STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF CLYDE HILL, Complainant, vs. TEAMSTERS LOCAL 763, Respondent.	CASE 127714-U-15 DECISION 12628 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On November 12, 2015, the City of Clyde Hill (employer) filed a complaint with the Public Employment Relations Commission alleging unfair labor practices against Teamsters Local 763 (union). On November 20, 2015, the employer filed an amended complaint. On November 25, 2015, the Unfair Labor Practice Manager issued a preliminary ruling finding a cause of action to exist. On April 26, 2016, the employer filed a second amended complaint to add a statement of requested remedies.[1] The case was assigned to Examiner Page A. Garcia who conducted a hearing on May 12 and June 14, 2016. The parties submitted timely post-hearing briefs on August 8, 2016.

ISSUE

The issue, as framed by the preliminary ruling, is whether the union refused to bargain in violation of RCW 41.56.150(4) and, if so, derivatively interfered in violation of RCW 41.56.150(1) by

[1] Because the second amended complaint did not alter the complaint's allegations, I did not issue an amended preliminary ruling.

failing and/or refusing to execute a signed collective bargaining agreement memorializing the contract terms set by the interest arbitration award issued on October 5, 2015.

I find that the union refused to bargain by inviting error in its post-interest arbitration hearing brief, failing at least twice through its partisan arbitrator to correct the error, and ultimately delaying the final execution of the collective bargaining agreement incorporating the interest arbitration award based on the same invited error.

BACKGROUND

The bargaining unit consists of uniformed, commissioned police officers at the City of Clyde Hill. The unit is subject to interest arbitration under RCW 41.56.450.

The Parties' Collective Bargaining Agreement

The parties' collective bargaining agreement (CBA) in effect from January 1, 2010, through December 31, 2012, stated that for each year of the agreement,

> the rates of pay . . . shall be increased by one hundred percent (100%) of the increase in the Seattle-Tacoma-Bremerton Consumer Price Index for all Urban Wage Earners (CPI-W), All Items Series (1982-1984=100) as published by the Bureau of Labor Statistics . . . with *a minimum increase of one point five percent (1.5%) and a maximum increase of four percent (4%)*. Either party may open this section only . . . should the index reflect increases of less than one percent (1%) or more than five percent (5%).

(emphasis added).

Panel Interest Arbitration

The parties were unable to agree on wages (and other subjects) during negotiations for a successor CBA and submitted the unresolved issues to interest arbitration. The Commission certified issues for interest arbitration on August 12, 2014. The interest arbitration panel was composed of a neutral chairperson, Arbitrator Jane Wilkinson; a union partisan member, Tim Sullivan; and an employer partisan member, Otto Klein III.

The parties took part in a hearing before the neutral arbitrator on May 28, May 29, and June 16, 2015. The parties submitted post-interest arbitration hearing briefs on August 21, 2015.

The union sought a three-year agreement. The union's post-interest arbitration hearing brief proposed "to maintain existing contract language for 100 percent of the CPI-W" and "to *continue the 1–4 percent* guaranteed pay raise range" (emphasis added) for each year of the new agreement, as opposed to the 1.5 percent to 4 percent range that was in the prior CBA. The law firm representing the union in the instant unfair labor practice case is the same law firm that represented the union at the 2015 interest arbitration and through its post-interest arbitration hearing brief.

The employer sought a five-year agreement. The employer proposed a 2 percent wage increase for 2013 and wage increases of 90 percent of the CPI-W for the following years. The employer specified that this would equate to 1.08 percent for 2014 and 1.98 percent for 2015, with the exact increases for 2016 and 2017 to be finalized once the Department of Labor released the CPI-W data. The employer proposed to remove the language providing a 1.5 percent minimum and 4 percent maximum wage increase.[2]

Partisan Arbitrators' First Opportunity for Input on Draft Award

Before issuing the final interest arbitration award, Wilkinson circulated a draft award among the partisan members of the panel on September 14, 2015. The draft award was for a three-year agreement and included the following table on wages:

Table 12

Year	Wage Adjustment
2013	100% CPI-W (2.7%)
2014	100% CPI-W (1.2%)
2015	100% CPI-W (2.2%)

[2] Although this was not specifically mentioned in the employer's post-hearing brief, the employer's proposals for interest arbitration showed that this language was to be removed from the CBA, and Clyde Hill City Administrator Mitch Wasserman testified that during the interest arbitration hearing, the employer argued to remove the minimum and maximum percentages from the agreement.

A footnote to the wage award ("Footnote 11") stated:

> No argument was presented as to whether to retain the 1% floor and 4% ceiling of prior agreements. Therefore, that minimum and maximum will remain in place.

Earlier in the draft award, Wilkinson included tables identifying each party's proposed wages, including longevity. Table 2 contained just the parties' wage proposals. The first column, "Union Proposed Increases," included an asterisk; the second column, "City Proposed Increases," did not. Just below Table 2, the asterisk highlighted Wilkinson's note: "The Union also seeks a 1% floor and 4% ceiling on the CPI-based pay increase."

In her September 14 e-mail, Wilkinson asked the partisan arbitrators to give their input on the draft award by September 17, 2015, because the award was due to the parties by September 21, 2015. Sullivan responded that he was on a hunting trip and asked for an extension. Wilkinson subsequently e-mailed counsel for the union and the employer, asking for a two-week extension to issue the award by October 5, 2015. The parties agreed, and so Wilkinson requested that the partisan arbitrators provide their input by September 24, 2015.

On September 14, 2015, Klein sent a copy of the draft award to Mitch Wasserman, Clyde Hill City Administrator, Greg Rubstello, the employer's attorney, and Cabot Dow, the employer's labor consultant. Wasserman testified that he noticed Footnote 11 in the draft was incorrect, because although the footnote stated that "[n]o argument was presented as to whether to retain the 1% floor and 4% ceiling of prior agreements," there actually was argument at the interest arbitration hearing about whether to keep the floor and ceiling language.[3] The employer did not bring the stated inaccuracy in Footnote 11 to Wilkinson's or Sullivan's attention, but did bring up another error that was corrected by Wilkinson in the final award.

Sullivan did not provide any comment regarding whether argument was made before Wilkinson about the floor and ceiling language, nor did he comment about the accuracy or inaccuracy of the

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[3] The parties dispute whether the employer noticed the "floor and ceiling" error before the issuance of the final interest arbitration award. Resolving this dispute is unnecessary because, as discussed below, the union did not file its own complaint alleging failure to bargain in good faith on the part of the employer.

floor and ceiling language in Footnote 11 or Table 2 when he submitted his input on Wilkinson's draft award on September 24, 2015.

Partisan Arbitrators' Second Opportunity for Input on Draft Award

Wilkinson's draft award called for a three-year agreement. The employer had originally proposed a five-year agreement, and the union had originally proposed a three-year agreement. On September 24, 2015, Klein suggested a compromise of a four-year agreement, with wage increases for the fourth year based on 100 percent of the increase in the CPI.

In response to Klein's input, on September 27, 2015, Wilkinson suggested some corrections and modifications to the award and asked Klein and Sullivan for further input by September 29, 2015. Sullivan sent his own comments and asked for an opportunity to review Klein's suggestions and offer additional input. Sullivan and Wilkinson agreed that Sullivan would send any input by the morning of September 29, 2015.

On September 29, 2015, Sullivan offered more comments to Wilkinson and courtesy copied Klein. Sullivan did not raise concerns about the drafted floor and ceiling language in Footnote 11 or Table 2 in his second round of input. Among his comments was an agreement with Klein on a four-year duration of the CBA. Sullivan stated, "We would not be opposed to a 4th year at 100% CPI as [Klein] suggested." Sullivan also concurred with Klein's correction to a 5 percent premium (as opposed to the 4 percent premium in Wilkinson's draft) for a 10-year officer with an AA Degree under the Career Development Program. In this second round of feedback to Wilkinson, Sullivan discussed disagreement with the Flex Benefit Cap, Cafeteria Monies, Comparables, and Longevity.

The Final Interest Arbitration Award

Wilkinson issued her final award on October 5, 2015. The record does not show that either partisan arbitrator ever brought up the floor and ceiling errors in Footnote 11 or Table 2[4] before the issuance

[4] In the final award, Table 2 was identified as Table 1 and still had the same sentence just below it, "*The Union also seeks a 1% floor and 4% ceiling on the CPI-based pay increase."

of the award. Both Sullivan and Klein signed the final award and indicated they each concurred in part and dissented in part. However, neither partisan arbitrator specified the parts of the award with which they concurred or dissented.

Wilkinson awarded wage adjustments as follows:

Table 12

Year	Wage Adjustment
2013	100% CPI-W (2.7%)
2014	100% CPI-W (1.2%)
2015	100% CPI-W (2.2%)
2016	100% CPI-W (1.1%)[5]

Wilkinson kept the text of Footnote 11 from the earlier draft in her final award, but Footnote 11 was renumbered and thereafter referred to as "Footnote 14."

Protracted Implementation of Award

Wilkinson's award was not in the form of a complete or marked-up CBA which was ready for the parties to execute. Rather, the award was a description of her rulings on the issues before her. Thus, the parties still needed to work together to incorporate the arbitration award into the actual language of the CBA.

On October 12, 2015, Wasserman contacted the union's representative, Mike Wilson, stating that the employer had incorporated the award and earlier tentative agreements into a new CBA and that he planned to present it for official approval by the city council the following day. Wasserman stated, "[I]f you have any comments please make me aware of them before tomorrow's meeting." Wasserman testified that the employer was anxious to execute the new contract so that it could

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[5] Wilkinson had not stated in prior drafts or communications that the wage increase for 2016 would be 1.1 percent.

issue retroactive paychecks to the bargaining unit. Wasserman also explained that the employer needed to obey deadlines for implementation imposed in the award.[6]

In his October 12, 2015 draft, Wasserman used "track changes" to show what language was being added to and removed from the prior CBA. Wasserman removed the prior language that described how wages would be tied to the CPI and added language stating the specific wage increases for each year (2.7 percent for 2013, 1.2 percent for 2014, 2.2 percent for 2015, and 1.1 percent for 2016). Wasserman also removed the 2010–2012 CBA language providing a minimum 1.5 percent and maximum 4 percent wage increase.

At the end of the draft CBA, Wasserman added a recap of the final award which included the text of Footnote 14 referencing a "1% floor and 4% ceiling of prior agreements." All of the "recap" language was underlined, which Wasserman testified meant that it was not in the previous CBA but was proposed to be in the new CBA. Wasserman did not indicate to Wilson that the employer had noticed any errors in Footnote 14.

On October 13, 2015, Wasserman e-mailed Wilson a "clean" copy of the draft CBA and said, "I'll have 4 copies signed and sent to you tomorrow." The "clean" copy, which was no longer marked with tracked changes, still included the "recap" from Wasserman's October 12, 2015 draft and the text of Footnote 14.

Between October 14 and October 19, 2015, Wilson and Wasserman exchanged e-mails related to a Letter of Understanding (LOU) concerning special overtime assignments and Article 6 of the CBA, Hours of Work/Overtime. These items were not included in the list of issues certified by the Commission for interest arbitration. The employer contended that special overtime assignment provisions should remain in a separate LOU, whereas—by the account of Wasserman's October

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6 The award directed the employer to retroactively make employees whole for shortfalls in contributions to a "cafeteria plan" within 30 days from the date of the award. The award also directed that a health care premium split of 90 percent (employer) and 10 percent (employee) would take effect 30 days after the issuance of the arbitration award.

19, 2015, e-mail to Wilson—the union was attempting to incorporate the LOU into Article 6 of the CBA.[7]

On October 26, 2015, Wilson e-mailed Wasserman some suggested changes to the draft CBA. Wilson stated, "[P]lease review and let me know if this is accurate. If so I can give this to Linda Baker [the union's administrative coordinator] and she will prepare the documents for signature . . . ." Wasserman testified that the changes suggested by Wilson were "more formatting type" as opposed to substantive changes. Neither party offered Wilson's October 26 attached changes into evidence.

On October 28, 2015, Wasserman responded to Wilson, stating he would accept Wilson's suggestions and would send the union four signed copies of the CBA. Wasserman also stated that the "recap" language attached to his prior drafts (which included the text of Footnote 14) was not part of the CBA. The version of the CBA attached to Wasserman's October 28 e-mail (and all later drafts of the CBA) no longer had the "recap" language or any mention of minimum or maximum wage increases.

Later on October 28, 2015, Baker e-mailed Wasserman, stating that the union would need a signed subscription agreement, which related to the union's vision plan benefits in the CBA.

In an e-mail dated October 29, 2015, Wasserman informed Wilson that he made the "housekeeping/formatting" changes earlier suggested by Wilson, had the mayor sign the new draft, and mailed the signed CBA to the union. Wasserman's e-mail described this version as a "revised-revised" word version of what was believed to be the "final CBA."

On November 2, 2015, Wasserman e-mailed Wilson and attached a copy of the draft 2013-2016 CBA reflecting notation clarifications in Appendix A, and described it as, "([W]hat we all believe

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7 Exhibit Er-12 contained the October 14-19, 2015, e-mail exchange. Both parties stipulated to Exhibit Er-12 being admitted to the record. Neither party addressed these e-mail exchanges through witness testimony, however.

to be) the final revised version of the CBA." Wasserman added, "It is my understanding that the Union will sign this document tomorrow."

Later on November 2, 2015, Wilson spoke with Wasserman. Wasserman summarized the communication in an e-mail to Dow: "[Wilson] wanted to include the min/max language from the award…we agreed not to agree…it is not in the CBA…he was also under the impression the min was 1.0%." The union did not present evidence or testimony to further clarify what occurred in this conversation. The draft sent earlier in the day by Wasserman did not include any language relating to minimum and maximum wage increases. Wasserman testified that he and Wilson did not agree on whether language relating to Footnote 14 belonged in the CBA.

On the morning of November 4, 2015, Wilson called Wasserman again, "wanting to include language pertaining to the min-max comment the arbitrator mentioned for historical reasons (this time he mentioned it was a min of 1.5%)."[8] Wasserman did not agree that the language should be in the CBA. Wasserman told Wilson, "[T]he arb award is not self-executing and . . . I am not authorized to make any $ payoffs until I have a signed contract . . . ."

Later on November 4, 2015, Wasserman e-mailed Wilson regarding the union's delay in signing the CBA:

> For some time now you have a new collective bargaining agreement for signature that incorporates the arbitrator's award and the TA's from collective bargaining. The arbitrator anticipated the new CBA would be timely executed and provided that the 90/10 insurance premium split would start 30 days after the date of her award.
>
> Your delay in executing the CBA is unwarranted, adversely impacting the City (and the officers) and cannot continue. The City will be forced to file an unfair labor practice charge seeking to require execution of the CBA and reimbursement to the City of the costs of delay as well as the prosecution of the ULP, should the delay continue. I trust such action will be unnecessary.
>
> Let's get the new contract off to a good start by signing it today!

[8] Per an e-mail from Wasserman to Rubstello and Dow. The union did not offer evidence to clarify what occurred in this conversation.

On November 5, 2015, Wasserman sent a memo to the bargaining unit employees and the employer's payroll department, explaining that even though the new CBA was not yet signed, the employer would begin implementing provisions from Wilkinson's award relating to retroactive wage payments, cafeteria plan payments, and changes to health care premiums.

Exchanges Between Parties' Counsel

On November 6, 2015, Rubstello informed the union's attorney, Mike McCarthy, "I have been directed to file a ULP on Monday if we do not have a signed CBA today." At this point, Wilson had not responded to Wasserman's November 4, 2015, e-mail.

On November 9, 2015, McCarthy e-mailed Rubstello the following language for a draft footnote about the floor and ceiling wage increases which the union wanted to add to the CBA:

> The previous collective bargaining agreement contained a 1.5%/4.0% minimum/maximum applicable to each annual CPI-derived wage raise. Neither party sought to eliminate or revise this provision in negotiations or arbitration of this 2013-2016 Agreement. As a consequence, Arbitrator Jane Wilkinson ordered in her October 5, 2015 interest arbitration award, at footnote 14, that the provision should "remain in place." By the time that award was issued, the parties already knew that the CPI fell within the acceptable min/max range for every year of the contract, so there is no need to include the entire min/max provision in the body of this Agreement.

In a subsequent e-mail, McCarthy observed that the draft footnote was wrong, as two of the wage increases in Wilkinson's award were below 1.5 percent. McCarthy stated that the union thought the 1.5 percent minimum should apply.

Rubstello replied to McCarthy on November 9, 2015, noting that the footnote was also incorrect because it said that neither party sought to eliminate the minimum/maximum language, when the employer actually had proposed to eliminate the language. Rubstello added, "The whole footnote is inaccurate."

On November 10, 2015, Rubstello stated in an e-mail to McCarthy that the employer did not want to go back to Wilkinson to seek her intent behind Footnote 14, as the union had proposed.[9] Rubstello explained that Wasserman did not want to spend more money or time on the arbitration, that the union partisan arbitrator had extended time to review the draft award and propose edits, and that there was no ambiguity in the wage rates in the award. Rubstello informed McCarthy that the employer was willing to add language to the CBA as follows:

> In the Arbitrator's Decision and Award of October 5, 2015, the Arbitrator stated in footnote 14 the following: "No argument was presented as to whether to retain the 1% floor and 4% ceiling of prior agreements. Therefore, that minimum and maximum will remain in place."

Rubstello concluded, "[Wasserman] needs [the union's] agreement to sign the CBA with the added footnote today. If not the ULP will be filed tomorrow."

McCarthy responded to Rubstello's e-mail shortly thereafter and stated, "We will be contacting Arbitrator Wilkinson anyway." He asked, "[A]re you suggesting that we retain the typo (*i.e.*, 1 vs. 1.5) in the footnote to the CBA?"

Rubstello responded to McCarthy on the same day, asserting that the arbitrator no longer had jurisdiction over the case and maintaining that there was no ambiguity that needed clarification. Rubstello remarked, "The Union's unhappiness with the award is not cause for refusal to sign a collective bargaining agreement implementing the award. You do not have permission of the City to contact the Arbitrator regarding the award."

Opportunity to Review Erroneous Union Brief and Partisan Arbitrator's Omission

McCarthy replied later on November 10, 2015, arguing that the arbitrator still had jurisdiction and that Footnote 14 did create ambiguity. McCarthy added,

> [O]ver the next couple of days, I will look into the award and post-hearing briefs more deeply for indicators of the Arbitrator's likely intent. I may even speak with

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[9] The record is not clear on this point, but it appears that McCarthy and Rubstello had a conversation on or around November 9, 2015, in which McCarthy suggested the parties go back to Wilkinson for clarification.

> Tim Sullivan. (You will remember that I did not do the underlying hearing). After that, I will get back to you to see what we can put together, if anything.

On November 12, 2015, the employer filed the above-captioned unfair labor practice complaint, alleging that the union had violated RCW 41.56.140(4)[10] by refusing to execute a written agreement.

There is no indication from the record that leading up to the filing of the instant unfair labor practice complaint that McCarthy indicated recognition of the union's post-interest arbitration hearing brief's floor/ceiling discrepancy, nor of Sullivan's failure to raise the floor/ceiling discrepancy.

After the employer filed the complaint, the union sent a letter to Wilkinson on December 3, 2015, asking whether Footnote 14 and the wage increases for 2014 or 2016 should be changed. Wilkinson responded on December 21, 2015, stating that she would not change her award. The union sent the employer signed copies of the CBA (without any reference to Footnote 14) on February 10, 2016.

ANALYSIS

Applicable Legal Standards

Duty to Bargain

Under Chapter 41.56 RCW, a public employer and an exclusive bargaining representative have the duty to bargain over wages, hours, and working conditions. RCW 41.56.030(4). A union that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice. RCW 41.56.150(4).

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[10] In its complaint, the employer alleged that the union violated RCW 41.56.140, entitled "Unfair labor practices for public employer enumerated." The preliminary ruling correctly framed the issue as an alleged violation of RCW 41.56.150, "Unfair labor practices for bargaining representative enumerated."

In determining whether an unfair labor practice has occurred, the totality of the 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).

Conduct referred to as "moving the target"—for example, changing demands or proposals at an advanced stage of the bargaining process—has been at 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); *see also Spokane County (Spokane County Deputy Sheriff's Association)*, Decision 12028 (PECB, 2014), *aff'd*, Decision 12028-A (PECB, 2014).

Duty to Bargain for Uniformed Personnel

The union represents a unit of uniformed commissioned police officers at the City of Clyde Hill. The employees are uniformed personnel under RCW 41.56.030(13). Chapter 41.56 RCW defines some key aspects of the collective bargaining process for uniformed personnel.

If an employer and union representing uniformed personnel do not reach agreement on the terms of a collective bargaining agreement through negotiations or mediation, interest arbitration is used to determine the terms of the agreement between the parties. *State – Office of the Governor*, Decision 10313 (PECB, 2009), *aff'd*, Decision 10313-A (PECB, 2009).

The Legislature granted interest arbitration to uniformed employees, recognizing that

> there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted

> public service there should exist an effective and adequate alternative means of settling disputes.

RCW 41.56.430.

Under Chapter 41.56 RCW, interest arbitration decisions are "final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious." RCW 41.56.450.

When a final agreement results at the conclusion of the process, the parties must sign the contract. *Snohomish County*, Decision 5578-A (PECB, 1996), *citing City of Olympia (Olympia Police Guild)*, Decision 2629 (PECB, 1987), *aff'd*, Decision 2629-A (PECB, 1988). Parties have a distinct duty to execute contracts containing terms arising out of interest arbitration awards. *City of Olympia (Olympia Police Guild)*, Decision 2629, *aff'd*, Decision 2629-A ("As a result of the corrections agreed to by the parties and the interest arbitration proceedings, the parties now have a contract and the guild's continued failure to execute an agreement [incorporating the terms set by the award] constitutes an unfair labor practice . . . ."); *State – Office of the Governor*, Decision 10313-A.

Although an interest arbitration award itself is final and binding, the parties' conduct vis-à-vis the collective bargaining process stays under the purview of the Commission. *Spokane County Fire Protection District 1*, Decision 3447 (PECB, 1990).

Interest arbitration is a continuation of the collective bargaining process and of the obligation to bargain in good faith. *City of Bellevue*, Decision 3085-A (PECB, 1989), *aff'd*, *City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992). "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." *City of Bellevue*, Decision 3085-A.

Parties that have escalated their demands late in the interest arbitration process have been found to have violated the duty to bargain in good faith. *See City of Clarkston (International Association of Fire Fighters, Local 2299)*, Decision 3246 (PECB, 1989); *Spokane County (Spokane County Deputy Sheriff's Association)*, Decision 12028.

Application of Standards

Comment On Post-Complaint Facts and Allegations

The employer's complaint was filed on November 12, 2015. The employer filed an amended complaint, which added paragraph numbers to the original complaint but did not offer any new facts, on November 20, 2015. The preliminary ruling, issued on November 25, 2015, accounted for both the original complaint and the November 20 amended complaint. On April 26, 2016, the employer filed a second amended complaint, which added a statement of requested relief but did not allege any new facts. Thus, although the complaint was amended twice, the statement of facts for this case stayed unchanged from the original November 12, 2015, complaint.

At the hearing, the employer introduced evidence and testimony of events which occurred after the first amended complaint was filed. In its brief, the employer argued that events which occurred after November 20, 2015—namely, the union "unilaterally" sending the letter to Wilkinson on December 3, 2015, and the further delay between December 21, 2015, and February 10, 2016, when the contract was ultimately signed—were unfair labor practices. The union also made arguments based on post-complaint facts in its brief.

The employer had ample opportunity to amend its complaint to include new facts but did not do so. The post-complaint information may be considered as "background" information where relevant, but it does not have substantive weight to support the finding of an unfair labor practice violation. *Central Washington University*, Decision 10118-A (PSRA, 2010) (a party may only be required to redress claims for which it has been placed on notice); *Skagit County*, Decision 8886-A (PECB, 2007) (declining to consider allegations of "unilateral change" arising after original complaint, where union did not raise the allegations in an amended complaint); *but see Snohomish*

County Police Staff and Auxiliary Services Center, Decision 12342-A (PECB, 2016) (evidence of events occurring after a complaint has been filed may be relevant to the case).

The employer's allegation that the union refused to bargain based on its conduct within the six-month period before November 20, 2015, will be considered. The events that occurred after November 20, 2015, may be considered as contextual information. However, the employer's *allegations* about conduct which occurred after November 20, 2015, (that the union refused to bargain by contacting the arbitrator on December 3, 2015, and refused to bargain by its further delay in signing the contract) are not considered in reaching the finding of an unfair labor practice violation.

Refusal to Bargain

Based on the totality of the evidence, I find that the union did not comply with its duty to bargain in good faith when, between October 5, 2015, and November 20, 2015, it repeatedly refused to sign a successor collective bargaining agreement based on an interest arbitration panel's award.

The union unreasonably delayed finalizing the CBA

Wilkinson issued her award on October 5, 2015. Her award was not in the form of a complete CBA, so it was reasonable for the parties to take some time to work on incorporating her award into a final agreement.

On October 12, 2015, the employer sent the union a first draft of the CBA, which incorporated Wilkinson's October 5 award, and invited input from the union. The union attempted to incorporate changes to Article 6 of the successor CBA through a separate LOU on special overtime assignments via e-mail discussions between Wilson and Wasserman in mid-October 2015. Article 6 and the LOU were not included in the list of issues certified by the Commission for interest arbitration. Otherwise, the record does not reflect that the union responded or offered any input until October 26, 2015,—three weeks after the final award was issued and two weeks after the employer sent the union a draft of the CBA. The employer responded to the union's input on

October 28, and the union did not respond again until the following week, on November 2. The union gave no explanation for these delays.

Throughout the process of incorporating the award into the CBA, it was clear that the employer was treating this task as a priority, while the union was not.

As the employer repeatedly told the union, the award set deadlines for the employer to implement some provisions (30 days after the date of the award, which would have been November 4).[11] The employer needed the union to settle and execute the CBA so that the employer could follow these deadlines.[12] The employer was clearly concerned with the union's delay as the deadlines drew closer.

The union's lack of diligence to finalize the CBA following the issuance of the interest arbitration award is part of the "totality of the circumstances" that leads me to find an unlawful refusal to bargain on the part of the union.

The union unreasonably refused to sign the CBA based on Footnote 14

In November 2015, after the employer agreed to the union's suggested edits to the draft CBA, the union still would not sign the CBA. The union suddenly became concerned about the fact that the award and the draft CBA did not apply a 1.5 percent minimum wage increase, as provided in the prior CBA and that Footnote 14 of the award had errors. I find that this was not a reasonable basis for the union to delay and refuse to sign the CBA.

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11 The 30-day deadlines were present in the draft award circulated among the partisan arbitrators on September 14, 2015. This should have put the union on advance notice that it would need to act promptly to execute a CBA once the award was issued. If the union had concerns with its ability to work with the employer to meet the 30-day deadlines, it should have given its input through its partisan arbitrator.

12 Although the employer eventually implemented the provisions of the award that were subject to deadlines without having a signed agreement with the union, this was possibly at the employer's peril. The union's delay put the employer in a position where it had to choose between violating the deadlines imposed in the interest arbitration award and risking a charge of "unilateral change" by making changes to health care premiums and other terms and conditions of employment without having a signed agreement with the union. It was not reasonable for the union to put the employer in this position.

Footnote 14 was incorrect because although Wilkinson stated "[n]o argument was presented" as to whether to retain the floor and ceiling language, the parties actually did present arguments on that issue. Footnote 14 was also incorrect where it stated that the "prior agreements" had a 1 percent floor and 4 percent ceiling. The prior agreements actually had a 1.5 percent floor and 4 percent ceiling. However, these errors would not be a reasonable basis for the union to delay or refuse to sign the CBA in November 2015 because of its discovery of the error at that time. The union invited the error and had several prior opportunities to recognize and correct the error.

The union invited this error when it argued in its own post-arbitration hearing brief "to continue the 1–4 percent guaranteed pay raise range." Thus, the union could not claim that Wilkinson ignored the union's argument; the draft award, and ultimately the final award, gave the union exactly what it asked for—guaranteed wage increases between 1 percent and 4 percent.

The union later had opportunities to deal with the error because it had a partisan arbitrator on the interest arbitration panel. Wasserman testified that despite the "substantial" costs, the parties decided to use partisan arbitrators because "there was an opportunity for [those] individual[s] to clarify, prior to the final award."

Sullivan had not one but two opportunities to note the floor and ceiling discrepancies in not only Footnote 11 but also Table 2 of the draft award. Sullivan provided input on Wilkinson's September 14, 2015, draft award *and* was afforded another opportunity to respond to Wilkinson's corrections and modifications based on Klein's September 24, 2015, input. Not only did the draft award include the erroneous statement that "prior agreements" contained a 1 percent floor on wage increases, it awarded a specific wage increase that was below 1.5 percent. Sullivan should have at least noticed the 1.2 percent wage award for 2014—a wage increase lower than would have been allowed under the prior contract—and it should have prompted Sullivan to check and see if there was "floor" language. The record contains no evidence that Sullivan noticed or raised concerns about these discrepancies.

When Wilkinson issued her final award with Footnote 14, Sullivan signed the award, so it can be reasonably assumed that Sullivan read the award. The award stated that he dissented in part but did not mention anything about disagreement with the wage increases or Footnote 14. WAC 391-55-245 lets partisan arbitrators attach concurring or dissenting opinions to the neutral chairperson's interest arbitration award. Neither partisan arbitrator did so in this case. Because Sullivan took part at least somewhat in the drafting of the award and signed the final award, it was not reasonable for the union to thereafter refuse to execute the CBA because of objections to Footnote 14. *See Whitman County*, Decision 8506 (PECB, 2004) ("[A] party who signs a contract without reading it cannot successfully argue that mutual assent was lacking . . . .").

The union argued that it did not have to execute the CBA because there was "no meeting[] of the minds." The union took part in interest arbitration, invited an error in its arbitration brief, and—despite at least two opportunities—did not bring attention to the error in the award which was contributed to and signed by the union's partisan arbitrator. Further, McCarthy advised Rubstello on November 10, 2015, he would look over the post-arbitration hearing briefs and possibly even speak to Sullivan. McCarthy indicated at that time he would see what the parties could put together. Whether McCarthy carried through with these intentions is not evidenced by the record. Rather, as of the date of the first amended complaint, November 20, 2015, the union still refused to sign the successor CBA. The union cannot thereafter be allowed to avoid the execution of the award by claiming there was no mutual assent. By the very nature of interest arbitration, the parties did not mutually agree to specific CBA language; rather, they "mutually assented" to have the certified CBA provisions decided by binding interest arbitration.

The parties must take responsibility for their own arguments before interest arbitration panels. "[I]t must be assumed that the parties are to approach interest arbitration with the existing employment relationship well in mind, and with full knowledge of proposed changes to that relationship." *City of Clarkston (International Association of Fire Fighters, Local 2299)*, Decision 3246. Where a party invites error, and especially where they had their own partisan arbitrator on the panel who did not deal with the error, the party must live with the error. Where an error is invited, as in this case, it cannot form a reasonable basis for delaying the signing of a CBA,

especially following issuance of a binding interest arbitration award. *See Kitsap Transit*, Decision 5143 (PECB, 1995) (employer ordered to sign CBA reflecting employer's original wage proposal which was agreed to by union, despite employer's argument that the wage proposal was a "mistake").[13]

It was not reasonable for the union, so late in the process, to try to disavow the actions of its attorney (who wrote the original post-hearing brief for the interest arbitration hearing) and its representative on the arbitration panel (who did not correct the error in the interest arbitration award he signed). The union's continued failure to execute an agreement resulting from the missteps of its own representatives before an arbitration panel, constitutes an unfair labor practice under RCW 41.56.150. *City of Olympia (Olympia Police Guild)*, Decision 2629 (PECB, 1987), *aff'd*, Decision 2629-A (PECB, 1988). *Kiona-Benton School District (Public School Employees of Kiona-Benton)*, Decision 4312 (PECB, 1993) (where the parties reached agreement, the employer could not lawfully refuse to sign the contract on grounds that the agreement did not include the provision that was never discussed by the employer's bargaining team).

By the time the final award was issued on October 5, 2015, the union, through its partisan arbitrator, had multiple opportunities to correct the error about the minimum/maximum wage increase language, which the union itself invited in its post-arbitration hearing brief. The union's refusal to sign the CBA because of its belated concerns with Footnote 14 was a bad faith refusal to sign the agreement and an unlawful refusal to bargain in violation of RCW 41.56.150(4).[14]

Union's Defenses

Mootness

The union argues that "since the contract has already been signed, there is nothing left to litigate."

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13 In *Kitsap Transit*, the examiner held, "Having obtained ratification of the contract[,] to permit the employer to now attempt to establish a new and significantly lower wage rate under the guise of a mistake[] would make a mockery of the collective bargaining process."

14 The employer's attorney even agreed to add Footnote 14 to the contract on November 10, 2015, and the union still would not sign the contract. Instead, McCarthy stated that the union was going to contact the arbitrator, and he was going to take some more time to review the award and post-hearing briefs.

"[U]nfair labor practices do not become 'moot' merely because the offending party ceases its unlawful conduct voluntarily or under threat of proceedings before th[e] Commission." *City of Seattle (International Brotherhood of Electrical Workers, Local 46)*, Decision 3169-A (PECB, 1990); *see also Kennewick General Hospital*, Decision 4815-B (PECB, 1996) ("Even though a collective bargaining agreement is negotiated and agreed upon by the parties, that agreement does not resolve the allegations concerning improper bargaining conduct."); *Kennewick General Hospital*, Decision 5389 (PECB, 1995).

Bad Faith on the Part of the Employer

The union argues that the employer has "unclean hands" because the employer's partisan arbitrator, Klein, noticed the error about the wage "floor" in the draft award and did not bring it to the attention of Wilkinson or the union's partisan arbitrator, Sullivan.

If the union believed that the employer bargained in bad faith, it could have filed its own unfair labor practice complaint against the employer. The union's claims that the employer acted in bad faith are not subject to review by the Commission. *Kennewick General Hospital*, Decision 4815-B; *Benton County*, Decision 5763 (PECB, 1996).

Moreover, the union did not show that Klein actually noticed that the draft award erroneously described the prior agreement's wage floor as 1 percent rather than 1.5 percent. Wasserman did not recall exactly when the employer became aware of this error, and no other witness or any evidence proved that Klein knew of the error before the award was final.

The allegation that the employer chose not to call attention to the error is not supported by the record and does not change or diminish the fact that the union missed its own opportunities to deal with the error which the union itself invited.[15]

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[15] The union also alleged that Klein's sharing of the draft award with Wasserman, Rubstello, and Dow was not proper. The union did not point to any authority to support its allegation.

REMEDIES

The employer and the union each claimed that the other engaged in bad faith conduct and made frivolous arguments, and so each party asked for an award of attorney fees.

The standard remedy for an unfair labor practice violation includes ordering the offending party to cease and desist and, if necessary, to restore the status quo, make employees whole, post notice of the violation, publicly read the notice, and order the parties to bargain from the status quo. *State – Corrections*, Decision 11060-A (PSRA, 2012), *reconsideration denied*, Decision 11060-B (PSRA, 2012).

Attorney fees have been awarded as a punitive remedy in response to egregious conduct, recidivist conduct, or to frivolous defenses asserted by a party. *Western Washington University*, Decision 9309-A (PSRA, 2008), *citing Lewis County*, 644-A (PECB, 1979), *aff'd*, *Lewis County v. Public Employment Relations Commission*, 31 Wn. App. 853 (1982) (attorney fees awarded where history of underlying conduct evidenced patent disregard for statutory mandate to engage in good faith negotiations), *and Auburn School District*, Decision 2710-A (1987) (motion for attorney fees on appeal denied where Commission found that although employer's appeal had no merit, it was not frivolous).

In this case, although the union did not comply with its good faith bargaining obligation following the issuance of the interest arbitration award, I find no historical pattern of this union failing to abide by its collective bargaining obligations with this employer, which would warrant an award of attorney fees. *See, e.g.*, *City of Seattle*, Decision 4163-A (PECB, 1993) (denying attorney fees where union failed to demonstrate a pattern of recidivist conduct by the employer). Furthermore, even though the union's defenses may not have had merit, it cannot be said that they were frivolous. There was admittedly some confusion and error in the arbitrator's award, but since they were of the union's own making, the union was not justified in refusing to sign the contract on that basis. The employer's request for attorney fees is denied. As the union is being found to have committed unfair labor practices, its request for attorney fees is also denied.

The employer also asked that the union be ordered to sign the contract. Since the union eventually did sign the contract, that remedy is not warranted here. *Benton County*, Decision 5763.

As a remedy in this case, the union is ordered to cease and desist from refusing to bargain, to post notices stating it committed unfair labor practices, and to read the notice into the minutes of a regular meeting of its governing body.

FINDINGS OF FACT

1. The City of Clyde Hill is a public employer within the meaning of RCW 41.56.030(12).

2. Teamsters Local 763 (union) is a bargaining representative within the meaning of RCW 41.56.030(2) for a bargaining unit of uniformed commissioned police officers at the City of Clyde Hill.

3. The employer and union were parties to a collective bargaining agreement (CBA) effective from January 1, 2010, through December 31, 2012.

4. The January 1, 2010, through December 31, 2012, CBA provided that for each year of the agreement,

> the rates of pay…shall be increased by one hundred percent (100%) of the increase in the Seattle-Tacoma-Bremerton Consumer Price Index for all Urban Wage Earners (CPI-W), All Items Series (1982-1984=100) as published by the Bureau of Labor Statistics…with a minimum increase of one point five percent (1.5%) and a maximum increase of four percent (4%). Either party may open this section only…, should the index reflect increases of less than one percent (1%) or more than five percent (5%).

5. During negotiations for a successor CBA, the parties were unable to agree on wages and other subjects, and submitted the unresolved issues to interest arbitration.

6. The Commission certified issues for interest arbitration on August 12, 2014.

7. The interest arbitration panel was composed of a neutral chairperson, Arbitrator Jane Wilkinson; a union partisan member, Tim Sullivan; and an employer partisan member, Otto Klein III.

8. The parties took part in a hearing before the interest arbitration panel on May 28, May 29, and June 16, 2015. The parties submitted post-hearing briefs on August 21, 2015.

9. The union's post-interest arbitration brief proposed "to maintain existing contract language for 100 percent of the CPI-W, [and] to continue the 1-4 percent guaranteed pay raise range" for each year of the new agreement. The union proposed a three-year agreement.

10. The employer proposed a 2 percent wage increase for 2013, and wage increases of 90 percent of the CPI-W for the subsequent years. The employer specified that this would equate to 1.08 percent for 2014 and 1.98 percent for 2015, with the exact increases for 2016 and 2017 to be finalized once the Department of Labor released the CPI-W data. The employer proposed to remove the language providing a 1.5 percent minimum and four percent maximum wage increase. The employer proposed a five year agreement.

11. Before issuing the final interest arbitration award, Arbitrator Wilkinson circulated a draft award among the partisan members of the panel, on September 14, 2015. The draft award was for a three-year agreement, and awarded wages as follows: 2013 – 100% CPI-W (2.7%); 2014 – 100% CPI-W (1.2%); 2015 – 100% CPI-W (2.2%).

12. "Footnote 11" of the wage award stated: "No argument was presented as to whether to retain the 1% floor and 4% ceiling of prior agreements. Therefore, that minimum and maximum will remain in place."

13. Arbitrator Wilkinson asked the partisan arbitrators to provide input on the draft. Sullivan requested an extension of time to review the draft and provide input, which was granted.

14. Sullivan and Klein provided input and suggestions to Arbitrator Wilkinson.

15. On September 24, 2015, Klein suggested a compromise of a four-year agreement, with wage increases for the fourth year based on 100 percent of the increase in the CPI.

16. In response to Klein's input, on September 27, 2015, Wilkinson suggested some corrections and modifications to the award and asked Klein and Sullivan for further input by September 29, 2015.

17. On September 29, 2015, Sullivan offered more comments to Wilkinson and courtesy copied Klein. Sullivan did not raise concerns about the drafted floor and ceiling language in Footnote 11 or Table 2 in his second round of input. Among his comments was an agreement with Klein on a four-year duration of the CBA. Sullivan stated, "We would not be opposed to a 4th year at 100% CPI as [Klein] suggested."

18. Neither Klein nor Sullivan raised any issue about "Footnote 11" of the draft.

19. Wilkinson issued her final award on October 5, 2015. The record does not show that either partisan arbitrator ever brought up the floor and ceiling errors in Footnote 11 or Table 2 before the issuance of the award. Both Sullivan and Klein signed the final award and indicated they each concurred in part and dissented in part. However, neither partisan arbitrator specified the parts of the award with which they concurred or dissented.

Wilkinson awarded wage adjustments as follows:

Table 12

Year	Wage Adjustment
2013	100% CPI-W (2.7%)
2014	100% CPI-W (1.2%)
2015	100% CPI-W (2.2%)
2016	100% CPI-W (1.1%)

Wilkinson kept the text of Footnote 11 from the earlier draft in her final award, but Footnote 11 was renumbered and thereafter referred to as "Footnote 14."

20. The award directed the employer to retroactively make employees whole for shortfalls in contributions to a "cafeteria plan" within 30 days from the date of the award. The award also provided that a health care premium split of 90 percent (employer) and 10 percent (employee) would take effect 30 days after the date of the arbitration award.

21. On October 12, 2015, Wasserman contacted the union's representative, Mike Wilson, stating that the employer had incorporated the award and earlier tentative agreements into a new CBA and that he planned to present it for official approval by the city council the following day. Wasserman stated, "[I]f you have any comments please make me aware of them before tomorrow's meeting." Wasserman testified that the employer was anxious to execute the new contract so that it could issue retroactive paychecks to the bargaining unit. Wasserman also explained that the employer needed to obey deadlines for implementation imposed in the award.

22. In his October 12, 2015 draft, Wasserman used "track changes" to show what language was being added to and removed from the prior CBA. Wasserman removed the prior language that described how wages would be tied to the CPI and added language stating the specific wage increases for each year (2.7 percent for 2013, 1.2 percent for 2014, 2.2 percent for 2015, and 1.1 percent for 2016). Wasserman also removed the 2010–2012 CBA language providing a minimum 1.5 percent and maximum 4 percent wage increase.

23. On October 13, 2015, Wasserman e-mailed Wilson a "clean" copy of the draft CBA and said, "I'll have 4 copies signed and sent to you tomorrow." The "clean" copy, which was no longer marked with tracked changes, still included the "recap" from Wasserman's October 12, 2015 draft and the text of Footnote 14.

24. Between October 14 and October 19, 2015, Wilson and Wasserman exchanged e-mails related to a Letter of Understanding (LOU) concerning special overtime assignments and Article 6 of the CBA, Hours of Work/Overtime. These items were not included in the list of issues certified by the Commission for interest arbitration. The employer contended that special overtime assignment provisions should remain in a separate LOU, whereas—by the

account of Wasserman's October 19, 2015, e-mail to Wilson—the union was attempting to incorporate the LOU into Article 6 of the CBA.

25. On October 26, 2015, Wilson e-mailed Wasserman some suggested changes to the draft CBA. Wilson stated, "[P]lease review and let me know if this is accurate. If so, I can give this to Linda Baker [the union's administrative coordinator] and she will prepare the documents for signature . . . ."

26. On October 28, 2015, Wasserman e-mailed Wilson, stating he had accepted Wilson's suggestions and was going to send the union four signed copies of the contract. Wasserman also stated that the "recap" attached to his prior drafts (which included the text of footnote 14) was not part of the CBA. The version of the CBA attached to Wasserman's October 28, 2015 e-mail (and all subsequent drafts of the CBA) no longer had the "recap" or any mention of minimum or maximum wage increases.

27. Later on October 28, 2015, Baker e-mailed Wasserman, stating that the union would need a signed subscription agreement, which related to the union's vision plan benefits in the CBA.

28. In an e-mail dated October 29, 2015, Wasserman informed Wilson that he made the "housekeeping/formatting" changes earlier suggested by Wilson, had the mayor sign the new draft, and mailed the signed CBA to the union. Wasserman's e-mail described this version as a "revised-revised" word version of what was believed to be the "final CBA."

29. On November 2, 2015, Wasserman e-mailed Wilson and attached a copy of the draft 2013-2016 CBA reflecting notation clarifications in Appendix A, and described it as, "([W]hat we all believe to be) the final revised version of the CBA." Wasserman added, "It is my understanding that the Union will sign this document tomorrow."

30. Later on November 2, 2015, Wilson spoke with Wasserman. Wasserman summarized the communication in an e-mail to Dow: "[Wilson] wanted to include the min/max language

from the award…we agreed not to agree…it is not in the CBA…he was also under the impression the min was 1.0%."

31. On the morning of November 4, 2015, Wilson called Wasserman again, "wanting to include language pertaining to the min-max comment the arbitrator mentioned for historical reasons (this time he mentioned it was a min of 1.5%)."[16] Wasserman did not agree that the language should be in the CBA. Wasserman told Wilson, "[T]he arb award is not self-executing and . . . I am not authorized to make any $ payoffs until I have a signed contract . . . ."

32. Later on November 4, 2015, Wasserman e-mailed Wilson regarding the union's delay in signing the CBA:

> For some time now you have a new collective bargaining agreement for signature that incorporates the arbitrator's award and the TA's from collective bargaining. The arbitrator anticipated the new CBA would be timely executed and provided that the 90/10 insurance premium split would start 30 days after the date of her award.
>
> Your delay in executing the CBA is unwarranted, adversely impacting the City (and the officers) and cannot continue. The City will be forced to file an unfair labor practice charge seeking to require execution of the CBA and reimbursement to the City of the costs of delay as well as the prosecution of the ULP, should the delay continue. I trust such action will be unnecessary.
>
> Let's get the new contract off to a good start by signing it today!

33. On November 5, 2015, Wasserman sent a memo to the bargaining unit employees and the employer's payroll department, explaining that even though the union contract was not yet signed, the city would begin implementing provisions from Wilkinson's award, relating to retroactive wage payments, cafeteria plan payments, and changes to health care premiums.

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[16] Per an e-mail from Wasserman to Rubstello and Dow. The union did not offer evidence to clarify what occurred in this conversation.

34. On November 9, 2015, McCarthy e-mailed Rubstello the following language for a draft footnote about the floor and ceiling wage increases which the union wanted to add to the CBA:

> The previous collective bargaining agreement contained a 1.5%/4.0% minimum/maximum applicable to each annual CPI-derived wage raise. Neither party sought to eliminate or revise this provision in negotiations or arbitration of this 2013-2016 Agreement. As a consequence, Arbitrator Jane Wilkinson ordered in her October 5, 2015 interest arbitration award, at footnote 14, that the provision should "remain in place." By the time that award was issued, the parties already knew that the CPI fell within the acceptable min/max range for every year of the contract, so there is no need to include the entire min/max provision in the body of this Agreement.

35. In a subsequent e-mail, McCarthy observed that the draft footnote was wrong, as two of the wage increases in Wilkinson's award were below 1.5 percent. McCarthy stated that the union thought the 1.5 percent minimum should apply.

36. On November 10, 2015, Rubstello stated in an e-mail to McCarthy that the employer did not want to go back to Wilkinson to seek her intent behind Footnote 14, as the union had proposed.[17] Rubstello explained that Wasserman did not want to spend more money or time on the arbitration, that the union partisan arbitrator had extended time to review the draft award and propose edits, and that there was no ambiguity in the wage rates in the award. Rubstello informed McCarthy that the employer was willing to add language to the CBA as follows:

> In the Arbitrator's Decision and Award of October 5, 2015, the Arbitrator stated in footnote 14 the following: "No argument was presented as to whether to retain the 1% floor and 4% ceiling of prior agreements. Therefore, that minimum and maximum will remain in place."

Rubstello concluded, "[Wasserman] needs [the union's] agreement to sign the CBA with the added footnote today. If not the ULP will be filed tomorrow."

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[17] The record is not clear on this point, but it appears that McCarthy and Rubstello had a conversation on or around November 9, 2015, in which McCarthy suggested the parties go back to Wilkinson for clarification.

37. Later on November 10, 2015, McCarthy e-mailed Rubstello, "We will be contacting Arbitrator Wilkinson anyway." He asked, "[A]re you suggesting that we retain the typo (i.e., 1 vs. 1.5) in the footnote to the CBA?"

38. Rubstello responded to McCarthy on the same day, asserting that the Arbitrator no longer had jurisdiction over the case and maintaining there was no ambiguity that needed clarification. Rubstello remarked, "The Union's unhappiness with the award is not cause for refusal to sign a collective bargaining agreement implementing the award. You do not have permission of the City to contact the Arbitrator regarding the award."

39. McCarthy replied later on November 10, 2015, arguing that the arbitrator still had jurisdiction and that Footnote 14 did create ambiguity. McCarthy added,

> [O]ver the next couple of days, I will look into the award and post-hearing briefs more deeply for indicators of the Arbitrator's likely intent. I may even speak with Tim Sullivan. (You will remember that I did not do the underlying hearing). After that, I will get back to you to see what we can put together, if anything.

40. There is no indication from the record that leading up to the filing of the instant unfair labor practice complaint that McCarthy indicated recognition of the union's post-interest arbitration hearing brief's floor/ceiling discrepancy, nor of Sullivan's failure to raise the floor/ceiling discrepancy.

CONCLUSIONS OF LAW

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

2. As described in Findings of Fact 4 through 40, the union refused to bargain in violation of RCW 41.56.150(4) and (1) by failing or refusing to execute a signed collective bargaining

agreement memorializing the contract terms set by the interest arbitration award issued on October 5, 2015.

ORDER

Teamsters Local 763, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Failing or refusing to bargain in good faith during the collective bargaining process.

   b. Failing or refusing to timely execute a collective bargaining agreement incorporating an interest arbitration award.

   c. 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. Negotiate in good faith during the collective bargaining process.

   b. Execute collective bargaining agreements incorporating interest arbitration awards in a timely manner.

   c. Contact the Compliance Officer at the Public Employment Relations Commission to receive official copies of the required notice posting. Post copies of the notice provided by the Compliance Officer in conspicuous places on the employer's

premises where union notices to bargaining unit employees 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. The union's Secretary-Treasurer shall read the notice provided by the Compliance Officer into the record at a regular meeting of the governing body or board of the union, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

e. Notify the complainant, in writing, within 20 days following the date this order becomes final 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.

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

ISSUED at Olympia, Washington, this 7th day of November, 2016.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Page A Garcia

PAGE A. GARCIA, 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 127714-U-15
DECISION 12628 - PECB

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

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

THE WASHINGTON STATE PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING, RULED THAT TEAMSTERS LOCAL 763 COMMITTED AN UNFAIR LABOR PRACTICE, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY refused to bargain by failing or refusing to execute a signed collective bargaining agreement memorializing the contract terms set by the interest arbitration award issued on October 5, 2015, for the commissioned police officers bargaining unit.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL negotiate in good faith with the employer during the collective bargaining process.

WE WILL sign collective bargaining agreements incorporating interest arbitration awards in a timely manner.

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.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MARILYN GLENN SAYAN, CHAIRPERSON
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MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 11/7/2016

DECISION 12628 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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