STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GREEN RIVER UNITED FACULTY COALITION, Complainant, vs. GREEN RIVER COLLEGE, Respondent.	CASE 127797-U-15 DECISION 12622 - CCOL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On December 21, 2015, the Green River United Faculty Coalition (union) filed a complaint with the Public Employment Relations Commission alleging Green River College (employer) refused to bargain when it unilaterally implemented the Program Prioritization Process.

The Commission's Unfair Labor Practice Manager issued a preliminary ruling on January 6, 2016. On January 27, 2016, the union filed a motion for temporary relief under WAC 391-45-430 which the Commission denied on February 11, 2016. *Green River College*, Decision 12545 (CCOL, 2016). On April 5, 2016, the union filed a renewed motion for temporary relief which the Commission denied on May 3, 2016. *Green River College*, Decision 12571 (CCOL, 2016). The case was assigned to Examiner Jamie L. Siegel who held a hearing on May 4 and 6, 2016. The parties submitted post-hearing briefs on July 11, 2016.

ISSUES

The issues, as framed by the preliminary ruling, are whether the employer refused to bargain in violation of RCW 28B.52.073(1)(e) and, if so, derivatively interfered in violation of RCW 28B.52.073(1)(a) by:

1. Unilaterally announcing its decision to replace the Program Assessment and Improvement process contained in the parties' expired collective bargaining agreement with a new Program Prioritization Process, without providing the union with an opportunity for bargaining;

2. Refusing to bargain with the union over its decision to implement a new Program Prioritization Process, which is alleged to be a mandatory subject of bargaining; and

3. Refusing to bargain with the union over the effects of its decision to implement a new Program Prioritization Process.

The union did not establish that the employer refused to bargain in violation of RCW 28B.52.073(1)(e), and I dismiss the complaint.

BACKGROUND

The employer operates a college with its main campus in Auburn, Washington. The union represents a bargaining unit of instructional faculty, division chairpersons, counseling faculty, and instructional resources and services faculty.

Collective Bargaining Agreement

The parties' collective bargaining agreement (CBA) expired on June 1, 2014. They reached a tentative agreement on a successor CBA in November 2015 and ratified and approved it in February 2016; the CBA had not been signed at the time of the hearing. During all times relevant

to this matter, the parties operated under the terms of the expired agreement. The articles addressed in this decision remain unchanged in the successor CBA.

Article IV, Section O of the CBA addresses the Program Assessment and Improvement (PA&I) process. Programs undergo the process once every five years unless they are exempted. The CBA describes the PA&I process as "a formative process that shall not be used in place of the 'program review' process intended to evaluate program viability." The CBA does not address the program review process.[1]

Article XII of the CBA addresses reductions in force. It defines allowable reasons for reductions in force as any of the following: emergency reduction in force as defined in RCW 28B.50.873 (financial emergency), institutional lack of funds, or program termination or program reduction.

The Employer's Introduction of the Program Prioritization Process—July and September 2015

In the spring of 2015, the employer forecasted an estimated four million dollar budget deficit going into the 2016–17 academic year. As a result, on May 21, 2015, the employer's Board of Trustees approved a resolution to study the impact of "policies, practices and procedures that have a negative effect on enrollment, retention, completion and, as a result, the college's financial stability and wellbeing."

At least in part due to feedback the employer received after eliminating a program and faculty position the previous academic year, the employer adopted a new Program Prioritization Process (PPP) to provide transparency and stakeholder involvement as the employer planned for possible budget cuts. The employer developed its process as an adaptation from a model described in the book *Prioritizing Academic Programs and Services* authored by Robert C. Dickeson. Derek Brandes, the employer's vice president of instruction, learned about the process from a colleague at another college.

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[1] The preliminary ruling did not address any allegations regarding the program review process. As a result, no allegations regarding the program review process are before me.

On July 16, 2015, Brandes presented the PPP to the employer's Board of Trustees. The first page of his presentation described the "situation" with the following four points:

- Budget shortfall
- Board Resolution to analyze impacts to Enrollment & Budget
- Process to identify ways to enhance Revenue, Realize Efficiencies, & Cut Costs
- What are other colleges doing in environment of restrained resources?

Two months later, on September 16, 2015, Brandes and Christopher Johnson, Executive Director of Institutional Effectiveness, shared the PPP with faculty and staff at opening week presentations for the new academic year. During the presentations, faculty asked a variety of questions, including questions about the PPP's relationship to the PA&I process. When a faculty member stated that replacing the PA&I process would require bargaining, Brandes reportedly replied, "Yes, let's bargain it then."[2]

The employer highlighted six objectives of the PPP: (1) ensure a sustainable financial future; (2) become more transparent about budgeting; (3) align planning, evaluation, and budgeting (accreditation); (4) identify areas of investment; (5) re-evaluate why the employer did things; and (6) better align Green River College with community and student needs.

For purposes of implementing the PPP, the employer divided the campus into three "pillars" with like functions: instructional programs, student support services, and institutional support services. This case focuses exclusively on the instructional programs pillar. Within each pillar, a committee developed rubrics designed to collect qualitative and quantitative data to address 10 criteria:

1. Program history, development, and expectations
2. External demand for the program
3. Internal demand for the program
4. Quality of program inputs and processes
5. Quality of program outcomes

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2 The PA&I process had not been implemented for at least two years.

6. Size, scope, and productivity of the program
7. Revenue and other resources generated by the program
8. Costs and other expenses associated with the program
9. Impact, justification, and essentiality of the program
10. Opportunity analysis of the program

Brandes testified that while it was the intent to use the 10 criteria, only nine were used. The criteria relating to costs was eliminated because short-staffing in the budget office did not allow the employer to generate the necessary data.

After the committee developed the rubrics, each program completed the rubrics. The next steps involved scoring the programs' answers, analyzing the data, and ranking the programs into one of five quintiles with 20 percent of programs in each quintile. "Quintile one" programs ranked the highest and were candidates for enriched funding. "Quintile five" programs ranked the lowest and were candidates for reduction, consolidation, or merger.

The original timeline showed the employer prioritizing programs by January 31, 2016, and making budget decisions on resource allocations by March 31, 2016. As described below, the timelines changed.

Communication About the PPP Between the Employer and Union—September and October 2015

While some employees learned of the PPP at the July Board of Trustees meeting and others learned of it at the September opening week presentations, the employer gave the union no official notice of its decision to implement the PPP until the employer sent the union what the employer considered a "pro forma" letter on October 6, 2015. The letter invited the union to request bargaining over the effects of the employer's decision to implement the PPP.[3]

[3] The letter announced the implementation of the PPP in order to address budgetary concerns and determine the viability of each area on campus. The letter explained, "The process will involve stakeholders from each area of the college and will examine instructional services, student services, and institutional support. The intent of this process is to achieve strategic balance by measuring, analyzing, and prioritizing those areas."

On September 23, 2015, prior to receiving the employer's "pro forma" letter, the union formally demanded to bargain the employer's decision to implement the PPP. Union president Jaeney Hoene's e-mail to Eileen Ely, the employer's president, identified that the imposition of the process, particularly in such a short period of time, constituted a new workload requirement. The e-mail also addressed the union's concern that the employer intended to replace the PA&I process with the PPP. Indicating flexibility on the bargaining forum, Hoene stated, "I will look forward to communicating with administration's negotiating team regarding the bargaining process and whether or not it will be included in the larger contract negotiation process."

On September 24, 2015, Marshall Sampson, the employer's vice president of human resources and legal affairs, responded by e-mail to Hoene's demand to bargain and stated a willingness to bargain either in the larger contract negotiation process or as a separate issue. The letter indicated that PPP participation was not required: "While Faculty participation is not required, the process may continue as it is within the scope of Management Rights to review all programs within the college. Should Faculty desire to participate, the College does not see a barrier to that participation pending the resolution of the Demand to Bargain."

As a result of the union's demand to bargain, the union and employer met on October 7, 2015. Attending on behalf of the union were Hoene and Leslie Kessler, a bargaining unit employee who also served on the union's bargaining team and as the instructional council chairperson. Brandes and Sampson attended the meeting on behalf of the employer. The parties disagree on the characterization of the meeting; the employer asserts it was a bargaining session and the union asserts it was not.

At the meeting the parties discussed the employer's perspective of its management rights, and the employer reiterated its position that participation in the PPP was voluntary. The parties discussed PPP workload issues and the employer raised the idea of compensating employees for participation on certain committees, such as the pillar committee. The employer also raised the idea of relieving employees from other committee work due to the heavy workload of the PPP. Additionally,

Brandes shared that the employer did not intend to replace the PA&I process with the PPP and discussed reinstating the PA&I process.[4]

At the end of the meeting, Kessler noted that faculty would feel better if there were a guarantee that PPP results would not be used to lay off any faculty members for one year. Sampson asked if that was a proposal and the response was "no, that was not." The union did not request additional meetings or add the subject to the negotiations taking place on the CBA.

On October 30, 2015, Brandes updated the employer's Board of Trustees on the PPP. At the same Board of Trustees meeting, Hoene expressed concerns about the speed of the process and questioned spending $26 million of local funds on capital projects while looking at cutting programs. She stated, "Any process that leads to eliminating positions and programs of study for students should have unassailable justification." Hoene announced that faculty did not believe the PPP to be credible or justified and would not participate in it.

Union's Unfair Labor Practice Complaint—December 2015

On December 21, 2015, the union filed the present unfair labor practice complaint.[5]

Next Steps With Implementation of the PPP—January 2016

The employer continued implementation of the PPP. The pillar committee developed the rubrics and published them in January 2016. The employer established a February deadline for completing the rubrics.

Approximately 50 percent of bargaining unit employees participated in completing the rubrics. For those who did not, their program deans (non-bargaining unit employees) completed the rubrics.

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[4] In January 2016, Brandes published a multi-year PA&I rotation schedule for the 2015–16 through 2019–20 academic years. On April 1, 2016, the journalism program, among others, submitted its PA&I documentation.

[5] Both parties introduced, without objection, evidence postdating the union's complaint. I admitted the evidence based on the Commission's recent decision holding that evidence of events occurring after a complaint has been filed may be relevant. *Snohomish County Police Staff and Auxiliary Services Center*, Decision 12342-A (PECB, 2016), *pending in* Snohomish County Superior Court, Case No. 16-2-03002-3.

According to some witnesses, employees—particularly those without tenure—felt pressured to participate. Hoene testified that employees were terrified and that there was pressure and strong encouragement from the deans to participate. One dean, Christie Gilliland, sent several e-mails. In an e-mail to her department on January 12, 2016, Gilliland warned employees about putting their programs at risk by not participating:

> I know I sent a message earlier, but having seen the final list of questions I would even more strongly encourage you to look seriously at the questions and I am hoping when you see them you will decide to participate. I worry about any of our programs being put at risk. I understand you have reasons why you may be considering not participating, but I think you want to seriously weigh whether or not you want to put your program [at] risk. Seeing the final list of 28 questions, I realize now that I will only be able to answer about 4 or 5 of them (those that are strictly asking for data and perhaps a standard general response for the revenue question . . . . For all of the others, I will just have to say "no information available" as many of them are asking for what you have done, what you intend to do, or to provide specific examples/evidence. I would never presume to read your minds nor do I have access to your curriculum so those really have to be answered by you all.

On January 21, 2016, Gilliland e-mailed bargaining unit employee Timothy Scharks indicating that since she had not heard from him, she presumed he chose not to participate. Her e-mail expressed concern for his program:

> I have to be honest that of all my areas, I am most concerned about yours. I have no inside knowledge or anything, but it is the smallest and might be seen as the easiest to move to adjunct only or eliminate. If you are not planning to participate, I will do what I can and send it to you in case you want to edit it.

In another e-mail to Scharks on January 26, 2016, after Brandes spoke with the deans and cautioned them against "arm twisting" employees, Gilliland wrote:

> It is voluntary and it is okay if you do not want to participate. I would not be doing my job or my ethical due diligence if I did not express my concern, but if you would prefer I just fill out the rest for you as I have done with other areas I am happy to do that. Unfortunately, they will mostly be "no information available" as I have already filled in the questions I can for you. Really, anything you put would be value added.

Communication About the PPP Between the Employer and Union—January and February 2016

Between January 13 and 22, 2016, Sampson and Hoene exchanged a number of e-mails, each appearing to document their positions for litigation. By e-mail dated January 13, 2016, Sampson disputed assertions in the union's unfair labor practice complaint and offered to continue bargaining the effects of the PPP. Sampson recounted his version of events from the October 7, 2015, meeting and stated, "Your ULP complaint states that possible faculty terminations are a potential impact that must be bargained. We have a reduction in force process in Article XII of the expired contract and the tentative contract. You did not request changes to that process." Sampson offered dates and times for bargaining.

By e-mail dated January 14, 2016, Hoene contested Sampson's description of the October 7 meeting as a bargaining session, stating the purpose of the meeting was not to bargain over the effects but to get clarification regarding Sampson's e-mail responding to the demand to bargain. Sampson's January 15 e-mail clarified:

> You publicly announced that position [faculty will not participate in the PPP at all] to the Board and to the media. The College accepted your position, and the College is gathering Prioritization data and information without faculty assistance. Gathering such information is a management prerogative and is not a mandatory subject of bargaining. . . . This email will confirm that administration is not requiring faculty to participate in the process.

Hoene's January 21 e-mail indicated the employer refused to bargain over implementation of the PPP, not the union, and expressed the following frustration:

> While you claim to want to bargain over the effects of the PPP on faculty, you have only obscurely (if at all) referred to bargaining over workload and compensation as a result of the PPP. But the impact of the PPP on our members is much greater than vague references would allow. Job security, wages, and workload—both from the implementation of the PPP and the actions ultimately taken by the College as a result of the PPP's implementation—are only scratching the surface of what needs to be addressed. Furthermore, the Union cannot even fully articulate to you the full scope of topics which the PPP will impact for our bargaining unit members without increased transparency from the College on how it foresees using the PPP.

By e-mail dated January 22, Sampson responded to Hoene acknowledging receipt of her e-mail, discussing the employer's ability to compile information without employee participation, and providing clarification as follows about the employer's willingness to bargain future decisions:

> Prioritization information does not itself contain a process for making a decision to change any faculty working condition, making a wage change, or changing an instructional program. If a College decision is made that could involve an impact and change to faculty that must be bargained, we are open to bargaining it.

The parties met again on January 25, 2016, with the same representatives on each side. Again, the parties disagree on whether the meeting can be characterized as a bargaining session. At the meeting the union asked the employer questions from a prepared list and the employer responded. The union raised no topics to bargain and made no proposals. The union shared a concern about deans pressuring employees about participating in the PPP; Brandes said he would address the concern with the deans. The evidence reveals that the employer offered to pay bargaining unit employees who served on any of the three PPP-related committees a specific hourly rate. It is not clear from the record how the union responded to that offer at the meeting.

By e-mail dated January 29, 2016, Sampson confirmed the meeting on January 25 and indicated the employer was open to continuing to bargain. In an e-mail dated February 1, 2016, Hoene disputed aspects of Sampson's e-mail. She also indicated that the union was considering the employer's offer to pay employees who served on the PPP committees but wanted to continue the discussion with the settlement mediator assigned to help the parties try to resolve this unfair labor practice dispute.

Next Steps with Implementation of the PPP—March and April 2016

On March 17, 2016, Johnson updated the employer's Board of Trustees on the PPP. He reaffirmed the timeline that included March 31 as the date the steering committee would report quintile rankings to the college council, budget committee, and president; April 4 as the date scores would be released to the college; and the end of May as the timeframe for the budget committee analysis going to the college council and executive team.

The next day, however, the union learned the timeline had changed and that the instructional pillar would not go to the budget committee; instead, it would go to the deans and Brandes. Brandes testified that the employer adjusted the timeline due to contractual reduction-in-force deadlines. He also testified that the instructional pillar did not go to the budget committee because some committee members expressed concern about making decisions without faculty participation on the committee.

On March 31, 2016, the steering committee released audited rankings to the employer's leadership and Brandes promptly notified six programs that they were in the fifth quintile: automotive/welding, early childhood education/parent education, earth science, geology and oceanography, geography, and history.[6] Brandes met with the faculty and deans of programs in the fifth quintile; union representatives attended some of the meetings. At each meeting, Brandes shared a "scorecard" for the program. The scorecard showed the program's original total score, individual scores for each criteria, and "deeper dive" scores. Near the bottom of the scorecard under "Next Steps" was the following:[7]

> 3) Option – Schedule a presentation Friday April 8 – Schedule with Jean Questions:
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> Describe the impact that a reduction or elimination of your program would have on other programs/units at the college.

Brandes offered the employees in each program the opportunity to make presentations about their respective programs for up to 45 minutes on April 8. In response to questions about expectations for the presentation, Brandes said, "I want you to show me why I would be sorry if I eliminated your program."

In the earth science meeting on April 1, Brandes acknowledged that many programs in the fifth quintile were there due to non-participation. Brandes also responded to a question about what

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6 The criminal justice program also ranked in the fifth quintile. It is not clear from the record how employees in this program were notified of the ranking or whether they met with Brandes. The employer did not ask the program employees to make a presentation in defense of their program.

7 The geography scorecard did not include the April 8 date.

would happen if employees did not make a presentation with the statement "They would look worse, and their scores would be very bad."

Keith Clay, the science division chair, made the April 8 presentation on behalf of earth science. He spent about 12 hours over the weekend preparing for the presentation, and the two earth science instructors spent time during the week going through statistics line by line to find errors or gain understanding of the low marks the program received on its scorecard.

Based on the history program's meeting with Brandes, Mark Thomason, the social studies division chair, understood that he needed to present information to save the history department and the jobs of its employees. He spent about 12 hours preparing for the presentation and one of his program colleagues spent about 35 hours. He testified, "[W]e did not view this as something we could avoid doing."

Geography faculty member Scharks testified that at his dean's urging, he completed the rubric and his program still fell in the fifth quintile. He spent 15 to 20 hours preparing for the presentation in an effort to save his program from elimination.

The automotive/welding program did not complete the rubrics and ranked in quintile five. In the meeting with Brandes, program faculty provided enough information to be removed from quintile five and presentations were not necessary. Dan Sorensen, a bargaining unit employee in the automotive program, testified about the inaccurate information on the scorecard: "I think a lot of information that was submitted on behalf of our programs was inaccurate, and probably not even intentionally inaccurate; just nobody knows our programs like the program faculty."

The early childhood education/parent education program scored in quintile five. Kessler spent about 30 hours over the weekend and in the evenings preparing for the presentation.

Communications About the PPP From the Employer—April to May 2016

On April 13, 2016, Ely sent a letter to Hoene in which she stated that the employer did not intend to rely on the PPP results for program elimination. She shared that the employer would continue with the PPP's instructional pillar for non-reduction purposes, including aiding in accreditation:

> This letter will confirm that the College will not use the PPP for instructional program reduction or elimination decisions. Completion of PPP quintile rankings, and any voluntary faculty participation in the final ranking steps, does not need to occur as part of any decision to reduce instructional programs. . . . Non-participation in PPP will not result in program elimination since PPP quintile rankings will not be the tool used for such decisions.

Ely also indicated that the CBA's reduction-in-force process would be used if the employer considered a program reduction or elimination.

On April 14, Ely sent an e-mail to all staff and faculty and a separate e-mail to students, both with content similar to the April 13 letter to Hoene. On April 21, an in-service day, the employer's budget presentation clarified, "Quintile 5 does not mean automatic program cut."

Undisputed testimony revealed that Brandes announced the employer would issue reduction-in-force notices the week after the hearing; the Commission received no motion to reopen the record.

ANALYSIS

Applicable Legal Standards

In Chapter 28B.52 RCW, the section of Washington State law addressing collective bargaining rights for community and technical college faculty, the Legislature explained the purpose of the chapter and highlighted its intent for bargaining parties to work together cooperatively and professionally:

> It is the purpose of this chapter to promote cooperative efforts by prescribing certain rights and obligations of the employees and employers and by establishing orderly

> procedures governing the relationship between the employees and their employers which procedures are designed to meet the special requirements and needs of public employment in higher education. It is the intent of this chapter to promote activity that includes the elements of open communication and access to information in a timely manner, with reasonable discussion and interpretation of that information. It is the further intent that such activity shall be characterized by mutual respect, integrity, reasonableness, and a desire on the part of the parties to address and resolve the points of concern.

RCW 28B.52.010.

The Duty to Bargain

Washington State law requires public employers to engage in collective bargaining with the exclusive bargaining representatives of their employees concerning mandatory subjects of bargaining. RCW 28B.52.020(8); RCW 28B.52.030. The definition of "collective bargaining" in Chapter 28B.52 RCW requires bargaining "with respect to wages, hours, and other terms and conditions of employment [mandatory subjects], such as procedures related to nonretention, dismissal, denial of tenure, and reduction in force." RCW 28B.52.020(8).

The Commission determines, as a matter of law and fact, whether a particular subject is a mandatory or permissive subject of bargaining. *Id.*; WAC 391-45-550. In reaching these determinations, the Commission applies a balancing test on a case-by-case basis. The Commission balances the relationship the subject bears to employee wages, hours, and working conditions and the extent to which the subject lies at the core of entrepreneurial control or is a management prerogative. The decision focuses on which characteristic predominates. *City of Seattle*, Decision 12060-A (PECB, 2014), *citing International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197, 203 (1989). While the balancing test calls upon the Commission and its examiners to balance these two principal considerations, the test is more nuanced and is not a strict black-and-white application. One case may result in a finding that a subject is a mandatory subject of bargaining, while the same subject, under different facts, may be considered permissive. *City of Seattle*, Decision 12060-A.

An employer commits an unfair labor practice by failing or refusing to bargain in good faith on a mandatory subject of bargaining. RCW 28B.52.073(1)(e). Parties may agree to bargain permissive subjects of bargaining.

In determining whether a party has met its bargaining obligation and bargained in good faith, examiners and the Commission analyze the totality of circumstances. To find a violation, the evidence must support the conclusion that the total bargaining conduct demonstrates a failure or refusal to bargain in good faith or the intent to frustrate or avoid an agreement. *Central Washington University*, Decision 10413-A (PSRA, 2011).

Effects Bargaining

Even when a decision involves a permissive subject of bargaining, if the decision has a material impact on the wages, hours, or working conditions of bargaining unit employees, the employer must bargain the effects of the decision. *Spokane Fire District 9*, Decision 3661-A (PECB, 1991); *Port of Seattle*, Decision 11763-A (PORT, 2014). For example, Commission precedent holds that an employer has no duty to bargain its decision to reduce its budget; the effects of the decision, however, may require bargaining. *Wenatchee School District*, Decision 3240-A (PECB, 1990).

The Commission has addressed the timing of effects bargaining in several cases. In *Spokane Fire District 9*, a case involving the addition of timed performance standards into a firefighter training program, the employer asserted effects bargaining should not be required during the "developmental" stages of a change in working conditions. The Commission agreed with the employer under the particular facts in that case:

> The timing of an obligation to bargain the "effects" of a permissive decision will necessarily depend on the facts of a particular case. When the effects are sufficiently foreseeable before implementation of a permissive decision, a bargaining obligation can reasonably be found to arise. In this case, any effects are still too speculative to require bargaining. For now, we agree with the employer that no duty to bargain arose in this case.

Additionally, an employer is not required to delay implementation of a decision on a permissive subject of bargaining while effects bargaining occurs. *City of Bellevue*, Decision 3343-A (PECB, 1990); *Federal Way School District*, Decision 232-A (EDUC, 1977).

Application of Standards

As detailed below, I find that the union has not established by a preponderance of the evidence that the employer refused to bargain in violation of RCW 28B.52.073(1)(e).

Issue 1: The Union Did Not Establish That the Employer Replaced the PA&I Process With the PPP and Refused to Bargain Its Decision

The PA&I process, a negotiated process addressed in the CBA, is a formative tool designed for program improvement. It is not designed to evaluate programs or determine program viability. The PA&I process had not been implemented for at least two years when the employer announced it was launching the PPP. After attending the September 16, 2015, opening week presentation about the PPP, at least some bargaining unit employees understood that the PPP would replace the PA&I process.

When the employer and union met on October 7, 2015, in response to the union's demand to bargain, Brandes indicated the employer did not intend to replace the PA&I process with the PPP and discussed reinstating the PA&I process. In January 2016, Brandes published the PA&I process rotation schedule for five academic years, 2015–16 through 2019–20. On April 1, 2016, the journalism program, among others, submitted its PA&I documentation to the employer.

The parties may disagree on why the PA&I process was not implemented for at least two years; the union may believe the employer intended to replace the PA&I process with the PPP. The evidence, however, demonstrates that the PPP did not replace the PA&I process. The union did not establish that the employer replaced the PA&I process with the PPP and refused to bargain its decision.

Issue 2: The Union Did Not Establish That Implementation of the PPP Was a Mandatory Subject of Bargaining

To determine whether the employer refused to bargain the decision to implement the PPP, I begin by analyzing whether the PPP is a mandatory subject of bargaining. Because the PPP relates to both conditions of employment and managerial prerogatives, I apply the *City of Richland* balancing test and weigh the relationship the PPP bears to employees' wages, hours, and working conditions against the extent to which the PPP lies at the core of entrepreneurial control or is a management prerogative.

In applying the balancing test, the first step is to accurately characterize the decision that is the subject of the union's demand to bargain. *Kitsap County v. Kitsap County Correctional Officers' Guild, Inc.*, 193 Wn. App. 40 (2016).[8] The union demanded to bargain the employer's decision to implement the PPP. As detailed below, in applying the balancing test, I find the evidence tips the balance in favor of the decision to implement the PPP being a management prerogative and, therefore, a permissive subject of bargaining.

a. Relationship the PPP Bears to Employees' Wages, Hours, and Working Conditions

In analyzing the relationship the PPP bears to employees' wages, hours, and working conditions, I review both hours/workload and job security below.

i. Hours/Workload

It is undisputed that implementation of the PPP carried a heavy workload burden. The record does not describe how heavy the workload burden was and on whom. Approximately 50 percent of bargaining unit employees participated in the PPP by completing the rubrics about their programs. Some of the rubrics required quantitative data; some required qualitative data and needed department engagement to properly complete. Neither party sought to admit the rubrics into evidence. The record includes no evidence on how much time bargaining unit employees spent completing the rubrics.

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[8] In *Kitsap County*, the Washington State Court of Appeals explained, "Contrary to the county's rhetoric about the budget, however, the record is clear that the Guild's demand was only to bargain over the layoff decision."

The employer formed several committees with PPP responsibilities, including the steering committee, the pillar committee, and the budget committee. The record does not indicate whether any bargaining unit employees served on the committees and, if they did, how much time they spent serving on the committees.

The bargaining unit employees whose programs ranked in the fifth quintile attended meetings with Brandes and their deans. Approximately one week later, the employees, with the exception of those working in the automotive/welding program, delivered an "optional" presentation in defense of their respective programs. Individually, they spent from 12 to 35 hours preparing for the presentations.

With respect to the presentations, Brandes testified that they provided a good opportunity for employees to share with him and the deans additional information about their programs and to explain the data. Brandes testified that he told those in quintile five, "[I]t gives us more of an opportunity to see, you know, if this is a program that we shouldn't touch, that we should look at more efficiencies; or do we have to even look further at, potentially, a cut?" Most of the employees whose programs ranked in quintile five did not complete the rubrics.

Understandably, the union questions the voluntariness of employee participation in the PPP. In October 2015, early in the PPP implementation, the employer declared participation in the PPP voluntary. Brandes acknowledged in his testimony that although participation was voluntary, participation would have been helpful because "faculty are the closest to what they are doing in their instructional areas, and what their program is doing." No employees were disciplined or threatened with discipline for their nonparticipation.

Despite the fact employees were not threatened with discipline, some employees felt pressure to participate in the PPP. As described above, at least one dean documented her serious concerns about the elimination of some of the programs whose faculty members chose not to participate. Hoene testified that employees "were terrified" and that "[m]any were e-mailing [her] saying that

they were receiving . . . pressure, strong encouragement, from their deans to participate, for fear that if they didn't, their program[s] and jobs would be eliminated."

ii. Job Security

Implementation of the PPP raised serious concerns for job security. The record demonstrates that the employer initiated the PPP as a tool to help identify programs for possible reduction or elimination.[9] Bargaining unit employees reasonably anticipated the results of the PPP would be used to make program cuts which would likely include the elimination of bargaining unit positions and layoffs. Employees have a strong interest in maintaining their employment; layoffs threaten that interest. The threat to job security caused fear among many bargaining unit employees.

b. Relationship the PPP Bears to the Core of Entrepreneurial Control or is a Management Prerogative

In the summer of 2015, the employer projected an estimated four million dollar budget deficit going into the 2016–17 academic year due to a variety of factors, including declining enrollment and changes in state funding. The employer wanted to determine where it could most effectively make budget cuts. At least in part due to feedback the employer received after eliminating a program and faculty position the previous year, the employer wanted to use a process to help inform its decision-making that involved stakeholders and provided transparency. The employer adopted the PPP.

The PPP provided the employer a structured method to collect data from the programs across the entire college, analyze the data, and rank the programs into quintiles based on the data. The PPP's ranking of programs did not dictate the employer's next steps. The employer intended to use the data, including the rankings, to help inform its budget, program, and staffing decisions. Those decisions, however, were not controlled by the PPP. While quintile five programs may have faced greater scrutiny and risk of reduction or elimination, the PPP in itself did not determine whether specific programs would be reduced or eliminated.

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[9] While the PPP may serve additional purposes, the record clearly demonstrates the employer's primary motivation in implementing the PPP was to help identify programs to potentially reduce or eliminate.

Additionally, the employer points to Legislative direction in the 2015 State Appropriations Act. Engrossed Substitute Senate Bill 6052, Section 602(2)(c) requires each institution of higher education, in achieving or exceeding the delineated enrollment targets, to "[e]liminate and consolidate programs of study for which there is limited student or employer demand, or that are not areas of core academic strength for the institution, particularly when such programs duplicate offerings by other in-state institutions."

c. Conclusion: Employer's Management Prerogative to Collect and Analyze Data on Its Programs and to Prioritize Programs Outweighs the Employees' Interests in Wages, Hours, and Working Conditions

At issue is the employer's decision to implement the PPP. The PPP involved developing rubrics, collecting data about instructional programs, analyzing data, and ranking programs into quintiles. While it is clear the employer adopted the PPP in order to help make decisions on which programs to potentially reduce or eliminate, the issue before me is the decision to implement the PPP.

For decades the Commission has consistently concluded that employers maintain the prerogative to determine their budgets and decide what services and programs to offer, including educational programs. *Federal Way School District*, Decision 232-A; *Wenatchee School District*, Decision 3240-A. Employers maintain the managerial prerogative to collect and analyze data about their programs and services in anticipation of making decisions about what programs and services to offer.

This case did not present sufficient evidence to establish that employee involvement in the collection and analysis of the data, whether voluntary or not, sufficiently impacted terms and conditions of employment to tip the scale and make implementation of the PPP a mandatory subject of bargaining. The employer's implementation of the PPP caused many employees to spend time on new tasks. The record includes limited evidence on the time employees spent on PPP-related work except for those whose programs ranked in quintile five. Those employees spent significant time over the course of one week preparing presentations. That group of employees represents less than 20 percent of the bargaining unit.

In addition to the workload issue, the employer's implementation of the PPP caused fear and uncertainty for many employees due to the possibility of layoffs. The issue in the union's demand to bargain, however, was not program reduction, program elimination, or layoffs, and this decision does not address whether those issues would be mandatory subjects of bargaining under the facts of this case. When the record in this case closed, the employer had announced no reorganizations, program reductions, program eliminations, or layoffs. Undisputed testimony revealed that Brandes had announced the employer would issue reduction-in-force notices the week after the hearing; the Commission received no motion to reopen the record.

Ultimately, the employer may elect to use PPP results in making decisions about program reductions or eliminations, which in turn could lead to layoffs of bargaining unit employees. The fact that the employer may use PPP results in making decisions which could potentially be mandatory subjects of bargaining does not convert implementation of the PPP into a mandatory subject of bargaining.

After applying the *City of Richland* balancing test, I conclude that the employer's management prerogative to collect and analyze data on its programs and to prioritize programs outweighs the employees' interests in wages, hours, and working conditions, making implementation of the PPP a permissive subject of bargaining. As a result, I find the union did not establish that the employer refused to bargain over the decision to implement the PPP.

Issue 3: The Union Did Not Establish That the Employer Refused to Bargain the Effects of Implementing the PPP

The union alleges the employer refused to bargain the effects of implementing the PPP. The employer does not dispute its obligation to bargain the effects of the PPP and argues it met its obligation. Based on the totality of the circumstances, I conclude the union did not establish that the employer refused to bargain the effects of the PPP.

The employer did not provide official notice to the union of its decision to implement the PPP until two and a half months after it presented the PPP to the Board of Trustees in a public meeting. In

fact, the employer's official written notice and offer to bargain effects did not come until after the union submitted its demand to bargain and the parties had already scheduled a meeting for October 7, 2015.

As described in the Background section above, the parties disagree on the characterization of the October 7 meeting. Hoene and Kessler testified that they did not consider the meeting a bargaining session for several reasons. They both described the meeting as informal. Because the parties were negotiating a successor CBA with the assistance of a mediator, Hoene indicated she thought bargaining about the PPP would take place in that forum. Hoene's September 23, 2015, e-mail, however, included the prospect that the demand to bargain could be fulfilled in a forum different from the successor CBA bargaining: "I will look forward to communicating with administration's negotiating team regarding the bargaining process and whether or not it will be included in the larger contract negotiation process." The record includes no evidence that the union took any steps to add PPP effects bargaining to the "larger contract negotiation process."

At the October 7 meeting the parties discussed workload issues involving the PPP. The employer rejected the concept of paying employees to complete the rubrics but raised ideas about compensating employees for participation on certain committees and relieving employees from other committee work. The parties also discussed the management rights clause and reinstating the PA&I process. At the end of the meeting Kessler noted that faculty would feel better if there were a guarantee that PPP results would not be used to lay off any faculty members for one year. Sampson asked if that was a proposal and the response was "no, that was not." There is no evidence that either party suggested scheduling another meeting.

The next relevant event occurred on October 30, 2015, when Hoene announced to the employer's Board of Trustees that bargaining unit employees would not participate in the PPP. The record includes no substantive communication between the parties about the PPP from October 30 until after the union filed the present unfair labor practice complaint.

By e-mail dated January 13, 2016, Sampson disputed assertions in the unfair labor practice complaint and offered to continue bargaining the effects of the PPP. Sampson's e-mail led to a multipage e-mail debate between Hoene and Sampson in which they documented their positions for litigation. When one of Hoene's e-mails expressed concern about the possibility of layoffs, Sampson explored whether the union wished to bargain the reduction-in-force procedure.

As a result of the e-mails, the parties met on January 25, 2016. Again, the parties disagree on whether the meeting can be characterized as a bargaining session. The union came to the meeting with a list of questions to ask the employer. The union introduced no proposals. In contrast, the employer offered to pay bargaining unit employees who served on any of the three PPP-related committees a specific hourly rate. It is not clear how the union responded to that offer at the meeting, but in a follow-up e-mail dated February 1, 2016, Hoene indicated the union was considering the offer. She explained in the e-mail that the union preferred to continue the discussion with the settlement mediator assigned to help the parties try to resolve this unfair labor practice dispute.

I find that the October 7, 2015, and January 25, 2016, meetings can both be characterized as bargaining sessions. The law does not require bargaining to take place in formal sessions with specified numbers of participants. The law requires the parties to meet at reasonable times and to bargain in good faith in an effort to reach agreement. RCW 28B.52.020(8).

While neither meeting appears to have been particularly productive, productivity is not a measure of whether a meeting constituted a bargaining session and whether the parties engaged in good faith bargaining. The law does not compel either party to agree to a proposal or to make a concession. *Id.* The October 7 meeting was scheduled in response to the demand to bargain, and the parties discussed workload and some other aspects of the PPP. There is no evidence that the union objected to the forum for the meeting or suggested meeting in a different forum. After the October 7 meeting and prior to the filing of the unfair labor practice complaint, there is no evidence that the union initiated further contact with the employer to bargain effects.

While the record indicates that at the October 7 meeting the employer rejected the idea of paying employees to complete the rubrics, there is no evidence that the union, on October 7 or at any other time, made a specific proposal for the employer to pay employees a specific amount for completing the rubrics. The record also lacks evidence that the union presented the employer with a specific proposal detailing its position on the workload issue or any other issues at any time.

The record demonstrates that the union did not meaningfully engage itself in effects bargaining. It appears the union lacked interest in bargaining the effects of the PPP. The union had a forum to bargain and chose not to use it. Hoene testified that "implementation was [the union's] primary concern." Instead of focusing on effects bargaining, the record reflects the union was focused on bargaining the employer's decision to implement the PPP.

Although Hoene testified that the employer was not willing to bargain implementation or the workload impact of the PPP, the evidence demonstrates otherwise. Examining the totality of the circumstances in this case, the employer was willing to engage in effects bargaining. The employer suggested some specific ways to address workload issues; the union did not. The union accepted the employer's position that it would not compensate employees for completing the rubrics and opted not to present proposals that could potentially achieve union interests relating to workload or other issues.

This case highlights the challenges parties face when a union demands to bargain an employer decision and the employer agrees to bargain the effects of the decision but not the decision itself. It can be difficult for the union to set aside its view that the employer has an obligation to bargain its decision, essentially accept the decision, and engage in bargaining over the effects.

Here, the union believed the employer initiated the PPP from a flawed premise about the need for potential program cuts and had serious concerns about the process itself. The union wanted to engage the employer in those discussions and wanted to bargain the larger issue, believing doing so would be in the best interest of the entire college community. The union's frustration with the

employer's unwillingness to bargain the implementation of the PPP is evident in its e-mail communications and the testimony at hearing.

The union also expressed frustration about the employer's request that the union identify impacts it wished to negotiate. Hoene's January 14, 2016, e-mail to Sampson demonstrates the union's frustration and uncertainty about what future action the employer may take:

> Until the College proposes changes, we will not know whether or not they require bargaining. For example, should the College choose to enhance a weak program with a new full-time faculty position, we would obviously not request to bargain that. If the College should suggest that additional workload beyond the duties outlined in the contract be added to a faculty position to address particular program needs, then that would require bargaining. Since suggesting we determine whether we want to bargain decisions or outcomes that have not yet occurred seems patently absurd, we understand Barbara's letter [Barbara Iribarren authored the employer's October 6, 2015, "pro forma" letter announcing the PPP] to have been referring to the immediate impacts of the PPP, which are related to workload and compensation, which were included in our request to bargain, and which the College refused to bargain in its response.

In looking at the totality of the circumstances surrounding the parties' bargaining, the record contains no evidence of union proposals, unanswered requests for information, or unmet requests to meet to bargain. The totality of the circumstances does not support the union's allegation that the employer refused to bargain the effects of the PPP.

Additional Commentary

While I find the employer committed no violation of state law, it is apparent from the record that regardless of any positive motivation, the events involving the PPP did not serve the parties or the larger educational community well.

A productive labor relationship requires communication. *City of Mountlake Terrace*, Decision 11702-A (PECB, 2014). The bargaining process works best when the employer and union view themselves as partners working together to resolve problems. In bargaining relationships where the employer and union view themselves as such, they recognize that each bears responsibilities for the state of the relationship and for ensuring effective communication between them. When

faced with confusion about roles and responsibilities or disagreement about a bargaining obligation on a particular subject, those with mature bargaining relationships find ways to discuss the matter and work through the challenges.

In enacting Chapter 28B.52 RCW, the Legislature described its intent for higher education bargaining parties to work through their unique challenges cooperatively and professionally: "It is the further intent that such activity [bargaining] shall be characterized by mutual respect, integrity, reasonableness, and a desire on the part of the parties to address and resolve the points of concern." RCW 28B.52.010.

Both parties would be better served by viewing themselves as bargaining partners and working together to resolve the points of concern.

CONCLUSION

The union did not establish that the employer refused to bargain in violation of RCW 28B.52.073(1)(e), and I dismiss the complaint.

FINDINGS OF FACT

1. Green River College is a public employer within the meaning of Chapter 28B.52 RCW.

2. The Green River United Faculty Coalition (union) is an exclusive bargaining representative within the meaning of RCW 28B.52.020(7) and represents a bargaining unit of instructional faculty, division chairpersons, counseling faculty, and instructional resources and services faculty.

3. The parties' collective bargaining agreement (CBA) expired on June 1, 2014. During all times relevant to this matter, the parties operated under the terms of the expired agreement.

4. In the spring of 2015, the employer forecasted an estimated four million dollar budget deficit going into the 2016–17 academic year. As a result, on May 21, 2015, the employer's Board of Trustees approved a resolution to study the impact of "policies, practices and procedures that have a negative effect on enrollment, retention, completion and, as a result, the college's financial stability and wellbeing."

5. The employer adopted a new Program Prioritization Process (PPP) to help identify programs for possible reduction or elimination.

6. On July 16, 2015, Derek Brandes, the employer's vice president of instruction, presented the PPP to the employer's Board of Trustees.

7. On September 16, 2015, Brandes and Christopher Johnson, Executive Director of Institutional Effectiveness, shared the PPP with faculty and staff at opening week presentations for the new academic year. During the presentations, faculty asked a variety of questions, including questions about the PPP's relationship to the Program Assessment and Improvement (PA&I) process.

8. The PA&I process had not been implemented for at least two years when the employer announced it was launching the PPP. After attending the September 16, 2015, opening week presentation about the PPP, at least some bargaining unit employees understood that the PPP would replace the PA&I process.

9. The employer gave the union official "pro forma" notice of its decision to implement the PPP by letter dated October 6, 2015. The letter invited the union to request bargaining over the effects of the employer's decision to implement the PPP.

10. On September 23, 2015, prior to receiving the employer's "pro forma" letter, the union formally demanded to bargain the employer's decision to implement the PPP. Union president Jaeney Hoene's e-mail to Eileen Ely, the employer's president, identified that the

imposition of the process, particularly in such a short period of time, constituted a new workload requirement. The e-mail also addressed the union's concern that the employer intended to replace the PA&I process with the PPP. Indicating flexibility on the bargaining forum, Hoene stated, "I will look forward to communicating with administration's negotiating team regarding the bargaining process and whether or not it will be included in the larger contract negotiation process."

11. On September 24, 2015, Marshall Sampson, the employer's vice president of human resources and legal affairs, responded by e-mail to Hoene's demand to bargain and stated a willingness to bargain either in the larger contract negotiation process or as a separate issue. The letter indicated that PPP participation was not required: "While Faculty participation is not required, the process may continue as it is within the scope of Management Rights to review all programs within the college. Should Faculty desire to participate, the College does not see a barrier to that participation pending the resolution of the Demand to Bargain."

12. As a result of the union's demand to bargain, the union and employer met on October 7, 2015. Attending on behalf of the union were Hoene and Leslie Kessler, a bargaining unit employee who also served on the union's bargaining team and as the instructional council chairperson. Brandes and Sampson attended the meeting on behalf of the employer.

13. At the October 7 meeting the parties discussed the employer's perspective of its management rights, and the employer reiterated its position that participation in the PPP was voluntary. The parties discussed PPP workload issues and the employer raised the idea of compensating employees for participation on certain committees, such as the pillar committee. The employer also raised the idea of relieving employees from other committee work due to the heavy workload of the PPP. Additionally, Brandes shared that the employer did not intend to replace the PA&I process with the PPP and discussed reinstating the PA&I process. At the end of the meeting, Kessler noted that faculty would feel better if there were a guarantee that PPP results would not be used to lay off any faculty

members for one year. Sampson asked if that was a proposal and the response was "no, that was not." The union did not request additional meetings or add the subject to the negotiations taking place on the CBA.

14. While the record indicates that at the October 7 meeting the employer rejected the idea of paying employees to complete the rubrics, there is no evidence that the union, on October 7 or at any other time, made a specific proposal for the employer to pay employees a specific amount for completing the rubrics. The record also lacks evidence that the union presented the employer with a specific proposal detailing its position on the workload issue or any other issues at any time.

15. After the October 7 meeting and prior to the filing of the unfair labor practice complaint, there is no evidence that the union initiated further contact with the employer to bargain effects.

16. On October 30, 2015, Brandes updated the employer's Board of Trustees on the PPP. At the same Board of Trustees meeting, Hoene expressed concerns about the speed of the process and questioned spending $26 million of local funds on capital projects while looking at cutting programs. She stated, "Any process that leads to eliminating positions and programs of study for students should have unassailable justification." Hoene announced that faculty did not believe the PPP to be credible or justified and would not participate in it.

17. In January 2016, Brandes published a multi-year PA&I rotation schedule for the 2015–16 through 2019–20 academic years. On April 1, 2016, the journalism program, among others, submitted its PA&I documentation. The PPP did not replace the PA&I process.

18. The employer continued implementation of the PPP. The pillar committee developed the rubrics and published them in January 2016. The employer established a February deadline for completing the rubrics.

19. Approximately 50 percent of bargaining unit employees participated in completing the rubrics. The record includes no evidence on how much time the employees spent completing the rubrics. For those who did not, their program deans (non-bargaining unit employees) completed the rubrics. According to some witnesses, employees—particularly those without tenure—felt pressured to participate. Hoene testified that employees were terrified and that there was pressure and strong encouragement from the deans to participate. One dean sent several e-mails to her department's employees warning them about putting their programs at risk by not participating. No employees were disciplined or threatened with discipline for their nonparticipation.

20. Brandes acknowledged in his testimony that although participation was voluntary, participation would have been helpful because "faculty are the closest to what they are doing in their instructional areas, and what their program is doing."

21. The employer formed several committees with PPP responsibilities, including the steering committee, the pillar committee, and the budget committee. The record does not indicate whether any bargaining unit employees served on the committees and, if they did, how much time they spent serving on the committees.

22. Between January 13 and 22, 2016, Sampson and Hoene exchanged a number of e-mails, each appearing to document their positions for litigation. By e-mail dated January 13, 2016, Sampson disputed assertions in the union's unfair labor practice complaint and offered to continue bargaining the effects of the PPP. Sampson recounted his version of events from the October 7, 2015, meeting and stated, "Your ULP complaint states that possible faculty terminations are a potential impact that must be bargained. We have a reduction in force process in Article XII of the expired contract and the tentative contract. You did not request changes to that process." Sampson offered dates and times for bargaining.

23. By e-mail dated January 14, 2016, Hoene contested Sampson's description of the October 7 meeting as a bargaining session, stating the purpose of the meeting was not to bargain over the effects but to get clarification regarding Sampson's e-mail responding to the demand to bargain. Sampson's January 15 e-mail confirmed that the employer was not requiring faculty to participate in the process. Hoene's January 21 e-mail indicated the employer refused to bargain over implementation of the PPP and expressed frustration about the union's ability to "fully articulate to [the employer] the full scope of topics which the PPP will impact for [the union's] bargaining unit members without increased transparency from the College on how it foresees using the PPP."

24. By e-mail dated January 22, Sampson clarified as follows the employer's willingness to bargain future decisions:

> Prioritization information does not itself contain a process for making a decision to change any faculty working condition, making a wage change, or changing an instructional program. If a College decision is made that could involve an impact and change to faculty that must be bargained, we are open to bargaining it.

25. The parties met again on January 25, 2016, with the same representatives on each side. At the meeting the union asked the employer questions from a prepared list and the employer responded. The union raised no topics to bargain and made no proposals. The union shared a concern about deans pressuring employees about participating in the PPP; Brandes said he would address the concern with the deans. The employer offered to pay bargaining unit employees who served on any of the three PPP-related committees a specific hourly rate.

26. By e-mail dated January 29, 2016, Sampson confirmed the meeting on January 25 and indicated the employer was open to continuing to bargain. In an e-mail dated February 1, 2016, Hoene disputed aspects of Sampson's e-mail. She also indicated that the union was considering the employer's offer to pay employees who served on the PPP committees but wanted to continue the discussion with the settlement mediator assigned to help the parties try to resolve this unfair labor practice dispute.

27. On March 17, 2016, Johnson updated the employer's Board of Trustees on the PPP. He reaffirmed the timeline that included March 31 as the date the steering committee would report quintile rankings to the college council, budget committee, and president; April 4 as the date scores would be released to the college; and the end of May as the timeframe for the budget committee analysis going to the college council and executive team. The next day, however, the union learned the timeline had changed and that the instructional pillar would not go to the budget committee; instead, it would go to the deans and Brandes. Brandes testified that the employer adjusted the timeline due to contractual reduction-in-force deadlines. He also testified that the instructional pillar did not go to the budget committee because some committee members expressed concern about making decisions without faculty participation on the committee.

28. On March 31, 2016, the steering committee released audited rankings to the employer's leadership and Brandes promptly notified six programs that they were in the fifth quintile: automotive/welding, early childhood education/parent education, earth science, geology and oceanography, geography, and history. Brandes met with the faculty and deans of programs in the fifth quintile; union representatives attended some of the meetings. At each meeting, Brandes shared a "scorecard" for the program. The scorecard showed the program's original total score, individual scores for each criteria, and "deeper dive" scores. Near the bottom of the scorecard under "Next Steps" was the following:

> 3) Option – Schedule a presentation Friday April 8 – Schedule with Jean Questions:
>
> Describe the impact that a reduction or elimination of your program would have on other programs/units at the college.

29. Brandes offered the employees whose programs were ranked in quintile five the opportunity to make presentations about their respective programs for up to 45 minutes on April 8. In response questions about expectations for the presentation, Brandes said, "I want you to show me why I would be sorry if I eliminated your program." In the earth science meeting on April 1, Brandes acknowledged that many programs in the fifth quintile

were there due to non-participation. Brandes also responded to a question about what would happen if employees did not make a presentation with the statement "They would look worse, and their scores would be very bad."

30. On April 8, 2016, bargaining unit employees whose programs ranked in quintile five delivered an "optional" presentation in defense of their respective programs. Individually, they spent from 12 to 35 hours preparing for the presentations. That group of employees represents less than 20 percent of the bargaining unit.

31. Bargaining unit employees reasonably anticipated the results of the PPP would be used to make program cuts which would likely include the elimination of bargaining unit positions and layoffs. Employees have a strong interest in maintaining their employment; layoffs threaten that interest.

32. When the record in this case closed, the employer had announced no reorganizations, program reductions, program eliminations, or layoffs. Undisputed testimony revealed that Brandes had announced the employer would issue reduction-in-force notices the week after the hearing; the Commission received no motion to reopen the record.

33. The PPP provided the employer a structured method to collect data from the programs across the entire college, analyze the data, and rank the programs into quintiles based on the data. The PPP's ranking of programs did not dictate the employer's next steps. While quintile five programs may have faced greater scrutiny and risk of reduction or elimination, the PPP in itself did not determine whether specific programs would be reduced or eliminated.

34. Ultimately, the employer may elect to use PPP results in making decisions about program reductions or eliminations, which in turn could lead to layoffs of bargaining unit employees. The fact that the employer may use PPP results in making decisions which

could potentially be mandatory subjects of bargaining does not convert implementation of the PPP into a mandatory subject of bargaining.

35. This case did not present sufficient evidence to establish that employee involvement in the collection and analysis of the data, whether voluntary or not, sufficiently impacted terms and conditions of employment to tip the scale and make implementation of the PPP a mandatory subject of bargaining. The employer's management prerogative to collect and analyze data on its programs and to prioritize programs outweighs the employees' interests in wages, hours, and working conditions, making implementation of the PPP a permissive subject of bargaining.

36. The union did not meaningfully engage itself in effects bargaining. It appears the union lacked interest in bargaining the effects of the PPP. The union had a forum to bargain and chose not to use it. Instead of focusing on effects bargaining, the record reflects the union was focused on bargaining the employer's decision to implement the PPP.

37. Examining the totality of the circumstances in this case, the employer was willing to engage in effects bargaining. The employer suggested some specific ways to address workload issues; the union did not. The union accepted the employer's position that it would not compensate employees for completing the rubrics and opted not to present proposals that could potentially achieve union interests relating to workload or other issues. The record contains no evidence of union proposals, unanswered requests for information, or unmet requests to meet to bargain.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 28B.52 RCW and Chapter 391-45 WAC.

2. The union did not establish that the employer replaced the Program Assessment and Improvement process with the Program Prioritization Process and refused to bargain in violation of RCW 28B.52.073(1)(e) by its actions described in Findings of Fact 5 through 9, 11 through 13, and 16 through 18.

3. The union did not establish that the employer refused to bargain a mandatory subject of bargaining in violation of RCW 28B.52.073(1)(e) by implementing the Program Prioritization Process as described in Findings of Fact 4 through 9, 11 through 14, 16, and 18 through 35.

4. The union did not establish that the employer refused to bargain the effects of its decision to implement the Program Prioritization Process in violation of RCW 28B.52.073(1)(e) by its actions described in Findings of Fact 5 through 7, 9, 11 through 16, 18 through 34, and 36 through 37.

ORDER

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

ISSUED at Olympia, Washington, this 10th day of October, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jamie Siegel

JAMIE L. SIEGEL, Examiner

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

COLLECTIVE BARGAINING
PERC
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RECORD OF SERVICE - ISSUED 10/10/2016

DECISION 12622 - CCOL has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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