Kitsap County, Decision 11675 (PECB, 2013)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KITSAP COUNTY 911 EMPLOYEES' GUILD, Complainant, vs. KITSAP COUNTY, Respondent.	CASE 24240-U-11-6210 DECISION 11675 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Merker Law Offices, by *George E. Merker,* Attorney at Law, for the union.

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

On September 12, 2011, the Kitsap County 911 Employees' Guild (union) filed an unfair labor practice complaint against Kitsap County (employer). The union alleged the employer refused to bargain and derivatively interfered with employee rights in violation of RCW 41.56.140(4) and (1). A preliminary ruling was issued on September 16, 2011, finding causes of action to exist. Examiner Guy Otilio Coss held a hearing on May 1 and 2, 2012. On July 17, 2012, the parties submitted post-hearing briefs to complete the record. On July 18, 2012, the union filed a motion to strike the employer's brief as being in violation of WAC 391-45-290(2). On July 20, 2012, the employer filed a response to the union's motion to strike and a cross motion requesting permission to file an overlength brief. On July 27, 2012, the union replied to the employer's response and motion.

ISSUES

1. Should the employer's motion to file an overlength brief be granted or should the union's motion to strike the employer's overlength brief be granted?

2. Did the employer breach its good faith bargaining obligations regarding the authority of its bargaining representatives?

3. Did the employer breach its good faith bargaining obligations by failing to ratify a tentative agreement reached in collective bargaining?

The employer's motion to file an overlength brief is denied. The union's motion to strike the employer's closing brief is granted in part. Pages 26 to 35 of the employer's closing brief are stricken from the record and shall not be considered in this decision. The employer did not breach its good faith bargaining obligations regarding the authority of its bargaining representatives and therefore did not commit an unfair labor practice in violation of RCW 41.56.140(4). By failing to ratify its own proposed contract of April 22, 2011, based solely on the tentatively agreed to language in Article 26F, the employer failed to bargain in good faith and committed an unfair labor practice in violation of RCW 41.56.140(4) and derivatively interfered with employee rights in violation of RCW 41.56.140(1).

Issue 1: Should the employer's motion to file an overlength brief be granted or should the union's motion to strike the employer's overlength brief be granted?

APPLICABLE LEGAL STANDARDS

The Commission has a rule concerning the length of briefs filed by parties in unfair labor practice proceedings. WAC 391-45-290 states that:

> (2) A party filing a brief under this section must limit its total length to twenty-five pages (double-spaced, twelve-point type), unless:
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> (a) It files and serves a motion for permission to file a longer brief in order to address novel or complex legal and/or factual issues raised by the objections;
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> (b) The hearing examiner grants such a motion for good cause shown; and
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> (c) A motion for permission to file a longer brief may be made orally to the hearing examiner at the end of the administrative hearing, and the hearing officer has the authority to orally grant such motion at such time.

In *Northshore Utility District*, Decision 11267-A (PECB, 2012), the Commission upheld an examiner's refusal to strike as overlength a brief that was within the 25 page limit but which

contained 36 footnotes on 20 of the 24 pages. The examiner had concluded that while WAC 391-45-290 established a 25 page limit for briefs, the rule made no mention of footnotes so that there was no basis in the rule to strike all or a portion of the employer's brief. On appeal, the Commission clearly saw this as improper under the page limit rule and stated that:

> [I]t is important to note that we strongly agree with the Examiner's comment on the employer's post-hearing brief, which contained 36 footnotes on 20 of the 24 pages in an effort to thwart the 25 page limitation in WAC 391-45-290(2). In this case, we particularly agree with the Examiner's statement that:
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> > Parties need not waste precious space in their briefs detailing the facts contained in the record that the Examiner reviews prior to issuing her decision. Briefs should focus on legal analysis.

Northshore Utility District, Decision 11267-A.

ANALYSIS

Unlike the employer in *Northshore Utility District*, this employer submitted a 35 page brief that was clearly 10 pages over the limit. Prior to filing its brief, the employer did not seek advance permission from the Examiner, as required by WAC 391-45-290(2), either orally at the end of the hearing or by written motion, to file an overlength brief. The employer only sought permission to file an overlength brief after the union objected to the employer's brief.

The employer responded to the union's motion to strike and, for the first time, filed a motion requesting acceptance of its already-filed overlength brief. The employer's Chief Civil Deputy Prosecuting Attorney declared that she had not reviewed the Commission's page length rules but had presumed "that filing a 35-page closing brief was allowable" because she was "familiar with the Rules for Superior Court, which do not contain page limits for briefs" and with "the Rules of Appellate Procedure, which allow up to 50 pages for an opening brief and 25 pages for a reply." The employer stated that its overlength brief and failure to seek permission to file was "nothing more than an unintentional oversight." "An employer[1] relies on its erroneous interpretation of law to its detriment." *City of Pasco*, Decision 9181-A (PECB, 2008).

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[1] Or union.

In support of its motion to file an overlength brief, the employer argues that the case at issue meets the requirements of WAC 391-45-290(2)(a) because there is a need to "address novel or complex legal and/or factual issues raised by the objections." In support of this contention the employer states that the transcript was two volumes in length, 43 exhibits were presented and "[i]n an effort to highlight testimony crucial to the County's response to the Guild's allegations, the County's closing brief included approximately 98 inches, or approximately 9 pages, of text copied from the transcript of the hearing." Such use of a party's allotted page limit was clearly admonished by the Commission when it held that it particularly agreed that "[p]arties need not waste precious space in their briefs detailing the facts contained in the record that the Examiner reviews prior to issuing her decision. Briefs should focus on legal analysis." *Northshore Utility District*, Decision 11267-A.

CONCLUSION

This case does not address novel or complex legal and/or factual issues nor is good cause shown to grant the employer's late filed motion to submit an overlength brief. Accordingly, the employer's motion under WAC 391-45-290(2)(a) to file an overlength brief is denied. The employer's assertion of "unintentional oversight" in failing to review the Commission's rules and instead relying on presumptions based on understandings of the rules in various other forums is also rejected. Accordingly, the union's motion to strike the employer's closing brief is granted in part. Pages 26 to 35 of the employer's closing brief are stricken from the record and shall not be considered in this decision.

Issue 2: Did the employer breach its good faith bargaining obligations regarding the authority of its bargaining representatives?

Issue 3: Did the employer breach its good faith bargaining obligations by failing to ratify a tentative agreement reached in collective bargaining?

BACKGROUND

The union is the exclusive bargaining representative for employees in two bargaining units of Kitsap County Central Communications, known as CENCOM: 1) non–supervisory employees;

and 2) supervisors. The employer and union are parties to a collective bargaining agreement effective from October 22, 2007, through December 31, 2009. The labor agreement covers both units.

In November 2009, the employer and union began the process of collective bargaining for a successor agreement to the parties' 2007-2009 labor agreement. The negotiating teams were comprised of each party's designated representatives. The employer's negotiating team included its designated principal negotiator, Labor Relations Manager Fernando Conill, as well as Director of CENCOM Richard Kirton and Deputy Director of CENCOM Maria Jameson-Owens. The union's negotiating team included its principal negotiator, Attorney Chris Casillas , as well as Guild President Laura Woodrum, Guild Vice President Tonya Shaw, and bargaining unit members Donna Kelly, Jeff West, Stephanie Trueblood, Mary Valerio, and Tom Powers.

The parties collectively bargained in negotiation sessions, as well as in mediation sessions with a Commission mediator, over a period of approximately 20 months between November 2009 and July 2011. On November 16, 2009, the union negotiating team presented its first proposal for a successor agreement to the employer's negotiating team. The union's proposal covered various topics, including a proposal to increase the existing maximum accrual of compensatory time from 40 to 60 hours and to increase the length of time that compensatory time hours would be automatically "cashed out" if not used from 60 to 90 days. The proposal also sought to modify the existing language concerning the approval/disapproval of compensatory time. The union's proposed modification to Article 26F was as follows:

> An employee who is eligible for overtime may, at his/her option, take compensatory time off (at the rate of 1-1/2 hours off for each hour of overtime earned) in lieu of overtime pay if the compensatory time is taken off within sixty (60) days of when it is earned; **Provided**, an employee cannot accrue more than ~~forty~~sixty (~~40~~60) hours of compensatory time. The employee shall notify the Director of his/her decision to take compensatory time off or paid compensation at the overtime rate, when advised of his/her overtime duty. Compensatory time may be used by the employee ~~only as scheduling permits as determined by the Director~~ within a reasonable period of time after the employee makes a request so long as such use does not unduly disrupt the operations of the agency. In accord with the written opinion of the Department of Labor, the creation of an overtime situation as a result of granting a compensatory time request is not a situation that

> would unduly disrupt the operations. The employee whose request to use compensatory time is denied because ~~of the needs of~~ it would unduly disrupt the Center shall receive payment for the time requested at his or her hourly rate. Compensatory time will be automatically cashed out if it is not used within ~~sixty~~ninety (~~60~~90) days of when it was earned. An employee may choose to cash their unused compensatory time earlier than ~~sixty~~ninety (~~6~~90) days.

(Emphasis in bold, underlines (indicating additions) and strikethroughs (indicating deletions) in original)

The opinion letter referenced was the *Wage and Hour Division Opinion Letter*, 1994 WL 1004861 (Aug. 19, 1994) from the United States Department of Labor (DOL Opinion Letter)[2] which concerned a memorandum of understanding between an employer and union and whether the "understanding between [a union and employer] concerning the use of compensatory time off [was] consistent with 29 USC § 207(o)," the Compensatory Time section of the Fair Labor Standards Act (FLSA).

On November 16, 2009, and again on February 22, 2010, the employer made counter proposals to the union which sought to maintain the status quo on Article 26F. The union maintained its proposal to modify the language of Article 26F as described above.

On March 8, 2010, the employer made a counter-proposal to the union on Article 26F. The employer proposed accepting the union's language with the addition of the phrase "in and of itself" so that the relevant language would read as follows:

> Compensatory time may be used by the employee ~~only as scheduling permits as determined by the Director~~ within a reasonable period of time after the employee makes a request so long as such use does not unduly disrupt the operations of the agency. In accord with the written opinion of the Department of Labor, the creation of an overtime situation as a result of granting a compensatory time request, **in and of itself**, is not a situation that would unduly disrupt the operations.

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[2] The parties' disagree on what, if any, legal implications, interpretations or conclusions can, or should, be drawn from several Federal Court of Appeals cases discussing 29 USC § 207(o), the compensatory time section of the FLSA and their potential impact on the standing of the DOL Opinion Letter. The Commission does not have jurisdiction over the FLSA. *City of Pasco*, Decision 9181-A (Noting that "[T]his Commission does not have jurisdiction over the FLSA and that this Commission is bound by its own decisions and Washington court decisions. This Commission cannot make determinations as to whether a policy is legal or illegal under the FLSA.")

It is important to note that the employer was not required to make a counter-proposal other than to reject the union's proposal in favor of maintaining the status quo as it did in its November 16, 2009 and February 22, 2010 proposals. Further, it is indisputable that the proposal to add the phrase "in and of itself" was made by the employer. CENCOM Director Kirton testified that he had personally proposed to add this phrasing as an acceptable employer counter to the union's proposal because he "felt that it more accurately reflected the requirements of the Department of Labor. That overtime could be a factor, but it could not be the only factor." The parties both agree in their briefs that this counter-proposal was made by the employer to the union on March 8, 2010, and that the union agreed to that language. As of this date the parties agree that the bargained over language contained in Article 26F was tentatively agreed to by both the employer and the union.

Sometime in early 2010, shortly after the parties' tentative agreement on Article 26F, the employer states in its brief that Kirton "made efforts to ensure that the Deputy Director of CENCOM, Maria Jameson-Owens, was following the DOL opinion." The employer states that Kirton took this action because he believed it more accurately reflected the DOL opinion and because he "was concerned about the Guild's perception that he was not complying with the DOL opinion." The employer also asserts that "[t]hrough his reading of trade journals and discussions at conferences concerning public sector labor relations, Mr. Kirton, who is not an attorney, believed that DOL's opinion reflected the current state of the law. . . ."

The parties continued to bargain and on March 16, 2010, the employer produced and delivered to the union a document entitled "Kitsap County/CENCOM – 911 Employees' Guild CBA Negotiations." The document was sent to the union from Labor Relations Manager Conill. The document stated that it was a "status review" in reference to "CBA Bargaining" and indicated that it was created "per Kitsap County notes." Under the section on Article 26F, the employer notes the following: "Unduly disrupt language and DOL language provision; **County Counter**: After 'granting compensatory time request' . . . 'in and of itself,' 'is not a situation'- 3/8/10." The employer lists this proposal's status as "**TA on 3/8/10**." (emphasis in bold added).

More than six months later, on September 27, 2010, the employer produced and delivered to the union another document entitled "Kitsap County/CENCOM – 911 Employees' Guild CBA

Negotiations." The document was sent to the union from Conill. The document stated that it was in reference to the "**COUNTY Proposal, Revised** – CBA BARGAINING" and again indicated that it was created "per Kitsap County notes." Under the section on Article 26F, the employer notes the following: "Unduly disrupt language and DOL language provision; **County Counter**: After 'granting compensatory time request' . . . 'in and of itself,' 'is not a situation'- 3/8/10." The employer lists this proposal's status as "**TA on 3/8/10**." (emphasis in bold added).

On October 27, 2010, the employer made a proposal to the union that was clearly and prominently labeled as its last, best, and final offer.[3] The document was sent to the union from Conill. This last, best and final proposal continued to include the bargained for language in Article 26F that had been tentatively agreed to on March 8, 2010. The attached documents contained a memorandum with a subject of: "Kitsap County/CENCOM Last/Best/Final Proposal". The memorandum states that the attached proposal "contains all of the working-condition tentative agreements that we successfully negotiated at the table--and there are many as you know." The memorandum ends by stating that:

> In closing, everything in the attached proposal – excluding the 2010 and 2011 Wage Adjustment proposal (section 20.A and 20.B) – has been tentatively agreed-to at the bargaining table, I believe . . . Please know that we would much rather have a "yes" vote from the membership--whom we respect and value--than having to do a "unilateral implementation" of this last, best and final proposal, given the impasse which we have reached."

(emphasis in original)

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[3] The employer claims in its brief that "[n]either the Board nor Richard Kirton was aware that in October 2010, Mr. Conill labeled a proposal from the employer as a last, best, and final offer." The employer cites to testimony by Kirton that he had not "authorized Fernando Conill to deliver a last, best final offer." However, the document speaks for itself: it is clearly and unequivocally labeled "Kitsap County/CENCOM Last/Best/Final Proposal" and the employer admits that this last, best and final offer was made and delivered by Conill, its Labor Relations Manager and designated principal negotiator. Even if the employer did not, as it claims, authorize or intend Conill to make this last, best and final offer to the union, the union was never advised that Conill did not have such authority. Further, the e-mail and documents show that Kirton and Kitsap County Administrator Nancy Buonanno Grennan were copied on the offer to the union. Kirton testified that he received the last, best and final documents but "did not see this until it went out." However, upon discovering that Conill had sent the last, best and final proposal, no testimony or evidence was introduced that Kirton, or any other employer representative, attempted either to correct the union's understanding or to retract the nature of its last, best and final offer.

At no time, either prior to or included in, the employer's last, best and final offer was any reference made to any level of employer concern over the longstanding tentative agreement on Article 26F which, by this time, the parties both agree, had been tentatively agreed to for over seven months. Included with the employer's last, best and final offer was an employer statement that it believed the parties were at impasse and that, absent a "yes" vote by the union, the employer would have "to do a 'unilateral implementation' of this last, best and final proposal. . . ." A "unilateral implementation" would have necessarily included the tentatively agreed to language contained in the employer's own last, best and final offer concerning Article 26F. The union's negotiating team did not take the employer's last, best and final offer to its bargaining unit for a vote and the employer, despite its stated intention to do so, did not implement.

The parties continued to bargain and union attorney Casillas credibly testified that Labor Relations Manager Conill had advised him that he had met with the Board of County Commissioners at some point in January 2011 to review the status of bargaining with the union. Two Kitsap County Commissioners testified that they vaguely remember this meeting with Conill and that a status report concerning bargaining had been given. Both claim to have never been made aware of their negotiating team's counter-proposal and longstanding tentative agreement concerning Article 26F during the entirety of the 17-month period from the initial tentative agreement on March 8, 2010 to their vote in August of 2011. The Commissioners' testimony is not credible: the language in Article 26F was tentatively agreed to on March 8, 2010, and continued to be offered and reported as tentatively agreed to through various written counter proposals, negotiation and mediation meetings, the unilateral announcement of impasse and an employer-made last, best and final offer. Both Commissioners testified that cost factors were important considerations that were discussed in their meetings with Kirton and Conill and that they tended to "focus on the big items" and that "26F was not brought to the board's attention by the folks that we had at the negotiating table, Richard Kirton and Fernando Conill." However, concerning cost items, Kitsap County Commissioner Josh Brown testified that the Board was aware of the implications and costs of contract language concerning compensatory time language changes because recently it "was something that with one of our bargaining units, which has binding arbitration rights, we fought successfully previously."[4] Finally, as Conill

[4] *Kitsap County*, Decision 10669 (PECB, 2010).

wasn't called by the employer as a witness, there was no testimony contradicting Casillas' credible testimony that Conill had advised Casillas that he had discussed the employer's proposals with the Board of County Commissioners. Given all these factors, it is not credible that Kirton or Conill *never* discussed with the Board of County Commissioners the impact of potential compensatory time costs related to the tentatively agreed changes in Article 26F.

On March 17, 2011, the employer made a proposal that continued to contain the parties' March 8, 2010 tentatively agreed to language in Article 26F.

On April 22, 2011, the employer, after consulting with the Board of County Commissioners, made a proposal containing a new, additional economic move concerning a training pay issue. No change was made to, nor concern voiced over, the language in Article 26F, which, by this date, had been tentatively agreed to and unaltered for 13 months. The union agreed to take the employer's April 22, 2011 proposal to its bargaining unit for a vote.

On June 7, 2011, Conill e-mailed Casillas advising that, for the first time, there was an issue with the language of Article 26F that had now been tentatively agreed to and unaltered for 15 months and that had been included in numerous proposals made by the employer, including a last, best and final offer that the employer said it would unilaterally implement. Conill's e-mail advised that Chief Civil Deputy Prosecuting Attorney Jacquelyn Aufderheide had reviewed a draft of the contract as part of the employer's contract review process and decided that the tentatively agreed to Article 26F language "needs to be stricken as it is not consistent with current law." Importantly, Conill stated that he "could not recommend ratification to the BOCC [Board of County Commissioners] until the 26.F language provision is resolved somehow."

On June 20, 2011, the union ratified the employer's April 22, 2011 proposal which included the tentatively agreed language on Article 26F. This was confirmed by Conill in an August 12, 2011 memorandum to Casillas stating that "[i]n this specific case, the 911 Guild membership voted to ratify the Employer's April 22, 2011 proposal" and notified the employer on June 20, 2011.

On June 22, 2011, Conill advised the union that "[t]he contract has been routed internally and approved by all parties except Jacquelyn [Aufderheide]. . . ."

On July 5, 2011, the employer submitted a memorandum of understanding drafted by Aufderheide to resolve her legal issue with the tentatively agreed to language on Article 26F reached in bargaining by the employer and union negotiating teams 16 months earlier. The memorandum proposed new, substantive language that had never been proposed by the employer's designated negotiating team in the previous 16 months of negotiation and mediation.[5]

On July 18, 2011, and again on July 26, 2011, the employer submitted revised memorandums of understanding drafted by Aufderheide to resolve her legal issue with the tentatively agreed to language of Article 26F. Again, the memorandums proposed a substantive change to the tentatively agreed to language first proposed by the employer's negotiating team, and accepted by the union, 16 months earlier. In these two versions, Aufderheide strikes out the assertion that the employer's negotiating team had "at all times" informed the Guild that any tentative agreement reached was subject to review by the Kitsap County Prosecuting Attorney.

On August 12, 2011, Conill notified the union in writing that the Board of County Commissioners had "decided not to ratify the 2010-2011 collective bargaining agreement proposal which Kitsap County submitted in good faith to the 911 Guild on April 22, 2011." (emphasis added) Conill advised the union that "[t]he Commissioners will ratify the entire April

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[5] In addition to the new, substantive proposal to change the bargained for terms and conditions of the tentative agreement, Aufderheide's memo claims that "[t]he County's bargaining team at all times informed the Guild that any tentative agreement reached was subject to review by the Kitsap County Prosecuting Attorney and ratification by vote of the CENCOM Policy Board and the Kitsap County Board of Commissioners." This statement is completely unsupported by the testimony and evidence which clearly shows that the union was specifically advised by Conill through delivery of the employer's "Governance Directive, POL-155, Negotiating a New Labor Contract" (discussed in more detail below) which unequivocally states that only two employer entities must review and adopt agreements made by its negotiating team: the CENCOM Policy Board and the Kitsap County Board of Commissioners. These two entities are specifically referred to twice. First, the governance directive states that "Collective bargaining agreements are subject to review and approval by both the CENCOM Policy Board and the Kitsap County Board of Commissioners" and again that "CENCOM commits to abide by a duly negotiated labor agreement, the terms of which have been reviewed and approved by the CENCOM Policy Board and the Board of County Commissioners." The employer could have included one of its prosecuting attorneys as a member of its negotiating team and/or advised the union that review/approval by the prosecuting attorney's office was required. The employer did neither. In fact, it specifically notified the union that review and/or approval of tentative agreements was dependent only on the CENCOM Policy Board and the Kitsap County Board of County Commissioners. Nowhere in the evidence, testimony, or in the employer's specific labor contract negotiation directive was there any mention that prosecuting attorney's review and/or approval was required. Not only was there no evidence that the prosecuting attorney's office review or approval was required, there was no evidence that the union was ever, let alone "at all times," notified of any such requirement.

22, 2011, County proposal, as long as the current contract language in Section 26.F (2007-2009 CBA) is retained, and the March 8th TA'ed language removed, in a revised 2010-2011 Successor Agreement." (emphasis in original) In other words, the employer advised the union that it would ratify its own April 22, 2011 proposal made to the union on the condition that the union agreed to the removal of the parties' March 8, 2010 tentatively agreed to language in Article 26F.

APPLICABLE LEGAL STANDARDS

Authority of Bargaining Representatives

Under the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, a public employer has a duty to bargain with the exclusive bargaining representative of its employees. RCW 41.56.030(4). "[P]ersonnel matters, including wages, hours, and working conditions" of bargaining unit employees are characterized as mandatory subjects of bargaining. *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197 (1989); *Federal Way School District*, Decision 232-A (EDUC, 1977), citing *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958). In determining whether an unfair labor practice has occurred or if a party has engaged in bad faith bargaining, the totality of conduct or circumstances must be considered. *Walla Walla County*, Decision 2932-A (PECB, 1988); *Kennewick Public Hospital District 1*, Decision 4815-B (PECB, 1996); *King County,* Decision 10547-A (PECB, 2010). Where an unfair labor practice is alleged, the complainant has the burden of proving its case by a preponderance of the evidence. WAC 391-45-270(1)(a); *Cowlitz County*, Decision 7007-A (PECB, 2000).

"A party is not entitled to reduce collective bargaining to an exercise in futility." *Mansfield School District*, Decision 4552-B (EDUC, 1995). An employer must "meet with a willingness to hear and consider a union's view and a willingness to change its mind . . . [but] such behavior cannot mitigate other [violations] of its good faith obligation." *Fort Vancouver Regional Library*, Decision 2350-C (PECB, 1988), *aff'd,* Decision 2350-D (PECB, 1989). One indication of bad faith is if the words and actions of a party show that it is merely "going through the motions" of bargaining, also called "surface bargaining"; among them, "fail[ing] to designate an agent with sufficient bargaining authority." *Western Washington Univ*ersity, Decision 9309 (PSRA, 2006),

citing *Atlanta Hilton & Tower*, 271 NLRB 1600 (1984). "The exclusive bargaining representative and the principal representative of the employer possess a mutual duty to bargain in good faith, and each party has apparent authority as well as actual authority to reach agreement which will become a collective bargaining agreement. Each party has a right to rely upon the other's authority to reach such an agreement." *Mason County*, Decision 10798-A (PECB, 2011), citing *Naches Valley School District*, Decision 2516 (EDUC, 1987).

"Apparent authority can be created by appointing a person to a position, such as that of manager or treasurer, which carries with it generally recognized duties, and to those who know of the appointment, there is apparent authority to do the things ordinarily entrusted to one occupying the position, regardless of unknown limitations which are imposed upon the particular agent." *City of Brier*, Decision 5089-A (PECB, 1995), citing *King v. Riveland*, 125 Wn.2d 500 (1994). The test for determining whether an employee is an agent looks at all of the circumstances. *Waterville School District*, Decision 11556 (EDUC, 2012). The Commission recently addressed actual or apparent authority in the context of collective bargaining:

> An agent's authority to bind his principal may be of two types, either actual or apparent. With actual authority, the principal's objective manifestations are made to the agent. With apparent authority, they are made to a third person or party. Specifically, apparent authority is created through a manifestation by the principal to a third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to do the acts in question. Thus, either the principal must intend to cause the third person to believe that the agent is authorized to act for him, or the principal should realize that this conduct is likely to create such belief.

Waterville School District, Decision 11556 (citations omitted).

The Commission's rules do not require parties' representatives to be licensed attorneys or to hold any other license, training, or experience. WAC 391-08-010. It is up to each party to choose their own representatives based on the level of knowledge (legal or otherwise), experience, and training they feel is necessary to represent them. A representative's "authority to bargain" is neither reduced nor enhanced based on any license, knowledge (legal or otherwise), experience or training.

Failure to Ratify Tentative Agreement

The Commission recently summarized the legal standards concerning parties' duty to ratify agreements reached during good faith bargaining:

> In certain circumstances, the failure to ratify a collective bargaining agreement may be an unfair labor practice. This Commission has previously recognized that parties are, upon request, obligated to execute a written agreement, and a refusal to sign a contract incorporating agreed upon terms is a per se violation of the act. *Naches Valley School District*, Decision 2516-A (EDUC, 1987), *cited with approval in Shoreline School District*, Decision 9336-A (PECB, 2007). *See also Mason County*, Decision 2307-A (PECB, 1986), *reversed on other grounds, Mason County v. Public Employment Relations Commission*, 54 Wn. App. 36 (1989). Similarly, a party that is dissatisfied with the results of negotiations after its offer is accepted commits an unfair labor practice violation if it seeks to retrench from its offer and bring other issues to the bargaining table. *Island County*, Decision 857 (PECB, 1980).
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> In determining whether an unfair labor practice has occurred, this Commission examines the totality of circumstances when analyzing conduct during negotiations. *Shelton School District*, Decision 579-B (EDUC, 1984). A party may violate its duty to bargain in good faith either by one per se violation, such as a refusal to meet at reasonable times and places, by refusing to make counter proposals, or through a series of questionable acts which, when examined as a whole, demonstrate a lack of good faith bargaining, but by themselves would not be a per se violation. *Snohomish County*, Decision 9834-B (PECB, 2008).

Mason County, Decision 10798-A. The Commission further noted that:

> [W]hen a union or employer representative says to the other party: "We will reach agreement with you at this table, but we must ratify it with our [membership/board of directors] before we have a contract", each party must anticipate a period <u>of only limited risk</u> while the tentative agreement is converted into a binding contract. . . . The exclusive bargaining representative and the principal representative of the employer possess a mutual duty to bargain in good faith, and each party has apparent authority as well as actual authority to reach agreement which will become a collective bargaining agreement. Each party has a right to rely upon the other's authority to reach such an agreement.

Mason County, Decision 10798-A, citing *Naches Valley School District*, Decision 2516. (emphasis added)

In *Shoreline School District*, Decision 9336-A (PECB, 2007), the union and employer negotiating teams reached a tentative agreement at the bargaining table. The Commission found

that the union "was safe to assume that the employer's bargaining team had the authority to reach binding tentative agreements, and that the employer would fully support any terms it proffered, contingent on ratification" by the Board of Directors. However, the tentative agreement was rejected by the Board of Directors after the Superintendent recommended rejection of the deal. The Commission found that the employer's negotiating team had advised the union that it would "sell" the tentative agreement to the Board of Directors, that ratification was only contingent upon a vote of the Board of Directors and made no mention of a need for the Superintendent's support. The Commission's bad faith finding was not based on a lack of support for the tentative agreement by the employer's negotiating team, but on the Superintendent's recommendation to reject the proposal at the end of a lengthy bargaining process of which he had not been involved as a member of the negotiating team. The Commission held that when the Superintendent "recommended that the Board of Directors not ratify the contract, he 'torpedoed' an agreement made by his own bargaining team, and the effect of that recommendation clearly prejudiced the union . . . and under these particular facts, he was not permitted to recommend rejection of the proposal."

The Commission recently reiterated its *Shoreline School District* rationale as follows:

> [T]he employer committed an unfair labor practice when it failed to support a tentative agreement it reached with its represented employees. In that case, the employer's representative, who had authority to bargain on behalf of the employer, negotiated and reached a tentative agreement about a catering proposal with the exclusive bargaining representative of its employees. The district's superintendent, who was not present at negotiations, spoke against the agreement on the basis of the catering proposal, and the school board rejected the tentative agreement.

Mason County, Decision 10798-A (emphasis added).

ANALYSIS

Authority of Bargaining Representatives

The employer in this case is Kitsap County who is party to Interlocal Agreements establishing and governing the Kitsap County Central Communications (CENCOM). The authority and responsibilities of Kitsap County and the CENCOM Policy Board concerning the negotiations of

labor contracts are outlined in the employer's Governance Directive, POL-155 (Negotiating a New Labor Contract)[6] which states, in relevant part, that:

> 3. CPB [CENCOM Policy Board] and BOCC [Board of County Commissioners] Provide Labor Relations Direction and Oversight
>
> Under the terms of Interlocal Agreements establishing and governing CENCOM, the CENCOM Policy Board is responsible for CENCOM's budget, its emergency telecommunications systems and programs, and staffing levels. Kitsap County, through its Board of Commissioners, serves as the umbrella organization for personnel and human resource matters for all CENCOM employees, including establishing personnel policies, and negotiating labor agreements. All CENCOM employees are considered employees of Kitsap County. Collective bargaining agreements are subject to review and approval by both the CENCOM Policy Board and the Kitsap County Board of Commissioners.
>
> 4. CENCOM Director and County Administrator Oversee Negotiations
>
> In consultation with the CENCOM Policy Board and the Board of County Commissioners, the CENCOM Director and Kitsap County Administrator (and/or their designees) negotiate the labor agreements, oversee the negotiations process, and appoint a Principal Negotiator.
>
> 6. CENCOM will abide by the terms of the Collective Bargaining Agreement[7]
>
> CENCOM commits to abide by a duly negotiated labor agreement, the terms of which have been reviewed and approved by the CENCOM Policy Board and the Board of County Commissioners. The agreement will not be considered adopted until signed by the Board of County Commissioners. The CENCOM Director will sign the collective bargaining agreement as a demonstration of the Agency's commitment to abide by both the letter and spirit of the agreement.
>
> 7. Team Members Will Conduct Themselves Professionally
>
> Negotiations team members will conduct themselves professionally, follow the direction of the CENCOM Policy Board and Board of County Commissioners, and maintain appropriate confidentiality of the negotiating process.

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6 A copy of this directive was given to the union negotiating team during bargaining.

7 The document numbering skipped "5."

8. Members Will Bargain in Good Faith

Negotiations team members will bargain in good faith and will abide by any ground rules that arise out of the collective bargaining process.

Per the above-cited Governance Directive, the employer's "Principal Negotiator" was Labor Relations Manager Fernando Conill. The negotiating team also included Director of CENCOM, Richard Kirton and Assistant Director of CENCOM, Maria Jameson-Owens. Like many public employers, the employer did not designate, nor assign to its team, a licensed attorney, nor was it required to do so.[8] Again, like many public employers, the employer designated its Labor Relations Manager, Conill, as its principal negotiator. By the employer's words and actions, as well as by the explicit terms of Governance Directive POL-155, the union was put on notice that Conill was the employer's principal negotiator. The employer's Governance Directive POL-155 further states that the employer's negotiating team members were expected to conduct themselves professionally and to bargain in good faith.

The employer's assignment of Conill as its principal negotiator and the assignment of the CENCOM Director and Deputy Director to its negotiating team put the union on notice that this negotiating team represented the employer for purposes of bargaining in good faith for a new collective bargaining agreement. The union was further put on notice by way of the employer's governance directive concerning the negotiation of new labor contracts. These were "objective manifestation" of the negotiating team's authority to act on behalf of the employer as referred to by the Commission in *Waterville School District*, Decision 11556. Additionally, even if actual authority were not found, the employer's assignment of its Labor Relations Manager as principal negotiator, the assignment of its Director and Deputy Director to the negotiating team and their sole participation in the 20-month collective bargaining process, clearly indicate apparent authority.

Finally, the employer does not assert that the Chief Civil Deputy Prosecuting Attorney's late entry into the good faith bargaining process was necessitated by the negotiating team's lack of authority to bargain. Instead, the employer asserts that it was its negotiating team's lack of legal

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[8] WAC 391-08-010.

knowledge and labor negotiations experience relative to the union attorney's legal knowledge and experience that necessitated her late entry into the process. In its brief, the employer points out that Conill, Kirton, and Jameson-Owens had limited, or no, labor contract bargaining experience. The employer asserts multiple times in its brief that the union attorney somehow took advantage of the employer's team by "mistakenly, carelessly, or knowingly fail[ing] to inform the employer" of the "crucial fact" that, according to the employer, the Ninth Circuit Court of Appeals had rejected the DOL Opinion Letter in *Mortensen v. County of Sacramento*, 368 F.3d 1082 (2004). In doing so the employer alleges that Casillas "knowingly withheld information crucial to the bargaining process." Kitsap County Commissioner Josh Brown testified that Conill and Kirton "thought the law said one thing, they didn't realize that the courts had decided otherwise, they're not attorneys. They certainly were at the negotiating table with individuals who were attorneys, probably knew that there had been a change, but they didn't. And I don't blame them for that." To the extent that the employer appears to be attempting to use their negotiating team's lack of legal education or knowledge as a defense to this unfair labor practice claim, it is rejected. What the union and the employer disagreed on concerning the DOL Opinion Letter concerned the interpretation of a court's legal *opinion*, not a "crucial fact". Legal opinions are capable of being analyzed and interpreted and that is what the union attorney did: he presented a legal position/opinion based on legal research done on behalf, and in the interest of diligently advocating for the interests of his client.[9]

The employer claims in its brief that "the Guild's attorney testified that he was aware of the Ninth Circuit's decision in *Mortenson* [sic], but he did not inform Mr. Kirton about it or advise Mr. Kirton to consult with the prosecutor's office." The employer cites no statute, rule, code or case law, Commission or otherwise, supporting its assertion that Casillas, as the legal representative for the union, had any duty to provide the employer's negotiating team with legal counsel, legal research, statutory/case analysis, or to recommend that the employer's chosen labor relations professionals were in need of, or should consult with, legal counsel. The union attorney was presented with an employer assigned negotiating team that he was safe to assume had such knowledge and/or access to legal counsel. The employer's negotiators were free to

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[9] Attorneys are duty-bound to diligently advocate for the interests of their clients under the Washington State Bar Association's Rules of Professional Conduct. See, generally, WSBA RPC 1.3.

believe the union attorney's legal opinions and/or interpretations on the subject or to do their own research or seek their own counsel. They did not. Conill did not testify so there is no evidence as to what he, as the employer's Labor Relations Manager and principal negotiator for this labor contract, understood or believed. When Director Kirton was specifically asked on cross examination about the union's opinion concerning the DOL Opinion Letter, he testified that he "did not feel that was necessary" to seek legal advice and that he "was aware of the DOL opinion and didn't have any reason to believe that the DOL opinion – that there had been any other case law changing that." He also testified that he had not done any legal research into the issue and the employer states in its brief that "[t]hrough his reading of trade journals and discussions at conferences concerning public sector labor relations, Mr. Kirton, who is not an attorney, believed that DOL's opinion reflected the current state of the law. . . ."

CONCLUSION

Taking all of the facts into consideration as a whole, the employer clearly notified the union (as well as intended to cause, or should have realized that its conduct was likely to create such belief) that its designated negotiating team of Conill, Kirton, and Jameson-Owens were authorized to act for the employer, subject only to the CENCOM Policy Board and the Board of County Commissioners ongoing consultation and final agreement. The employer had the right to designate those personnel and to vest authority in them to bargain on the employer's behalf subject to its stated limitations. The employer's negotiating team had apparent authority as well as actual authority to make proposals, counter proposals and tentative agreements on the terms and conditions of a new collective bargaining agreement. The union had a right to rely on that authority during negotiations. Accordingly the employer did not breach its good faith bargaining obligations regarding the authority of its bargaining representatives in the selection of its negotiating team.

Failure to Ratify Tentative Agreement

The employer's Governing Directive, POL-155 (Negotiating a New Labor Contract) is clear, direct and unambiguous. The negotiating team designated by the employer was vested with the authority to negotiate on the employer's behalf. The only employer entity referenced as limiting

the negotiating team's ability and authority were the CENCOM Policy Board and the Board of County Commissioners.

Union attorney Casillas credibly testified that Conill had advised him on multiple occasions that he was in communication with the CENCOM Policy Board and the Board of County Commissioners concerning all aspects of the negotiations. Conill did not testify. Supporting Casillas' testimony is the employer's governance directive given to the union during bargaining which states that negotiations would be done in "consultation with the CENCOM Policy Board and the Board of County Commissioners" and that the negotiating team would "follow the direction of the CENCOM Policy Board and Board of County Commissioners. . . ." The union's negotiating team had no reason to doubt that Conill and the employer's negotiating team were following that policy directive and that such communication and consultation with the CENCOM Policy Board and the Board of County Commissioners were taking place. During the 17 months since the parties had tentatively agreed on Article 26F, the employer had unfalteringly included the tentative agreement in correspondence, proposals, a last, best and final offer and its proposal to the union of April 22, 2011, which the union ratified. Even without the employer's clear policy directive that its negotiating team would be consulting with the CENCOM Policy Board and the Board of County Commissioners, the Commission has held that an employer's designees have a responsibility to keep decision makers informed of proposals being made on its behalf.

In *Mason County*, Decision 10798-A, the Commission held that the employer's negotiating team[10] had "the responsibility to keep [the employer] informed" of proposals being offered by the employer, and "if any proposal was unacceptable... [the employer] had an obligation to direct [its team] to alter their proposals or to reject the union's proposal during negotiations, and not after negotiations had concluded and the agreements were ratified by the union." Just as the human resources manager and department head in *Mason County*, Conill, Kirton and Jameson-Owens also had a responsibility to keep the CENCOM Policy Board and/or the Board of County Commissioners informed *of the proposals that they were offering on behalf of the employer.* If any employer made proposals (or counter proposals) were unacceptable to the CENCOM Policy Board and/or the Board of County Commissioners, they had an obligation to direct Conill,

[10] The team included several employer designees including its human resources manager and a department head.

Kirton, and Jameson-Owens to alter their proposals or to reject the union's proposal during negotiations, and not after negotiations had concluded and the agreements were ratified by the union.

Over the totality of the 17-month period after the employer and union tentatively agreed to Article 26F, it is not reasonable to expect that the union understood that the CENCOM Policy Board and the Board of County Commissioners had been consulted and informed of the contents of the entire contract, with the exception of the tentative agreement negotiated and reached on Article 26F. During the entire time that the language in Article 26F was negotiated and tentatively agreed to, no mention was made by the employer's negotiating team that there was any issue, at any level, with the bargained-for language. No evidence was presented that Conill or any member of the employer's negotiating team had voiced any concern, nor that any member of the CENCOM Policy Board or the Board of County Commissioners had voiced any opposition whatsoever to its own negotiating team's proposals, offers, counter-offers or the parties' March 8, 2010 tentative agreement concerning Article 26F.

What is reasonable to believe is the union viewed all of the employer's clear words, writings, actions and conduct as indicating that approval of the tentatively agreed to language, which had remained unchanged for 17 months, was simply a formality because it had already been reviewed and/or approved by the ratifying body. These beliefs were reasonably inferred due to the employer's own policy directive concerning the negotiation of labor agreements, the very lengthy amount of time the parties had a tentative agreement on the language in Article 26F, the repeated inclusion in employer-drafted summaries of the status of negotiations and the repeated inclusion of the language in the employer's own contract proposals, including the announcement of impasse and the issuance of an employer last, best and final offer. Adding further support to the reasonableness of the union's belief that the tentative agreement's approval was simply a formality is the fact that the tentatively agreed to language was the result of give and take good faith bargaining between the parties: the employer agreed that the union's proposed language would be acceptable if the union agreed to the employer's counter-proposal to add the phrase "in and of itself" to the union's proposed language. The union accepted the employer's counter-proposal to form the parties' tentative agreement.

While the employer is correct that it had informed the union that final approval by the CENCOM Policy Board and the Board of County Commissioners was required, it never put the union on notice that the employer's prosecuting attorney office's review or approval of the substance of any bargained-for terms and conditions was required. In *Shoreline School District*, Decision 9336-A, the employer committed an unfair labor practice where ratification was only contingent upon a vote of the Board of Directors and no mention was ever made of a need for the Superintendent's support. The Commission's bad faith finding was not based on a lack of support for the tentative agreement by the employer's negotiating team, but on the Superintendent's recommendation to reject the proposal at the end of a lengthy bargaining process of which he had not been involved as a member of the negotiating team. Here, just as in *Shoreline School District*, the employer's negotiating team, who had authority to bargain on behalf of the employer, negotiated and reached a tentative agreement on Article 26F. Part of that tentative agreement contained language counter-proposed by the employer's team. Chief Civil Deputy Prosecuting Attorney Aufderheide, who was not present during negotiations, spoke against the tentative agreement which led the Board of County Commissioners to reject the tentative agreement. Like the superintendent in *Shoreline School District*, Aufderheide recommended rejection of the proposal at the end of a lengthy bargaining process even though she had not been a designated and/or participating member of the employer's negotiating team. When she "recommended that the [Board of County Commissioners] not ratify the contract, [s]he 'torpedoed' an agreement made by [the employer's] own bargaining team, and the effect of that recommendation clearly prejudiced the union . . . and under these particular facts, [s]he was not permitted to recommend rejection of the [tentative agreement]."

CONCLUSION

Based on the totality of the circumstances, the union was safe to assume that the employer's negotiating team had the authority to reach binding tentative agreements, and that the employer would fully support the terms it proffered, contingent on ratification by the Board of County Commissioners. Aufderheide's late entry into the collective bargaining process and recommendation that the Board of County Commissioners not ratify the contract "torpedoed" the parties' Article 26F tentative agreement which had existed unaltered for 17 months. This act

clearly prejudiced the union. Considering all of the facts and circumstances over the 17-month period as a whole, by failing to ratify its own proposed contract of April 22, 2011, based solely on the tentatively agreed to language in Article 26F, the employer failed to bargain in good faith and committed an unfair labor practice in violation of RCW 41.56.140(4) and derivatively interfered with employee rights in violation of RCW 41.56.140(1).

FINDINGS OF FACT

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

2. The Kitsap County 911 Employees' Guild (union) is a bargaining representative within the meaning of RCW 41.56.030(2) for employees in two bargaining units of Kitsap County Central Communications, known as CENCOM: 1) non–supervisory employees; and 2) supervisors.

3. The employer and union are parties to a collective bargaining agreement effective from October 22, 2007, through December 31, 2009. The labor agreement covers both units.

4. In November 2009, the employer and union began the process of collective bargaining for a successor agreement to the parties' 2007-2009 labor agreement.

5. The employer's negotiating team included its designated principal negotiator, Labor Relations Manager Fernando Conill, as well as Director of CENCOM Richard Kirton and Deputy Director of CENCOM Maria Jameson-Owens.

6. The union's negotiating team included its principal negotiator, Attorney Chris Casillas, as well as Guild President Laura Woodrum, Guild Vice President Tonya Shaw, and bargaining unit members Donna Kelly, Jeff West, Stephanie Trueblood, Mary Valerio, and Tom Powers.

7. On November 16, 2009, the union negotiating team presented its first proposal for a successor agreement to the employer's negotiating team. The union proposed a modification to the parties' existing language in Article 26F.

8. On November 16, 2009, and again on February 22, 2010, the employer made counter proposals to the union which sought to maintain the status quo on Article 26F. The union maintained its proposal to modify the language of Article 26F.

9. On March 8, 2010, the employer made a counter-proposal to accept the union's proposed language in Article 26F if the union would agree to the employer's addition of the phrase "in and of itself" to the article's language.

10. On March 8, 2010, the union accepted the employer's counter-offer and the parties tentatively agreed to the bargained for language in Article 26F.

11. On March 16, 2010, the employer produced and delivered to the union a document that included reference to the parties' March 8, 2010 tentative agreement on Article 26F.

12. On September 27, 2010, the employer produced and delivered to the union another document that included reference to the parties' March 8, 2010 tentative agreement on Article 26F.

13. On October 27, 2010, the employer advised the union that it believed the parties to be at impasse and made a last, best and final offer to the union which included the parties' March 8, 2010 tentative agreement on Article 26F. The employer advised the union that absent a "yes" vote by the union, the employer would have "to do" a unilateral implementation of its last, best and final offer.

14. Labor Relations Manager Conill met with the Kitsap County Board of County Commissioners in January 2011 to review the status of bargaining with the union.

15. On March 17, 2011, the employer made a proposal that continued to contain the parties' March 8, 2010 tentative agreement on Article 26F.

16. On April 22, 2011, the employer made a proposal containing a new, additional economic move concerning a training pay issue. No change was made to the parties' March 8, 2010 tentative agreement on Article 26F. The union agreed to take the employer's April 22, 2011 proposal to its bargaining unit for a vote.

17. On June 7, 2011, Conill e-mailed union attorney Casillas advising that, for the first time, there was an issue with the parties' March 8, 2010 tentative agreement on Article 26F. Conill's e-mail advised that Chief Civil Deputy Prosecuting Attorney Jacquelyn Aufderheide had reviewed a draft of the contract as part of the employer's contract review process and decided that the tentatively agreed to Article 26F language "needs to be stricken as it is not consistent with current law." Conill advised the union that he "could not recommend ratification to the BOCC [Board of County Commissioners] until the 26.F language provision is resolved somehow."

18. On June 20, 2011, the union ratified the employer's April 22, 2011 proposal which included the parties' March 8, 2010 tentative agreement on Article 26F.

19. On June 22, 2011, Conill advised the union that "[t]he contract has been routed internally and approved by all parties except Jacquelyn [Aufderheide]. . . ."

20. On July 5, 2011, the employer submitted a memorandum of understanding drafted by Aufderheide to resolve her legal issue with the parties' March 8, 2010 tentative agreement on Article 26F. The memorandum proposed new, substantive language that had never been proposed by the employer's designated negotiating team during negotiation and mediation.

21. On July 18, 2011, and again on July 26, 2011, the employer submitted revised memorandums of understanding drafted by Aufderheide to resolve her legal issue with the parties' March 8, 2010 tentative agreement on Article 26F. Again, the memorandums

proposed a substantive change to the parties' March 8, 2010 tentative agreement on Article 26F.

22. On August 12, 2011, Conill notified the union that the Kitsap County Board of County Commissioners had not ratified the employer's April 22, 2011 proposal made to the union. Conill advised the union that the Board of County Commissioners would ratify the proposal on the condition that the union agreed to remove the parties' March 8, 2010 tentative agreement on Article 26F.

23. On July 17, 2012, the parties submitted post-hearing briefs. The employer's brief was 35 pages in length.

24. On July 18, 2012, the union filed a motion to strike the employer's brief as being overlength in violation of WAC 391-45-290(2). On July 20, 2012, the employer filed a response to the union's motion to strike and a cross motion requesting permission to file an overlength brief.

CONCLUSIONS OF LAW

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

2. Kitsap County's motion to file an overlength brief did not meet the requirements of WAC 391-45-290(2).

3. As described in Findings of Fact 4 through 22, Kitsap County did not breach its good faith bargaining obligations regarding the authority of its bargaining representatives and therefore did not commit an unfair labor practice in violation of RCW 41.56.140(4).

4. By failing to ratify its own April 22, 2011 contract proposal which contained the parties' March 8, 2010 tentative agreement on Article 26F as describe in Findings of Fact 4 through 22, Kitsap County failed to bargain in good faith and committed an unfair labor

practice in violation of RCW 41.56.140(4) and derivatively interfered with employee rights in violation of RCW 41.56.140(1).

ORDER

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

1. CEASE AND DESIST from:

   a. Failing to ratify its own April 22, 2011 contract proposal.

   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. At the next regularly scheduled meeting of the Kitsap County Board of County Commissioners, ratify the inclusion of the parties' March 8, 2010 tentative agreement on Article 26F into the January 1, 2010, through December 31, 2011, collective bargaining agreement between Kitsap County and the Kitsap County 911 Employees' Guild.

   b. Take any additional actions which are necessary to implement the collective bargaining agreement retroactive to January 1, 2010.

   c. Process any and all grievances filed by Kitsap County 911 Employees' Guild concerning claimed violations of the collective bargaining agreement during the period from January 1, 2010, up to the date of the employer's compliance with the order, without asserting any procedural defenses based on failure to comply with contractual time limits.

d. 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.

e. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Kitsap County Board of County Commissioners, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

f. 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.

g. 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 27th day of February, 2013.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

GUY OTILIO COSS, Examiner

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

CASE 24240-U-11-6210
DECISION 11675 - PECB

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

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

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

WE UNLAWFULLY refused to bargain in good faith when we failed to ratify our own contract proposal made to the Kitsap County 911 Employees' Guild on April 22, 2011.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL ratify the inclusion of the parties' March 8, 2010 tentative agreement on Article 26F into the January 1, 2010, through December 31, 2011, collective bargaining agreement between Kitsap County and the Kitsap County 911 Employees' Guild.

WE WILL take any additional actions which are necessary to implement the collective bargaining agreement retroactive to January 1, 2010.

WE WILL process any and all grievances filed by Kitsap County 911 Employees' Guild concerning claimed violations of the collective bargaining agreement during the period from January 1, 2010, up to the date of the employer's compliance with the order, without asserting any procedural defenses based on failure to comply with contractual time limits.

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 02/27/2013

The attached document identified as: DECISION 11675 - 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:	24240-U-11-06210	FILED:	09/12/2011	FILED BY:	PARTY 2
DISPUTE:	ER GOOD FAITH				
BAR UNIT:	ALL EMPLOYEES				
DETAILS:	-				
COMMENTS:					

EMPLOYER: KITSAP COUNTY
ATTN: FERNANDO CONILL
614 DIVISION ST
MS-23
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PARTY 2: KITSAP 911 GUILD
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