did not initially envision the CSRs working in the residence halls. The decision to assign CSRs to the residence hall patrols came later, in March or April 2021. The employer's September 15, 2020, notice to the union did not include the decision to transfer the residence hall patrols outside of the bargaining unit.

Chief West testified that in March or April 2021, HFS decided it would not renew the MOU and no longer wanted police officers to patrol the residence halls. There is no evidence that this decision was communicated to the union. The employer thus did not meet its obligation to notify the union of its decision and provide it an opportunity to bargain with respect thereto.

The employer points to the expiration of the MOU between the police department and HFS as creating a time pressure that prevented bargaining. The MOU expired on June 30, 2021. When time is of the essence, parties are expected to act promptly. *Id*. Had the employer notified the union when it decided not to assign police officers to patrol the residence halls, the parties would have had ample time to bargain the decision before the MOU expired on June 30, 2021, and, if necessary, to submit the issue to binding interest arbitration.

While the employer is a large operation, it is not unreasonable the employer would have knowledge that the MOU would expire and be expected to factor its bargaining obligation into the timeline for negotiating renewals of interdepartmental MOUs. The expiration of the MOU does not excuse the employer from its bargaining obligation. The employer must maintain its operation with an eye toward its bargaining obligation.

This case presents a perfect scenario for the parties to bargain, and the parties had ample time between the employer's announcement of its decision on September 8, 2020, to reimagine campus safety, the decision to hire CSRs, and HFS's decision not to renew the MOU for the parties to bargain the transfer of bargaining unit work. How the police department patrolled the residence halls has changed over time from its blue blazer program in the 1970s to its armed officers in the wake of the Virginia Tech shooting. The union affirmatively stated its commitment to exploring the how policing was conducted on campus and cited its efforts at another jurisdiction. However, rather than abide by its statutory bargaining obligation, the employer decided, without notice to

the union or an opportunity to bargain, to assign bargaining unit work to non-bargaining unit employees.

There is no evidence that the employer notified the union that the employer would remove the residence hall patrols from the bargaining unit and assign them to the CSRs. A union cannot demand to bargain when the employer does not provide notice. Accordingly, the employer violated RCW 41.80.110(1)(e) when it failed to give the union notice before assigning bargaining unit work to non-bargaining unit employees.

CONCLUSION

Patrolling the employer's residence halls is bargaining unit work. The employees' interest in maintaining bargaining unit work outweighs the employer's interest in a speedy reimagining of public safety on the employer's campus. The employer had an obligation to notify the union before deciding to assign bargaining unit work to non-bargaining unit employees. The employer has not demonstrated that time was of the essence. The legislature has determined that the right of employees to bargain collectively is a policy important enough to impinge on public employer's abilities to act unilaterally when eliminating employees' work. The employer was required to notify the union that it wanted to remove armed police officers from the residence halls before determining that it would do so. Instead, the employer determined that it needed to respond to campus interests and ignored its bargaining obligation. The employer violated RCW 41.80.110(1)(e) when it assigned patrol of the employer's residence halls to non-bargaining unit employees without providing notice and an opportunity for bargaining.

ORDER

The findings of fact 1 through 19 and 21 issued by Examiner Michael Snyder are AFFIRMED and adopted as the Findings of Fact of the Commission. Finding of fact 20 is VACATED. We substitute and add the following findings of fact:

20. Patrol of the residence halls was bargaining unit work of the bargaining unit represented by Teamsters Local 117.

22. The employer's decision to transfer the work of patrolling its residence halls residence halls out of the bargaining unit is a mandatory subject of collective bargaining.

Conclusion of law 1 entered by Examiner Snyder is AFFIRMED and adopted as a Conclusion of Law of the Commission. Conclusion of law 2 is VACATED. We substitute the following Conclusion of Law.

2. By assigning bargaining unit work to non-bargaining unit employees without notice and without providing the union an opportunity to bargain, as described in findings of fact 7, 17, 18, and 20, the employer refused to bargain in violation of RCW 41.80.110(1)(e) and (a).

The University of Washington, 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 Teamsters Local 117 bargaining unit without providing Teamsters Local 117 with notice and an opportunity to bargain.

b. Refusing to bargain with Teamsters Local 117 regarding the transfer of bargaining unit work outside the bargaining unit.

c. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of chapter 41.80 RCW:

a. Restore the work of patrolling the employer's residence halls in its entirety and exclusively to the police bargaining unit represented by Teamsters Local 117.

b. Give notice to and, upon request, negotiate in good faith with Teamsters Local 117 before transferring patrol of the residence halls to non-bargaining unit employees.

c. Make any eligible bargaining unit employees whole, with interest, by paying them wages and benefits lost as a result of the skimming found in this unfair labor practice complaint. Such payments shall be computed in accordance with WAC 391-45-410.

d. Contact the 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.

e. Read the notice provided by the compliance officer into the record at a regular public meeting of the Board of Regents of the University of Washington, 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.

f. 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.

g. 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 29th day of July, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

KENNETH J. PEDERSEN, Commissioner

OPINION DISSENTING

An employer is not required to bargain matters that are "at the core of entrepreneurial control" or are management prerogatives. *City of Richland*, 113 Wn.2d at 203. The employer's decision to change its policing model in the residence halls was within the "core of entrepreneurial control." For this reason, I respectfully dissent from the majority opinion.

The employer's decision to create the CSR position and, eventually, assign CSRs to patrol residence halls at night in lieu of armed Campus Police Officers was made by the employer in the wake of the murder of George Floyd and in response to demands by the Black Student Union on campus. One of the demands was to "Disarm and Divest from UWPD." In a letter addressing those demands, UW President Ana Mari Cauce recognized the police violence that Black students and community members have witnessed and "the painful history of systemic racism that has been with us since the founding of our country . . . ." Employer Ex. 7. President Cauce "committed to re-imagining a more holistic approach to campus safety that minimizes armed police presence on our Seattle campus." *Id.* (italics omitted). Cauce said that her "goal is to limit UWPD response to those situations where there is the threat of, or realistic possibility of, imminent harm." She further stated, "We will also begin work on developing a team of responders, with at least some mental health training, to respond to calls for non-crime related safety . . . ." *Id.*

I would affirm the Examiner's conclusion that the assignment of patrolling residence halls to CSRs was bargaining unit work because it had been historically performed by Campus Police Officers (CPOs). I would also affirm, unlike the majority, that the transfer of work was not a mandatory subject of bargaining under the *City of Richland* balancing test, which 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." Decision 13483 at 9. *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197, 203 (1989). I would find, like the Examiner, that the bargaining unit's interests in maintaining the work assignments were outweighed by the employer's interest in "re-imagining" its public safety model in the residence halls.

The Examiner correctly pointed out that the transfer of work to CSRs had a limited impact on the working conditions of CPOs. Decision 13483 at 7. The employer neither removed CPOs from bid positions nor laid off CPOs. The union did not present evidence that the CPOs suffered *any* financial impact from the transfer, such as the loss of overtime. With respect to their job duties, the CPOs continued to respond to nearly all the calls for service on campus and dispatches to the dormitories. In short, CPOs retained their law enforcement responsibilities and activities and ceded only their patrol and outreach function in the residence halls to the CSRs, who were authorized only to "observe and report." *Id.* at 6.

The majority largely ignores the slight impact of the transfer of work on the working conditions of bargaining unit members and instead emphasizes the loss of three positions in the bargaining unit and its impact on the union's work jurisdiction. I agree with the Examiner that the union's work preservation interest does not on its own make the decision to transfer work a mandatory subject, because if that were enough, the *City of Richland* test would be rendered meaningless. Decision 13483 at 12.

Balanced against the relatively slight impact on the bargaining unit is the employer's strong interest in "re-imagining" its public safety model and limiting interactions between armed CPOs and students to matters for which police officers are uniquely qualified; i.e., when imminent harm

is threatened. The historical context of the employer's decision is important—a nationwide discussion about the limits of law enforcement in 2020 and the perceived risk of police violence by Black students and members of the university community. Under these circumstances, the employer's interest in replacing armed and commissioned CPOs with unarmed security personnel to enhance the living and learning environment of its students outweighed the interest of the union in retaining the residence hall patrol work.

The majority cites *Fibreboard Paper Products Corp. v. National Labor Relations Board*, 379 U.S. 203 (1964), to support its conclusion that the transfer of dormitory patrol work to CSRs was not a managerial prerogative at the core of its entrepreneurial control because the employer merely substituted CSRs for CPOs to perform the same task of patrolling residence halls. In *Fibreboard*, the employer replaced bargaining unit maintenance workers with subcontracted employees to perform the exact same work. In contrast, while CSRs do patrol the university's residence halls, they fulfill only a general security function. CPOs continue to perform all law enforcement functions: respond to calls involving possible criminal activity, such as trespassing, assault, and theft, as well as calls for medical aid; investigate criminal activity and suspects; and issue citations. In short, CSRs do not perform the same work as CPOs and the employer did not merely substitute one for another.

This matter is more akin to a case from the Commission's own jurisprudence, *Tacoma-Pierce County Health Department*, Decision 6929-A (PECB, 2001). For years, the employer ran a substance abuse/methadone program based on a therapeutic model intended to cure substance abuse through counseling and medication. The employer later decided to use a different, "harm-reduction" approach, providing clients with a methadone maintenance program to enable them to function in society. Essentially, the new approach stripped the program of its counseling function and retained and expanded the methadone medication function. The employer laid off the program's RNs and counselors and replaced them with LPNs and medical aides and assistants to staff the methadone program. The Examiner concluded, notwithstanding the dramatic impact on the bargaining unit, that the changes to the program's emphasis and the use of different job

classifications to implement it went to the heart of entrepreneurial control and did not require bargaining.[8]

Similarly, the employer here changed the security model it used in its residence halls. Without layoff, the university removed the criminal law enforcement function from residence hall patrol work and assigned the "observe and report" aspect of the work to a new classification. As the Examiner concluded in *Tacoma-Pierce County Health Department*, I would find that the changes to the employer's approach to residence hall security and the use of a new CSR job classification to implement it was at the core of the university's entrepreneurial control and was not a mandatory subject of bargaining.

For the reasons stated above, I would affirm the Examiner's decision that the employer did not violate RCW 41.80.110(1)(e).

MARK BUSTO, Commissioner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under RCW 34.05.542.

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8 The Majority seems to suggest at footnote 6 that *Tacoma-Pierce County Health Department* is not as persuasive authority as cases decided by the Commission. Not so. WAC 391-45-310(2) provides: "After the close of the hearing and the filing of all briefs, the examiner shall issue a decision containing findings of fact, conclusions of law, and an order. Unless appealed to the commission under WAC 391-45-350, a decision issued under this section shall be the final order of the agency, with the same force and effect *as if issued by the commission*." (emphasis added).

RECORD OF SERVICE

ISSUED ON 07/29/2022

DECISION 13483-A - PSRA 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 133414-U-21

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