Western Washington University, Decision 8256 (PSRA, 2003)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Complainant, vs. WESTERN WASHINGTON UNIVERSITY Respondent.	CASE 16507-U-02-4267 DECISION 8256 - PSRA FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

Eric T. Nordloff, Attorney at Law, appeared for the union.

Christine O. Gregoire, Attorney General, by *Wendy Bohlke*, Senior Counsel, Assistant Attorney General, for the employer.

On February 14, 2002, Public School Employees of Washington (union), filed a complaint charging unfair labor practices with the Washington State Department of Personnel under Chapter 251-14 WAC and Chapter 41.06 RCW, naming Western Washington University (employer) as respondent.[1] The authority to determine and remedy unfair labor practices was transferred to the Public Employment Relations Commission by the Personnel System Reform Act of 2002 (PSRA), effective June 13, 2002,[2] and the Commission made Chapter 391-45 WAC

1 Department of Personnel Case ULP-528.

2 See RCW 41.06.340 as amended effective June 13, 2002.

applicable to state civil service employees and their employers. Thereafter, the complaint was reviewed under WAC 391-45-110, and a preliminary ruling was issued on October 15, 2002, finding a cause of action to exist on allegations summarized as:

> Employer refusal to bargain in violation of RCW 41.56.140(4), [and derivatively "interference" in violation of RCW 41.56.140(1)] by breach of its good faith bargaining obligations through refusing to engage in collective negotiations concerning the subject of parking.

The employer filed an answer. A hearing was held on January 30, 2003, before Examiner Frederick J. Rosenberry. The parties filed post hearing briefs.

On the basis of the evidence presented at the hearing, the Examiner rules that the union met the burden of proof necessary to establish that the employer failed or refused to bargain in good faith by declining to engage in collective bargaining with the union regarding employee parking. An unfair labor practice violation was committed, and a remedial order is issued.

BACKGROUND

Western Washington University is a state institution of higher education, headquartered in Bellingham. The employer offers traditional educational opportunities for students whose academic studies advance beyond high school. Approximately 13,500 students, faculty, and staff members are regular users of the campus.

The union is the exclusive bargaining representative of a bargaining unit of the employer's classified employees.

The parties executed their first collective bargaining agreement on April 16, 2002. The preamble of that agreement states:

> Pursuant to provisions of RCW 41.06, and WAC 251-14 of the Washington Personnel Resources Board, rules for higher education, this constitutes an Agreement between the Board of Trustees of

> Western Washington University, hereinafter call the EMPLOYER, or UNIVERSITY, or WWU, and the Public School Employees of Washington, hereinafter call the UNION, or PSE. All the employees covered by this Agreement are supervisors/managers and an integral part of the university administration.

The bargaining unit is further described in a recognition section of the parties' contract (Article 1), which states:

> The provisions of this agreement apply to all classified employees at WWU assigned to classes included in Bargaining Unit D as delineated by the Washington Personnel Resources Board, hereinafter called the WPRB. The PSE is recognized as the exclusive representative for Bargaining Unit D, by certification of the Director of the Washington State Department of Personnel on December 6, 2000.

That collective bargaining agreement was for a term of three years. It is scheduled to expire in 2005.

Parking On/Around the Employer's Campus

Several years ago, the employer adopted an "Institutional Master Plan" addressing a multitude of issues. The plan includes a "Transportation Management Program," the purposes of which include effecting compliance with a "Commute Trip Reduction Act" which was incorporated into the Washington Clean Air Act in 1991.[3]

All parking on the employer's campus is regulated. The employer issues approximately 8,500 permits for access to approximately 3,500 available spaces. The employer sells more parking permits than it has spaces based on a premise that not all permit holders will require a parking

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3 See RCW 70.94.521 - .551. The purpose of the statute was to help reduce air pollution, congestion, and energy consumption.

space at the same time. The employer uses different circulation ratios for three categories of users: (1) resident students; (2) commuting students; and (3) employees. The resident students use about one-third of the available parking spaces. The employer sells parking permits to faculty and staff at a ratio of about 1.1 to 1.2 permits per space. The "Transportation Management Program" became a matter of interest to the union, because of a shortage of employee parking, the cost of employee parking, and the manner in which the employer has required compliance with unilaterally imposed parking regulations.

The employer's written criteria for assigning parking spaces to employees states:

> University Employees have the opportunity to apply for a parking assignment in advance of the subsequent new school year. Deadlines are established for submitting applications. Those meeting the application deadlines may then be eligible for the advance priority parking assignment:
>
> Criteria:
>
> 1. Job-related needs:
>
>   A supplemental application form is completed and signed to describe the extent to which the applicant is required to use his/her personal vehicle in job performance.
>
> 2. Seniority:
>
>   The amount of time in years and months an applicant has been an employee of WWU.
>
> 3. After-priority assignments:
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>   Applicants not meeting the priority assignment dead-line receive assignments from whatever space is left after the priority assignment process is completed.
>
> 4. Waiting List:

If the applicant does not get the parking assignment of their choice, they will be placed on a waiting list for their desired lot and will remain on this for the entire school year or a space becomes available.

5. Executive Exempts are eligible for reserved spaces at increased rates.

6. Directors, Asst [sic] Directors, Deans, Coaches, Managers, etc., are eligible for an all lots addition to their G lot assignment.

The employer's parking and traffic regulations state in relevant part:

All motor vehicle and parking regulations are in effect 24 hours every day. Permits and/or meter payments are required as posted at the entrance of each lot.

DRIVER RESPONSIBILITY

Finding Authorized Space: If space is not available in assigned Faculty/Staff or R lot, the driver must go to a regular space in the next lot and call Parking and Transportation Services immediately. C permit holders who do not find space in any C lot must go to the 16CR, which is part of the C zone.

Space Availability: A parking permit only provides the opportunity to park within a specified area or areas. (If a space is not available in one C lot, a driver must go to another C lot.)

On-campus parking rates for 2002-2003 were:

Permit Prices	Qtrly	Academic	Annual	Summer
G/R	$ 73	$219	$279	$ 60

C/12A	$ 67	$201	$256	$ 55
16CR	$ 43	$129	$164	$ 35
M	$ 14	$ 42	$ 53	$ 11
Reserved	$160	$480	$640	$160
G Fac/Staff Carpool	$ 55	$165	$210	$ 45
C Student Carpool	$ 50	$150	$191	$ 41
Vanpool	$ 40	$120	$153	$ 33

In addition to selling on-campus parking, the employer rents off-campus parking space for use by its employees. For the period from September 2002 to June 2003, the employer paid the City of Bellingham $8,100 to rent 300 parking spaces at a city facility located approximately four miles from the employer's campus. The employer made those 300 spaces available without cost to its employees, but the employees paid fares to a local public transportation system to commute between that facility and the campus.

Off-campus parking in areas adjacent to the university campus is limited, and there is competition between residents, visitors, students, and university employees for that parking. To help mitigate the impact of the campus on surrounding neighborhoods, the employer and the City of Bellingham entered into an interlocal agreement that includes reference to a city ordinance establishing residential parking zones (RPZ's) where parking is restricted to residents and their visitors. The employer pays $25,000 per year to Bellingham to be applied toward to the cost of operating and administering the RPZ program.

Onset of this Controversy

During the parties' negotiations for their current collective bargaining agreement, the union demanded bargaining on the matter of parking for bargaining unit employees. The employer

maintained that the matter of employee parking is not a mandatory subject of bargaining, and declined to bargain the matter with the union.

The parties agreed to place a contingent re-opener in their current collective bargaining agreement, as follows:

> PSE has proposed certain terms and conditions for staff parking by bargaining unit employees. The employer maintains that parking is not a mandatory subject for collective bargaining by civil service employees. PSE is submitting that question to the Washington Personnel Resources Board. The parties agree that, in the event that parking is determined to be a mandatory subject for collective bargaining, after all avenues of appeal are exhausted (if desired by a party), this agreement will be reopened for the purpose of negotiating terms and conditions of staff parking by bargaining unit members.

The union then initiated the instant unfair labor practice proceeding, seeking an order compelling the employer to submit the matter of employee parking to collective bargaining.

POSITIONS OF THE PARTIES

According to the union, employee parking is a mandatory subject of bargaining under both Chapter 41.06 RCW and Chapter 41.56 RCW. The union maintains that, notwithstanding the employer's arguments to the contrary, the employer has discretionary authority to "establish and promulgate rules and regulations governing . . . vehicular traffic and parking upon the lands and facilities of the university. . . ." Based on that discretionary authority, the union contends the employer has failed and refused to bargain in good faith.

According to the employer, the union was seeking free or reduced cost parking and a preferential position in a process that has existed for many years. The employer maintains that it has statutory authority to unilaterally adopt regulations for its parking system. In support of its argument, the employer points out that it is required by the state legislature to provide a parking system and

that it must comply with city requirements regarding parking and transportation. The employer points out that the legislature does not appropriate any funds for transportation operations and maintenance, but that the legislature has authorized the employer to operate a system, levy user fees, impose fines for failure to comply with rules, and has granted the employer authority to incur bond debt and construct parking structures. The employer further contends that it complies with requirements enacted by the City of Bellingham under the state Growth Management Act. According to the employer, the parking governance system (which calls for participation by students, faculty, and staff) determines how user permits are assigned, and the effects of seniority. It is the employer's position that to give preference to the union in this matter and ignore a long-established system inappropriately disregards past practice and is impractical under relevant laws and rules which require that the system be self-supporting.

DISCUSSION

The Standards to Be Applied

At the time this controversy arose, these parties bargained collectively pursuant to the State Civil Service Law, Chapter 41.06 RCW. Within that statute, RCW 41.06.150 included:

> RCW 41.06.150 RULES OF [the Washington Personnel Resources] BOARD - MANDATORY SUBJECTS - PERSONNEL ADMINISTRATION. The board shall adopt rules, consistent with the purposes and provisions of this chapter, as now or hereafter amended, and with the best standards of personnel administration, regarding the basis and procedures to be followed for:
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> . . . .
>
> (13) Agreements between agencies and certified exclusive bargaining representatives providing for grievance procedures and *collective negotiations on all personnel matters over which the appointing authority of the appropriate bargaining unit of such agency may lawfully exercise discretion*;

> (14) . . . PROVIDED, That nothing contained herein permits or grants to any employee the right to strike or refuse to perform his or her official duties; . . . .

(emphasis added). The enforcement of that duty to bargain was, and remains, through unfair labor practice proceedings under RCW 41.56.140 - .160.

Replicating the style used by the legislature (in which new material is underlined and deleted material is stricken over), the operative amendment by the PSRA was as follows:

> RCW 41.06.340 UNIT DETERMINATION, REPRESENTATION AND UNFAIR LABOR PRACTICE PROVISIONS APPLICABLE TO CHAPTER. (1) With respect to collective bargaining as authorized by RCW 41.80.001 through RCW 41.80.130, the public employment relations commission created by chapter 41.58 RCW shall have authority to adopt rules, on and after the effective date of this section, relating to determination of appropriate bargaining units within any agency. In making such determination the commission shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees. The public employment relations commission created in chapter 41.58 RCW shall adopt rules and make determinations relating to the certification and decertification of exclusive bargaining representatives.
>
> (2) Each and every provision of RCW 41.56.140 through 41.56.160 shall be applicable to this chapter as it relates to state civil service employees ((~~and the Washington Personnel Resources Board, or its designee, whose final decision shall be appealable to the Washington Personnel Resources Board, is granted all powers and authority granted . . . by RCW 41.56.140 through [.160]~~)).

Because the Public Employment Relations Commission already administered RCW 41.56.140 - .160, the deletion of the references to the Washington Personnel Resources Board marked the onset of Commission jurisdiction over unfair labor practice proceedings involving state civil service employees.

Long before the PSRA was passed, the Supreme Court of the State of Washington had interpreted RCW 41.06.340 as creating a bridge or link from the State Civil Service Law to the duty to bargain as administered by the Commission under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW. *Ortblad v. State*, 85 Wn.2d 109 (1975). Separately, our Supreme Court has endorsed interpretation of Chapter 41.56 RCW in a manner consistent with precedent developed by the National Labor Relations Board (NLRB) and the federal courts interpreting the similar provisions of the National Labor Relations Act (NLRA). *Nucleonics Alliance v. WPPSS*, 101 Wn.2d 24 (1981); *IAFF v. PERC (City of Richland)*, 113 Wn.2d 197 (1989). Hence, decisions issued by the Commission under Chapter 41.56 RCW are relevant precedents in this case.

Triage of Subjects for Bargaining-

Federal and state precedents segregate the potential subjects of bargaining between an employer and union into three categories. *Federal Way School District*, Decision 232-A (EDUC), 1977) (citing *NLRB v. Wooster Division of Borg Warner*, 356 U.S. 342 (1958)):

- Mandatory subjects of bargaining are matters about which the parties are obligated to bargain, upon request of the other party to the relationship. Where bargaining on a mandatory subject is requested, the parties must bargain in good faith to either an agreement or an impasse. *Lewis County*, Decision 3418 (PECB, 1990); *Pierce County*, Decision 1710 (PECB, 1983).

- Permissive subjects may be bargained, but parties are not required by law to do so. These are often matters of management or union prerogatives which may or may not directly affect employee wages, hours or working conditions. Management decisions regarding core entrepreneurial control are not mandatory subjects of bargaining, and the employer is free to do as it pleases on such subjects. *Spokane County Fire District 9*, Decision 3021

(PECB, 1988); *King County Fire District 16*, Decision 3714 (PECB, 1991). There is a notable distinction between a "decision" that has personnel implications and its "effects": Even where a managerial decision is a permissive subject of bargaining, the personnel effects of implementing that decision are a mandatory subject of bargaining. *City of Richland*, Decision 2448-B (PECB, 1987).

- Illegal subjects are matters which parties must refrain from bargaining, because their agreement on the matter would produce an unlawful outcome.

While the "grievance procedures and collective negotiations on all personnel matters over which the appointing authority of the appropriate bargaining unit of such agency may lawfully exercise discretion" scope of bargaining under RCW 41.06.150(13) was seemingly narrower than the "grievance procedures and . . . personnel matters, including wages, hours and working conditions" scope of bargaining set forth in RCW 41.56.030(4), the Supreme Court's *Ortblad* decision found some basis for unions representing state employees to at least influence "wages" decisions.

This is not the first case in which the duty to bargain about employee parking has come before the Commission. Indeed, it is well-settled that the matter of employee parking is a mandatory subject of bargaining under Chapter 41.56 RCW. The detailed analysis of the issue in *Port of Pasco*, Decision 4021 (PECB, 1992), included:

> [T]he Examiner finds ample case precedent from the NLRB and other state labor relations boards holding that parking practices, as opposed to transportation costs to and from work, are a mandatory subject of bargaining.

The National Labor Relations Board continues to hold that parking is a mandatory subject of bargaining under the NLRA. *United Parcel Service*, 336 NLRB No. 119, (2001).

Exceptions to the Bargaining Obligation-

Over the years, a number of exceptions from the duty to bargain have emerged in case precedents:

- Business Necessity is a defense where a party to a collective bargaining relationship is faced with a compelling legal or practical need to maintain the status quo or to make a change affecting a mandatory subject of bargaining. It may be relieved of its bargaining obligation, to the extent necessary to deal with the compelling circumstance. Even then, a business necessity which justifies a particular decision or action will not relieve that party of its obligation to bargain the effects of the decision on the affected employees. *Cowlitz County*, Decision 7007-A (PECB, 2000); *North Franklin School District*, Decision 3980-A (PECB, 1993).

- Legal Necessity is a defense raised under contract law to invalidate a contract that is contrary to the terms and policy of a statute, making it unenforceable. *Bates Technical College*, Decision 5140-A (PECB, 1996). However, the Supreme Court of the State of Washington has ruled that Chapter 41.56 RCW prevails in the event of a conflict with other state statutes. *Rose v. Erickson*, 106 Wn.2d 420 (1986). More recently, the Supreme Court, in *City of Pasco v. Public Employment Relations Commission*, 119 Wn.2d 504 (1992), restated the dominance of Chapter 41.56 RCW, if it conflicts with other laws, and reiterated the fact that it is to be liberally construed.

The Burden of Proof-

As the complainant challenging the employer's bargaining stance in this unfair labor practice proceeding, the union bears the burden of proof. WAC 391-45-270. The employer bears the burden of proof, however, as to affirmative defenses including business or legal necessity. *Cowlitz County*, Decision 7007-A; *Lake Washington Technical College*, Decision 4721-A (PECB, 1995).

Derivative "Interference"-

Consistent with the practices and precedents of the NLRB under the counterpart federal statute, the Commission has generally found that any refusal to bargain in violation of RCW

41.56.140(4) inherently interferes with the rights of bargaining unit employees, so that a "derivative" violation is found under RCW 41.56.140(1), whenever a violation is found under another of the subsections of RCW 41.56.140. *Washington* State *Patrol*, Decision 4757-A (PECB, 1995); *Battle Ground School District*, Decision 2449-A (PECB, 1986).

Application of Standards

The Examiner understands the employer's position to be based on two perceptions: first, a belief that employee parking is not a mandatory subject of bargaining; and second, a belief that (although it does not use the terms found in the Commission precedents described above) it is precluded from engaging in collective bargaining with the union out of business or legal necessity, because it feels compelled to meet what it views as overriding legal and contractual restraints.

Application of Title 28B RCW -

The employer looks to Title 28B RCW for much of the authority supporting its position, pointing in particular to:

> RCW 28B.35.120 TRUSTEES – GENERAL POWERS AND DUTIES OF BOARD. In addition to any other powers and duties prescribed by law, each board of trustees of the respective regional universities:
>
> (1) Shall have full control of the regional university and its property of various kinds, except as otherwise provided by law.
>
> . . . .
>
> (5) Except as otherwise provided by law, may establish and erect such new facilities as determined by the board to be necessary for the regional university.
>
> . . . .

(8) May establish, lease, operate, equip and maintain self-supporting facilities in the manner provided in RCW 28B.10.300 through 28B.10.330, as now or hereafter amended.

(9) Except as otherwise provided by law, to enter into such contracts as the trustees deem essential to regional university purposes.

. . . .

(12) May promulgate such rules and regulations, and perform all other acts not forbidden by law, as the board of trustees may in its discretion deem necessary or appropriate to the administration of the regional university.

. . . .

RCW 28B.10.560 POLICE FORCES FOR UNIVERSITIES . . . — ESTABLISHMENT OF TRAFFIC REGULATIONS – ADJUDICATION OF PARKING INFRACTIONS – APPEAL. (1) The . . . boards of trustees of the regional universities . . . , acting independently and each on behalf of its own institution, may each:

(a) Establish and promulgate rules and regulations governing pedestrian traffic and vehicular traffic and parking upon lands and facilities of the university or college;

(b) Adjudicate matters involving parking infractions internally; and

(c) Collect and retain any penalties imposed.

(2) If the rules or regulations promulgated under subsection (1) of this section provide for internal adjudication of parking infractions, a person charged with a parking infraction who deems himself or herself aggrieved by the final decision in an internal adjudication may, within ten days after written notice of the final decision, appeal by filing a

> written notice thereof with the college or university police force. Documents relating to the appeal shall immediately be forwarded to the district court in the county in which the offense was committed, which court shall have jurisdiction over such offense and such appeal shall be heard de novo.

The employer correctly asserts that Title 28B RCW gives it the authority to establish parking regulations and fees, but the analysis cannot end there. It is because parking is a matter over which the employer can lawfully exercise authority, that parking can be a mandatory subject of bargaining under RCW 41.06.150(13).[4] The statutes relied upon by the employer do not compel unilateral action by the employer, or otherwise expressly invalidate its collective bargaining obligations under RCW 41.06.150(13). Moreover, the inclusion of the phrase "unless otherwise required by law" in the cited statutes requires a harmonization between the authority conferred upon the employer and the duty to bargain imposed upon the employer.

Application of Chapter 516-12 WAC -

The employer looks to Title 516 WAC in support of its claim of a right to unilaterally establish parking regulations. That rule states, in relevant part:

> WAC 516-12-420 AUTHORITY. The board of trustees of Western Washington University is granted authority under Title 28B of the Revised Code of Washington to establish regulations to govern pedestrian and vehicular traffic and parking on the campus of the university. The administration of the parking regulations and moving violations is the responsibility of the public safety director.
>
> . . . .
>
> (3) The public safety director is authorized to:

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4 Conversely, if the employer did not have the authority to regulate parking, the analysis could end here.

> (a) Issue and/or sell parking permits to employees, students, guests, visitors and others when necessary, and to provide special parking for physically disabled.

The employer's problem here is that the cited rule, along with the rest of Title 516 WAC, was adopted by the employer itself. As a general proposition, an employer cannot override its statutory obligations by adopting a Washington Administrative Code rule. Moreover, nothing in the cited rule compels unilateral implementation of any specific parking regulation. The most that can be said is that the board of trustees has purported to delegate its statutory authority to a particular official, who was and remains an agent of the employer. The employer's approach would not harmonize the employer's authority concerning parking with the employer's collective bargaining obligation concerning matters over which it exercises authority, and is rejected.

Effect of Clean Air Act and Subsequent Legislation-

The "Clean Air Act" first passed by the United States Congress in 1963 has been amended on numerous subsequent occasions. The states are called upon to enact legislation to improve air quality standards, and the State of Washington has adopted Chapter 70.94 RCW in connection with the federal legislation. In 1991, provisions concerning "commute trip reduction" were incorporated into the Washington Clean Air Act, as RCW 70.94.521 - .551, with a purpose of reducing air pollution, traffic congestion, and energy consumption through employer-based programs that decrease the number of commute trips by single-occupant vehicles. The commute trip reduction legislation is applicable to this employer, along with all other public and private employers that have 100 or more employees at a single worksite. Employers who implement commute trip reduction programs are expected to undertake good faith efforts by a number of ways to accomplish the intent of the law.

This employer argues that the clean air laws require the implementation of programs, and so remove such programs from the scope of collective bargaining. Aside from making the assertion, however, the employer offered no evidence to support its viewpoint. While acknowledging that there are societal interests in compliance with the clean air legislation and its commute trip reduction component, the Examiner rejects the employer's defense. Nothing is cited or found in

Chapter 70.94 RCW which explicitly preempts the collective bargaining obligation imposed by RCW 41.06.150(13). The overall subject of employee parking has a myriad of facets which could be explored through the collective bargaining process, and nothing in Chapter 41.06 RCW or Chapter 41.56 RCW is expressly contrary to the spirit or letter of the other laws.

Application of the Institutional Master Plan-

The employer has adopted an institutional master plan (IMP) for future development of its facilities. The IMP addresses parking, transportation and circulation.[5] According to the employer, the transportation portion of the IMP led to the creation of its interlocal agreement with the City of Bellingham. Even accepting the latter assertion, however, there is no evidence that the employer's implementation of its IMP deprived it of the authority to bargain with the union on a matter that was otherwise within its control. The employer's argument is unsupported.

Application of the Interlocal Agreement-

The employer also looks to the interlocal agreement it entered into with the City of Bellingham, which details circumstances by which the employer uses revenue from campus parking fees to pay the City of Bellingham the $25,000 amount for enforcement and related expenses associated with the residential parking zones. The interlocal agreement states in relevant part:

> WHEREAS, reduction of impact on the City's residential neighborhoods from non-resident University students, faculty, and visitors parking is one of the goals of the University's Transportation Management Program, which anticipated the development of residential parking zones (RPZs); . .

5 The employer's director of public safety testified that a "Growth Management Act" required the employer to develop such a plan, but no specific statutory citation or other evidence was offered to explain the linkage.

Again, however, the employer relies on a document of its own creation. The cited agreement is no more than a voluntary partnership compact negotiated between neighbors and designed to address mutual interests. Collective bargaining on matters over which the employer can exercise authority can lead to voluntary agreements negotiated between parties that have mutual interests. The employer's assertion that its Interlocal Agreement with Bellingham creates a legal exception to its statutory bargaining obligation is rejected.

Transportation Management Program-

The employer points to a "Transportation Management Program" (TMP) that it allegedly implemented to effectuate compliance with its obligations under state and federal law, including the Growth Management Act, but it provided little evidence regarding the TMP. Like the rule in Title 516 WAC and the interlocal agreement with the neighboring jurisdiction, the TMP is merely a product of the employer's own creation. There is no basis to conclude that it should (or could) excuse the employer from harmonizing its TMP with its statutory collective bargaining obligations under RCW 41.06.150(13).

Conclusions

This employer that has a great deal of discretionary authority in regard to employee parking has clearly failed and refused to bargain with the exclusive bargaining representative of its civil service employees. The union has met it burden to prove that the employer unlawfully failed and/or refused to engage in good faith collective bargaining regarding the matter of employee parking.

The employer has failed to establish either a "business necessity" or "legal necessity" defense to avoid its statutory collective bargaining obligations. The employer's stated concern that bargaining with this bargaining unit regarding employee parking could lead to different standards for different categories of employees reflects the realities of the collective bargaining process, in which the duty to bargain exists separately in each appropriate bargaining unit where employees have chosen to designate an exclusive bargaining representative. The possibility of this employer having to deal with complex issues and competing interests is irrelevant, however, where its

obligations flow from a state statute. Any facts or arguments presented at the hearing that are not cited within this decision are immaterial or not persuasive.

FINDINGS OF FACT

1. Western Washington University is an institution of higher education of the state of Washington, operated under Title 28B RCW. It is administered in accordance with Chapter 28B.10 RCW, and is an employer of classified employees covered by the State Civil Service Law, Chapter 41.06 RCW.

2. Public School Employees of Washington, a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of a bargaining unit of supervisory classified employees who provide a variety of services for Western Washington University.

3. During the course of negotiations that resulted in the parties' current collective bargaining agreement, the union sought to bargain regarding employee parking. The employer declined to engage in collective bargaining regarding the matter of employee parking, and asserted that it was not a mandatory subject of bargaining.

4. The employer and the union are parties to a collective bargaining agreement for the period from April 16, 2002, to April 16, 2005. As resolution to the dispute described in paragraph 3 of these findings of fact, the parties agreed to include a contingent provision in their collective bargaining agreement, allowing the union to reopen negotiations if it was subsequently determined that employee parking is a mandatory subject of bargaining.

5. In connection with the dispute described in paragraph 3 of these findings of fact, and as contemplated in paragraph 4 of these findings of fact, the union timely filed the complaint to initiate this unfair labor practice proceeding.

6. Under statutes conferring authority upon this employer and similar institutions of higher education, parking for employees in the bargaining unit represented by the union is a matter over which the employer may lawfully exercise discretion.

7. The statutes cited by the employer in this proceeding neither expressly provide for unilateral action by the employer in regard to employee parking nor expressly preempt the duty to bargain concerning employee parking.

8. The Washington Administrative Code rules, interlocal agreement and various plans cited by the employer in this proceeding are of the employer's own creation.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.06.340 and RCW 41.56.140 - .160, and under Chapter 391-45 WAC.

2. By failing and refusing to engage in collective bargaining with Public School Employees of Washington concerning parking for employees in the bargaining unit represented by the union, Western Washington University committed unfair labor practices in violation of RCW 41.56.140(4) and (1).

ORDER

Western Washington University, 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 with Public School Employees, as the exclusive bargaining representative of the appropriate bargaining unit described in paragraph 2 of the foregoing findings of fact.

   b. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights secured by 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. Upon request, bargain collectively in good faith with Public School Employees of Washington regarding the matter of employee parking.

b. Post, in conscious place on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered with other material.

c. Read the notice attached to this order into the record at a regular public meeting of the Board of Trustees of Western Washington University, 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 above-named 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 above-named complainant with a signed copy of the notice required by the preceding paragraph.

e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

ISSUED at Olympia, Washington, on the 27th day of October, 2003.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

[SIGNED]

FREDERICK J. ROSENBERRY, Examiner

This order will be the final order of the agency unless a notice of appeal is filedwith the Commission under WAC 391-45-350.

APPENDIX

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL, upon request, bargain collectively in good faith with Public School Employees of Washington regarding the matter of employee parking.

WE WILL read this notice into the record at the next public meeting of the Board of Trustees of Western Washington University, and append a copy thereof to the official minutes of such meeting.

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.

DATED: _____

WESTERN WASHINGTON UNIVERSITY

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300.