Washington State University, Decision 11498 (PSRA, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE EMPLOYEES, Complainant, vs. WASHINGTON STATE UNIVERSITY, Respondent.	CASE 24194-U-11-6197 DECISION 11498 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On August 18, 2011, the Washington Federation of State Employees (union) filed a complaint against Washington State University (employer) and on August 31, 2011, amended the complaint. Unfair Labor Practice Manager David I. Gedrose issued a preliminary ruling on September 9, 2011, finding causes of action for refusal to bargain. The Commission assigned the case to Examiner Jamie L. Siegel, and I held a hearing on February 28 and 29, 2012. The parties filed post-hearing briefs.

ISSUES

1. Did the employer refuse to bargain with the union by contracting out a specialized roof repair project on the president's residence and by failing or refusing to meet and negotiate concerning the roof repair work?

2. Did the employer breach its good faith bargaining obligation by the manner in which it invoked the 45-day contract limitation period and by refusing to bargain the impacts of

both the roof repair project and the other projects included in the union's thirteen demands to bargain?

The union failed to prove that the specialized roof repair project the employer contracted out was bargaining unit work. As a result, the employer did not refuse to bargain with the union when the employer contracted out the work without bargaining. With respect to the 45-day contract limitation period and the roof repair project, because the employer was not obligated to bargain the contracting out of the roof repair project, invoking the 45-day contract limitation period in the manner it did does not violate the employer's good faith bargaining obligation. With respect to the 45-day contract limitation period and the other projects included in the union's thirteen demands to bargain, the record concerning the other projects is insufficient to prove the employer violated its good faith bargaining obligation.

FACTUAL BACKGROUND

The union represents Bargaining Unit 13 which includes roofers. The Commission certified Bargaining Unit 13 in 2008. *Washington State University*, Decision 10116-A (PSRA, 2008). The union initially represented the roofers in a "skilled trades" bargaining unit that was decertified in 2005. *Washington State University*, Decision 9164 (PSRA, 2005). The roofers were not represented from the 2005 decertification until the 2008 certification.

The employer's roofing department employs five full-time roofers, including the lead. Typically, the department hires three seasonal employees, which the parties call "cyclic roofers," to work from April through October. The roofing department's work ranges from complete roof installations to roof maintenance and repair work on campus buildings.

At all pertinent times, the July 1, 2009, to June 30, 2011 collective bargaining agreement (CBA), and the successor agreement, covered the parties. The CBAs do not address the topic of contracting out bargaining unit work. Article 1.7 of the CBAs describes the employer's duty to bargain subjects not addressed in the contract:

> Where required by law, and where there has been no waiver of bargaining requirement, the University will satisfy its collective bargaining obligation before

> changing a matter not referred to or covered by this Agreement. The University will notify the Union of these changes, and the Union may request discussions about and/or negotiations on the impact of these changes on Employee's working conditions. In the event the Union does not request discussions and/or negotiations within fourteen (14) calendar days of receipt of the notice, the University may implement the changes without further discussions and/or negotiations. Upon completion of negotiations but no later than forty-five (45) calendar days following request to bargain from the Union, the University may implement its proposal. There may be emergency or mandated conditions that are outside of the University's control requiring immediate implementation, in which case the University will notify the Union as soon as possible, and may implement if needed prior to the completion of negotiations. If the Union does not withdraw the demand to bargain, the parties will agree to the location and time for the discussions and/or negotiations. Each party is responsible for choosing its own representatives for these activities.

This decision refers to this provision as the "45-day" contract limitation period.

President's Residence

The employer maintains a residence for its president on the Pullman campus. The president's residence is over 100 years old and is considered a showcase facility. The residence's current roof was installed in 1982 by a private contractor. Near the president's residence is a cottage. The roofs of the residence and the cottage are steep and are covered with concrete tile. Of the approximately 450 roofs on campus, the president's residence and the cottage have the only roofs with concrete tiles.

In October 2010, Gerry Stamper, union shop steward and maintenance mechanic 2, responded to a work order involving squirrels entering the president's residence. Stamper and a colleague inspected the roof for squirrel access points from a "man lift."[1] After identifying that the chimney was not capped, Stamper also noticed that the dormers were either not all flashed or had gaps in the flashing. He reported the concern. Based upon Stamper's report, the employer initiated a work order for repair of the roof and coded it as non-urgent.

In late February 2011, Kirk Morris, one of the employer's senior architects, was assigned the project. (All future dates refer to 2011 unless otherwise noted). At the end of February or early

[1] Stamper described the "man-lift" as a mobile unit with a 65-foot boom and a two-person cage.

March, Morris participated in a walk-through of the residence with Mike Dymkoski, roofing shop supervisor, and one of the roofers. The roof was not leaking at that time but there had been leaking periodically over the past several years.

The evidence reflected that the employer was unsure how to address the problems with the roof.[2] The employer was uncertain whether the whole roof needed to be replaced or whether a smaller repair job would be sufficient. Tim Rundquist, the employer's architectural supervisor, developed and managed the employer's roofing program. Rundquist suggested that the employer consult with Barton Roofing, an experienced Spokane roofing company, to help determine the appropriate approach and scope of the project.[3] On March 11, a Barton Roofing representative, escorted by a bargaining unit roofer in the man-lift, inspected the roof and provided its recommendation to the employer.

The employer accepted Barton Roofing's recommendation and began the established processes for obtaining budget approval to fund the project. The employer notified the union of the project and solicited bids. On March 24, Assistant Vice President for Facilities Operations, Lawrence E. (Ev) Davis, approved the project. By memorandum dated March 29, Davis submitted to the facilities operations shops a report describing new design projects for five projects, including the roof of the president's residence. The document identified the reason for contracting out the roof project as "Shops do not have sufficient experience nor are they equipped to effect repairs on a concrete tile roof."

The project documentation identified the estimated bid timeframe to perform the roof repair work as June to August. That timeframe changed on March 30 after a storm caused water to enter the master bathroom of the president's residence on the second floor of the three-story house, specifically the light fixture secured to the shower's ceiling. By e-mail dated March 31,

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2 Testimony conflicted regarding whether the employer asked the former lead roofer to provide an estimate to repair the problems with the roof. Whether the employer asked and the lead roofer's alleged response are not relevant to this decision.

3 When Rundquist was in private practice for 29 years and designed homes with concrete tile roofs, he used Barton Roofing to install the roofs because they did a good job and the work product he saw from other contractors was a concern to him.

Kendra Wilkins-Fontenot, the employer's labor relations officer, informed the union's labor advocate, Amy Achilles, of the situation as follows:

> I wanted to give you a heads up on a roof job that will show up on the next New design projects notification.
>
> Unfortunately, we are getting water penetrating the President's residence through the roof and tracing downward from the roof to the 3 floor attic to the 2nd floor master bathroom ceiling and into the shower ceiling light fixture and onto the ceiling board of the 2nd floor guest bathroom. There is damage to the guest bathroom ceiling evident at this time.
>
> Our roofing crew has extremely limited experience with this type roof as it is the only roof like this on campus. Additionally, they do not have the equipment for performing the work on this type roof without risking further damage to the roof. We have had some of our staff on site covering things inside to prevent further damage, however since we are not prepared to work on this type roof no efforts have been able to be expended to repair the roof at this point. Because of the current and impending damage we need to move expeditiously to get a specialty contractor on board with the skills, experience, and equipment to effect immediate repairs to avoid further damage to the building and alleviate the associated safety problems.
>
> This project is not normally bargaining unit work nor will bargaining unit positions or work be displaced as a result of our purchasing these specialty roofing services. However, I wanted to let you know how we are proceeding on this urgent project as it will appear on the next New design project notification but the work will already have been started and questions are often raised on roof jobs.

By letter dated April 1, Wilkins-Fontenot forwarded Davis' March 29 new design projects memo to the union's executive director. The memo listed five projects, one of which was the repair of the roof on the president's residence. By letter e-mailed April 5, Achilles demanded to bargain the decision and the impacts of the decision to contract out the roof repair project as well as the four other projects identified in the employer's March 29 report of new design projects.

The employer moved forward with the process to repair the roof and sought bids for the following project: "Repair copper flashing and concrete tile roofs on seven (7) dormers. . . . Replace broken roof tiles on the visual open field of the roof with tile removed from existing

dormers. Install new 'best' matching roof tiles in areas on the existing dormers that cannot be visually seen from the street level."

The employer solicited bids from several contractors, including a private business owned by three of the bargaining unit roofers. Barton Roofing was the only company to bid on the project. Barton Roofing completed the work in less than two days and invoiced the employer on April 25 for $6,792.21. According to the employer's architect on the project, Barton Roofing replaced 25 to 40 tiles.

Demand to Bargain, Scheduling

On April 6, the day after submitting the demand to bargain, Achilles emailed Wilkins-Fontenot and Sabrina McPherson, human resources analyst, seeking to schedule a meeting on April 26 to discuss the roof repair project as well as other demands to bargain. On April 26, Achilles e-mailed about a different bargaining matter and noted that she had not received a response to her request for dates to bargain the roof repair project. The next day, Wilkins-Fontenot responded saying that they would look at dates again, indicating that she thought they had submitted possible dates.[4] Over the course of the next several months, Achilles, McPherson, and Wilkins-Fontenot exchanged potential meeting dates via e-mail.

The employer offered dates with one and one-half hours to three hours available; Achilles sought days with more time available due to the number of issues they had to discuss. Achilles and Jeanine Livingston, the union's contracting compliance manager, offered to participate by telephone to expand the available dates.

In an e-mail from McPherson to Achilles on May 13, McPherson made the following suggestion:

> Because of the multiple calendars required to coordinate to schedule these meetings, it may be helpful if we break the items you want to discuss into multiple meetings. This may be easier than coordinating ½ day schedules. If this will work for you, please let me know what days are best and which DTB [demand to bargain] you would like to address on which days.

4 Prior to the demand to bargain concerning the roof repair project, the parties had been working to schedule meetings concerning other demands to bargain.

The parties had identified 13 outstanding demands to bargain, which includes the roof repair project. The earliest notice of design project was dated November 23, 2010, with the most current dated May 24, 2011.

Eventually, after numerous e-mails, on July 12 the parties scheduled a meeting for August 8. On Friday, August 5, at 1:58 P.M., Wilkins-Fontenot sent an e-mail to Achilles in which she raised Article 1.7 of the CBA (reproduced in full in the "factual background" section above) and the 45-day contract limitation period:

> For Monday's DTB [demand to bargain] because all but one of the DTB filed by WFSE listed below are outside the required bargaining timeframe outlined in Article 1.7 of the Contract, to make the best use of our time, I recommend we start our discussion with the 05-24-2011 NDP [notice of design project] notice (DTB filed on 6/2/11) as this is the NDP notice DTB still subject to bargaining under Article 1.7
>
> As for the other projects, all are outside the Article 1.7 formal bargaining criteria, and most have started as noted on the NDP reports, however, we can address questions you have on them.
>
> Otherwise, per our earlier correspondence I agree we are just about there on the Purchasing Services by Contract Agreement, so I hope we can clarify remaining information/questions in our meeting Monday to finalize the document and move forward.

On the morning of August 8, Wilkins-Fontenot sent an e-mail explaining: "Correction to my previous email. It looks like all of these NDP [notice of design project] DTB [demand to bargain] are outside Article 1.7 required bargaining timeframe, but again, we can address questions you have on the projects and focus our attention on the Purchasing Services by Contract Agreement." The Purchasing Services by Contract Agreement is not directly at issue in this case.

Wilkins-Fontenot's e-mails invoking Article 1.7 surprised Achilles and Livingston. They testified that the employer had not previously invoked the 45-day contract limitation period and many of the demands to bargain were much older than 45 days. They interpreted the employer's

e-mails and Wilkins-Fontenot's statements at the August 8 meeting as refusing to bargain. They testified that Wilkins-Fontenot offered to answer questions but was not willing to bargain.

The parties met on August 8. Wilkins-Fontenot testified that, at that meeting, she asked the union about the impacts of the roof repair project and the union's only response was that it was their work. Wilkins-Fontenot acknowledged that prior to the August 8 meeting, the employer had never refused to bargain because the demand to bargain exceeded the 45-day contract limitation period.

APPLICABLE LEGAL STANDARDS

Duty to Bargain

Chapter 41.80 RCW requires public employers and the unions representing its employees to bargain about mandatory subjects, including wages, hours and working conditions. RCW 41.80.005(2). The law limits the scope of mandatory subjects to those matters of direct concern to employees. *International Association of Fire Fighters v. PERC*, 113 Wn.2d 197, 200 (1989) *(City of Richland)*. Unless a union clearly waives its right to bargain, an employer is prohibited from making unilateral changes to mandatory subjects. An employer must give a union sufficient notice of possible changes affecting mandatory subjects of bargaining and, upon union request, bargain the decision and its effects in good faith until reaching agreement or impasse.

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

Transfer of Bargaining Unit Work

Unions have a legitimate interest in preserving work that bargaining unit employees have historically performed. As a result, Commission precedent establishes that an employer's decision to transfer work from the bargaining unit that has traditionally performed the work to a

different bargaining unit (skimming) or to employees of different employers (contracting out) is typically considered a mandatory subject of bargaining. *City of Snoqualmie*, Decision 9892-A (PECB, 2009).

The Commission utilizes a two step approach to determine whether an employer has violated its bargaining obligations by skimming or contracting out work. The first step is to determine whether the work is bargaining unit work. The Commission defines bargaining unit work as work that bargaining unit employees have historically performed. Once an employer assigns bargaining unit employees to perform a certain body of work, the work attaches to the unit and becomes bargaining unit work. *Kitsap County Fire District 7*, Decision 7064-A (PECB, 2001). If the work falls outside the scope of work normally performed by bargaining unit employees, the employer has no duty to bargain and the analysis ends with the first step. *Wapato School District*, Decision 10743 (PECB, 2010), *aff'd* Decision 10743-A (PECB, 2011).

Second, when an employer transfers work that attached to a bargaining unit, the Commission considers the following five factors to determine whether the employer has a duty to notify the union of the intended transfer of work and provide the union an opportunity to bargain:

1. The previously established operating practice as to the work in question (*i.e.*, had non-bargaining unit personnel performed the work before?);
2. Whether the transfer of work involved a significant detriment to bargaining unit members (*e.g.*, by changing conditions of employment or significantly impairing reasonably anticipated work opportunities);
3. Whether the employer's motivation was solely economic;
4. Whether there had been an opportunity to bargain generally about the changes in existing practices; and
5. Whether the work was fundamentally different from regular bargaining unit work in terms of the nature of the duties, skills, or working conditions.

Skagit County, Decision 8746-A (PECB, 2006). No one factor is determinative. *State – Social and Health Services*, Decision 9551-A (PSRA, 2008).

Good Faith Bargaining - Timely Response to Bargaining Demands

The obligation to bargain includes the requirement that parties meet at reasonable times and bargain in good faith. RCW 41.80.005(2). In determining whether a party has met this obligation, the Commission does not look at acts in isolation and instead reviews the totality of circumstances surrounding the bargaining. In *State – Washington State Patrol*, Decision 10314-A (PECB, 2010), the Commission found that the employer failed to timely respond to the union's demand to bargain a successor collective bargaining agreement and explained the duty to meet at reasonable times:

> The obligation to meet and confer at reasonable times and places is an affirmative obligation, and both employers and unions must make reasonable efforts to promptly secure bargaining dates and locations following a demand to bargain. In cases such as this, this Commission will examine the totality of the circumstances to determine whether the stated reasons for delaying bargaining are reasonable.

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

ISSUE 1 ANALYSIS: CONTRACTING OUT

As described in the "Applicable Legal Standards" section above, the first step in determining whether the employer committed an unfair labor practice when it contracted out the roof repair project is to analyze whether the project is bargaining unit work.

The bargaining unit roofers regularly perform installation, maintenance, and repair work on the roofs of buildings on campus. Of the 450 roofs on campus, the roofs on the president's residence and cottage are the only roofs with concrete tile. I find the uniqueness of the disputed project, which required removing and replacing concrete tile, distinguishes the disputed project from other work performed by bargaining unit roofers on other campus roofs. Additionally, I find the work sporadically performed by bargaining unit roofers on the president's residence is significantly different from the work involved in the disputed project. As further explained below, I find that the disputed project is not bargaining unit work.

Concrete Tile Roofs Distinguishable

The most detailed and convincing evidence about concrete tile roofing came from Tim Rundquist, the employer's architectural supervisor.[5] Rundquist credibly testified that concrete tile roofs "are kind of an entity unto themselves, and they are quite different from any other type of roof. . . ." He explained that concrete tile is heavier with more three-dimensional characteristics, that the tiles fasten down differently from other roofing materials, and that the tiles break easily.

Rundquist testified about the complexity of replacing concrete tiles and the careful handling required to avoid breakage. He testified that it was "nonsense" to say that replacing concrete tiles was an easy job and explained why: "Because it has to be handled very carefully. In order not to break things it has to be set correctly, it has to be interlayering correctly, and it's a rather complicated process. If it were not as complicated a process, there would be a whole lot more people who are capable to do it."

Witnesses testified that walking on a concrete tile roof presents unique challenges because of the dead space in the middle of the tile. This is not an issue for other roof surfaces, such as metal tile, where the tiles lay flat and have no dead space.[6] To avoid breaking the tiles, roofers often use special rubberized mats to walk on concrete tile roofs.[7]

Based upon the entire record, I find the unique qualities of the concrete roof tiles and the specialized expertise needed to work with them and replace them distinguishes the disputed project from other work performed by bargaining unit roofers on other campus roofs.

Other Work on Roof of President's Residence Distinguishable

While bargaining unit roofers have sporadically performed some work on the president's residence, the work they performed is distinguishable from the work involved in the disputed

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[5] Although Rundquist is not a roofer and had not been on the roof of the president's residence, of all the witnesses he demonstrated the most knowledge of, and experience with, concrete tile roofs. At the time of hearing, Rundquist no longer worked for the employer.

[6] At least one building on campus, Wilmer Davis Hall, has a metal tile roof that bargaining unit roofers have repaired.

[7] The fact that the employer did not have rubberized mats is not relevant to this decision.

project. The evidence showed that from 2006 through 2010, the roofers were called to the president's residence on fewer than ten occasions and performed the following work:[8]

- Investigated leaks on several occasions, trying to determine the source;
- Glued a piece of a concrete tile back where it had broken off;
- Replaced a concrete tile with a piece of metal;
- Repaired gutters;
- Power-washed the roof;
- Caulked cracks;
- Replaced some nails on existing loose tiles;
- Helped electricians install heat tape; and
- Taped copper on dormers

The record includes no evidence that bargaining unit roofers ever walked on the roof of the president's residence. Roofers performed the work detailed above while on the man-lift or while working out of a dormer window.

The record includes no evidence that bargaining unit roofers ever removed a concrete tile and replaced it with another concrete tile. The disputed project involved removing and replacing many concrete tiles, complex specialized work that bargaining unit roofers have never done while working for the employer. The disputed project also appeared to require roofers to walk on the fragile tiles without breaking them, something that bargaining unit roofers have never done.

Based upon the evidence, the work required for the disputed project was substantially different from the work the bargaining unit roofers historically performed. Because of these differences, I find the disputed project was not bargaining unit work.

The union argues that the roofer position description is evidence that the work at issue is bargaining unit work. The position description includes the following position summary:

[8] I considered all evidence of work performed on the roof of the president's residence, including work performed prior to the certification of the bargaining unit.

"Perform journey-level skilled duties for maintenance, repair and replacement of all types of roof membrane, sub roofing, sheathing and base material and for roof supporting structural members." One of the job duties marked as an essential function includes: "Install all types of roofing including hot asphalt, rubber membrane, composition shingle, corrugated metal, slate, tile, etc." Another roofing position description includes the following job duty marked as an essential function: "Install or repair all types of roofing including asphalt, composition, corrugated metal, slate, tile, etc."

Position descriptions may sometimes assist in defining bargaining unit work but they are not determinative. As indicated above, bargaining unit work is defined as "work that bargaining unit employees have historically performed." Specific work may be detailed in a job description but if bargaining unit employees have not historically performed the work, it cannot be considered bargaining unit work. I find the evidence establishes that bargaining unit roofers have not removed and replaced concrete tiles as part of their job responsibilities. The disputed work never attached to the bargaining unit and does not constitute bargaining unit work.

The union relies upon the fact that when soliciting companies to bid on the roof project, the employer sought bids from a private company that is owned and operated by three bargaining unit roofers. According to the employer's director for purchasing services, when soliciting bids the employer never knows for certain whether potential bidders are able to do the job. Regardless, the issue of the bargaining unit employees' ability to perform the disputed work is not before me. The skill and off-duty experience of bargaining unit employees is not relevant in determining the more narrow issue of whether the bargaining unit employees have historically performed the disputed work. I find bargaining unit employees have not historically performed the specialized work of removing and replacing concrete roof tiles.

Conclusion

The union did not establish that bargaining unit roofers historically performed the work at issue. The uniqueness of the disputed project distinguishes it from other work performed by bargaining unit roofers on other roofs on campus buildings. The work sporadically performed by bargaining unit roofers on the president's residence is substantially different from the work involved in the

disputed project. I find that the work involved in the disputed project falls outside the scope of work historically performed by the bargaining unit roofers. As a result, the employer had no duty to bargain with the union prior to contracting out the work.

ISSUE 2 ANALYSIS: GOOD FAITH BARGAINING, 45-DAY LIMITATION PERIOD

The unfair labor practice manager's preliminary ruling identifies a cause of action against the employer for "breach of its good faith bargaining obligations concerning the 45[-day] contract limitation period." The union alleges that the employer engaged in bad faith bargaining when it delayed bargaining and then used the 45-day contract limitation period as justification for refusing to bargain.

The evidence at hearing focused on the president's residence roof repair project. Because I find that project is not bargaining unit work, the employer had no obligation to bargain that decision or the impact of the decision to contract out that project.

Although the hearing focused on the president's residence roof repair project, the record includes some evidence of 13 notices of design projects about which the union demanded to bargain. Each notice of design projects and demand to bargain addressed multiple projects. The parties had planned to bargain those projects, along with the roof repair project, at the August 8 meeting. The employer's invocation of the 45-day contract limitation period interrupted the planned bargaining.

The union introduced into evidence the notices of design projects and the demands to bargain those projects, but, except for the roof repair project on the president's residence, that is the extent of the record. The record is insufficient to determine whether the other projects included in the 13 notices of design projects and demands to bargain were bargaining unit work about which the employer had an obligation to bargain. Additionally, the record includes no evidence of the status of those projects and whether they were completed as planned. As a result, the record has insufficient evidence to determine whether the employer breached any bargaining obligation it may have had.

FINDINGS OF FACT

1. Washington State University (employer) is an employer within the meaning of RCW 41.80.005(8).

2. The Washington Federation of State Employees (union) is an exclusive bargaining representative within the meaning of RCW 41.80.005(9).

3. The union represents Bargaining Unit 13 which includes roofers. The employer's roofing department employs five full-time roofers, including the lead. The roofer position description includes the following position summary: "Perform journey-level skilled duties for maintenance, repair and replacement of all types of roof membrane, sub roofing, sheathing and base material and for roof supporting structural members." One of the job duties marked as an essential function includes: "Install or repair all types of roofing including asphalt, composition, corrugated metal, slate, tile, etc."

4. At all pertinent times, the July 1, 2009, to June 30, 2011 collective bargaining agreement (CBA), or the successor agreement, covered the parties. The CBA does not address the topic of contracting out bargaining unit work.

5. The employer maintains a residence for its president on the Pullman campus. The residence's current roof was installed in 1982 by a private contractor. Near the president's residence is a cottage. The roofs of the residence and the cottage have steep slopes and are covered with concrete tile. Of the approximately 450 roofs on campus, the president's residence and the cottage are the only buildings with concrete tile roofs.

6. In October 2010, the employer initiated a work order for repair of the roof of the president's residence after an employee reported that the chimney was not capped and the dormers were either not all flashed or had gaps in the flashing. The employer coded the work order as non-urgent.

7. In late February 2011, a senior architect was assigned the project and at the end of February or early March, he participated in a walk-through of the residence with Mike Dymkoski, roofing shop supervisor, and a bargaining unit roofer. The roof was not leaking at that time but there had been leaking periodically over the past several years.

8. The employer was unsure how to address the problems with the roof. The employer was uncertain whether the whole roof needed to be replaced or whether a smaller repair job would be sufficient.

9. Tim Rundquist, the employer's architectural supervisor, developed and managed the employer's roofing program. Rundquist suggested that the employer consult with Barton Roofing, a Spokane company, to help determine the appropriate approach and scope of the project.

10. On March 11, a Barton Roofing representative, escorted by a bargaining unit roofer, inspected the roof and provided its recommendation to the employer. The employer accepted Barton Roofing's recommendation and began the established processes for obtaining budget approval to fund the project. The employer notified the union of the project and solicited bids.

11. On March 24, Assistant Vice President for Facilities Operations, Lawrence E. (Ev) Davis, approved the project. By memorandum dated March 29, Davis submitted to the facilities operations shops a report of new design projects for five projects, including the roof of the president's residence. The document identified the reason for contracting out the roof project as "Shops do not have sufficient experience nor are they equipped to effect repairs on a concrete tile roof."

12. On March 30, the project's estimated bid timeframe of June to August to perform the roof repair work changed after a storm caused water to enter the light fixture secured to the shower's ceiling in the master bathroom of the president's residence. By e-mail dated March 31, Kendra Wilkins-Fontenot, the employer's labor relations officer, informed the

union's labor advocate, Amy Achilles, that the employer was seeking bids to repair the roof.

13. By letter dated April 1, Wilkins-Fontenot forwarded the new design projects memo to the union's executive director.

14. By letter e-mailed April 5, Achilles demanded to bargain the decision and the impacts of the decision to contract out the roof repair project as well as the four other projects identified in the employer's March 29 report of new design projects.

15. The employer moved forward with the process to repair the roof and sought bids for the following project: "Repair copper flashing and concrete tile roofs on seven (7) dormers. . . . Replace broken roof tiles on the visual open field of the roof with tile removed from existing dormers. Install new 'best' matching roof tiles in areas on the existing dormers that cannot be visually seen from the street level."

16. The employer solicited bids from several contractors, including a private business owned by three of the bargaining unit roofers. Barton Roofing was the only company to bid on the project. Barton Roofing completed the work in less than two days and invoiced the employer on April 25 for $6,792.21. According to the employer's architect on the project, Barton Roofing replaced 25 to 40 tiles.

17. Over the course of several months, Achilles, Wilkins-Fontenot, and Sabrina McPherson, Human Resources Analyst, exchanged numerous e-mails with potential meeting dates to discuss the roof project as well as the other projects included in the 13 outstanding demands to bargain. Eventually, the parties scheduled a meeting for August 8.

18. On Friday, August 5, at 1:58 P.M., Wilkins-Fontenot sent Achilles an e-mail raising the 45-day contract limitation period included in Article 1.7 of the CBA. The e-mail included the following statement: "As for the other projects, all are outside the Article 1.7 formal bargaining criteria, and most have started as noted on the NDP [notice of design project] reports, however, we can address questions you have on them."

19. On the morning of August 8, Wilkins-Fontenot sent an e-mail explaining: "Correction to my previous email. It looks like all of these NDP [notice of design project] DTB [demand to bargain] are outside Article 1.7 required bargaining timeframe, but again, we can address questions you have on the projects and focus our attention on the Purchasing Services by Contract Agreement." The Purchasing Services by Contract Agreement is not directly at issue in this case.

20. The bargaining unit roofers regularly perform roof installations and maintenance and repair work on campus roofs. Concrete tile roofs, however, are significantly different from the other types of roof on campus and require specialized expertise to remove and replace tiles. The uniqueness of the disputed project, which required removing and replacing many concrete tiles, distinguishes the project from other work performed by bargaining unit roofers on other campus roofs.

21. From 2006 through 2010, bargaining unit roofers were called to the president's residence on fewer than ten occasions and performed the following work: investigated leaks on several occasions, trying to determine the source; glued a piece of a concrete tile back where it had broken off; replaced a concrete tile with a piece of metal; repaired gutters; power-washed the roof; caulked cracks; replaced some nails on existing loose tiles; helped electricians install heat tape; and taped copper on dormers.

22. Roofers performed the work described in the preceding Finding of Fact while on the man-lift or while working out of a dormer window. No evidence reflects that bargaining unit roofers ever walked on the roof of the president's residence.

23. The work sporadically performed by bargaining unit roofers on the president's residence is substantially different from the work involved in the disputed roof repair project.

24. No evidence reflects that bargaining unit roofers ever removed a concrete tile and replaced it with another concrete tile. The disputed project involved removing and replacing many concrete tiles. The disputed project is not work historically performed by bargaining unit roofers and is not, therefore, bargaining unit work.

25. The record includes 13 notices of design projects and the corresponding demands to bargain. Other than the roof repair project on the president's residence, the record contains no other information about the projects and is insufficient to determine whether the other projects involve bargaining unit work and whether the employer breached any bargaining obligation it may have had.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.80 RCW and Chapter 391-45 WAC.

2. By its actions described in Findings of Fact 10 through 13, 15, 16, and 20 through 24, the employer did not unlawfully contract out bargaining unit work and did not refuse to bargain with the union in violation of RCW 41.80.110(1)(e).

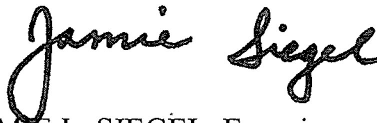
3. The union failed to establish that the employer breached its good faith bargaining obligation through its actions described in Findings of Fact 17 through 19 and 25.

ORDER

The union's complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JAMIE L. SIEGEL, Examiner

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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OLYMPIA, WASHINGTON 98504-0919

MARILYN GLENN SAYAN, CHAIRPERSON
PAMELA G. BRADBURN, COMMISSIONER
THOMAS W. McLANE, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 10/02/2012

The attached document identified as: DECISION 11498 - PSRA 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:	24194-U-11-06197	FILED:	08/18/2011	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	OPER/MAINT				
DETAILS:	Facilities Operations				
COMMENTS:					

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