Snohomish County Fire District 1 (International Association of Fire Fighters, Local 1828), Decision 12669 (PECB, 2017)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SNOHOMISH COUNTY FIRE DISTRICT 1, Complainant, vs. INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1828, Respondent.	CASE 128003-U-16 DECISION 12669 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On March 9, 2016, Snohomish County Fire District 1 (employer or district) filed a complaint alleging the International Association of Fire Fighters, Local 1828 (union) breached its good faith bargaining obligation in violation of Chapter 41.56 RCW when the union refused to honor an agreement reached with the employer during bargaining and to execute a signed written agreement. The employer asserts that the parties reached agreement for a process to resolve their negotiations for the 2015-2017 collective bargaining agreement. That agreement would maintain the components of a previously rejected tentative agreement and also included an agreement to proceed with an expedited one-issue interest arbitration concerning peak activity units. The employer asserts that the union's negotiator never indicated to the employer that the agreement needed to be ratified by the union's membership for it to be valid at the time of the initial agreement. The union subsequently refused to sign the agreement, and the employer filed the instant complaint.

On September 26 and 27, 2016, Examiner Dario de la Rosa held a hearing. The parties filed post-hearing briefs on December 19, 2016.[1]

The issue to be decided in this case is whether the union breached its good faith bargaining obligation in violation of RCW 41.56.150(4) and (1) when it refused to sign and execute the agreement it reached with the employer for a process to resolve their negotiations for the 2015-2017 collective bargaining agreement. Based upon the totality of circumstances presented in this record, the union breached its good faith bargaining obligation when it refused to sign the agreement it reached with the employer.

The parties' agreement was a final agreement that resolved all outstanding issues. The union's negotiator and negotiating team gave the employer the impression that they had the authority to agree to the process for settling the 2015-2017 collective bargaining agreement. The union's negotiator also stated to the employer that if the employer agreed to that process there would be no need for ratification by the union's executive board or membership. Although the union's negotiator at one time couched the proposal for settlement as "off the record," the union's conduct gave the employer a reasonable belief that the parties reached a final binding agreement. The appropriate remedy in this case is to direct the union to sign the agreement that it reached with the employer on February 9 and 10, 2016.

BACKGROUND

The employer is the largest provider of fire and emergency medical services in Snohomish County. The district services southern Snohomish County as well as the cities of Brier, Mountlake Terrace, and Edmonds. The district currently employs approximately 200 interest arbitration eligible employees who are represented by the union. The employer and union were parties to a collective bargaining agreement effective from January 1, 2013, to December 31, 2014.

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[1] On December 19, 2016, the employer filed a motion to correct the transcript in this matter. On December 29, 2016, the union responded to that motion and filed its own motion to correct. Many of the corrections sought by the parties were minor and do not impact the record. However, a few of the proposed changes were substantive in nature. It is unnecessary to rule on the motions to modify the transcript in order to resolve this matter.

Peak Activity Units

The employer's revenues dropped sharply during the most recent economic recession. As a result, the employer implemented a series of cost-cutting measures, such as a hiring freeze which resulted in staffing shortages. In order to alleviate the economic pressure on the employer, the union agreed to a 3.65 percent wage decrease for the 2012 calendar year.[2] Additionally, the parties entered into a December 4, 2013, memorandum of understanding that would create "peak activity units" to help ease the burden on staffing.[3] The memorandum of understanding expired on January 1, 2015.

A peak activity unit is an operation staffing plan for a fire district that increases the levels of staffing during those hours (usually daylight) that routinely demonstrate the highest need for the district's emergency services. Prior to 2013, all employee work shifts were 24 hours long. In order to accomplish the increased staffing envisioned by for the peak activity units, the parties agreed that certain medical transport work would be staffed 12 hours a day, seven days a week, with the assigned employees working 10-hour shifts four days a week. By implementing a dedicated transport staff, initial responders would no longer be required to transport civilians to a hospital and instead would be free to return to their stations to await the next service call.

Bargaining for the 2015-2017 Contract

The employer and union began negotiations for a 2015-2017 comprehensive collective bargaining agreement in 2014. At that time, Cabot Dow served as the employer's chief spokesperson and Alex Skalbania served as the union's chief spokesperson. Union President Thad Hovis also served on the union's negotiating team. The union also had a full negotiating team that was not typically at the table. On May 14, 2014, Dow and Skalbania agreed upon ground rules that would cover the bargaining process.[4] Provisions of the ground rules that are important to this proceeding include:

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2 The parties' collective bargaining agreement had called for a 3.65 percent cost-of-living-adjustment pay increase for 2012. That increase had already been implemented when the parties agreed to the wage decrease.

3 The record demonstrates that the union initially opposed the peak activity units and filed several grievances concerning the employer's peak activity unit plan. The union and employer eventually reached agreement for a mutually acceptable peak activity unit plan.

4 Exhibit Union 28.

. . .

4. Each negotiating team shall designate a chief spokesperson. The chief spokesperson shall be the only person authorized to make proposals and counter-proposals. This means that proposals will not take place away from the bargaining table, except by and through the chief spokespersons.

5. All tentative agreements between the parties shall be in writing, shall be dated, and shall be signed or initialed by the chief spokesperson for each party.

6. Unless otherwise agreed to by the parties in writing at the time when a particular tentative agreement (TA) is reached, the parties hereby agree that, when they reach a tentative agreement upon a particular subject, the subject has been TA'ed will be removed from active discussion between the parties, and will become part of the package that is ultimately voted on by both parties, in order to allow the parties to focus on other issues that remain unresolved. TA's can be changed or rescinded by mutual agreement, and will automatically be rescinded in the event that one or more of the parties votes down a package that includes a particular TA.

. . .

8. Authority:

   The undersigned representatives certify that they have the authority to represent their respective parties in the collective bargaining process.

The ground rules also included provisions for bargaining notes, bargaining committee sizes, news releases and confidentiality, and agreements to expedite the process.

The parties bargained throughout 2014 and 2015. Consistent with the ground rules, when the parties reached a tentative agreement each party initialed the agreed upon language. Hovis typically signed the tentative agreements for the union and Dow typically signed for the employer.

In May 2015, Larry Hannah replaced Dow as the employer's chief spokesperson. Hannah primarily represented the employer by himself. In September 2015, Sydney Vinnedge replaced Skalbania. Hovis continued to represent the union at the table with Vinnedge.

On November 16, 2015, the parties reached a tentative agreement for the 2015-2017 contract. The parties' agreement included a new peak activity unit plan that was embedded in "Appendix C" of

the agreement. The new peak activity unit plan modified the existing practice contained in the December 4, 2013, memorandum of understanding but otherwise kept the practice in place. Hannah and Thovis each signed the tentative agreement for their respective sides. The union's membership rejected the agreement, and the parties returned to the bargaining table.

On January 25, 2016, Hannah, Vinnedge, and Hovis met again to discuss the next steps following the rejection of the tentative agreement. The parties "closed out" several issues so that they would not be the subject of any future interest arbitration. The parties also identified the peak activity unit issue as one of the key factors in the rejection of the November 16, 2015, tentative agreement.

During this same meeting Vinnedge suggested that the parties keep all tentative agreements in place but send the peak activity unit issue to interest arbitration. Hannah did not immediately embrace or reject the concept but suggested that three other issues important to the employer—Rule of 3, long shifts, and Counting Paramedics/Captains—also be arbitrated. Hannah's notes to the employer's board of commissioners indicate that the union rejected the concept of arbitrating the three additional issues.[5] Hannah's testimony and notes also demonstrate that Vinnedge suggested if the peak activity unit issue was taken to interest arbitration that there would be no union ratification vote on the proposed settlement.[6] According to Hannah, the union would formulate a "sensible" proposal for peak activity units. Hannah later confirmed this plan, which he dubbed the "Vinnedge plan," with Vinnedge through a January 26, 2016, e-mail.[7]

The union's executive board met on January 29. Hovis testified that while a majority of the union's executive board was supportive of the concepts presented in the Vinnedge plan, the executive board wanted further exploration on the concepts.

On January 31, 2016, Hannah and Vinnedge discussed the peak activity unit issue. Hovis was not involved in this conversation. Hannah testified that Vinnedge explained the union's proposal for

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5 Employer Exhibit 13. *See also* Employer Exhibit 15.

6 Employer Exhibit 13.

7 Employer Exhibit 12. Hannah originally called the plan the "Vinnedge scenario" in his e-mail.

peak activity units. During the conversation Hannah reiterated the employer's desire to arbitrate the other three items. Hannah testified that Vinnedge told him the union would seek an interest arbitration with no peak activity units unless the parties agreed on the one-issue arbitration. Hannah reported the substance of this conversation to the employer's board of commissioners by e-mail.

On February 1, 2016, Vinnedge e-mailed Hannah:

> [P]lease confirm that if I send you a proposed 'Vinnedge Plan' on [peak activity units] that it will not be construed as a new protected position. In other words, it is *off the record* and will not be introduced as evidence in interest arbitration if we are unable to get a deal. (emphasis added).[8]

Vinnedge also stated in the same e-mail that he had sent his peak activity unit proposal to the union's bargaining team for consideration, but he had not yet received a response from them.

On February 2, 2016, Vinnedge and Hannah exchanged a series of e-mails.[9] At 10:07 a.m., Vinnedge wrote Hannah and stated that the multiple issue arbitration was a "no go." They went on to discuss other issues related to the negotiations including the outstanding drug and alcohol policy. At 3:40 p.m., Vinnedge sent Hannah an e-mail with the union's peak activity unit proposal that would be offered if the parties agreed to the Vinnedge plan. Vinnedge once again characterized this offer as an "off the record" proposal. Vinnedge asked Hannah to review the proposal carefully and stated that he had "some flexibility to amend" the union's peak activity unit proposal that reflected the January 31, 2016, discussion that Vinnedge had with Hannah. Vinnedge also stated in that e-mail that the employer's board of commissioners "should grab this quickly." Vinnedge did not indicate at any time during the course of the e-mail conversation that the union's executive board or membership would need to ratify the proposal.[10]

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8 Employer Exhibit 17.

9 *Id.*

10 Hannah also sent Vinnedge an e-mail at 4:08 p.m. asking for additional clarification. Employer Exhibit 17A. Vinnedge responded to that e-mail and copied Hovis.

Hannah presented the union's proposal to the employer's board of commissioners the evening of February 2, 2016. Hannah testified that although he urged the board to seriously consider the union's proposal, it was not received warmly. On February 3, 2016, Hannah e-mailed Vinnedge indicating that the Vinnedge plan was "on life support." Hannah also stated that he was able to secure a one-week delay in the board of commissioners' decision.

Hannah proposed that he and Vinnedge use the delay to create a finalized version of the Vinnedge plan, which Hannah termed a "ready-to-eat-meal" (MRE).[11] Hannah's purpose for creating the MRE document was that in the event the board of commissioners accepted the Vinnedge plan, the board of commissioners would have an actual document ready to sign and finalize. On February 4, 2016, Hannah e-mailed Vinnedge his proposed final version of the MRE document[12] as well as the employer's Appendix C peak activity unit proposal.[13] Vinnedge confirmed receipt of the materials.

On February 8, 2016, Vinnedge sent Hannah the union's peak activity unit proposal. Vinnedge also sent copies of the union's proposal to Hovis as well as three other union officers, Vice President Rob Gullickson, Treasurer James Curtis, and Tim Hoover.[14] Hannah was aware that the union's negotiating team was copied on the e-mail. Vinnedge's e-mail did not indicate that the proposal was subject to ratification by the union.

On February 9, 2016, Hannah and Vinnedge conversed by phone to confirm the purpose of the Vinnedge plan so that both parties were clear on the intent of the deal. Hannah testified that Vinnedge told him that if the deal was rejected by the employer, the union would hold to its original position of seeking no peak activity units in any future interest arbitration. Hannah e-mailed the

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11 A meal-ready-to-eat or MRE is a military ration issued to soldiers that can be consumed without any additional preparation.

12 Employer Exhibit 18A.

13 Employer Exhibit 19.

14 Employer Exhibit 19A.

final package to Vinnedge who then replied, "Confirmed off the record until approved."[15] Hannah confirmed the proposal was "off the record unless the Agreement is entered" through a subsequent e-mail.[16]

Hannah sent a separate e-mail to the employer's board of commissioners explaining the Vinnedge plan, including the items that were tentatively agreed upon by the parties. Hannah also explained the possible outcomes if the Vinnedge plan was not approved by the employer. The board of commissioners approved the Vinnedge plan by a vote of 4-1.

After the board of commissioners meeting, Hannah signed and dated the agreement on behalf of the employer and e-mailed the signed copy to Vinnedge for Hovis's signature. On February 10, 2016, Vinnedge responded to Hannah stating, "Thanks Larry. I am copying [Hovis] on this for his signature."[17] Vinnedge included Hovis on the e-mail and attached the employer's signed copy of the agreement.

The union did not sign the agreement. Hannah contacted Vinnedge on February 11, 12, 16, 17, and 18, 2016, inquiring about when the union was going to sign the agreement.[18] Vinnedge replied to these e-mails but did not indicate when the union was going to sign the agreement or that the union did not intend to sign the agreement.

On February 19, 2016, Vinnedge contacted Hannah to inform him that the union's executive board had voted to reject the Vinnedge plan and that the union was not going to sign the agreement. On February 21, 2016, Hannah e-mailed Vinnedge a copy of their February 9–10 e-mail conversation to remind Vinnedge of the parties' agreement on the Vinnedge plan.

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15 Employer Exhibit 20; *see also* Employer Exhibit 23.

16 *Id.*

17 Employer Exhibit 6.

18 Employer Exhibits 25, 26, 27, and 28.

Vinnedge and Hannah continued to discuss possible ways to settle the matter. Hannah informed Vinnedge that the employer would only be open to a substitute deal if the terms of the new deal were more favorable to the employer. The union indicated that it would agree to the one-issue interest arbitration if it were allowed to take the position that the peak activity units would be eliminated, as opposed to what the union originally presented as part of the Vinnedge plan.[19] The employer rejected that approach and on March 2, 2016, suggested that the parties discuss a "two-prong" approach for arbitration. The union rejected that approach.

On March 8, 2016, the employer's board of commissioners voted unanimously to file the instant complaint.[20]

DISCUSSION

Applicable Legal Standards

A public employer and a union representing public employees have a duty to bargain with each other over mandatory subjects of bargaining. RCW 41.56.030(4). "[N]either party shall be compelled to agree to a proposal or be required to make a concession . . . ." *Id.* While neither party is required to make a concession, neither party is entitled to reduce collective bargaining to an exercise in futility. *City of Snohomish*, Decision 1661-A (PECB, 1984). Parties must negotiate with the goal of reaching an agreement, if possible. *Id.*, *citing National Labor Relations Board v. Highland Park Manufacturing Co.*, 110 F.2d 632 (4th Cir., 1940).

Distinguishing between good faith and bad faith bargaining can be difficult in close cases. *Mansfield School District*, Decision 4552-B (EDUC, 1995); *Spokane County*, Decision 2167-A (PECB, 1985). A party may violate its duty to bargain in good faith by one per se violation, such as refusing to meet at reasonable times and places or to make counterproposals. *Snohomish County*, Decision 9834-B (PECB, 2008). A party may also violate its duty to bargain in good faith

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19 Union Exhibit 67.

20 This agency certified all outstanding issues for interest arbitration on April 22, 2016. Union Exhibit 78. The instant unfair labor practice complaint blocks that proceeding.

through a series of questionable acts which when examined as a whole demonstrate a lack of good faith but none of which by themselves would be per se violations. *Id.* When analyzing conduct during negotiations, the Commission examines the totality of the circumstances to determine whether an unfair labor practice has occurred. *Shelton School District*, Decision 579-B (EDUC, 1984).

Conduct indicative of bad faith bargaining is seen when a party engages in tactics that evidence an intent to frustrate or stall agreement, such as setting "forth an 'entire spectrum' of proposals that would be predictably unpalatable to the other party, so that the proposer would know that agreement is impossible;" not explaining a position or offering untenable explanations of a position; increasing demands during bargaining or adding new demands; entering negotiations with a take-it-or-leave-it attitude; or approaching bargaining with an attitude that bargaining is from scratch. *City of Snohomish*, Decision 1661-A; *see also Mansfield School District*, Decision 4552-B.

Parties are encouraged to engage in free and open exchanges of ideas as part of the collective bargaining process. *City of Redmond*, Decision 8879-A (PECB, 2006); *see also* WAC 391□45□550. Conditional or "what if" offers are a lawful and valuable tool for exploring alternative proposals during collective bargaining negotiations. *Whatcom County*, Decision 7244-B (PECB, 2004). When making what if or conditional offers, the intent of the offer must be clearly expressed and must not be ambiguous. City of Redmond, Decision 8879-A. If asked, the offering party must explain to the other party the conditions and the implications of a failure to satisfy those conditions of the proposal. *Id.*

Application of Standards

The totality of the evidence in this case demonstrates that the union failed to bargain in good faith when it refused to support and sign its own proposal encompassed in the Vinnedge plan. Public employers and the bargaining representatives of public employees may designate representatives of their own choosing to negotiate on their behalf. *Kitsap County*, Decision 12163-A (PECB, 2015). Furthermore, the statements and actions of individuals vested with such authority can be binding on the party they represent. *See City of Spokane*, Decision 4746 (PECB, 1994).

Here, Vinnedge's statements and actions demonstrate that he had apparent and actual authority to enter into a binding agreement with the employer, even with the existence of the parties' ground rules. Vinnedge and Hannah began discussing the settlement concept that would result in the Vinnedge plan as early as January 25, 2016. While Hannah attempted to broaden the issues that would be sent to interest arbitration, Vinnedge rejected those attempts and insisted that a one-issue interest arbitration would be the only acceptable concept that would result in settlement. The record also supports a finding that Vinnedge stated the agreement would be binding if the employer's board of commissioners adopted the agreement. Furthermore, Hannah's testimony and documentary notes demonstrate that Vinnedge was of the opinion that if the parties adopted the Vinnedge plan, there would be no need for the union to ratify the agreement.[21] At no time during their conversations either on January 25, 2016, or thereafter did Vinnedge expressly state to Hannah that the Vinnedge plan was subject to the ratification by the union's executive board or membership.

Following their discussion about the MRE document, Vinnedge sent Hannah the union's peak activity unit proposal. Although Vinnedge once again characterized the proposal as "off the record," he never communicated to Hannah that the union's executive board or membership would need to ratify the proposal if it was accepted by the employer. He also did not expressly state that the union's executive board had approved the peak activity unit proposal or that the proposal had been rejected. Rather, Vinnedge's concerns only centered on ensuring that the union's peak activity unit proposal would not be construed as a new protected position should the Vinnedge plan be rejected.

The e-mail that Vinnedge sent to Hannah at 3:40 p.m. on February 2, 2016, clearly presented the union's proposal on the matter and also stated that the employer's board of commissioners "should grab this quickly." The tone and tenor of Vinnedge's statements in this e-mail indicated to Hannah that if the employer agreed to the Vinnedge plan the contract would be resolved, and at hearing the union provided no evidence or testimony refuting the employer's belief.

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[21] Vinnedge did not testify at hearing. Hannah's testimony throughout this proceeding is consistent with the documentary evidence.

When Vinnedge sent Hannah the union's peak activity unit proposal on February 8, 2016, he also sent copies of that proposal to four of the union's officers. No evidence in the record demonstrates that the union's officers expressed any opposition to the proposal between the time that the e-mail was sent and the time the employer's board of commissioners considered the proposal. Furthermore, no evidence demonstrates that any of the union's officers or its negotiating team expressly communicated to either Vinnedge or the employer that the Vinnedge plan was subject to union ratification. This silence from the union's officers is particularly compelling in light of Vinnedge's February 10, 2016, e-mail to Hannah stating that the employer's signed copy of the agreement was being provided to Hovis for his signature. Therefore, the union's executive board's February 19, 2016, attempt to reject the deal demonstrates bad faith bargaining in light of the documented evidence and cannot serve as a means to back away from the negotiated agreement.

The evidence in total leads to a conclusion that Vinnedge's conduct and statements gave Hannah a credible and reasonable belief that if the employer agreed to the Vinnedge plan, the union would sign that proposal. The evidence also supports a conclusion that if the union needed its executive board or membership to ratify the Vinnedge plan, which was the union's own proposal, the union failed to properly communicate this prerequisite to the employer. Thus, the union committed an unfair labor practice when it refused to sign the agreement.

The union argues that its proposal on the Vinnedge plan cannot be enforced because the tentative agreement was not signed by both parties and that it was still nevertheless subject to union ratification. The union points out that the agreed upon ground rules required all tentative agreements to be signed and that did not happen with the Vinnedge plan. The union also points out that the bargaining history demonstrates that all tentative agreements required ratification by the parties' respective governing boards.

In some instances, a party may withdraw from a tentative agreement reached during negotiations. In *City of Pasco*, Decision 4694-A (PECB, 1994), *aff'd*, *Pasco Police Officers' Association v. City of Pasco*, 132 Wn.2d 450 (1997), a union was allowed to withdraw from an oral tentative agreement based in part on the parties' ground rules. The parties' ground rules required all tentative agreements to be reduced to writing and initialed by each party. Because the withdrawal

was made at a time that did not indicate an intent to frustrate bargaining and the tentative agreement was not in writing, the union was allowed to renege on the oral agreement.

This case is factually distinguishable from *City of Pasco*, and the parties' ground rules cannot act as a shield to the conduct that occurred during the negotiating process. While these parties may have historically signed tentative agreements and sent those tentative agreements to membership for ratification, this history is irrelevant as to the course of conduct that occurred between January 25, 2016, and February 10, 2016. The parties created the Vinnedge plan at a critical juncture in the negotiations. The union's membership had rejected the November 16, 2015, tentative agreement, and Hannah and Vinnedge were in the process of exploring a last minute settlement to avoid a multi-issue, multi-day interest arbitration. Hannah and Vinnedge had several discussions about the intent and purpose of the Vinnedge plan. Vinnedge also explained to Hannah the consequences that would occur if the employer's board of commissioners rejected the agreement.

The employer clearly communicated to the union that the employer's board of commissioners would need to accept and ratify the Vinnedge plan. Additionally, Hannah credibly testified that Vinnedge gave him the impression that the union did not need to ratify the Vinnedge plan if the employer's board of commissioners were to accept the deal, and the union presented no contemporaneous evidence or testimony to counter this assertion. Vinnedge did not testify about the telephonic or e-mail conversations between him and Hannah. Additionally, no other union officer was present during the telephonic conversations. The documentary evidence supports a finding that Hannah and Vinnedge had reached a mutually acceptable agreement that was expressly subject to ratification by the employer's board of commissioners but not the union's executive board or membership.

The union asserts that its peak activity unit proposal should be characterized as an "off the record" or what-if proposal and therefore the union cannot be bound by the position stated in the proposal. To support this argument, the union points out that Vinnedge clearly stated in his February 1 and February 9 e-mails that the union's proposal on peak activity units was off the record. The union also argues that rejection of its designation of the proposal as "off the record" would hamper collective bargaining because it would eliminate the use of hypothetical bargaining proposals.

The problem with the union's argument is that it fails to take into account the factual situation presented by this case. This record demonstrates that when Vinnedge termed his proposal as "off the record" in his February 1 e-mail to Hannah, he was attempting to protect the union's position on that issue for any future interest arbitration if the Vinnedge plan was rejected. The context of the parties' discussion on this issue supports a conclusion that the parties were attempting to use the Vinnedge plan as a concrete resolution for the prolonged negotiations. The context of the discussion between the parties also supports a conclusion that if the Vinnedge plan were to be rejected by the employer, the union would not be bound by its proposal in the Vinnedge plan but would instead be allowed to retreat to its original position, namely eliminating peak activity units. Again, nowhere in Vinnedge's e-mail exchanges with Hannah did Vinnedge state the union's proposal would not be acceptable to the union if the employer ratified it, and the union did not enter evidence into the record demonstrating that it made any contemporaneous statements to the employer opposing the plan.

Finally, the union argues that the employer's March 2, 2016, "two-prong" approach proposal served as a new counteroffer that automatically supersedes its previous offers concerning the Vinnedge plan. According to the union, by making additional counteroffers the employer modified its original proposal and therefore that original proposal could no longer be considered binding. This argument fails to take into account that the employer would not have been placed in the position of having to make new proposals had the union not backed away from its own Vinnedge plan proposal. The union's argument also fails to take into account the fact that even in the wake of the union's unfair labor practice the employer still had an obligation to bargain with the union in good faith in order to reach agreement. *See Spokane County*, Decision 2167 (PECB, 1985) (stating that a belief that a party does not have to negotiate over an issue that is the subject of an unfair labor practice complaint does not reflect the mutual obligation of the parties to negotiate and conclude an agreement reflecting the substance of the negotiations).

Remedy

Fashioning remedies is a discretionary act of the Commission. *Public Utility District 1 of Clark County*, Decision 2045-B (PECB, 1989); *State – Corrections*, Decision 11060-A (PSRA, 2012). Chapter 41.56 RCW is remedial in nature, and its "provisions should be liberally construed to

effect its purpose." *Local Union No. 469, International Association of Fire Fighters v. City of Yakima*, 91 Wn.2d 101, 109 (1978).

The Commission "has authority to issue appropriate orders that it, in its expertise, believes are consistent with the purposes of the act, and that are necessary to make its orders effective unless such orders are otherwise unlawful." *Municipality of Metropolitan Seattle v. Public Employment Relations Commission*, 118 Wn.2d 621, 634–5 (1992); *see also Snohomish County*, Decision 9834-B (PECB, 2008). "Appropriate remedial orders" are those necessary to effectuate the purposes of the statute and to make the Commission's lawful orders effective. *Municipality of Metropolitan Seattle v. Public Employment Relations Commission*, 118 Wn.2d at 633.

The employer requests that the union be required to sign the MRE document that was presented to the employer's board of commissioners and signed by Hannah, the employer's authorized bargaining agent. If the parties have reached a "final agreement," then this agency may remedy an associated unfair labor practice by directing the offending party to sign a negotiated collective bargaining agreement. *See, e.g.*, *Mason County*, Decision 10798-A (PECB, 2011) (directing an employer to sign a collective bargaining agreement where the employer's negotiator gave the union the impression that he had full authority to negotiate on behalf of the employer and that final ratification of the agreement by the board of county commissioners would be a mere formality); *Naches Valley School District*, Decision 2516 (EDUC, 1987), *aff'd*, Decision 2516-A (EDUC, 1987) (directing a union to sign a collective bargaining agreement where the parties had reached agreement). Such a remedy is applied on a case-by-case basis.

Here, the Vinnedge plan was a final agreement for the 2015-2017 collective bargaining agreement. Vinnedge gave Hannah the impression that the contract could be executed if the employer ratified the Vinnedge plan. In order to best effectuate the purposes of the Chapter 41.56 RCW, the appropriate remedial order for the union's unfair labor practice is to direct the union to sign the MRE document that was presented to the employer's board of commissioners and signed by Hannah. A remedy that failed to include a direction for the union to sign the agreement would effectively reward the union for its unfair labor practice. This "make-sign" remedy also places the parties in the same situation they would have been in had the union not unlawfully repudiated the

agreement Vinnedge reached with Hannah. The make-sign remedy is in addition to requiring the union to cease and desist from engaging in the prohibited conduct, post notices of the violation, and publicly read the notice of its violation at a regular meeting of the union.

FINDINGS OF FACT

1. Snohomish County Fire District 1 (employer) is a public employer within the meaning of RCW 41.56.030(12).

2. The International Association of Fire Fighters, Local 1828 (union), is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union represents approximately 200 interest arbitration eligible employees.

4. The employer and union were parties to a collective bargaining agreement effective from January 1, 2013, to December 31, 2014.

5. The employer's revenues dropped sharply during the most recent economic recession. The parties entered into a December 4, 2013, memorandum of understanding that would create "peak activity units" to help ease the burden on staffing. The memorandum of understanding expired on January 1, 2015.

6. A peak activity unit is an operation staffing plan for a fire district that increase the levels of staffing during those hours (usually daylight) that routinely demonstrate the highest need for the district's emergency services.

7. The employer and union began negotiations for a 2015-2017 comprehensive collective bargaining agreement in 2014. At that time, Cabot Dow served as the employer's chief spokesperson and Alex Skalbania served as the union's chief spokesperson. Union President Thad Hovis also served on the union's negotiating team. The union also had a full negotiating team that was not typically at the table.

8. On May 14, 2014, Dow and Skalbania agreed upon ground rules that would cover the bargaining process.

9. The parties bargained throughout 2014 and 2015. Consistent with the ground rules, when the parties reached a tentative agreement each party initialed the agreed upon language. Hovis typically signed the tentative agreements for the union and Dow typically signed for the employer.

10. In May 2015, Larry Hannah replaced Dow as the employer's chief spokesperson. Hannah primarily represented the employer by himself. In September 2015, Sydney Vinnedge replaced Skalbania. Hovis continued to represent the union at the table with Vinnedge.

11. On November 16, 2015, the parties reached a tentative agreement for the 2015-2017 contract. The parties' agreement included a new peak activity unit plan that was embedded in "Appendix C" of the agreement. The union's membership rejected the agreement, and the parties returned to the bargaining table.

12. On January 25, 2016, Hannah, Vinnedge, and Hovis met again to discuss the next steps following the rejection of the tentative agreement. The parties "closed out" several issues so that they would not be the subject of any future interest arbitration. The parties also identified the peak activity unit issue as one of the key factors in the rejection of the November 16, 2015, tentative agreement.

13. During the meeting described in Finding of Fact 12, Vinnedge suggested that the parties keep all tentative agreements in place but send the peak activity unit issue to interest arbitration. Hannah's testimony and notes demonstrate that Vinnedge suggested if the peak activity unit issue was taken to interest arbitration that there would be no union ratification vote on the proposed settlement. Hannah later confirmed this plan, which he dubbed the "Vinnedge plan," with Vinnedge through a January 26, 2016, e-mail.

14. The union's executive board met on January 29. Hovis testified that while a majority of the union's executive board was supportive of the concepts presented in the Vinnedge plan, the executive board wanted further exploration on the concepts.

15. On January 31, 2016, Hannah and Vinnedge discussed the peak activity unit issue. Hovis was not involved in this conversation. Hannah testified that Vinnedge explained the union's proposal for peak activity units. Hannah testified that Vinnedge told him the union would seek an interest arbitration with no peak activity units unless the parties agreed on the one-issue arbitration. Hannah reported the substance of this conversation to the employer's board of commissioners by e-mail.

16. On February 1, 2016, Vinnedge e-mailed Hannah: [P]lease confirm that if I send you a proposed 'Vinnedge Plan' on [peak activity units] that it will not be construed as a new protected position. In other words, it is off the record and will not be introduced as evidence in interest arbitration if we are unable to get a deal. (emphasis added).

17. On February 2, 2016, Vinnedge sent Hannah an e-mail with the union's peak activity unit proposal that would be offered if the parties agreed to the Vinnedge plan. Vinnedge once again characterized this offer as an "off the record" proposal. Vinnedge asked Hannah to review the proposal carefully and stated that he had "some flexibility to amend" the union's peak activity unit proposal that reflected the January 31, 2016, discussion that Vinnedge had with Hannah. Vinnedge also stated in that e-mail that the employer's board of commissioners "should grab this quickly." Vinnedge did not indicate at any time during the course of the e-mail conversation that the union's executive board or membership would need to ratify the proposal.

18. Hannah presented the union's proposal to the employer's board of commissioners the evening of February 2, 2016. Hannah testified that although he urged the board to seriously consider the union's proposal, it was not received warmly. On February 3, 2016, Hannah e-mailed Vinnedge indicating that the Vinnedge plan was "on life support." Hannah also stated that he was able to secure a one-week delay in the board of commissioners' decision.

19. Hannah proposed that he and Vinnedge use the delay to create a finalized version of the Vinnedge plan, which Hannah termed a "ready-to-eat-meal" (MRE). Hannah's purpose for creating the MRE document was that in the event the board of commissioners accepted the Vinnedge plan, the board of commissioners would have an actual document ready to sign and finalize. On February 4, 2016, Hannah e-mailed Vinnedge his proposed final version of the MRE document as well as the employer's Appendix C peak activity unit proposal. Vinnedge confirmed receipt of the materials.

20. On February 8, 2016, Vinnedge sent Hannah the union's peak activity unit proposal. Vinnedge also sent copies of the union's proposal to Hovis as well as three other union officers, Vice President Rob Gullickson, Treasurer James Curtis, and Tim Hoover. Hannah was aware that the union's negotiating team was copied on the e-mail. Vinnedge's e-mail did not indicate that the proposal was subject to ratification by the union.

21. On February 9, 2016, Hannah and Vinnedge conversed by phone to confirm the purpose of the Vinnedge plan so that both parties were clear on the intent of the deal. Hannah testified that Vinnedge told him that if the deal was rejected by the employer, the union would hold to its original position of seeking no peak activity units in any future interest arbitration.

22. On February 9, 2016, Hannah e-mailed the final package to Vinnedge who then replied, "Confirmed off the record until approved." Hannah confirmed the proposal was "off the record unless the Agreement is entered" through a subsequent e-mail.

23. Hannah sent a separate e-mail to the employer's board of commissioners explaining the Vinnedge plan, including the items that were tentatively agreed upon by the parties. Hannah also explained the possible outcomes if the Vinnedge plan was not approved by the employer. The board of commissioners approved the Vinnedge plan by a vote of 4-1.

24. After the board of commissioners meeting, Hannah signed and dated the agreement on behalf of the employer and e-mailed the signed copy to Vinnedge for Hovis's signature.

On February 10, 2016, Vinnedge responded to Hannah stating, "Thanks Larry. I am copying [Hovis] on this for his signature."

25. The union did not sign the agreement. Hannah contacted Vinnedge on February 11, 12, 16, 17, and 18, 2016, inquiring about when the union was going to sign the agreement. Vinnedge replied to these e-mails but did not indicate when the union was going to sign the agreement or that the union did not intend to sign the agreement.

26. On February 19, 2016, Vinnedge contacted Hannah to inform him that the union's executive board had voted to reject the Vinnedge plan and that the union was not going to sign the agreement.

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. Based upon Findings of Fact 7 through 25, the International Association of Fire Fighter, Local 1828 failed to bargain in good faith and violated RCW 41.56.140(4), and derivatively committed an interference violation of RCW 41.56.140(1), with failed to sign the February 8, 2016, MRE document described in Finding of Fact 22.

ORDER

The International Association of Fire Fighters, Local 1828, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Refusing to bargain collectively in good faith with Snohomish County Fire District 1 by refusing to sign the February 9, 2016, agreement reached between the

employer's Chief Negotiator Larry Hannah and the union's Chief Negotiator Sydney Vinnedge.

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. Sign the February 9, 2016, agreement reached between the employer's Chief Negotiator Larry Hannah and the union's Chief Negotiator Sydney Vinnedge.

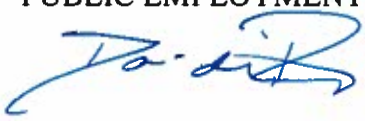
b. Contact the Compliance Officer at the Public Employment Relations Commission within 20 days of the date this order becomes final to receive official copies of the required notice posting. Post copies of the notice provided by the Compliance Officer in conspicuous places on the employer's premises 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.

c. Notify the complainant, in writing, within 20 days following the date this order becomes final, 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.

d. Notify the Compliance Officer, in writing, within 20 days following the date this order becomes final, as to what steps have been taken to comply with this order and, at the same time, provide her with a signed copy of the notice she provides.

ISSUED at Olympia, Washington, this 20th day of March, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



DARIO DE LA ROSA, 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.

CASE 128003-U-16
DECISION 12669 - PECB

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union).**
- **Bargain collectively with your employer through a union chosen by a majority of employees.**
- **Refrain from any or all of these activities, except you may be required to make payments to a union or charity under a lawful union security provision.**

THE WASHINGTON STATE PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING, RULED THAT *INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 1825* COMMITTED AN UNFAIR LABOR PRACTICE, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY breeched our good faith bargaining obligation by refusing to support and sign the February 9, 2016, agreement reached between the employer's Chief Negotiator Larry Hannah and the union's Chief Negotiator Sydney Vinnedge.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL bargain in good faith and honor agreements reached with the employer during bargaining.

WE WILL sign the February 9, 2016, agreement reached between the employer's Chief Negotiator Larry Hannah and the union's Chief Negotiator Sydney Vinnedge

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.

WE WILL NOT refuse to sign written agreements documenting the terms of agreements reached in bargaining or otherwise engage in bad faith bargaining.

DO NOT POST OR PUBLICLY READ THIS NOTICE.

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

The full decision is published on PERC's website, www.perc.wa.gov.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
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MARILYN GLENN SAYAN, CHAIRPERSON
MARK E. BRENNAN, COMMISSIONER
MARK R. BUSTO, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 03/20/2017

DECISION 12669 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBER: 128003-U-16

EMPLOYER: ATTN:	SNOHOMISH COUNTY FIRE DISTRICT 1 BRAD READING 12425 MERIDIAN AVE S EVERETT, WA 98208 breading@firedistrict1.org (425) 551-1200
REP BY:	OTTO G. KLEIN III SUMMIT LAW GROUP PLLC 315 5TH AVE S STE 1000 SEATTLE, WA 98104-2682 ottok@summitlaw.com (206) 676-7000
PARTY 2: ATTN:	IAFF LOCAL 1828 THAD HOVIS PO BOX 12730 MILL CREEK, WA 98082 president@iaff1828.org (425) 551-1200
REP BY:	SYDNEY D. VINNEDGE EMMAL SKALBANIA & VINNEDGE 3600 15TH AVE W SUITE 201 SEATTLE, WA 98119-1330 sydney@vinnedge.com (206) 281-1770