STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEIU HEALTHCARE 1199NW, Complainant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE 136601-U-23 DECISION 13881 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On May 9, 2023, SEIU Healthcare 1199NW (union) filed an unfair labor practice complaint against the University of Washington (employer). The union alleged that the employer had refused to bargain over the elimination of positions and movement of work to a different bargaining unit. A video hearing was held before the undersigned Hearing Examiner on January 30 and 31, 2024. The parties filed briefs on March 22, 2024, to complete the record. Because the union did not meet its burden of proving an unlawful refusal to bargain, the complaint is dismissed.

ISSUE

The issue in this case, as framed by the June 7, 2023, cause of action statement, is whether the employer violated RCW 41.80.110(1)(e) by "[b]reaching its good faith bargaining obligations

related to the elimination of Cardiac Monitoring Technician (CMT) positions and moving the work to a different bargaining unit beginning approximately July 1, 2023."[1]

BACKGROUND

The employer is a university which operates several medical centers. On January 9, 2023, the employer sent the union an email informing the union that the employer was "increasing the number of inpatient beds at three locations in order to support continuous high patient census and the community's need for cardiac care. All of these new inpatient beds [would] be equipped with telemetry monitoring for patients with cardiac conditions." The employer informed the union that to accommodate this increase in beds it would be "centralizing telemetry monitoring at Harborview Medical Center."

Telemetry monitoring is performed by Cardiac Monitoring Technicians. The union represents approximately nine CMTs at the University of Washington Medical Center – Northwest (Northwest). A different union represents CMTs at Harborview Medical Center (Harborview). The employer's January 9 email also informed the union that the CMTs currently working at Northwest would either relocate to Harborview or be laid off according to provisions in their collective bargaining agreement. The email suggested that the transfer of Northwest CMTs to Harborview would be complete by August 1, 2023.

On February 7, 2023, the union in the present case sent the employer an email with a "demand to bargain management's proposed move and restructure." The union's email demanded that the employer "[c]ease and desist all actions to restructure or change working conditions for [CMTs]."

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[1] The cause of action statement also contained an allegation that the employer had refused to provide relevant bargaining information. At hearing, the union dropped this allegation from its complaint. Tr. 9. The union did not present any additional testimonial evidence or briefing regarding a refusal to provide information. Accordingly, that claim is dismissed as abandoned. *See Tacoma School District (Tacoma Education Association)*, Decision 5465-E (EDUC, 1997).

On March 16, 2023, the union and the employer met and discussed the employer's decision to centralize telemetry monitoring and relocate the CMTs from Northwest to Harborview. The union asked about how the decision was made, whether it was final, who was consulted, whether patient safety concerns had been discussed, whether there had been discussion about having the centralization at Northwest instead of Harborview, and what parking and training would look like, among other topics. The employer responded that the primary consideration for the move was space, that it intended to move forward with the centralization and relocation of workers, and that it wanted to work collaboratively with the union on impacts such as schedules and parking.

On March 24, 2023, the employer filed a unit clarification petition[2] seeking to have the CMTs at Northwest moved out of the union's Northwest bargaining unit and into a unit that represents the CMTs at Harborview.

A bargaining session was scheduled for March 30, 2023. The union canceled it on the day of the session. On May 9, 2023, the union filed this unfair labor practice complaint.[3]

The union and the employer met on May 2, 10, and 17, 2023. At these meetings, the union raised patient safety concerns regarding the employer's plan to centralize CMT work and expressed skepticism about the employer's claim that there was insufficient space to maintain CMTs at Northwest. The employer responded that it was aware of the patient safety concerns and had adjusted some of its implementation timelines to reflect that there had not been much discussion about the impacts of the move.

On May 23, 2023, the union and the employer met via video conference. The union again raised patient safety concerns. The employer acknowledged these concerns and said it would work with

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[2] This was filed as case 136335-C-23.

[3] Much of the evidence presented in this case concerned events which occurred after the complaint was filed. Given that bargaining was ongoing when the complaint was filed and that the cause of action statement broadly addresses the bargaining of the Northwest CMT unit elimination and movement to Harborview, I find the post-complaint evidence relevant and will discuss it here. *See SNOPAC*, Decision 12342-A (PECB, 2016) (holding that "[e]vidence of events occurring after a complaint has been filed with the agency may be relevant to the case.").

employees to mitigate them. The union proposed that the employer put a telemetry station on each floor of each hospital where cardiac monitoring takes place. The employer responded that this proposal did not address its space concerns and would cost significantly more than their current plan. The employer again reiterated its position that management had the right to move the CMTs to Harborview and that it was interested in discussing the impacts of that decision.

On June 13, 2023, the employer emailed the union and stated that it felt that the bargaining process had "not led to any significant impact bargaining proposals." The employer adjusted its timeline and changed the implementation date for moving the Northwest CMTs to Harborview to September 29, 2023. The employer requested to schedule a meeting "the week of July 10th to discuss further."

Following the June 13, 2023, email, the parties had informal communications which ultimately culminated in an October 4, 2023, email from the employer rejecting an informal union proposal and declaring that the parties were at impasse. In the email, the employer declined to schedule future meetings and invited the union to send "proposal[s] or concept[s]" to the employer's representatives.

ANALYSIS

Applicable Legal Standards

The complainant has the burden of proof in unfair labor practice cases. WAC 391-45-270(1)(a). To establish a violation of RCW 41.80.110(1)(e) a party must show either a refusal to bargain over a mandatory subject of bargaining or conduct that so frustrates the bargaining process (bad faith bargaining) that it is equivalent to refusing to bargain. *See University of Washington*, Decision 11414-A (PSRA, 2013). 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 that may achieve a mutually satisfactory accommodation of the interests of both the employer and the employees. When analyzing conduct during negotiations, the Commission examines the totality of the circumstances to determine whether an unfair labor practice has occurred. *Shelton School District*, Decision 579-B (EDUC, 1984).

Chapter 41.80 RCW requires the employer to bargain collectively with the unions representing its employees regarding “wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement.” RCW 41.80.020(1). The scope of bargaining under chapter 41.80 RCW is limited by RCW 41.80.020 and RCW 41.80.040. RCW 41.80.040(1) prohibits employers from bargaining over “[t]he functions and programs of the employer, the use of technology, and the structure of the organization.”

In determining whether a subject of bargaining is mandatory, 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.” *Spokane County,* Decision 13510-B (PECB, 2022) (quoting *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission,* 113 Wn.2d 197, 203 (1989)).

Application of Standards

The union failed to meet its burden to prove that the employer violated the duty to bargain in good faith over a mandatory subject of bargaining.

The Employer’s Decision to Centralize CMT Work Was Not a Mandatory Subject of Bargaining

It is clear from the record that the employer was not willing to bargain over the decision to centralize CMT work; it was under no obligation to do so. In fact, had it done so, it would have violated RCW 41.80.040(1)’s prohibition on bargaining over “functions and programs,” “structure of the organization,” and “use of technology.” The Commission has held that a similar decision to centralize work within an organization was covered by RCW 41.80.040(1). *See University of Washington*, Decision 11075-A (PSRA, 2012) (citing the statute in ruling that the consolidation of call centers was not a mandatory subject). I find that the decision to centralize CMT work is related to “functions and programs,” “structure of the organization,” and “use of technology.” Bargaining over this decision would have violated the statute; the employer’s refusal to bargain the decision was lawful.

Even if the employer's decision was not covered by RCW 41.80.040(1), it was still not a mandatory subject of bargaining under the general balancing test used by the Commission. This is because the employer's need for entrepreneurial control over where its work is performed and how its space is allocated outweighs the employees' interests in the effected terms and conditions of employment, such as where they perform their work. Again, the Commission has held that similar consolidations of work and the transfer of whole departments were not mandatory subjects of bargaining. *City of Anacortes*, Decision 6830-A (PECB, 2000) (ruling that the transfer of emergency dispatch operations to a newly created entity was not a mandatory subject).

The Union Failed to Prove That the Employer Refused to Bargain the Impacts of the Decision to Centralize CMT Work

While the decision to centralize CMT work is not a mandatory subject of bargaining, there were arguably impacts of that decision which are mandatory subjects. These include things such as changes to parking and scheduling and potential impacts to patient safety. During bargaining, the employer expressed an interest in discussing these impacts. In response, the union continued to ask questions about the overall decision and made proposals which would have reversed the decision. The union cites the employer's lack of counterproposals as evidence of a refusal to bargain. But the employer did not need to respond to proposals which would have reversed a decision it was not obligated to bargain. *See Wenatchee School District,* Decision 3240-A (PECB, 1990) (holding that where proposals relate to both mandatory and permissive subjects, failing to respond is not a refusal to bargain). When a union believes that there are impacts to a decision which need to be bargained, it is up to the union to clearly raise these with the employer. *See City of Anacortes,* Decision 6830-A (ruling that there was no refusal to bargain where the union had failed to raise specific impacts with the employer prior to filing a complaint). In this case, the employer invited impacts discussions, and it discussed patient safety concerns with the union. The union did not present evidence of proposals it made with regards to impacts only that the employer had failed to respond to. In the absence of such evidence, I cannot find a refusal to bargain or bad faith bargaining.

The union argues that the employer refused to bargain over the assignment of duties of Northwest CMTs to the CMTs at Harborview. This is not an accurate description of the employer's position. The employer proposed centralizing the work and eliminating the Northwest CMT positions; it said nothing about assigning duties to employees in a different bargaining unit. It is true that the issue of the representation status of the CMTs from Northwest who would move to Harborview was not discussed in bargaining, but that is because shortly after bargaining began, the employer filed a unit clarification petition asking for this issue to be decided by PERC. Utilizing the Commission's processes to resolve a representation issue is not a refusal to bargain.

Finally, the union argues that some of the employer's behavior amounted to bad faith bargaining, including a unilateral declaration of impasse in an October 4, 2023, email to the union. Under the totality of the circumstances, this act was not bad faith bargaining. Taken in isolation, the employer's October 4, 2023, email might appear to be a refusal to bargain. In particular, the refusal to schedule additional meetings might appear to be a violation. However, the bargaining history makes clear that the union was unwilling to discuss and bargain impacts only. Thus, the employer's position that it did not wish to engage in useless meetings was not unreasonable. The fact that the email left open the door to future proposals (presumably related to impacts) from the union is also evidence that the employer was not attempting to frustrate the bargaining process.

This situation in this case is not unlike the situation in *Wenatchee School District,* Decision 3240-A, where an employer refused to consider union proposals which would have reversed its decision to cut its budget by changing from a half-day to a full-day kindergarten to reduce transportation costs. The employer terminated an effects bargaining session when it became apparent that all of the union's proposals would require the employer to reverse its budgetary decision. The Commission stated that it was "unwilling to find an unfair labor practice based on the employer's impatience, when the union repeatedly sought to address a nonmandatory subject of bargaining." *Id.*

CONCLUSION

The union failed to meet its burden to prove an unlawful refusal to bargain. The complaint is dismissed.

FINDINGS OF FACT

1. The University of Washington (employer) is a public employer withing the meaning of RCW 41.80.005(8).

2. SEIU Healthcare 1199NW (union) is an exclusive bargaining representative within the meaning of RCW 41.80.005(9).

3. The employer is a university which operates several medical centers.

4. On January 9, 2023, the employer sent the union an email informing the union that the employer was "increasing the number of inpatient beds at three locations in order to support continuous high patient census and the community's need for cardiac care. All of these new inpatient beds [would] be equipped with telemetry monitoring for patients with cardiac conditions." The employer informed the union that to accommodate this increase in beds it would be "centralizing telemetry monitoring at Harborview Medical Center."

5. Telemetry monitoring is performed by Cardiac Monitoring Technicians (CMTs). The union represents approximately nine CMTs at the University of Washington Medical Center – Northwest (Northwest). A different union represents CMTs at Harborview Medical Center (Harborview).

6. The employer's decision to centralize CMT work was related to its "functions and programs," "structure of the organization," and "use of technology."

7. The employer's January 9 email also informed the union that the CMTs currently working at Northwest would either relocate to Harborview or be laid off according to provisions in

their collective bargaining agreement. The email suggested that the transfer of Northwest CMTs to Harborview would be complete by August 1, 2023.

8. On February 7, 2023, the union sent the employer an email with a "demand to bargain management's proposed move and restructure." The union's email demanded that the employer "[c]ease and desist all actions to restructure or change working conditions for [CMTs]."

9. On March 16, 2023, the union and the employer met and discussed the employer's decision to centralize telemetry monitoring and relocate the CMTs from Northwest to Harborview. The union asked about how the decision was made, whether it was final, who was consulted, whether patient safety concerns had been discussed, whether there had been discussion about having the centralization at Northwest instead of Harborview, and what parking and training would look like, among other topics. The employer responded that the primary consideration for the move was space, that it intended to move forward with the centralization and relocation of workers, and that it wanted to work collaboratively with the union on impacts such as schedules and parking.

10. On March 24, 2023, the employer filed a unit clarification petition seeking to have the CMTs at Northwest moved out of the union's Northwest bargaining unit and into a unit that represents the CMTs at Harborview.

11. A bargaining session was scheduled for March 30, 2023. The union canceled it on the day of the session.

12. On May 9, 2023, the union filed this unfair labor practice complaint.

13. The union and the employer met on May 2, 10, and 17, 2023. At these meetings, the union raised patient safety concerns regarding the employer's plan to centralize CMT work and expressed skepticism about the employer's claim that there was insufficient space to maintain CMTs at Northwest. The employer responded that it was aware of the patient safety concerns and had adjusted some of its implementation timelines to reflect that there had not been much discussion about the impacts of the move.

14. On May 23, 2023, the union and the employer met via video conference. The union again raised patient safety concerns. The employer acknowledged these concerns and said it would work with employees to mitigate them. The union proposed that the employer put a telemetry station on each floor of each hospital where cardiac monitoring takes place. The employer responded that this proposal did not address its space concerns and would cost significantly more than their current plan. The employer again reiterated its position that management had the right to move the CMTs to Harborview and that it was interested in discussing the impacts of that decision.

15. On June 13, 2023, the employer emailed the union and stated that it felt that the bargaining process had "not led to any significant impact bargaining proposals." The employer adjusted its timeline and changed the implementation date for moving the Northwest CMTs to Harborview to September 29, 2023. The employer requested to schedule a meeting "the week of July 10th to discuss further."

16. Following the June 13, 2023, email, the parties had informal communications which ultimately culminated in an October 4, 2023, email from the employer rejecting an informal union proposal and declaring that the parties were at impasse. In the email, the employer declined to schedule future meetings and invited the union to send "proposal[s] or concept[s]" to the employer's representatives.

17. At hearing, the union dropped the allegation in its complaint that the employer had not provided relevant bargaining information. The union did not present any additional testimonial evidence or briefing regarding a refusal to provide information.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.80 RCW and chapter 391-45 WAC.

2. Based upon findings of fact 3 through 16, the employer did not breach its good faith bargaining obligations when it proposed to eliminate Cardiac Monitoring Technician positions and move the work to a different hospital.

3. Based upon finding of fact 17, the union abandoned its claim that employer had refused to provide relevant bargaining information.

ORDER

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

ISSUED at Olympia, Washington, this 20th day of June, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

LOYD J. WILLAFORD, 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.