

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 925

Complainant,

vs.

KING COUNTY

Respondent.

CASE 137655-U-23

DECISION 13984 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

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The complainant, Service Employees International Union, Local 925 (union), filed a complaint against King County (employer or county) on September 22, 2023. A cause of action statement was issued on October 9, 2023, and the employer's answer was filed on November 15, 2023. A five-day virtual hearing was held in front of Examiner Christopher Casillas beginning April 29, 2024, and concluding on June 21, 2024, following a short recess between hearing dates. The parties filed post-hearing briefs on August 20, 2024, to complete the record.

ISSUES

The issue, as framed by the cause of action statement, is

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 for bargaining unit employees by contracting with the South Correctional Entity to house adult in-custody population without providing the union an opportunity for bargaining.

2. Breaching its good faith bargaining obligation during negotiations with the union concerning the employer's decision to contract with the South Correctional Entity to house adult in-custody population.

The union has carried its burden of proof in demonstrating that King County refused to bargain in violation of RCW 41.56.140(4), which also constitutes derivative interference under RCW 41.56.140(1). Through its unilateral implementation of a contract with South Correctional Entity (SCORE) to house adult in-custody inmates, who are clients of the attorneys and staff working at the King County Department of Public Defense (DPD), King County substantially changed the terms and conditions of employment for union members and employees at DPD. The nature of the change is most appropriately classified as a mandatory subject of bargaining. As such, King County failed to provide the union notice and an opportunity to bargain in advance of implementing the change, which results in a refusal to bargain violation. Since the decision to house DPD inmates at the SCORE facility was implemented by King County as a *fait accompli*, this necessarily requires finding a breach of King County's duty to bargain in good faith.

Separately, the record does not support finding that the employer committed an independent refusal to bargain violation under RCW 41.56.140(4) for breaching its good faith bargaining obligations regarding the effects or impacts of the decision to contract with SCORE. Although not demonstrating a model of clarity, King County sufficiently discharged its obligation to bargain the effects of its decision to contract with SCORE with the union. The dismissal of this charge, however, does not negate King County's liability for refusing to bargain the underlying decision of the SCORE partnership. An appropriate remedy must be issued concerning King County's refusal to bargain the decision, notwithstanding insufficient evidence showing that King County failed to bargain the impacts or effects of the decision.

BACKGROUND

In the 1960s, the United States Supreme Court issued a series of decisions finding that states that failed to provide legal counsel for indigent defendants in criminal cases had deprived those individuals accused of crimes of their due process rights and rights guaranteed under the Sixth

Amendment to the U.S. Constitution.¹ These decisions culminated in the 1963 decision of *Gideon v. Wainwright*,² where a unanimous Supreme Court determined that the Sixth Amendment right to counsel was incorporated into the due process clause of the Fourteenth Amendment and applied against the states. Washington State also ensures the right to counsel in criminal proceedings, both under article I, section 22 of the Washington State Constitution and under section 3.1 of the Superior Court Criminal Rules.³

As the right to counsel became the law of the land many decades ago, states and local government subdivisions began providing free or cost-reduced public defense services to those accused of crimes who were otherwise unable to pay for legal counsel. In King County, that system eventually coalesced into four separate nonprofit law firms that provided public defense services throughout King County⁴ The law firms contracted directly with the courts through a competitive bidding process to provide free public defense services to criminal defendants charged with crimes in King County. Following a lawsuit in the early 2000s, King County created the DPD and brought the attorneys and staff of the four law firms into county employment.

Today, DPD provides legal representation services for individuals charged with a crime in King County who otherwise cannot afford legal counsel, for individuals facing civil commitment proceedings, and for individuals subject to the loss of parental rights. Felony and misdemeanor practices occupy the bulk of the legal representation work performed by DPD. The majority of DPD's incarcerated clients that have been charged with a crime are housed at one of two facilities: the King County Correctional Facility (KCCF), located in Seattle, or the Maleng Regional Justice Center (MRJC) jail, located in Kent. The KCCF and MRJC jails are both located in geographic proximity to several courthouses where legal proceedings are conducted for adult individuals

¹ See *Hudson v. North Carolina*, 363 U.S. 697 (1960); *McNeal v. Culver*, 365 U.S. 109 (1961); *Chewning v. Cunningham*, 368 U.S. 443 (1962); *Carnley v. Cochran*, 369 U.S. 506 (1962).

² *Gideon v. Wainwright*, 372 U.S. 335 (1963).

³ Const. art. I, §22; Wash. Sup. Ct. Crim. R. 3.1; *State v. Heng*, 2 Wn.3d 384, 388-89 (2023).

⁴ The four named law firms are (1) the Associated Counsel for the Accused, (2) the Northwest Defenders Division, (3) the Society of Counsel Representing Accused Persons, and (4) the Defender Association.

charged with crimes in King County. KCCF is located within a couple of blocks of the Seattle Municipal Court (SMC) and the King County Courthouse (KCC), which holds both King County District Court and King County Superior Court. The MRJC building, in addition to being a correctional facility, houses a superior and district court as well. The juvenile court is located at the Judge Patricia H. Clark Children and Family Justice Center (CCFJC), also in Seattle.

DPD also represents incarcerated individuals housed at other facilities, including juvenile clients detained at the CCFJC; individuals civilly committed against their will and housed in one of approximately 20 different treatment centers across the county; and some individuals housed at the SCORE facility on charges from another municipality but who also face charges by King County. Additionally, DPD staff represent clients who may not be incarcerated but are participating in King County's therapeutic courts, including drug court and mental health court, as well as clients assigned to the family defense court and clients in civil child custody cases. Staff assigned to these practice areas have historically been required to travel to multiple hospitals, courts, and other locations throughout King County.

The four law firms that existed prior to the creation of DPD are now four of the five main divisions of DPD, with each division retaining the name of the original law firm. A fifth division encompasses the managerial and administrative support staff of DPD. Each of the divisions maintain different practice areas, with approximately 30 different practice areas in total across all of DPD. While there are many diverse practice areas, the predominant one across the divisions is criminal, which encompasses clients charged with either felonies or misdemeanors.

The bargaining unit in DPD, represented by the union, includes all current full-time and regular part-time DPD employees, excluding specifically named classifications as defined in the collective bargaining agreement. There are five main job classifications within the bargaining unit that directly provide or support public defense work. The majority of those employees are classified as attorneys, and they directly represent the criminal defendants that have been assigned to public defenders through DPD. Supporting the attorneys and clients include (1) mitigation specialists, (2) investigators; (3) paralegals; and (4) legal assistants. The unit also includes employees that provide various administrative and operational support services.

Seattle and Kent Clusters

With DPD's prominent practice area being criminal, and because King County chose to cluster its adult jails and courthouses in two locations – Seattle and Kent – many years ago, the four law firms established offices in proximity to these two locations. Since their incorporation into DPD, the historical law firms have maintained office space in similar locations. All DPD divisions maintain office space in the Dexter Horton Building in downtown Seattle, which is within a few blocks of the SMC, KCC, and KCCF. In Kent, DPD maintains office space two blocks away from the MRJC, at the Meeker Street Law Office Building and Northwest Defenders Division office building. There is also a DPD office near the CCFJC in Seattle's Capitol Hill neighborhood.

Since the criminal practice area is the most prominent practice area in DPD, most staff are assigned to work in one of the offices located in Seattle or Kent. Typically, staff in criminal practice are assigned to primarily work at an office that is near a specific courthouse to which they are also assigned – either the MRJC courthouse in Kent or the KCC in Seattle. In turn, their in-custody clients are typically housed at one of the correctional facilities attached to the corresponding courthouse.

This is not an exclusive arrangement; for example, DPD staff working out of Seattle may be assigned clients and cases in Kent at the MRJC, and vice versa. But for staff in the criminal practice area most of their time is spent at the jail and courthouse nearest their office. When working out of an alternate site, the practice of most staff is to schedule multiple client meetings and judicial proceedings on the same day that they are visiting the alternate location. Staff may also work out of one of the offices at the alternate location as needed. Staff typically plan their site visits and their travel—usually by car or mass transit—to the alternate location in advance.

King County Jails

One of the reasons why the DPD offices are in proximity to the two main jails and courthouses in King County is the requirement that attorneys make their best effort to visit clients in jail within one business day of their assignment. Consistent with standards promulgated by the Washington State Bar Association and the American Bar Association, King County has adopted a one business day visit policy. The policy is designed to help alleviate anxiety among those recently imprisoned

in jail, address medical issues, answer legal questions, and preserve evidence. With the high volume of clients and cases and the need to often be in multiple locations throughout the day, having offices close to the KCCF and MRJC jail has been an important historical practice, in part because it allows attorneys to comply with the one business day visit policy.

Housing adult in-custody inmates almost exclusively at KCCF or the MRJC jail represents an important historical working condition for bargaining unit employees. First, union members often must split their working day between three separate locations: the jails where their clients are housed to conduct interviews, sign documents, and prepare for hearings; the courthouse, where various legal proceedings are conducted; and their office, where they may conduct research, draft legal documents, and meet with colleagues. Staff that work with and support the attorneys, such as investigators, maintain similar schedules and requirements. To serve clients, attorneys and other support staff members must readily and quickly move between all three facilities throughout the course of a regular workday. The regular frequency with which staff are expected to physically move between the jail, courthouse, and their office necessitates a high degree of proximity between facilities to complete the required work.

Second, at these facilities owned by King County, there are important services established therein that are needed by bargaining unit employees to perform their jobs. This includes King County Wi-Fi, which allows employees to easily access secure case file materials that are electronically stored on county systems through a reliable and secure network. An ample number of visiting booths are available at both jails where staff can safely meet with their clients and easily review or sign documents without the need to schedule an appointment in advance. Interpreters are also available at King County facilities to assist with non-English speaking clients.

Third, DPD staff maintain special access privileges at county facilities that are important for completing their work. DPD staff are all automatically included on the do-not-record registry so that calls into or out of the jail between staff and clients comport with confidentiality requirements. Staff can also always visit the jail without making appointments to maintain necessary access to their clients. Laptops and cell phones are also permitted inside the jails for DPD staff.

Finally, the clustering of the jails, courthouses, and offices in two locations allows DPD employees to consolidate and regularize their commuting patterns. Many staff, for instance, regularly utilize mass transit to commute to their location for the day whereas others routinely drive to the office. Moving to an alternate site location on a given day can, as a result, create significant operational and financial issues for staff because they may require a vehicle, having to pay for parking, or the need to invest significant time on a mass transit option. Consequently, most staff attempt to consolidate client meetings and court appearances on the same day that they are required to work out of an alternate location.

Time efficiency is an important working condition for DPD staff due, in part, to their overall case volumes. Many attorneys in the criminal practice area consistently represent around 70 clients at any time. It is typical for staff on an average workday to visit multiple clients in jail to conduct interviews, collect evidence, and prepare for legal proceedings; go to the courthouse to attend different hearings or trials and work at the office, drafting motions or briefs, conducting research, or reviewing cases with colleagues. Given the high workload and the ever-present need to regularly move between multiple locations, traveling to a farther location during the day or having to wait an extended period of time to meet with a client can severely impact the ability of staff to do their jobs. As one DPD attorney noted regarding the time burden of visiting SCORE, “I would have to figure out to account for 1 out of 70 clients for 40 minutes just to drive and see one person. That meant that I would have to dedicate a large amount of time just proportionately just to go see my one client. . . .”

SCORE Pilot Announcement

In October 2022, King County gave public notice of its intent to contract with the SCORE Jail, located in Des Moines, Washington, to house some Department of Adult and Juvenile Detention (DAJD) inmates as a pilot program. Based on the record, this was the first time the county decided to house adult inmates in its custody at a non-county jail. The county based its decision on the high number of correction officer vacancies and the increase in the average daily population (ADP) of detainees at KCCF and the MRJC jail. The Director of DAJD, Allen Nance, testified that at the time of the SCORE pilot announcement there were over 116 correctional officer vacancies, causing significant department morale issues and overtime issues, and the nature of the work was

becoming more complex. During the COVID-19 pandemic, the ADP also increased significantly to over 1,900 inmates, further straining resources. The initial pilot program called for moving up to 60 detainees to SCORE by June 2023, with an eventual goal of moving up to 150 detainees there. At the time, the ADP at KCCF and MRJC was around 1,300 inmates.

Prior to the October 2022 announcement of the SCORE pilot program, the union did not receive any notice from King County about moving DAJD adult detainees, and DPD clients, to the SCORE Jail. Union President Molly Gilbert only learned that a proposed contract between King County and SCORE was being considered by the King County Council (council) after being contacted by the Corrections Guild President, Dennis Folk. Gilbert subsequently reviewed meeting agendas for the council and discovered that the SCORE pilot program contract had been filed and placed on the council's agenda. A December 6, 2022, letter from Director Nance to all DAJD employees confirmed that King County was pursuing a contract with SCORE to house adult detainees, with the goal of the contract taking effect as early as January 2023.

On November 21, 2022,⁵ the union sent a letter to the King County Office of Labor Relations (OLR) Director Megan Pedersen and Senior Labor Relations Negotiator Andre Chevalier demanding to bargain "all bargainable matters relating to King County contracts with offsite 'regional jails.'" The union demanded that the county maintain the status quo regarding incarcerated persons at DAJD facilities until the county exhausted its bargaining obligations. On December 6, 2022, Chevalier responded to the demand to bargain letter indicating a willingness to meet with the union "to discuss the County's trial partnership with . . . SCORE" and inquiring as to available dates in December.

Meeting on SCORE Pilot Program

The county and the union met a total of six times to discuss the new SCORE pilot program, with an initial meeting on December 13, 2022. At this first meeting, Chevalier stated that the county was moving ahead with the SCORE pilot program and that it did not believe this decision had to

⁵ The letter, dated November 21, 2022, was attached to an email, which was sent by union representative Rion Peoples on November 22, 2022, at 12:43 p.m., and it was also delivered to Molly Gilbert and Anita Khandelwal of DPD.

be bargained with the union. The union, conversely, presented the county with a list of impacts to working conditions that DPD members would experience if King County inmates were housed at SCORE. The non-exhaustive list of changes and impacts to DPD member-working conditions specified over a dozen items, including access to private meeting booths, 24/7 walk-in access privileges, internet access, extended commute and visit times, client medical treatments, and client transportation concerns. In discussing these concerns, Chevalier acknowledged that he was new to the role of working with DAJD and that he would need to rely on more subject-matter experts, like Diana Joy, the DAJD Chief of Administration and SCORE project manager, to address all the specific concerns raised by the union at that time. Joy was able to address some questions raised by the union, for example, noting that attorney calls are not recorded at SCORE, but she also stated that she would need to follow up on many of the specific questions.

On January 9, 2023, Chevalier emailed the union a detailed reply to all the specific working condition issues identified by the union at the December 13, 2022, meeting. In this email, Chevalier also notified the union that the county was pushing back the start date for the SCORE pilot program to “late Q1 of 2023” in order to provide more opportunity to discuss the details of it with the union. Chevalier confirmed that SCORE has five face-to-face visiting booths, that the attorneys would have 24/7 access to clients, and that transports of inmates would be done the same way as they are for inmates housed at the KCCF and MRJC jail. He also stated that King County Wi-Fi would not be installed at SCORE, so staff would have to use VPN to access client files, and that non-attorney staff would not have the same 24/7 access rights, but the county would continue to follow up on that issue. The following day, on January 10, 2023, a second meeting between the parties was held. At the meeting, the union pressed its desire to delay any decision on the SCORE pilot program until its concerns were addressed and continued to note the King County areas where it felt that moving inmates to SCORE would result in a significant change for its members.

Following the second meeting, the parties discussed a tour of the SCORE facility to better understand operations there, which was held on February 1, 2023. The parties were able to meet with SCORE officials to address various concerns raised by the union; test out the Wi-Fi, cellular connections, and speeds; and tour the overall facility. A discussion also occurred regarding an existing SCORE policy prohibiting lawyers and staff from bringing computers into the facility or

requiring inspection prior to those devices being brought in. Ultimately SCORE agreed to allow DPD personnel to bring their laptops into the facility without inspection.

The King County Council placed a meeting of its Law, Justice, Health and Human Services Committee to discuss the SCORE contract on its March 7, 2023, agenda. The day before this scheduled meeting, the council received a letter from the union requesting that the council pause the SCORE contract approval until numerous issues identified by the union were addressed. Joy, on behalf of DAJD, addressed several of the concerns raised by the union with the council at the March 7 meeting, but the council deferred any vote on the contract at that time. The union and the county had a third meeting on March 29, 2023, where the union reiterated its ongoing concerns with the SCORE contract that it insisted the county had yet to address and that it believed represented significant changes from the status quo. On April 4, 2023, the King County Council voted on, and approved, an ordinance creating an interlocal agreement between SCORE and King County to house adult in-custody inmates.

On May 25, 2023, the parties met for the fourth time. King County shared with the union that inmates would begin to be housed at SCORE starting on June 10, 2023. The county also confirmed that both attorneys and non-attorney staff would be added to SCORE's do-not-record list and that DPD security clearances would be shared with SCORE. The union then presented a memorandum of agreement (MOA) to the county on the SCORE pilot program. The proposals made by the union included a requirement that King County provide 10 parking spaces at the Goat Hill Garage in Seattle for the use of employees working at the Dexter Horton Building; reimburse employees who pay for parking outside of their assigned location; pay employees a \$250 per-visit fee for each trip to SCORE; make a one-time payment of \$2,500 to attorneys assigned to a felony trial rotation and mitigation specialists; and provide a \$5,000 retention bonus for all union members. The county formally responded to the union's MOA at a July 14, 2023, meeting where it rejected the proposal. Chevalier proposed on behalf of the county that DPD reserve two spaces at the Goat Hill Garage and dedicate two cars for use by DPD employees.

Frustrated with the county's handling of the entire process related to the SCORE pilot program, the union sought a meeting with OLR Director Pedersen and the parties agreed to meet on July 27,

2023. Pedersen listened to the concerns expressed by the union, and a discussion ensued regarding the union's proposed MOA and King County's initial response to that proposal. Pedersen committed to reconsidering the retention bonus proposal but indicated that the bonus would likely be limited to only "Class A attorneys" rather than being provided to the whole union. In an October 17, 2023, email Chevalier informed the union that it had "continued its evaluation of DPD retention issues initially raised by SEIU during the SCORE bargaining process." Chevalier went on to state that, because of that analysis, the county would offer an incentive program for Class A felony-qualified attorneys in the union in the form of a retention bonus for those employees. The union fervently denies that the retention bonus was connected to the SCORE pilot program, noting that the proposal stemmed from the staffing crisis following the COVID-19 pandemic, that the same bonus was offered to the Teamsters union, and that the bonus was offered months after the union's proposed MOA and approximately one month after the SCORE pilot program had been cancelled. Nonetheless, the union and the county did sign an agreement for a retention bonus for Class A attorneys in mid-November of 2023.

SCORE Pilot Program

On June 10 and 11, 2023, the SCORE pilot program officially launched as King County transferred 31 inmates to the SCORE facility. Although some of the concerns raised by the union were addressed by this time, both DPD management and the union documented several incidents where staff experienced changes in working conditions in comparison to the working conditions at King County's two main locations in Seattle and Kent. Several staff, for instance, reported problems with their names not being added to the do-not-record list by SCORE, clients at SCORE not being able to leave voicemails with attorneys, and some clients finding it difficult to even access a private phone while at SCORE. Different staff members also reported significant problems with both in-person visits and video visits with their clients. One attorney sent in several requests to schedule a visit with no reply from SCORE; numerous attorney-client visits, both by video and in person, were abruptly cut short or cancelled all together without explanation; and in at least one incident SCORE placed a client in a public setting for a video visit, which inhibited the attorney's ability to discuss confidential details about the case.

Despite an earlier site visit by the parties to address the Wi-Fi and cellular network situation, discuss the laptop policy, and assess the availability of sufficient meeting rooms, issues persisted after the start of the pilot program. Several staff members reported, at different times, that the Wi-Fi at SCORE was not working at all or in specific areas, such as the waiting room, and cellular service was generally not available. During visits, staff were given different instructions by SCORE personnel regarding their ability to bring in a laptop and cell phone, in some cases leading to a denial of those devices in the facility, which inhibited their work. During site visits, several attorneys experienced a lack of available meeting booths, so client meetings had to take place at other locations, including in the SCORE medical wing and non-private conference rooms. Meeting with clients outside of secured visiting booths created safety and confidentiality problems. Corrections officers with SCORE had to remain outside some meeting spaces, with the door slightly ajar, to monitor inmates. This created a security risk for DPD staff and limited attorney-client discussions because of confidentiality concerns with meeting in non-private locations with a corrections officer right outside the door.

Many DPD clients do not speak English, and the traditional interpretive services at the KCCF and MRJC jail were impacted by the move to SCORE. The county's court-certified interpreters maintain a public calendar that DPD staff have access to and can book appointments through when meeting with clients in need of an interpreter at KCCF or the MRJC jail. Due to the extended travel time between these facilities and the SCORE jail, staff found it impossible to book any appointments that would allow the interpreters to travel to and from SCORE and maintain their other appointments at KCCF or the MRJC jail. As a result, staff visiting non-English speaking clients at SCORE had to rely on telephonic interpreters for their meetings, which were generally less preferred, and in at least one situation the client could not communicate with the interpreter because of audio quality issues on the call.

Staff also reported that, depending on traffic, the travel time was 30 to 60 minutes between downtown Seattle and SCORE and 15 to 30 minutes between Kent and SCORE. SCORE is approximately 7 miles from the MRJC and approximately 15 miles from KCCF. One of the attorneys testified that, with a typical case load involving around 60-70 individuals, spending an hour traveling to and from SCORE during an already busy day produced a "significant" impact on

the overall workload. Staff that needed to visit SCORE to meet with clients reported meaningful challenges in planning for their day to accommodate the extra time and measurable impacts on the rest of their workload stemming from the extended visiting times to the facility.

As a consequence of restrictions imposed by King County on the types of inmates eligible for transfer to SCORE, the number of such inmates remained relatively low throughout the pilot program. In July 2023, the ADP for King County inmates at SCORE was just over 32. Logs of visits by DPD staff during the month of July 2023 correspondingly showed an average of around six to eight employee visits each week.

On September 21, 2023, just over three months after the first King County inmates arrived at SCORE, the pilot program was cancelled. Nance testified that with “the extreme machinations that [the county was] having to go through on a daily and weekly basis to screen, transport, and manage those individuals, it simply didn’t make a whole lot of sense to continue.” SCORE agreed to terminate the pilot program, in part because they had reserved a large number of beds for King County inmates, but the county ended up only filling about 20 to 30 beds at any given time.

ANALYSIS

Applicable Legal Standard(s)

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)).

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

Whether a particular 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. At one end of the spectrum are grievance procedures and “personnel matters, including wages, hours and working conditions,” also known as mandatory subjects of bargaining. RCW 41.56.030(4). At the other end of the spectrum are matters “at the core of entrepreneurial control” or management prerogatives, which are permissive subjects of bargaining. *City of Richland*, 113 Wn.2d at 203. In between are other matters that must be weighted on the specific 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. 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(s)

The penultimate question in this case concerns whether the county's decision to house adult in-custody inmates, and clients of DPD staff, at the SCORE Jail, a non-county facility, constitutes a mandatory subject of bargaining. Application of the *City of Richland* balancing test necessitates a finding that, based on the unique facts of this case, King County's decision to contract with the SCORE Jail to house inmates at that facility is a mandatory subject of bargaining. Several factors weigh strongly on both sides of the equation, but the scales tip in favor of this decision being a mandatory subject of bargaining based on the significant impact to employee working conditions and the public's interest in the effective delivery of public defense legal services. Requiring DPD employees to meet with clients at the SCORE Jail also constituted a change to the status quo that had a meaningful impact on employee working conditions. King County's decision to implement this change as a *fait accompli*, without providing the union notice and an opportunity to bargain, constitutes a refusal to bargain and derivative interference violation.

Mandatory Subject of Bargaining

The union has proved a wide and significant number of impacts on employee working conditions because of the county's decision to house adult in-custody inmates at the SCORE Jail. Efficiency has established itself as a core job feature for DPD staff. Criminal practice is the largest practice area in DPD, and attorneys assigned to this practice area regularly represent around 70 clients at one time. The support staff, such as investigators and mitigation specialists, maintain similarly heavy caseloads. By policy, attorneys must meet with criminal clients in jail within 24 hours of being assigned the case. Staff are routinely asked to meet with multiple clients throughout the day in jail, attend various legal proceedings at the courthouse, and work out of their offices drafting motions, briefs, and other legal filings. Completion of all this work is only marginally possible through efficient scheduling and the close physical proximity of facilities where much of this work is completed. In other words, a critical and central working condition for DPD staff, in criminal practice, is the ability to move between the office, jail, and courthouse quickly and efficiently.

The housing of adult in-custody inmates at one of the two jails operated by King County is also in and of itself a critical working condition for DPD staff. Client files are maintained electronically, which means DPD staff require reliable internet connections to access them when meeting with

clients or during court proceedings. King County has historically maintained reliable internet access for its employees at county facilities, such as at KCC and KCCF. All DPD staff at county jails are on the do-not-record list so that there is no breach of confidentiality requirements when speaking with clients over the phone. DPD staff can also access their clients 24/7 at King County jails without needing an appointment, and they regularly have access to secure and confidential visiting booths to meet with clients. Additionally, the county maintains translators at its jails to meet the needs of the high percentage of inmates who are not fluent in English, which is also an important working condition for DPD staff so that they can adequately communicate with their clients. The many services and facility arrangements at KCCF and the MRJC are working conditions that directly support the ability of DPD staff to perform their job and serve the needs of their clients.

In contrast, the county undoubtedly has a significant number of strong managerial interests and prerogatives in being able to contract with an outside entity to house some of its adult in-custody inmates. In the most general terms, King County, as a public employer running a public jail, has a strong managerial interest in determining where to house inmates, including deciding the location of a specific facility and where to send particular inmates. The county also retains a managerial interest in contracting with outside vendors to perform required work so long as such contracting is consistent with other legal requirements, including collective bargaining laws. More specifically, the county faced, at the time of this decision, an unprecedented crisis at its jails that created numerous legal, operational, and safety issues. As documented and testified to by Director Nance, DAJD was deeply impacted by the COVID-19 pandemic and a staffing crisis in its jails which necessitated some type of solution. The ADP in King County's jails skyrocketed during this period. The county was experiencing significant vacancies in its corrections officer staff, which created staffing challenges and strained the mental and physical wellbeing of the remaining employees. Safety and health concerns for staff and inmates in the jail were exacerbated by the pandemic. DAJD was, in short, facing a threat to the viability of its operations, and the county has a strong managerial interest in being able to safely and effectively manage those operations.

The Commission has also required that the public's interest in receiving effective services be weighed in deciding whether a subject is mandatory or permissive. In this case, the public's interest

reaches its apex in the ability of DPD staff to effectively represent indigent individuals charged with crimes in King County. It is not hyperbole to refer to the United States Constitution and the Washington State Constitution as the most sacred and central political charters for citizens of this country and state residents. For over a half-century now, our state and federal courts have held that these constitutions mandate the right to the effective assistance of legal counsel for those charged with a crime who otherwise cannot afford legal services. In many ways, the work performed by DPD staff is the embodiment of one of the most time-honored rights held in this country and a defining feature of our political system: the right to counsel. As citizens of the United States and residents of King County and Washington State, the public can have no greater interest than in ensuring that the rights memorialized in our founding charters are preserved and protected by the government elected therein. While King County labored to mitigate the impacts of moving some adult in-custody inmates to the SCORE Jail, the evidence shows that meaningful impacts still occurred and would have continued if the partnership remained. Even the slightest degradation of public legal defense stemming from the SCORE Jail partnership is enough to weigh heavily on the public's interest in effective government services given the significance of the right impaired in this situation.

In balancing these varied and competing interests, it is apparent that the county's decision to house adult in-custody inmates, and DPD clients, at the SCORE Jail, constituted a mandatory subject of bargaining. The county's managerial interests and prerogatives are weighty in this case and cannot be easily dismissed. But, on balance, the impact on employee working conditions because of this change is too significant. While another scale may weigh these factors somewhat more equally, the public's interest in DPD staff providing effective legal counsel to indigent criminal defendants in King County must tip the scales in favor of finding this issue to be a mandatory subject of bargaining.

Status Quo

Prior to the SCORE pilot program, there is no evidence that the county ever housed any inmates at non-county jails. For several decades, adult in-custody inmates, with a few noted exceptions,⁶ have exclusively been housed at either KCCF or the MRJC jail. Since KCCF and the MRJC jail opened, they have been located close to the municipal and superior courts in both Seattle and Kent. Since its inception, DPD has maintained office space for its divisions within a couple of blocks of the jails and courthouses in both Seattle and Kent. The record also demonstrates that the majority of clients for DPD attorneys and staff assigned to criminal practice are typically housed at a jail, and assigned to a courthouse, in proximity to the staff member's office. While criminal practice staff can be assigned clients at the alternate jail and courthouse away from their main office and are required to regularly work at that alternate location, they almost exclusively work in one of two geographic areas.⁷

The county argues that the union has not established a clear historical practice of DPD staff predominantly working in one of two established geographic regions, but this argument overstates the scope of more exceptional work circumstances for DPD staff. It is true, for instance, that some DPD staff predominantly work in a third location near the CCFJC with juvenile inmates. A smaller percentage of DPD staff do visit clients housed at medical treatment facilities, scattered throughout King County, or may represent clients at other court locations, such as in the drug, mental health, or family courts. It is also accurate that in the past, predating the SCORE pilot program, DPD staff were occasionally required to visit clients at the SCORE Jail who had pending criminal charges in King County, were released, but were then subsequently arrested again and sent to SCORE.

However, each scenario represents either an exception to the predominant work experience or a small percentage of the total work done by DPD. The overwhelming majority of work done by

⁶ Some individuals who have been civilly committed are housed at various treatment facilities across King County. Additionally, predating the pilot program, some individuals with pending criminal charges in King County have been housed at the SCORE Jail. Those individuals, however, were released from jail by King County pending criminal charges but then subsequently arrested, on a separate criminal charge, by a municipal entity that contracts with SCORE for jail services.

⁷ Testimony indicated that there is a work-from-home policy that staff may utilize, but, on most days, staff are required to commute to their assigned work location.

DPD consists of adult in-custody inmates charged with one or more misdemeanors or felonies and housed at KCCF or the MRJC jail. The fact that, at times, or for smaller practice areas within DPD, the staff must visit or work out of locations other than KCCF and KCC in downtown Seattle and the MRJC in Kent does not undermine the existence of the status quo with respect to the predominant body of work performed by DPD in criminal practice and the historical location of most DPD clients at one of two county-owned jails.

The county's argument that the number of inmates transferred to SCORE was *de minimis* and did not constitute a change in the status quo is of no avail. It is true that the number of detainees moved to SCORE during the pilot program was a fraction of those housed at KCCF or the MRJC jail and, consequently, the number of attorney visits to SCORE was in the single digits, on average, each week. But the relatively low numbers were a consequence of the failure of the pilot program itself rather than being indicative of the significance of this change. Had the county modified its self-imposed restrictions on transporting inmates to SCORE or otherwise acted to expand the partnership, the number of inmate transfers and DPD visits would have grown in tandem. Additionally, although the number of inmates and DPD site visits were relatively low, this fact does not diminish the significance of the impact on working conditions when staff were required to make such visits. The visits, and the impacts of those visits, were enough to demonstrate a change to the status quo.

The union has carried its burden of proof to demonstrate a clear historical practice by King County of housing its adult in-custody inmates at one of two county-owned facilities. Additionally, the practice includes locating the main DPD offices within walking distance of those same facilities to serve those inmates and allow attorneys and staff to conduct their work. The occurrence of some exceptional circumstances and unique situations identified by the county do not undermine the existence of this historical past practice.

Meaningful Change in Practice

In moving adult in-custody inmates to the SCORE Jail and requiring DPD staff to travel to a new site to visit their clients, the county implemented a significant and meaningful change to its historical practice. The scope of this change is both broad and deep with respect to the working

conditions of DPD staff. The SCORE Jail is physically remote from the county's main two jail and courthouse complexes. It is approximately seven miles from MRJC, requiring 15 to 30 minutes of commute time there by car from Kent. It is even further from downtown Seattle, approximately 15 miles away, and that journey can take anywhere from 30 to 60 minutes by car, depending on traffic. Staff must use a vehicle to travel to SCORE due to the lack of transit options, which means they must either drive their personal vehicle on days that they are required to visit SCORE and bear some of the expenses associated with bringing a personal vehicle to work, or they must rely on securing a county vehicle in order to travel to SCORE. DPD does not maintain any office space in proximity to SCORE for staff to operate, and there are no courthouses near SCORE.

Working at SCORE and meeting with clients at that facility was, in and of itself, a significant change in practice for DPD staff. Unlike the expansive access rights that DPD staff have always had at county-owned jails, staff reported meaningful impacts in their ability to access and communicate with clients at SCORE, even within the limited confines of the pilot program. Testimony included situations of staff repeatedly trying to schedule visits to no avail, an inability of clients to make phone calls to their attorneys while housed at SCORE, not including all DPD staff on the required do-not-record registry, difficulties with bringing in laptops or personal devices, and insufficient meeting spaces or spaces that were not as secure or confidential as in the county's jails. Translation services were negatively impacted in some cases with clients being housed at SCORE, and several staff reported challenges accessing client files while at SCORE due to ongoing issues with the Wi-Fi services there and limited cellular service. In isolation, each individual change made it more challenging for DPD staff to do their work, but the combination of these changes represents a material and meaningful impact on the established working conditions of DPD staff.

Opportunity to Bargain

King County did not provide the union a meaningful opportunity to bargain its decision to start the SCORE pilot program and house adult in-custody inmates, and DPD clients, at the SCORE Jail. The record clearly shows that the county had already decided to initiate a program with SCORE before the union ever learned of this development. The union only learned of the program through its own sleuthing, first being told by the president of the corrections officers' union, and then

searching the meeting minutes of the King County Council. Before ever meeting to discuss the union's demand to bargain, DAJD Director Nance issued a letter on December 6, 2022, to all staff notifying them of the SCORE pilot program and the intent to start the contract as early as January 2023. Although inmates ultimately were not transferred to SCORE until June 2023, the King County Council signed the interlocal agreement with SCORE in April 2023, while the parties were still actively bargaining. Chevalier, on behalf of the county, had also admittedly stated to the union, on multiple occasions, that the county did not believe it needed to bargain the decision to contract with SCORE with the union.

The record is replete with examples of the fact that King County implemented its decision to contract with SCORE to house some adult in-custody inmates as a *fait accompli*. Neither a notice or a meaningful opportunity to bargain prior to making any final decision was ever afforded to the union. Additionally, even though the union promptly issued a demand to bargain in November 2023 after learning of the potential SCORE pilot program, it did not need to send that in order to avoid waiving its bargaining rights through inaction since the county's decision had effectively already been made at that point. As a mandatory subject of bargaining, the county was obligated to first provide the union with a notice of a proposed change and an opportunity to engage in meaningful bargaining. The county's failure to do that in this case is a refusal to bargain in violation of RCW 41.56.140(4).

Effects Bargaining

Based on the totality of circumstances, there is insufficient evidence to support an independent finding that the county refused to bargain over the effects or impacts of the SCORE pilot program with the union. The county's engagement with the union over the effects of the SCORE pilot program was disjointed, and it presented conflicting messaging around the process and what it felt its obligations were. Chevalier, at times, denied that King County had a bargaining obligation or that meetings between the parties constituted bargaining sessions. But, on the whole, the county sufficiently discharged its duty to bargain over the effects of the SCORE pilot program.

It maintained regular and timely communications, addressed questions and concerns with meaningful follow up, met with the union on at least six separate occasions, and ultimately made

substantive proposals in response to the union's proposals. The union was undoubtedly frustrated throughout the process and fiercely contests whether the county's ultimate agreement to pay a retention bonus to DPD attorneys was at all related to the SCORE pilot program. But this cannot negate the fact that the county regularly met with the union, followed up on specific questions and requests for information, and eventually agreed to at least one of the terms proposed by the union by paying a retention bonus to DPD attorneys.

The record must be examined in its totality and not through the lens of isolated incidents. The collective bargaining laws do not require the parties to make specific proposals, offer specific concessions, or engage in particular ways. What is required of the parties is to engage in a meaningful process of bargaining, which includes a responsibility to meet at reasonable times, come to the table with an open mind and willingness to consider alternatives, listen to the interests and proposals expressed by each party, and work toward a resolution. In measuring those efforts through the totality of circumstances standard, it cannot be found that King County refused to bargain over the effects or impacts of the SCORE pilot program.

CONCLUSION

The union has carried its burden of proof that King County committed a refusal to bargain violation and derivatively interfered with the union's rights in contravention of RCW 41.56.140(1) and RCW 41.56.140(4). Under the *City of Richland* balancing test, the county's decision to contract with SCORE to house adult in-custody inmates, and DPD clients, is properly classified as a mandatory subject of bargaining. As a mandatory subject, the county was obligated to provide the union notice of the proposed change and an opportunity to engage in meaningful bargaining. When the county failed to provide this notice and implemented the change as a *fait accompli*, it instituted a meaningful and substantial change in the status quo working conditions for DPD employees and members of the union's bargaining unit. King County's subsequent efforts to bargain the impacts of this decision with the union do not constitute an independent refusal to bargain violation. The remedy ordered through this decision exclusively pertains to the county's refusal to bargain the SCORE pilot program decision itself.

FINDINGS OF FACT

1. King County is a public employer as defined by RCW 41.56.030(13).
2. SEIU Local 925 is a bargaining representative within the meaning of RCW 41.56.030(2) and represents a bargaining unit of public employees, as defined in RCW 41.56.030(12), that includes the positions of attorneys, mitigation specialists, investigators, paralegals, legal assistants, and administrative and operational support employees employed by the King County Department of Public Defense (DPD).
3. The King County DPD provides legal representation services for individuals charged with a crime in King County who otherwise cannot afford legal counsel, for individuals facing civil commitment proceedings, and for individuals subject to the loss of parental rights.
4. Within DPD, the felony and misdemeanor practices occupy the bulk of the legal representation work. The majority of DPD's incarcerated clients that have been charged with a crime are housed at one of two facilities: the King County Correctional Facility (KCCF), located in Seattle, or the Maleng Regional Justice Center (MRJC) jail, located in Kent. The KCCF and MRJC jails are both located in geographic proximity to several courthouses where legal proceedings are conducted for adult individuals charged with crimes in King County. KCCF is located within a couple of blocks of the Seattle Municipal Court (SMC) and the King County Courthouse (KCC), which holds both King County District Court and King County Superior Court. The MRJC building, in addition to being a correctional facility, houses a superior and district court as well. The juvenile court is located at the Judge Patricia H. Clark Children and Family Justice Center (CCFJC), also in Seattle.
5. DPD also represents incarcerated individuals housed at other facilities, including juvenile clients detained at the CCFJC; individuals civilly committed against their will and housed in one of approximately 20 different treatment centers across the county; and some individuals housed at the SCORE facility on charges from another municipality but who also face charges by King County. Additionally, DPD staff represent clients who may not be incarcerated but are participating in King County's therapeutic courts, including drug

court and mental health court, as well as clients assigned to the family defense court and clients in civil child custody cases. Staff assigned to these practice areas have historically been required to travel to multiple hospitals, courts, and other locations throughout King County.

6. Before King County formed DPD, legal defense services were historically provided by one of four private law firms. The four law firms included (1) the Associated Counsel for the Accused, (2) the Northwest Defenders Division, (3) the Society of Counsel Representing Accused Persons, and (4) the Defender Association. The law firms contracted directly with the courts in King County through a competitive bidding process to provide free public defense services to criminal defendants charged with crimes. Following a lawsuit in the early 2000s, King County created the DPD and brought the attorneys and staff of the four law firms into county employment.
7. The four law firms that existed prior to the creation of DPD are now four of the five main divisions of DPD, with each division retaining the name of the original law firm. A fifth division encompasses the managerial and administrative support staff of DPD. Each of the divisions maintain different practice areas, with approximately 30 different practice areas in total across all of DPD. While there are many diverse practice areas, the predominant one across the divisions is criminal, which encompasses clients charged with either felonies or misdemeanors.
8. The bargaining unit in DPD, represented by the union, includes all current full-time and regular part-time DPD employees, excluding specifically named classifications as defined in the collective bargaining agreement. There are five main job classifications within the bargaining unit that directly provide or support public defense work. The majority of those employees are classified as attorneys, and they directly represent the criminal defendants that have been assigned to public defenders through DPD. Supporting the attorneys and clients include (1) mitigation specialists, (2) investigators; (3) paralegals; and (4) legal assistants. The unit also includes employees that provide various administrative and operational support services.

9. With DPD's prominent practice area being criminal, and because King County chose to cluster its adult jails and courthouses in two locations – Seattle and Kent – many years ago, the four law firms established offices in proximity to these two locations. Since their incorporation into DPD, the historical law firms have maintained office space in similar locations. All DPD divisions maintain office space in the Dexter Horton Building in downtown Seattle, which is within a few blocks of the SMC, KCC, and KCCF. In Kent, DPD maintains office space two blocks away from the MRJC, at the Meeker Street Law Office Building and Northwest Defenders Division office building. There is also a DPD office near the CCFJC in Seattle's Capitol Hill neighborhood.
10. Since the criminal practice area is the most prominent practice area in DPD, most staff are assigned to work in one of the offices located in Seattle or Kent. Typically, staff in criminal practice are assigned to primarily work at an office that is near a specific courthouse to which they are also assigned – either the MRJC courthouse in Kent or the KCC in Seattle. In turn, their in-custody clients are typically housed at one of the correctional facilities attached to the corresponding courthouse.
11. Staff assigned to a particular office do not exclusively represent clients housed at the most proximate jail. For example, DPD staff working out of Seattle may be assigned clients and cases in Kent at the MRJC, and vice versa. But for staff in the criminal practice area most of their time is spent at the jail and courthouse nearest their office. When working out of an alternate site, the practice of most staff is to schedule multiple client meetings and judicial proceedings on the same day that they are visiting the alternate location. Staff may also work out of one of the offices at the alternate location as needed. Staff typically plan their site visits and their travel—usually by car or mass transit—to the alternate location in advance.
12. One of the reasons why the DPD offices are in proximity to the two main jails and courthouses in King County is the requirement that attorneys make their best effort to visit clients in jail within one business day of their assignment. Consistent with standards promulgated by the Washington State Bar Association and the American Bar Association, King County has adopted a one business day visit policy. The policy is designed to help

alleviate anxiety among those recently imprisoned in jail, address medical issues, answer legal questions, and preserve evidence. With the high volume of clients and cases and the need to often be in multiple locations throughout the day, having offices close to the KCCF and MRJC jail has been an important historical practice, in part because it allows attorneys to comply with the one business day visit policy.

13. Housing adult in-custody inmates almost exclusively at KCCF or the MRJC jail represents an important historical working condition for bargaining unit employees. First, union members often must split their working day between three separate locations: the jails where their clients are housed to conduct interviews, sign documents, and prepare for hearings; the courthouse, where various legal proceedings are conducted; and their office, where they may conduct research, draft legal documents, and meet with colleagues. Staff that work with and support the attorneys, such as investigators, maintain similar schedules and requirements. To serve clients, attorneys and other support staff members must readily and quickly move between all three facilities throughout the course of a regular workday. The regular frequency with which staff are expected to physically move between the jail, courthouse, and their office necessitates a high degree of proximity between facilities to complete the required work.
14. Second, at these facilities owned by King County, there are important services established therein that are needed by bargaining unit employees to perform their jobs. This includes King County Wi-Fi, which allows employees to easily access secure case file materials that are electronically stored on county systems through a reliable and secure network. An ample number of visiting booths are available at both jails where staff can safely meet with their clients and easily review or sign documents without the need to schedule an appointment in advance. Interpreters are also available at King County facilities to assist with non-English speaking clients.
15. Third, DPD staff maintain special access privileges at county facilities that are important for completing their work. DPD staff are all automatically included on the do-not-record registry so that calls into or out of the jail between staff and clients comport with confidentiality requirements. Staff can also always visit the jail without making

appointments to maintain necessary access to their clients. Laptops and cell phones are also permitted inside the jails for DPD staff.

16. Finally, the clustering of the jails, courthouses, and offices in two locations allows DPD employees to consolidate and regularize their commuting patterns. Many staff, for instance, regularly utilize mass transit to commute to their location for the day whereas others routinely drive to the office. Moving to an alternate site location on a given day can, as a result, create significant operational and financial issues for staff because they may require a vehicle, have to pay for parking, or need to invest significant time on a mass transit option. Consequently, most staff attempt to consolidate client meetings and court appearances on the same day that they are required to work out of an alternate location.
17. Time efficiency is an important working condition for DPD staff due, in part, to their overall case volumes. Many attorneys in the criminal practice area consistently represent around 70 clients at any time. It is typical for staff on an average workday to visit multiple clients in jail to conduct interviews, collect evidence, and prepare for legal proceedings; go to the courthouse to attend different hearings or trials and work at the office, drafting motions or briefs, conducting research, or reviewing cases with colleagues. Given the high workload and the ever-present need to regularly move between multiple locations, traveling to a farther location during the day or having to wait an extended period of time to meet with a client can severely impact the ability of staff to do their jobs. As one DPD attorney noted regarding the time burden of visiting SCORE, “I would have to figure out to account for 1 out of 70 clients for 40 minutes just to drive and see one person. That meant that I would have to dedicate a large amount of time just proportionately just to go see my one client. . . .”
18. In October 2022, King County gave public notice of its intent to contract with the SCORE Jail, located in Des Moines, Washington, to house some Department of Adult and Juvenile Detention (DAJD) inmates as a pilot program. Based on the record, this was the first time the county decided to house adult inmates in its custody at a non-county jail. The county based its decision on the high number of correction officer vacancies and the increase in the average daily population (ADP) of detainees at KCCF and the MRJC jail. The Director

of DAJD, Allen Nance, testified that at the time of the SCORE pilot announcement there were over 116 correctional officer vacancies, causing significant department morale issues and overtime issues, and the nature of the work was becoming more complex. During the COVID-19 pandemic, the ADP also increased significantly to over 1,900 inmates, further straining resources. The initial pilot program called for moving up to 60 detainees to SCORE by June 2023, with an eventual goal of moving up to 150 detainees there. At the time, the ADP at KCCF and MRJC was around 1,300 inmates.

19. Prior to the October 2022 announcement of the SCORE pilot program, the union did not receive any notice from King County about moving DAJD adult detainees, and DPD clients, to the SCORE Jail. Union President Molly Gilbert only learned that a proposed contract between King County and SCORE was being considered by the King County Council (council) after being contacted by the Corrections Guild President, Dennis Folk. Gilbert subsequently reviewed meeting agendas for the council and discovered that the SCORE pilot program contract had been filed and placed on the council's agenda.
20. A December 6, 2022, letter from Director Nance to all DAJD employees confirmed that King County was pursuing a contract with SCORE to house adult detainees, with the goal of the contract taking effect as early as January 2023.
21. On November 21, 2022, the union sent a letter to the King County Office of Labor Relations (OLR) Director Megan Pedersen and Senior Labor Relations Negotiator Andre Chevalier demanding to bargain "all bargainable matters relating to King County contracts with offsite 'regional jails.'" The letter, dated November 21, 2022, was attached to an email, which was sent by union representative Rion Peoples on November 22, 2022, at 12:43 p.m., and it was also delivered to Molly Gilbert and Anita Khandelwal of DPD. The union demanded that the county maintain the status quo regarding incarcerated persons at DAJD facilities until the county exhausted its bargaining obligations. On December 6, 2022, Chevalier responded to the demand to bargain letter indicating a willingness to meet with the union "to discuss the County's trial partnership with . . . SCORE" and inquiring as to available dates in December.

22. The county and the union met a total of six times to discuss the new SCORE pilot program, with an initial meeting on December 13, 2022.
23. At this first meeting, Chevalier stated that the county was moving ahead with the SCORE pilot program and that it did not believe this decision had to be bargained with the union. The union, conversely, presented the county with a list of impacts to working conditions that DPD members would experience if King County inmates were housed at SCORE. The non-exhaustive list of changes and impacts to DPD member-working conditions specified over a dozen items, including access to private meeting booths, 24/7 walk-in access privileges, internet access, extended commute and visit times, client medical treatments, and client transportation concerns. In discussing these concerns, Chevalier acknowledged that he was new to the role of working with DAJD and that he would need to rely on more subject-matter experts, like Diana Joy, the DAJD Chief of Administration and SCORE project manager, to address all the specific concerns raised by the union at that time. Joy was able to address some questions raised by the union, for example, noting that attorney calls are not recorded at SCORE, but she also stated that she would need to follow up on many of the specific questions.
24. On January 9, 2023, Chevalier emailed the union a detailed reply to all the specific working condition issues identified by the union at the December 13, 2022, meeting. In this email, Chevalier also notified the union that the county was pushing back the start date for the SCORE pilot program to “late Q1 of 2023” in order to provide more opportunity to discuss the details of it with the union. Chevalier confirmed that SCORE has five face-to-face visiting booths, that the attorneys would have 24/7 access to clients, and that transports of inmates would be done the same way as they are for inmates housed at the KCCF and MRJC jail. He also stated that King County Wi-Fi would not be installed at SCORE, so staff would have to use VPN to access client files, and that non-attorney staff would not have the same 24/7 access rights, but the county would continue to follow up on that issue.
25. The following day, on January 10, 2023, a second meeting between the parties was held. At the meeting, the union pressed its desire to delay any decision on the SCORE pilot program until its concerns were addressed and continued to note the King County areas

where it felt that moving inmates to SCORE would result in a significant change for its members.

26. Following the second meeting, the parties discussed a tour of the SCORE facility to better understand operations there, which was held on February 1, 2023. The parties were able to meet with SCORE officials to address various concerns raised by the union; test out the Wi-Fi, cellular connections, and speeds; and tour the overall facility. A discussion also occurred regarding an existing SCORE policy prohibiting lawyers and staff from bringing computers into the facility or requiring inspection prior to those devices being brought in. Ultimately SCORE agreed to allow DPD personnel to bring their laptops into the facility without inspection.
27. The King County Council placed a meeting of its Law, Justice, Health and Human Services Committee to discuss the SCORE contract on its March 7, 2023, agenda. The day before this scheduled meeting, the council received a letter from the union requesting that the council pause the SCORE contract approval until numerous issues identified by the union were addressed. Joy, on behalf of DAJD, addressed several of the concerns raised by the union with the council at the March 7 meeting, but the council deferred any vote on the contract at that time.
28. The union and the county had a third meeting on March 29, 2023, where the union reiterated its ongoing concerns with the SCORE contract that it insisted the county had yet to address and that it believed represented significant changes from the status quo.
29. On April 4, 2023, the King County Council voted on, and approved, an ordinance creating an interlocal agreement between SCORE and King County to house adult in-custody inmates.
30. On May 25, 2023, the parties met for the fourth time. King County shared with the union that inmates would begin to be housed at SCORE starting on June 10, 2023. The county also confirmed that both attorneys and non-attorney staff would be added to SCORE's do-not-record list and that DPD security clearances would be shared with SCORE. The union then presented a memorandum of agreement (MOA) to the county on the SCORE pilot

program. The proposals made by the union included a requirement that King County provide 10 parking spaces at the Goat Hill Garage in Seattle for the use of employees working at the Dexter Horton Building; reimburse employees who pay for parking outside of their assigned location; pay employees a \$250 per-visit fee for each trip to SCORE; make a one-time payment of \$2,500 to attorneys assigned to a felony trial rotation and mitigation specialists; and provide a \$5,000 retention bonus for all union members.

31. The county formally responded to the union's MOA at a July 14, 2023, meeting where it rejected the proposal. Chevalier proposed on behalf of the county that DPD reserve two spaces at the Goat Hill Garage and dedicate two cars for use by DPD employees.
32. Frustrated with the county's handling of the entire process related to the SCORE pilot program, the union sought a meeting with OLR Director Pedersen and the parties agreed to meet on July 27, 2023. Pedersen listened to the concerns expressed by the union, and a discussion ensued regarding the union's proposed MOA and King County's initial response to that proposal. Pedersen committed to reconsidering the retention bonus proposal but indicated that the bonus would likely be limited to only "Class A attorneys" rather than being provided to the whole union.
33. In an October 17, 2023, email Chevalier informed the union that it had "continued its evaluation of DPD retention issues initially raised by SEIU during the SCORE bargaining process." Chevalier went on to state that, because of that analysis, the county would offer an incentive program for Class A felony-qualified attorneys in the union in the form of a retention bonus for those employees.
34. The union fervently denies that the retention bonus was connected to the SCORE pilot program, noting that the proposal stemmed from the staffing crisis following the COVID-19 pandemic, that the same bonus was offered to the Teamsters union, and that the bonus was offered months after the union's proposed MOA and approximately one month after the SCORE pilot program had been cancelled.
35. The union and the county signed an agreement for a retention bonus for Class A attorneys in mid-November of 2023.

36. On June 10 and 11, 2023, the SCORE pilot program officially launched as King County transferred 31 inmates to the SCORE facility.
37. Although some of the concerns raised by the union were addressed by this time, both DPD management and the union documented several incidents where staff experienced changes in working conditions in comparison to the working conditions at King County's two main locations in Seattle and Kent. Several staff, for instance, reported problems with their names not being added to the do-not-record list by SCORE, clients at SCORE not being able to leave voicemails with attorneys, and some clients finding it difficult to even access a private phone while at SCORE. Different staff members also reported significant problems with both in-person visits and video visits with their clients. One attorney sent in several requests to schedule a visit with no reply from SCORE; numerous attorney-client visits, both by video and in person, were abruptly cut short or cancelled all together without explanation; and in at least one incident SCORE placed a client in a public setting for a video visit, which inhibited the attorney's ability to discuss confidential details about the case.
38. Despite an earlier site visit by the parties to address the Wi-Fi and cellular network situation, discuss the laptop policy, and assess the availability of sufficient meeting rooms, issues persisted after the start of the pilot program. Several staff members reported, at different times, that the Wi-Fi at SCORE was not working at all or in specific areas, such as the waiting room, and cellular service was generally not available. During visits, staff were given different instructions by SCORE personnel regarding their ability to bring in a laptop and cell phone, in some cases leading to a denial of those devices in the facility, which inhibited their work. During site visits, several attorneys experienced a lack of available meeting booths, so client meetings had to take place at other locations, including in the SCORE medical wing and non-private conference rooms. Meeting with clients outside of secured visiting booths created safety and confidentiality problems. Corrections officers with SCORE had to remain outside some meeting spaces, with the door slightly ajar, to monitor inmates. This created a security risk for DPD staff and limited attorney-client discussions because of confidentiality concerns with meeting in non-private locations with a corrections officer right outside the door.

39. Many DPD clients do not speak English, and the traditional interpretive services at the KCCF and MRJC jail were impacted by the move to SCORE. The county's court-certified interpreters maintain a public calendar that DPD staff have access to and can book appointments through when meeting with clients in need of an interpreter at KCCF or the MRJC jail. Due to the extended travel time between these facilities and the SCORE jail, staff found it impossible to book any appointments that would allow the interpreters to travel to and from SCORE and maintain their other appointments at KCCF or the MRJC jail. As a result, staff visiting non-English speaking clients at SCORE had to rely on telephonic interpreters for their meetings, which were generally less preferred, and in at least one situation the client could not communicate with the interpreter because of audio quality issues on the call.
40. Staff also reported that, depending on traffic, the travel time was 30 to 60 minutes between downtown Seattle and SCORE and 15 to 30 minutes between Kent and SCORE. SCORE is approximately 7 miles from the MRJC and approximately 15 miles from KCCF. One of the attorneys testified that, with a typical case load involving around 60-70 individuals, spending an hour traveling to and from SCORE during an already busy day produced a "significant" impact on the overall workload. Staff that needed to visit SCORE to meet with clients reported meaningful challenges in planning for their day to accommodate the extra time and measurable impacts on the rest of their workload stemming from the extended visiting times to the facility.
41. As a consequence of restrictions imposed by King County on the types of inmates eligible for transfer to SCORE, the number of such inmates remained relatively low throughout the pilot program. In July 2023, the ADP for King County inmates at SCORE was just over 32. Logs of visits by DPD staff during the month of July 2023 correspondingly showed an average of around six to eight employee visits each week.
42. On September 21, 2023, just over three months after the first King County inmates arrived at SCORE, the pilot program was cancelled. Nance testified that with "the extreme machinations that [the county was] having to go through on a daily and weekly basis to screen, transport, and manage those individuals, it simply didn't make a whole lot of sense

to continue.” SCORE agreed to terminate the pilot program, in part because they had reserved a large number of beds for King County inmates, but the county ended up only filling about 20 to 30 beds at any given time.

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 3-20, 27, 29, and 36-42, the employer refused to bargain in violation of RCW 41.56.140(4), and derivatively interfered in violation of RCW 41.56.140(1), by unilaterally changing terms and conditions of employment for bargaining unit employees by contracting with the South Correctional Entity to house adult in-custody population without providing the union an opportunity for bargaining.
3. As described in findings of fact 21-26, 28, and 30-35, the employer did not commit a refusal to bargain violation under RCW 41.56.140(4), or derivatively interfere in violation of RCW 41.56.140(1), by breaching its good faith bargaining obligation during negotiations with the union concerning the employer’s decision to contract with the South Correctional Entity to house adult in-custody population.

ORDER

King County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
 - a. Contracting with any outside entity to house in-custody inmates charged with one or more crimes by King County and assigned legal representation services by the King County Department of Public Defense.

- b. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights under the laws of the state of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of chapter 41.56 RCW:
 - a. Restore the *status quo ante* by reinstating the wages, hours, and working conditions that existed for the employees in the affected bargaining unit prior to the unilateral change in housing adult in-custody inmates, and clients of DPD staff, at a non-county jail, found unlawful in this order.
 - b. Give notice to and, upon request, negotiate in good faith with SEIU, Local 925 before contracting with a non-county entity to house adult in-custody inmates charged in King County and clients of DPD.
 - c. Contact the compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for posting. Post copies of the notice provided by the compliance officer in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.
 - d. Read the notice provided by the compliance officer into the record at a regular public meeting of the King County Council, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.
 - e. Notify the complainant, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time,

provide the complainant with a signed copy of the notice provided by the compliance officer.

- f. Notify the compliance officer, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide the compliance officer with a signed copy of the notice the compliance officer provides.

ISSUED at Olympia, Washington, this 8th day of November, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



CHRISTOPHER J. CASILLAS, 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.