Spokane County (Spokane County Deputy Sheriff's Association), Decision 12028 (PECB, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE COUNTY, Complainant, vs. SPOKANE COUNTY DEPUTY SHERIFF'S ASSOCIATION, Respondent.	CASE 26055-U-13-6666 DECISION 12028 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Summit Law Group PLLC, by *Michael C. Bolasina,* Attorney at Law, for the employer.

Stocker, Smith, Luciani & Staub, PLLC, by *Thomas R. Luciani,* Attorney at Law, for the union.

On October 30, 2013, Spokane County (employer) filed an unfair labor practice complaint with the Public Employment Relations Commission, alleging that the Spokane County Deputy Sheriff's Association (union) breached its good faith bargaining obligations by submitting a regressive wage proposal shortly before the parties' scheduled interest arbitration hearing. Unfair Labor Practice Manager David I. Gedrose reviewed the complaint under WAC 391-45-110, and on November 1, 2013, issued a preliminary ruling finding a cause of action. On November 1, 2013, Executive Director Michael P. Sellars suspended the interest arbitration proceedings under WAC 391-55-265, pending the outcome of the unfair labor practice complaint. The Commission assigned the unfair labor practice complaint to Examiner Stephen W. Irvin on November 1, 2013, and I presided over an expedited hearing on December 30, 2013. The parties filed post-hearing briefs on February 3, 2014, to complete the record.

ISSUE

Did the union breach its good faith bargaining obligations by submitting a regressive wage proposal shortly before the parties' scheduled interest arbitration hearing?

Based on the testimony, exhibits, and arguments contained in the parties' post-hearing briefs, I find that the union breached its good faith bargaining obligations when it submitted a regressive wage proposal to an interest arbitration panel. After tying its wage proposal to the Consumer Price Index (CPI) during bilateral negotiations and mediation, the union severed the tie when conveying its wage proposal to the interest arbitration panel. Although the parties were at impasse and their unresolved issues had been certified for interest arbitration, the totality of circumstances demonstrates that the union's wage proposal to the interest arbitration panel created an impediment to breaking the impasse and reaching a negotiated settlement prior to the interest arbitration hearing. Instead of narrowing the parties' differences, the union frustrated the collective bargaining process by making its wage proposal less attractive to the employer and making it less likely that the parties would be able to reach agreement.

APPLICABLE LEGAL STANDARDS

Duty to Bargain

Chapter 41.56 RCW states that collective bargaining:

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

RCW 41.56.030(4).

The "personnel matters, including wages, hours and working conditions" of bargaining unit employees are characterized as the mandatory subjects of bargaining under *City of Richland*, Decision 2448-B (PECB, 1987), *remanded*, 113 Wn.2d 197 (1989), and *Federal Way School District*, Decision 232-A (EDUC, 1977), *citing NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958). *City of Redmond*, Decision 8863-A (PECB, 2006). An employer or union that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice. RCW 41.56.140(4); 41.56.150(4).

In determining whether an unfair labor practice has occurred, the totality of circumstances must be analyzed. *Vancouver School District,* Decision 11791-A (PECB, 2013), *citing Walla Walla County*, Decision 2932-A (PECB, 1988); *City of Mercer Island*, Decision 1457 (PECB, 1982). The evidence must support the conclusion that the respondent's total bargaining conduct demonstrates a failure or refusal to bargain in good faith or an intention to frustrate or avoid an agreement. *City of Wenatchee*, Decision 8898-A (PECB, 2006). Inherent to the good faith obligation is the obligation of employers and unions to provide each other, upon request, with information needed by the requesting party for collective bargaining negotiations or contract administration. *City of Redmond*, Decision 8863-A, *citing City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd*, 119 Wn.2d 373 (1992).

Conduct referred to as "moving the target", *i.e.*, changing demands or proposals at an advanced stage of the bargaining process, has been an issue in other cases. Such behavior is subject to "close scrutiny," and can constitute unlawful conduct. *Spokane County Fire District 1,* Decision 3447-A (PECB, 1990), *citing City of Snohomish*, Decision 1661-A (PECB, 1984); *Sunnyside Valley Irrigation District (Laborers Union, Local 614)*, Decision 314 (PECB, 1977).

Duty to Bargain as it Pertains to Uniformed Personnel

The bargaining unit involved in this case consists of "uniformed personnel" within the meaning of RCW 41.56.030(13), and the parties' bargaining relationship is subject to the interest arbitration provisions of RCW 41.56.430, *et seq.* If an agreement has not been reached following a reasonable period of negotiations and mediation, and the Executive Director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an

interest arbitration panel is created to resolve the dispute.[1] The issues for determination by the arbitration panel shall be limited to the issues certified by the Executive Director. RCW 41.56.450. The rules and procedures of the interest arbitration process are set forth in Chapter 391-55 WAC, beginning with WAC 391-55-200. Under WAC 391-55-220, each party is required to submit to the interest arbitration panel and the other party, at least 14 days before the scheduled interest arbitration hearing, a written proposal on all issues it intends to submit to interest arbitration.

The Commission has determined, and the Washington Supreme Court has affirmed, that interest arbitration represents a continuation of the collective bargaining process and of the parties' obligation to bargain in good faith:

> The duty to bargain in good faith does not end at the point where contract issues are certified for interest arbitration, nor does it end while interest arbitration proceedings are taking place. Rather, it continues at all times during the interest arbitration process. Although interest arbitration is triggered by the Executive Director's certification under RCW 41.56.450 that an impasse exists, that impasse can be broken at any time. In fact, it is in the public interest that such an impasse be broken, and that the parties proceed, if possible, to a negotiated resolution of their dispute.

City of Bellevue, Decision 3085-A, *aff'd*, 119 Wn.2d 373 (1992).

Offers can be changed after interest arbitration has been invoked, particularly when there is an apparent attempt to narrow the parties' differences. However, regressive bargaining occurs when one party at the bargaining table in some manner evidences an attempt to make a proposal less attractive. *City of Wenatchee*, Decision 8898-A.

BACKGROUND

The union is the exclusive bargaining representative for all commissioned law enforcement officers of the Spokane County Sheriff's Office. The events that led to the unfair labor practice

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[1] RCW 41.56.450 and WAC 391-55-205 provide for a three-member arbitration panel: two partisan arbitrators (each side appoints its partisan arbitrator), and one neutral chairperson. The parties may also waive the use of partisan arbitrators. In that case, the neutral chairperson serves as the interest arbitrator.

complaint occurred while the parties were negotiating a successor collective bargaining agreement (CBA) to the CBA that expired December 31, 2010, and was extended by mutual agreement through December 31, 2011.

On June 27, 2011, the union provided the employer its initial proposal for a successor agreement that would take effect on January 1, 2012. The following wage proposal was included:

> Wage increases to be based upon the CPI-U index (posted by the Bureau of Labor Statistics) as proposed by the employer and accepted by the S.C.D.S.A. [union] in 2008. Wage increases for all classifications will be calculated based upon a top-step sergeant's current wage.
>
> - **2012:** An increase of at least 2% up to 5%
> - **2013:** An increase of at least 2% up to 5%
> - **2014:** An increase of at least 2% up to 5%

The CPI-U[2] index referenced in the union's proposal was proposed by the employer on November 1, 2007, during negotiations for the parties' 2008-2010 CBA. For 2009 and 2010, the employer proposed wage increases based upon "100% of CPI-U (US City Average) – Reported by U.S. Department of Labor Bureau of Labor Statistics in July" for the prior 12 months. The parties eventually abandoned the CPI-based wage proposal and agreed to 3.25 percent wage increases in 2009 and 2010. Bargaining unit members did not receive a wage increase when the parties agreed to extend the 2008-2010 CBA through December 31, 2011.

The parties' first bargaining session for the successor agreement was September 29, 2011, and the employer provided its opening proposal to the union on October 11, 2011. The employer's initial proposal for a two-year agreement included: 1) no wage increases for 2012 and 2013; 2) increased medical, dental, and vision insurance premium sharing costs for all employees; and 3) a move to what the employer called the "Alternative Health/Dental plans" in 2012, which included higher deductibles and out-of-pocket expenses for some employees. As part of its initial proposal, the employer offered $500 for each full-time employee and a pro-rated amount for part-time employees if the union would agree to move to the alternative insurance plans effective January 1, 2012.

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[2] The Consumer Price Index (CPI) is used to monitor changes in the price of a set list of products. CPI-U refers to the CPI value for Urban Consumers, which excludes rural populations.

After the union rejected the employer's initial proposal, the employer made two conditional offers in order to provide the union incentive for accepting a switch in insurance plans and increased premium sharing. The first came on December 15, 2011, when the employer offered wage increases of 0.5 percent on January 1, 2012, 1 percent on January 1, 2013, and 1 percent on July 1, 2013, if the union would move to the alternative plans on February 1, 2012. The second came on March 29, 2012, when the employer proposed that the union move to the alternative plans on July 1, 2012, in exchange for a 2 percent wage increase in 2012 and the ability to contribute cashouts from unused sick leave or holidays to a Health Reimbursement Account.

The union did not accept either of the employer's conditional proposals, and maintained its initial stance on wages, and the desire for no change to its premium sharing formula and existing insurance plans. After the parties were unable to make progress resolving these issues and others during six bargaining sessions, the employer requested mediation from the Commission on April 20, 2012.

The parties brought 12 unresolved items into their first mediation meeting on June 29, 2012, and were unable to reach agreement on any of them. During the second mediation meeting on August 13, 2012, the parties agreed to remove proposals regarding specialty pay and a sick leave incentive, but wages, insurance plans, and premium cost sharing remained among the unresolved issues.

After each of the first two mediation meetings, Spokane County Labor Relations Director Timothy O'Brien sent an e-mail to the mediator and the union indicating that both the employer and union believed that they were at impasse and detailing the issues in dispute. In e-mails sent July 2, 2012, and August 14, 2012, O'Brien wrote that the union continued to seek a three-year CBA with annual wage increases tied to CPI-U, along with no change to its insurance plans and premium sharing formula. O'Brien's July 2 e-mail described the union's position as "100% CPI-U for all three years," while his August 14 e-mail described it as "100% CPI-U for all three years with min 2% max 5% each year." The employer, O'Brien's e-mails stated, still sought a two-year contract with a wage freeze, a new premium sharing formula, and a move to the new

insurance plans. The union did not object to O'Brien's characterization of any of the unresolved issues.

The parties' third and final mediation meeting was October 26, 2012, and produced no further agreements. Convinced that the parties were at impasse, the mediator asked each side to submit a written list of its issues to certify for interest arbitration in accordance with WAC 391-55-200. O'Brien submitted the employer's list to the mediator and the union via e-mail on October 31, 2012:

1) Term: Two year: 1/1/12 – 12/31/13
2) Wages: Wage freeze
3) Medical/Dental/Vision: Move to alternative plan with new premium share formula
4) Overtime: Delete contractual OT and just follow FLSA and WMWA
5) Vacation/Sick Accruals: Day is equal to 8 hours
6) Longevity or Education: Once selected – cannot change

Union President Walter Loucks submitted the union's list to the mediator and the employer via e-mail on November 12, 2012:

1) Contract term: three years
2) Wages: 2%-5% calculated on a TSS rate of pay
3) Medical/Dental: maintain current plans and premium share formula
4) Uniform allowance: 20% of a TSD monthly rate of pay
5) Annual and Personal leave sell back: increase maximum from 40 to 120 hours annually
6) Sick time sell back: upon reaching ten years of continuous service
7) Officer Bill of Rights: amend Appendix "B", Article III § 6 to include proposed language.

On November 14, 2012, Executive Director Sellars concurred with the mediator's recommendation that the remaining unresolved issues be submitted to interest arbitration, and certified 10 issues for an interest arbitration panel to consider: 1) Length of agreement; 2) Wages; 3) Medical/dental/vision benefits; 4) Clothing allowance; 5) Vacation/holiday sell back; 6) Sick leave cash out; 7) Bill of rights; 8) Vacation/sick accruals; 9) Longevity or Education; and 10) Overtime. Jane Wilkinson was subsequently selected as the neutral chairperson for the

interest arbitration panel, and a hearing was scheduled for November 6, 2013, nearly one year after certification of the unresolved issues.

In accordance with WAC 391-55-220, the parties submitted written proposals on the remaining unresolved issues to the interest arbitration panel and the opposing party. On October 22, 2013, union attorney Thomas R. Luciani e-mailed the union's proposal to Wilkinson and employer attorney Bruce Schroeder. Luciani's e-mail included the following wage proposal:

> 2) Wage increases based on Top Step Sergeant
> 2012 – 2% to 5%
> 2013 – 2% to 5%
> 2014 – 2% to 5%.

On October 23, 2013, Schroeder replied via e-mail that the wage proposal advanced to the arbitrator was incorrect because the union had previously proposed wage increases tied to CPI-U. Luciani responded later in the day that "that was the initial proposal. The final proposal, contained in an e-mail of 11/12/12 to the mediator, did not contain that tie-in."

In an e-mail to Luciani on October 25, 2013, Schroeder wrote that the employer considered the union's October 22, 2013 wage proposal regressive and asked that the union return to its CPI-U proposal in order to avoid an unfair labor practice complaint. On October 29, 2013, Luciani responded in an e-mail to Schroeder that "the reference to the CPI-U was in anticipation of the County seeking to utilize another index. The Association never intended to limit its wage requests for 2012, 2013 and 2014 to the CPI-U percentages for those years, and that position was confirmed in the final e-mail transmission to the Mediator." The employer filed its unfair labor practice complaint the next day. On November 1, 2013, Executive Director Sellars suspended the interest arbitration proceedings pending the outcome of the unfair labor practice complaint.

ANALYSIS

The issues brought to the fore by this case are not unique, as employers and unions have been found to have violated their good faith bargaining obligations by advancing proposals prior to interest arbitration that were substantially different from proposals made during bilateral

negotiations and mediation. In *Spokane County Fire District 1,* Decision 3447-A, the employer committed an unfair labor practice by withdrawing its previous offer for a wage increase and submitting a no-increase proposal to the interest arbitrator prior to the hearing without advancing a good faith basis for the change of its position. In *City of Spokane*, Decision 1133 (PECB, 1981), the employer refused to bargain when it, at the threshold of interest arbitration, withdrew all of the improvements it had offered to the union during bilateral negotiations and mediation. The union refused to bargain in *City of Clarkston (International Association of Fire Fighters, Local 2299)*, Decision 3246 (PECB, 1989), when it escalated its bargaining demands and positions before an interest arbitration panel. The union committed a similar violation in *King County (Public Safety Employees Local 519, SEIU)*, Decision 4236 (PECB, 1992), when it increased its wage demands prior to interest arbitration.

In *City of Clarkston (International Association of Fire Fighters, Local 2299)*, the union failed to disclose to the employer its intention to change the list of comparable jurisdictions the union was relying upon. A failure to communicate was also at the root of unfair labor practices found in *Whatcom County (Whatcom County Deputy Sheriff's Guild)*, Decision 7728 (PECB, 2002), where the union advanced an issue to interest arbitration that it first raised on the last day of mediation and then appeared to have dropped; and *City of Wenatchee*, Decision 8028 (PECB, 2003), where the employer advanced proposals to interest arbitration that had not been submitted during bilateral negotiations and were only given a "passing glance" during mediation.

The union's arguments for dismissal of the employer's complaint in this case are threefold. First, the union contends that the complaint was not timely filed, because the union eliminated the reference to CPI-U when it e-mailed the mediator its list of issues to be submitted to interest arbitration on November 12, 2012, and the employer filed its complaint many months after the six-month statute of limitations had expired. Second, the union asserts that it did not bargain regressively because it never intended to tie its wage proposal to CPI-U. The union explains that its request for a wage increase of between 2 and 5 percent without the reference to CPI-U was an attempt to provide the interest arbitration panel a range of wage options to counterbalance the potential impact of an interest arbitration award that could force employees to pay higher premiums for new insurances plans that include higher out-of-pocket medical costs. Third, the

union argues that dropping the CPI-U reference in its November 12, 2012 e-mail to the mediator and the October 22, 2013 e-mail to the arbitrator did not infect the bargaining process because the bargaining process was finished once impasse was declared.

The employer points to the parties' history of bargaining in support of its complaint. The employer argues that the plain language of the union's initial proposal tethered wage increases to CPI-U, and that the union's position did not change during the course of bilateral negotiations and mediation. The employer also contends that – seen in the context of the union's wage position during bilateral negotiations and mediation – the union's November 12, 2012 e-mail to the mediator was a continuation of the previous theme. As such, the employer asserts that it filed its complaint in a timely manner because it did not have clear and unequivocal notice of the union's intent to drop CPI-U from its wage proposal until the e-mail exchange that began with the union's October 22, 2013 proposals to the neutral chairperson of the interest arbitration panel and the employer.

After considering the union's overall bargaining behavior, I find little merit in its arguments in favor of dismissal. Despite the employer's insistence on a wage freeze for 2012 and 2013, the possibility existed that the parties could have reached a settlement on the courthouse steps prior to interest arbitration. The window of opportunity for a negotiated settlement closed abruptly, however, when the union switched courses on its wage proposal following months of bilateral negotiations and mediation in which it consistently maintained its initial proposal to link wage increases to CPI-U.

The union's escalation of demands at an advanced stage of negotiations makes this case analogous to *City of Clarkston (International Association of Fire Fighters, Local 2299)*, Decision 3246. In addition to failing to share its list of comparable jurisdictions with the employer prior to interest arbitration, the union in *City of Clarkston* also proposed a wage increase that was higher than it sought during bilateral negotiations and mediation. The Examiner found that the union had committed an unfair labor practice by failing to disclose the basis for changes in its wage proposal and its list of comparable jurisdictions prior to interest arbitration

when "[a] timely and clear explanation of the union's change of direction could have mitigated the problem."

The Examiner in *City of Clarkston* explained the parties' good faith bargaining obligations as follows:

> In its brief, the union argues that the interest arbitrator has authority to decide whether such information should be considered. If the union's argument is taken to its logical conclusion, however, either party could invent any type of proposal that it desired after it entered interest arbitration. Such a procedure can work two ways, both of which are detrimental to the "good faith" collective bargaining process. Thus, while a union could propose a much higher wage rate than was discussed in negotiations and mediation, the union's theory would also open the way for an employer to dramatically reduce its wage offer, or even to demand concessions in interest arbitration that had never been discussed at the bargaining table. Such consequences may occur in the negotiation of adversarial matters such as civil lawsuits on commercial contracts, where neither party is under a statutory duty to bargain in good faith. The interest arbitration process was designed, however, to be the final step in a collective bargaining process centered upon good faith, and a late escalation of demands by either party violates that duty.

In the instant case, the plain language of the union's initial proposal in June of 2011 made it apparent that wage increases were to be based on CPI-U, and the union never wavered from that position until the 11th hour before interest arbitration proceedings were to begin. Union President Loucks testified that he had a brief conversation during one of the first two bargaining sessions with county Labor Relations Director O'Brien, in which Loucks stated that the union's wage proposal was not tied to CPI-U. O'Brien did not recall that conversation, and the record shows that the union did not make another written wage proposal during bilateral negotiations and mediation that reflected the union's professed position regarding the lack of linkage between wages and CPI-U.

The absence of a modified wage proposal from the union led the employer to the reasonable belief that the 2 to 5 percent wage increase contained in the union's November 12, 2012 e-mail to the mediator – sent 16 days after the last mediation meeting – was no different than the union's CPI-based initial proposal. It wasn't until the union's October 22, 2013 e-mail to the neutral chairperson of the interest arbitration panel and the subsequent e-mail exchange between

the parties' legal representatives that the employer was put on notice that the union had substantially altered its wage proposal by dropping the reference to CPI-U.

O'Brien testified that the parties knew at the time the October 22, 2013 e-mail was sent that the union's proposed CPI-based wage increases would be 2.2 percent in 2012, 2.77 percent in 2013, and 2 percent in 2014. The employer estimated the cost of the wage increases to be slightly more than $2.7 million over the three-year term of the contract. If the union were allowed to seek up to 5 percent wage increases in each year of the contract in interest arbitration without the link to CPI-U, the union's proposal had the potential to be far more expensive for the employer.

The union's change of position on wages after the declaration of impasse would have been acceptable if it had served to bring the parties closer to agreement. It did the opposite, however, and must be considered regressive and a violation of the duty to bargain in good faith.

CONCLUSION

The union's total bargaining conduct indicates that it breached its good faith bargaining obligations when it submitted a regressive wage proposal to an interest arbitration panel. The union's decision to abandon a CPI-based wage increase after the parties' unresolved issues were certified for interest arbitration resulted in a wage proposal that was less attractive to the employer and frustrated the collective bargaining process in violation of Chapter 41.56 RCW.

In past cases involving escalated bargaining demands prior to interest arbitration and violations of the duty to bargain in good faith, the Commission has ordered the offending party to withdraw its modified proposals before proceeding to the interest arbitration hearing. As a remedy in this case, the union shall be ordered to cease and desist from its illegal activity, to post appropriate notices, and to enter the interest arbitration hearing with the initial wage proposal it provided to the employer on June 27, 2011 – Wage increases for 2012, 2013, and 2014 are to be based upon the CPI-U index reported by the U.S. Department of Labor Bureau of Labor Statistics in July for the prior 12 months. Wage increases for all classifications will be calculated based upon a top-step sergeant's current wage, with a minimum of 2 percent and a maximum of 5 percent each year.

FINDINGS OF FACT

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

2. Spokane County Deputy Sheriff's Association (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union is the exclusive bargaining representative for all commissioned law enforcement officers of the Spokane County Sheriff's Office.

4. The events that led to the unfair labor practice complaint occurred while the parties were negotiating a successor collective bargaining agreement (CBA) to the CBA that expired December 31, 2010, and was extended by mutual agreement through December 31, 2011.

5. On June 27, 2011, the union provided the employer its initial proposal for a successor agreement that would take effect on January 1, 2012.

6. The following wage proposal was included in the union's initial proposal:

> Wage increases to be based upon the CPI-U index (posted by the Bureau of Labor Statistics) as proposed by the employer and accepted by the S.C.D.S.A. [union] in 2008. Wage increases for all classifications will be calculated based upon a top-step sergeant's current wage.
>
> - **2012:** An increase of at least 2% up to 5%
> - **2013:** An increase of at least 2% up to 5%
> - **2014:** An increase of at least 2% up to 5%

7. The CPI-U index referenced in the union's proposal was proposed by the employer on November 1, 2007, during negotiations for the parties' 2008-2010 CBA. For 2009 and 2010, the employer proposed wage increases based upon "100% of CPI-U (US City Average) – Reported by U.S. Department of Labor Bureau of Labor Statistics in July" for the prior 12 months.

8. The parties' first bargaining session for the successor agreement was September 29, 2011, and the employer provided its opening proposal to the union on October 11, 2011.

9. The employer's initial proposal for a two-year agreement included: 1) no wage increases for 2012 and 2013; 2) increased medical, dental and vision insurance premium sharing costs for all employees; and 3) a move to what the employer called the "Alternative Health/Dental plans" in 2012, which included higher deductibles and out-of-pocket expenses for some employees. As part of its initial proposal, the employer offered $500 for each full-time employee and a pro-rated amount for part-time employees if the union would agree to move to the alternative insurance plans effective January 1, 2012.

10. After the union rejected the employer's initial proposal, the employer made two conditional offers in order to provide the union incentive for accepting a switch in insurance plans and increased premium sharing. The first came on December 15, 2011, when the employer offered wage increases of 0.5 percent on January 1, 2012, 1 percent on January 1, 2013, and 1 percent on July 1, 2013, if the union would move to the alternative plans on February 1, 2012. The second came on March 29, 2012, when the employer proposed that the union move to the alternative plans on July 1, 2012, in exchange for a 2 percent wage increase in 2012 and the ability to contribute cashouts from unused sick leave or holidays to a Health Reimbursement Account.

11. The union did not accept either of the employer's conditional proposals, and maintained its initial stance on wages, and the desire for no change to its premium sharing formula and existing insurance plans.

12. After the parties were unable to make progress resolving these issues and others during six bargaining sessions, the employer requested mediation from the Commission on April 20, 2012.

13. The parties brought 12 unresolved items into their first mediation meeting on June 29, 2012, and were unable to reach agreement on any of them.

14. During the second mediation meeting on August 13, 2012, the parties agreed to remove proposals regarding specialty pay and a sick leave incentive, but wages, insurance plans, and premium cost sharing remained among the unresolved issues.

15. After each of the first two mediation meetings, Spokane County Labor Relations Director Timothy O'Brien sent an e-mail to the mediator and the union indicating that both the employer and union believed that they were at impasse and detailing the issues in dispute.

16. In e-mails sent July 2, 2012, and August 14, 2012, O'Brien wrote that the union continued to seek a three-year CBA with annual wage increases tied to CPI-U, along with no change to its insurance plans and premium sharing formula. O'Brien's July 2 e-mail described the union's position as "100% CPI-U for all three years," while his August 14 e-mail described it as "100% CPI-U for all three years with min 2% max 5% each year." The employer, O'Brien's e-mails stated, still sought a two-year contract with a wage freeze, a new premium sharing formula, and a move to the new insurance plans. The union did not object to O'Brien's characterization of any of the unresolved issues.

17. The parties' third and final mediation meeting was October 26, 2012, and produced no further agreements. Convinced that the parties were at impasse, the mediator asked each side to submit a written list of its issues to certify for interest arbitration in accordance with WAC 391-55-200.

18. O'Brien submitted the employer's list to the mediator and the union via e-mail on October 31, 2012:

    1) Term: Two year: 1/1/12 – 12/31/13
    2) Wages: Wage freeze
    3) Medical/Dental/Vision: Move to alternative plan with new premium share formula
    4) Overtime: Delete contractual OT and just follow FLSA and WMWA
    5) Vacation/Sick Accruals: Day is equal to 8 hours
    6) Longevity or Education: Once selected – cannot change

19. Union President Walter Loucks submitted the union's list to the mediator and the employer via e-mail on November 12, 2012:

1) Contract term: three years
2) Wages: 2%-5% calculated on a TSS rate of pay
3) Medical/Dental: maintain current plans and premium share formula
4) Uniform allowance: 20% of a TSD monthly rate of pay
5) Annual and Personal leave sell back: increase maximum from 40 to 120 hours annually
6) Sick time sell back: upon reaching ten years of continuous service
7) Officer Bill of Rights: amend Appendix "B", Article III §6 to include proposed language.

20. On November 14, 2012, Executive Director Michael P. Sellars concurred with the mediator's recommendation that the remaining unresolved issues be submitted to interest arbitration, and certified 10 issues for an interest arbitration panel to consider: 1) Length of agreement; 2) Wages; 3) Medical/dental/vision benefits; 4) Clothing allowance; 5) Vacation/holiday sell back; 6) Sick leave cash out; 7) Bill of rights; 8) Vacation/sick accruals; 9) Longevity or Education; and 10) Overtime. Jane Wilkinson was subsequently selected as the neutral chairperson for the interest arbitration panel, and a hearing was scheduled for November 6, 2013, nearly one year after certification of the unresolved issues.

21. In accordance with WAC 391-55-220, the parties submitted written proposals on the remaining unresolved issues to the interest arbitration panel and the opposing party. On October 22, 2013, union attorney Thomas R. Luciani e-mailed the union's proposal to Wilkinson and employer attorney Bruce Schroeder. Luciani's e-mail included the following wage proposal:

2) Wage increases based on Top Step Sergeant
2012 – 2% to 5%
2013 – 2% to 5%
2014 – 2% to 5%.

22. On October 23, 2013, Schroeder replied via e-mail that the wage proposal advanced to the arbitrator was incorrect because the union had previously proposed wage increases tied to CPI-U.

23. Luciani responded on October 23, 2013, that "that was the initial proposal. The final proposal, contained in an e-mail of 11/12/12 to the mediator, did not contain that tie-in."

24. In an e-mail to Luciani on October 25, 2013, Schroeder wrote that the employer considered the union's October 22, 2013 wage proposal regressive and asked that the union return to its CPI-U proposal in order to avoid an unfair labor practice complaint.

25. On October 29, 2013, Luciani responded in an e-mail to Schroeder that "the reference to the CPI-U was in anticipation of the County seeking to utilize another index. The Association never intended to limit its wage requests for 2012, 2013 and 2014 to the CPI-U percentages for those years, and that position was confirmed in the final e-mail transmission to the Mediator."

26. The employer filed its unfair labor practice complaint on October 30, 2013.

27. On November 1, 2013, Executive Director Sellars suspended the interest arbitration proceedings pending the outcome of the unfair labor practice complaint.

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. By escalating its demands after the parties' unresolved issues were certified for interest arbitration, as described in Findings of Fact 21, 23 and 25, the Spokane County Deputy Sheriff's Association has failed and refused to bargain in good faith, and has committed an unfair labor practice in violation of RCW 41.56.150(4) and (1).

ORDER

Spokane County Deputy Sheriff's Association, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Failing to bargain in good faith with Spokane County by submitting a regressive wage proposal to an interest arbitration panel.

   b. In any other manner interfering with, restraining or coercing 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. Upon request, bargain in good faith with Spokane County concerning wage increases for 2012, 2013, and 2014.

   b. Withdraw the wage proposal made to the interest arbitration panel on October 22, 2013, and rely in the currently pending interest arbitration proceedings on the wage proposal made to the employer on June 27, 2011: Wage increases for 2012, 2013, and 2014 are to be based upon the CPI-U index reported by the U.S. Department of Labor Bureau of Labor Statistics in July for the prior 12 months. Wage increases for all classifications will be calculated based upon a top-step sergeant's current wage, with a minimum of 2 percent and a maximum of 5 percent each year.

   c. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's

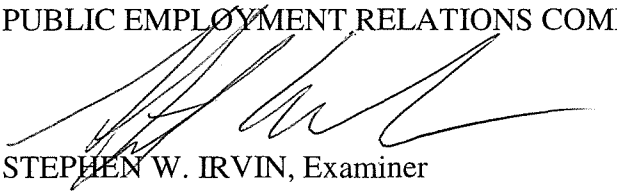
premises where union notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

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

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

ISSUED at Olympia, Washington, this 16th day of April, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



STEPHEN W. IRVIN, 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 26055-U-13-6666
DECISION 12028 - PECB

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

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

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT THE SPOKANE COUNTY DEPUTY SHERIFF'S ASSOCIATION COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY refused to bargain with Spokane County by escalating our wage demands after the parties' unresolved issues were certified for interest arbitration.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL, upon request, bargain in good faith with Spokane County concerning wage increases for 2012, 2013, and 2014.

WE WILL withdraw the wage proposal made to the interest arbitration panel on October 22, 2013, and rely in the currently pending interest arbitration proceedings on the wage proposal made to the employer on June 27, 2011: Wage increases for 2012, 2013, and 2014 are to be based upon the CPI-U index reported by the U.S. Department of Labor Bureau of Labor Statistics in July for the prior 12 months. Wage increases for all classifications will be calculated based upon a top-step sergeant's current wage, with a minimum of 2 percent and a maximum of 5 percent each year.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce 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 04/16/2014

The attached document identified as: DECISION 12028 - 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:	26055-U-13-06666	FILED:	10/30/2013	FILED BY:	EMPLOYER
DISPUTE:	UN GOOD FAITH				
BAR UNIT:	LAW ENFORCE				
DETAILS:	-				
COMMENTS:					

EMPLOYER: SPOKANE COUNTY
ATTN: SPOKANE CO COMMISSIONERS
W 1116 BROADWAY
SPOKANE, WA 99260
Ph1: 509-477-2265

REP BY: MICHAEL C BOLASINA
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PARTY 2: SPOKANE CO DEPUTY SHERIFF ASSN
ATTN: WALTER LOUCKS
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Ph1: 509-216-0056 Ph2: 509-477-3151

REP BY: THOMAS R LUCIANI
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