Kitsap County, Decision 12163 (PECB, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KITSAP COUNTY JUVENILE DETENTION OFFICERS' GUILD, Complainant, vs. KITSAP COUNTY, Respondent.	CASE 25523-U-13-6535 DECISION 12163 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Cline and Casillas, by *Christopher J. Casillas*, Attorney at Law, for the union.

Prosecuting Attorney Russell D. Hauge, by *Jacquelyn M. Aufderheide*, Chief Civil Deputy Prosecuting Attorney, for the employer.

On March 11, 2013, the Kitsap County Juvenile Detention Officers' Guild (union) filed an unfair labor practice (ULP) complaint against Kitsap County (employer). The union alleged that the employer refused to bargain and derivatively interfered with employee rights in violation of RCW 41.56.140(4) and (1). An amended preliminary ruling was issued finding causes of action to exist. Examiner Dianne Ramerman held a hearing on May 6, 2014. On July 11, 2014, the parties submitted post-hearing briefs to complete the record.

ISSUES

1. Did the employer refuse to bargain by failing to provide the union with requested information?
2. Did the employer refuse to bargain by failing to send representatives to the table with sufficient authority to engage in meaningful bargaining?

3. If the employer refused to bargain in good faith, what is the appropriate remedy?

The employer did not refuse to bargain by failing to provide the union with requested documents or tangible evidence. However, it did refuse to bargain when it sent representatives to the table without sufficient authority to engage in meaningful bargaining. The evidence presented shows that given the circumstances of this case the employer's representatives at the table were not adequately informed, could not enter into tentative agreements (TAs) without consulting with those not at the bargaining table, could not adequately explain the employer's intent, and unilaterally terminated bargaining. The standard remedy is appropriate in this case.

BACKGROUND

On July 5, 2012, the union was certified as the exclusive bargaining representative for juvenile detention officers and food service workers who work in the Kitsap County Juvenile and Family Court Services Department. *Kitsap County*, Decision 11361-A (PECB, 2012). The Office and Professional Employees International Union (OPEIU), Local 11, previously represented the employees in this group. Kitsap County Superior Court (KCSC) is the employer for non-wage-related matters, and the Board of County Commissioners (BOCC) is the employer for wage-related matters.[1]

On September 11, 2012, the parties began negotiations for an initial collective bargaining agreement (CBA). Attorney Christopher Casillas, Union President Pepe Pedesclaux and Union Vice President Jack Kissler represented the union. Labor Relations Manager Fernando Conill represented the employer for wage-related matters, and Michael Merringer, KCSC Juvenile Court Director of Services, and William Truemper, KCSC Juvenile Detention Division Manager, represented the employer for non-wage-related matters. At the first bargaining session, the employer proposed the elimination of contractual overtime. Conill introduced and explained

[1] The bargaining unit employees have dual employers. RCW 41.56.020; RCW 41.56.030(12); *Mason County*, Decision 10798-A (PECB, 2011). In *Washington State Council of County and City Employees v. Hahn*, 151 Wn.2d 163 (2004), the Supreme Court of Washington expressly recognized that judges are required to engage in good faith collective bargaining about their employees' non-economic terms and conditions of employment.

these provisions. The parties also discussed other wage, and health and welfare benefit issues as well as the term of the CBA.

The parties met again on September 25, 2012. The employer presented its first full contract proposal. The employer proposed grievance procedure language in Article 10 of the CBA that was essentially the same as language in the previous CBA with OPEIU. The proposal contained a bifurcated grievance procedure in which non-wage-related grievances went to Step 2 with the KCSC judges, who would render a "binding" decision on the grievance. Additionally, the employer proposed minor changes to Article 16.1 - Nondiscrimination of the CBA that changed "Union" to "Guild" and added "veteran status." The training of on-call/extra help, shift bidding, pat-downs and bus driving was also discussed at this meeting.

The third bargaining session occurred on October 9, 2012. The employer made minor changes to its proposal. The parties again discussed the training of on-call/extra help, shift bidding, pat-downs and bus driving. The union presented a proposal to change the grievance procedure. Under the union's proposal, grievances would be presented to a neutral arbitrator at Step 2 and that decision "shall be final and binding."

During the October 9, 2012 meeting, the union also proposed that Article 16.1 - Nondiscrimination read as follows:

> The parties agree that there shall be, in no manner whatsoever, any discrimination against any employee on the basis of race, color, religion, creed, sex, sexual orientation; [sic] marital status, national origin, age, or sensory, mental or physical disabilities.

Under the OPEIU CBA, Article 16.1 - Nondiscrimination read in relevant part: "Neither the Employer, Union, nor any employee shall in any manner whatsoever discriminate against . . . ." Then, after "against," the rest of the subsection was exactly the same as the union's proposal above. Because the employer did not express any specific objections to the union's minor changes and only proposed minor changes itself, the union asked to TA the issue. However, the employer did not do so because, as Kissler testified, "[t]hey had to go talk to somebody about the language, I assume their legal department, but I don't know who." Merringer testified that "[i]t's

my recollection that [Conill] indicated that the [employer] was drafting basically a new definition or a new section on nondiscrimination, and he would like to take a look at that and bring that back for the group to consider to adopt."

The parties met for a fourth time on November 6, 2012. The union presented a second, more detailed proposal. The parties sat down and reviewed each of the proposals.

At the December 4, 2012 session, the parties covered several topics. First, they began discussing the grievance procedure. The union had concerns over the procedure terminating with the judges. The employer listened and, according to Kissler, "[t]hey understood our issues, but they really couldn't address them at the table. They -- they had to take our proposal back to, I assume, the judges . . . ." Merringer stated that he would talk to the judges about the union's concerns.

Second, at this meeting, the union expressed concerns over the employer's proposal on overtime. It showed the employer team "Resolution No. 184 2012," which was adopted by the BOCC on November 26, 2012. It covered overtime for non-represented employees and amended the Kitsap County Personnel Manual. Under the resolution, overtime compensation for hours worked in excess of eight hours in a day or 40 hours in one work week was retained, while overtime compensation for paid leave taken was eliminated. The resolution was contrary to what the employer proposed at the table to the union. When the resolution was presented, Kissler testified that the employer team "didn't know anything about this resolution and didn't have a response or an answer, and said they would have to check into it and get back with us in regards to that." After the employer team consulted with others, it presented a revised overtime proposal to the union a couple of meetings later. The revised proposal was similar to the terms contained in the resolution.

On December 17, 2012, the parties met and again discussed the grievance procedure. Merringer stated that he had talked to the presiding judge about the union's comments that were made at the previous bargaining session about a possible lawsuit against the employer and superior court. In response, the presiding judge wanted to take the comments to the full board of KCSC judges.

Merringer and the superior court judge met with the full board on December 18, 2012. The employer did not respond to the union regarding the issue until the next bargaining session.

The parties' next bargaining session occurred on January 25, 2013, when the grievance procedure issue again was discussed. Merringer relayed the following list of bulleted points of the judges' "[r]easons for not supporting arbitration" to the union team:

1. Arbitration hearings generally are private and lack transparency and openness.
2. Arbitration hearings lack formal discovery.
3. In Superior Court hearings, we firmly believe in the effectiveness of the legal process in obtaining a fair result.
4. In Superior Court hearing [sic], we are familiar with these parameters and feel there is no reason to deviate from that honored tradition.
5. Arbitrators generally are not required to follow legal precedent or procedure or evidentiary rules, and many arbitrators are not licensed attorneys. . [sic]
6. Recourse to court review of arbitrator decisions is extremely limited.

Merringer stated that the presiding judge had emailed him an outline of the above reasons and that he reduced that email to a bulleted document to use as a "script." Although he presented the script as the employer's "rationale," Merringer testified that at the January 25, 2013 meeting his recollection was that Casillas's "only question was what binding meant, and if it would preclude [the union] from filing for the lawsuit." Thus, Merringer responded to Casillas that the questions were legal in nature and asked Casillas to articulate them in writing so that he could obtain a legal opinion from the employer's legal counsel, Jacquelyn Aufderheide.

As requested, Casillas sent an email to Conill and Merringer on February 7, 2013, stating "I had asked whether it was the [employer's] position that, should the [union] ever agree to this provision, that it would constitute a waiver of its bargaining rights to, for example, file a lawsuit against the [employer] and Superior Court . . . . Also, irrespective of whether it is intended to be a waiver or not, can you please explain the [employer's] rationale for such a provision. . . . It's incumbent upon the [employer] to explain . . . what that seeks to accomplish. . . ."

On February 8, 2013, the employer's legal counsel, responded to the union's email as follows:

> We understand that on behalf of the [union] you requested information concerning the legal effects of grievance provisions proposed by the [e]mployer, specifically: (1) whether the [e]mployer's proposal would result in a waiver of the [union's] right to file a lawsuit against the [e]mployer for an alleged violation of the terms of any agreement; and (2) the [e]mployer's rationale for its proposed language.
>
> The Public Employment [sic] Collective Bargaining Act does not require a [CBA] to include grievance arbitration procedures. RCW 41.56.122 reads in part:
>
> > A [CBA] *may*:
> > . . . (2) Provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a [CBA].
>
> (Emphasis added). Thus, arbitration is voluntary. If and when the parties voluntarily agree to arbitrate their differences, then it becomes obligatory on either party to arbitrate at the request of the other.
>
> Absent agreement for binding arbitration of a labor dispute arising from the parties' [CBA], the superior courts have original jurisdiction in all cases in equity and in law, and this would include disputes arising from [CBAs]. Of course, it is for the court to determine the scope of its jurisdiction including whether the parties have agreed to arbitrate a particular dispute. WA Const. Art. 4 §6; RCW 2.08.010. . . .

Later in the day, on February 8, 2013, Casillas wrote to Merringer stating that the employer's legal counsel's letter was in no way responsive to either of the questions he had asked. He wrote, "I was not asking for an explanation of what is mandated in the collective bargaining statute or how the superior court's general jurisdiction operates." He added:

> Also, please consider this notice that to the extent the [employer's] team has to rely on the opinion of individuals who are not present at the table to explain its proposals, the [union] does not view such an approach as consistent with the good faith bargaining obligation. The [employer], among other things, has a duty to bring to the table those individuals who can explain its proposals, consider responses from the [union], and make counter proposals. If [the employer's legal counsel] is the only person who can explain particular proposals then she needs to make herself available to attend our bargaining sessions. We will not accept a process where we ask questions or make counters and then have to wait until a subsequent point in time to get a response. The problems with such an approach are numerous, and not something we consider to be in good faith.

On February 14, 2013, Merringer responded to Casillas's objections by stating that he believed the employer's legal counsel answered the union's questions, and stating that he believed the members at the table can and have explained their positions, but were not prepared to offer legal opinions or give legal advice. Nevertheless, on cross-examination, Merringer admitted that in comparing the union's questions in its February 7, 2013 email with the employer's legal counsel's response, the employer did "[n]ot specifically" respond to the union's question about waiver and that the employer did not respond to the union's question asking the employer to explain its rationale for its grievance procedure proposal.

Later on February 14, 2013, Casillas responded to Merringer's email stating that "it is in no way reasonable to interpret that letter from [Aufderheide] as in any way responsive to what I had asked. . . . I think it is emblematic of the fact that this letter is not responsive to those requests because, for one, in this letter the only time the word 'waiver' is even used is when [the employer's legal counsel] restates my original request. . . ." Casillas added that the employer's legal counsel's letter also did not articulate the employer's rationale for its proposal, but instead took a position about whether arbitration is statutorily required. Further, he added that he was not asking for a legal opinion, but rather for an explanation of the employer's position and its intent behind a specific proposal so that the union could understand and thereby make a counter proposal.

On February 15, 2013, Merringer thanked Casillas for his emails and stated that he "look[ed] forward to continuing the discussion at our next scheduled meeting . . . ."

The parties' next and final bargaining session occurred on February 26, 2013. The meeting was scheduled for 9:00 A.M. until noon. Prior to the session, the parties agreed to discuss working conditions items, including the grievance procedure. Near the beginning of the session, the parties made an agenda that included reviewing a list of 40 TAs, ground rules and the grievance

procedure.[2] First, the parties discussed the filing of a ULP complaint regarding training for on-calls. There was some tension with that discussion.

The parties quickly moved to the topic of the grievance procedure. Merringer read the same script to the union bargaining team that he had read to the team during the parties' January 25, 2013 meeting. In response, Casillas asked essentially the same questions noted above. Merringer stated that he had already answered the union's questions, and he restated his previous statement almost word for word. Casillas stated that it was a matter of fundamental fairness and that as far as he was aware all other represented groups in the county have binding arbitration. Merringer did not respond. Then, Casillas asked about the meaning of the word "binding." Merringer said that was a legal question he could not answer, but stated that the language meant Step 2 was the last step in the grievance procedure at the employer level. Casillas explained that the union was uncomfortable with the word "binding" because to most people it means something different and because of that a judge in the superior court may elect his or her own understanding of the word over the employer's legal counsel's interpretation.

Casillas asked if the employer would be open to removing the word "binding." Merringer responded that if that was the union's proposal, the union could put it in writing, and the employer would consider it. Casillas responded that the union's proposal was for arbitration. Casillas said that he did not understand why the employer's position was not to use arbitration, and that it was Merringer's responsibility to explain why so he could understand and make a proposal. Merringer responded that he had already answered Casillas's questions. Casillas asked Merringer how the judges could be impartial when as the employer they have a vested interest in the outcome. Merringer did not respond. Casillas asked again, and Merringer said he would agree that the judges are the employer.

Kissler testified that Merringer became "clearly angry" during this exchange. Consequently, Merringer asked that the parties take a break. Casillas responded that Merringer did not get to unilaterally decide when the parties were done talking about a particular issue. Conill then

[2] When bargaining an initial CBA, it is common for the parties to reach numerous TAs on non-contentious issues because every article needs to be bargained. Here, evidence was not presented as to the substance of each of these TAs.

suggested that the parties caucus for 15 minutes. Casillas agreed and stated that the parties could revisit the issue when they got back together.

During the break, Merringer consulted with the employer's legal counsel, who was not at the table, for direction on how to proceed. Merringer was told to move to a different agenda topic and "[i]f the [union] refused to move off of [sic] grievance and refused to move on to any other agenda items, to terminate or to end the session." When Merringer returned, he demanded that the parties move to a different topic. When the union continued to want to discuss the grievance procedure, Merringer terminated the session, told Conill to set another date, and walked out of the bargaining session.

In a March 7, 2013 email from Merringer to Casillas, Merringer wrote that he believed Casillas was frustrating and obstructing bargaining and "taking advantage of being the only lawyer in the room, asserting your knowledge and expertise in the law, and demanding that we immediately respond to your legal contentions without benefit of legal counsel when we indicate that we will consult with the [employer's] attorney and get back to you."

ISSUE 1: Did the Employer Refuse to Bargain by Failing to Provide the Union with Requested Information?

PROCEDURAL BACKGROUND

On March 19, 2013, a preliminary ruling was issued, summarizing the allegations of the complaint as follows:

> Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by breach of its good faith bargaining obligations in negotiations over a [CBA].

The union's statement of facts alleged that it requested information about the employer's proposal on grievance arbitration procedures for an initial CBA, but that the employer did not adequately respond. The statement of facts appeared to state that the violation concerned the employer's breach of its good faith bargaining obligations in failing to fully explain its position, rather than a refusal to provide relevant collective bargaining information requested by the union.

In the employer's answer, filed on April 9, 2013, it specifically and repeatedly referred to information requests by the union. Thus, on April 30, 2013, the preliminary ruling was amended as follows:

> Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by (a) breach of its good faith bargaining obligations in negotiations over a [CBA], and (b) refusal to provide relevant information requested by the union in the aforementioned negotiations.

This was done because it was apparent that the relationship between the duties to provide information and good faith bargaining needed to be addressed in this decision.

APPLICABLE LEGAL STANDARDS

The duty to provide relevant information is rooted in the parties' duty to bargain. The term "collective bargaining" is defined in the Public Employees' Collective Bargaining Act, RCW 41.56.030(4), as follows:

> "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, . . . except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession . . . .

The duty to bargain includes a duty to provide relevant information requested by the opposite party for the proper performance of its duties in the collective bargaining process. *University of Washington*, Decision 11499 (PSRA, 2012), *aff'd*, Decision 11499-A (PSRA, 2013), *citing City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd*, *City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992); *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). The duty to provide information requires the production of specific records or tangible evidence. *Island County*, Decision 11946-A (PECB, 2014) ("records" including various reports, memorandum and emails); *University of Washington*, Decision 11499-A (investigatory notes); *City of Seattle*, Decision 10249-A (PECB, 2009) (emails and other documents); *City of*

Yakima, Decision 10270-B (PECB, 2011) (documents); *Seattle School District*, Decision 9628-A (PECB, 2008) (copy of a check); *Seattle School District*, Decision 5542-C (PECB, 1997) (potentially confidential records). Conversely, the more general duty to bargain in good faith includes a duty to engage in good faith communications.

ANALYSIS & CONCLUSION

The employer did not violate the statute by "refusing to provide relevant information" requested by the union. Here, the union asked the employer to "explain" its grievance procedure proposal. Thus, the union demanded that the employer engage in good faith communications with it, not that it provide documents or tangible evidence. The union's request is not a Chapter 41.56 RCW information request dispute. Rather, it is a request to communicate in bargaining that if not appropriately met is a refusal to bargain by breach of a party's good faith bargaining obligation. Information request disputes under Chapter 41.56 RCW are those that request a document, or tangible evidence, not those that seek a verbal explanation.

ISSUE 2: Did the Employer Refuse to Bargain by Failing to Send Representatives to the Table with Sufficient Authority to Bargain?

APPLICABLE LEGAL PRINCIPLES

Duty to Bargaining in Good Faith

Under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, a public employer has a duty to collectively bargain with the exclusive bargaining representative of its employees. The duty to bargain in good faith is enforced through RCW 41.56.140(4) and (1), and ULP proceedings under RCW 41.56.160 and Chapter 391-45 WAC.

A party is not entitled to reduce collective bargaining to an exercise in futility, but instead must negotiate with the view of reaching an agreement if possible. *Mansfield School District*, Decision 4552-B (EDUC, 1995); *City of Snohomish*, Decision 1661-A (PECB, 1984). Thus, a balance must be struck between the obligation of the parties to bargain in good faith and the requirement that the parties not be forced to make concessions. *City of Snohomish*, Decision

1661-A. Distinguishing between good faith and bad faith in bargaining can be difficult in close cases. *Mansfield School District*, Decision 4552-B; *Spokane County*, Decision 2167-A (PECB, 1985).

An employer that refuses to bargain in good faith on a mandatory subject of bargaining commits ULP violations. RCW 41.56.140(4) and (1). "[P]ersonnel matters, including wages, hours, and working conditions" of bargaining unit employees are characterized as mandatory subjects of bargaining. *International Association of Fire Fighters (IAFF), Local 1052 v. PERC*, 113 Wn.2d 197 (1989). Grievance procedures and the components of grievance procedures are mandatory subjects of bargaining. RCW 41.56.030(4); *City of Bellevue*, Decision 11435-A (PECB, 2013). Collective bargaining agreements negotiated under Chapter 41.56 RCW may contain provisions for binding arbitration. RCW 41.56.122(2). An employer and a union have a duty to bargain over all aspects of the grievance procedure, including the final resolution of the grievance. *City of Bellevue*, Decision 11435-A. When the Commission finds a refusal to bargain violation under the statutes it administers, it automatically finds that the employer derivatively interfered with employee rights. *Mason County, Decision* 10798-A (PECB, 2011).

Where a ULP violation is alleged, the complainant has the burden of proving its case by a preponderance of the evidence. WAC 391-45-270(1)(a); *Kitsap County*, Decision 11675 (PECB, 2013), *citing Cowlitz County*, Decision 7007-A (PECB, 2000). The preponderance of the evidence standard requires that the evidence establish that the proposition at issue is more probably true than not true. *Department of Social and Health Services v. Bissett*, 92 Wn. App. 420 (1998), *citing In re Sego*, 82 Wn.2d 736, 739 n.2 (1973). The respondent is responsible for the presentation of its defense, but only has a burden of proof as to affirmative defense. WAC 391-45-270(1)(b).

Duty to Communicate and Explain Bargaining Rationale

Good faith bargaining includes a duty to engage in full and frank discussion of disputed issues, and to explore possible alternatives, if any, that may be mutually acceptable. *Vancouver School District*, Decision 11791-A (PECB, 2013); *Snohomish County*, Decision 9834-B (PECB, 2008); *Mansfield School District*, Decision 4552-B; *South Kitsap School District*, Decision 472 (PECB,

1978). "Integral to the good faith collective bargaining process, the parties are expected to explain both their own proposals and their reasons for rejecting the proposals of the opposite party, so that their rationale may be properly understood and new proposals may be formulated." *Snohomish County*, Decision 9834 (PECB, 2007), *aff'd, Snohomish County* 9834-B; *see City of Snohomish*, Decision 1661-A. Thus, a productive labor relationship requires communication. *City of Mountlake Terrace*, Decision 11702-A.

For example, in *Snohomish County*, Decision 9834-B, the Commission held that the employer breached its good faith bargaining obligation by failing to adequately explain its bargaining proposals when the union pressed for its rationale. Ultimately after the ULP complaint was filed and several months and several negotiation sessions after the request, the employer provided the union with an explanatory memorandum that contained insight regarding its rationale. *Snohomish County*, Decision 9834-B. "Had the employer provided this document in a timely manner, it might have mitigated, but not necessarily cured, this violation of its good faith bargaining obligation." *Snohomish County*, Decision 9834-B.

Representatives Must Have Sufficient Authority to Bargain

The parties must vest their negotiators with sufficient capacity and authority to carry on meaningful bargaining. *Valley Imported Cars*, 203 NLRB 873 (1973); JOHN E. HIGGINS, *THE DEVELOPING LABOR LAW, SIXTH EDITION, VOL. I* at 954 (2012). It is an indication of bad faith if the words and actions of a party show that it is merely "going through the motions" of bargaining, also called "surface bargaining;" among them, "fail[ing] to designate an agent with sufficient bargaining authority." *Kitsap County*, Decision 11675, *citing Atlanta Hilton & Tower*, 271 NLRB 1600 (1984). A negotiating team must have authority to make proposals and enter tentative agreements, and the other party has a right to rely on that authority. *Kitsap County*, Decision 11675-A (PECB, 2013).

Legal Knowledge

The Commission's rules do not require parties' representatives to be licensed attorneys or to hold any other license, training or experience. WAC 391-08-010. A representative's "authority to bargain" is neither necessarily reduced nor enhanced based on any license, knowledge (legal or

otherwise), experience or training. *Kitsap County*, Decision 11675, *aff'd*, Decision 11675-A. Thus, it is up to each party to choose their own representatives based on the level of knowledge (legal or otherwise), experience, and training they feel is sufficient to carry out meaningful bargaining. *Kitsap County*, Decision 11675, *aff'd*, Decision 11675-A.

Duty to Meet at Reasonable Times

The duty to bargain requires employers and unions "to meet at reasonable times." *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014). To prove a failure to meet, the complainant must demonstrate that it requested negotiations over a mandatory subject of bargaining and that the other party either failed or refused to meet with the complainant, or imposed unreasonable conditions or limitations that frustrated the collective bargaining process. *City of Mountlake Terrace*, Decision 11831-A. An example of this type of bad faith bargaining is the unilateral cancellation of bargaining sessions. *Snohomish County*, Decision 9834-B. A case-by-case analysis is necessary to prove a violation. *City of Mountlake Terrace*, Decision 11831-A.

Totality of the Circumstances

In determining if a party has engaged in bad faith bargaining, the Commission examines the totality of the circumstances. *Kitsap County*, Decision 11675-A, *citing Shelton School District*, Decision 579-B (EDUC, 1984). A party may violate its duty to bargain in good faith either by one per se violation, such as a refusal to meet at reasonable times and places or refusing to make counterproposals, or through a series of questionable acts that, when examined as a whole, demonstrate a lack of good faith bargaining, but by themselves would not be per se violations. *Kitsap County*, Decision 11675-A, *citing Snohomish County*, Decision 9834-B. Bargaining tactics that evidence a desire to maintain a predetermined outcome or employer proposals that are knowingly and predictably unpalatable to the union have been found to evidence bad faith under the totality of the circumstances standard. *Mason County*, Decision 3706-A (PECB, 1991); *Snohomish County*, Decision 9834-B, *citing Association of Flight Attendants, AFL-CIO, v. Horizon Air Industries, Indus.*, 976 F.2d 541 (9th Cir. 1992).

ANALYSIS

Employer's Representatives Lacked Sufficient Authority to Engage in Meaningful Bargaining

Under the totality of the circumstances in this case, it is more probable than not from the evidence presented that the employer's representatives did not come to the table with sufficient authority. While individually the actions described above might not support a finding of insufficient authority, taken together the employer representatives' (1) failure to explain the employer's intent, (2) lack of adequate knowledge, (3) inability to enter TAs without consulting with those not at the table, and (4) unilateral termination of the parties' final session shows by a preponderance that the employer failed to bargain in good faith by failing to send representatives to the table with sufficient authority to engage in meaningful bargaining. An employer that refuses to bargain in good faith on a mandatory subject of bargaining commits ULP violations. RCW 41.56.140(4) and (1). Here, the employer failed to bargain the following four mandatory subjects with the union.

(1) Grievance Procedures -

Grievance procedures are a mandatory subject of bargaining. RCW 41.56.030(4); *City of Bellevue*, Decision 11435-A. When employer representatives at the table were asked by the union team to explain both the employer's rational for its grievance procedure proposal as well as the employer's intent behind the word "binding," they did not communicate an explanation or engage in full and frank discussions. As described below, the employer sent representatives to the table without sufficient authority to bargain and effectively hamstrung its bargaining team. This frustrated the bargaining process.

On December 4, 2012, the union laid out its concerns regarding the employer's proposal on grievance procedures, but the employer representatives at the table did not, and stated they could not respond. This supports a finding that they did not have sufficient authority to bargain. Instead, Merringer had to consult first with the superior court presiding judge on December 17, 2012, and then the KCSC judges before he could provide a response. On December 18, 2012, the superior court presiding judge and the KCSC judges, none of whom were ever at the bargaining table, met and ultimately emailed Merringer a response to be conveyed to the union. Merringer then reduced this email to a "script" of bulleted talking points.

Merringer waited until the parties' next bargaining session on January 25, 2013, to read the union his script. Numbers 1, 2, 5 and 6 of his script contained facts, and numbers 3 and 4 contained general explanations. Thus, this late response was not so much an explanation of the employer's proposal and rejection of the union's proposal as it was a position statement. The union had asked the employer for the following specific explanations: (1) what the word "binding" meant, i.e., whether the employer's proposal constituted a waiver of any of the union's rights; and (2) to articulate its rationale for not wanting to arbitrate grievances. The script did not answer these questions. When Casillas asked again, because the union's questions had not been addressed, Merringer stated that the questions were legal in nature. Because the employer opted not to have legal counsel at the negotiations, Merringer asked Casillas to articulate the union's questions in writing so that the employer's legal counsel could respond. The union complied. The request had the effect of reducing collective bargaining to a series of written exchanges that frustrated the full and frank discussion necessary for good faith bargaining.

When the employer responded in a letter two weeks later, its legal counsel's response stated some general law, but did not affirmatively address whether the employer intended its term "binding" to constitute a waiver. Further, stating that the employer *may* have binding arbitration and commenting on the superior court's jurisdiction is not providing a "rationale" that would give the union enough information to understand the employer's proposal and then make a counter proposal. Since essentially no explanatory information was exchanged away from the table, the union again asked the same questions at the parties' final negotiation session on February 26, 2013. In response, Merringer simply re-read the script he used at the parties' meeting on January 25, 2013.

While it may be appropriate in some circumstances to obtain a legal opinion away from the table before responding to a question, such was not the case here. The two questions asked by the union did not seek the type of explanation that would warrant a legal opinion as the questions had to do with the employer's intent — first behind the word "binding," and second behind the employer's proposal to take the matter to the KCSC judges and not an independent arbitrator. As the union's questions made clear, the issue was not whether the word "binding" would in fact constitute a waiver, rather the issue was whether the employer intended a waiver by its use of the

term "binding." Good faith bargaining requires the parties to explain their intent. Contracts are meant to be expressions of the parties' mutual intent, so by refusing to disclose its intent, the employer was not bargaining in good faith. *See Berg v. Hudesman,* 115 Wn.2d 657 (1990) (contracts interpreted to carry out the parties' mutual intent).

It was also not a defense that the union's questions were of a legal nature. Like many public employers, the employer did not designate or assign to its team a licensed attorney, nor was it required to do so. WAC 391-08-010; *see Kitsap County*, Decision 11675, *aff'd*, *Kitsap County*, Decision 11675-A. In this situation, what the employer was required to do was to have bargaining representatives at the table with the authority and knowledge to communicate and explain its intent. The employer failed in this regard. Moreover, the employer's legal counsel's response on January 25, 2013, should have actually explained the employer's intent. The employer also failed to meaningfully bargain in this regard.

Nor is the employer's refusal to explain its intent justified by the fact that the employer's proposal and prior OPEIU CBAs from October 1, 1994, through December 31, 2009, also use the word "binding." The question at issue was what the employer intended the term "binding" to mean in this initial CBA with this union. If the employer intended the term to have the same meaning as the OPEIU CBA, it should have communicated that fact. This would have allowed the union to respond by either agreeing to that meaning or by proposing an alternative meaning. But because the employer refused to state its intent, the union was prevented from responding and denied the ability to negotiate whether the term "binding" would result in a waiver. Thus, the employer's assertion that the union should have known or did in fact know what "binding" meant is without merit.

(2) Overtime -

Overtime is a mandatory subject of bargaining. *IAFF, Local 1052 v. PERC*, 113 Wn.2d 197. The employer's actions related to overtime also contribute to a finding that employer representatives at the table did not have sufficient authority to engage in meaningful bargaining. When the union bargaining team showed the employer team a recently adopted employer resolution on overtime, the employer team had no knowledge of the resolution and again

indicated that it would need to consult with persons not at the bargaining table before it could respond to the union. It was unable to either communicate an explanation or engage in full and frank discussions over this subject of bargaining. Thus, the employer effectively hamstrung its bargaining team at the table. This frustrated the bargaining process. While the employer's lack of knowledge of its own resolution might not by itself show a lack of good faith, it certainly adds to the totality of the evidence and shows a lack of sufficient authority to bargain.

(3) Nondiscrimination -

Nondiscrimination is a mandatory subject of bargaining. *IAFF, Local 1052 v. PERC*, 113 Wn.2d 197; JOHN E. HIGGINS, *THE DEVELOPING LABOR LAW, SIXTH EDITION, VOL. I* at 1408-09. The employer's actions related to nondiscrimination also support a finding that employer representatives at the table did not have sufficient authority to engage in meaningful bargaining. When it came time to enter a TA on nondiscrimination, the employer representatives designated by the employer with the task of negotiating the CBA had to take the issue to people not at the bargaining table. This showed the employer representative's lack of authority to agree to anything, even mere changes in wording, and effectively hamstrung its bargaining team at the table. This frustrated the bargaining process.

In some instances, it would be reasonable for a party to delay responding to a proposal so that its legal counsel or others could review or give input. But in other instances, such advice should not be necessary. Here, in isolation, the employer's statement that it wanted to "bring that back for the group to consider to adopt" may seem reasonable. In the context of these actual negotiations, however, the employer's argument appears specious. The employer defends that it wanted to compare the union's nondiscrimination proposal with revisions being made to the employer-wide nondiscrimination policy. However, no evidence was presented that the employer communicated any information regarding the comparison back to the union. Furthermore, from the evidence presented, it is not clear why the employer waited to raise this concern or why any possible change to the policy was not already reflected in the employer's proposal. If the employer was concerned about inconsistency and was prepared, it should have been able to compare any proposal to the employer-wide policy because it knew the parties would be negotiating over the issue of nondiscrimination. Moreover, when one actually compares the

changes made to Article 16.1 in the parties' proposals, it is hard to imagine any legitimate substantive concern. The changes are minor and in wording only.

(4) Meet at Reasonable Times -

To meet its obligation of good faith bargaining over mandatory subjects, the employer had a duty to meet at reasonable times. *City of Mountlake Terrace*, Decision 11831-A. Here, the employer's actions were inconsistent with this duty. Merringer's actions at the final bargaining session support a finding that the employer representatives at the table did not have sufficient authority to engage in meaningful bargaining when they unilaterally terminated bargaining over a mandatory subject (grievance procedures) by walking away from the bargaining table on February 26, 2013. Merringer became angry as the union continued to ask questions about the employer's grievance procedure proposal that employer representatives at the table could not answer. Merringer contacted the employer's legal counsel, and did not ask Conill, the employer's Labor Relations Manager who was at the bargaining table, for a recommendation about how to proceed. He was instructed by Aufderheide, who was not at the table, to walk out if the union refused to change subjects. Thus, the employer effectively hamstrung its bargaining team at the table, and the parties' final negotiation session ended unilaterally with the employer leaving. This frustrated the bargaining process.

Open Public Meeting and Restrictions of Delegation of Authority Arguments Misplaced

The employer argues that open public meetings laws and restrictions on delegation of discretionary authority must be a consideration when evaluating the bargaining obligations of public employer negotiators. It asserts that the case of *State ex rel. Bain v. Clallam County*, 77 Wn.2d 542 (1970), is instructive because it is a reminder that the county board of commissioners can only take "action" at open public meetings. That case, however, is both factually distinguishable and has been superseded by legislative changes. Factually, the case involved county commissioners adopting a tentative agreement. That is not the issue in this case. *Bain* says nothing about an employer representative's authority at the table when negotiating a CBA which is the issue here.

Additionally, the employer asserts that a board of commissioners may not delegate discretionary power. However, it cites *Keeting v. Public Utility District No. 1 of Clallam County*, 49 Wn.2d 761 (1957), that stands for the proposition that it is not an unlawful delegation of decision-making power if the governing body gives the authority to someone else, but puts enough parameters on the delegation so that the governing body is still making the decision. Again, the cited proposition is not the issue in this case.[3]

Furthermore, under the plain terms of the Open Public Meetings Act (OPMA) adopted after the *Bain* decision, it is not a violation of the OPMA for a governing body to meet outside of an open public meeting to establish a position for labor negotiations. *Mason County*, Decision 10798-A; RCW 42.30.140. RCW 42.30.140(4) expressly states that the OPMA shall not apply to:

> Collective bargaining sessions with employee organizations, including contract negotiations, grievance meetings, and discussions relating to the interpretation or application of a labor agreement; or . . . that portion of a meeting during which the governing body is planning or adopting the strategy or position to be taken by the governing body during the course of any collective bargaining, professional negotiations, or grievance or mediation proceedings, or reviewing the proposals made in the negotiations or proceedings while in progress.

That statute, adopted in 1990, overturned *Mason County v. PERC*, 54 Wn. App. 36 (1989), and allows public employers and unions representing public employees to negotiate outside the confines of the OPMA. *Mason County*, Decision 10798-A, *citing see City of Fife*, Decision 5645 (PECB, 1996). Thus, there is nothing in the OPMA that prevents an employer from establishing a bargaining position and sufficiently instructing its representatives to bargain based on that position.

CONCLUSION

Looking at the totality of the circumstances and considering the evidence presented, the employer's conduct in this case constitutes ULP violations. *See Kitsap County*, Decision 11675-A, *citing Snohomish County*, Decision 9834-B. Employer representatives at the table did not

[3] Other cases cited by the employer are either not relevant or only tangentially related to the circumstances of the current case.

have sufficient authority to engage in meaningful bargaining. They were not adequately informed, could not enter TAs without consulting with those not at the bargaining table, could not adequately explain the employer's proposals or positions, and unilaterally terminated a bargaining session. Thus, by sending representatives to the table without sufficient authority to engage in meaningful bargaining, the employer failed to bargain in good faith and committed a ULP in violation of RCW 41.56.140(4) and derivatively interfered with employee rights in violation of RCW 41.56.140(1).

It appears that through its action of relying on the opinion and recommendation of the employer's legal counsel, the employer limited the authority of its negotiators at the bargaining table with regard to the issues of grievance procedures and the duty to meet at reasonable times. *See Kitsap County*, Decision 11675-A. The employer team at the table also was not sufficiently informed as to the issue of overtime in the county, nor was it able to reach agreement on the issue of nondiscrimination without consulting with others not at the table. By not giving the employer representatives at the table sufficient authority to meaningfully bargain *prior to* reaching a TA on outstanding issues, the employer effectively hamstrung it representatives at the table. Taken together these acts frustrated the bargaining process.

ISSUE 3: If the Employer Refused to Bargain in Good Faith, What is the Appropriate Remedy?

Duty to Bargain in Good Faith

The union asks for a remedy requiring the employer to withdraw its grievance procedure proposal. However, under the good faith bargaining standard, an employer is not required to agree to the union's proposal or make a concession, or to change its own proposal. RCW 41.56.030(4); *City of Snohomish*, Decision 1661-A. Chapter 41.56 RCW states that a CBA *may* provide for binding arbitration. RCW 41.56.122. Therefore, the employer need not withdraw its proposal, which does not include binding arbitration; however, it does need to engage in good faith bargaining as explained above.

Attorney's Fees Not Warranted

The Commission has the authority to require payment of attorney's fees or to impose other extraordinary remedies under RCW 41.56.160 when violations are found under RCW 41.56.140. *Municipality of Metropolitan Seattle v. PERC*, 118 Wn.2d 621 (1992). However, the Commission has used "extraordinary" remedies sparingly. *Island County*, Decision 11946-A; *Public Utility District 1 of Clark County*, Decision 2045-B (PECB, 1989). The Commission has awarded attorney fees: (1) when such an award is necessary to make the order effective, and (2) when the defense to the ULP complaint was meritless or frivolous, or the respondent had engaged in a pattern of repetitive conduct showing a patent disregard of its statutory obligations. *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, *Pasco Housing Authority v. PERC*, 98 Wn. App. 809 (2000).

Here, although the employer is found to have refused to bargain in good faith, an award of attorney's fees is not warranted to make the order effective. The actions of the employer in this case do not demonstrate a clear pattern of refusing to bargain or a patent disregard for its duty to bargain. *Kitsap County*, Decision 11675-A, is not dispositive as it involved the representatives' authority at a different point in the collective bargaining process. That case involved the authority of the employer's bargaining representatives at the end of the process and legal counsel's input on ratification of a TA, whereas this case involves the representative's authority at the table and during the bargaining process prior to any TA. Regarding any future award of attorney's fees, the role of employer representatives not at the table should now be clear at both points in time.

FINDINGS OF FACT

1. Kitsap County (employer) is an employer within the meaning of RCW 41.56.030(12).

2. The Kitsap County Juvenile Detention Officers' Guild (union) is an exclusive bargaining representative within the meaning of RCW 41.56.030(2).

3. On July 5, 2012, the union was certified as the exclusive bargaining representative for juvenile detention officers and food service workers who work in the Kitsap County Juvenile and Family Court Services Department.

4. On September 11, 2012, the employer and union held their first bargaining session and began negotiating an initial collective bargaining agreement. The employer proposed the elimination of contractual overtime. Conill introduced and explained these provisions.

5. The employer's negotiating team included Labor Relations Manager Fernando Conill for wage-related matters, and Michael Merringer, KCSC Juvenile Court Director of Services, and William Truemper, KCSC Juvenile Detention Division Manager, for non-wage-related matters.

6. The union's negotiating team included Attorney Christopher Casillas, Union President Pepe Pedesclaux and Union Vice President Jack Kissler.

7. On September 25, 2012, the employer proposed grievance procedure language in Article 10 of the CBA that was essentially the same as language in the previous CBA with OPEIU. The proposal contained a bifurcated grievance procedure in which non-wage-related grievances went to Step 2 with the KCSC judges, who would render a "binding" decision on the grievance.

8. On September 25, 2012, the employer proposed minor changes to Article 16.1 - Nondiscrimination of the CBA that changed "Union" to "Guild" and added "veteran status."

9. On October 9, 2012, the union presented a proposal to change the grievance procedure. Under the union's proposal, grievances would be presented to a neutral arbitrator at Step 2 and that decision "shall be final and binding."

10. On October 9, 2012, the union also proposed minor changes to Article 16.1 - Nondiscrimination. The union asked that the parties tentatively agree to the issue. However, the employer did not do so because, as Kissler testified, "[t]hey had to go talk to somebody about the language, I assume their legal department, but I don't know who." Merringer testified that "[i]t's my recollection that [Conill] indicated that the [employer]

was drafting basically a new definition or a new section on nondiscrimination, and he would like to take a look at that and bring that back for the group to consider to adopt."

11. At the December 4, 2012 session, the parties covered several topics. First, they began discussing the grievance procedure. The union had concerns over the procedure terminating with the judges. The employer listened and, according to Kissler, "[t]hey understood our issues, but they really couldn't address them at the table. They – they had to take our proposal back to, I assume, the judges . . . ." Merringer stated that he would talk to the judges about the union's concerns.

12. Also at the December 4, 2012 meeting, the union expressed concerns over the employer's proposal on overtime. It showed the employer team "Resolution No. 184 2012," which was adopted by the BOCC on November 26, 2012. It covered overtime for non-represented employees and amended the Kitsap County Personnel Manual. The resolution was contrary to what the employer proposed at the table to the union. When the resolution was presented, Kissler testified that the employer team "didn't know anything about this resolution and didn't have a response or an answer, and said they would have to check into it and get back with us in regards to that." After the employer team consulted with others, it presented a revised overtime proposal to the union a couple of meetings later. The revised proposal was similar to the terms contained in the resolution.

13. On December 17, 2012, the parties met and again discussed the grievance procedure. Merringer stated that he had talked to the presiding judge about the union's comments that were made at the previous bargaining session about a possible lawsuit against the employer and superior court. In response, the presiding judge wanted to take the comments to the full board of KCSC judges.

14. Merringer and the superior court judge met with the full board on December 18, 2012. The employer did not respond to the union regarding the issue until the next bargaining session.

15. The parties' next bargaining session occurred on January 25, 2013, when the grievance procedure issue again was discussed. Merringer relayed a list of bulleted points of the judges' "[r]easons for not supporting arbitration" to the union team. Merringer stated that the presiding judge had emailed him an outline of the above reasons and that he reduced that email to a bulleted document to use as a "script." Although he presented the script as the employer's "rationale," Merringer testified that at the January 25, 2013 meeting his recollection was that Casillas's "only question was what binding meant, and if it would preclude [the union] from filing for the lawsuit." Thus, Merringer responded to Casillas that the questions were legal in nature and asked Casillas to articulate them in writing so that he could obtain a legal opinion from the employer's legal counsel, Jacquelyn Aufderheide.

16. As requested, Casillas sent an email to Conill and Merringer on February 7, 2013, stating "I had asked whether it was the [employer's] position that, should the [union] ever agree to this provision, that it would constitute a waiver of its bargaining rights to, for example, file a lawsuit against the [employer] and Superior Court . . . . Also, irrespective of whether it is intended to be a waiver or not, can you please explain the [employer's] rationale for such a provision. . . . It's incumbent upon the [employer] to explain . . . what that seeks to accomplish. . . ."

17. On February 8, 2013, the employer's legal counsel, responded to the union's February 7, 2013 email. First, the employer's legal counsel's letter restated Casillas's questions. Then, it cited the statute stating that a collective bargaining agreement may provide for binding arbitration. It concluded by adding that the superior courts have original jurisdiction in all cases in equity and in law.

18. On February 8, 2013, Casillas wrote to Merringer stating that the employer's February 8, 2013 letter was in no way responsive to either of the questions he had asked. He wrote, "I was not asking for an explanation of what is mandated in the collective bargaining statute or how the superior court's general jurisdiction operates." He added that the

employer has a duty to bring to the table those individuals who can explain its proposals, consider responses from the union and make counter proposals.

19. On February 14, 2013, Merringer responded to Casillas's objections by stating that he believed the employer's legal counsel answered the union's questions, and stating that he believed the members at the table can and have explained their positions, but were not prepared to offer legal opinions or give legal advice. Nevertheless, on cross-examination, Merringer admitted that in comparing the union's questions in its February 7, 2013 email with the employer's legal counsel's response, the employer did "[n]ot specifically" respond to the union's question about waiver and that the employer did not respond to the union's question asking the employer to explain its rationale for its grievance procedure proposal.

20. On February 14, 2013, Casillas responded to Merringer's email stating that he did not consider Aufderheide's letter as in any way responsive to what he had asked on February 7, 2013. Casillas added that the letter did not articulate the employer's rationale for its proposal, but instead took a position about whether arbitration is statutorily required. Further, he added that he was not asking for a legal opinion, but rather for an explanation of the employer's position and its intent behind a specific proposal so that the union could understand and thereby make a counter proposal.

21. On February 15, 2013, Merringer thanked Casillas for his emails and stated that he "look[ed] forward to continuing the discussion at our next scheduled meeting . . . ."

22. The parties' final bargaining session occurred on February 26, 2013. The meeting was scheduled for 9:00 A.M. until noon. The parties agreed to discuss the grievance procedure.

23. At the February 26, 2013 meeting, the parties quickly moved to the topic of the grievance procedure. Merringer read the same script to the union bargaining team that he had read to the team during the parties' January 25, 2013 meeting. In response, Casillas asked essentially the same questions noted above. Merringer stated that he had already

answered the union's questions, and he restated his previous statement almost word for word. Casillas stated that it was a matter of fundamental fairness and that as far as he was aware all other represented groups in the county have binding arbitration. Merringer did not respond. Then, Casillas asked about the meaning of the word "binding." Merringer said that was a legal question he could not answer, but stated that the language meant Step 2 was the last step in the grievance procedure at the employer level. Casillas explained that the union was uncomfortable with the word "binding" because to most people it means something different and because of that a judge in the superior court may elect his or her own understanding of the word over the employer's legal counsel's interpretation. Casillas said that he did not understand why the employer's position was not to use arbitration, and that it was Merringer's responsibility to explain why so he could understand and make a proposal. Merringer responded that he had already answered Casillas's questions. Casillas asked Merringer how the judges could be impartial when as the employer they have a vested interest in the outcome. Merringer did not respond. Casillas asked again, and Merringer said he would agree that the judges are the employer.

24. Kissler testified that Merringer became "clearly angry" during this exchange. Consequently, Merringer asked that the parties take a break. Casillas responded that Merringer did not get to unilaterally decide when the parties were done talking about a particular issue. Conill then suggested that the parties caucus for 15 minutes. Casillas agreed and stated that the parties could revisit the issue when they got back together.

25. During the break, Merringer consulted with the employer's legal counsel, who was not at the table, for direction on how to proceed. Merringer was told to move to a different agenda topic and "[i]f the [union] refused to move off of [sic] grievance and refused to move on to any other agenda items, to terminate or to end the session." When Merringer returned, he demanded that the parties move to a different topic. When the union continued to want to discuss the grievance procedure, Merringer terminated the session, told Conill to set another date, and walked out of the bargaining session.

26. In a March 7, 2013 email from Merringer to Casillas, Merringer wrote that he believed Casillas was frustrating and obstructing bargaining and "taking advantage of being the only lawyer in the room, asserting your knowledge and expertise in the law, and demanding that we immediately respond to your legal contentions without benefit of legal counsel when we indicate that we will consult with the [employer's] attorney and get back to you."

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. As described in Findings of Fact 4 through 26, Kitsap County breached its good faith bargaining obligations by not sending bargaining representatives to the table with sufficient authority to engage in meaningful bargaining and, therefore, committed an unfair labor practice in violation of RCW 41.56.140(4) and (1).

ORDER

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

1. CEASE AND DESIST from:

    a. Failing or refusing to have representatives at the bargaining table with sufficient authority to engage in meaningful bargaining over an initial collective bargaining agreement.

    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. Give notice to and, upon request, negotiate in good faith by sending representatives to the bargaining table with sufficient authority to engage in meaningful bargaining with the Kitsap County Juvenile Detention Officers' Guild over an initial collective bargaining agreement.

b. 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.

c. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Kitsap County Board of County Commissioners, 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.

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

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

ISSUED at Olympia, Washington, this 6th day of October, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DIANNE RAMERMAN, 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 25523-U-13-6535
DECISION 12163 - PECB

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 PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT *KITSAP COUNTY* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY refused to bargain in good faith, when we sent representatives to the bargaining table without sufficient authority to bargain an initial collective bargaining agreement with the Kitsap County Juvenile Detention Officers' Guild.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL give notice to and, upon request, negotiate in good faith by sending representatives to the bargaining table with sufficient authority to bargain with the Kitsap County Juvenile Detention Officers' Guild over an initial collective bargaining agreement.

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.

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