STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KING COUNTY CORRECTIONS GUILD, Complainant, vs. KING COUNTY, Respondent.	CASE 137840-U-23 DECISION 13920-A - PECB CORRECTED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Ryan Lufkin, Attorney at Law, Public Safety Labor Group, LLP, for King County Corrections Guild.

Donna Bond and *Kelsey Schirman*, Senior Deputy Prosecuting Attorneys, King County Prosecuting Attorney Leesa Manion, for King County.

On November 6, 2023, the King County Corrections Guild (union) filed an unfair labor practice complaint against King County (employer). The complaint alleged that the employer violated its duty to bargain by unilaterally changing working conditions and the parties' collective bargaining agreement (CBA) in relation to the ability to perform mandatory overtime as an essential function of the job of a corrections officer. The undersigned hearing examiner held a virtual hearing on August 1 and 2, 2024. The parties filed briefs on October 4, 2024, to complete the record.

ISSUES

The issue in this case, as framed in the November 15, 2023, cause of action statement, is whether the employer violated RCW 41.56.140(4) "by unilaterally changing (1) the essential functions of the job [of corrections officers], (2) the nondiscrimination clause as it relates to medical disability, or (3) the overtime practices in relation to medical disability, without providing the union an opportunity for bargaining."

The union met its burden to prove that the employer unilaterally changed the working conditions of corrections officers to include the ability to perform mandatory overtime as a condition of

employment. Specifically, the employer's unilateral declaration that the inability to work mandatory overtime would result in medical separation of corrections officers was a change to a mandatory subject of bargaining. The union did not prove that the employer unilaterally changed the non-discrimination clause[1] of the parties' CBA or that an alleged change to the employer's administrative leave policy was an unlawful unilateral change.

BACKGROUND

The employer operates corrections facilities in King County. It employs approximately 380 corrections officers. The union represents those officers.

History of Mandatory Overtime and Medical Restrictions for Corrections Officers

Regular overtime, both voluntary and mandatory, has historically been a feature of the corrections officers' work. The union and the employer disagree about whether mandatory overtime has historically been an "essential function" of the job of a corrections officer.

The employer's job postings and application questionnaires for corrections officers have historically included information regarding mandatory overtime. The parties' CBA contains an extensive article on overtime, including a section on mandatory overtime.

Since approximately 1997, for the purposes of assessing disability accommodations, the employer has used an "essential functions form" which it provided to doctors. This form lists coming "to work on a regular and reliable basis" as an essential function. It further states that "[t]he ability to work regularly, having reliable predictable attendance" is required. The form does not mention overtime.

Since at least 2014, the employer has suggested to the union during contract negotiations that it wished to change the essential functions form to reflect its position that mandatory overtime is an essential function of the job of corrections officers. The union has resisted efforts to change the

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[1] The union did not present evidence regarding the anti-discrimination clause at hearing and made only oblique reference to the topic in its brief. Accordingly, I find that the union abandoned this claim.

form and has expressed its position that the ability to work overtime has never been an essential function of the position. The form has not been changed and was still in use as of the date of the hearing on this matter.

The employer has historically accommodated medical restrictions on corrections officers' ability to work mandatory overtime. Beginning in 2014, the employer began deducting hours from the affected officers' King County and federal family and medical leave (FML) accruals when they would have normally been required to work overtime but were excused due to medical restriction. The union has never grieved this process.

In 2009 there were, on average, roughly 10 officers with medical overtime restrictions. The average fluctuated within a range of roughly 8 to 15 officers for a number of years and then began climbing in 2017. By the end of 2019, approximately 90 officers had overtime restrictions.

In late 2019 and early 2020, the employer had internal discussions about how to deal with a staffing crisis that had the corrections facilities "operating below minimum staffing consistently." A key driver of the crisis, according to internal discussion, was the fact that up to 25 percent or more of corrections officers had medical restrictions on their ability to work mandatory overtime. One suggestion to address this issue was to make mandatory overtime "an essential function" and bargain to interest arbitration on work rules, scheduling, and leave issues. Other options that were considered included reducing barriers to recruitment, hiring part-time staff, and bringing in staff from court details and other non-corrections facility settings to cover shifts for the corrections facilities.

Following these internal discussions, the number of officers with medical restrictions on their ability to work overtime continued to increase to 150 in early 2022 and to more than 250 by the end of 2022. The employer also had approximately 120 open corrections officer positions in 2023.

Employer Issues a Proposed Medical Separation of an Officer

On August 1, 2023, the employer sent Officer Juliana Bucio-Suarez a notice that it intended to medically separate her from employment. The letter cited Bucio-Suarez's restriction on her ability to work mandatory overtime with no end date for that restriction, that she had exhausted her FML

as of October 2022, and that she had not worked sufficient hours to qualify for additional FML. Bucio-Suarez ultimately submitted documentation that rescinded her medical restriction on overtime. She was not separated from employment.

Union Demands to Bargain Medical Separations

On August 9, 2023, the union sent the employer an email entitled "Essential Functions Change - Demand to Bargain & Notice of ULP." The email demanded that the employer suspend any proposed medical separations and bargain over the imposition of medical separations based on restrictions on working overtime. The email conceded that the employer had the right to discipline officers who do not work mandatory overtime when they have exhausted leave but went on to argue that medical separation "short circuits the normal process . . . and fundamentally alters the process for terminating an employee . . . without notice or opportunity to bargain." The union's email concluded with a notice, in compliance with the parties' CBA, that the union intended to file an unfair labor practice complaint regarding this issue.

On August 25, 2023, the employer responded to the union's demand to bargain email. The parties met on September 6, 2023, and then exchanged follow-up emails before the employer responded in detail on September 22, 2023, to the union's demand to bargain. In its response, the employer stated that it would not be rescinding proposed medical separations or bargaining over whether it was experiencing undue hardship by accommodating employees. The employer did not view the medical separations as a unilateral change; rather, it saw them as consistent with its past practice regarding situations where an employee cannot meet an essential function of a position. When it previously deemed that accommodating employees created an undue hardship, the employer has medically separated employees. The employer cited the abnormally high rate of medical restrictions on overtime—with 55-60 percent of corrections officers having such restrictions—and the operational impact of these numbers on the rest of the workforce as reasons it could not accommodate those officers who had exhausted FML leave.

Employer Issues Additional Proposed Medical Separations

On August 30, 2023, the employer sent Officer Jill Hallowell a notice that it intended to medically separate her from employment. The notice cited Hallowell's indefinite medical restriction on

working mandatory overtime and her exhaustion of FML as reasons for the proposed separation. Hallowell had exhausted her FML in September 2022 and had continued to work under an accommodation until she was placed on paid administrative leave pending a final decision on the separation. On September 22, 2023, a meeting was held with the employer, Hallowell, and a union representative. At the meeting, the union representative stated he did not understand why Hallowell was not allowed to continue working during the separation process, since she was medically cleared to work 40.85 hours per week and up to 2 hours per day of mandatory overtime. The union representative stated that separating Hallowell would simply make the staffing and overtime problem worse. The representative further alleged that he believed Hallowell had been place on paid administrative leave to prevent her from working enough hours to accrue eligibility for additional FML. Hallowell was medically separated on October 31, 2023.

Hallowell testified at hearing that she had worked fewer hours in early 2023 because she was on light duty. Beginning in May 2023, Hallowell was cleared to work "some overtime" and did work some overtime shifts. She did not directly answer a question about whether she had worked a 40-hour work week at any point during the two years before she was separated. Hallowell also testified that she was likely to need additional surgery in the future to deal with an off-the-job injury.

During the summer of 2023, the employer proposed to medically separate Officer Rozell Beleford. Beleford had a medical restriction that prevented him from working any overtime and had exhausted his FML. The employer placed Beleford on paid administrative while it considered whether to separate him. During the process, Beleford submitted new FML paperwork which revealed he was still qualified for FML. His proposed separation was rescinded.

In response to an information request from the union, the employer was unable to find any examples before 2023 of medical separations based on an inability to work overtime.

Union Demands to Bargain Use of Paid Administrative Leave for Medical Separations

On September 25, 2023, the union sent an email to the employer demanding to bargain the employer's decision to place officers who were proposed for separation on paid administrative leave (PAL). The email stated that it was the union representative's recollection that officers who

were proposed for medical separation for not getting a COVID vaccination were not placed on PAL prior to their separation. The representative speculated that the reason for the use of PAL was to prevent officers from requalifying for FML. The email included a request for information related to medical separations and the use of administrative leave for the prior five years.

On October 8, 2023, the employer responded to the union's demand to bargain the use of paid administrative leave. It stated that it had used PAL in the past for disciplinary separations and for COVID vaccination cases. PAL was not typically used in other medical separations because those employees were not normally coming to work due to their medical situations. The employer vigorously denied that it was using PAL to prevent the accrual of FML; it stated that employees on PAL continue to accrue benefits. The employer also stated that it had reviewed the parties' CBA and found no reference to PAL, and because the employer believed it had acted consistently with its past practice, there was no change that would require collective bargaining.

At hearing, the employer's representatives testified that PAL is used when the employer has suggested to an employee that it may be ending their employment. It is used to mitigate any problems with morale or performance that might occur when an employee knows they are leaving employment involuntarily. In response to the union's request for information, the employer stated that it was not aware of any other cases, other than the COVID vaccination cases and the cases of Officer Hallowell and Officer Beleford, where administrative leave was used in a medical separation.

ANALYSIS

Applicable Legal Standard(s)

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). 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). 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).

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

Application of Standard(s)

The union met its burden to prove that the employer unilaterally changed the working conditions of corrections officers to include the ability to perform mandatory overtime as a condition of employment. Specifically, the employer's unilateral declaration that the inability to work mandatory overtime would result in medical separation of corrections officers was a change to a mandatory subject of bargaining. The union did not prove that there was a change to the employer's administrative leave policy.

The parties spent considerable time at hearing and in their briefing discussing "essential functions" of the position of corrections officer and that term's relationship to disability discrimination and accommodation and FML law. This is not surprising given that the union's complaint framed the alleged unilateral change as a change in "essential function." However, the record is clear that the unilateral change alleged in the union's complaint was the employer asserting the right to end a corrections officer's employment because they were medically restricted from performing mandatory overtime and had exhausted their FML leave. The employer's rationale for the separations was that the officers could no longer perform the "essential function" of mandatory overtime without a leave accommodation. Since there had been a long history of allowing officers to continue to work with medical restrictions on overtime, I find medically separating them for this reason to be an effective change in the "essential functions" of the position.

The Medical Separations in this Case Were a Mandatory Subject of Bargaining

Applying the agency's balancing test to the question of whether the medical separation of employees in this case was a mandatory subject of bargaining, I find that it was. Being medically separated ends the employment relationship. Therefore, like disciplinary termination, it directly affects the employees' core interest of continued receipt of wages and other benefits of employment. In contrast, the employer has an interest in maintaining a healthy, safe, and productive workplace. The ability to medically separate those employees who can no longer safely or productively perform the work desired by the employer is important to its entrepreneurial control. On balance, in this case, I find the employee's interest in continued employment predominates. This is especially true, since, in the present case, there were no internal or public safety concerns raised by the continued employment of corrections officers who are medically restricted from overtime while bargaining occurred over any medical separations.[2]

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[2] In coming to this conclusion, I am mindful of the Commission's recently issued decisions which found COVID vaccination mandates, which changed the conditions of employment and subjected employees to termination, were not a mandatory subject of bargaining. *See, City of Bellingham*, Decision 13826-A (PECB, 2024); *King County,* Decision 13825-A (PECB, 2024). In those cases, the Commission went to great lengths to emphasize that a public health emergency was a major factor in its decisions. No such emergency existed in this case.

The employer argues that its reasonable accommodation process and its definition of "essential functions" cannot be mandatory subjects of bargaining because they are controlled by other laws. This appears to be a quasi-preemption argument with no authority cited for that proposition. As I suggested in my prior rulings in this matter, and as the employer correctly points out, disability discrimination and accommodation and FML laws are not within this agency's jurisdiction. Accordingly, I will not be addressing any arguments related to those laws in this decision. To the extent the laws are relevant at all, they provide floors beneath which the agency cannot impose contradictory orders. Absent express statutory language, compliance with other laws is not a defense to an unfair labor practice complaint. Labor law can, and often does, impose additional obligations on parties. *See, e.g., Industria Lechera De Puerto Rico, Inc.,* 344 NLRB 1075 (2005) (ruling that the employer committed unilateral change by transferring an employee; compliance with the Americans with Disabilities Act was not a defense).

The employer cites *King County*, Decision 13825 (PECB, 2024) for the proposition that workplace accommodation issues are beyond the scope of the Commission's jurisdiction. As an initial matter, this was an Examiner decision which was affirmed without comment as to this issue. *See King County*, Decision 13825-A. Second, the Examiner appeared to be referring to individual cases of accommodation, not the overall policy of accommodation, which is the issue in the present case. It is long settled that individual claims of disability discrimination or claims of violations of contractual promises of non-discrimination are not justiciable by PERC. *King County*, Decision 6767-A (PECB, 1999). But this does not mean all issues related to accommodation are outside the agency's jurisdiction, and the Commission has never so held. In fact, the Commission has held that the existence of other laws related to a topic does not automatically preclude this agency's jurisdiction over the topic. *See King County*, Decision 6994-B (PECB, 2002); *King County*, Decision 6995-B (PECB, 2002) (ruling that the employer's alleged discriminatory administration of FML law did not preclude PERC from deciding whether the same facts constituted discrimination based on union activity). As in the 2002 *King County* cases, here there is overlap between general employment law (disability and accommodation laws) and labor law administered by PERC (the duty to bargain over working conditions).

Where issues related to accommodation or changes in job requirements have come before PERC Examiners, they have often been treated as mandatory subjects of bargaining. *See, e.g.*, *Seattle School District*, Decision 12173 (PECB, 2014) (finding that an information request on the accommodation process was relevant to the bargaining process, so refusal to provide information was unlawful); *City of Seattle*, Decision 8916 (PECB, 2005) (ruling that a change to job requirements for dispatchers was a unilateral change); *Town of Steilacoom*, Decision 6213 (PECB, 1998) (ruling that the past practice of the employer to impose physical standards for police officers meant no unilateral change occurred when an officer was separated for not meeting such standards); *City of Anacortes*, Decision 5668 (PECB, 1996) (ruling that unilateral imposition of physical agility testing for promotion was unlawful); *City of Olympia*, Decision 3194 (PECB, 1989) (finding that the establishment and substance of physical fitness standards were mandatory subjects of bargaining). An exception to this trend is the recent *King County* case cited by the employer. But as noted above, the Examiner in that case appeared to be referring to individual accommodation decisions, not an overall shift in the policy of accommodation as has occurred here. *King County*, Decision 13825.

While this agency has not squarely addressed the issue of medical separation or accommodation as mandatory subjects of bargaining, the National Labor Relations Board (NLRB) has. PERC treats NLRB decisions as persuasive when interpreting similar statutory language. *King County*, Decision 6772-A (PECB, 1999) (citing *Nucleonics Alliance, et al. v. Washington Public Power Supply System*, 101 Wn.2d 24 (1984)). PERC's enabling statute has similar "wages, hours, and working conditions" language as the NLRB's regarding subjects of bargaining. *Compare* RCW 41.56.030(4) *with* 29 U.S.C. § 152(5). The NLRB has consistently held that there is a mandatory bargaining obligation over workplace accommodations and that this obligation exists independent of other statutes. *See, e.g., Wendt Corp.*, 369 NLRB 135 (2020) (ruling that light duty assignments are a mandatory subject of bargaining); *Industria Lechera De Puerto Rico,* 344 NLRB 1075 (ruling that the transfer of an employee for accommodation purposes was a mandatory subject of bargaining); *Roseburg Forest Prods. Co.*, 331 NLRB 999 (2000) (ruling that the employer could not refuse to provide information regarding a worker's disability to the union in response to an information request). Following the 2002 *King County* decisions, the decisions of prior PERC

Examiners, and the NLRB's persuasive authority, I find that the medical separations in this case were a mandatory subject of bargaining.

The Medical Separations Were a Change in the Status Quo

Prior to the summer of 2023, for at least 14 years, the employer accommodated hundreds of officers who had medical restrictions on their ability to work overtime by allowing them to continue to work. Beginning in 2014, the employer began deducting time from the FML accruals of these officers. I find that this was the status quo prior to August 2023. There is nothing in the record to suggest that the employer informed the union, prior to the proposed separations in 2023, that in the event that an officer exhausted their FML accruals, the officer would be medically separated. In fact, the record contains evidence that the employer continued to accommodate officers who had exhausted their FML. Both Officer Bucio-Suarez and Officer Hallowell exhausted their FML in 2022 and continued to work until the employer proposed their medical separations in August 2023.

In the summer of 2023, for the first time, the employer moved to separate a corrections officer because she was medically restricted from working overtime. The union demanded to bargain the separation, and the employer proceeded to separate a different officer for the same reason. I find these actions by the employer to be a meaningful change to the status quo of a mandatory subject of bargaining.

The employer argues that the union did not meet its burden of proving a change to the status quo because it did not produce evidence of precisely the same circumstances with a different outcome. The union's burden is not as high as that. The union was required to prove a set of working conditions existed and that the employer made a meaningful change to those working conditions. It met that burden when it proved that the employer accommodated employees who had overtime restrictions and then decided to no longer accommodate some of them.

Finally, the employer argues that there was no change to the status quo; that it was merely following its long-established practices regarding workplace accommodation and medical separation. I do not find this to be credible. After more than 14 years of accommodating medical restrictions on overtime without a single instance of a medical separation for this issue, the

employer proposed three medical separations in the space of a few months. This came after many years of internal deliberations about what to do about the explosive increase in medical restrictions on overtime. While I am sympathetic to the employer's staffing dilemma, that dilemma did not relieve it of the obligation to provide the officers' union notice and an opportunity to bargain before it unilaterally changed the long-term expectation of continued employment and accommodation of corrections officers with medical restrictions on their ability to work overtime.

The Union Did Not Prove the Employer Changed How It Administers Paid Administrative Leave

The employer placed two of the three officers it proposed to medically separate on PAL while it considered the officers' and the union's input on a final decision. The third officer was already away from the workplace on other leave. There was sufficient evidence presented at hearing to conclude that this was not a meaningful change to how the employer had used PAL in the past. In particular, the employer had used PAL when it separated employees who did not get the COVID vaccination and in other situations where it was contemplating separating an employee from employment.[3]

CONCLUSION

The employer violated RCW 41.56.140(4) when it refused to bargain with the union before medically separating corrections officers who had restrictions on their overtime use and had exhausted their FML. The union did not prove a unilateral change in the language of the CBA or the employer's use of administrative leave policy.

REMEDY

The standard remedy for violations of the duty to bargain includes a restoration of the *status quo ante*, a bargaining order, a notice posting, and make-whole remedies for any affected employees. *State - Corrections*, Decision 11060-A (PSRA, 2012). I see no need to deviate from those remedies

[3] In the absence of evidence of a change in practice, it is unnecessary to determine whether the employer's use of PAL constitutes a mandatory subject of bargaining.

in this case. With regard to the make whole remedy, on the record before me, it appears that Officer Hallowell was the only employee who suffered an economic impact from the employer's illegal action. However, if there are other officers who suffered an impact, the employer is ordered to make them whole. As for Officer Hallowell, the employer is ordered to reinstate her and pay her back pay from the date of her separation to the date of this order. Because Officer Hallowell was in a transition period, her hours of work were fluctuating, and her medical prognosis was somewhat uncertain, the make-whole remedy must account for these variables. The back pay award will be calculated on a weekly basis as equivalent to the average number of hours Hallowell actually worked per week from May 1, 2023, through the date the employer placed her on administrative leave before medically separating her. The employer will also restore Hallowell's leave and other benefits as if she had worked full time.

FINDINGS OF FACT

1. The employer operates corrections facilities in King County. It employs approximately 380 corrections officers. The union represents those officers.

2. Regular overtime, both voluntary and mandatory, has historically been a feature of the corrections officers' work. The union and the employer disagree about whether mandatory overtime has historically been an "essential function" of the job of a corrections officer.

3. The employer's job postings and application questionnaires for corrections officers have historically included information regarding mandatory overtime. The parties' CBA contains an extensive article on overtime, including a section on mandatory overtime.

4. Since approximately 1997, for the purposes of assessing disability accommodations, the employer has used an "essential functions form" which it provided to doctors. This form lists coming "to work on a regular and reliable basis" as an essential function. It further states that "[t]he ability to work regularly, having reliable predictable attendance" is required. The form does not mention overtime.

5. Since at least 2014, the employer has suggested to the union during contract negotiations that it wished to change the essential functions form to reflect its position that mandatory

overtime is an essential function of the job of corrections officers. The union has resisted efforts to change the form and has expressed its position that the ability to work overtime has never been an essential function of the position. The form has not been changed and was still in use as of the date of the hearing on this matter.

6. The employer has historically accommodated medical restrictions on corrections officers' ability to work mandatory overtime. Beginning in 2014, the employer began deducting hours from the affected officers' King County and federal family and medical leave (FML) accruals when they would have normally been required to work overtime but were excused due to medical restriction. The union has never grieved this process.

7. In 2009 there were, on average, roughly 10 officers with medical overtime restrictions. The average fluctuated within a range of roughly 8 to 15 officers for a number of years and then began climbing in 2017. By the end of 2019, approximately 90 officers had overtime restrictions.

8. In late 2019 and early 2020, the employer had internal discussions about how to deal with a staffing crisis that had the corrections facilities "operating below minimum staffing consistently." A key driver of the crisis, according to internal discussion, was the fact that up to 25 percent or more of corrections officers had medical restrictions on their ability to work mandatory overtime. One suggestion to address this issue was to make mandatory overtime "an essential function" and bargain to interest arbitration on work rules, scheduling, and leave issues. Other options that were considered included reducing barriers to recruitment, hiring part-time staff, and bringing in staff from court details and other non-corrections facility settings to cover shifts for the corrections facilities.

9. Following these internal discussions, the number of officers with medical restrictions on their ability to work overtime continued to increase to 150 in early 2022 and to more than 250 by the end of 2022. The employer also had approximately 120 open corrections officer positions in 2023.

10. On August 1, 2023, the employer sent Officer Juliana Bucio-Suarez a notice that it intended to medically separate her from employment. The letter cited Bucio-Suarez's restriction on

her ability to work mandatory overtime with no end date for that restriction, that she had exhausted her FML as of October 2022, and that she had not worked sufficient hours to qualify for additional FML. Bucio-Suarez ultimately submitted documentation that rescinded her medical restriction on overtime. She was not separated from employment.

11. On August 9, 2023, the union sent the employer an email entitled "Essential Functions Change - Demand to Bargain & Notice of ULP." The email demanded that the employer suspend any proposed medical separations and bargain over the imposition of medical separations based on restrictions on working overtime. The email conceded that the employer had the right to discipline officers who do not work mandatory overtime when they have exhausted leave but went on to argue that medical separation "short circuits the normal process . . . and fundamentally alters the process for terminating an employee . . . without notice or opportunity to bargain." The union's email concluded with a notice, in compliance with the parties' CBA, that the union intended to file an unfair labor practice complaint regarding this issue.

12. On August 25, 2023, the employer responded to the union's demand to bargain email. The parties met on September 6, 2023, and then exchanged follow-up emails before the employer responded in detail on September 22, 2023, to the union's demand to bargain. In its response, the employer stated that it would not be rescinding proposed medical separations or bargaining over whether it was experiencing undue hardship by accommodating employees. The employer did not view the medical separations as a unilateral change; rather, it saw them as consistent with its past practice regarding situations where an employee cannot meet an essential function of a position. When it previously deemed that accommodating employees created an undue hardship, the employer has medically separated employees. The employer cited the abnormally high rate of medical restrictions on overtime—with 55-60 percent of corrections officers having such restrictions—and the operational impact of these numbers on the rest of the workforce as reasons it could not accommodate those officers who had exhausted FML leave.

13. On August 30, 2023, the employer sent Officer Jill Hallowell a notice that it intended to medically separate her from employment. The notice cited Hallowell's indefinite medical

restriction on working mandatory overtime and her exhaustion of FML as reasons for the proposed separation. Hallowell had exhausted her FML in September 2022 and had continued to work under an accommodation until she was placed on paid administrative leave pending a final decision on the separation.

14. On September 22, 2023, a meeting was held with the employer, Hallowell, and a union representative. At the meeting, the union representative stated he did not understand why Hallowell was not allowed to continue working during the separation process, since she was medically cleared to work 40.85 hours per week and up to 2 hours per day of mandatory overtime. The union representative stated that separating Hallowell would simply make the staffing and overtime problem worse. The representative further alleged that he believed Hallowell had been place on paid administrative leave to prevent her from working enough hours to accrue eligibility for additional FML. Hallowell was medically separated on October 31, 2023.

15. Hallowell testified at hearing that she had worked fewer hours in early 2023 because she was on light duty. Beginning in May 2023, Hallowell was cleared to work “some overtime” and did work some overtime shifts. She did not directly answer a question about whether she had worked a 40-hour work week at any point during the two years before she was separated. Hallowell also testified that she was likely to need additional surgery in the future to deal with an off-the-job injury.

16. During the summer of 2023, the employer proposed to medically separate Officer Rozell Beleford. Beleford had a medical restriction that prevented him from working any overtime and had exhausted his FML. The employer placed Beleford on paid administrative while it considered whether to separate him. During the process, Beleford submitted new FML paperwork which revealed he was still qualified for FML. His proposed separation was rescinded.

17. In response to an information request from the union, the employer was unable to find any examples before 2023 of medical separations based on an inability to work overtime.

18. On September 25, 2023, the union sent an email to the employer demanding to bargain the employer's decision to place officers who were proposed for separation on paid administrative leave (PAL). The email stated that it was the union representative's recollection that officers who were proposed for medical separation for not getting a COVID vaccination were not placed on PAL prior to their separation. The representative speculated that the reason for the use of PAL was to prevent officers from requalifying for FML. The email included a request for information related to medical separations and the use of administrative leave for the prior five years.

19. On October 8, 2023, the employer responded to the union's demand to bargain the use of paid administrative leave. It stated that it had used PAL in the past for disciplinary separations and for COVID vaccination cases. PAL was not typically used in other medical separations because those employees were not normally coming to work due to their medical situations. The employer vigorously denied that it was using PAL to prevent the accrual of FML; it stated that employees on PAL continue to accrue benefits. The employer also stated that it had reviewed the parties' CBA and found no reference to PAL, and because the employer believed it had acted consistently with its past practice, there was no change that would require collective bargaining.

20. At hearing, the employer's representatives testified that PAL is used when the employer has suggested to an employee that it may be ending their employment. It is used to mitigate any problems with morale or performance that might occur when an employee knows they are leaving employment involuntarily. In response to the union's request for information, the employer stated that it was not aware of any other cases, other than the COVID vaccination cases and the cases of Officer Hallowell and Officer Beleford, where administrative leave was used in a medical separation.

21. The union did not present evidence regarding the anti-discrimination clause of its CBA at hearing and made only oblique reference to the topic in its brief. Accordingly, I find that the union abandoned its claim of unilateral change to this clause.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-45 WAC.

2. As described in findings of fact 2 through 17, the union proved that, by refusing the union's demand to bargain and unilaterally medically separating corrections officers, the employer breached its good faith bargaining obligation in violation of RCW 41.56.140(4), and derivatively, RCW 41.56.140(1).

3. As described in finding of fact 21, the union failed to prove that the employer unilaterally altered the parties' collective bargaining agreement with respect to the nondiscrimination clause.

4. As described in findings of fact 18 through 20, the union failed to prove that the employer altered the way it implemented paid administrative leave.

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) Medically separating corrections officers from employment because they have medical restrictions on their overtime use and have exhausted FML.

   (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 this order. Back pay shall be computed in conformity with WAC 391-45-410. Reinstate Officer Jill Hallowell and pay her back pay from the date of her separation to the date of this order in an amount calculated on a weekly basis as equivalent to the average number of hours Hallowell actually worked per week from May 1, 2023, through the date the employer placed her on administrative leave before medically separating her. Restore Hallowell's leave and other benefits as if she had worked full time during this period.

(b) Give notice to and, upon request, negotiate in good faith with the King County Corrections Guild before medically separating corrections officers from employment because they have medical restrictions on their overtime use and have exhausted FML.

(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 13th day of December, 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.