

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMALGAMATED TRANSIT UNION,
LOCAL 587,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 22254-U-09-5679

DECISION 10547 - PECB

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Frank Freed Subit & Thomas, by *Clifford Freed*, for the union.

Davis Wright Tremaine, by *Henry E. Farber* and *Kelsey M. Sheldon*, for the employer.

On February 5, 2009, the Amalgamated Transit Union, Local 587 (union), filed an unfair labor practice complaint against King County (employer). The complaint alleges employer refusal to bargain and interference. The Commission appointed Jamie L. Siegel as the Examiner, and I held a hearing on May 20 and 28, 2009. At hearing, the union withdrew its direct dealing complaint. The parties filed post-hearing briefs on July 31, 2009, and additional briefing in light of *Griffin School District*, Decision 10489 (PECB, 2009), on September 2, 2009.

ISSUES

1. Was the employer's decision to furlough certain bargaining unit employees on ten days in 2009 a mandatory subject of bargaining?

2. If the decision to furlough employees was a mandatory subject of bargaining, did the employer establish a business necessity that excused it from its duty to bargain the decision to furlough employees?
3. Did the employer satisfy its obligation under RCW 41.56.140(1) to bargain the effects of its decision to furlough employees on ten days in 2009 when it implemented its decision without reaching an agreement with the union on the effects of the decision?

The employer refused to bargain and interfered with employee rights when it decided to furlough certain bargaining unit employees on ten scheduled work days without offering to bargain the decision with the union. Applying the balancing test, I conclude that the furlough decision was a mandatory subject of bargaining. Although the employer was faced with closing a significant budget deficit in a volatile economic environment, the employer failed to establish a business necessity defense excusing it from fulfilling its bargaining obligation. The employer also failed to fulfill its obligation to bargain the effects of the furlough decision when it implemented its decision without reaching an agreement with the union or pursuing the impasse process outlined in RCW 41.56.492.

APPLICABLE LEGAL STANDARDS

Bargaining Obligation – Mandatory and Permissive Subjects of Bargaining

Chapter 41.56 RCW requires a public employer to bargain with the exclusive bargaining representative of its employees. The duty to bargain extends to mandatory subjects of bargaining including wages, hours and working conditions. RCW 41.56.030(4). The law limits the scope of mandatory subjects to those matters of direct concern to employees. *International Association of Fire Fighters, Local 1052 v. PERC (City of Richland)*, 113 Wn.2d 197 (1989). Unless a union clearly waives its right to bargain, an employer is prohibited from making unilateral changes to mandatory subjects. An employer must give a union sufficient notice of possible changes affecting mandatory subjects of bargaining and, upon union request, bargain in good faith until reaching agreement or impasse. In accordance with RCW 41.56.492, when a transit employer and union are unable to agree concerning changes to a mandatory subject, the employer may not

unilaterally implement the change; instead, the parties may proceed to mediation and, if still at impasse, to interest arbitration. *See City of Tukwila*, Decision 9691-A (PECB, 2008).

The Commission classifies managerial decisions that only remotely affect terms and conditions of employment as permissive subjects of bargaining. *North Franklin School District*, Decision 5945-A (PECB, 1998). Parties may bargain regarding such subjects but are not required to do so. If an employer's decision on a permissive subject of bargaining materially impacts wages, hours, or working conditions of bargaining unit employees, the employer must bargain with the union concerning those impacts. *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991).

The Commission's decisions cannot always draw bright lines between mandatory and permissive subjects of bargaining because the cases often present unique facts. In situations where a managerial decision also involves wages, hours or working conditions, the Commission and its examiners apply a balancing test to determine whether the matter is a mandatory subject of bargaining. The balancing test analyzes which of the following two characteristics predominate: (1) the extent to which the managerial action impacts the employees' wages, hours or working conditions, or (2) the extent to which the managerial action is an essential management prerogative. As the Washington State Supreme Court stated in *International Association of Fire Fighters, Local 1052 v. PERC (City of Richland)*, 113 Wn.2d 197 (1989): "The critical consideration in determining whether an employer has a duty to bargain is the nature of the impact on the bargaining unit versus the employer's need for managerial control."

A party asserting an unfair labor practice complaint bears the burden of proving its case. WAC 391-45-270(1)(a).

Business Necessity Defense

In very limited circumstances, the Commission excuses an employer from fulfilling its full bargaining obligation. An employer may implement a unilateral change of employee wages, hours or working conditions without satisfying its obligation to bargain the decision when necessitated by compelling practical or legal circumstances. *City of Tukwila*, Decision 9691-A.

In making such decisions, the Commission “examines all of the relevant facts and circumstances surrounding the particular event.” The employer bears the burden of proving the defense. WAC 391-45-270(1)(b); *Cowlitz County*, Decision 7007-A (PECB, 2000). Even when an employer meets the burden of establishing a business necessity defense, the employer must still bargain the effects the decision has on mandatory subjects of bargaining.

An employer claiming such a defense must prove that: (1) a business necessity existed; (2) it provided adequate notice to the union of the proposed change; and (3) the parties bargained over the effects of the change or the union waived bargaining. *Skagit County*, Decision 8886-A (PECB, 2007).

ANALYSIS

The employer’s workforce consists of approximately 13,000 employees in over 70 bargaining units. Among its services, the employer provides public passenger transportation through its transit division. The union serves as the exclusive bargaining representative of approximately 3,600 employees working in the transit division. The bargaining unit employees work in five major job classifications, including transit operator, vehicle maintenance, facilities, supervision, and special classification. In 2008, the parties completed negotiations for a successor collective bargaining agreement effective from November 1, 2007, to October 31, 2010.

Budget Development for 2009

As the employer developed its 2009 budget, the financial landscape at the local, state, national, and international level changed at a rapid pace. The volatile economic environment created a variety of budgeting challenges, including increasing the employer’s costs and decreasing its revenues. Both the employer’s general fund and transit funds faced significant deficits. Beth Goldberg, the employer’s Deputy Director of the Office of Management and Budget, testified about the economic volatility as follows:

So we continued to develop the budget, we continued to monitor economic indicators. It was -- things were changing daily, hourly in terms of economic indicators. The stock market was rising, the stock market was falling. Fuel prices

were continuing on its record-setting pace, but with fluctuations. By early September on the general fund side the deficit had grown to \$93.4 million. Transit was looking at a \$83 million deficit. And those were the parameters around which we completed the 2009 proposed budget, in terms of closing a \$93 million deficit on the general fund side and an \$83 million deficit for transit.

Some of the greatest budgeting challenges for the employer, particularly in the transit fund, included the declining sales tax revenue,¹ the increasing costs for diesel fuel,² and the increasing estimates for the cost of living adjustment (COLA).³

In addition to the fiscal pressures, the employer faced time pressures as it worked to balance the budget within its budget adoption timeline. The employer's governing body, the King County Council (council), adopts a balanced budget for each of its funds by late November. Traditionally, the employer's executive submits a proposed budget to council in mid-October, giving the council time to review and consider the proposed budget prior to the November adoption.

In October 2008, the transit division submitted its mid-biennial supplemental budget request to Ron Sims, who was then serving as the King County Executive.⁴ To close the \$83 million gap for the biennium, the transit division explored various options and proposed nine specific changes, including increasing fares charged to consumers and spending down its operating reserves. For transit to use the operating reserves at the level proposed would have required the council to change policies. The council chose not to pursue some of the options, including spending the reserves down as far as proposed.

¹ Sales tax revenues represent approximately 60 percent of transit's total revenue.

² On an annualized basis, every ten cent increase in diesel fuel prices costs the employer an additional one million dollars. The employer had budgeted diesel fuel costs for 2008 at \$2.60 per gallon; the actual cost peaked at \$4.27 per gallon.

³ Many of the collective bargaining agreements between the employer and the labor organizations representing its employees provide for annual salary increases based upon the COLA.

⁴ In 2007, transit began biennial budgeting and developed a budget for 2008-2009.

Sims transmitted the employer's proposed budget to council on October 13. The proposed budget eliminated hundreds of positions and discontinued and reduced a variety of services. The proposed budget also reduced compensation for unrepresented employees, including reducing the COLA to three percent and eliminating merit increases. Sims set aside a target number for represented employees' labor cost reductions, explaining he was "relying on the same methodology used to determine the target savings for non-represented employees. This will generate \$8 million in General Fund savings and \$7.2 million in savings to other county funds in 2009."

Negotiations with King County Coalition of Labor Unions

The King County Coalition of Labor Unions (the coalition) serves as an ad hoc group of labor organizations representing a variety, but not all, of the bargaining units within the employer's operations. By letter to the coalition co-chairs dated October 3, 2008, Sims sought the coalition's assistance in achieving a balanced budget for 2009. He identified the employer's COLA formula as "one of the most challenging aspects of this financial situation," and said:

We have had positive preliminary discussions with you about possible changes to both wages and benefits but we have not had time to reach any final agreements. I needed to make some final assumptions to balance the budget. Therefore, I have directed the budget office to find the final \$15 million in reductions from the wages of both represented and non-represented employees.

Sims explained the labor cost reduction approach with unrepresented employees and noted that the collective bargaining agreements do not allow him to do the same with represented employees. He stated:

However, I will be taking whatever steps I can under the contracts to reduce costs. Given the fiscal emergency, I am prepared to take the extraordinary step of requiring staggered mandatory unpaid week long furloughs of all represented King County employees in 2009 except for Corrections personnel and Sheriff's Deputies. . . . Furloughs in Transit provide little savings and would require reduction in bus service so I will instead be seeking alternative reduction strategies with Transit Employees.

Sims' letter asked the coalition co-chairs to partner with him on the furloughs or to bargain alternative ways to generate the savings. He stated that if they could not agree on solutions to reach the necessary savings, layoffs would be necessary as well as looking at the benefit and wage terms of open labor agreements. His letter notes: "I am looking forward to our meeting on October 6 where we can discuss both the furloughs and any alternatives." The parties introduced no evidence from a meeting on October 6, 2008.

On October 13, 2008, the employer announced to the coalition that it would shut down all but essential services on 10 days in 2009 and place the employees on unpaid furlough for the 10 days. The employer offered to negotiate the impacts of its decision with the coalition and the coalition agreed. Negotiations began October 14, 2008, and involved over one dozen labor organizations, some representing multiple bargaining units.

On October 27, 2008, after four to five bargaining sessions, the coalition and the employer reached a tentative agreement on the effects of the furlough days. In an email to all employees, Sims announced the tentative agreement and the 10 furlough days, explaining the "ten specific unpaid days are equal to a 3.85 percent reduction in pay." He stated:

If you are a union member, you will be hearing full details from your union representatives and their recommendations. . . . While this plan has the advantage of preserving the cumulative effect of COLA increases, the ten days unpaid furlough would lower the net 2009 COLA increase to one percent.

After specifying the dates of the proposed furloughs, Sims explained, "If approved, this approach also allows us to achieve additional savings on heating and cooling costs by shutting down entire facilities on furlough days."

According to Goldberg, the furlough approach had the benefit of being an equitable, quick method within its authority to reach the savings necessary to balance the budget while also saving jobs. The employer calculated the furloughs as saving the general fund \$8.5 million and the non-general fund \$14.3 million. The employer calculated the savings in the transit division at \$1.7 million. This figure includes bargaining unit employees represented by Amalgamated

Transit Union, Local 587 (ATU), non-represented employees, and employees in other bargaining units.

Negotiations with ATU

The union did not participate in the bargaining between the employer and the coalition concerning the effects of the furlough decision. Lance Norton, union president and business representative, had not attended a coalition meeting in seven years and did not know the bargaining concerning furloughs was taking place. No one from the employer contacted the union about the furloughs or the coalition bargaining until after the employer reached the coalition agreement.

On or about October 27, 2008, David Levin, the employer's labor negotiator who was assigned to negotiate the furlough effects with the union, informed Norton of the furlough decision and the tentative agreement with the coalition. The employer's decision directly impacts 65 employees in the union's bargaining unit. Most of the furloughed bargaining unit employees work in transit's special classification and include those in customer assistance, rider information, and pass sales. Six of the impacted bargaining unit employees work in the finance and business operations division.

The union demanded to bargain the furlough decision as well as the effects. The employer offered to bargain only the effects. When the parties met on November 5, 2008, to bargain the effects of the decision, the employer presented the coalition agreement as its proposal. The union shared several ideas on other cuts the employer could make as well as ideas to lessen the financial impact on the employees. The employer expressed an unwillingness to agree to anything that would not assist in achieving the targeted labor cost savings. The employer rejected the union's ideas except for the possibility of allowing furloughed employees to use donated compensatory time (AC time). After the November 5 meeting, the employer further explored the union's AC time idea and informed the union that it was willing to pursue it if the union administered the distribution of the donated funds. The union then dropped the idea.

On November 19, 2008, Norton presented the employer's proposal to the impacted bargaining unit employees and they rejected it. The union submitted no written counter-proposals and requested no additional bargaining meetings with the employer as it believed that the employer would agree to nothing outside the coalition agreement.

By letter to the union dated December 8, 2008, the employer acknowledged that the parties had not reached agreement on the effects of the furloughs and that the union had advised that it was not interested in further effects bargaining. The employer explained:

We are disappointed that we were unable to reach agreement on effects before we begin the implementation process, as we had been willing to offer certain protections to affected employees and to the bargaining unit for your support. The deadline of our proposal has now passed thus we are no longer offering the terms that we discussed previously. For example, we will no longer offer this bargaining unit furlough replacement time. However, we will meet to resume discussions about effects of the shut-down upon request.

The union requested no further effects bargaining and the employer implemented the furloughs beginning on January 2, 2009.⁵ The parties presented no evidence that they considered or requested mediation and, if necessary, interest arbitration.

EMPLOYER'S DECISION – MANDATORY SUBJECT

Applying the balancing test in this case, I find that the extent to which the employer's action impacts employee wages, hours and working conditions predominates over the extent to which the action is an essential management prerogative. As a result, I conclude that the employer's decision to furlough employees was a mandatory subject of bargaining.

The furloughs significantly impact bargaining unit employees. The employer requires employees to take unpaid leave on what would otherwise be 10 work days. This action reduces

⁵ Some of the bargaining unit employees worked on January 2, 2009, the first furlough day. The employer decided to open the pass sales office because the sale of passes generates revenue. The office has its own entrance which allowed the rest of the King Street Center to remain closed. Other than the pass sales office on January 2, all but essential services cease operations on furlough days.

the employee work year by 80 hours and reduces employee compensation for 2009 by 3.85 percent. Employees who had scheduled vacation on work days that became furlough days are required to change the time off to unpaid time, thereby impacting the use of vacation, a working condition.

The employer makes several arguments in support of its position that its action was an essential management prerogative. The employer argues it is critical that it be allowed to exercise its managerial prerogative to reduce its budget and to determine the quantity and scope of its services, including reducing the level of services it offers to the public. The employer asserts that it exercised such prerogatives when it closed buildings and operations for 10 days and that furloughing employees was an effect of that decision.

Furthermore, the employer states that if its furlough decision is a mandatory subject of bargaining, it would be left “without a way to address its budgetary issues” and expresses that such a result “could place a union, or eventually PERC, in the position of requiring a governmental entity to maintain services that it no longer wanted to provide or that it could no longer afford.” The employer also argues that had it been required to bargain and the parties could not reach agreement, the employer “would have had little other choice but to cut other programs. Where the County is choosing between rider information and maintaining bus service levels, as it was here, the decision is intrinsically managerial.”

The employer correctly states that it has the right to determine its budget and budget priorities. The employer also has the right to determine which services it wishes to offer and at what levels. This case, however, is not about an employer’s decision to eliminate a service or to eliminate a product. This case is not about eliminating or reducing a program or otherwise changing the scope of the employer’s enterprise. Instead, this case is about an employer’s decision to reduce its labor costs. Regardless of how the employer chooses to characterize it, the fundamental nature of the employer’s action is a reduction in labor costs achieved by cutting employee work days.

Sims' written communication clearly and explicitly identifies the employer's reasons for its decision to close operations for ten days and furlough employees. His October 3 letter to the coalition co-chairs describes the employer's concern about the COLA and its need to reduce such labor costs. Sims' October 13 budget submission to the council identified targeted savings from represented employee costs, including \$8 million in general fund savings and \$7.2 million in other fund savings. Sims' October 27 email announcing the coalition agreement focused on the COLA but noted that the furlough approach "also allows us to achieve additional savings on heating and cooling costs by shutting down entire facilities on furlough days."

The employer presented no evidence that non-labor cost savings from closing operations played an important role in its decision. The employer presented no evidence that it ever calculated such non-labor cost savings. The only reason the employer decided to close buildings and operations on 10 days was to achieve its targeted savings from labor costs.

Clearly, the employer faced serious challenges in developing a balanced budget for 2009; it had to make significant and difficult cuts. The employer recognized that closing buildings and furloughing employees impacted the public as well as employees. Looking at the decision's impact on the public and the employer's need to consider the political, social, and other such factors does not, however, tip the balance toward the employer's decision being a managerial prerogative.

My decision in this case does not prevent the employer from taking responsible actions reflective of its financial circumstances. Nor will this decision require an employer to maintain services that it no longer wishes to provide, as the employer fears. This decision simply requires that the employer fulfill its bargaining obligation as it considers taking actions that change mandatory terms and conditions of employment. As the Commission explained in *City of Tukwila*, Decision 9691-A (PECB, 2008), a case where the employer argued it was excused from bargaining with the union about health insurance benefits because it needed to offer only one schedule of benefits for all groups of employees:

Although the employer may fear that result [that bargaining about benefits would result in a second schedule of benefits], that fear alone does not alleviate it from its collective bargaining obligation, and also fails to recognize that while Chapter 41.56 RCW requires the employer to negotiate in good faith with the union regarding mandatory subjects, it does not compel agreement. RCW 41.56.030(4).

Skagit County, Decision 8746-A (PECB, 2006), a case involving ferry service, is also instructive. In that case the Commission concluded that although the employer had the right to determine the level of ferry service and to set the sailing schedule, it did not have the right to change the employees' shift schedule to fit the new sailing schedule without bargaining. The Commission rejected the employer's expansive interpretation of management prerogatives as encompassing scheduling employees to fit the employer's new level of service and explained:

As was noted in *City of Auburn*, Decision 901 (PECB, 1980), if limitations on management flexibility were the criteria for determining whether union proposals on work hours were a mandatory subject of bargaining, most proposals, as such, would be subject to challenge, and RCW 41.56.030(4) would be rendered meaningless. Thus, the shifts worked by employees are generally accepted as a mandatory subject of bargaining, and an employer that desires to change employee work shifts is obligated to bargain that change with the union representing its employees.

An important premise underlying the collective bargaining laws is that collective discussions between management and labor will result in better decisions. *City of Centralia*, Decision 5282-A (PECB, 1996). How an employer reduces labor costs is a type of decision that can be improved through collective bargaining. In *City of Centralia*, Decision 5282-A, a case involving the issue of staffing levels, the Commission, quoting from *First National Maintenance v. NLRB*, 452 US 666 (1981), stated:

In the process of deciding that case [*First National Maintenance v. NLRB*], however, the Court considered that an employer's desire to reduce labor costs alone is a matter 'peculiarly suitable for resolution within the collective bargaining framework'. *First National Maintenance Corporation v. NLRB*, at 679-680. Here, the employer was not attempting to decrease its service or change the scope of the enterprise; the employer has pointed to no other reasons for its actions but to reduce labor costs. Under *First National Maintenance*, the issue is clearly suitable for collective bargaining. (footnote omitted)

Conclusion

The employer's decision to furlough employees on 10 days in 2009 was a mandatory subject of bargaining. The employer's decision reduces employee work days, reduces employee compensation, and alters working conditions. By unilaterally imposing such changes, the employer interfered with employee rights and refused to bargain in violation of RCW 41.56.140(4) and (1).

BUSINESS NECESSITY DEFENSE

The employer raises the affirmative defense of business necessity. To establish this defense, the employer must demonstrate that a business necessity existed, that it provided adequate notice to the union of the proposed change, and that the parties bargained over the effects of the change or the union waived bargaining.

The employer's witnesses concerning the budget, Goldberg and Jill Krecklow, the transit division's finance and administrative services manager, testified credibly and convincingly about the status of the employer's 2008 budget and their work in developing the 2009 budget.⁶ The employer established that it faced serious challenges in developing a balanced budget for 2009. The volatile economic environment required the employer to make significant cuts to develop a balanced budget and time was limited. Despite their credible testimony, the employer failed to establish that a business necessity existed.

In two relatively recent decisions, the Commission found that the employers established that a business necessity existed. In *Cowlitz County*, Decision 7007-A, the Commission concluded that the employer established its business necessity defense and that the employer did not commit an unfair labor practice when it changed the employees' health insurance plan without bargaining. In that case, the employer attempted to reach the union attorney by phone to discuss the

⁶ I base this decision on the information the employer had at the time it made its budgeting and furlough decisions. As a result, I do not consider the employer's subsequent receipt of stimulus funds, audit information concerning the transit reserve funds, or the testimony of the union's economist.

impending termination of the employees' health insurance plan due to the union's change in representation. When the attorney failed to return the employer's telephone calls, the employer sent a letter to the union attorney and union president explaining the issue and offering an alternate health insurance plan. In the letter, the employer clarified that it was not asking the union to waive its right to bargain health insurance when negotiating the contract. The union attorney failed to respond. In that case, the employer tried to engage the union in discussion of the problem but the union was unresponsive. Had the employer done nothing, the employees would have been left without health insurance.

In *Skagit County*, Decision 8886-A, the Commission agreed with the employer that it was excused from bargaining the decision to deduct industrial insurance premiums from employees' pay because the employer had a statutory obligation to make the deductions.

In this case, no law required the employer to furlough employees. The employer was not required to take a certain action to avoid a lapse in some important benefit. Although the evidence in this case demonstrates that the employer had limited time to develop a balanced budget, the record does not demonstrate that the only way it could achieve a balanced budget was to unilaterally impose furloughs. Although the employer faced difficult choices in cutting the budget, it did have options. Furthermore, the record reveals nothing to suggest that there were any obstacles to bargaining with the union. The employer presented no evidence that the union was unresponsive to the employer or that any union action or issues impeded the possibility of bargaining.

Even if the employer had established a business necessity existed, the employer failed to provide the union with timely notice of its proposed furloughs. By letter to the coalition co-chairs dated October 3, 2008, Sims stated "I am looking to you as labor leaders to partner with me on this [furloughs] or to bargain alternative ways to generate these savings. I am willing to consider any combination of wages and benefit reductions that achieve the \$10 million in 2009 with or without the furloughs."

This highlights that 24 days before informing the union of its furlough decision and inviting the union to engage in effects bargaining, the employer invited the coalition to bargain furloughs or alternate ways to achieve the savings. The record offers no explanation of why the employer provided notice of the potential furloughs to other labor organizations 24 days prior to the employer providing notice to the union. The record also offers no explanation of why the employer offered other labor organizations the opportunity to negotiate the furlough decision when it only offered the union the opportunity to negotiate the effects of the decision. In this particular situation where time for action is already limited, a 24 day delay is not timely.

Finally, as described below, the employer failed to fulfill its statutory obligation to engage in effects bargaining.

Conclusion

The employer failed to establish a business necessity defense excusing it from its bargaining obligations.

EFFECTS BARGAINING

The parties make various arguments in support of their positions on effects bargaining. I find it unnecessary to address their arguments. The parties do not dispute that they failed to reach agreement on the effects of the furloughs and that the employer implemented the furloughs beginning on January 2, 2009. The employer offered to re-open bargaining on the effects of the furloughs at any time. The union chose to file the present unfair labor practice complaint rather than pursue additional bargaining. It is undisputed that neither party sought mediation or interest arbitration.

As stated above under “Applicable Legal Standards,” when a transit employer and union are unable to agree to a proposed change to wages, hours or working conditions, the employer may not unilaterally implement the change. *City of Tukwila*, Decision 9691-A. RCW 41.56.492 gives the parties the opportunity to request mediation to resolve the issues in disagreement and, if not resolved in mediation, to submit the issues in disagreement to interest arbitration.

Conclusion

The employer failed to satisfy its obligation to negotiate the effects of the furlough decision. The employer's unilateral implementation of the furloughs without having reached agreement with the union or pursuing the process outlined in RCW 41.56.492 constitutes an unfair labor practice.

CONCLUSION

The employer's decision to furlough bargaining unit employees on 10 days in 2009 was a mandatory subject of bargaining. The employer failed to establish its business necessity defense and, therefore, committed an unfair labor practice when it refused to bargain its decision to furlough bargaining unit employees. The employer also committed an unfair labor practice when it failed to satisfy its obligation to negotiate the effects of the furlough decision by implementing its decision without having reached agreement with the union or pursuing the process outlined in RCW 41.56.492.

FINDINGS OF FACT

1. King County (employer) is a public employer within the meaning of RCW 41.56.030(1). The employer operates and maintains a public passenger transportation system through its transit division.
2. Amalgamated Transit Union, Local 587 (union), is a bargaining representative within the meaning of RCW 41.56.030(3) and serves as the exclusive bargaining representative of King County employees working in the transit division.
3. During all relevant times, the union and the employer were parties to a collective bargaining agreement.
4. During all relevant times, Ron Sims served as the King County Executive.

5. The King County Coalition of Labor Unions (coalition) serves as an ad hoc group of labor organizations representing a variety of, but not all, the bargaining units within the employer's operations.
6. The volatile economic environment created a variety of budgeting challenges for the employer, including increasing costs and decreasing revenue. Both the employer's general fund and transit fund faced significant deficits as the employer developed its 2009 budget.
7. In addition to the fiscal pressures, the employer faced time pressures as it worked to balance the budget within its budget adoption timeline.
8. By letter to the coalition co-chairs dated October 3, 2008, Ron Sims identified the employer's COLA formula as one of the most challenging aspects of the employer's financial situation and invited the coalition to bargain the furloughs or alternate ways to achieve labor cost savings.
9. On October 13, 2008, the employer announced to the coalition that it would shut down all but essential services on 10 days in 2009 and place the employees on unpaid furlough for the 10 days.
10. On October 27, 2008, after four to five bargaining sessions, the coalition and the employer reached a tentative agreement on the effects of the furlough days.
11. The union did not participate in the bargaining between the employer and the coalition concerning the effects of the furlough decision. No one from the employer contacted the union about the furloughs or the coalition bargaining until after the employer and coalition reached the tentative agreement.
12. On or about October 27, 2008, the employer informed the union of the furlough decision and the tentative agreement with the coalition.

13. The furloughs directly impact 65 of the union's bargaining unit employees.
14. The union demanded to bargain the furlough decision as well as the effects. The employer offered to bargain only the effects, refusing to bargain the decision.
15. When the employer and the union were unable to reach agreement on the effects of the furloughs, neither the union nor the employer requested mediation or interest arbitration. The employer offered to resume effects bargaining upon the union's request.
16. The employer began implementation of the furloughs on January 2, 2009.
17. The furloughs directly affect bargaining unit employees' wages, hours and working conditions. The furloughs require employees to take unpaid leave on what would otherwise be 10 work days. This reduces the employee work year by 80 hours and reduces employee compensation for 2009 by 3.85 percent. Employees who had scheduled vacation on work days that became furlough days are required to change the time off to unpaid time.
18. The reason the employer decided to close operations on 10 days was to reach its targeted savings from labor costs. The fundamental nature of the employer's action was a reduction in labor costs achieved by cutting employee work days.
19. The extent to which the employer's action impacts employee wages, hours and working conditions predominates over the extent to which the action is an essential management prerogative.
20. The employer did not prove that a business necessity existed as it presented no evidence that unilaterally imposing furloughs was required or that it was the only way it could achieve a balanced budget.

21. No union action or issues impeded the possibility of bargaining the furlough decision with the union.
22. The employer failed to provide the union with timely notice of its proposed furloughs, having provided the coalition with notice 24 days earlier.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and 391-45 WAC.
2. The changes described in Findings of Fact 12, 16, and 17 are a mandatory subject of bargaining which the employer must bargain under RCW 41.56.140(4).
3. The employer did not establish a business necessity defense excusing it from its bargaining obligations under Chapter 41.56 RCW.
4. By its actions described in Findings of Fact 14, 15, and 16, the employer refused to bargain and interfered with employee rights in violation of RCW 41.56.140(4) and (1).

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. Unilaterally reducing the number of employee work days and, as a result, reducing compensation by furloughing bargaining unit employees.

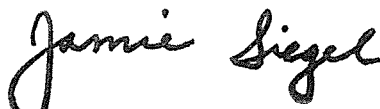
- b. Refusing to bargain the decision and the effects of the decision to reduce the number of employee work days and, as a result, reducing compensation, by furloughing bargaining unit employees.
 - c. Acting in any other manner that interferes with, restrains, or coerces its employees in the exercise 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 which existed for the employees in the affected bargaining unit prior to the unilaterally imposed 10 furlough days found unlawful in this order.
 - b. Give notice to and, upon request, negotiate in good faith with Amalgamated Transit Union, Local 587, before changing wages, hours or working conditions.
 - c. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission 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 attached to this order.

- f. Notify the Compliance Officer of the Public Employment Relations Commission, 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 attached to this order.

ISSUED at Olympia, Washington, this 29th day of September, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script that reads "Jamie Siegel".

JAMIE L. SIEGEL, 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.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT KING COUNTY COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY unilaterally furloughed 65 bargaining unit employees, reducing 10 of their work days and reducing their wages by 3.85 percent.

WE UNLAWFULLY refused to bargain with the union about our decision and the effects of our decision to furlough the employees, which interfered with the rights of our employees.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL reinstate the wages, hours and working conditions which existed for the bargaining unit employees prior to our unilateral actions found unlawful in this Order.

WE WILL notify the union and, upon request, bargain with the union, any future decision and the effects of such decision to reduce the number of work days.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DO NOT POST OR PUBLICLY READ THIS NOTICE.

**AN OFFICIAL NOTICE FOR POSTING AND READING
WILL BE PROVIDED BY THE COMPLIANCE OFFICER.**



PUBLIC EMPLOYMENT RELATIONS COMMISSION


112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 09/29/2009

The attached document identified as: **DECISION 10547 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION


BY: S/ ROBBIE DUFFIELD

CASE NUMBER: 22254-U-09-05679 FILED: 02/05/2009 FILED BY: PARTY 2
DISPUTE: ER UNILATERAL
BAR UNIT: TRANSIT BUS
DETAILS: -
COMMENTS:

EMPLOYER: KING COUNTY
ATTN: JAMES JOHNSON
500 FOURTH AVE RM 450
MS ADM-ES-0450
SEATTLE, WA 98104-2372
Ph1: 206-205-5321 Ph2: 206-296-8556

REP BY: HENRY FARBER
DAVIS WRIGHT TREMAINE
777 108TH AVE NE STE 2300
BELLEVUE, WA 98004-5149
Ph1: 425-646-6100 Ph2: 425-646-6138

PARTY 2:
ATTN: ATU LOCAL 587
PAUL BACHTEL
2815 2ND AVE STE 230
SEATTLE, WA 98121-1261
Ph1: 206-448-8588 Ph2: 800-847-4696

REP BY: CLIFFORD FREED
FRANK FREED SUBIT THOMAS
705 2ND AVE STE 1200
SEATTLE, WA 98104-1729
Ph1: 206-682-6711