

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY POLICE OFFICERS GUILD  
and PUGET SOUND POLICE MANAGERS  
ASSOCIATION,

Complainants,

vs.

KING COUNTY,

Respondent.

CASE 136189-U-23c

DECISION 13825 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

*Laura Alspach and Derrick Isackson, Attorneys at Law, Vick, Julius, McClure, P.S., for the King County Police Officers Guild.*

*Stanley Seo, Association President, for the Puget Sound Police Managers Association.*

*Monica Romero, Jessica Kang, and Mark Filipini, Attorneys at Law, K&L Gates LLP, for King County.*

On August 10, 2021, King County (employer or the County) announced that it would implement a mandate that would require all county executive branch employees to receive a vaccination for COVID-19. Failure to comply with the mandate would result in separation from county employment, subject to an exception and accommodation process. In these consolidated cases, the Puget Sound Police Managers Association (PSPMA or association) and the King County Police Officers Guild (KCPOG or guild) (collectively unions) each allege that the County did not bargain with them before implementing the mandate, and so the County committed an unlawful unilateral change. The unions further allege that the County breached its good faith bargaining obligations during negotiations with them concerning the COVID-19 vaccine requirements.

The County decided to mandate COVID-19 vaccinations in order to protect the health and safety of its employees and the community and ensure continuity of essential government services. The

spread of the Delta variant of COVID-19 presented an unpredictable and urgent situation. The government's interests in being able to decide how best to protect employee and community health and safety during this situation—and being able to rapidly implement that decision—outweighed the unions' interests in bargaining over the issue. The decision to implement the COVID-19 vaccine mandate under the specific circumstances of this case was not a mandatory subject of bargaining, and the County did not commit an unlawful unilateral change.

The County met with the unions several times to bargain over the effects of its decision. Although the County lawfully refused to negotiate over the vaccine mandate decision, the parties discussed and exchanged proposals and modified their positions relating to the effects. The unions did not prove that the County breached its good faith bargaining obligation during this process.<sup>1</sup>

## ISSUES

The issues in these two consolidated cases are identical. As stated in the preliminary rulings of January 19, 2022 (guild case) and February 22, 2022 (association case), the issue in each case is whether King County violated the Public Employees Collective Bargaining Act in the following manner:

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:

1. Unilaterally changing terms and conditions of employment by requiring employees to be fully vaccinated against COVID-19 or face termination.
2. Breaching its good faith bargaining obligation during negotiations with the union concerning COVID-19 vaccine requirements.

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<sup>1</sup> Today I am also issuing *City of Bellingham*, Decision 13826 (PECB, 2024), which deals with the City of Bellingham's COVID-19 vaccine mandate as applied to uniformed personnel of the Bellingham Police Department. Because both cases concerned whether a COVID-19 vaccine mandate was a mandatory subject of bargaining, I believed it was appropriate to issue the decisions together. However, each case was decided based on its own record.

## BACKGROUND

The association represents Captains, Lieutenants,<sup>2</sup> and Majors of the King County Sheriff's Office. The collective bargaining agreement (CBA) for the Majors unit was in effect August 26, 2021, through December 31, 2022. The collective bargaining agreement for the Captains and Lieutenants bargaining unit was in effect January 1, 2021, through December 31, 2023.

The guild represents Deputies (including Detectives) and Sergeants at the King County Sheriff's Office. The County and the guild had a collective bargaining agreement in effect from January 1, 2017, through December 31, 2021

Duties of Majors include managing and directing the activities of police precincts or contract entities;<sup>3</sup> serving as the direct representatives of the Sheriff's Office to the community; coordinating department-wide programs such as DARE; submitting reports; attending meetings; managing and directing responses to emergency situations such as disasters or riots; developing and implementing programs and policies; supervising staff; directing employee investigations; making arrests; carrying out court mandates; ensuring safety; using force; and managing the department's response to major law enforcement incidents.

Duties of Captains include supervising and supporting personnel; meeting with personnel to solve problems; conducting personnel counseling; reviewing and acting on personnel/disciplinary recommendations; investigating allegations of personnel misconduct and complaints; evaluating the effectiveness of programs; administering orders and policies; managing and conducting complex investigations; evaluating evidence and reports about witnesses, suspects, and complaints; conducting studies; preparing reports; maintaining relationships with employees, citizens, business, and public leaders; making presentations to civic groups, news media, and

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<sup>2</sup> Although the association purports to represent Lieutenants, there are apparently no Lieutenants employed at the King County Sheriff's Office.

<sup>3</sup> The King County Sheriff's Office contracts to provide dedicated police services to some cities within King County. For example, Major Theodore Boe was contracted to be the Chief of Police for the City of Burien.

others; developing long range plans and budgets; responding as a field supervisor to major emergency problems; managing the department's response to and handling of major law enforcement incidents; and performing the work functions of a peace officer.

Duties of Sergeants include supervising staff; coordinating daily work activities; assigning overtime; reallocating resources; ensuring personnel compliance with policies; monitoring work quality; evaluating performance; conducting counseling; recommending and issuing personnel actions; investigating grievances, misconduct, and complaints; coaching and motivating personnel; facilitating and mediating conflicts; resolving law enforcement issues; reviewing reports; responding to crime scenes, calls, and critical incidents; supervising deputies in the protection of scenes; preservation of life and property; directing detection, collection, and preservation of evidence; responding to and investigating officer-involved accidents, shootings, and use of force; directing use of force; providing instruction; conducting roll call and briefings; screening and coordinating requests for assistance from other agencies; completing reports; performing research; participating in community outreach; meeting with citizens to take complaints; making presentations to community and business groups; and participating in community policing activities.

Duties of Deputies include patrolling the county in a vehicle or on foot; investigating crime scenes; assisting people in trouble; rendering public safety services; responding to reports of possible crimes; securing scenes; interviewing victims and witnesses; gathering evidence; completing reports; investigating suspects; making arrests; testifying in courts; carrying out court mandates; otherwise ensuring safety of self or others including the use of force; investigating family disputes; reports of maltreatment of children and complaints about mentally ill persons; taking people into custody; responding to disasters and civil disturbances; enforcing laws and ordinances; issuing citations; serving warrants; handcuffing; searching arrested persons; securing property; transporting prisoners to jail; responding to accident scenes; administering emergency first aid; and participating in community policing activities.

*The COVID-19 Pandemic Hits King County*

In early 2020, a novel coronavirus known as SARS-CoV-2 reached Washington state. SARS-CoV-2 is extremely communicable and causes COVID-19, a respiratory disease for which humanity had no established immunity and which can lead to serious illness and death. One of the first documented outbreaks in the United States occurred in King County, “a horrific outbreak in the skilled nursing facility in Kirkland that nearly wiped out the entire population of older adults,” according to the County’s expert witness, Dr. John Lynch of Harborview Medical Center and the University of Washington School of Medicine.

In February and March 2020, the President of the United States, the Governor of Washington, and King County Executive Dow Constantine declared states of emergency in their jurisdictions because of the emerging COVID-19 pandemic. The County, along with other governments and organizations, adopted a variety of measures to control the spread of COVID-19, including quarantining, isolation, testing, masking, handwashing, sanitation practices, social distancing, limiting capacity of indoor spaces, air filtration, and using plexiglass partitions. The scientific community believed these measures were effective. As the guild’s expert witness, Dr. Eileen Natuzzi of Georgetown University Walsh School of Foreign Service – Center for Australian, New Zealand and Pacific Studies and San Diego County Public Health Services said, “we really didn’t have anything else at the time.” At King County, some police work, such as taking reports or detective work, could be done remotely, but much of the work still had to be done in person.

2020 was a difficult year in Washington, as the spread of COVID-19 waxed and waned with the changing of the seasons, changing restrictions on everyday life, and the changing of the virus itself. Throughout 2020 and 2021, life in western Washington changed dramatically in response to the COVID-19 pandemic. Schools and businesses were closed, and people were ordered to stay home, wear masks, and engage in social distancing.

*COVID-19 Vaccines Become Available*

In December 2020, the United States Food and Drug Administration (FDA) issued emergency use authorizations (EUAs) for COVID-19 vaccines developed by Pfizer/BioNTech and Moderna. The Pfizer/BioNTech and Moderna vaccines use messenger RNA (mRNA) technology. This was the

first time mRNA technology was used for a vaccine for infectious diseases in humans. In February 2021, the FDA issued an EUA for a COVID-19 vaccine developed by Janssen (Johnson & Johnson). The Janssen (Johnson & Johnson) vaccine was an adenovirus-based vaccine. The FDA approved the vaccines after studies showed that they reduced transmission of COVID-19 and were effective at preventing symptomatic disease and death. Research studies indicated that the vaccines provided better immunity and protection than either being previously infected (assuming one survived the infection) or having no prior infection. Research also indicated that the vaccines provided better protection than testing, masking, and other strategies that were employed prior to the availability of the vaccines. The vaccines helped people continue to perform their jobs instead of being out sick with COVID-19. There was only one group of people who were recommended to not get the vaccine—people who had a history of severe anaphylaxis in response to ingredients in the vaccine such as polyethylene glycol. As with other vaccines, the Pfizer/BioNTech, Moderna, and Janssen vaccines were not zero risk, but severe side effects were believed to be very rare. An April 2021 article in the *Journal of the American Medical Association* introduced as evidence by the guild reported that anaphylaxis in response to the mRNA vaccines was expected to occur in 2.5 to 11.1 cases per million doses and stated, “the overall risk of anaphylaxis to an mRNA COVID-19 vaccine remains extremely low and largely comparable to other common health care exposures.” After getting a vaccine dose, people were advised to wait at the vaccination site for 15 minutes in case there was an immediate adverse reaction, such as an anaphylactic reaction.

Vaccine availability was phased in for different groups of the population based on risk of exposure to COVID-19 (e.g., healthcare workers) and risk of severe disease and death (e.g., the elderly). According to the Washington State Department of Health’s “COVID-19 Vaccine Prioritization Guidance and Allocation Framework,” Law Enforcement Officers were part of phase 1B2 and were eligible to receive vaccines beginning March 17, 2021. On March 15, 2021, Whitney Abrams, the County’s Chief People Officer, sent an email to all county employees informing them of this eligibility.

In the spring of 2021, the general population began to get vaccinated, and COVID-19 infections and hospitalizations were down. Brenda Bauer, who was the County’s Deputy Chief Operating

Officer and COVID Incident Commander at the time, recalled, “as soon as vaccines became available just before summer things started to really calm... everybody was thrilled that we finally had a tool that was letting us impact the rate of infection, hospitalization, and death. So things were looking up quite a bit that summer until we got to August.”

### *The Delta Variant Emerges*

Since its emergence in humans in late 2019, the COVID-19 virus has mutated and evolved into many variants. Some were “variants of concern” because they were more transmissible or because they caused more disease and death than other variants. The Delta variant first began to emerge in the United States around late spring of 2021 and was a variant of concern because it was both much more transmissible and more pathogenic (caused more disease). The Delta variant caused higher rates of hospitalization and death than prior variants. Research available at the time indicated that the Pfizer/BioNTech, Moderna, and Janssen vaccines were less effective in preventing infection by the Delta variant, and “breakthrough” infections increasingly occurred, but the vaccines still provided a reduction in infection and transmission, especially soon after being vaccinated.<sup>4</sup> The vaccines were still providing very high levels of protection against severe disease

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<sup>4</sup> The guild introduced a “CDC Morbidity and Mortality Weekly Report” (MMWR) from May 28, 2021, about two and a half months before the County’s vaccine mandate was announced, which reported that “vaccine breakthrough infections occur only in a small fraction of all vaccinated persons and account for a small percentage of all COVID-19 cases.” The study reported that out of about 101 million people who were fully vaccinated, 10,262 breakthrough infections had been reported. The study said, “The number of COVID-19 cases, hospitalization and deaths that will be prevented among vaccinated persons will far exceed the number of vaccine breakthrough cases.”

The guild introduced an MMWR from July 30, 2021, about two weeks before the County’s vaccine mandate was announced, which found that “COVID-19 vaccination remains the most effective means to achieve control of the pandemic.” The study said that “unvaccinated persons, as well as persons with certain immunocompromising conditions... remain at substantial risk for infection, severe illness, and death, especially in areas where the level of SARS-CoV-2 community transmission is high.” The study said, “a small proportion of persons who are fully vaccinated may become infected,” and recommended continued masking for vaccinated as well as unvaccinated people, especially in areas of high transmission.

The guild introduced an MMWR from August 6, 2021, four days before the County’s vaccine mandate was announced, which studied a COVID-19 outbreak in Barnstable County, Massachusetts. The study found that during this July 2021 outbreak, there was a very high rate of breakthrough infections, and 74 percent of cases associated with summer events in Barnstable occurred in fully vaccinated people. The study did not say how

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many of the attendees were fully vaccinated and cautioned, “As population-level vaccination coverage increases, vaccinated persons are likely to represent a larger proportion of COVID-19 cases.” This study did not state that the vaccines were ineffective in preventing transmission of COVID-19 but recommended that strategies such as masking continue in areas of high transmission.

The guild introduced an article from *Science* magazine from August 16, 2021, published a week after the County’s vaccine mandate was announced, and a *Nature Communications* article from November 4, 2021, published almost three months after the County’s vaccine mandate was announced. These articles described breakthrough infections occurring in Israel. The *Science* article explained that 78 percent of those 12 and older were fully vaccinated, and “more than half” of new infections were in fully vaccinated people. Most of the vaccinations in Israel were with the Pfizer vaccine. The *Science* article continued, “The sheer number of vaccinated Israelis means some breakthrough infections were inevitable, and the unvaccinated are still far more likely to end up in the hospital or die,” and “protection from COVID-19 infection during June and July dropped in proportion to the length of time since an individual was vaccinated.” Similarly, the *Nature Communications* article found that the protection from COVID-19 infection provided by the vaccines was very effective soon after vaccination but waned over time. Neither article said that the vaccines provided no protection from infection in comparison to being unvaccinated.

The guild introduced an article from *The Lancet* from October 28, 2021, over two months after the vaccine mandate was issued, that studied COVID-19 infections in the United Kingdom. Some of the subjects of this study had received vaccines that were not approved by the FDA nor covered by the County’s vaccine mandate (the Oxford-AstraZeneca and Sinovac vaccines). This study found “vaccine effectiveness against infection is reduced for delta, compared with alpha,” and concluded that “vaccination reduces the risk of delta variant infection and accelerates viral clearance. Nonetheless, fully vaccinated individuals with breakthrough infections have peak viral load similar to unvaccinated cases and can efficiently transmit infection in household settings. . .” The study stated that its findings were “consistent with the known protective effect of COVID-19 vaccination against infection.”

The guild introduced an article from *Cell* from February 3, 2022, almost six months after the vaccine mandate was announced, that also studied the Barnstable County outbreak. This study noted that there was a significant number of breakthrough infections and found that “transmission to and from vaccinated individuals is common in some settings.” The study did not say that vaccines were ineffective or made no difference in rates of infection versus being unvaccinated. The study said, “[D]ue to the small number of unvaccinated cases in our dataset, we were unable to meaningfully compare rates of secondary transmission by vaccination status; we were also not able to meaningfully compare rates of secondary transmission by time since vaccination.”

Dr. Natuzzi interpreted these studies as indicating that “vaccines were not blocking transmission” and stated, “the data does not support that vaccines stop transmission, period.” She asserted, “If the goal of your mandate is to stop the spread of the virus, then this data that’s coming out suggests that your mandate is not going to be effective.” However, she did agree that the vaccines were effective at preventing serious illness, hospitalization, and death. She also agreed that the vaccines were effective at preventing transmission of COVID-19 soon after vaccination, although this effect waned over time.

Dr. Lynch agreed with Dr. Natuzzi that “how long that level of protection lasts around infection, does diminish” but asserted that the vaccines were effective in reducing transmission. He said, “[I]f you look at all of the Public Health Seattle-King County dashboards... at almost no point is there a point where the infection rate is equivalent between unvaccinated and vaccinated individuals. Unvaccinated individuals were



and death. Dr. Lynch explained that during the Delta variant period, “infection rates, hospitalization rates, and death rates, those are driven almost entirely by unvaccinated populations.... When we looked at hospitalizations in acute care, ICU, and the worse outcome of death, those were almost entirely people who had no exposure, no immunity, i.e., unvaccinated.”

In August 2021, the Delta variant reached western Washington, and COVID-19 infections surged in King County. Hospitalizations, intensive care unit (ICU) admissions, and deaths all markedly increased. The infection and hospitalization rates were much higher for unvaccinated people compared to those who were fully vaccinated. At the time, much of the population had still never been infected with COVID-19 and had no immunity at all, and thus vaccinations were likely to offer substantial protection from severe illness and death.

#### *King County Issues a Vaccine Mandate*

By August 2021, some but not all of the employees of the County were vaccinated. According to the County’s insurance information, as of late July, only 58.5 percent of Deputy Sheriffs were fully vaccinated. Some of the officers were hesitant to get vaccinated. Detective Michael Mansanarez, the guild president, explained the thinking of these officers: “I don’t know if it’s best for me. I don’t know which one. I heard some problems with Johnson and Johnson. You have Pfizer. You have Moderna. So people were just doing their own research because time had elapsed, and they were concerned.” Mansanarez also explained that during this time, officers who believed they were positive for COVID-19 sometimes would not get a test or report it because they didn’t want to be one of “Jay’s numbers.”<sup>5</sup>

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at higher risk for infection throughout the pandemic compared to vaccinated people and at... dramatic increased risk of hospitalization and death up to this day.” He cited an article in the *Commonwealth Fund* about a Yale School of Public Health study that estimated that between December 2020 and November 2022, vaccines prevented nearly 120 million COVID-19 infections in the United States, as well as more than 18 million hospitalizations and more than 3 million deaths.

<sup>5</sup> Presumably, this is a reference to Governor Jay Inslee.

As the Delta variant continued to spread, with no end in sight, King County officials began to believe that a county vaccine mandate might be in order. Erstwhile, Deputy Chief Operating Officer Bauer explained,

[W]e concluded that a vaccine mandate was necessary for the safety of our employees and the people we serve.

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We were all talking about the best way to execute really essential public functions that we performed and continued to do that with the incredible risk that Delta was presenting. And we were hearing from . . . I believe it was OSHA suggested that employers mandate vaccines, public and private. We had conversations with some private agencies as well, and it was pretty much concluded that a mandate was the safest course of action.

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We were deeply concerned. We had gotten through that first year. We were hopeful that a voluntary vaccination . . . would move us towards a place where we could more safely deliver public services and keep coworkers safe.

But we were, once again, starting to see really high infection rates. We were having employees come in and infect entire crews. I told department heads they needed to assess who their subject matter experts were and how they were going to continue to operate things like wastewater facilities if key employees were out ill or died. So . . . there was considerable concern.

We were running short on crews for essential services like corrections officers to keep our jails functioning safely. We weren't able to fill sheriff's shifts and... there were times where a deputy couldn't get a backup because of staffing shortages. . . . We were having difficulty delivering basic community services and some really essential services.

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We just had such a high sick leave rate as a result of . . . COVID . . . the additional impacts of COVID beyond our ordinary sick leave rate that people were calling in right and left. And if you imagine something like a sheriff's department or the corrections facilities that operate 24/7 . . . you can't leave anything unfilled, and we had people [who] were working hundreds of hours of overtime to try to step in for those who were out ill.

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[W]e were very concerned about essential services, public safety services in particular . . . We were very concerned that we were on the edge of functionality in . . . delivery of many of our services. . . . We were doing all sorts of things to try to cope and then with an infection rate that was nearly 50 percent higher [from the Delta variant]. So it was so much more easy to make your coworker sick, take out a whole crew, make a number of the public sick, all of those things went into the consideration, I know.

According to Bauer, the County's leadership looked at alternatives such as masking, testing, hygiene, and checking temperatures and concluded, "they just were secondary measures that weren't as effective. The single most effective way to address COVID is vaccines." Bauer also explained, "[W]e were trying to prevent serious illness and death among both our employees and the members of the public who use our services." The County's leadership was "absolutely considering hospitalizations and death." Bauer explained, "We had a number of county employees die. We had medical expenses . . . [and] significant impacts on the medical community. . . . The chief examiner's office was working on figuring out the deaths of people and . . . bodies were piling up. . . . we had a role in preventing bad things happening in our community."

The County's leadership decided that the vaccine mandate should be implemented "because of what we were seeing with the infection rates from Delta, because of the risk to the safety and wellness of our employees, because of the risk that many members of the public didn't have a choice but to use our services. They were arrested. . . . They didn't have a choice but to interact with our employees, and we needed to reduce the risk to coworkers. We needed to reduce the risk to the public."

On August 9, 2021, Constantine posted an article on the King County "Employee News" page, which was sent to all county employees. In this article, Constantine explained that the County would require all employees to be fully vaccinated effective October 18, 2021. Constantine described how the number of new cases of COVID-19 had substantially increased and how "[n]ationally, about 97% of patients hospitalized with COVID-19 are unvaccinated. Vaccines have been shown to be safe and highly effective at preventing COVID-19 infection and in limiting hospitalization and death, even when there are 'breakthrough' infections." Constantine stated,

“The key to ending the pandemic is for as many people as possible to be fully vaccinated.”

Constantine also said,

As government employees, many of us work directly with the public. We have an obligation to keep our customers safe. We also want our colleagues to be as safe as possible. The need for our services remains as urgent as ever during the pandemic, essential for the people we serve. Our work needs to go on. Full vaccination is the answer.

Also on August 9, 2021, Constantine held a joint press conference with Washington Governor Jay Inslee, along with leaders from the City of Seattle and the Washington State Department of Health and Public Health – Seattle & King County. At this conference, the speakers reiterated the dangers of the Delta variant and the impacts that the pandemic was having on the healthcare system, the economy, and daily life. Inslee in particular was very explicit that the state mandate meant that vaccination was a condition of further employment and that employees who did not vaccinate and did not have an exemption and accommodation would be separated. At the conference, Constantine said the following:

King County will be mirroring . . . the state employee policy, and we will be requiring all 13,500 executive branch employees to be vaccinated by mid-October. We too will work with our labor unions to negotiate the details for implementation. . . . Today’s announcement will help ensure that we reach our goal of 100 percent by fall. . . . Steps like this at the local and organizational level are what the experts think are necessary. . . . The Delta variant is spreading in our community now. It’s more contagious, more infectious, more dangerous than what came before it. There is one group of people that it is hitting by far the hardest—the unvaccinated. The science is clear, vaccines work. They’re safe. They’re our best way to end this pandemic, and there is no reason not to take the time to get your vaccine and help protect your health before you get sick. But getting your vaccine isn’t just or even primarily about protecting yourself. It’s something you do for your family. It’s something you do for your friends, for your neighbors, for your coworkers. And particularly for the children who are unable to be vaccinated. So let’s all do our part, every one of us, to get every person vaccinated against this disease that has taken such a tragic toll on our community over the last year and a half. I saw last week that the Seahawks announced that they had reached a 99 percent vaccination rate in their organization . . . That sounds like a challenge to me. So I’m looking forward to this fall when for the first time ever, the King County executive branch will try to best the Seahawks in at least one measure, and that is hitting 100 percent vaccinated.

Association representative Major Theodore Boe testified that, before these announcements, the association was not provided any advance notice that a vaccine mandate order was going to be issued. Mansanarez had received a phone call informing him that the press conference would occur ten minutes before it happened. Mansanarez watched the press conference, and “there was no doubt in [his] mind it was going to be a shot or termination.”

The following day, August 10, 2021, Constantine signed the Order Pursuant to Proclamation of Emergency; COVID-19 Vaccination Requirements for Executive Branch Employees. The order declared that “all King County Executive branch employees must be fully vaccinated with vaccines authorized by the Centers for Disease Control (CDC)<sup>6</sup> by October 18, 2021.” The order described the background and reasoning for the decision, including that the Delta variant had caused COVID-19 cases and hospitalizations to rise sharply; that COVID-19 vaccines are safe and effective in reducing serious disease and hospitalizations; that King County provides essential services to the public, often in person, to protect life, health, and safety; and that vaccination was the primary means to protect the health care system, avoid the return of stringent public health measures, and end the pandemic. The order provided an exception “as employees may be entitled under law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation.”

On August 11, 2021, Bob Railton, the Deputy Director of the King County Office of Labor Relations (OLR), sent an email to union leaders, including Mansanarez and association president Stanley Seo. Railton informed the recipients about the vaccine mandate order and said, “Failure to comply with the Order will result in separation of employment.” Railton told the unions to notify his office “if you want to bargain the impacts of the Order.”

On August 11, 2021, association vice president Joseph Hodgson sent a demand to bargain letter to Sheriff Mitzi Johanknecht regarding the COVID-19 vaccination mandate. On August 13, 2021,

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<sup>6</sup> Although the order referred to “vaccines authorized by the CDC,” there is no dispute that the order covered the FDA-approved vaccines developed by Pfizer, Moderna, and Janssen.

Mansanarez sent Sasha Alessi, a Negotiator with the County OLR, a demand to bargain letter on behalf of the guild. Both unions demanded to bargain over both the decision and the effects of the mandate order. Alessi testified, “The County’s response was that this was not decisional bargaining. This was effects bargaining only.”

On August 19, 2021, Railton provided Mansanarez and Seo with documents about religious and medical exemptions and accommodation, vaccination sites, compensation for getting vaccinated, leave use for employees unable to work due to vaccine effects, and rehire of employees who were separated and subsequently vaccinated, as well as “a draft of the county’s plans for separating employee[s] who cannot be accommodated or elect to not be vaccinated.”<sup>7</sup>

#### *Bargaining Between County and Association*

The first meeting between the association and the County was on August 30, 2021. Boe was the spokesperson for the association. Boe understood that the County was only willing to negotiate the effects of the mandate, not the mandate itself. Nonetheless, the association proposed that unvaccinated employees be placed on administrative leave, telecommute, take COVID-19 tests, and wear masks as an alternative to being separated from employment. The association also proposed that the deadline to become vaccinated be extended to January 1, 2022.

The County gave a written proposal<sup>8</sup> to the association on September 7, 2021. The association provided a written counter proposal to the County on September 9, 2021. The association proposed provisions relating to the following: the use of leave prior to separation (i.e., “unpaid leave of absence with benefits to follow until rescind of the executive order”); reinstatement; limiting the duration of the vaccine mandate; supplemental vaccinations and boosters; use of leave related to

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<sup>7</sup> When Railton sent this email, the County had not yet responded to the guild’s demand to bargain. The guild’s attorney brought up this fact, and Railton said, “The county did receive the guild’s bargaining demand dated August 13, and I apologize that we had not yet acknowledged the demand. Sasha [Alessi] is currently on leave, but returning Monday. We will schedule a meeting with you soonest, hopefully next week.”

<sup>8</sup> All of the proposals exchanged between the association and the County that are in the record were characterized as “what-if” proposals.

the vaccines; long term impacts or deaths; \$1,000 additional weekly pay for Captains and Majors; the Sheriff's plan for staff reductions and workloads; and allowing "leave cash-out" for leave that could not be used.

Over the next several weeks, the parties continued to exchange proposals.<sup>9</sup>

Throughout the bargaining process, the County modified its proposals. For example, between September 15 and 27, 2021,<sup>10</sup> the County added language providing that the association was free to challenge any separations from employment or the proclamation in general; a provision relating to the ability to get vaccinations during work hours; provisions relating to rehire; a modification of the effective date of the mandate to December 31, 2021; a provision for the association to provide input on staffing plans; and provisions relating to carry-over of leave that couldn't be used.

The association also modified its proposals throughout the process. By September 27, 2021, it appears that the association largely accepted the County's proposals but sought modified language relating to whether employees would be kept in paid status pending completion of Loudermill meetings; modified language relating to the rehire process; modified language relating to the association's ability to provide input on staffing plans; and language relating to the continued effect of the CBA. On September 27, 2021, the County accepted some of the modified language proposed by the association.

The association offered into evidence an exchange between Seo, Boe, and the association's Attorney, Mark Anderson, indicating that at a bargaining session prior to October 5, 2021, the parties had reached "an agreement in principle."<sup>11</sup> After Boe told Anderson that they would take

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<sup>9</sup> The record does not appear to contain a complete set of all the proposals exchanged by the County and the association.

<sup>10</sup> There is no evidence of any further exchange of proposals between the County and the association after September 27, 2021.

<sup>11</sup> The record is not clear what the "agreement" specifically was. Presumably, the association agreed to the County's counterproposal from September 27, 2021, which is the last proposal in the record.

the “order” to the membership to vote on, Anderson explained, “You’ve got a deal that extends benefits to your members. Without that deal, they have nothing come October 18th. The membership is better off with a signed MOU than nothing at all.”

The association membership voted to reject the agreement and, according to Alessi, the parties returned to the table. Alessi recalled that the association then walked away from the table as, during the course of bargaining, they discovered that they didn’t have any employees who weren’t vaccinated. Boe’s recollection was that the County didn’t want to bargain anymore by January 2022: “I think we asked to have further meetings, and it was a decision by the County not to schedule further meetings.”

Boe recalled that the County had a public health nurse at the bargaining sessions to provide information relating to the County’s position that vaccination was the best way to combat the pandemic. The nurse had explained why she believed that the proposed alternatives were not as effective in preventing the spread of COVID-19 as vaccination. Boe recalled the message from this person was that the County wanted the mandate because otherwise they would “have issues with mass issues of death.”

Boe felt that that the County did “[n]ot really” provide reasons for rejecting the association’s proposals, claiming, “[T]hey didn’t want us to have any say or involvement in any decision-making related to operations.” At one point Boe had complained to Bob Railton, “Bob, we’re not negotiating here. You’re just saying no to anything and everything I propose.” According to Boe, Railton had responded, “Saying no is bargaining.” Boe said that only “wordsmithing” proposals from the association were accepted by the County. Boe said “there was no concessions from the County on our proposal.” Boe said that the County rejected the association’s proposal to have masking and testing instead of a vaccine mandate and explained, “[T]heir position was vaccination was the only safe way to respond to COVID-19.”

Boe testified that he sought clarity over details of the accommodation process, such as who was going to be on the committee to review requests for accommodation. Boe felt he did not get the clarity he was looking for. Boe said, “I believe they said it was going to be medical staff and HR



staff as well as legal staff in the committee, but I don't know the actual members of the committee or who that was."

*Bargaining Between the County and the Guild*

The guild and the County first met to bargain regarding the vaccine mandate towards the end of August 2021. According to Mansanarez, the first few meetings were "[m]ore of a meet and greet." The guild asked the County for more time before the mandate was implemented and also suggested alternatives to vaccination, such as testing, masking, and telecommuting. Mansanarez recalled that he "kept getting the word no from Bob Railton."

On August 31, the County provided a written proposal<sup>12</sup> to the guild that addressed effects of the mandate, such as the the process and timelines the County would use to enforce compliance with the mandate; the general exemption and accommodation policy; that vaccinations would be on paid time; paid time off up to one shift for vaccine side effects; the County paying the costs of vaccinations; eligibility for rehire; and confidentiality of medical information.

The guild provided a revised proposal to the County on the same day, August 31. The guild proposed, among other things, that

- instead of being separated, employees who were not fully vaccinated (or who were exempt from vaccination but could not be accommodated) would take a daily COVID-19 test and would have to wear a mask at all times while at work;
- compliance timelines would be adjusted so that the separations for non-compliance would not go into effect until January 1, 2022;
- such separations would not be considered "misconduct," and the County would not challenge employees' eligibility for unemployment;
- accommodations for those not vaccinated "may include masking at all times while at work and up to daily testing";

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<sup>12</sup> All of the proposals between the guild and the County were characterized as "what-if" proposals.

- all employees who were fully vaccinated by December 1, 2022, would be paid \$2,000;
- paid time off for vaccine side effects would be increased to 40 hours;
- separations due to the vaccine mandate would be grievable under the contract's just cause provision;
- unvaccinated employees could seek rehire when the emergency proclamation ended, including details of the rehire process;
- employees separated due to the vaccine mandate would be eligible to receive payment for accrued leave under the CBA;
- employees who had a documented case of COVID-19 in the previous five months would not be required to be vaccinated;
- and that any required quarantining for COVID-19 cases or exposures would be on paid leave.

The County and the guild continued to exchange proposals through September and October.<sup>13</sup> Each party modified its proposals during the process. Around October 15, 2021, the guild requested mediation, and a PERC mediator was assigned.

On October 19, 2021, the County provided a proposal to the guild, which Mansanarez characterized as the County's final offer. This proposal was different from the County's initial proposal. For example, it specified that separations due to the mandate would not be regarded as misconduct; that the guild reserved the right to challenge any separations; that employees required to quarantine would be granted up to 80 hours of paid leave, which could also be used for family care; that rehire provisions would be included, as proposed by the guild on September 29, 2021; and that employees separated due to the vaccine mandate would be eligible to receive payment for accrued leave under the CBA. Mansanarez testified that he did not bring this proposal to the membership because "it never passed my board."

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<sup>13</sup> The record does not appear to contain a complete set of the proposals exchanged between the guild and the County.

The parties continued to meet with the Mediator through November 2021. Effects bargaining and mediation continued past the date that the guild submitted its unfair labor practice complaint and into 2023. According to Alessi, the County made the last proposal, and the guild did not accept it.

Mansanarez characterized the bargaining process as

more like surface bargaining. It was just kind [of] scratching the surface. We weren't really getting into the meat and potatoes of what we wanted. It was more of the County's way or the highway kind of thing, at least I kind of drew from it. From reading through theirs, they changed a few words here and there, maybe changed 40 hours to 80 hours of COVID leave. . . . But we were getting a lot of nos.

Mansanarez also said, "[T]hey stuck with the same proposals to every union. . . . It might be a few word changes, maybe a couple number changes, giving more hours here and there, they have not moved from their position." Mansanarez said, "[M]y main goal through all of this and all this mediation and all this was keeping my members at work and keeping them employed."

#### *The County's Perspective on the Bargaining Process*

Alessi testified that the County did move on certain items in response to guild proposals but acknowledged that there was not much movement on the County's position. Alessi sought to address issues raised by the association and document areas where they had agreement. He testified that the County agreed to some changes in response to PSPMA proposals. Bauer testified that OLR staff would send her proposals to see if she had concerns.

Alessi and Bauer observed that both unions sought to bargain over the decision to implement the vaccine mandate (i.e., alternatives to the vaccine mandate such as masking and testing), but the County took the position that it would not bargain over the decision, only the effects. Thus, the County was not willing to entertain the unions' "decision" proposals.

Alessi and Bauer also testified that the County was not interested in bargaining over accommodations because the County only intended to provide exceptions and accommodations to the mandate as required by law. Alessi explained, "[A]n accommodation is a legal process that

needs to comply with federal law, and it's not usually something I would bargain with the Union. We would follow the law and follow the legal requirements for a lawful accommodation." Bauer testified,

The exemption and the accommodation process is one that we do all the time as an employer, and the exemption and the accommodation process were called out in the mandate as things that we would undertake. . . . We were going to comply with the law as it related to medical exemptions and comply with the law as it related to religious accommodations.

Bauer testified that she would not agree to a proposal that would have unvaccinated people still working with others:

It wasn't fair. We had employees who were terrified who had lost family members. They wanted me to tell them who was vaccinated and who wasn't which I could not do. . . .

. . . .

[W]e had members of the public who didn't know and didn't have a choice about whether they were working with someone who was vaccinated, and we had coworkers who were saying, "I want to know who on my crew is vaccinated and who isn't because I don't want to work with somebody who isn't vaccinated." And we can't share that kind of medical information . . . we were advised and did conclude that a vaccine mandate was critical. . . .

. . . .

It was a public health emergency, and we determined that employees needed to be vaccinated to work with other people.

Bauer also explained that she wouldn't agree to pay people to take the vaccine, as the guild had proposed. She said, "We certainly did cover the cost of the vaccine. We covered the cost of taking time off from work to go get the vaccine, but I don't think that the County decided that it was within our resources or interests to pay each person to get the vaccine."

#### *The Vaccine Mandate Ultimately Resulted in Terminations*

One person represented by PSPMA was separated because of the vaccine mandate. Twenty-five employees represented by the guild were separated because of the vaccine mandate. The County

characterized the separations as non-disciplinary. Due to the time involved in processing the accommodations, the terminations were effectuated between November 22, 2021, and April 1, 2022.

Some employees chose to resign at least in part because of the vaccine mandate. Mansanarez thought that the total number of officers lost from the guild unit, including retirements and resignations, was about 59. Mansanarez acknowledged that some of these officers were also motivated to leave for other reasons, such as the community backlash against law enforcement following the death of George Floyd. Jessica Klein, Human Resources Manager 3 for the King County Sheriff's Office, similarly said, "[W]e had people leaving for a number of reasons. And prior to the mandate, we had seen people leaving for just laws that were changing, current climate of policing in the area." She estimated around 40 employees represented by the guild either resigned or were separated because of the mandate. Boe believed that some members of the association resigned because of the mandate, but he could not say how many.

The guild introduced a report that Sheriff Patti Cole-Tindall had presented to the King County Council in May 2022 which stated, "27 Commissioned Employees Were Involuntarily Separated. . . . Additionally, 20 commissioned employees . . . chose to retire or resign" (47 total). Sheriff Cole-Tindall's report said that, as of May 5, 2022, there were 640 employees in the guild unit (544 Deputies and 96 Sergeants) and 25 employees in the association unit (7 Majors and 18 Captains), for a total of 665 commissioned officers in the two bargaining units.<sup>14</sup> But for the vaccine mandate, there would have been at least 712 commissioned officers in the two units (the 665 employed in May 2022 plus the 47 who left as a result of the mandate).

Mansanarez felt that the loss of officers had an impact on the operations of the department, which was already understaffed for other reasons. Mansanarez testified that the department lost

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<sup>14</sup> The staffing numbers can be determined using Sheriff Cole-Tindall's figures for the number of full-time equivalents (FTE) and number of vacancies. Deputies had 630 FTEs with 86 vacancies, and Sergeants had 116 FTEs and 20 vacancies  $((630 - 86) + (116 - 20) = 640)$ ; Captains had 24 FTEs and 6 vacancies, and Majors had 8 FTEs and 1 vacancy  $((8 - 1) + (24 - 6) = 25)$ .

institutional knowledge, couldn't meet minimum staffing levels at times, and overtime increased. Detectives, K9 Officers, and Marine Unit Officers were redeployed to patrol. Sheriff Cole-Tindall told the King County Council in May 2022, "It is a whole number of issues that's come together at the same time and one thing that worries me, keeps me up at night is if our numbers continue to increase in the case of our commissioned vacancies, we are at risk of not being able to provide basic public service." The report Sheriff Cole-Tindall shared with the County Council said that although 47 commissioned employees were separated or resigned because of the mandate, there were 113 commissioned vacancies at that time.

COVID-19 was the leading cause of death for police officers in 2020 and 2021. According to the *Officer Down Memorial Page*, between March and December 2020, COVID-19 killed an estimated 221 Law Enforcement Officers, and in 2021, COVID-19 killed an estimated 496 Law Enforcement Officers.<sup>15</sup> These were considered "line of duty deaths," indicating that these officers acquired COVID-19 in the workplace.

The guild filed its original unfair labor practice complaint on January 7, 2022. On January 19, 2022, Unfair Labor Practice Administrator Dario de la Rosa issued a preliminary ruling finding that the complaint stated a cause of action. On February 9, 2022, the County filed an answer. On February 10, 2022, Examiner Michael Snyder was assigned to hear the case. On September 15, 2022, the case was reassigned to me.

The association filed its original unfair labor practice complaint on February 9, 2022. The association did not include the first page of its statement of facts. On February 10, 2022, the association filed a complete copy of its complaint. On February 22, 2022, Unfair Labor Practice Administrator Dario de la Rosa issued a preliminary ruling finding that the complaint stated a cause of action. On March 11, 2022, Examiner Michael Snyder was assigned to hear the case. On

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<sup>15</sup> In *City of Bellingham*, Decision 13826, the record showed that COVID-19 killed an estimated 301 law enforcement officers in 2021. I recognize this inconsistency is unusual. However, as noted in footnote 1, each decision must be based on its own record. In each of these decisions, different sources for line of duty deaths in 2021 were entered into evidence.

March 16, 2022, the County filed an answer. On September 15, 2022, the case was reassigned to me.

On February 2, 2023, the Commission's Executive Director issued an order consolidating the guild and association cases for further processing. A hearing was conducted in Seattle on October 2, 3, 4, and 6, November 15, and December 6, 2023. Some witnesses were examined using a videoconferencing computer program. For unknown reasons, James Cline, the Attorney of record for the association at the time, did not attend the hearing. Also for unknown reasons, Shannon Richards, the other Attorney of record for the association, left the hearing during the lunch break on the first day of the hearing and did not return. The parties filed briefs to complete the record on January 31, 2024. Cline, but not Richards, signed onto the association's brief. Cline then filed a notice of withdrawal on April 12, 2024. On April 24, 2024, Commission staff confirmed that Richards had also withdrawn from the case. With no attorneys left to represent the association, association president Seo was added to the appearances at the top of this decision by default. The record does not show that Seo was present at the hearing or participated in this case in any way.

## ANALYSIS

### Applicable Legal Standard

#### *Unilateral Change*

The parties' collective bargaining obligation requires 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 a term of a collective bargaining agreement. *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). To prove a unilateral change, the complainant must establish that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain. *Kitsap County*, Decision 8292-B (PECB, 2007). The complainant must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan*

*Seattle (METRO) (ATU 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. *Kitsap County*, Decision 8893-A (PECB, 2007) (citing *King County*, Decision 4893-A (PECB, 1995)).

Whether a particular subject is mandatory or nonmandatory is a question of law and fact to be determined by the Commission and is not subject to waiver by the parties by their action or inaction. A party which engages in collective bargaining with respect to a particular issue does not and cannot confer the status of a mandatory subject on a nonmandatory subject. WAC 391-45-550; *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A (PECB, 2017). To decide whether an issue is a mandatory subject of bargaining, 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 Union 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197, 203 (1989). The public’s interest in effective government services is also a factor in the balance. *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A (considering the public’s interest in effective fire suppression service and observing that “the public’s interest in safety must be weighed”). The actual application of this test is nuanced and is not strictly black and white. Subjects of bargaining fall along a continuum. One case may result in a finding that a subject is a mandatory subject of bargaining, while the same subject, under different facts, may be considered permissive. The decision focuses on which characteristic predominates. *Id.*

#### *Good Faith Bargaining Obligation*

“The obligation to bargain in good faith encompasses a duty to engage in full and frank discussions on disputed issues, and to explore possible alternatives, if any, that may achieve a mutually satisfactory accommodation of the interests of both the employer and employees.” *Snohomish County*, Decision 9834-B (PECB, 2008). While the parties’ collective bargaining obligation does not compel them to agree to proposals or make concessions, a party is not entitled to reduce collective bargaining to an exercise in futility. *Western Washington University*, Decision 9309-A (PSRA, 2008). Differentiating between lawful “hard bargaining” and unlawful “surface



bargaining” can be difficult in close cases. This fine line in differentiating the two reflects a natural tension between the obligation to bargain in good faith and the statutory mandate that there be no requirement that concessions be made or an agreement be reached. An adamant insistence on a bargaining position is not, by itself, a refusal to bargain. However, good faith is inconsistent with a predetermined resolve not to budge from an initial position. *Id.*

In determining whether an unfair labor practice has occurred, the totality of circumstances must be analyzed. The evidence must support the conclusion that the respondent’s total bargaining conduct demonstrates a failure or refusal to bargain in good faith or an intention to frustrate or avoid an agreement. *Id.*

#### Application of Standard

##### *Issue 1: Did the County Unlawfully Unilaterally Implement a COVID-19 Vaccine Mandate?*

There is no dispute that the County implemented the COVID-19 vaccine mandate without first bargaining over the decision with the unions. There is also no dispute that the vaccine mandate was a change to the status quo. The dispositive issue in this case is whether the County’s COVID-19 vaccine mandate is a mandatory subject of bargaining.

#### *Identifying the Subject at Issue*

According to the preliminary ruling, the issue in this case is whether the County “unilaterally chang[ed] terms and conditions of employment by requiring employees to be fully vaccinated against COVID-19 or face termination.”

#### The Issue Identified in the Preliminary Ruling Must Be Analyzed as a Whole, Rather Than Divided into Separate Issues

The association argues that the County “conflates *two separate subjects*. One subject is whether the County can order a vaccine to combat a pandemic. Whether someone choosing not to be vaccinated loses their job *is an entirely different subject*.” The association asserts, “[E]ven if the vaccine order is a management right, the consequences on the employees, including whether they keep their job are negotiable. . . .” The association essentially argues that the County can “order” employees to be vaccinated, but there cannot be any consequences to employees for violating the

order unless bargaining with the union is completed. The guild argues that “the vaccine mandate was silent regarding what should happen to an employee who did not comply with the new condition of employment” and “Termination was an Effect of the Mandate and a Mandatory Subject of Bargaining.”

The subject at issue here cannot be carved up as the unions suggest. The preliminary ruling in this case specifically puts at issue whether the County “unilaterally chang[ed] terms and conditions of employment by requiring employees to be fully vaccinated against COVID-19 or face termination.” The County’s decision to “requir[e] employees to be fully vaccinated against COVID-19 or face termination” must be analyzed under the *City of Richland* test as a whole. *Wenatchee School District*, Decision 3240-A (PECB, 1990) (rejecting the union’s argument that a change in the kindergarten program was merely an “effect” of a budget decision as the decision over the program was squarely at issue and was a management prerogative and a nonmandatory subject). The County’s decision was to implement a vaccine “mandate” rather than a vaccine “request,” “option,” or “suggestion.”

The guild’s argument that it was unclear whether being vaccinated would become a new condition of employment, and that failure to meet this condition would result in termination, is not persuasive. Constantine’s vaccine mandate announcement was made jointly with the governor’s statewide vaccine mandate announcement. At the press conference, Governor Inslee was explicit that non-compliance with the state mandate would mean separation from employment. Although Constantine was not as explicit as Governor Inslee, he said that the County’s mandate “mirrored” the state’s mandate. The association acknowledged in its brief that “[w]hile the order itself was silent on the consequences of employee noncompliance with the ‘order,’ it became subsequently clear that noncompliance with [sic] result in termination.” Accordingly, the association’s demand to bargain said, “The County announced . . . that failure to attain vaccinated status will result in termination from County employment.” Boe knew the order meant that if an employee didn’t get vaccinated, it would mean “[s]eparation from employment.” Mansanarez testified that “[a]fter watching the press conference and seeing what Dow Constantine said during that press conference, there was no doubt in my mind it was going to be a shot or termination.” Accordingly, the guild’s

demand to bargain said, “The [guild] has been advised by the County that all members must be fully vaccinated by October 18, 2021, as a condition of continued employment with the County. Clearly, requiring bargaining unit members to be vaccinated or be terminated from employment is a mandatory subject of bargaining.” Examining the totality of the record, it does not appear that, up until the hearing, anyone was confused at any time about the consequences of non-compliance with the County’s mandate.<sup>16</sup>

The Fact That There Were Possible Alternatives to the County’s Vaccine Mandate Does Not Change the Focus of the Inquiry

The unions argue that the County could have, and should have, decided on a different course of action other than mandating COVID-19 vaccination and terminating noncompliant employees. The unions argued that the County could have instead utilized masking, testing, air filtration, hand washing, cleaning, working remotely, or putting unvaccinated employees on leave. The guild argues that, because Alessi acknowledged that alternatives to the vaccine mandate were “possible,” the vaccine mandate was therefore a mandatory subject. The guild also appeared to suggest during the hearing that taking only one dose of the two-dose series of the Pfizer-BioNtech or Moderna vaccine still offered protection and so should have satisfied the vaccine mandate. The guild also appeared to suggest that the County could have taken a “carrot” approach and paid people to get the vaccine instead of requiring vaccination as a condition of continued employment. The association argues that “because these alternatives did exist and the County failed to even discuss them, it committed an Unfair Labor Practice.”

Again, the unions confuse the issue. The question here is not whether the County’s COVID-19 vaccine mandate was—at the time, or especially in hindsight—the best possible choice. The issue

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<sup>16</sup> I am not persuaded by the guild’s references to testimony by Alessi and County Labor Relations Negotiator Lacey O’Connell that it was the Sheriff who ultimately decided to terminate an employee. These comments were in the context of these witnesses explaining the accommodation process for individual employees (i.e., the Sheriff made the final decision on whether an employee could be accommodated or whether the accommodation would be denied and the employee would be terminated). I do not believe this testimony undermines the fact that termination for noncompliance was clearly integral to the vaccine mandate, as the guild suggests.

here is not whether the County should have implemented the vaccine mandate or whether it should have done something else instead. The sole issue is whether the County had the right to unilaterally make the choice that it did make or whether the County had to bargain with the unions first. If the vaccine mandate was a mandatory subject, then the County could not unilaterally implement it and would have had to first bargain over the decision, including considering the union's proposed alternatives. If the vaccine mandate was not a mandatory subject, then the County was under no obligation to consider the unions' proposed alternatives, as no bargaining was required. *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A. The mandatory or permissive nature of the subject is determined by the *City of Richland* balancing test, and whether there were other options available is not a factor in that test.<sup>17</sup>

Similarly, the guild argued that the County's vaccine mandate was not effective. The guild appeared to argue at the hearing that since the County's vaccine mandate did not require boosters, its vaccine mandate was imperfect. The guild also argued that if the goal of the mandate was to stop the spread of COVID, the mandate was not effective because of breakthrough infections. The issue here is not whether the County's mandate was perfect, or if, in retrospect, it was not as effective as the County had hoped. *See, e.g., City of Walla Walla*, Decision 12414 (PECB, 2015) (finding that the union's arguments that the renumbering of fire department apparatus was cumbersome and unnecessary did not change the nonmandatory nature of the decision). The issue is whether the County was obligated to bargain with the unions before making its decision to implement the vaccine mandate.

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<sup>17</sup> In virtually every case applying the *City of Richland* balancing test, the employer could have decided not to make the change at issue. The fact that the employer could have chosen not to make the given change has never been a factor in whether the subject is mandatory or not. For example, in *Wenatchee School District*, the Commission found that the employer's decision to convert to a full-day kindergarten was not a mandatory subject. The school district there certainly could have *not* made such a decision. In *City of Seattle*, Decision 11588-A (PECB, 2013), the Commission found that the City's decision to have in-house counsel represent employees in police action lawsuits was not a mandatory subject. The City could have decided to not make such a change. In *University of Washington*, Decision 11075-A (PSRA, 2012), the Commission found that the employer's decision to consolidate its call centers was not a mandatory subject. The university certainly could have not consolidated the call centers or could have found other ways to achieve its goal of remaining competitive with other hospitals.

The Sufficiency of the Accommodation Process Is Beyond the Scope of This Case

The guild also argued that the County was required to bargain over the scope of accommodations for unvaccinated employees and that the County failed to provide sufficient accommodations to employees who asserted medical or religious reasons for not getting the vaccine. This is also a separate issue. Whether there was just cause to ultimately terminate a particular employee or whether the County complied with its legal or contractual obligations to accommodate disabilities or religious beliefs is beyond the scope of this case.<sup>18</sup> If the unions believe that individual separations were without just cause and/or because of a flawed accommodation process, their remedy lies elsewhere. *King County*, Decision 6772-A (PECB, 1999) (ruling that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements); *City of Seattle*, Decision 9938-A (PECB, 2009); (ruling that individual disciplinary determinations are not mandatory subjects of bargaining); *Everett Community College*, Decision 8850-A (PSRA, 2006) (finding that disability accommodation issues are beyond the jurisdiction of the Commission).

The County was clear that it would require all employees to be vaccinated as a condition of further employment and that employees who did not comply would be terminated. However, the County recognized that they were required by law to provide a certain degree of religious and disability accommodation. The mandate order provided for exceptions “as employees may be entitled under law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation.” It is clear that the County intended for its mandate to be as broad as possible and for the exceptions to be as narrow as the law would allow.

The guild argues that “the Accommodation Process was an Effect of the Mandate and was a Mandatory Subject of Bargaining.” The scope of exceptions to the mandate are integral to the scope of the mandate itself. The unions’ proposals for greater accommodations are necessarily

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<sup>18</sup> The guild also cited *Othello School District*, Decision 13488 (EDUC, 2022) for the proposition that it would be unlawful direct dealing and union circumvention for an employer to negotiate directly with employees over changes to their existing disability accommodations. Such an issue is beyond the scope of this case, unlike in *Othello School District*, where “direct dealing” and “circumvention” were specifically identified as issues in the preliminary ruling.

proposals that unvaccinated employees should be able to continue working. Thus, these proposals amount to whether the County can mandate vaccination or not. If the vaccine mandate itself was a mandatory subject of bargaining, the scope of exemptions to the mandate would be appropriate for the bargaining table. If the vaccine mandate was a permissive subject, then the County would be free to unilaterally determine the vaccine mandate's scope, including the scope of any exemptions or accommodations that would be afforded, without bargaining with the unions.<sup>19</sup>

*The City of Richland Test Applied*

If a subject is a mandatory subject, that means it must be bargained to either agreement or lawful impasse. This bargaining unit is an interest arbitration-eligible bargaining unit, which means that if the parties are not able to come to agreement in bargaining, they must then engage in mediation, and ultimately the impasse is resolved in arbitration. RCW 41.56.430 - RCW 41.56.465; *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."). The full bargaining and impasse resolution process can take years. Ultimately, the *City of Richland* analysis determines whether a particular change is the type of change that the government should be able to make without going through this process or whether the subject is "amenable to bargaining with the union and, should they reach impasse, to submission to binding interest arbitration." *University of Washington*, Decision 13483-A (PSRA, 2022).

The *City of Richland* test requires that the Commission "accommodat[e] the diverse public, employer and union interests at stake in public employment relations" and "achieve the balance of public, employer and union interests..." *City of Richland*, 113 Wn.2d at 203, 204.

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<sup>19</sup> The guild also argued that because the County kept employees at work past the October 18, 2021, vaccination deadline while the accommodation process was ongoing, "there was discernable room for bargaining and no justifiable reason to implement the decision before bargaining with the Guild." The extent to which the County found it was warranted to extend the vaccination deadline also goes to the scope of the mandate itself. If the vaccine mandate was a nonmandatory subject, then the County would be free to determine when it would be enforced. It does not follow that because the County found justifiable reasons to keep employees working past the deadline, the full bargaining process (including interest arbitration) is therefore required before the County can implement the vaccine mandate at all.

In this case, there are significant and substantial interests on each side of the balance.

*The Unions' Interests*

The *City of Richland* decision asks how strongly “the subject bears [a relationship] to [the] wages, hours and working conditions” of employees. The COVID-19 vaccine mandate is, by its own terms and in the most fundamental sense, a new working condition. It is literally a condition that must be satisfied for continued working.

The Unions Have Substantial and Compelling Interests on Their Side of the Balance

Employees have a substantial interest in continuing their employment, which is impacted by the implementation of a new and controversial job qualification. When the employees in this case began their employment relationship with King County, there was no COVID-19 vaccine mandate. They did not sign up for a COVID-19 vaccine requirement as a job qualification. Under the COVID-19 vaccine mandate, the workforce was told that if they did not comply with this new job qualification (i.e., being irrevocably injected with new drugs that were only authorized under emergency use authorizations), they would be terminated. This was a difficult choice for some of the employees. I agree with the association that “[a] job provides an important paycheck necessary to live off, but often much more. For professional employees, including law enforcement officers, work is often integral to their identity.” Leaving a job can have lasting impacts on one’s career. According to Mansanarez, some employees who left employment with the County at this time “just left the profession altogether.” The fact that the vaccine mandate was a brand new job

qualification and that noncompliance would lead to termination is a substantial interest on the side of the unions.<sup>20</sup>

The employees also have a substantial liberty interest at stake here. They have an interest in not being pressured, under threat of job loss, to take a new vaccine that, at the time the order was issued, had only received an emergency use authorization from the FDA. There is a compelling argument that accepting such a substance should be a personal decision free from such enormous pressure from one's employer. These interests weigh in favor of requiring the County to bargain over the COVID-19 vaccine mandate with the unions prior to having implemented it.

Misinformation and conflicting information about COVID-19 and the COVID-19 vaccines were rampant at this time. Dr. Lynch described a survey that found that "more than half of unvaccinated adults currently believe that 'getting vaccinated posed a bigger risk to their health than getting infected with the coronavirus.'" Dr. Lynch explained that "[t]hroughout the pandemic, people have been exposed to a great deal of information from a variety of sources, including news, public health

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<sup>20</sup> The unions contend that if an issue impacts job tenure, it is automatically a mandatory subject, asserting, from *City of Olympia*, Decision 3194 (PECB, 1989), "If the work rule affects an employee's continuation of employment . . . it will be a mandatory subject of bargaining, *regardless of the employer's legitimate reason for its promulgation*." This probably is almost always the case, and I can understand why Examiner Downing would feel comfortable expressing such an axiom, but I do not think this reflects our current application of *City of Richland*. The Commission has rejected the notion that any issues are categorically mandatory or permissive, instead requiring the balancing test to be performed on "a case-by-case" basis and considering the specific facts of each case. *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A. Although the unions' interest in job tenure is a very substantial interest, it is only one side of the balance. Unhelpfully, the unions dedicate much of their briefs to arguing that the vaccine mandate is categorically a mandatory subject instead of addressing the balancing of union, employer, and public interests, as required by the *City of Richland* test.

Accordingly, the association's categorical reliance on cases where the possibility of discipline led to the conclusion that the an issue was a mandatory subject, such as *King County*, Decision 5810-A (PECB, 1997) (identification badge system) and *King County*, Decision 9495-A (PECB, 2008) (surveillance cameras), is misplaced because, in each of those cases, the issues and interests to be balanced were different from the current case. *Compare Tacoma-Pierce Health Department*, Decision 6929-A (PECB, 2001) (finding that changes to job requirements were nonmandatory subjects, even though they had resulted in layoffs of newly-unqualified employees, and explaining that "[t]hose decisions flow directly from the change of program mission and emphasis, and so also go to the heart of entrepreneurial control."); *Wenatchee School District*, Decision 3240-A (finding that a decision to convert to a full-day kindergarten resulted in the "partial layoff" of bus drivers, but it was still not a mandatory subject).



guidance, fact sheets, infographics, research, as well as opinions, rumors, myths, and outright falsehoods.” Mansanarez testified that by the time the vaccine mandate was issued, some of his members were hesitant to get the vaccine: “People have done their own research. They don’t want that shit in their body. They don’t know. There’s no data. There’s no science behind it. . . . I don’t know if it’s best for me. I don’t know which one. I heard some problems with Johnson and Johnson. . . . So people were just doing their own research because time had elapsed, and they were concerned.” Some employees were understandably confused and apprehensive about conflicting information about the safety and effectiveness of the vaccines. It was legitimate for some employees to be concerned and hesitant about receiving a COVID-19 vaccine.

The guild introduced evidence of one employee, initials C.B.,<sup>21</sup> who was sincerely concerned about whether it was safe to get a COVID-19 vaccine. On the County’s medical questionnaire, C.B.’s doctor answered “no” to whether C.B. was allergic to anything specific in any of the vaccines and wrote “I support the vaccines in general. But my signature here does not mean I agree with vaccinating an already immune person against [their] will.” However, C.B.’s doctor had earlier said that, due to a past infection, C.B. was “already immune to SARS-CoV-2. Further [C.B.] has a history of severe reactions to vaccines in the military. It is my professional opinion that [C.B.] would become very ill if [C.B.] was administered the vaccine.”<sup>22</sup>

Similarly, another guild witness, initials M.R., submitted a doctor’s note, which said,

Given [M.R.]’s significant autoimmune health history, including diagnoses of Mixed Connective Tissue Disorder and Scleroderma, as well as frequent reactions to ingredients and excipients in supplements, pharmaceuticals, and vaccines that have severely impacted quality of life and ability to work, it is my professional recommendation that [M.R.] does not receive the COVID-19 vaccine until more is

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<sup>21</sup> These employees’ stories are demonstrative of the unions’ interest, and their names are not relevant. Accordingly, their names are redacted to respect their privacy.

<sup>22</sup> After being separated for non-compliance with the vaccine mandate, C.B. received the vaccine in the doctor’s office so that any reactions could be monitored and treated. Subsequently, C.B. was reinstated by the County. It was apparent from C.B.’s testimony that C.B. was terrified about getting the vaccine.

known about the long term impact of the COVID-19 vaccines on the exacerbation and progression of autoimmune disorders.

Given that employees had legitimate and understandable reasons for not wanting to get COVID-19 vaccines, the unions had a strong interest in being able to bargain over the decision to impose a vaccine mandate.

The County's COVID-19 vaccine mandate resulted in some employees being terminated, and this impact to staffing in turn impacted workload, as well as officer morale. Mansanarez testified that, after employees were separated or resigned as a result of the vaccine mandate, "[o]vertime increased. You know, we have minimum staffing . . . We were running short. People were burned out. They're tired. I mean, everybody's working an ungodly amount of overtime. I truly believe that 2023 will be the largest amount of overtime the County will pay out at the sheriff's office in my 26-year career. It's going to be huge. . . ." Impacts to staffing and the consequential impacts to officer workload and morale were foreseeable impacts of the vaccine mandate. It is reasonable to argue, as the guild does, that the foreseeable impacts to staffing from the vaccine mandate could have impacts to officer safety. The foreseeable impact to staffing weighs in favor of the unions being able to bargain over the vaccine mandate decision.

In sum, there are substantial interests on the unions' side of the *City of Richland* balance.<sup>23</sup>

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There are some employee interests that weigh in favor of the County being able to implement a vaccine mandate without having to go through the (often protracted) bargaining and impasse resolution procedure. The employees have an interest in not getting sick or dying from COVID-19. COVID-19 was the leading cause of line of duty deaths of law enforcement officers in 2020 and 2021 and represented the majority of line of duty deaths in Washington State. Bauer testified that employees had told her, "I want to know who on my crew is vaccinated and who isn't because I don't want to work with somebody who isn't vaccinated." At least some employees had an interest in a safer work environment where all of their coworkers were vaccinated for COVID-19.

*Employer's Interests*

The unions do not appear to acknowledge any employer interests in implementing a COVID-19 vaccine mandate. However, the County has important interests in implementing the COVID-19 vaccine mandate.

The *City of Richland* balancing test weighs “the extent to which the subject lies ‘at the core of entrepreneurial control’ or is a management prerogative.” *City of Richland*, 113 Wn.2d at 203. The Commission has recognized that “public sector employers are not ‘entrepreneurs’ in the same sense as private sector employers, [so] entrepreneurial control should consider the right of a public sector employer, as an elected representative of the people, to control management and direction of government.” *Central Washington University*, Decision 12305-A (PSRA, 2016). Fundamentally, this case calls into question the government’s ability to act decisively in the face of a public health emergency.

The guild asserts, “The termination of Guild members was never about an emergency, but rather about the County’s desire to obtain one-hundred percent vaccination rate, or at least, as Executive Constatine said, ‘beat the Seahawks.’” The record does not support this assertion. It is clear that the vaccine mandate was motivated by a sincere concern over the COVID-19 pandemic and its threat to the health and safety of employees and the public. I do not find that Constantine’s lighthearted comment about beating the Seahawks undermines the obvious legitimate intention behind the COVID-19 vaccine mandate.

When Constantine announced the vaccine mandate to employees, he said, “We . . . want our colleagues to be as safe as possible.” The County has an interest in protecting the health of its

employees. The COVID-19 vaccine mandate foreseeably<sup>24</sup> reduced the chance that employees would infect each other with COVID-19.<sup>25</sup> The vaccine mandate also foreseeably reduced the chances that employees would get infected with COVID-19 by members of the public as they performed their law enforcement duties. In turn, the vaccine mandate also foreseeably helped protect each employee from getting sick and dying from COVID-19. The County's interest in being able to act decisively and unilaterally to protect employee health by implementing a COVID-19 vaccine mandate is compelling. Being able to implement the vaccine mandate quickly, rather than having to wait until bargaining and interest arbitration with both unions was completed, may have saved the lives of police officers at King County.

When Constantine announced the vaccine mandate to employees, he said, "As government employees, many of us work directly with the public. We have an obligation to keep our customers safe." Protecting public health is a core governmental function. *See, e.g., In re Recall of Inslee*, 508 P.3d 635, 642 (2022). The duties of the Deputies, Sergeants, Captains, and Majors at the King County Sheriff's Office require them to interact closely with members of the public. Police officers

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<sup>24</sup> We can't ultimately know what direct effect the County's COVID-19 vaccine mandate had in comparison to what it would have looked like if the County had not implemented the vaccine mandate. The County's interests at the time the decision was made should be considered—that is, what effects the County had reasonably foreseen the vaccine mandate would have. The vaccine mandate was either mandatory or permissive at the time the decision was made, rather than in hindsight. *See, e.g., City of Seattle*, Decision 11588-A (PECB, 2013) (finding that the decision to stop using outside-counsel for police action defense cases was nonmandatory, even though in-house counsel ended up being insufficient, and the employer returned to hiring outside counsel); *City of Walla Walla*, Decision 12414 (considering the employer's justification "at the time of the unilateral change" for changing fire apparatus numbering system under the *City of Richland* test, even though subsequent events eliminated the justification).

<sup>25</sup> The guild's expert witness, Dr. Natuzzi, asserted that "the vaccines were not blocking transmission." However, the County's witness, Dr. Lynch, pointed out that the studies Dr. Natuzzi had relied on showed that the vaccines did still reduce transmission of COVID-19 to some extent, especially soon after vaccination. Moreover, as noted above in footnote 4, many of the studies Dr. Natuzzi had relied on in her testimony were issued after the County had already ordered the mandate. Even if, after the fact, the efficacy of the vaccines in reducing transmission was called into question, at the time of the order it was reasonable for the County to believe that the vaccines would be effective in reducing transmission, even if they did not completely "block" it. As noted above, the impacts of the vaccine mandate should be viewed as the County would have foreseen them at the time of the decision, rather than in hindsight. Although there was some disagreement among experts about the extent to which the vaccines prevented transmission, the County was entitled to rely on those with the view that the vaccines were effective. The County was not required to credit the experts who disagreed.

enter homes and businesses, render life-saving assistance, and take people into custody. The COVID-19 vaccine mandate foreseeably reduced the chances of county police officers spreading COVID-19 to members of the public during these interactions. The County's interest in being able to act decisively and unilaterally to protect public health by implementing a COVID-19 vaccine mandate is compelling. Being able to implement the vaccine mandate quickly, rather than having to wait until bargaining and interest arbitration with both unions was completed, may have saved the lives of members of the public in King County.

When he announced the vaccine mandate to employees, Constantine stated, "The key to ending the pandemic is for as many people as possible to be fully vaccinated." The County had an interest in ending the COVID-19 pandemic. The vaccine mandate furthered this interest as it foreseeably increased the portion of the local population that was vaccinated. Dr. Lynch testified,

[V]accine mandates... dramatically impact uptake of vaccinations.... [G]enerally you get an increase of vaccination, between 15 and 20 percent. That's a lot. One in five people get vaccinated as a result of a mandate who haven't already chosen to be vaccinated. We also know that in King County, specifically among different groups, vaccination rates increased from moderate, low, to very high as a result of mandates, so less than half to... three quarters or more with just the implementation of the mandate. So they clearly work to get people vaccinated with a safe and effective vaccine.

Among the King County Sheriff's Office Deputies, the vaccination rate went from around 416 fully vaccinated employees at the end of July 2021 (using the figures from Sheriff Cole-Tindall's report, 58.5 percent of about 712 employees) to about 665 (or 93 percent) by the time the vaccine mandate was implemented (according to Cole-Tindall's figures, 47 were separated or resigned because of the vaccine mandate, and about 665 officers remained).

Increasing population immunity through vaccination was regarded as a safe and effective means to combat the COVID-19 pandemic. The *Journal of the American Medical Association* recommended vaccine mandates as "the way to regain the upper hand in this fight." Ending the COVID-19 pandemic so that the community could return to a normal life is a compelling interest. Being able to implement the vaccine mandate quickly, rather than having to wait until bargaining

and interest arbitration with both unions was completed, foreseeably furthered these broader interests.

The County's vaccine mandate order stated that "widespread vaccination is also the primary means we have to protect our health care system." Increased vaccination rates advanced the County's public health interest by helping to preserve the integrity of the healthcare system. The guild and the County's experts agreed that the vaccines prevented severe disease and hospitalization, so increased vaccination rates foreseeably helped keep the hospitals from being overrun. Dr. Lynch explained the implications of this:

[I]f we were not able to markedly reduce, dramatically reduce the risk of hospitalization and all the care that ensues with those hospitalizations, every hospital in our county and in our state and potentially across the country would be at risk for being overwhelmed. There were multiple times during the pandemic where we were close to enacting what's called the crisis standard of care. If you're not familiar with this, this is a step-wise process where you move through conventional care, to contingency care where we implement the same level of care but in unconventional ways, for instance, reducing requirements around documentation or other ways that don't directly impact patient care.

That's so if . . . the system gets pressured in terms of census and capacity, we move from conventional to contingency. When . . . that ability goes beyond, we move into what's called crisis standards of care. That's where the system moves to prioritizing who can survive, basically. Who is most likely to survive, which is contrary to our standard approach in medicine. It is important to recognize that Idaho went to crisis standards of care, and they had to think about not prioritizing healthcare in a way that they aren't typically used to.

And we had many conversations at the state level . . . around how were we going to implement crisis standards of care because we were that close to it. What I mean by that is the hospital system was so fragile in terms of the number of patients coming to our facilities, requiring our care, the length of time, particularly COVID patients required, in the ICU . . . often six-, eight-plus weeks of critical care and intubation, which is fairly unprecedented, that it was a constant fear.

If it wasn't for vaccines, we would, I think have eclipsed that and moved into crisis standards of care here in Washington State and definitely in King County as the referral standard for the entire state.

Being able to implement the vaccine mandate quickly, rather than having to wait until bargaining and interest arbitration with both unions was completed, foreseeably furthered the County's interest in protecting the local healthcare system.

The County's COVID-19 vaccine mandate was issued, in part, because "King County provides essential services to the public," and "response to the emergency has required and continues to require King County employees to provide services, often in-person, to protect life, health, and safety." One of the County's primary missions is to provide police services through the Sheriff's Office. The COVID-19 vaccine mandate foreseeably helped ensure that the King County Sheriff's Office continued to provide its essential services. COVID-19 was the leading cause of police officer line of duty deaths in 2020 and 2021. The County has an interest in avoiding sickness and death among its police officers so that it can continue to provide essential police services to the community. Vaccines prevent severe illness and death, as well as prevent and reduce the severity of "long-COVID," which could impair or incapacitate employees for many weeks or months. By mid-2021, the County's police department was already understaffed for reasons other than COVID-19. The County had a compelling interest in keeping the Sheriff's Office staffed and operational to preserve public order and safety. Being able to implement the vaccine mandate quickly, rather than having to wait until bargaining and interest arbitration with both unions was completed, foreseeably kept the Sheriff's Office personnel healthy and at work, performing their critical mission.

As a practical matter, the nature of the COVID-19 pandemic created a strong interest in the County being able to implement the COVID-19 vaccine mandate without having to wait for bargaining and impasse resolution. The situation was urgent. The Delta variant was surging at the time of the mandate. The area's hospitals were filling to capacity, and at that time no one knew how long the Delta variant would go on or how infectious it would get. As Dr. Lynch testified, delaying the implementation of the vaccine mandate would have foreseeably led to a "dramatic increase in infections and likely an overwhelming number of hospitalizations that would potentially overrun the healthcare system." Being able to act decisively to preserve health and safety, limit sickness

and death, and maintain essential government services during a once-in-a-century pandemic “lies ‘at the core of entrepreneurial control’” for the government of King County.

### *Public Interests*

Where public safety may be impacted by an employer’s decision, the public’s interest in safety must be weighed as part of the balance. *City of Everett, (International Association of Fire Fighters, Local 46)*, Decision 12671-A. In this case, the public’s interests largely overlap with the interests articulated above. The officers at the King County Sheriff’s Office interact with members of the public in person. These interactions occur in homes, in public and private buildings, and in the back of patrol cars. Social distancing and masking are not always possible. Members of the public have an interest in reducing the likelihood that a police officer will transmit COVID-19 to them. The public also has an interest in continued police services, a critical service to the community. The COVID-19 vaccine mandate furthered these public interests. These public interests were furthered by the County’s ability to implement the vaccine mandate quickly, rather than having to wait until bargaining and interest arbitration with both unions was completed.

### *The Balance*

The unions’ interests in job preservation, in advocating for employees who had legitimate reasons for not wanting to get a COVID-19 vaccine, and in the freedom to make one’s own choice whether to receive a COVID-19 vaccine are significant and compelling. However, I find that under the unique facts of this case, the County’s interests in being able to decisively and unilaterally implement the COVID-19 vaccine mandate in order to protect its employees, protect the public, and further public health interests, and the public’s parallel interests, outweigh the unions’ interests.

The unions urged that the reduction in police department staffing levels as a result of the COVID-19 vaccine mandate detrimentally impacted the workforce and impacted services to the public and that this weighs in the unions’ favor. I do not find that this factor should carry much weight in the balancing test. Staffing levels can be impacted by many factors such as pay, recruitment efforts, and job qualifications. Prior to the COVID-19 vaccine mandate, the department was already understaffed, and recruitment efforts were impacted by other factors, not



the mandate. Sheriff Cole-Tindall's report said that 47 commissioned employees were separated or resigned because of the mandate, but there were over twice as many (113) commissioned vacancies. Moreover, it is impossible to know how staffing, morale, and workload could have been impacted by increased sickness and death among the police force if the vaccine mandate had not been implemented. Viewed from this angle, the potential impacts to staffing from not immediately implementing a COVID-19 vaccine mandate could weigh in favor of finding that it was not a mandatory subject.

Applying the *City of Richland* test is specific to the facts of each case. One case may result in a finding that a subject is a mandatory subject of bargaining, while the same subject, under different facts, may be considered permissive. *City of Everett, (International Association of Fire Fighters, Local 46)*, Decision 12671-A. This is such a case. The particular circumstances present here lead to an outcome that could easily be different in another vaccine mandate case with different facts. It is critical to analyze the circumstances that existed at the time the decision was made.

There are several specific facts that were present at the time that tip the balance in the County's favor in this case.

One important factor unique to this case is the nature of the COVID-19 pandemic itself. COVID-19 is extremely transmissible between people in close proximity. Humanity had no prior immunity to it, and it causes a significant amount of sickness and death. A case involving a vaccine mandate for a different disease that is not as transmissible or virulent (e.g., human papillomavirus, gingivitis, or the seasonal flu) might come out differently.<sup>26</sup>

Another important circumstance unique to this case is the nature of the COVID-19 vaccines as their effectiveness was understood at the time. At the time of the vaccine mandate, the vaccines were approved by the FDA under emergency use authorizations and were understood to be highly

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<sup>26</sup> Thus, National Labor Relations Board and Ninth Circuit Court of Appeals decisions described by the association that dealt with flu prevention policies (for which the association did not provide citations) are distinguishable.

effective at preventing infection, transmission, disease, and death. The vaccines were also understood at that time to have very minimal and rare side effects.<sup>27</sup> The COVID-19 vaccines are still understood as being effective in preventing serious illness and death. A different case dealing with different vaccines that were not understood to be as safe and effective might come out differently. Similarly, a COVID-19 vaccine mandate case arising at a different time with a different body of knowledge about the safety and effectiveness of the vaccines might come out differently. This case must be weighed based on what was known about the COVID-19 vaccines at the time of the County's mandate.

Another important circumstance unique to this case is that, at the time the vaccine mandate was implemented, the Delta variant was creating a significant public health crisis. Fortunately, the Delta variant did not last long, and the hospitals did not exceed their capacity. At the time of the mandate, however, no one knew how long the Delta variant would circulate, how many people it would make sick or kill, or whether the hospitals would exceed capacity. At the time, there was an understandable urgency to take action to combat the Delta variant. Under other circumstances, the COVID-19 vaccine mandate might not have the same urgency. At the time of the publication of this decision, the COVID-19 pandemic seems to have largely stabilized, and life has largely returned to normal. If the COVID-19 vaccine mandate were ordered today, the case might turn out differently. This case, however, must be weighed in the circumstances that existed at the time.

Another important circumstance unique to this case is that we are dealing with the COVID-19 vaccine mandate as it is applied to a bargaining unit of police officers. Police officers cannot work from home, and typically they work in close contact with each other and with members of the public. They also perform an absolutely critical and fundamental mission for the maintenance of public order and safety. A COVID-19 vaccine mandate case as applied to a different group of

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<sup>27</sup> Subsequent to the County's vaccine mandate, in May 2022, the FDA limited the use of the Janssen (Johnson & Johnson) vaccine to "individuals . . . who would otherwise not receive a COVID-19 vaccine" because of a rare but serious blood clotting side effect.

employees, such as those who can work from home or who have a less critical mission, might have a different outcome.

Another important circumstance unique to this case is that, at the time of the COVID-19 vaccine mandate, the King County Sheriff's Office was already understaffed and was having difficulty recruiting new officers. Additionally, the onboarding process to get new recruits to the point where they can be on patrol on their own is substantial, taking about 18 months. The County had an understandable urgency in ensuring that its police force was protected from COVID-19 so that they could continue to perform their jobs. In a different case where the workforce was in surplus or where employees were easily replaced, the outcome might be different.

In this case and under these circumstances, the government of King County had the right to unilaterally implement a COVID-19 vaccine mandate to protect its employees and the public from COVID-19, maintain its police force, protect the health care system, and attempt to advance the end of the pandemic. Under the circumstances, this was not the type of decision that should have had to wait for bargaining and interest arbitration. Balancing the union, employer, and public interests, I find that the County's August 10, 2021, COVID-19 vaccine mandate was not a mandatory subject of bargaining. Accordingly, the County was not required to bargain to agreement or resolved impasse over its COVID-19 vaccine mandate.

*The Effects Bargaining Was Not Required to Be Completed Before the County Implemented Its Vaccine Mandate*

The guild argues that both "termination" and "accommodations" are effects of the mandate. As discussed above, both of these subjects are part and parcel of the vaccine mandate decision itself rather than mere effects. There are, however, issues that are properly characterized as "effects." The parties discussed effects issues during their bargaining, such as compensation for getting the vaccine, leave for getting the vaccine and dealing with side effects, and compensation for staffing impacts of the vaccine mandate. The guild argues that "The Effects of the Mandate Touched on Mandatory Subjects of Bargaining, Which Must Be Bargained with the Guild *Before* the County Can Implement a Change to Status Quo."

The Commission has held that an employer “may implement decisions within its sole prerogative . . . even though required bargaining has not been concluded on the effects of that decision.” *City of Bellevue*, Decision 3343-A (PECB, 1990).

*Issue 2: Good Faith Bargaining Obligation*

According to the preliminary rulings, the second issue in this case is whether the County “[b]reach[ed] its good faith bargaining obligation during negotiations with the union[s] concerning COVID-19 vaccine requirements.”

The unions’ complaints elaborate on how the County allegedly breached its good faith bargaining obligation.

The association’s complaint asserted, “By refusing to move off of its positions stated in the August 17, 2021 ‘process outline,’ King County engaged in bad faith and surface bargaining. . . .” The association did not address the “good faith bargaining” issue in its brief. The association did not offer anything that appeared to be “the August 17, 2021 ‘process outline’” into evidence.

The guild’s complaint asserted, “The County’s predetermined resolve not to change its pre-determined positions constitutes bad faith bargaining. . . .” and “the County’s bargaining with predetermined outcomes constituted surface bargaining . . . .”

In its brief, the guild argues that the County breached its duty to bargain in good faith because

- “The County Entered Bargaining with a Predetermined Resolve Not to Budge From its Original Position of Vaccinate or Terminate. . . .”;
- “The County’s conduct at the table . . . was the ‘County’s way or the highway. . . .”;
- “[T]he County quickly shot down each option with very little or no explanation. . . .”;
- “The County never explored or contemplated any alternatives to termination, despite the Guild’s desperate attempts to properly negotiate. Instead, throughout bargaining, the County’s proposals to the Guild virtually stayed the same. . . .”;

- “The County never considered any proposals which could prolong a member’s employment or save a member’s job. . . .”;
- “[T]he Guild proposed alternatives to termination. . . . [and] [t]he only response from the County was always, ‘No’. . . .”;
- “[T]he County fixated on maintaining consistency between different labor organizations. . . .”; and
- “[T]he County’s position remained the same from the date the mandate was announced to the date of the final member’s termination. All attempts by the Guild to bargain with the County were futile. . . .”

It is evident that most of the bargaining sought by the guild and association was over the decision to implement the vaccine mandate itself (i.e., ways to have unvaccinated employees remain employed by the County). As discussed above, the County was allowed to unilaterally implement its mandate that all employees receive a COVID-19 vaccine or be terminated. The County was not required to negotiate over its decision to terminate employees who did not receive the vaccine. The unions’ proposals to mask and test instead of vaccinating, have employees work from home instead of vaccinating, or have employees remain at home on paid or unpaid leave instead of vaccinating fall in this category. Despite the County’s communications to the unions stating that it would only agree to engage in effects bargaining, the unions steadfastly insisted on making “decision” proposals.

Where the unions here clearly sought to bargain over the decision as well as the effects, some Commission precedent indicates that the County would have been under no obligation to respond to such demands.

In *Wenatchee School District*, Decision 3240-A, the Commission found that the employer did not refuse to bargain the effects of a nonmandatory decision where “the union’s . . . proposals ‘were more directed at the decision . . . than to the effects of that decision.’” The Commission “therefore view[ed] this as a case of the union having made undifferentiated bargaining demands, i.e., where a proposal contains mandatory and permissive subjects of bargaining that are intermingled.” The

Examiner found that, nonetheless, the employer had unlawfully refused to bargain by terminating bargaining without getting into bargaining over the “effects.” The Commission reversed, finding that “the absence of ‘effects’ bargaining occurred because the union kept focusing on what we have found to be a permissive, not mandatory, subject of bargaining. . . . As noted earlier, testimony by the union's own witnesses suggests that the union's focus was not on true ‘effects’, but rather on the program decision.” The Commission cited *Renton School District No. 403*, Decision 706 (EDUC, 1979), where the employer had “committed no unfair labor practice in refusing to respond to the union's proposal that encompassed a nonmandatory subject of bargaining” and *Pierce County*, Decision 1845 (PECB, 1984), where “the thrust of the union's demand was focused on a nonmandatory subject of bargaining, but two of the union's proposals could have been read as an attempt to address effects . . . [T]he union did not request to bargain effects in a clear and coherent manner, and . . . no refusal to bargain occurred when the employer failed to ‘ferret out’ the effects proposals.” *See also Port of Seattle*, Decision 11763-A (PORT, 2014) (“[I]f a union focuses on bargaining a decision that is a permissive subject of bargaining and not the effects, an employer may not be found to have refused to bargain the mandatory effects of a permissive decision.”).

The record shows that the County in fact did meet with the unions, exchanged proposals, and was willing to discuss issues with the unions. This appeared to also involve repeated assertions by the County that it would not bargain over the vaccine mandate decision. Many of the complaints in the guild’s brief are disposed of by the conclusion that the vaccine mandate was not a mandatory subject of bargaining. The County’s duty to bargain in good faith was limited to the effects of the decision. The County was lawfully intransigent on the vaccine mandate decision. Thus, it was entirely permissible for the County to “[e]nter . . . Bargaining with a Predetermined Resolve Not to Budge From its Original Position of Vaccinate or Terminate,” as the guild alleges.

Considering the totality of the circumstances, the unions do not show that the County’s bargaining with respect to the effects constituted bad faith or surface bargaining. The record shows that the County met with each union several times and exchanged, discussed, and modified its proposals. With respect to the effects, the record does not indicate a “take it or leave it” attitude on the part of the County. With respect to effects, the record does not support a conclusion that the County

reduced collective bargaining to an exercise in futility. The allegation that the County “fixated on maintaining consistency between different labor organizations” is belied by the fact that the County’s final proposals to the guild and the association are themselves different in several ways.<sup>28</sup> With respect to effects, the totality of the County’s conduct does not “reflect a rejection of the principle of collective bargaining.” *Mason County*, Decision 3706-A (PECB, 1991).

In sum, the unions do not carry their burden of proving that the County breached its good faith bargaining obligations during negotiations over the effects of the vaccine mandate.

### CONCLUSION

Because King County’s August 10, 2021, COVID-19 vaccine mandate was not a mandatory subject of bargaining, the County was not required to bargain the decision. It was not unlawful for the County to unilaterally implement the vaccine mandate. The unions did not carry their burden of proving the County breached its good faith bargaining obligation during negotiations regarding the vaccine mandate. The complaints are dismissed.

### FINDINGS OF FACT

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

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<sup>28</sup> The County’s final offer to the association provided that employees would be encouraged to get vaccinated during regular work hours, but the final offer to the guild did not contain such a provision. The County’s final offer to the guild provided that employees who are “fully vaccinated” would be eligible for rehire, while the association offer said employees had to be “compliant with all hiring requirements at the time of reinstatement” and contained other different rehire language. The final offer to the association provided that the Sheriff’s Office would “seek input from PSPMA on the development of operational staffing plans as they specifically relate to the impacts of the Executive’s order,” while the final offer to the guild contained no such provision. The final offer to the association provided that employees would be able to carry over excess leave if vacations were denied for operational reasons, but the final offer to the guild contained no such provision. The final offer to the association provided that “all other terms and conditions of the collective bargaining agreement remain in full force and effect,” while the final offer to the guild contained no such provision. The provisions stating that the parties “have fulfilled their bargaining obligations” are also different in the unions’ final offers. And it is not necessarily the case that seeking uniformity among bargaining units constitutes bad faith on the part of an employer. *See Western Washington University*, Decision 9309-A (PSRA, 2008); *Whatcom County*, Decision 8512-A (PECB, 2005); *Pierce County*, Decision 13004 (PECB, 2019).

2. The Puget Sound Police Managers Association (association) is a bargaining representative within the meaning of RCW 41.56.030(2) and is the exclusive bargaining representative of a bargaining unit of the King County Sheriff's Office Captains, Majors, and Lieutenants.
3. The King County Police Officers Guild (guild) is a bargaining representative within the meaning of RCW 41.56.030(2) and is the exclusive bargaining representative of a bargaining unit of the King County Sheriff's Office Deputies.
4. The Deputies, Captains, Majors, and Lieutenants working for the employer are uniformed personnel within the meaning of RCW 41.56.030(14).
5. Dow Constantine was the King County Executive.
6. Mitzi Johanknecht was the King County Sheriff.
7. At a different time, Patti Cole-Tindall was the King County Sheriff.
8. Major Theodore Boe is the association's representative.
9. Stanley Seo was the association's president.
10. Joseph Hodgson was the association's vice president.
11. Deputy Michael Mansanarez is the guild's president.
12. Brenda Bauer was the employer's Deputy Chief Operating Officer and COVID Incident Commander.
13. Whitney Abrams was the employer's Chief People Officer.
14. Bob Railton was the Deputy Director of the King County Office of Labor Relations (OLR).
15. Sasha Alessi was a Negotiator with the King County OLR.
16. The employer and the association were parties to a collective bargaining agreement for the Majors unit that was effective from August 26, 2021, through December 31, 2022.



17. The employer and the association were parties to a collective bargaining agreement for the Captains and Lieutenants unit that was effective from January 1, 2021, through December 31, 2022.
18. The employer and the guild were parties to a collective bargaining agreement for the Deputies unit that was effective from January 1, 2017, through December 31, 2021.
19. The Deputies, Captains, Majors, and Lieutenants working for the employer interact closely with members of the public as part of their core job duties, entering homes and business, rendering life-saving assistance, and taking people into custody.
20. In early 2020, a novel coronavirus known as SARS-CoV-2 reached Washington. SARS-CoV-2 is extremely communicable and causes COVID-19, a respiratory disease for which humanity had no established immunity and which can lead to serious illness and death.
21. In February and March 2020, the President of the United States, the Governor of Washington, and King County Executive Dow Constantine declared states of emergency in their jurisdictions because of the emerging COVID-19 pandemic. The County, along with other governments and organizations, adopted a variety of measures to control the spread of COVID-19, including quarantining, isolation, testing, masking, handwashing, sanitation practices, social distancing, limiting capacity of indoor spaces, air filtration, and using plexiglass partitions. The scientific community believed these measures were effective. At King County, some police work, such as taking reports or detective work, could be done remotely, but much of the work still had to be done in person.
22. In December 2020, the United States Food and Drug Administration (FDA) issued emergency use authorizations (EUAs) for COVID-19 vaccines developed by Pfizer/BioNTech and Moderna. The Pfizer/BioNTech and Moderna vaccines used messenger RNA (mRNA) technology. This was the first time mRNA technology was used for a vaccine for infectious diseases in humans. In February 2021, the FDA issued an EUA for a COVID-19 vaccine developed by Janssen (Johnson & Johnson). The Janssen

(Johnson & Johnson) vaccine was an adenovirus-based vaccine. The FDA approved the vaccines after studies showed that they reduced transmission of COVID-19 and were effective at preventing symptomatic disease and death. Research studies indicated that the vaccines provided better immunity and protection than either being previously infected (assuming one survived the infection) or having no prior infection. Research also indicated that the vaccines provided better protection than testing, masking, and other strategies that were employed prior to the availability of the vaccines. The vaccines helped people continue to perform their jobs instead of being out sick with COVID-19. There was only one group of people who were recommended to not get the vaccine – people who had a history of severe anaphylaxis in response to ingredients in the vaccine, such as polyethylene glycol. As with other vaccines, the Pfizer/BioNTech, Moderna, and Janssen vaccines were not zero risk, but severe side effects were believed to be very rare.

23. Vaccine availability was phased in for different groups of the population. According to the Washington State Department of Health’s *COVID-19 Vaccine Prioritization Guidance and Allocation Framework*, law enforcement officers were part of phase 1B2 and were eligible to receive vaccines beginning March 17, 2021. On March 15, 2021, Whitney Abrams, the County’s Chief People Officer, sent an email to all county employees informing them of this eligibility.
24. The Delta variant first began to emerge in the United States around late spring of 2021 and was a variant of concern because it was both much more transmissible and more pathogenic (caused more disease). The Delta variant caused higher rates of hospitalization and death than prior variants. Research available at the time indicated that the Pfizer/BioNTech, Moderna, and Janssen vaccines were less effective in preventing infection by the Delta variant, and “breakthrough” infections increasingly occurred, but the vaccines still provided a reduction in infection and transmission, especially soon after being vaccinated. The vaccines were still providing very high levels of protection against severe disease and death.

25. In August 2021, the Delta variant reached western Washington, and COVID-19 infections surged in King County. Hospitalizations, intensive care unit admissions, and deaths all markedly increased. The infection and hospitalization rates were much higher for unvaccinated people compared to those who were fully vaccinated. At the time, much of the population had still never been infected with COVID-19 and had no immunity at all, and thus vaccinations were likely to offer substantial protection from severe illness and death.
26. By August 2021, some but not all of the employees of the County were vaccinated. According to the County's insurance information, as of late July, only 58.5 percent of Deputy Sheriffs were fully vaccinated. Some of the officers were hesitant to get vaccinated. Some officers who believed they were positive for COVID-19 would choose to not get a test or report it.
27. Employer officials determined that a vaccine mandate was in order, to protect the safety of employees and the public and to continue to deliver public services. The employer determined that a vaccine mandate would be superior to alternatives such as masking and testing.
28. On August 9, 2021, Constantine posted an article on the King County "Employee News" page, which was sent to all county employees. In this article, Constantine explained that the County would require all employees to be fully vaccinated effective October 18, 2021. Constantine described how the number of new cases of COVID-19 had substantially increased and how "[n]ationally, about 97% of patients hospitalized with COVID-19 are unvaccinated. Vaccines have been shown to be safe and highly effective at preventing COVID-19 infection and in limiting hospitalization and death, even when there are 'breakthrough' infections." Constantine stated, "The key to ending the pandemic is for as many people as possible to be fully vaccinated." Constantine also said,

As government employees, many of us work directly with the public. We have an obligation to keep our customers safe. We also want our colleagues to be as safe as possible. The need for our services remains as urgent as ever during the pandemic,

essential for the people we serve. Our work needs to go on. Full vaccination is the answer.

29. Also on August 9, 2021, Constantine held a joint press conference with Washington Governor Jay Inslee, along with leaders from the City of Seattle and the Washington State Department of Health, and Public Health – Seattle & King County. At this conference, the speakers reiterated the dangers of the Delta variant and the impacts that the pandemic was having on the healthcare system, the economy, and daily life. Inslee in particular was very explicit that the state mandate meant that vaccination was a condition of further employment and that employees who did not vaccinate and did not have an exemption and accommodation would be separated. At the conference, Constantine said the following:

King County will be mirroring . . . the state employee policy, and we will be requiring all 13,500 executive branch employees to be vaccinated by mid-October. We too will work with our labor unions to negotiate the details for implementation. . . . Today's announcement will help ensure that we reach our goal of 100 percent by fall. . . . Steps like this at the local and organizational level are what the experts think are necessary. . . . The Delta variant is spreading in our community now. It's more contagious, more infectious, more dangerous than what came before it. There is one group of people that it is hitting by far the hardest—the unvaccinated. The science is clear. Vaccines work. They're safe. They're our best way to end this pandemic. And there is no reason not to take the time to get your vaccine and help protect your health before you get sick. But getting your vaccine isn't just or even primarily about protecting yourself. It's something you do for your family. It's something you do for your friends, for your neighbors, for your coworkers. And particularly for the children who are unable to be vaccinated. So let's all do our part, every one of us, to get every person vaccinated against this disease that has taken such a tragic toll on our community over the last year and a half. I saw last week that the Seahawks announced that they had reached a 99 percent vaccination rate in their organization . . . That sounds like a challenge to me. So I'm looking forward to this fall when for the first time ever, the King County executive branch will try to best the Seahawks in at least one measure, and that is hitting 100 percent vaccinated.

30. Before these announcements, the association was not provided any advance notice that a vaccine mandate order was going to be issued. Mansanarez received a phone call informing him that the press conference would occur ten minutes before it happened.

31. On August 10, 2021, Constantine signed the Order Pursuant to Proclamation of Emergency; COVID-19 Vaccination Requirements for Executive Branch Employees. The order declared that “all King County Executive branch employees must be fully vaccinated with vaccines authorized by the Centers for Disease Control (CDC) by October 18, 2021.” The order described the background and reasoning for the mandate, including that the Delta variant had caused COVID-19 cases and hospitalizations to rise sharply; that COVID-19 vaccines are safe and effective in reducing serious disease and hospitalizations; that King County provides essential services to the public, often in person, to protect life, health, and safety; and that vaccination was the primary means to protect the health care system, avoid the return of stringent public health measures, and end the pandemic. The order provided an exception, “as employees may be entitled under law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation.”
32. On August 11, 2021, Railton sent an email to union leaders including Mansanarez and Seo. Railton informed the recipients about the vaccine mandate order and said, “Failure to comply with the Order will result in separation of employment.” Railton told the unions to notify his office “if you want to bargain the impacts of the Order.”
33. On August 11, 2021, Hodgson sent a demand to bargain letter to Johanknecht regarding the COVID-19 vaccination mandate.
34. On August 13, 2021, Mansanarez sent Alessi a demand to bargain letter on behalf of the guild. Both unions demanded to bargain over both the decision and the effects of the mandate order.
35. On August 19, 2021, Railton provided Mansanarez and Seo with documents about religious and medical exemptions and accommodation, vaccination sites, compensation for getting vaccinated, leave use for employees unable to work due to vaccine effects, and rehire of employees who were separated and subsequently vaccinated, as well as “a draft of the county’s plans for separating employee[s] who cannot be accommodated or elect to not be vaccinated.”

36. The first meeting between the association and the County was on August 30, 2021. Boe was the spokesperson for the association. Boe understood that the County was only willing to negotiate the effects of the mandate, not the mandate itself. Nonetheless, the association proposed that unvaccinated employees be placed on administrative leave, telecommute, take COVID-19 tests, and wear masks as an alternative to being separated from employment. The association also proposed that the deadline to become vaccinated be extended to January 1, 2022.
37. The County gave a written proposal to the association on September 7, 2021. The association provided a written counter proposal to the County on September 9, 2021. The association proposed provisions relating to the following: the use of leave prior to separation (i.e., “unpaid leave of absence with benefits to follow until rescind of the executive order”); reinstatement; limiting the duration of the vaccine mandate; supplemental vaccinations and boosters; use of leave related to the vaccines; long term impacts or deaths; \$1,000 additional weekly pay for Captains and Majors; the Sheriff’s plan for staff reductions and workloads; and allowing “leave cash-out” for leave that could not be used.
38. Over the next several weeks, the parties continued to exchange proposals.
39. Throughout the bargaining process, both the County and the association modified their proposals.
40. At a bargaining session prior to October 5, 2021, the association and the employer reached an “agreement in principle.” The association took the agreement to a vote of its membership. The association membership voted to reject the agreement.
41. The employer had a public health nurse at the bargaining sessions with the association to provide information relating to the County’s position that vaccination was the best way to combat the pandemic. The nurse had explained why she believed that the proposed alternatives were not as effective in preventing the spread of COVID-19 as vaccination.

42. The guild and the County first met to bargain regarding the vaccine mandate towards the end of August 2021. The guild asked the County for more time before the mandate was implemented and also suggested alternatives to vaccination, such as testing, masking, and telecommuting.
43. On August 31, the County provided a written proposal to the guild that addressed effects of the mandate, such as the process and timelines the County would use to enforce compliance with the mandate; the general exemption and accommodation policy; that vaccinations would be on paid time; paid time off up to one shift for vaccine side effects; the County paying the costs of vaccinations; eligibility for rehire; and confidentiality of medical information.
44. The guild provided a revised proposal to the County on the same day, August 31. The guild proposed that instead of being separated, employees who were not fully vaccinated (or who were exempt from vaccination but could not be accommodated) would take a daily COVID-19 test and would have to wear a mask at all times while at work; compliance timelines would be adjusted so that the separations for non-compliance would not go into effect until January 1, 2022; such separations would not be considered “misconduct” and the County would not challenge employees’ eligibility for unemployment; accommodations for those not vaccinated “may include masking at all times while at work and up to daily testing”; all employees who were fully vaccinated by December 1, 2022, would be paid \$2,000; paid time off for vaccine side effects would be increased to 40 hours; separations due to the vaccine mandate would be grievable under the contract’s just cause provision; unvaccinated employees could seek rehire when the emergency proclamation ended, including details of the rehire process; employees separated due to the vaccine mandate would be eligible to receive payment for accrued leave under the CBA; employees who had a documented case of COVID-19 in the previous five months would not be required to be vaccinated; and that any required quarantining for COVID-19 cases or exposures would be on paid leave.

45. The County and the guild continued to exchange proposals through September and October. Each party modified its proposals during the process. Around October 15, 2021, the guild requested mediation, and a PERC mediator was assigned.
46. On October 19, 2021, the County provided a proposal to the guild which was different from the County's initial proposal. The guild did not bring this proposal to the membership.
47. The employer and the guild continued to meet with the Mediator through November 2021. Effects bargaining and mediation continued past the date that the guild submitted its unfair labor practice complaint and into 2023.
48. In bargaining with both unions, the employer took the position that they would not bargain over the decision, only the effects. Thus, the employer was not willing to entertain the unions' "decision" proposals. The employer was also not interested in bargaining over accommodations because the employer only intended to provide exceptions and accommodations to the mandate as required by law.
49. One person represented by PSPMA was separated because of the vaccine mandate. Twenty-five employees represented by the guild were separated because of the vaccine mandate. The County characterized the separations as non-disciplinary. Due to the time involved in processing the accommodations, the terminations were effectuated between November 22, 2021, and April 1, 2022.
50. Some employees chose to resign at least in part because of the vaccine mandate.
51. The loss of officers had an impact on the operations of the department, which was already understaffed for other reasons. This impact to staffing in turn foreseeably impacted workload, as well as officer morale and officer safety.
52. COVID-19 was the leading cause of line of duty deaths for police officers in 2020 and 2021.
53. At the time of the employer's COVID-19 vaccine mandate, misinformation and conflicting information about COVID-19 and the COVID-19 vaccines were rampant.



54. One employee, C.B., was sincerely concerned about whether it was safe to get a COVID-19 vaccine. On the County's medical questionnaire, C.B.'s doctor answered "no" to whether C.B. was allergic to anything specific in any of the vaccines and wrote "I support the vaccines in general. But my signature here does not mean I agree with vaccinating an already immune person against [their] will." However, C.B.'s doctor had earlier said that, due to a past infection, C.B. was "already immune to SARS-CoV-2. Further [C.B.] has a history of severe reactions to vaccines in the military. It is my professional opinion that [C.B.] would become very ill if [C.B.] was administered the vaccine."
55. Another employee, M.R., submitted a doctor's note, which said,
- Given [M.R.]'s significant autoimmune health history, including diagnoses of Mixed Connective Tissue Disorder and Scleroderma, as well as frequent reactions to ingredients and excipients in supplements, pharmaceuticals, and vaccines that have severely impacted quality of life and ability to work, it is my professional recommendation that [M.R] does not receive the COVID-19 vaccine until more is known about the long term impact of the COVID-19 vaccines on the exacerbation and progression of autoimmune disorders.
56. The employer's COVID-19 vaccine mandate was motivated by a sincere concern over the COVID-19 pandemic and its threat to the health and safety of employees and the public.
57. The employer's COVID-19 vaccine mandate foreseeably reduced the chance that employees would infect each other with COVID-19. The vaccine mandate also foreseeably reduced the chances that employees would get infected with COVID-19 by members of the public as they performed their law enforcement duties. The vaccine mandate also foreseeably helped protect each employee from getting sick and dying from COVID-19.
58. The employer's COVID-19 vaccine mandate foreseeably reduced the chances of county police officers spreading COVID-19 to the members of the public during these interactions.
59. The employer's COVID-19 vaccine mandate foreseeably increased the portion of the local population, as well as the portion of the employer's workforce, that was vaccinated.

60. The employer's COVID-19 vaccine mandate foreseeably helped keep the hospitals from being overrun.
61. The employer's COVID-19 vaccine mandate foreseeably helped ensure that the King County Sheriff's Office continued to provide its essential services.

### CONCLUSIONS OF LAW

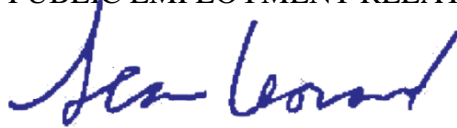
1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.
2. As described in findings of fact 19 through 31 and 48 through 61, the employer did not refuse to bargain with the association in violation of RCW 41.56.140(4) within six months of the date the complaint was filed by unilaterally changing terms and conditions of employment by requiring employees to be fully vaccinated against COVID-19 or face termination.
3. As described in findings of fact 28 through 33, 35 through 41, and 48, the employer did not refuse to bargain with the association in violation of RCW 41.56.140(4) within six months of the date the complaint was filed by breaching its good faith bargaining obligation during negotiations with the union concerning COVID-19 vaccine requirements.
4. As described in findings of fact 19 through 31 and 48 through 61, the employer did not refuse to bargain with the guild in violation of RCW 41.56.140(4) within six months of the date the complaint was filed by unilaterally changing terms and conditions of employment by requiring employees to be fully vaccinated against COVID-19 or face termination.
5. As described in findings of fact 28 through 32, 34 through 35, and 42 through 48, the employer did not refuse to bargain with the guild in violation of RCW 41.56.140(4) within six months of the date the complaint was filed by breaching its good faith bargaining obligation during negotiations with the union concerning COVID-19 vaccine requirements.

ORDER

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

ISSUED at Olympia, Washington, this 26th day of April, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in blue ink, appearing to read "Sean Leonard", is written over the printed name.

SEAN M. LEONARD, 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.