STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE PARKING ENFORCEMENT OFFICERS' GUILD, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE 134758-U-22 DECISION 13595 - PECB FINDING OF FACTS, CONCLUSIONS OF LAW, AND ORDER

Cynthia McNabb, Attorney at Law, Cline & Associates, for the Seattle Parking Enforcement Officers' Guild.

Mark S. Filipini, *Jessica S. Kang*, and *Benjamin Moore*, Attorneys at Law, K&L Gates, LLP, for the City of Seattle.

On January 13, 2022, the Seattle Parking Enforcement Officers' Guild (union) filed an unfair labor practice complaint against the City of Seattle (employer) with the Public Employment Relations Commission (Commission). The complaint alleges that the employer violated its bargaining obligation by unilaterally changing employee access to vehicle information and scheduling procedures.

A preliminary ruling was issued on February 8, 2022, and an answer was filed on March 1, 2022. A hearing was conducted by videoconference on June 2 and 3, 2022. The parties filed briefs on August 12, 2022, to complete the record.

ISSUES

The issues, as framed by the preliminary ruling,[1] are:

> Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)] within six months of the date the complaint was filed by: (a) unilaterally changing Parking Enforcement Officer's safety conditions by no longer authorizing access to vehicle information, without providing the union an opportunity to bargain, and (b) unilaterally changing the New Year's Day scheduling process, without providing the union an opportunity for bargaining.

Based on the record, the employer did not unilaterally change Parking Enforcement Officer (PEO) access to vehicle information or the New Year's scheduling process. The employer's implementation of a change to the type of vehicle information PEOs receive did not constitute an unlawful unilateral change because it did not involve a mandatory subject of bargaining. The employer was not obligated to bargain over its decision to change PEO access to vehicle information, and the union failed to demand to bargain the impacts and effects of the change. The record does not establish the existence of an established past practice concerning New Year's scheduling or that the employer unilateral changed its scheduling procedures. The complaint is dismissed.

BACKGROUND

The employer operates a parking enforcement division that employs approximately 82 PEOs. PEOs patrol the city on foot, on scooters, and in vehicles enforcing parking regulations and violations on city property. PEOs also cite abandoned cars, support law enforcement in identifying stolen vehicles, and provide traffic control during special events or incidents. The union represents

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[1] The special commission allegation is outside the scope of the preliminary ruling. *See State – Corrections*, Decision 11571-A (PSRA, 2013).

all nonsupervisory PEOs. The last collective bargaining agreement (contract) between the union and employer expired on December 31, 2021.

Parking enforcement operations were part of the Seattle Police Department (SPD) for approximately the past 50 years. During that time, PEOs wore uniforms and drove vehicles that displayed the SPD logo. PEOs, however, are not uniformed personnel within the meaning of RCW 41.56.030(14) and are not eligible for interest arbitration. On September 1, 2021, the employer transferred the parking enforcement division from SPD to the Seattle Department of Transportation (SDOT). The consequence of moving parking enforcement from a law enforcement agency (SPD) to a non-law enforcement agency (SDOT) and its impact on PEO ability to access certain vehicle information forms the basis of the union's first unilateral change allegation.

PEO Access to Criminal Justice Information System (CJIS) Information

A Central Computerized Enforcement Service System (ACCESS) is a database that law enforcement agencies throughout the country use to store criminal justice information, such as warrants and arrest records. ACCESS allows information to be shared with any agency that has permission to utilize the database. Any information retrieved from the database is classified as CJIS information. SPD data center manager Pepper Bojang-Jackson testified that CJIS information contained in the ACCESS database is strictly regulated by Federal Bureau of Investigation (FBI) and Washington State Patrol (WSP) policies. These policies only allow employees of a criminal justice employer to access CJIS information, as well as certain employees of noncriminal justice agencies who perform a criminal justice function. For example, dispatchers who work for a noncriminal justice call center can access CJIS information because they are performing a criminal justice function. SPD is a criminal justice employer, and PEOs had access to CJIS information while employed there. The FBI and WSP do not consider PEO work (issuing nonmoving citations and impounding vehicles) to be a criminal justice function. It is undisputed that since PEOs do not perform a criminal justice function, they cannot access CJIS information after transferring from a criminal justice employer (SPD) to a noncriminal justice employer (SDOT).

Nature of PEO Work

PEOs carry handheld devices, which are used to access vehicle information and issue citations. Union President Chrisanne Sapp testified that when an illegally parked vehicle is found, a PEO first inputs the license plate number into the handheld device to check the plate against a "hot sheet." The hot sheet is a nationwide list of license plates with law enforcement information attached to them, such as the vehicle being reported as stolen or criminal information associated with the registered owner. The handheld device notifies the PEO whether the vehicle is on the hot sheet, but it does not provide any additional information. If the plate does not get a hot sheet hit, the PEO issues a citation. If the handheld device reports a hot sheet hit, the PEO radios dispatch and provides the plate number, make, and location of the vehicle.

PEO Access to CJIS Information at SPD

PEOs could access CJIS information associated with vehicles while employed by SPD. The record established that dispatch would inform PEOs if a vehicle was stolen, had an expired registration, if the registered owner lived nearby, or if the owner had a history of violence toward law enforcement. Dispatch would send officers if the vehicle was stolen. PEOs were directed not to cite stolen vehicles while employed at SPD. Sapp and Union Board Member Nathan Morrow testified that PEOs used the CJIS information provided by dispatch to determine if it was safe to cite a vehicle or if they should leave a potentially unsafe area.

Events Preceding the Transfer of Parking Enforcement to SDOT

In the summer of 2020, the employer began to reevaluate the role, scope, and budget of the SPD following police accountability and social justice protests. In July 2020, Mayor Jenny Durkin proposed moving the parking enforcement division to SDOT. On October 13, 2020, the mayor sent the city council a budget formally proposing the transfer of parking enforcement to SDOT.

Between December 2020 and March 2021, the council explored moving parking enforcement into the newly created Community Safety and Communications Center (CSCC), to which SPD dispatch employees later transitioned. Between April and May 2021, the political winds shifted and the mayor's plan to transfer parking enforcement to SDOT gained favor. On May 19, 2021, union

leadership attended an informational meeting with SDOT Director Sam Zimbabwe to discuss the move.

Facts

On June 11, 2021, the then union president, Nanette Toyoshima, sent Zimbabwe an email recounting two incidents and asked how SDOT intended to keep PEOs safe after the transfer. One incident involved a 911 call reporting a vehicle owner threatening to assault a PEO, but the threat was later determined to be directed toward a private parking lot attendant. The second incident involved an owner trying to run down a PEO who was on a scooter after the PEO issued a citation to the owner's unoccupied vehicle. On July 15, 2021, Sapp (newly elected) reiterated the union's purported safety concerns in an email to Zimbabwe. In response to these emails, the parties arranged to meet on August 27, 2021.

On August 17, 2021, the council voted to move parking enforcement from SPD to SDOT, and the mayor signed the legislation the same day. The council stated that the move would be effective September 1, 2021, but the legislation could not take effect until 30 days after the mayor's signature. As a result, PEOs moved to SDOT on September 1, 2021, but did not officially join the department until September 17, 2021.

On Friday, August 27, 2021, Union Attorney Cynthia McNabb, Sapp, and Morrow met with Zimbabwe and other SDOT officials. Sapp testified that Zimbabwe assured the union that everything would remain status quo following the transition and committed to putting that assurance in writing to McNabb. On Monday morning, August 31, 2021, McNabb sent an email to Labor Negotiator Ned Burke and Zimbabwe inquiring about the promised status quo statement. McNabb also asked for an assurance that PEOs would continue to have "access to police information for citations." Zimbabwe responded that evening, stating SDOT would "maintain the status quo to the greatest extent possible."

In the afternoon of August 31, 2021, PEO Manager Brett Rogers forwarded a directive from the CSCC to all PEOs. The directive stated:

> On September 1, 2021, the Parking Enforcement Officers (PEOS) will transition from a unit within the Seattle Police Department to the Seattle Department of Transportation.
>
> Due to ACCESS regulations, CSCC employees are prohibited from providing any information obtained from ACCESS to PEOs. Therefore, CSCC employees will not provide DOL, stolen vehicle, vehicle registration, or other information obtained from ACCESS. . . .
>
> If there is any sensitive information associated with a PEO location/incident, such as a stolen vehicle or wanted person, the dispatcher will "SPD" the PEO unit to alert them that there is related safety information and send police to their location. The dispatcher will not relay the CJIS information directly to the PEO unit.

Rogers' cover email stated:

> As always, your safety is my primary concern. Please pay extra attention to radio traffic and what the dispatchers are saying to you. . . . you're going to have to read between the lines and realize there is something amiss with the person or vehicle you are dealing with.
>
> We will try to find a work around or fix for this as quickly as possible, but in the meantime please stay alert and stay safe.

McNabb sent Burke and Zimbabwe an email after receiving a copy of the directive on August 31, 2021. McNabb requested an immediate response stating that "workarounds" and "reading between the lines" were not acceptable solutions. On September 1, 2021, Burke responded stating that SDOT was "working aggressively to ensure that PEOs are able to get the necessary access."

In October 2021, Labor Negotiator Jason Snyder replaced Burke. On October 18, 2021, McNabb sent Snyder an email demanding to bargain the impact of recent changes to PEO staffing events at the Climate Pledge Arena. Several weeks later, on November 15, 2021, McNabb emailed Snyder proposing several dates in December 2021 to start bargaining for a successor contract. The parties met for contract bargaining on December 22, 2021, and Snyder testified without contradiction that the union did not raise access to CJIS information as an issue or demand to bargain over the effects.

Between September 1, 2021, and January 7, 2022, SDOT Strategic Advisor Margo Polley conducted biweekly meetings of an SDOT parking enforcement transition committee. Sapp attend the September 13, 2021, transition meeting, and Morrow testified that he attended most of the committee meetings. Summary reports of these meetings show that access to CJIS information was repeatedly discussed and alternative avenues for regaining access to the information were explored.

On November 24, 2021, Polley scheduled a meeting in December 2021 to discuss safety concerns and access to CJIS information with the union and PROTEC 17, who represents CSCC dispatchers. Polley's email stated:

> We are trying to find time in the near future to discuss CJIS access and concerns related to safety, if the PEOs are no longer eligible to be "Level 1 certified". We have been working with experts on this in both SPD and the Law Department and want to share what we've found, and find a way to move forward, addressing any safety concerns.

Snyder testified that he and Sapp attended the December 8, 2021, meeting. Sapp admitted to being invited to the meeting but did not recall attending it. McNabb was not invited and did not attend the meeting. During the meeting SDOT informed the unions that dispatchers could no longer communicate CJIS information to PEOs, and there would be continued discussions about how that type of information would be communicated. Snyder testified without contradiction that the union did not demand to bargain the effects of losing CJIS information during this meeting.

On January 5, 2022, the CSCC reissued its directive stating PEOs could no longer receive CJIS information.

PEO Access to CJIS Information at SDOT

PEO procedures for issuing citations remained the same after the move to SDOT. PEOs continue to rely on their handheld devices to access the hot sheet and radio dispatch if they get a hit. If the vehicle is stolen or has other law enforcement information associated with it, dispatch tells the PEO that SPD has an interest in the vehicle or that SPD is responding to the vehicle. Bojang-Jackson testified that dispatchers can still tell PEOs that a vehicle is stolen if they ask.

Dispatch cannot give PEOs any additional CJIS information about the vehicle. It is undisputed that SDOT does not require or expect PEOs to issue a citation or remain in the area after dispatch informs them that SPD has an interest in or is responding to a vehicle.

New Year's Scheduling

The union alleges a unilateral change to how PEOs were scheduled for special events on New Year's 2022. Appendix E, Section II.C.1 of the parties' contract address scheduling for special events:

> Starting with the PEO with the lowest number of hours accumulated in the Excel Overtime System, who is eligible to work, has not requested to be excluded from voluntary overtime, and has not been granted a mandatory overtime exemption from working the day of the event shall be the first assigned to the event. The next PEO on the list, using the same criteria, is the next assigned and so on until all positions for the event are filled.

Sapp testified that SDOT used an "Excel spreadsheet program" to assign PEOs for New Year's special events instead of a purported past practice of first soliciting volunteers then utilizing reverse seniority to assign additional shifts. The union did not provide any further evidence or testimony in support of this allegation. Parking enforcement operations manager Joe Vinson testified that PEO supervisor Wayne McCann scheduled PEOs for special events before and after the transition. McCann followed the contractual scheduling procedure for New Year's 2022.

ANALYSIS

Applicable Legal Standards

Duty to Bargain

A public employer has a duty to bargain with the exclusive bargaining representative of its employees over mandatory subjects of bargaining. RCW 41.56.030(4). An employer that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice. RCW 41.56.140(4). The obligation to bargain in good faith encompasses a duty to engage in full and frank discussions on disputed issues and a duty to explore possible alternatives that may achieve a mutually satisfactory accommodation of the interests of both the employer and

the employees. *Benton County*, Decision 12920-A (PECB, 2019) (citing *University of Washington*, Decision 11414-A (PSRA, 2013)).

A party may violate its duty to bargain in good faith by one per se violation, such as a refusal to meet at reasonable times and places or refusing to make counterproposals. *King County*, Decision 12451-A (PECB, 2016) (citing *Snohomish County*, Decision 9834-B (PECB, 2008)). A party may also violate its duty to bargain in good faith through a series of questionable acts that when examined as a whole demonstrate a lack of good faith bargaining but none of which by itself would be a per se violation. *Id*. When analyzing conduct during negotiations, the Commission examines the totality of the circumstances to determine whether an unfair labor practice has occurred. *Kitsap County*, Decision 12163-A (PECB, 2015) (citing *Shelton School District*, Decision 579-B (EDUC, 1984)).

Unilateral Changes

The parties' collective bargaining obligations require that the status quo be maintained regarding all mandatory subjects of bargaining, except when any changes to mandatory subjects of bargaining are made in conformity with the statutory collective bargaining obligation or terms of a collective bargaining agreement. *King County*, Decision 12451-A (citing *City of Yakima*, Decision 3503-A (PECB, 1990), *aff'd*, *City of Yakima v. International Association of Fire Fighters, Local 469*, 117 Wn.2d 655 (1991); *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991)). As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*, Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010) (citing *Skagit County*, Decision 8746-A (PECB, 2006)).

To prove a unilateral change, the complainant must prove that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain. *Snohomish County*, Decision 12826-A (PECB, 2018) (citing *Kitsap County*, Decision 8292-B (PECB, 2007)). 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. *King County*, Decision 12451-A (citing *Whatcom County*, Decision 7288-A (PECB, 2002)); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990). For a unilateral change to be unlawful, the change must have a material and substantial impact on the terms and conditions of employment. *King County*, Decision 12451-A (citing *Kitsap County*, Decision 8893-A (PECB, 2007); *King County*, Decision 4893-A (PECB, 1995)).

The Commission focuses on the circumstances as a whole and on whether an opportunity for meaningful bargaining existed. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998). If the employer's action has already occurred when the employer notifies the union (a *fait accompli*), the notice would not be considered timely, and the union would be excused from the need to demand bargaining. *Id*. If the union is adequately notified of a contemplated change at a time when there is still an opportunity for bargaining that could influence the employer's planned course of action, and the employer's behavior does not seem inconsistent with a willingness to bargain, if requested, then a *fait accompli* will not be found. *Id*., (citing *Lake Washington Technical College*, Decision 4721-A (PECB, 1995)).

Whether a particular item is a mandatory subject of bargaining is a mixed question of law and fact for the Commission to decide. WAC 391-45-550. To decide, the Commission applies a balancing test on a case-by-case basis. The Commission balances "the relationship the subject bears to [the] 'wages, hours and working conditions'" of employees and "the extent to which the subject lies 'at the core of entrepreneurial control' or is a management prerogative." *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197, 203 (1989). The decision focuses on which characteristic predominates. *Id*. Recognizing that public sector employers are not "entrepreneurs" in the same sense as private sector employers, entrepreneurial control concerns the right of an employer to control the management and direction of government. *Central Washington University*, Decision 12305-A (PSRA, 2016) (citing *Unified School District No. 1 of Racine County v. Wisconsin Employment Relations Commission*, 81 Wis.2d 89, 95 (1977)).

For mandatory subjects of bargaining, the parties have a duty to bargain over the decision and the effects of that decision. *Port of Seattle*, Decision 11763-A (PORT, 2014) (citing *Central Washington University*, Decision 10413-A (PSRA, 2011); *Skagit County*, Decision 6348 (PECB, 1998)). For permissive subjects of bargaining, the parties only have a duty to bargain the mandatory impacts of the decision. *Port of Seattle*, Decision 11763-A; *Central Washington University*, Decision 10413-A; *Skagit County*, Decision 6348.

An employer is not required to delay implementation of a decision on a permissive subject of bargaining while impact or effects bargaining occurs. *Port of Seattle*, Decision 11763-A (citing *City of Bellevue*, Decision 3343-A (PECB, 1990); *Federal Way School District*, Decision 232-A (EDUC, 1977)). An employer cannot refuse to commence effects bargaining until after the permissive decision is implemented. *Spokane County Fire District 9*, Decision 3661-A.

Waiver

A party may waive its right to bargain in one of two ways: waiver by contract or waiver by inaction. Waiver is an affirmative defense and the burden of proving such waiver is on the party asserting it. *City of Walla Walla*, Decision 12348-A (PECB, 2015) (citing *Lakewood School District*, Decision 755-A (PECB, 1980)). A party waives its right to bargain the impacts that a change to a permissive subject has upon a mandatory subject unless a specific demand to bargain effects is made. *Skagit County*, Decision 8886-A (PECB, 2007). An employer asserting a waiver by inaction defense carries a heavy burden in that it must establish that the only reasonable inference is that the union has abandoned its right to negotiate. *City of Mountlake Terrace*, Decision 11702-A (PECB, 2014) (citing *Clover Park Technical College*, Decision 8534-A (PECB, 2004)). The Commission focuses on the circumstances as a whole and on whether an opportunity for meaningful bargaining existed. *Clover Park Technical College*, Decision 8534-A (citing *Seattle School District*, Decision 5733-B (PECB, 1998)).

Application of Standards

Analysis of CJIS Information—Unilateral Change Allegation

The record clearly establishes that PEOs have historically had access to CJIS information associated with vehicles they encounter in the course of their work and that this practice served as

the relevant status quo. Further, there is no dispute that the September 1, 2021, and January 5, 2022, directives restricting PEO access to CJIS information changed the relevant status quo.

The next step to analyzing a unilateral change violation is to determine if the alleged change involved a mandatory subject of bargaining. The Commission's *City of Richland* balancing test is utilized to make that determination by weighing "the relationship the subject bears to [the] 'wages, hours and working conditions'" of employees and "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. Here, I conclude that the decision to limit the type of CJIS information provided to PEOs following the transfer of their division to SDOT was not a mandatory subject of bargaining. The employer was not obligated to bargain its decision to limit PEO access to CJIS information.

Extent to Which the Action Relates to Employee Wages, Hours, or Working Conditions

The union asserts that access to CJIS information is a mandatory subject of bargaining because it directly impacts PEO safety while performing job duties. Union witnesses testified that while employed by SPD they would access CJIS information associated with a vehicle and use that information to determine if they should cite a particular vehicle or leave a potentially unsafe area. Following the transition to SDOT, dispatch now informs PEOs that SPD has an interest in a vehicle if there is CJIS information associated with that vehicle. PEOs Sapp and Morrow testified that they know "SPD interest" means the vehicle has associated CJIS information and is potentially dangerous. PEOs are not expected to remain in the area or cite a vehicle after receiving the "SPD interest" warning from dispatch. The record contains two specific examples of safety concerns the union raised with SDOT, but those incidents occurred before the transition, when PEOs still had access to CJIS information. The incidents in the record that occurred after the transition involved citizen aggression where PEOs did not attempt to obtain CJIS information. In total, the record establishes that the most important safety aspect of accessing CJIS information was to determine if the vehicle a PEO was approaching to ticket was potentially unsafe. After the transition, PEOs lost access to specific CJIS information but continued to receive sufficient information from dispatch to alert them if the car they were approaching to ticket is potentially unsafe.

The union cites *Pierce County*, Decision 13300 (PECB, 2021) in support of its argument that the loss of CJIS information was a mandatory subject of bargaining. In *Pierce County*, the Examiner found that the employer unilaterally changed the timing of when it offered firearms training to new corrections officers. The Examiner determined that delaying the date new officers received firearms training directly impacted their safety because it limited the employer's ability to mount an armed response to incidents within the jail. Here, changing to the type of information PEOs receive about vehicles did not directly impact their safety in the same manner as the timing of firearms training in *Pierce County*. Specifically, POEs still receive information that informs them to leave a potentially dangerous situation, whereas the corrections officers in *Pierce County* lost access to firearms during a time they could be required to engage in a dangerous situation.

Extent to Which the Action Is an Essential Management Prerogative

On the other hand, the employer articulated a compelling management interest in limiting access to CJIS information following the transition of parking enforcement to SDOT. In order to manage its operation in compliance with FBI and WSP policies, the employer restricted PEO access to CJIS information but did so in a manner that did not adversely impact PEOs' situational safety while performing their job duties.

Decision Bargaining Conclusion

I conclude that the employer's managerial interest in limiting access to restricted CJIS information predominates over the union's unsubstantiated safety concerns. The issue is a nonmandatory subject of bargaining. The employer was not obligated to bargain its decision to limit PEO access to CJIS information, but it was obligated to bargain any effects on mandatory subjects upon request.

Effects Bargaining

The record evidence establishes that the union waived its right to bargain the effects of the change. Immediately after receiving the directive limiting PEO access to CJIS information on August 31, 2021, the union protested the change and threated to file an unfair labor practice complaint, but it did not specifically demand to bargain the effects of the change. On September 13, 2021, union officials Sapp and Morrow met with SDOT officials to discuss

transition issues including access to CJIS information. On October 18, 2021, the union demanded to bargain the effects of changes to event staffing but did not demand effects bargaining over CJIS information access. On December 8, 2021, the employer arranged a meeting with union officials to "discuss CJIS access and concerns related to safety." The record reflects that Sapp attended this meeting but is silent on whether any demand to bargain effects was made. On December 22, 2021, McNabb attended a contract bargaining session and the undisputed testimony established that the union did not demand to bargain the effects of CJIS access at this meeting.

Effects Bargaining Conclusion

The evidence does not show that the union ever made a specific demand to bargain the effects of the change in access to CJIS information. "Unless a specific demand to bargain effects is made, a union will be deemed to have waived its right to bargain the effects that a change to a permissive subject of bargaining has upon a mandatory subject." *Skagit County*, Decision 8886-A (PECB, 2007). The employer was not obligated to wait until effects bargaining had occurred to implement its decision to change PEO access to CJIS information. *City of Bellevue*, Decision 3343-A. The parties could have bargained effects after September 1, 2021, and the record shows that the employer repeatedly provided opportunities to bargain the effects of its decision for months following implementation of the change. The union had ample opportunity to raise effects bargaining with SDOT officials but failed to do so. The union waived its right to effects bargaining by its inaction.

Analysis of New Year's Scheduling—Unilateral Change Allegation

The record does not support the existence of an established past practice concerning New Year's scheduling. The parties' contract contains a procedure for scheduling special events including the New Year's fireworks display. That process includes utilizing an Excel spreadsheet of PEO overtime hours to determine who is assigned the shifts. In contradiction to the contractual scheduling procedure, Sapp testified that the parties had an established past practice of soliciting volunteers first and then assigning additional shifts based on reverse seniority. The union provided no additional testimony or evidence to support Sapp's assertion of a past practice, nor did the union identify any PEOs who were affected by the alleged change. Further, Sapp's testimony supports the employer's contention that it followed the contractual provisions by utilizing the Excel

spreadsheet to assign the shifts. No violation exists where there is no change to an established past practice. *Kitsap County*, Decision 8893-A (citing *King County*, Decision 4893-A). Because the record contains insufficient evidence of any change to an established past practice, I find that the employer did not unilaterally change its New Year's scheduling procedure.

CONCLUSION

The employer's decision to limit PEO access to CJIS information was not a mandatory subject of bargaining. The employer's managerial interest in restricting access to CJIS information while continuing to provide necessary vehicle information, outweighs the union's unsubstantiated safety concerns. The employer did not have an obligation to bargain its decision but may have had an obligation to bargain the effects of that decision. However, the union waived its right to effects bargaining by its inaction. The evidence was also insufficient to establish the existence of a past practice different than the contractual procedure for New Year's scheduling. Since there was no change to the status quo for New Year's scheduling, the employer did not unilaterally change employees' terms and conditions of employment.

FINDINGS OF FACT

1. The City of Seattle (employer) is a public employer within the meaning of RCW 41.56.030(13).

2. The Seattle Parking Enforcement Officers' Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union represents a bargaining unit of nonsupervisory Parking Enforcement Officers (PEOs). The employer and the union were parties to a collective bargaining agreement (contract) effective January 1, 2019, through December 31, 2021.

4. Parking enforcement operations were part of the Seattle Police Department (SPD) for approximately the past 50 years. PEOs are not uniformed personnel within the meaning of RCW 41.56.030(14) and are not eligible for interest arbitration.

5. A Central Computerized Enforcement Service System (ACCESS) is a database that law enforcement agencies throughout the country use to store criminal justice information, such as warrants and arrest records. ACCESS allows information to be shared with any agency that has permission to utilize the database. Any information retrieved from the database is classified as Criminal Justice Information System (CJIS) information.

6. CJIS information contained in the ACCESS database is strictly regulated by Federal Bureau of Investigation (FBI) and Washington State Patrol (WSP) policies, which only allow employees of a criminal justice employer to access CJIS information. SPD is a criminal justice employer. The Seattle Department of Transportation (SDOT) is not a criminal justice employer. PEOs had access to CJIS information while employed by SPD but lost access to CJIS information after transitioning to SDOT.

7. PEOs carry handheld devices, which are used to access vehicle information and issue citations. The handheld device checks a license plate number against a nationwide list of license plates with associated law enforcement information called a "hot sheet." The handheld device notifies the PEO whether the vehicle is on the hot sheet, but it does not provide any additional information. If the plate does not get a hot sheet hit, the PEO issues a citation. If the handheld device reports a hot sheet hit, the PEO radios dispatch and provides the plate number, make, and location of the vehicle. PEOs were directed not to cite stolen vehicles while employed by SPD.

8. In July 2020, Mayor Jenny Durkin proposed moving the parking enforcement division to SDOT. Between December 2020 and March 2021, the council explored moving parking enforcement into the newly created Community Safety and Communications Center (CSCC). On August 17, 2021, the council voted to transfer parking enforcement to SDOT. PEOs officially join SDOT on September 17, 2021.

9. On June 11, 2021, and July 15, 2021, the union sent emails to SDOT Director Sam Zimbabwe raising concerns about PEO safety.

10. On August 27, 2021, the union met with Zimbabwe to discuss the transition. On August 31, 2021, Zimbabwe sent Union attorney Cynthia McNabb an email stating SDOT would "maintain the status quo to the greatest extent possible" following the transition.

11. On August 31, 2021, PEO Manager Brett Rogers forwarded a directive from the CSCC to all PEOs. The directive stated:

> On September 1, 2021, the Parking Enforcement Officers (PEO'S) will transition from a unit within the Seattle Police Department to the Seattle Department of Transportation.
>
> Due to ACCESS regulations, CSCC employees are prohibited from providing any information obtained from ACCESS to PEO's. Therefore, CSCC employees will not provide DOL, stolen vehicle, vehicle registration, or other information obtained from ACCESS. . . .
>
> If there is any sensitive information associated with a PEO location/incident, such as a stolen vehicle or wanted person, the dispatcher will "SPD" the PEO unit to alert them that there is related safety information and send police to their location. The dispatcher will not relay the CJIS information directly to the PEO unit.

12. Rogers' cover email stated:

> As always, your safety is my primary concern. Please pay extra attention to radio traffic and what the dispatchers are saying to you. . . . you're going to have to read between the lines and realize there is something amiss with the person or vehicle you are dealing with.
>
> We will try to find a work around or fix for this as quickly as possible, but in the meantime please stay alert and stay safe.

13. On August 31, 2021, McNabb sent Labor Negotiator Ned Burke and Zimbabwe an email stating that "workarounds" and "reading between the lines" were not acceptable solutions. On September 1, 2021, Burke responded stating that SDOT was "working aggressively to ensure that PEOs are able to get the necessary access."

14. In October 2021, Labor Negotiator Jason Snyder replaced Burke. On October 18, 2021, McNabb sent Snyder an email demanding to bargain the impact of recent changes to PEO staffing events at the Climate Pledge Arena.

15. On December 22, 2021, the parties engaged in bargaining for a successor contract. The union did not raise access to CJIS information as an issue or demand to bargain over the effects during the bargaining session.

16. Between September 1, 2021, and January 7, 2022, SDOT Strategic Advisor Margo Polley conducted biweekly meetings of an SDOT parking enforcement transition committee. Summary reports of these meetings show that access to CJIS information was repeatedly discussed and alternative avenues for regaining access to the information were explored.

17. On November 24, 2021, Polley scheduled a meeting in December 2021 to discuss safety concerns and access to CJIS information with the union. Polley's email stated:

> We are trying to find time in the near future to discuss CJIS access and concerns related to safety, if the PEOs are no longer eligible to be "Level 1 certified". We have been working with experts on this in both SPD and the Law Department and want to share what we've found, and find a way to move forward, addressing any safety concerns.

18. Snyder and Sapp attended the December 8, 2021, meeting during which SDOT informed the union that dispatchers could no longer communicate CJIS information to PEOs and that there would be continued discussions about how that type of information would be communicated. The union did not demand to bargain the effects of losing CJIS information during this meeting.

19. On January 5, 2022, the CSCC reissued its directive stating PEOs could no longer receive CJIS information.

20. PEO procedures for issuing citations remained the same after the move to SDOT. PEOs continue to rely on their handheld devices to access the hot sheet and radio dispatch if they get a hit. If the vehicle is stolen or has other law enforcement information associated with it, dispatch tells the PEO that SPD has an interest in the vehicle or that SPD is responding to the vehicle. Dispatch cannot give PEOs any additional CJIS information about the vehicle. SDOT does not require or expect PEOs to issue a citation or remain in the area after dispatch informs them that SPD has an interest in or is responding to a vehicle.

21. Appendix E, Section II.C.1 of the parties' contract address scheduling for special events:

> Starting with the PEO with the lowest number of hours accumulated in the Excel Overtime System, who is eligible to work, has not requested to be excluded from voluntary overtime, and has not been granted a mandatory overtime exemption from working the day of the event shall be the first assigned to the event. The next PEO on the list, using the same criteria, is the next assigned and so on until all positions for the event are filled.

22. Sapp testified that SDOT used an "Excel spreadsheet program" to assign PEOs for New Year's special events instead of a purported past practice of first soliciting volunteers then utilizing reverse seniority to assign additional shifts. The union did not provide any further evidence or testimony in support of this allegation.

23. Parking enforcement supervisor Wayne McCann scheduled PEOs for the New Year's 2022 special events following the contractual scheduling procedure.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-25 WAC.

2. As described in findings of fact 4 through 20, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally changing PEO safety conditions by no longer authorizing access to vehicle CJIS information without providing the union an opportunity for bargaining.

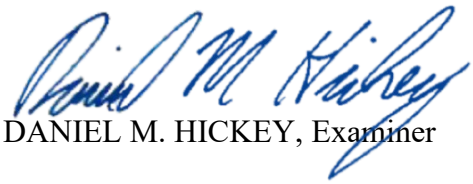
3. As described in findings of fact 21 through 23, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by unilaterally changing how it scheduled PEOs for New Year's without providing the union an opportunity for bargaining.

ORDER

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

ISSUED at Olympia, Washington, this 14th day of November, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DANIEL M. HICKEY, 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 11/14/2022

DECISION 13595 - 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 134758-U-22

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