*State – Washington State Patrol*, Decision 11283 (PECB, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

| | |
|---|---|
| WASHINGTON STATE PATROL TROOPERS ASSOCIATION,<br><br>Complainant,<br><br>vs.<br><br>STATE - WASHINGTON STATE PATROL,<br><br>Respondent. | CASES 23332-U-10-5943 and 23364-U-10-5949<br><br>DECISIONS 11283 – PECB and 11284 – PECB<br><br>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER |

Vick, Julius, McClure, P.S. by *Hillary McClure,* Attorney at Law, for the union.

Attorney General Robert M. McKenna, by *Morgan B. Damerow,* Assistant Attorney General, and *Alicia O. Young,* Assistant Attorney General, for the employer.

On July 2, 2010, the Washington State Patrol Troopers Association (union) filed an unfair labor practice complaint against the Washington State Patrol (employer) charging a breach of its good faith bargaining obligations in negotiations for a successor collective bargaining agreement and refusal to provide relevant information requested by the union concerning the negotiations.

On July 14, 2010, the union filed a second unfair labor practice complaint against the employer charging a breach of its good faith bargaining obligations in unilaterally changing its practice regarding firearms and limited duty assignments, after the union made a proposal addressing the topic during negotiations for a successor agreement.

On August 10, 2010, the union filed a motion to consolidate the two complaints for hearing. The employer did not object to the motion and the complaints were consolidated. Examiner Claire Nickleberry conducted a hearing on March 30 and 31, and May 26, 2011. The parties filed post-hearing briefs which were considered.

ISSUES

1. Did the employer refuse to bargain by breach of its good faith bargaining obligations in negotiations for a successor collective bargaining agreement, and by its refusal to provide relevant information requested by the union concerning the negotiations?

2. Did the employer refuse to bargain by breach of its good faith bargaining obligations in unilaterally changing its practice regarding firearms and limited duty assignments, after the union made a proposal addressing the topic during negotiations for a successor agreement?

The Examiner finds that the employer breached its good faith bargaining obligations in negotiations for a successor agreement by creating delays in providing proposals and engaging in an overall course of conduct designed to frustrate the collective bargaining process. The employer refused to provide relevant information requested by the union concerning the negotiations. The union failed to meet its burden of proof that the employer breached its good faith bargaining obligations by unilaterally changing its practice regarding firearms and limited duty assignments.

ISSUE 1: Did the employer refuse to bargain by breach of its good faith bargaining obligations in negotiations for a successor collective bargaining agreement, and by its refusal to provide relevant information requested by the union concerning the negotiations?

APPLICABLE LEGAL STANDARD

RCW 41.56.030(4) defines collective bargaining as the "mutual obligation 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, which may be peculiar to an appropriate bargaining unit of such public employer, except that by

such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter."

In *City of Redmond,* Decision 8863-A (PECB, 2006), the Commission states:

> The "personnel matters, including wages, hours, and working conditions" of bargaining unit employees are characterized as the mandatory subjects of bargaining under *City of Richland*, Decision 2448-B (PECB, 1987), *remanded*, 113 Wn.2d 197 (1989), and *Federal Way School District*, Decision 232-A (EDUC, 1977), citing *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958). An employer or union that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice, as follows:
>
> RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED. It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter.
>
> . . . .
>
> (4) To refuse to engage in collective bargaining.

The Commission further states in *City of Redmond*:

> In determining whether an unfair labor practice has occurred, the totality of circumstances must be analyzed. *City of Mercer Island*, Decision 1457 (PECB, 1982); *Walla Walla County*, Decision 2932-A (PECB, 1988) The evidence must support the conclusion that the respondent's total bargaining conduct demonstrates a failure or refusal to bargain in good faith or an intention to frustrate or avoid an agreement. *City of Clarkston*, Decision 3246 (PECB, 1989)

To sustain a charge of a breach of good faith bargaining obligations, a complainant union must establish that:

- It is the exclusive bargaining representative of the employees involved.
- It requested negotiations on a collective bargaining agreement or some issue that was a mandatory subject of bargaining under the applicable law.
- The employer engaged in specific conduct and/or a course of conduct designed to frustrate the collective bargaining process.

RCW 41.56.473 outlines bargaining subjects for the employer and provides that "[t]he governor shall submit a request for funds necessary to implement the wage and wage-related matters in the collective bargaining agreement or for legislation necessary to implement the agreement." RCW 41.56.473(5)(a) requires that the request for funds be "submitted to the director of financial management by October 1st before the legislative session at which the requests are to be considered."

In determining a failure to provide information charge, an exclusive bargaining representative must establish that:

- It requested existing information relevant to the performance of its functions in collective bargaining or contract administration.
- The employer failed or refused to provide the requested information.

The Commission stated in *City of Redmond:*

> Inherent to the good faith obligation is the obligation of employers and unions to provide each other, upon request, with information needed by the requesting party for collective bargaining negotiations or contract administration. *City of Bellevue,* Decision 3085-A (PECB, 1989), *aff'd,* 119 Wn. 2d 373 (1992)

ANALYSIS

The union is the bargaining representative for a bargaining unit of Washington State Patrol troopers and sergeants. As officers of the Washington State Patrol, under RCW 41.56.473 these employees are subject to the provisions of Chapter 41.56 RCW. Pursuant to RCW 41.56.473 (2), the Washington State Patrol is represented by the governor for purposes of collective bargaining.

In 2005 amendments were made to Chapter 41.56 RCW regarding the collective bargaining process for officers of the Washington State Patrol. The union had previously bargained directly with the State Patrol but the amendments created a bargaining process directly with the governor's office. The governor's office designated the Labor Relations Office (LRO) of the Office of Financial Management (OFM) to conduct bargaining on the employer's behalf. Deadlines were established for bargaining in RCW 41.56.475(1). "Within ten working days after the first Monday in September of every odd-numbered year," the employer and union are

required to attempt to agree on an interest arbitration panel and establish dates for an interest arbitration hearing "between August 1st and September 15th of the following even-numbered year." In September 2009, consistent with RCW 41.56.475(1), the employer and union selected an arbitrator to conduct an interest arbitration hearing and set the hearing date to be held the week of August 16, 2010, if the parties were not able to reach agreement on a successor collective bargaining agreement.

The employer and union are parties to a collective bargaining agreement (CBA) that was in effect from July 1, 2009, through June 30, 2011. In negotiations for a successor CBA, Jeffery Julius represented the union and John Dryer from LRO represented the employer. The first bargaining session was conducted on March 9, 2010. The parties had agreed to approach the meeting by discussing interests and attempting to find common ground to start the bargaining discussions. Some topics were discussed but no proposals were exchanged. Trooper Tommie Pillow, union president, asked Dryer if the LRO had the authority to make agreements and to enter into tentative agreements. Dryer assured him that he did have that authority. The union inquired about an information request that had previously been given to the employer regarding costing information. Dryer indicated that it was a lot of information and that the employer's response was not yet completed. The union and employer also established additional meeting dates.

The next negotiation meeting was held on March 23, 2010. Further discussion was held about the union's interests related to residency, and layoff and recall provisions. No agreements were reached at that meeting and the parties agreed they should look at specific proposals. The union indicated that they were ready with their opening proposal and Dryer asked Julius to send it to him. The union sent its opening proposal to Dryer on March 24, 2010. The union requested that the employer's opening proposal be provided prior to the next meeting so it could be reviewed in preparation for the next meeting. Dryer said he would try but could not promise it would be ready.

The parties met again on April 19, 2010, and further discussed the union's proposal. The employer did not provide its opening proposal until a subsequent meeting held on May 12, 2010.

The proposal was incomplete and had "placeholders" for Article 11 - Transfers, Article 13 - Holidays, Article 26 - Off Duty Employment, Article 27 - Memoranda of Understanding and Settlement Agreements Incorporated by Reference Into This Agreement, Article 28 - Compensation, and a new article titled - Reduction in Force/Layoff. The union made numerous requests for the employer to provide economic proposals and was told by Dryer that he would get it to them as soon as he could. Eventually, Dryer told the union that the employer's economic proposal would be available a week or so after the mid-June 2010 revenue forecast. As of the filing date of the unfair labor practice complaint on July 2, 2010, the union had not received any economic proposal from the employer. The employer's economic proposal was provided to the union on July 8, 2010. The employer stated that this was consistent with the negotiations for the previous CBA's time frame for producing the economic proposal; however, the evidence indicates that the employer's economic proposal for the 2009 – 2011 CBA was provided to the union on June 16, 2008.

The parties met ten times from March 9 to July 13; the last five meetings were in mediation. The only agreements that were reached in this time frame was a tentative agreement (T/A) on the articles that would not be open and would carry over to the new CBA and an agreement that was made during the last contract negotiations that didn't get added because the CBA was eventually rolled over. The overall conduct of bargaining was not conducive to the completion of a new CBA. The employer discussed topics with the union but was not prepared or willing to make any agreements. Dryer continued to have meetings but did not appear to have the authority or ability to make agreements until after the employer economic proposal was prepared.

When the employer provided its economic proposal on July 8 it contained a wage freeze, elimination of step increases on the wage scale and other economic reductions. The union caucused and then presented a "what-if" package proposal to the employer. The employer bargaining committee indicated that they would have to go back and talk to other people about the proposal. The parties met in mediation one more time on July 13 and the employer responded that the union's proposal was not acceptable and asked what it would take for the union to accept the employer's proposal. Julius stated that the union was not willing to negotiate against itself and asked Dryer to provide another proposal. Dryer responded that he did not have authority to provide another proposal. The union caucused and then told the employer that it did

not see a reason to go any further. That was the last date the parties had scheduled for negotiations since it was five weeks prior to the date for the interest arbitration hearing.

Chapter 41.56 RCW has very specific timelines for the parties to participate in interest arbitration if they reach impasse. A completed bargaining agreement must be submitted, pursuant to RCW 41.56.473(5)(a), to the OFM by October 1 for consideration of the funding to be submitted in the Governor's budget to the legislature. It is unrealistic to expect the parties to have time to complete bargaining prior to the interest arbitration hearing when the employer's economic proposal is not provided until July, five weeks prior to the hearing date. Such a limited time frame does not provide a reasonable opportunity to complete bargaining, as the parties need time to prepare for the interest arbitration hearing.

Duty to Provide Information

On May 24, 2010, Dryer provided a copy of the 2010 Compensation Survey that the employer had engaged the Segal Company to develop. On May 26 and 27, Julius sent e-mails requesting information regarding the development and conclusions in the compensation survey. He requested that the employer have a representative from Segal available to attend a bargaining session to answer the union's questions about the survey. The employer refused to fly someone in from Segal to meet with the parties. Dryer testified that he suggested that the parties speak with Karen Durant, senior compensation analyst. Julius testified that the conversation with Durant was to be about insurance costs and that Dryer never suggested he talk with Durant about the Segal survey. A phone conversation did take place between Julius, Dryer, and Durant but the compensation survey was not discussed. The evidence indicates that the conversation was to be about insurance costs not the compensation survey.

On June 9, 2010, the union provided its comparables and labor market comparisons. The employer indicated it was not prepared to disclose its comparables or economic proposal and would not be until after a future revenue forecast. On June 10, 2010, Julius sent an e-mail summarizing the previous day's meeting and stating that if the employer would not make someone from Segal available to answer questions that the union would object to the survey being used as evidence at any future interest arbitration proceeding.

On June 11, 2010, Dryer sent Julius a status report of the information requests made by the union. On June 14, 2010, Julius replied to Dryer with the union's view of the status of the information requests and some corrections.

On June 23, 2010, Julius sent an e-mail to Dryer acknowledging receipt of some of the materials that the union had requested regarding the compensation survey and requesting additional information that had not been provided. Dryer testified that he did not provide the requested information because it was not in a written document but resulted from a verbal discussion. That does not relieve the employer's responsibility to provide a recap or summary of the verbal discussions that took place, which would explain the methodology used by Segal that the union was inquiring about.

The Commission in *Kitsap County*, Decision 9326-B (PECB, 2010) stated:

> The duty to provide information does not compel a party to create records that do not exist; however, a party does have an obligation to make a reasonable good faith effort to locate the information requested. *Seattle School District*, Decision 9628-A (PECB, 2008)

Dryer did not offer to have a telephone conference with a representative of the Segal Company to provide the information the union was requesting. The employer did not make a good faith effort to provide the information requested by the union, which was vital to understanding the information provided by the Segal survey.

The employer further impeded the collective bargaining process by withholding its comparable compensation information. The employer refused to address comparable jurisdictions with the union which further frustrated the collective bargaining process. The union did not know what information the employer was using as the basis for its economic proposals and/or interest arbitration.

The Commission has affirmed refusal to provide information violations where the employer has withheld information from the union regarding its choice of comparables to use in an interest

arbitration hearing. In *City of Bellevue*, Decision 3085-A (PECB, 1989) *aff'd*, 119 Wn. 2d 373 (1992), the Commission states:

> The duty to bargain in good faith continues between a particular employer and union so long as the union remains the exclusive bargaining representative of the employees. NLRB v. Acme Industrial Co., 385 U.S. 432 (1967) We view the interest arbitration process as concurrent with, or even a continuation of, the collective bargaining process created within the same chapter of the Revised Code of Washington. The duty to bargain in good faith does not end at the point where contract issues are certified for interest arbitration, nor does it end while interest arbitration proceedings are taking place. . . .

At the time of the filing of the complaint on July 2, 2010, the employer had not provided all of the information requested by the union for the purposes of completing the collective bargaining process.

Employer Failure to T/A Article

On May 24, 2010, the parties reached agreement on transfer language in Article 21. The union's charge is that the employer refused to T/A that section of Article 21 in the CBA. Dryer testified that he did not want to T/A the section because it was possible that other areas of the CBA under consideration, such as layoff and recall, might impact the agreement they had reached. This is not an unusual position for a party to take as the duty to bargain in RCW 41.56.030(4) states: "neither party shall be compelled to agree to a proposal. . . ." It is not surprising though with the lack of progress being made in the bargaining process that the union was trying to encourage something to be finalized.

Proposed Change to Tuition Reimbursement Outside of Bargaining Process

The employer uses a concurrence process when reviewing and recommending changes to the agency regulation manual. A concurrence document is distributed internally and also sent to the unions. On May 24, 2010, the union received a concurrence document from the employer seeking comment on some policy changes being proposed regarding continuing education and tuition reimbursement. The concurrence document was distributed during the bargaining process but was not distributed through the LRO as the employer's bargaining representative. On May 26, 2010, Julius sent an e-mail to Dryer regarding the concurrence asking for clarification of

intent of some of the proposed changes. Both parties had proposals on the table regarding tuition reimbursement. The union raised a concern about a change to this contractual issue being distributed away from the bargaining table while bargaining was taking place. Dryer testified that he was not aware of the concurrence document.

On June 7, 2010, Julius sent an e-mail to Dryer with a second request for the information regarding the concurrence previously requested on May 26, 2010. On June 8, 2010, Dryer sent an e-mail to Julius asking to discuss the concurrence issues and advising him that the information the union requested had not yet been made available by the employer. According to testimony from Dory Nicpon, the employer's Labor and Policy Advisor, on May 25, 2010, she received a demand to bargain from Trooper Tommie Pillow, union president. She told Pillow that she would make the LRO aware that it should expect a demand to bargain from the union. On June 1, 2010, she instructed her staff to pull the proposed change until bargaining could be completed. While Nicpon took the appropriate action to put the change on hold until the issue could be resolved in bargaining, this did add to the union's frustration and raises questions about the LRO's authority as the bargaining representative for the employer when Dryer was not even aware of the concurrence.

Changes to Job Performance Appraisal

One of the charges in this case is that the employer made changes to the Job Performance Appraisal (JPA) in District 1[1] (D1) while the parties were in negotiations over the CBA which includes an article for the JPA. Neither party made a proposal to change the JPA language in the CBA. Julius sent an e-mail to Dryer inquiring about changes being made in D1 to the JPA. The issue is that the union believes that changes were being made to Section 2 of the JPA in D1. Captain Jeff DeVere from D1 testified that changes were made to the JPA in the late 1990's[2] and the biggest change was the addition of Section 2. The purpose of Section 2 of the JPA states:

> Section 2 ties directly to a key [employer] strategic objective—working toward local public safety goals—and has been formatted to guide, structure, and

---

1 District 1 is in the Tacoma area.

2 The copy of the JPA entered into evidence has a revision date of 10/07.

> appraise officers' efforts toward local public safety goals. This section also allows for appraisal of specialty duties as they support APA/division goals, objectives, and action plans.

Section 2 goes on to outline guidelines and documentation of the individual's efforts to achieve the established goals.

DeVere testified that when he became the commander of D1 in November 2009, he reviewed the JPAs in the district and determined: "We were not following our job performance appraisal process as it was agreed upon." He reviewed the JPA manual and determined that the sergeants were not consistently completing the JPAs. DeVere testified that he reviewed the CBA, and consulted with the lieutenants in D1 and the commanders in D3 and D8[3]. Captain Shawn Berry, commander of D3, provided DeVere with a template that his district uses for the JPA. Berry and Captain Jeff Otis, commander of D4, both testified to the process that is used in the two districts. That process is consistent with the process implemented by DeVere.

On June 30, 2010, Julius sent an e-mail to Dryer asking about an "announcement" of changes to the JPA, and the JPA process being implemented in D1. Julius raised the issue that the JPA is a mandatory subject of bargaining and potentially a "late hit" in bargaining. He also raised the concern that there was a joint committee working on the JPA process and asked if this was an attempt to bypass the committee's work. Dryer requested a response from then human resources division commander, Captain Marc Lamoreaux. Lamoreaux replied on July 2, 2010, that D1 was not implementing a new JPA process but "providing a standardization process to Section 2. . . ." An e-mail was sent from Lieutenant Julie Johnson to Lamoreaux on June 30, 2010, explaining that D1 leadership had adopted the template used by D3 and D4 at its May 2010 leadership meeting. The supervisors in D1 were requested to discuss the new template with the troopers so there would not be "any surprises." This response is consistent with the testimony of all three captains that discussed the template and process they were using for the JPA's section 2. It does not appear that the attempt at consistency was intended to change the JPA process or bypass the collective bargaining process.

---

[3] One of DeVere's lieutenants was from D8 so he reviewed information from D8.

CONCLUSION

The employer breached its good faith bargaining obligations by not providing its economic proposal until five weeks prior to a scheduled interest arbitration hearing and by refusing to make agreements on proposals until its economic proposal was complete which prohibited the parties from completing the collective bargaining process. The employer did not provide information regarding the Segal compensation survey requested by the union and refused to discuss or provide comparable information requested in preparation for bargaining and the interest arbitration hearing.

The employer did not breach its good faith bargaining obligations by refusing to T/A a section of an article in the CBA regarding transfers, by distributing a concurrence document regarding continuing education and tuition reimbursement, or by standardizing the JPA process for D1.

ISSUE 2: Did the employer refuse to bargain by breach of its good faith bargaining obligations in unilaterally changing its practice regarding firearms and limited duty assignments, after the union made a proposal addressing the topic during negotiations for a successor agreement?

APPLICABLE LEGAL STANDARD

As stated in Issue 1, an unfair labor practice violation can be found if an employer or union fails to bargain regarding wages, hours and working conditions identified as mandatory subjects of bargaining. *City of Redmond.* An employer must fulfill its bargaining obligations before making a unilateral change in a mandatory subject of bargaining.

In *King County,* Decision 10547-A (PECB, 2010), the Commission stated:

> As a general rule, an employer has an obligation to refrain from unilaterally changing terms or conditions of employment unless it: (1) gives notice to the union; (2) provides an opportunity for bargaining prior to making a final decision; (3) bargains in good faith, upon request; and (4) bargains to agreement or impasse concerning any mandatory subjects of bargaining. *Skagit County,* Decision 8746-A (PECB, 2006).

> For employees like these who are eligible for interest arbitration, an employer may not unilaterally implement its desired change after bargaining to a lawful impasse, but rather must obtain an award through interest arbitration. See *Snohomish County*, Decision 9770-A (PECB, 2008).

WAC 391-45-270(1)(a) states: "The complainant shall be responsible for the presentation of its case, and shall have the burden of proof."

ANALYSIS

On May 24, 2010, the union made an information request regarding the employer's policy for the right of employees on limited duty assignment to carry and utilize their badges and firearms. On June 16, 2010, Julius sent another e-mail to Dryer inquiring about the status of the information request made on May 24, 2010, regarding the limited duty assignment standards.

The employer's Supervisor and Employee Manual has a regulation in Chapter 11, Section 10.(VI) which addresses officers on long term limited duty assignment. It states in item 4:

> During the long term limited duty assignment, WSP [state patrol] officers shall not wear the uniform, carry their department weapon (they may carry their own personal weapon under the concealed weapon statutes, but not on duty in a department facility or a department vehicle); or perform any law enforcement related activities (i.e. motorist assist, traffic stops, etc.)

This practice has been in effect since at least November 2007 when this provision was last revised. Lamoreaux, then human resources division commander, further clarified that an officer on long term limited duty assignment is out of uniform, restricted from law enforcement activities, no longer has a take home vehicle, cannot drive a marked employer vehicle, and is not allowed to carry their department weapon.

On January 16, 2010, Trooper David Yergen was placed on a long term limited duty assignment in the Yakima District Office [D3]. He was instructed in the regulation mentioned above in an interoffice communication (IOC) from Ms. Pat Marshall of the human resources division. One of Yergen's responsibilities was to perform the duties of an armorer or firearms specialist.

Trooper Mark Soper is currently the Vice President of the union and works as a firearms instructor in the Homeland Security Division office in Seattle. In his duties as a union representative/officer he has had occasion to become familiar with the provisions of the long term limited duty regulation and serves on the union bargaining committee. He also has experience as an armorer in D2.

Soper has been acquainted with Yergen for over fifteen years. He was aware of the opening for an armorer in D3 which was assigned to Yergen. He raised a concern with the union that someone on long term limited duty was assigned to a position working with firearms. The union interprets the work of the armorer position as potentially "carrying" a firearm which is prohibited in the regulation for limited duty assignments. Yergen and others testified that the armorer position is responsible for the maintenance of firearms in the district. He and the other individuals don't consider what they do as "carrying" their firearm. They only do some repairs and testing to insure that the firearms are functioning in good order. Yergen testified that while he held that position[4] it was a small part of his duties. He had 12 areas of responsibility listed on his IOC. While holding this position, he only fired blanks when testing firearms and transported unloaded firearms in a vehicle.

The union's CBA proposal regarding the limited duty regulation restrictions states: "An employee taking or on limited duty leave under this section shall **NOT** be required to relinquish his/her badge and firearm unless the employee's health care provider restricts the employee from possessing or using a firearm." (emphasis added) Soper testified that the reason for the union's proposal was to allow a trooper on limited duty to be able to carry a weapon for defensive purposes. A number of union members drive unmarked cars that are still identifiable as police cars. He stated: "With the recent last couple of years of officers being assaulted and/or killed, it's been on the members minds." Soper stated that the reason the union made the proposal is to allow those members to be able to carry a weapon while in that position.

Yergen attended a funeral of three fellow troopers that perished in a fire. He was allowed to wear his uniform and to carry his weapon to the funeral service while on long term limited duty

---

[4] Yergen has been assigned to the academy as a regional instructor since February 16, 2011.

assignment. He was very close to two of the troopers. While this was a very personal and painful event to attend, the agency did violate its own regulations by allowing Yergen to attend in his uniform and carrying his weapon. The union failed to establish a time line for this alleged unfair labor practice violation.

Soper testified that the employer had not been willing to agree to the union's CBA proposal. The union maintains that the employer's violation of its own regulation is contrary to its position on the union's proposal and a refusal to bargain regarding the regulation while allowing Yergen to handle firearms, to wear his uniform and to carry his firearm. While the employer failed to give notice to the union before unilaterally changing a mandatory subject of bargaining, the union failed to establish the date of this alleged unfair labor practice.

## CONCLUSION

The union failed to meet its burden of proof that the employer breached its good faith bargaining obligations when it unilaterally changed its practice by allowing Yergen to wear his uniform and carry his weapon while on long term limited duty assignment.

## FINDINGS OF FACT

1. The Washington State Patrol is a public employer within the meaning of RCW 41.56.030(12) and RCW 41.56.473.

2. The Washington State Patrol Troopers Association (union) is a bargaining representative within the meaning of RCW 41.56.030(2) for a bargaining unit of troopers and sergeants who are officers of the Washington State Patrol. Jeffery Julius represented the union.

3. The Labor Relations Office (LRO) of the Office of Financial Management (OFM) represents the governor in collective bargaining pursuant to RCW 41.56.473(2). John Dryer represented the LRO.

4. The employer and union are parties to a collective bargaining agreement (CBA) that was in effect from July 1, 2009, through June 30, 2011.

5. In September 2009, consistent with RCW 41.56.475(1), the employer and union selected an arbitrator to conduct an interest arbitration hearing to be held the week of August 16, 2010, if the parties were not able to reach agreement on a successor CBA.

6. On March 9, 2010, the parties held the first bargaining session. No proposals were exchanged at that meeting. The union inquired if the employer's negotiating team had the authority to make agreements and enter into tentative agreements (T/A's). Dryer assured the union that he did have that authority.

7. On March 23, 2010, the parties met and the union indicated that they were ready with their opening proposal. The union requested that the employer's opening proposal be provided prior to the next meeting.

8. On March 24, 2010, the union sent its opening proposal to the employer.

9. On April 19, 2010, the parties met and discussed the union's proposal. The employer did not provide a proposal at this time.

10. On May 12, 2010, the employer provided an initial partial proposal with placeholders for compensation, holidays, off duty employment, transfers, references to appendices, and a new article for reduction in force/layoff.

11. On May 24, 2010, Dryer provided a copy of the 2010 Compensation Survey that the employer had engaged the Segal Company to develop.

12. On May 24, 2010, the parties reached agreement on transfer language in a section of Article 21 of the CBA. The employer would not T/A the section because it was possible that other areas of the CBA under consideration, such as layoff and recall, might impact the agreement they had reached.

13. On May 24, 2010, the union made an information request regarding the employer's policy for the right of employees on limited duty assignments, to carry and utilize their

badges and firearms. This was related to the assignment of David Yergen to an armorer position.

14. On May 24, 2010, the union received a concurrence document from the employer seeking comment on some policy changes being proposed regarding continuing education and tuition reimbursement. The concurrence document was distributed during the bargaining process but was not distributed through the LRO as the employer's bargaining representative. Both parties had proposals on the table regarding tuition reimbursement.

15. On May 26, 2010, Julius sent an e-mail requesting information regarding the 2010 Compensation Survey prepared by Segal. He requested that a representative from Segal be made available to attend a bargaining session to answer the union's questions about the survey.

16. On May 26, 2010, Julius sent an e-mail to Dryer regarding the concurrence asking for clarification of intent of some of the proposed changes.

17. On May 27, 2010, Julius sent another e-mail to Dryer restating the information request regarding the compensation survey and the request to have a representative from Segal available at a future bargaining session.

18. On June 1, 2010, Dory Nicpon, the employer's Labor and Policy Advisor, instructed her staff to pull the proposed change from the concurrence document until the issue could be resolved in bargaining.

19. On June 7, 2010, Julius sent an e-mail to Dryer with a second request for the information regarding the concurrence previously requested on May 26, 2010.

20. On June 8, 2010, Dryer sent an e-mail to Julius asking to discuss the concurrence issues and advising him that the information the union requested had not yet been made available by the employer.

21. On June 9, 2010, the union provided its comparables and labor market comparisons. The employer indicated it was not prepared to disclose its comparables or economic proposal and would not be until after a future revenue forecast.

22. On June 10, 2010, Julius sent an e-mail summarizing the previous day's meeting and stating that if the employer would not make someone from Segal available to answer questions that the union would object to the survey being used as evidence at any future interest arbitration proceeding.

23. On June 11, 2010, Dryer sent Julius a status report of the information requests made by the union.

24. On June 14, 2010, Julius replied to Dryer with the union's view of the status of the information requests and some corrections.

25. On June 16, 2010, Julius sent another e-mail to Dryer inquiring about the status of the information request made on May 24, 2010, regarding the limited duty assignment standards.

26. On June 23, 2010, Julius sent an e-mail to Dryer acknowledging receipt of some of the materials that the union had requested regarding the compensation survey and requesting additional information that had not been provided.

27. On June 30, 2010, Julius sent an e-mail to Dryer asking about an "announcement" of changes to the Job Performance Appraisal (JPA), and the JPA process being implemented in District 1 (D1).

28. While the employer standardized the JPA process for D1, it did not make unilateral changes to the JPA process.

29. As of July 2, 2010, the filing date of the unfair labor practice complaint, the union had not received any economic proposal from the employer.

30. At the time of the filing of the complaint on July 2, 2010, the employer had not provided all of the information requested by the union for the purposes of completing the collective bargaining process.

31. On July 8, 2010, the employer provided its economic proposal to the union.

32. Yergen attended a funeral of three fellow troopers that perished in a fire. He was allowed to wear his uniform and to carry his weapon to the funeral service while on long term limited duty assignment. The union failed to establish a time line for this alleged unfair labor practice violation.

## 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 6 through 10, 15, 17, 21, 22, 29, and 31, the employer breached its good faith bargaining obligations in negotiating for a successor agreement by creating delays in providing proposals and engaging in an overall course of conduct designed to frustrate the collective bargaining process, in violation of RCW 41.56.140(4) and (1).

3. As described in Findings of Fact 11, 15, 17, 23 through 26, and 30, the employer refused to provide information regarding the Segal compensation survey, comparable data of jurisdictions for interest arbitration, and other information requested by the union for use in the bargaining process, in violation of RCW 41.56.140(4) and (1).

4. As described in Findings of Fact 13, 25, and 32, the employer did not breach its good faith obligations or violate RCW 41.56.140(4) when it unilaterally changed its practice regarding firearms and limited duty assignments.

5. As described in Findings of Fact 27 and 28, the employer did not breach its good faith obligations or violate RCW 41.56.140(4) by standardizing the JPA process in District 1.

6. As described in Finding of Fact 12, the employer did not breach its good faith obligations or violate RCW 41.56.140(4) when it refused to T/A a section of an article in the CBA.

7. As described in Findings of Fact 14, 16, 18, 19, and 20, the employer did not breach its good faith obligations or violate RCW 41.56.140(4), when a concurrence document regarding tuition reimbursement and continuing education was distributed during the bargaining process.

## ORDER

The Washington State Patrol, 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 bargain in good faith during the collective bargaining process and failing to provide information requested by the union.

   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 with the Washington State Patrol Troopers Association during the collective bargaining process.

b. Provide the Washington State Patrol Troopers Association with complete information concerning its information requests.

c. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

d. 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 him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 2nd day of February, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Claire Nickleberry

CLAIRE NICKLEBERRY, 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.

CASES 23332-U-10-5943 and 23364-U-10-5949
DECISIONS 11283 – PECB and 11284 - PECB

COLLECTIVE BARGAINING

PERC

STATE OF WASHINGTON

## PUBLIC EMPLOYMENT RELATIONS COMMISSION

# NOTICE

**STATE LAW GIVES YOU THE RIGHT TO:**

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

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

WE UNLAWFULLY failed or refused to bargain in good faith during the collective bargaining process and failed to provide information requested by the Washington State Patrol Troopers Association (union).

**TO REMEDY OUR UNFAIR LABOR PRACTICES:**

WE WILL give notice to and, upon request, negotiate in good faith with the union during the collective bargaining process.

WE WILL provide the union with complete information concerning its information requests.

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.

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

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



## RECORD OF SERVICE - ISSUED 02/02/2012

The attached document identified as: DECISION 11283 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

| | | | | | |
|---|---|---|---|---|---|
| CASE NUMBER: | 23332-U-10-05943 | FILED: | 07/02/2010 | FILED BY: | PARTY 2 |
| DISPUTE: | ER MULTIPLE ULP | | | | |
| BAR UNIT: | LAW ENFORCE | | | | |
| DETAILS: | Bargaining | | | | |
| COMMENTS: | | | | | |

EMPLOYER: STATE - PATROL
ATTN: DIANE LEIGH
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5154 Ph2: 360-725-5152

REP BY: MORGAN DAMEROW
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
Ph1: 360-586-2230

PARTY 2: WA STATE PATROL TROOPERS ASSN
ATTN: TOMMIE PILLOW
200 UNION AVE SE STE 200
OLYMPIA, WA 98501
Ph1: 360-704-7530

REP BY: HILLARY MCCLURE
VICK JULIUS MCCLURE
5701 6TH AVE S STE 491A
SEATTLE, WA 98108-2568
Ph1: 206-957-0926

# PUBLIC EMPLOYMENT RELATIONS COMMISSION

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



## RECORD OF SERVICE - ISSUED 02/02/2012

The attached document identified as: DECISION 11284 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY: /S/ ROBBIE DUFFIELD

| | | | | | |
|---|---|---|---|---|---|
| CASE NUMBER: | 23364-U-10-05949 | FILED: | 07/14/2010 | FILED BY: | PARTY 2 |
| DISPUTE: | ER UNILATERAL | | | | |
| BAR UNIT: | LAW ENFORCE | | | | |
| DETAILS: | - | | | | |
| COMMENTS: | | | | | |

EMPLOYER: STATE - PATROL
ATTN: DIANE LEIGH
210 11TH AVE SW STE 331
PO BOX 43113
OLYMPIA, WA 98504-3113
Ph1: 360-725-5154 Ph2: 360-725-5152

REP BY: MORGAN DAMEROW
OFFICE OF THE ATTORNEY GENERAL
7141 CLEANWATER DR SW
PO BOX 40145
OLYMPIA, WA 98504-0145
Ph1: 360-586-2230

PARTY 2: WA STATE PATROL TROOPERS ASSN
ATTN: TOMMIE PILLOW
200 UNION AVE SE STE 200
OLYMPIA, WA 98501
Ph1: 360-704-7530

REP BY: JEFFREY JULIUS
VICK JULIUS MCCLURE
5701 6TH AVE S STE 491A
SEATTLE, WA 98108-2568
Ph1: 206-957-0926