STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

AMERICAN FEDERATION OF TEACHERS, LOCAL 1950, Complainant, vs. SHORELINE COMMUNITY COLLEGE, Respondent.	CASE 129773-U-17 DECISION 12973 - CCOL FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Laura Ewan, Attorney at Law, Schwerin Campbell Barnard Iglitzin & Lavitt LLP, for the American Federation of Teachers, Local 1950.

John D. Clark, Assistant Attorney General, Attorney General Robert W. Ferguson, for Shoreline Community College.

On October 23, 2017, the American Federation of Teachers, Local 1950 (union or AFT) filed an unfair labor practice (ULP) complaint against Shoreline Community College (employer). The union asserted that the employer failed to provide information about compensation, refused to bargain over a decision of using a new methodology to calculate compensation, unilaterally changed the amount of compensation, and failed to provide information about the compensation. The Public Employment Relations Commission's unfair labor practice manager issued a preliminary ruling on November 9, 2017, stating that a cause of action existed. Examiner Erin Slone-Gomez held a hearing on June 4, 5, 6, and 8, 2018, and the parties submitted post-hearing briefs on September 12, 2018, to complete the record.

ISSUES

Employer refusal to bargain in violation of RCW 28B.52.073(1)(d) [and if so, derivative interference in violation of RCW 28B.52.073(1)(a)], within six months of the date the complaint was filed, by:

1. Refusing to provide relevant information requested by the union concerning data related to the compensation implementation.

2. Breaching its good faith bargaining obligations and refusing to bargain with the union over the decision of using a new methodology of calculating increased compensation and the total amount of increased compensation owed to the bargaining unit employees.

3. Unilaterally changing the amount of agreed-upon increased compensation and the methodology to calculate the increased compensation owed to the bargaining unit employees, without providing the union an opportunity for bargaining.

The union met its burden of proving that the employer refused to bargain by failing to provide relevant information requested by the union, breaching its good faith bargaining obligations regarding proposed changes to compensation, and unilaterally changing the compensation methodology.

BACKGROUND

Negotiations

In the fall of 2016[1] the union and the employer jointly adopted an interest-based bargaining (IBB) approach to negotiations and agreed to use the affinity model when discussing compensation. The parties received training and facilitation assistance from Commissioner Jennifer Nitschke with the Federal Mediation and Conciliation Service (FMCS). The parties were initially trained by Nitschke in the IBB model in October 2016 and received training on the affinity model in February 2017. They bargained using the affinity model, with Nitschke facilitating, in March 2017. Broadly speaking, "interest-based bargaining," including the affinity model, is a collaborative negotiation style where the parties meet jointly to identify interests and solutions rather than exchange formal proposals. The affinity model is most often used when negotiating compensation. Upon the advice of Nitschke, the parties did not keep notes of the meetings focused on the affinity model, for themselves or their teams, and jointly brainstormed ideas on shared flip chart paper.

The union's negotiation team consisted of DuValle Daniel, union president and negotiation lead; Brad Fader, union treasurer; Leslie Potter-Henderson, union vice president; and Nancy Kennedy, AFT representative. The team also included Brian Martin, an associate faculty member who participated in bargaining through the end of the 2016–2017 academic year. The employer's negotiation team consisted, in part, of Stuart Trippel, senior executive director and chief financial officer and Alison Stevens, executive vice president.[2]

On February 8, 2017, in preparation for the upcoming training and affinity model negotiations, Nitschke e-mailed Daniel and Stevens informing them that their first meeting would be February 24, 2017. The e-mail further stated,

---

1 As the union's complaint was submitted October 23, 2017, the six months prior to the complaint begins on April 23, 2017. Discussions the parties had and documents exchanged during February, March, and early April are directly related to the parties' negotiations about missed "increments" that are the subject of this complaint. The parties submitted testimony and evidence about this time period. Accordingly, I am including relevant background before April 23, 2017, in this decision.

2 Stevens took over from a previous college employee as the lead bargainer for the employer team.

> On this date, the group will need to have all of their financial issues outlined. There is an expectation that all economic information will be provided. Folks will review all of the documentation and discuss the total economic picture, including all of the money available for consideration. This is not a time for leverage or strategy. This is a time for complete transparency. The group will arrive at a common understanding of needs and what .25, .5, .75, and 1 percent increases to wages look like, as well as other economic measures that are of concern to the group.

On February 16, 2017, Nitschke sent a follow-up e-mail to Daniel and Stevens, which instructed,

> At a minimum, the group will need to come up with agreed upon base numbers from which calculations can be conducted. For example, the true number of employees in the bargaining unit and in various categories, the average salary for each category, the price of insurance and all insurance stats (if applicable to your bargain), and the cost of benefits such as retirement, days off and any other items per individual, per category will be calculated.

The bargaining teams met on February 17, 2017, and they jointly identified the "economic issues" that they would like to address with Nitschke, one of which was increments. Increments, often called steps or longevity steps in other collective bargaining agreements, is a term used in community colleges to identify increases to compensation that occur based on service longevity. During several years after the 2008 recession, many state employees, including community college faculty, did not receive cost-of-living adjustments and in some instances had their compensation temporarily reduced. During this time most state employees, if eligible, still received step (increment) increases; however, community college faculty did not. Notably, legislative changes allowed colleges to use "local funds" (a source of funding previously prohibited) for compensation of staff beginning in summer 2017. Thus, compensation for previously unpaid increments were an important topic for the union during negotiations.

The parties met again on February 24, 2017. They discussed remaining bargaining issues in the morning and received affinity model training from Nitschke in the afternoon. On March 2, 2017, Trippel e-mailed the bargaining teams with excerpts from an e-mail he received from Veronica Zura, the executive director of human resources. Zura was on a maternity-related leave beginning October 2016 and thus did not participate in negotiations. However, she did provide information to the parties and was occasionally on speakerphone during meetings.

Trippel's excerpt from Zura's e-mail included in part:

- Estimated half-step increase costs for 2016-17 full-time faculty = $182,999.43
    - Estimated costs are based 50% of the average difference between salary levels ($2099.45) with benefits estimated at 17%
- Estimated half-step increase costs for part-time faculty (based on 2015-16 PTF data) = $127,508.88
    - Estimated costs are based on 50% of the average difference between salary levels ($487.00) with benefits estimated at 17%

Zura's e-mail also stated, "Please note as we discussed, the faculty increase costs do not include summer quarter (would be in addition to what's listed above)."

The parties met on March 3, 2017, and, as discussed above, did not take separate notes to record the negotiation. Instead, the parties identified ideas on post-it notes, which were discussed and agreed to throughout the day; e.g., "Point system to weight increments based on time of not receiving them" and "Reduce sabbatical fund by $200,000." Daniel documented the day's 19 agreements directly after the meeting. Of particular importance in the instant case is note two, which states, "Provide a retroactive increment to Sept/July 2016 applying $200,000 from sabbatical to the $311,000 (almost an increment of 1) and apply it by weighted average of number of increments missed to faculty salaries, full- and part-time, retroactive to July/Sept 2016." The parties discussed various ways that available compensation could be divided so that employees who had missed the most increments would receive the most compensation. They also discussed other factors, such as class load, that would need to be accounted for in order to determine the number of missed increments. The parties acknowledged that the division methodology would be complicated.[3] The parties agreed that an additional meeting would take place between Trippel and

[3] Both Daniel and Fader testified that Stevens explicitly talked about the impact that class load would have on compensation calculations. Trippel testified that he did not remember this conversation but that it could have happened. Stevens was not called to testify.

Fader, the negotiation teams' financial/accounting experts, for further discussions on how the agreed-upon compensation would be divided among the bargaining unit members.

During the March 3, 2017, session, Fader remembered Trippel stating that the college was concerned about the agreed-upon amount but that the union could determine the distribution methodology. Trippel believes he made a statement like this but that he also indicated the college was interested in equitable distribution between faculty groups; e.g., all of the compensation could not be given to the full-time faculty and none to the part-time faculty.

On March 17, 2017, Fader e-mailed Trippel and Zura a document titled "Missed Increments for Veronica." In it, Fader identified the proposed methodology for determining the weighted average to be used so that faculty members who had missed the most increments would receive more compensation than those who had missed fewer increments. Fader, Trippel, and Zura met on March 20, 2017, to further discuss the parties' agreement regarding compensation.

At some point in May 2017, the tentative collective bargaining agreement (CBA) was ratified by the parties and signed on May 24, 2017. The ratified contract addressed compensation for increments in Appendix A. Appendix A, Article I: Full-Time Academic Employees, Section B includes two subsections: subsection 1 concerns a one-time adjustment for missed increments, and subsection 2 concerns how future increments will be funded and paid. Subsection 1 states:

> 1. All partial increment increases negotiated in this Agreement (Section B.1.a., b., and c.) shall be treated as deferred compensation retroactive to July 1, 2016. *See* Appendix C Memorandum of Understanding, dated December 7, 2016.
>
> a. Funding for one-half (1/2) step increment increase plus funds saved from a one-third (1/3) reduction in sabbatical funding and used for a partial increment increase based on a weighted average of increments due;
>
> b. Funding for one-half (1/2) step increment increase; and,
>
> c. Distribution of the annual turn-over dollars for partial increment increase.

The companion language regarding part-time faculty is found in Appendix A, Article II: Associate Academic Employees, Section B. The language is substantively the same as that concerning full-time faculty with the exception of turn-over dollars, which were not mentioned.

Missed Increment Compensation Calculation

On June 1, 2017, Fader e-mailed Zura a spreadsheet of full-time faculty who had taught additional classes beyond their full-time faculty load (also called "moonlighting") and part-time faculty. Fader asked Zura for additional data to complete the list. Notably, this list included the load level of the faculty in a column titled "JOB %."

On June 2, 2017, Fader e-mailed Zura, and copied Trippel and Daniel, asking for the final amount of compensation that would be spread out among the bargaining unit. In part, Fader asked,

> Now that we are implementing, we need to have the costs more specifically calculated. This dollar amount becomes a fixed dollar amount that is spread to the membership. Would you be able to provide me the calculations for these dollars for my review? I have been preparing my own calculations and am finding that a half-step increment change is slightly different from the $311,000. One of the differences may be the calculation of summer quarter cost.
>
> As you know, I am currently working on the spreadsheet we have reviewed in the past that will determine the dollars to each individual member.

Zura promptly replied to all indicating,

> I'm not sure that I am the person to provide this final number for contract implementation use but would certainly be able to help determine it. My understanding is that you, Stuart [Trippel] and I will be meeting to go through the adjusted pay calculation together?
>
> I want to make sure I fully understand the updates to compensation in the contract to ensure any adjustments are accurately made.

Fader responded to Zura indicating that it would be helpful to have "something close to the finalized amount" at the meeting and asked if he could receive the calculation from whomever had the number ahead of the meeting. He also reminded Zura that he had sent a couple of e-mails recently asking for data that he needed to finalize the compensation worksheet (on which he had

been working for several months). Zura did not inform Fader that neither she nor any other employee had yet to begin the compensation calculations.

On June 13, 2017, Fader e-mailed Zura to follow-up on his two previous requests for information. Fader indicated that "[he] would really like to have a finalized worksheet to hand off to [her] at the meeting." Zura replied, "Based on the clarifications I'm hoping to get at this meeting, I'd like to wait to make sure we are all on the same page." Zura still had not informed Fader that she had not begun the compensation calculations.

On June 14, 2017, in response to Fader's expressed concerns regarding Zura's lack of response, Daniel e-mailed Zura and Trippel reminding them of Fader's requests for information and asking to meet. Specifically, Daniel indicated, "I understand you are probably working on this already, but given the complexity of the new compensation model I think we should work together to make sure it is applied accurately and in a timely manner."

Daniel, Fader, Zura, Trippel, and Stevens met on June 21, 2017. The following day, Zura sent notes from the meeting to all participants requesting that they review and confirm the accuracy of the notes. Zura wrote, "Once confirmed, HR will move forward with implementing these changes / notifying the division staff. I will also move forward with providing the information referenced in the summary (such as specific increase amount for each faulty member, potentially qualifying Priority Status faculty, etc.)."

Daniel responded that same day with a "track changes" version of Zura's notes where Daniel and Fader had responded with comments. Daniel highlighted that further discussion was needed and in an e-mail the following morning, June 23, 2017, Zura agreed. Importantly, in the union's comments back to Zura, they highlighted a statement indicating that the weighted average calculation was the "Individual # missed increments/ all missed increments = % of 511,000 funding received." The union indicated, "This is okay if it just [sic] a general understanding of the concept. Mathematically it includes load and annualizing the associate missed increments and workload from quarter information."

Approximately a half hour after Zura's e-mail, Fader again asked Zura for the information he had previously requested. Two hours later Daniel e-mailed Zura and Fader reiterating that Fader needed the requested information before he was unavailable (over the summer quarter) and asked why there was a delay. Zura responded in part,

> With apology, it will take time for me to pull and verify the data related to missed increments for faculty (including PTF, FTF, and MLC assignments), the sabbatical savings amount, and the additional half step increments. Noting that Brad [Fader] has done work on this already, because the HR Office is ultimately responsible for the accuracy I do still need to complete this work myself. While I don't know that I will be able to get this done by Monday, please rest assured it is a priority.
>
> I'm happy to sit down and explain the final data at any time, once it is ready. The data itself is not complicated and can be easily reviewed by others to check for any potentials [sic] questions or edits needed.

That Monday, June 26, 2017, Daniel responded,

> If that is what you are most comfortable with, it is ultimately your call. I think Brad [Fader] might have helped the process along more quickly because of his familiarity with the work we did in the IBB, but that is neither here nor there. *He can review it once you complete your work on behalf of the union.* (emphasis added).

The parties continued the e-mail exchange on another issue addressed in negotiations.

Payment of Missed Increment Compensation

On Tuesday, August 22, 2017, Daniel e-mailed Zura and Trippel asking for an update on the retroactive pay issue and on which paycheck the faculty could expect to see the additional compensation. Daniel also asked when Fader could review the calculations. After not receiving a response, Daniel e-mailed again on August 24, 2017, requesting a status update and indicating that when faculty questioned when they would be receiving their retroactive compensation, Daniel would direct them to human resources. Daniel added Stevens to her August 24th e-mail.

Nine minutes later, Zura responded,

> We are on track to have the calculations complete by the end of August, which means faculty should see the increase in their September 10th check as we had discussed. We are still double checking the numbers in HR (with Stuart [Trippel]'s help) and will be sending you the data as soon as our review is complete. Anticipating that you will have the data early next week, there are a couple of options as follows:
>
> 1) Process the retro-pay on the 9/10/17 paycheck, noting we can make adjustments after the fact should your review find edits needed
>
> 2) Wait until you have completed the full data review and delay retro-payments to the 10/10/17 paycheck

Daniel responded a half hour later,

> If Stuart [Trippel] has the opportunity to review the numbers there is no reason why Brad [Fader] should not also have access to the information to review it concurrently as both were at the bargaining table. I think the option you didn't offer that I think is more appropriate is to share the information you have with Brad [Fader] now. The union is not going to take responsibility for paychecks going out later than Sept 10th because the College refuses to share information we have requested since bargaining ended. Please share what you have so Brad [Fader] can start reviewing even if either he or Stuart [Trippel] find inaccuracies. They can compare notes.

Ten minutes after Daniel's e-mail Zura stated,

> I'm just trying to present you with clean data. Given the immense amount of individual adjustments that had to be calculated under a variety of categories, I am just checking my work to ensure its [sic] correct. There would be no efficiency in having multiple people check the same work at the same time. If it's helpful, this is the same process followed for previous retro-active increases.
>
> I'm not sure what you are referring to with information not being shared but if you can clarify, I'd be happy to provide it.

That same evening Daniel replied,

> The Union offered to work with you side by side to get the work done sooner, but we were denied. We then requested that once you complete your numbers that you send it to Brad [Fader]. However, Stuart [Trippel] is now reviewing the numbers and the College is still refusing to send the data to Brad [Fader] so that he could

> start to review not just the numbers but also the basis for the calculations. What was bargained is much more complex than what has been done before, so it was in both of our interest [sic] to ensure it has been done according to the agreement.
>
> . . . .
>
> I cannot tell you how to do this; I can only request, and based on the responses I've received, I hear that the request is being denied. At this point, I think that faculty should be paid by September 10, so I will send a communication out to faculty to explain the situation and let them know to contact you with any questions.
>
> I can only hope that we are able to complete both your review and ours in time to avoid any delays or adjustments.

Four minutes later Zura responded, "I think there may have been a miscommunication as I'm not sure where you've been denied information, rather it's been delayed while the large amount of data for varying individual calculations was pulled and processed."

Eight minutes later Daniel stated, "Probably the confusion as to the denial of information is a result of our different perspectives. No need to continue to try to explain or understand because likely we won't see it the same."

Zura sent three different versions of the calculations to Daniel and Fader: on Thursday evening, Friday morning, and Friday evening at 7:24 p.m. Upon receiving the information, the union was surprised to find that Zura's calculations were dramatically different than what the union had expected. Specifically, class load was not included as a factor, part-time and full-time funds were segregated, part-time missed increments were calculated in a way that disproportionately allocated compensation for missed increments in favor of part-time faculty, and the total compensation amount to be divided among the bargaining unit was less than the agreed-upon amount.

Letters to faculty about the upcoming retroactive payment were sent from the human resources department. The letters, dated August 30, 2017, indicated that each eligible employee would receive a certain payment as a "Weighted Increment Retroactive Amt" and that this amount was determined in accordance with the faculty contract.

Union Request to Stop Payment

On Thursday, August 31, 2017, Fader sent Trippel and Stevens an electronic meeting request to discuss the retroactive compensation on Wednesday, September 6, 2017. That same day, at 3:20 p.m., Daniel e-mailed Trippel and Stevens indicating that the meeting request had been sent and stated, "The September 11th [payday] date is in jeopardy so please advise whoever is responsible for payroll that until we come to an agreement on the allocation of the compensation that they should not proceed with payments on September 10."[4]

On Friday, September 1, 2017, at 11:53 a.m., Daniel informed Trippel and Stevens (and copied Zura and Fader) that she intended to e-mail the faculty informing them that the retroactive payment would not be included in the September 10th paycheck. She also asked the employer to confirm that they would postpone the payment. Daniel further indicated that the union had accepted the employer's previous invitation to a meeting on Thursday, September 7.

Trippel replied two minutes later indicating that the payroll manager was already inputting the retroactive compensation, that if there were any overpayments the union should notify the employer right away, and that any under payments could be dealt with in a future paycheck.

Daniel responded two minutes later stating,

> There are several issues and we already indicated that we did not want to pay incorrectly and have to fix it later. You should have worked with us as we requested from the beginning to make sure that what Veronica [Zura] was doing was what we bargained, but you would not allow Brad [Fader] the information he requested. You need to ask [the payroll manager] to not do those calculations because they do not represent what we wanted or expected.

Later that day Trippel, Fader, Daniel, and Zura attempted to have a multiparty conference call in response to a text Daniel sent Trippel asking for the payroll to be stopped. On the call, Trippel and Zura shared that all of the retroactive payments had been inputted into the employer's cumbersome payroll system and that it would be impossible to stop the retroactive payments. The

---

[4] The regular payday occurs on the tenth day of the month; in this instance, the tenth day occurred on a Sunday so the payday was the next business day.

employer also highlighted that the business hours of the college ended at noon on Fridays during the summer and that it was Labor Day weekend, thus complicating any possibility of making the changes over the weekend. Daniel and Fader attempted to brainstorm ideas in response to the employer's statement about the inability to postpone, all of which the employer rejected as unrealistic.

On Saturday, September 2, 2017, Daniel e-mailed the faculty LISTSERV notifying members that they would be receiving a retroactive payment that could be incorrectly calculated, that the union was denied the right to review and respond to the calculations, and that the employer acted unilaterally with disregard for collective bargaining. Daniel also urged faculty not to spend the retroactive amount until after the union and employer had reviewed the calculations. Later that night Daniel sent a similar e-mail to faculty directly as some faculty might not have been on the faculty LISTSERV.

On Wednesday, September 6, 2017, Daniel met with college president Cheryl Roberts regarding the union's concerns. On Thursday, September 7, 2017, the bargaining teams and Zura met. On Friday, September 8, 2017, the bargaining groups, Zura, and Roberts met. Around this time, Fader shared a two-page description of how the employer's calculations were different than the union's. The differences, in summary, included:

- Former employees had been excluded from the retroactive payment.
- Some faculty were missing from the lists used to determine the amount of money for a half-step increment.
- A different amount of turnover dollars was used.
- The amounts allocated for the half increment and sabbatical were less than what had been offered in negotiation.
- There was no allocation for summer funds.
- Part-time faculty were paid missed increments at the same rate of pay as full-time faculty even though their increment amounts are lower.

- The calculation of owed increments did not include weighting for class load or annualization.

On September 27, 2017, Daniel read a letter to the college's board of trustees at the board meeting expressing her frustration with the employer's actions during and after negotiations.

On October 12, 2017, Daniel met with Stevens; on October 15, 2017, Daniel sent a letter to Roberts summarizing that meeting. Daniel wrote that Stevens had stated the employer would send a communication to faculty indicating that the union was advocating for full-time faculty at the expense of part-time faculty and that the administration had no choice but to respond publicly because Daniel spoke at the board's public meeting. Daniel concluded her letter by stating that based on conversations with Roberts and Stevens, the union could expect a "counter offer" from the college in order to resolve the outstanding dispute regarding the employer's issuance of compensation for missed increments.

Roberts responded to Daniel on October 17, 2017, writing in part,

> Second, I would like to respond to your assertions about EVP Steven's efforts to set the record straight. The purpose of her comments was to point to discrepancies between the information presented in your report to the Board of Trustees at its regular meeting of September 27, 2017, and the written record of email discussions on the same topics. She offered you the opportunity to correct the information, rather than having the record corrected by the Administration.
>
> Finally, your letter mentions that you are expecting a "counter offer" to the Federation's request that the faculty be "made whole." You may be referring to comments I made during a brief discussion in your office on Thursday, October 12, 2017, where I mentioned some items that the administrative team wanted to discuss regarding implementation of the contract. Unfortunately, neither you nor your faculty team were willing to discuss it during a recent JU/MC meeting. You stated you might be open to hearing our presentation of the facts if the format was similar to the one the faulty team used to present its faculty compensation calculations to me on September 7, 2017.
>
> Outside of the bargaining process, there can be no "counter offer." We have a collective bargaining agreement in place—an agreement that was entered into by both the Federation and Administration, ratified by the Federation's membership and approved by the Board of Trustees at its regular meeting on May 24, 2017. As bargaining has concluded, we must follow the resolution processes stated in the

> collective bargaining agreement. We continue to be available to work on the issues and under these processes, with the Federation.

A few days later, October 23, 2017, the union filed its unfair labor practice complaint.

ANALYSIS

Applicable Legal Standards

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).

Whether a particular subject is a mandatory subject of bargaining is a mixed question of law and fact for the Commission to decide. *Cowlitz County*, Decision 12483-A (PECB, 2016). 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." *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). The decision focuses on which characteristic predominates. *Id.* 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).

Unilateral Change

The parties' collective bargaining obligation requires that the status quo be maintained regarding all mandatory subjects of bargaining, except when any changes to mandatory subjects of bargaining are made in conformity with the statutory collective bargaining obligation or a term of a collective bargaining agreement. *City of Yakima*, 3503-A (PECB, 1990), *aff'd*, *City of Yakima v. International Association of Fire Fighters, Local 469*, 117 Wn.2d 655 (1991); *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991). As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes*, Decision 12160-A (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010), *citing Skagit County*, Decision 8746-A (PECB, 2006).

To prove a unilateral change, the complainant must prove that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to the duty to bargain. *Kitsap County*, Decision 8292-B (PECB, 2007). A complainant alleging a unilateral change must establish the existence of a relevant status quo or past practice and that a meaningful change to a mandatory subject of bargaining occurred. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000); *Municipality of Metropolitan Seattle (Amalgamated Transit Union, Local 587)*, Decision 2746-B (PECB, 1990). For a unilateral change to be unlawful, the change must have a material and substantial impact on the terms and

conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007), *citing King County*, Decision 4893-A (PECB, 1995).

The Commission focuses on the circumstances as a whole and on whether an opportunity for meaningful bargaining existed. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998). If the employer's action has already occurred when the employer notifies the union (a *fait accompli*), the notice would not be considered timely and the union would be excused from the need to demand bargaining. *Id.* If the union is adequately notified of a contemplated change at a time when there is still an opportunity for bargaining that could influence the employer's planned course of action, and the employer's behavior does not seem inconsistent with a willingness to bargain, if requested, then a *fait accompli* will not be found. *Id.*, *citing Lake Washington Technical College*, Decision 4721-A (PECB, 1995).

Duty to Provide Information

The duty to bargain includes a duty to provide relevant information needed by the opposite party for the proper performance of its duties in the collective bargaining process. *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). This obligation extends not only to information that is useful and relevant to the collective bargaining process but also encompasses information necessary to the administration of the parties' collective bargaining agreement. *King County*, Decision 6772-A (PECB, 1999). Failure to provide relevant information upon request constitutes a refusal to bargain unfair labor practice. *University of Washington*, Decision 11414-A (PSRA, 2013).

Upon receiving a relevant information request, the receiving party must provide the requested information or notify the other party if it does not believe the information is relevant to collective bargaining activities. *Seattle School District*, Decision 9628-A (PECB, 2008). If a party perceives that a particular request is irrelevant or unclear, the party is obligated to communicate its concerns to the other party in a timely manner. *Pasco School District*, Decision 5384-A (PECB, 1996). If the requesting party does not believe the provided information sufficiently responds to the intent and purpose of the original request, the requesting party has a duty to contact the responding party

and engage in meaningful discussions about what type of information the requestor is seeking. *Kitsap County*, Decision 9326-B (PECB, 2010). The parties are expected to negotiate any difficulties they encounter with information requests. *Port of Seattle*, Decision 7000-A (PECB, 2000); *City of Yakima*, Decision 10270-B (PECB, 2011).

Parties must be prompt in providing relevant information. Unreasonable delay in providing necessary information may constitute an unfair labor practice. *Fort Vancouver Regional Library (Washington Public Employees Association)*, Decision 2350-C (PECB, 1988).

When responding to an information request, an employer has an obligation to make a reasonable good faith effort to locate the requested information. *Seattle School District*, Decision 9628-A (PECB, 2008).

Application of Standards

Analysis Common to All Three Charges

It is clear from a review of the facts that the union and management never had a meeting of the minds in regard to compensation for missed increments. The parties jointly decided to negotiate compensation using the affinity model and jointly agreed to use the services of an FMCS trainer/facilitator. The parties jointly wrote the language about a one-time missed increment compensation, albeit Fader may have offered much of the language. The parties jointly chose to include limited language in the CBA to memorialize this one-time payment, rather than provide a more thorough explanation of the process in the contract or in a letter of agreement.

The agreement stated that funding would come from a one-third (1/3) reduction in sabbatical funding but never identified how many dollars would be used nor how the sabbatical funding would be determined; e.g., one-third of the funding used the previous year, one-third of the funding budgeted for the upcoming year. Even more problematic, the contract language stated that "a weighted average of increments due" would be used. Union bargaining team members testified that they felt comfortable with the vagueness of the contract language because this would be a one-time payment. Also, the individuals administering the agreement were involved in the bargaining and thus would have an understanding of the parties' agreement.

During negotiations, the parties discussed various methods of funding missed increments and the distribution of such funding across the bargaining unit. Both Daniel and Fader clearly remember Trippel stating that the employer's concern was how much money would be used, not how the money would be distributed across the bargaining unit. Trippel confirmed that he made this statement, though he added a caveat that equitable distribution was also of interest to the college. Daniel and Fader also testified that the union expressed a desire for faculty who missed more increments to receive a greater share of the compensation. To accommodate the different increment methodologies used for full-time and part-time faculty, the union proposed a "weighted average." When responding to the union's idea, Stevens expressly stated that the methodology would require a calculation about individual professor class load and that this weighted average would be complicated. Daniel and Fader provided uncontroverted testimony that Stevens identified class load specifically during discussions. (Stevens was never called to testify.) As a result of these exchanges, the union left the second meeting on March 3, 2017, believing that the union was responsible for determining the exact distribution formula to be used based on the discussion during negotiations and that Fader and Trippel would meet to finalize details.

On March 17, 2017, Fader e-mailed Trippel and Zura a file about the proposed "increment change for faculty." This file identified the number of dollars to be used and an adjustment for scale difference. Importantly, the document clearly showed that the 755 missed increments for full-time faculty would not be adjusted but that the 795 missed increments for part-time faculty would be adjusted by 70 percent for a total of 557 increments.

On March 20, 2017, Fader and Trippel met to further discuss the missed increment methodology. Trippel decided Zura should be included in the conversation and invited her to join. Trippel testified that he viewed Fader's March 17 proposal as an opening discussion, although he never conveyed that sentiment to the union or followed up with a contrary view. Trippel also testified that after Zura joined the meeting he became a less active participant as Fader and Zura reviewed the documents Zura had created.

At this point, Zura became the employer's point person for administering the agreement and calculating missed increment payouts. This was highly problematic as Zura did not participate in

bargaining and thus did not have the understanding of the missed increment agreement the parties had only captured with vague, broad terms in the contract. At the direction of Nitschke, the parties did not pass written proposals nor did they create contemporaneous notes. In traditional bargaining, these types of written records are used when trying to ascertain what parties intended if contract language is ambiguous. By choosing to follow Nitschke's direction about avoiding notes when using the affinity model,[5] the parties were only able to rely on conversations when administering what they believed was a joint agreement about missed increments. Zura's lack of participation in compensation-related bargaining thus proved even more detrimental as she did not have bargaining notes or documented proposals to review.

At some point Zura made two crucial decisions that were in direct conflict with the union's understanding of the agreement. First, Zura decided that she and her office would be responsible for calculating the missed increment payouts and that this process would happen without the aid of the union. By choosing this approach Zura also decided the employer would determine the amount of funding available as the parties had used estimates during negotiations. Second, Zura decided to interpret "weighted average" in a way that was dramatically different than what the union had proposed.

It is unclear how or why Zura made these decisions. During testimony Zura seemed surprised that the union believed it would be responsible for determining the missed increment methodology. Zura also testified that her understanding of what the CBA's reference to "weighted average" meant was far simpler that what the union had proposed. On at least two occasions the union conveyed to Zura that its interpretation of a "weighted average" was multifaceted and complex. The first instance was Fader's e-mail on March 17, 2017; the second was when Daniel and Fader commented on the notes Zura created and distributed after the meeting on June 21, 2017. Their comments were clearly in response to Zura's formula of "Individual # missed increments/ all missed increments = % of 511,000 funding received." The comment stated, "This is okay if it just [sic] a general understanding of the concept. Mathematically it includes load and annualizing the associate missed increments and workload from quarter information." Additionally, on multiple occasions the union asked for information from Zura, to which she failed to respond. Doing so

---

5 Not all trainers/facilitators of the "affinity model" restrict personal note-taking.

would have clued in the parties that they lacked a shared understanding of what "weighted average" meant. This lack of understanding was compounded by Zura's failure to respond to the union's requests for information and last-minute distribution of her calculations, both of which are addressed further below.

Issue 1: Refusing to provide relevant information requested by the union concerning data related to the compensation implementation.

As noted above, the employer had a duty to provide the union with information relevant to the collective bargaining process and to the administration of the parties' CBA. On multiple occasions the union made requests for information necessary to determine the increments missed by faculty and about available funding. Several examples of this refusal, which occurred during June 2017, are identified below.

On June 1, 2017, Fader e-mailed Zura a list of full-time faculty who had worked additional time beyond their regular workload, also known as moonlighting, and a list of part-time faculty. He asked Zura to find the start dates for those employees and verify how many increments they had missed. It does not appear that Zura did so.

On June 2, 2017, in an e-mail that included Trippel and Daniel, Fader asked Zura for the exact amount of funding that would be used for missed increments. In this request Fader also highlighted that he did not have information about summer quarter cost. In Zura's response she highlighted that she, Fader, and Trippel would be meeting to go through the calculation process together. Fader then asked that the employer bring something close to the final compensation amount when they did meet and that this number be sent to him before the meeting. Fader also asked Zura to respond to the other e-mails he had sent requesting data relevant to the missed increment calculation. Neither Zura nor Trippel indicated that the employer had not yet begun to calculate the amount available for missed increments beyond the placeholder amounts or that the employer would not be using any summer quarter funds in that final calculation.

On June 13, 2017, Fader again asked Zura to respond to his information requests as he wanted to submit a finalized worksheet to the employer on June 15. As was clear through previous copies of the worksheet that Fader had given to Zura, the worksheet would include all faculty receiving

missed increment pay and the amount they would be receiving. Zura responded that she'd like to wait to send the information until after the parties met on June 15. (Due to scheduling conflicts the parties did not meet on June 15.) Not only did Zura not provide the information Fader had requested in his previous e-mails, or in response to the e-mail on June 13, she never indicated that she had not even begun the calculations for which she believed she was responsible.

On June 14, 2017, Daniel e-mailed Zura, Trippel, and Fader and again asked that Fader be given the requested information.

On June 23, 2017, Fader reminded Zura that he would only be available one more week to finalize the missed increment calculations before he left for summer quarter. He again asked for several pieces of information that were required to complete the calculations. Daniel e-mailed that same day, reiterating the importance of receiving the information.

One of the most important e-mails sent during this time period was Zura's June 23, 2017, e-mail to Daniel, Fader, Stevens, and Trippel. In this e-mail Zura indicated that it would take time for her to find and verify the information requested. In response to Daniel's highlight of Fader's completed work, Zura stated that the human resources office would need to administer the payments and thus she would need to complete the calculations herself. Zura never indicated that she would not use the work Fader had already done nor that she would be determining missed increments in a new way that was in conflict with the methodology that the union had at least twice shared with her previously. Finally, Zura stated that she was unlikely to be able to get this work done by the following Monday (Zura e-mailed on a Friday) but Daniel should, "please rest assured it is a priority." This phrase is particularly problematic as Zura had not yet begun the calculations and did not intend to complete them until the end of summer.[6] Neither Zura nor any other employer representative provided the information requested over the summer quarter and only provided information for the first time on August 24.

---

[6] During her testimony, Zura stated that she believed her deadline to complete this work was September 1, 2017. This date is not reflected in any of the notes or e-mails the parties shared nor did any other witness offer this date as an agreed-upon deadline.

The employer had a duty to not just respond to the union's requests for information but to provide updates and information concerning any delay in its response. The responding party must communicate with the requesting party on issues such as the type of information the requester is seeking, whether the responding party will be delayed in responding to the request, or whether the responding party believes the information requested is not relevant or the information request is not clear. *Kitsap County*, Decision 9326-B, *citing City of Seattle*, Decision 10249 (PECB, 2008), *remedy aff'd*, Decision 10249-A (PECB, 2009); *Pasco School District*, Decision 5384-A. The employer repeatedly indicated that it was unable to provide the information requested but never provided a date when it would be able to provide all or part of the information requested.

In conclusion, the employer's repeated failure to respond to the union's legitimate requests for information are in direct conflict with its obligations under law to provide information that is necessary to bargain and administer any contract. Therefore, the employer unlawfully failed to provide information to the union in violation of RCW 28B.52.073.

Issue 2: Breaching good faith bargaining obligations and refusing to bargain with the union over the decision to use a new methodology to calculate increased compensation and the total amount of increased compensation owed to the bargaining unit employees.

The duty to bargain in good faith is a core tenet of the collective bargaining process. As identified above, 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).

The parties chose to engage in bargaining through the use of an interest-based bargaining approach and chose to use an affinity model to discuss wages. At the end of this negotiation process, the parties jointly drafted and signed an agreement to partially repay missed increments by using a weighted average in order to provide the most compensation to employees who missed the most increments. It is clear from the evidence that during negotiations the union proposed a multifactor weighted average, that the union understood that the method by which the funds were to be

distributed was primarily up to the union, and that the union and employer would continue working together outside of negotiations to gather data and, using the methodology the union communicated, determine the total compensation each faculty member would receive. The union's actions during the spring and early summer were consistent with that understanding. In addition to proposing a multifactor methodology during negotiations, the union restated its methodology to the employer, including Zura, at least twice, on March 17 and June 22. The employer, through Zura, appeared to completely disregard the union's proposed methodology.

If the employer had disagreed or failed to understand the union's proposal, either during bargaining or after, it had a duty to follow-up with the union about its concerns. The obligation to bargain in good faith encompasses a duty to engage in full and frank discussions on disputed issues and a duty to explore possible alternatives that may achieve a mutually satisfactory accommodation of the interests of both the employer and the employees. *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014), *citing University of Washington*, Decision 11414-A.

Rather than ignoring the union's proposed methodology, if Zura had responded to the above-discussed union requests for information, it might have been made clear to the union that Zura was not calculating missed compensation according to union's proposed methodology. Thus, the union could have then explicitly highlighted to Zura that the methodology she was employing was different than what the union had proposed. Only when the employer finally sent the union its calculation of compensation at the end of the summer did it become obvious that the employer did not understand or did not agree with the union's methodology of compensating employees for missed increments. As Examiner Knutson appropriately stated in *Washington State University*, Decision 9614-A (PSRA, 2007), "It is impossible to have a *full and frank discussion* with the other party if that other party does not ask to talk to you."

In conclusion, by failing to dispute the methodology and/or by ignoring the methodology the union proposed on multiple occasions, the employer failed to engage in full and frank bargaining. Therefore, the employer failed to meet its duty to bargain in good faith in violation of RCW 28B.52.073.

Issue 3: Unilaterally changing the amount of agreed-upon increased compensation and the methodology to calculate the increased compensation owed to the bargaining unit employees, without providing the union an opportunity to bargain.

In order to be successful in proving an allegation of an employer's unilateral change, the union must prove four elements:

1. The existence of a relevant status quo or past practice.
2. That the relevant status quo or past practice was a mandatory subject of bargaining.
3. That notice and an opportunity to bargain the proposed change was not given, or that notice was given but an opportunity to bargain was not afforded and/or the change was a *fait accompli*.
4. That there was an actual change to the status quo or past practice.

City of Tukwila, Decision 10536-A (PECB, 2010).

These four elements are addressed in turn below.

Existence of a relevant status quo

Prior to the time period involved in the instant case, members of the bargaining unit had been receiving a wage that did not include incremental step increases that would have otherwise occurred if a salary freeze had not existed. This rate of pay was different for each individual bargaining unit member and was paid to each individual at the end of each prior pay period.

That the relevant status quo or past practice was a mandatory subject of bargaining

When determining whether a subject is a mandatory subject, the issue is reviewed through the *City of Richland* balancing test: The Commission balances "the relationship the subject bears to employee wages, hours, and working conditions" of the employer, 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, *citing City of Richland*, 113 Wn.2d 197, 203.

In this case, this review is straightforward as the subject in question is wages, and wages are unquestionably a mandatory subject of bargaining. *University of Washington*, Decision 10608-A (PSRA, 2011).

That notice and an opportunity to bargain the proposed change was not given, or that notice was given but an opportunity to bargain was not afforded

The first time the union received notice that the employer intended to implement a wage payment based on a methodology other than what the union proposed was via e-mail on Thursday, August 24, 2017. This e-mail included Zura's calculations about what bargaining unit members would receive. Zura proceeded to send two other drafts of this data, for a total of three submissions on August 24 and 25, as she discovered errors. The final version was e-mailed to Daniel and Fader on Friday, August 25 at 7:24 p.m. Accompanying this final version was a note that Zura would be on vacation starting Monday, August 28, 2017, but that the college's payroll manager, who also did not participate in bargaining, would be available to answer questions. Zura also stated, "We have our letters ready to send out to faculty, and the plan is to wait until next Wednesday, August 31st to allow for any additional adjustments identified before then."[7] This was the sole mention of any timeline that the union should be mindful of when reviewing Zura's data and calculations.

On Thursday, August 31, 2017, Daniel e-mailed Trippel, Stevens, and Fader sharing that Fader had sent a meeting request for the following Wednesday to review the retroactive compensation the employer proposed. In this e-mail Daniel stated, "The September 11 date is in jeopardy so please advise whoever is responsible for payroll that until we come to an agreement on the allocation of the compensation that they should not proceed with payments on September 10." As discussed above, the parties then engaged in e-mail and telephonic communications in which the employer indicated that it was impossible to cancel the retroactive payment because the employer already had chosen to input the increases into the college's payroll system and that it was unwilling and/or unable to cancel these inputs over the holiday weekend. Working over the holiday weekend would be required to meet the payroll deadline established by the college's payroll administrator.

---

7 August 31 occurred on a Thursday in 2017.

It is clear that the employer chose to submit its proposed compensation to the union at the very end of August despite repeated requests from the union to do so earlier. When it finally submitted its calculations, the employer did not indicate that the union had any set deadline to respond to or contest the calculations. Despite the lack of deadline the union responded with a request to meet a mere four working days after receiving the data. Further, the union explicitly warned the employer that the parties were not in agreement about compensation owed and that any future payments should be stopped until such time as the parties reached agreement.

The employer argues that the union chose to have the payment for missed increments issued on the September paycheck and relies on a series of e-mails from Thursday, August 24 as evidence. This argument fails for two reasons; the first is found within the text of the e-mails. Zura offered Daniel two options: to issue the missed compensation on the September 10 paycheck with the opportunity to make adjustments afterward, or to delay the payments until the October 10 paycheck so the union would have an opportunity to review Zura's calculations. In Daniel's response she argued that Zura artificially limited the union's options and that she, Daniel, continued to ask the employer to provide the requested information including the employer's projected calculations. Implausibly, Zura responded that she did not understand what information the union was seeking. After months of clear and explicit requests for information, and in response to Daniel's unambiguous request to review the calculations Zura identified in an e-mail less than an hour before, Zura's response can only be viewed as not credible.

The second reason this argument fails is that at the time the employer was asking the union's permission to move forward with payment on the September 10 paycheck, the employer had given no indication, despite months of asking, that it was choosing to calculate missed increments in a way that was never negotiated and in direct conflict with the union's proposal. The union could not agree that the employer should issue the compensation based on the employer's methodology because the union was unaware that the employer was using a methodology different from that which the union had proposed. The assumption that the employer would have used the union's methodology was entirely appropriate as Fader had provided worksheets that incorporated the methodology and, as stated above, the union had articulated its methodology at least twice beyond its initial articulation during bargaining.

Through a series of deliberate choices, the employer withheld information crucial to the union, over the union's objections, and only finally shared its interpretation of the parties' agreement at a point too late for the union to respond.

That there was an actual change to the status quo or past practice

The employer issued payments to faculty in accordance with its calculations on the September 10, 2017, paycheck.

In conclusion, the employer unilaterally implemented a change to employees' wages without providing an opportunity to bargain in violation of RCW 28B.52.073.

REMEDY

To remedy the first two violations in this case, the Commission's standard remedy is appropriate; namely, that the employer shall cease and desist from engaging in illegal activity. The appropriate remedy for the unilateral change allegation is more problematic. The standard remedy in a unilateral change 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; and order the parties to bargain from the status quo. *City of Anacortes*, Decision 6863-B (PECB, 2001).

In this case, the employer is not ordered to return to the status quo regarding wages. The purpose of ordering a return to the status quo is to ensure the offending party is precluded from enjoying the benefits of its unlawful act and by gaining unlawful advantage at the bargaining table. *Lewis County*, Decision 10571-A (PECB, 2011), *citing Herman Sausage Co.*, 122 NLRB 168, 172 (1958). The National Labor Relations Board (NLRB) has held that it will not order the revocation of an unlawfully granted unilateral wage increase, unless revocation of the wage increase is requested by the exclusive bargaining representative. *See Herman Sausage Co.*, 122 NLRB 168. The NLRB reasoned that if questions exist as to whether an unlawful unilateral change adversely affected employees, the exclusive bargaining representative is in the best position to determine whether a complete return to the preexisting status quo is appropriate to ensure that there will be no dissatisfaction on the part of the affected employees as a result of

enforcement of the statute. *See Id.* In the instant case, the union explicitly asks that any payments made to bargaining unit members in error not be returned. Therefore, a return to status quo regarding wages is inappropriate.

FINDINGS OF FACT

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

2. The American Federation of Teachers, Local 1950 is the exclusive bargaining representative within the meaning of RCW 28B.52.020(7) and represents the bargaining unit of instructional faculty at Shoreline Community College.

3. In the fall of 2016 the union and the employer jointly adopted an interest-based bargaining (IBB) approach to negotiations and agreed to use the affinity model when discussing compensation. The parties received training and facilitation assistance from Commissioner Jennifer Nitschke with the Federal Mediation and Conciliation Service (FMCS). The parties were initially trained by Nitschke in the IBB model in October 2016 and received training on the affinity model in February 2017. They bargained using the affinity model, with Nitschke facilitating, in March 2017.

4. Upon the advice of Nitschke, the parties did not keep notes of the meetings focused on the affinity model, for themselves or their teams, and jointly brainstormed ideas on shared flip chart paper.

5. The union's negotiation team consisted of DuValle Daniel, union president and negotiation lead; Brad Fader, union treasurer; Leslie Potter-Henderson, union vice president; and Nancy Kennedy, AFT representative. The team also included Brian Martin, an associate faculty member who participated in bargaining through the end of the 2016–2017 academic year. The employer's negotiation team consisted, in part, of Stuart Trippel, senior executive director and chief financial officer and Alison Stevens, executive vice president.

6. On February 8, 2017, in preparation for the upcoming training and affinity model negotiations, Nitschke e-mailed Daniel and Stevens informing them that their first meeting would be February 24, 2017. The e-mail further stated,

> On this date, the group will need to have all of their financial issues outlined. There is an expectation that all economic information will be provided. Folks will review all of the documentation and discuss the total economic picture, including all of the money available for consideration. This is not a time for leverage or strategy. This is a time for complete transparency. The group will arrive at a common understanding of needs and what .25, .5, .75, and 1 percent increases to wages look like, as well as other economic measures that are of concern to the group.

7. On February 16, 2017, Nitschke sent a follow-up e-mail to Daniel and Stevens, which instructed,

> At a minimum, the group will need to come up with agreed upon base numbers from which calculations can be conducted. For example, the true number of employees in the bargaining unit and in various categories, the average salary for each category, the price of insurance and all insurance stats (if applicable to your bargain), and the cost of benefits such as retirement, days off and any other items per individual, per category will be calculated.

8. The bargaining teams met on February 17, 2017, and they jointly identified the "economic issues" that they would like to address with Nitschke, one of which was increments.

9. The parties met again on February 24, 2017. They discussed remaining bargaining issues in the morning and received affinity model training from Nitschke in the afternoon. On March 2, 2017, Trippel e-mailed the bargaining teams with excerpts from an e-mail he received from Veronica Zura, the executive director of human resources. Zura was on a maternity-related leave beginning October 2016 and thus did not participate in negotiations. However, she did provide information to the parties and was occasionally on speakerphone during meetings.

10. Trippel's excerpt from Zura's e-mail included in part:

- Estimated half-step increase costs for 2016-17 full-time faculty = $182,999.43
    - Estimated costs are based 50% of the average difference between salary levels ($2099.45) with benefits estimated at 17%
- Estimated half-step increase costs for part-time faculty (based on 2015-16 PTF data) = $127,508.88
    - Estimated costs are based on 50% of the average difference between salary levels ($487.00) with benefits estimated at 17%

Zura's e-mail also stated, "Please note as we discussed, the faculty increase costs do not include summer quarter (would be in addition to what's listed above)."

11. The parties met on March 3, 2017, and, as discussed above, did not take separate notes to record the negotiation. Instead, the parties identified ideas on post-it notes, which were discussed and agreed to throughout the day; e.g., "Point system to weight increments based on time of not receiving them" and "Reduce sabbatical fund by $200,000." Daniel documented the day's 19 agreements directly after the meeting. Of particular importance in the instant case is note two, which states, "Provide a retroactive increment to Sept/July 2016 applying $200,000 from sabbatical to the $311,000 (almost an increment of 1) and apply it by weighted average of number of increments missed to faculty salaries, full- and part-time, retroactive to July/Sept 2016." The parties discussed various ways that available compensation could be divided so that employees who had missed the most increments would receive the most compensation. They also discussed other factors, such as class load, that would need to be accounted for in order to determine the number of missed increments. The parties acknowledged that the division methodology would be complicated. The parties agreed that an additional meeting would take place between Trippel and Fader, the negotiation teams' financial/accounting experts, for further discussions on how the agreed-upon compensation would be divided among the bargaining unit members.

12. Both Daniel and Fader testified that Stevens explicitly talked about the impact that class load would have on compensation calculations. Trippel testified that he did not remember this conversation but that it could have happened. Stevens was not called to testify.

13. During the March 3, 2017, session, Fader remembered Trippel stating that the college was concerned about the agreed-upon amount but that the union could determine the distribution methodology. Trippel believes he made a statement like this but that he also indicated the college was interested in equitable distribution between faculty groups; e.g., all of the compensation could not be given to the full-time faculty and none to the part-time faculty.

14. On March 17, 2017, Fader e-mailed Trippel and Zura a document titled "Missed Increments for Veronica." In it, Fader identified the proposed methodology for determining the weighted average to be used so that faculty members who had missed the most increments would receive more compensation than those who had missed fewer increments. Fader, Trippel, and Zura met on March 20, 2017, to further discuss the parties' agreement regarding compensation.

15. At some point in May 2017, the tentative collective bargaining agreement (CBA) was ratified by the parties and signed on May 24, 2017. The ratified contract addressed compensation for increments in Appendix A. Appendix A, Article I: Full-Time Academic Employees, Section B includes two subsections: subsection 1 concerns a one-time adjustment for missed increments, and subsection 2 concerns how future increments will be funded and paid. Subsection 1 states:

> 1. All partial increment increases negotiated in this Agreement (Section B.1.a., b., and c.) shall be treated as deferred compensation retroactive to July 1, 2016. *See* Appendix C Memorandum of Understanding, dated December 7, 2016.
>
> a. Funding for one-half (1/2) step increment increase plus funds saved from a one-third (1/3) reduction in sabbatical funding and used for a partial increment increase based on a weighted average of increments due;

b. Funding for one-half (1/2) step increment increase; and,

c. Distribution of the annual turn-over dollars for partial increment increase.

The companion language regarding part-time faculty is found in Appendix A, Article II: Associate Academic Employees, Section B. The language is substantively the same as that concerning full-time faculty with the exception of turn-over dollars, which were not mentioned.

16. On June 1, 2017, Fader e-mailed Zura a spreadsheet of full-time faculty who had taught additional classes beyond their full-time faculty load (also called "moonlighting") and part-time faculty. Fader asked Zura for additional data to complete the list. Notably, this list included the load level of the faculty in a column titled "JOB %."

17. On June 2, 2017, Fader e-mailed Zura, and copied Trippel and Daniel, asking for the final amount of compensation that would be spread out among the bargaining unit. In part, Fader asked,

> Now that we are implementing, we need to have the costs more specifically calculated. This dollar amount becomes a fixed dollar amount that is spread to the membership. Would you be able to provide me the calculations for these dollars for my review? I have been preparing my own calculations and am finding that a half-step increment change is slightly different from the $311,000. One of the differences may be the calculation of summer quarter cost.
>
> As you know, I am currently working on the spreadsheet we have reviewed in the past that will determine the dollars to each individual member.

Zura promptly replied to all indicating,

> I'm not sure that I am the person to provide this final number for contract implementation use but would certainly be able to help determine it. My understanding is that you, Stuart [Trippel] and I will be meeting to go through the adjusted pay calculation together?

> I want to make sure I fully understand the updates to compensation in the contract to ensure any adjustments are accurately made.

Fader responded to Zura indicating that it would be helpful to have "something close to the finalized amount" at the meeting and asked if he could receive the calculation from whomever had the number ahead of the meeting. He also reminded Zura that he had sent a couple of e-mails recently asking for data that he needed to finalize the compensation worksheet (on which he had been working for several months). Zura did not inform Fader that neither she nor any other employee had yet to begin the compensation calculations.

18. On June 13, 2017, Fader e-mailed Zura to follow-up on his two previous requests for information. Fader indicated that "[he] would really like to have a finalized worksheet to hand off to [her] at the meeting." Zura replied, "Based on the clarifications I'm hoping to get at this meeting, I'd like to wait to make sure we are all on the same page." Zura still had not informed Fader that she had not begun the compensation calculations.

19. On June 14, 2017, in response to Fader's expressed concerns regarding Zura's lack of response, Daniel e-mailed Zura and Trippel reminding them of Fader's requests for information and asking to meet. Specifically, Daniel indicated, "I understand you are probably working on this already, but given the complexity of the new compensation model I think we should work together to make sure it is applied accurately and in a timely manner."

20. Daniel, Fader, Zura, Trippel, and Stevens met on June 21, 2017. The following day, Zura sent notes from the meeting to all participants requesting that they review and confirm the accuracy of the notes. Zura wrote, "Once confirmed, HR will move forward with implementing these changes / notifying the division staff. I will also move forward with providing the information referenced in the summary (such as specific increase amount for each faulty member, potentially qualifying Priority Status faculty, etc.)."

Daniel responded that same day with a "track changes" version of Zura's notes where Daniel and Fader had responded with comments. Daniel highlighted that further discussion

was needed and in an e-mail the following morning, June 23, 2017, Zura agreed. Importantly, in the union's comments back to Zura, they highlighted a statement indicating that the weighted average calculation was the "Individual # missed increments/ all missed increments = % of 511,000 funding received." The union indicated, "This is okay if it just [sic] a general understanding of the concept. Mathematically it includes load and annualizing the associate missed increments and workload from quarter information."

21. Approximately a half hour after Zura's e-mail, Fader again asked Zura for the information he had previously requested. Two hours later Daniel e-mailed Zura and Fader reiterating that Fader needed the requested information before he was unavailable (over the summer quarter) and asked why there was a delay. Zura responded in part,

> With apology, it will take time for me to pull and verify the data related to missed increments for faculty (including PTF, FTF, and MLC assignments), the sabbatical savings amount, and the additional half step increments. Noting that Brad [Fader] has done work on this already, because the HR Office is ultimately responsible for the accuracy I do still need to complete this work myself. While I don't know that I will be able to get this done by Monday, please rest assured it is a priority.
>
> I'm happy to sit down and explain the final data at any time, once it is ready. The data itself is not complicated and can be easily reviewed by others to check for any potentials [sic] questions or edits needed.

22. That Monday, June 26, 2017, Daniel responded,

> If that is what you are most comfortable with, it is ultimately your call. I think Brad [Fader] might have helped the process along more quickly because of his familiarity with the work we did in the IBB, but that is neither here nor there. *He can review it once you complete your work on behalf of the union.* (emphasis added).

23. On Tuesday, August 22, 2017, Daniel e-mailed Zura and Trippel asking for an update on the retroactive pay issue and on which paycheck the faculty could expect to see the additional compensation. Daniel also asked when Fader could review the calculations. After not receiving a response, Daniel e-mailed again on August 24, 2017, requesting a status update and indicating that when faculty questioned when they would be receiving

their retroactive compensation, Daniel would direct them to human resources. Daniel added Stevens to her August 24th e-mail.

Nine minutes later, Zura responded,

> We are on track to have the calculations complete by the end of August, which means faculty should see the increase in their September 10th check as we had discussed. We are still double checking the numbers in HR (with Stuart [Trippel]'s help) and will be sending you the data as soon as our review is complete. Anticipating that you will have the data early next week, there are a couple of options as follows:
>
> 1) Process the retro-pay on the 9/10/17 paycheck, noting we can make adjustments after the fact should your review find edits needed
>
> 2) Wait until you have completed the full data review and delay retro-payments to the 10/10/17 paycheck

24. Daniel responded a half hour later,

> If Stuart [Trippel] has the opportunity to review the numbers there is no reason why Brad [Fader] should not also have access to the information to review it concurrently as both were at the bargaining table. I think the option you didn't offer that I think is more appropriate is to share the information you have with Brad [Fader] now. The union is not going to take responsibility for paychecks going out later than Sept 10th because the College refuses to share information we have requested since bargaining ended. Please share what you have so Brad [Fader] can start reviewing even if either he or Stuart [Trippel] find inaccuracies. They can compare notes.

25. Ten minutes after Daniel's e-mail Zura stated,

> I'm just trying to present you with clean data. Given the immense amount of individual adjustments that had to be calculated under a variety of categories, I am just checking my work to ensure its [sic] correct. There would be no efficiency in having multiple people check the same work at the same time. If it's helpful, this is the same process followed for previous retro-active increases.
>
> I'm not sure what you are referring to with information not being shared but if you can clarify, I'd be happy to provide it.

26. That same evening Daniel replied,

> The Union offered to work with you side by side to get the work done sooner, but we were denied. We then requested that once you complete your numbers that you send it to Brad [Fader]. However, Stuart [Trippel] is now reviewing the numbers and the College is still refusing to send the data to Brad [Fader] so that he could start to review not just the numbers but also the basis for the calculations. What was bargained is much more complex than what has been done before, so it was in both of our interest [sic] to ensure it has been done according to the agreement.
>
> . . . .
>
> I cannot tell you how to do this; I can only request, and based on the responses I've received, I hear that the request is being denied. At this point, I think that faculty should be paid by September 10, so I will send a communication out to faculty to explain the situation and let them know to contact you with any questions.
>
> I can only hope that we are able to complete both your review and ours in time to avoid any delays or adjustments.

27. Four minutes later Zura responded, "I think there may have been a miscommunication as I'm not sure where you've been denied information, rather it's been delayed while the large amount of data for varying individual calculations was pulled and processed."

28. Eight minutes later Daniel stated, "Probably the confusion as to the denial of information is a result of our different perspectives. No need to continue to try to explain or understand because likely we won't see it the same."

29. Zura sent three different versions of the calculations to Daniel and Fader: on Thursday evening, Friday morning, and Friday evening at 7:24 p.m. Upon receiving the information, the union was surprised to find that Zura's calculations were dramatically different than what the union had expected. Specifically, class load was not included as a factor, part-time and full-time funds were segregated, part-time missed increments were calculated in a way that disproportionately allocated compensation for missed increments in favor of part-time faculty, and the total compensation amount to be divided among the bargaining unit was less than the agreed-upon amount.

30. Letters to faculty about the upcoming retroactive payment were sent from the human resources department. The letters, dated August 30, 2017, indicated that each eligible employee would receive a certain payment as a "Weighted Increment Retroactive Amt" and that this amount was determined in accordance with the faculty contract.

31. On Thursday, August 31, 2017, Fader sent Trippel and Stevens an electronic meeting request to discuss the retroactive compensation on Wednesday, September 6, 2017. That same day, at 3:20 p.m., Daniel e-mailed Trippel and Stevens indicating that the meeting request had been sent and stated, "The September 11th [payday] date is in jeopardy so please advise whoever is responsible for payroll that until we come to an agreement on the allocation of the compensation that they should not proceed with payments on September 10."

32. On Friday, September 1, 2017, at 11:53 a.m., Daniel informed Trippel and Stevens (and copied Zura and Fader) that she intended to e-mail the faculty informing them that the retroactive payment would not be included in the September 10th paycheck. She also asked the employer to confirm that they would postpone the payment. Daniel further indicated that the union had accepted the employer's previous invitation to a meeting on Thursday, September 7.

33. Trippel replied two minutes later indicating that the payroll manager was already inputting the retroactive compensation, that if there were any overpayments the union should notify the employer right away, and that any under payments could be dealt with in a future paycheck.

34. Daniel responded two minutes later stating,

> There are several issues and we already indicated that we did not want to pay incorrectly and have to fix it later. You should have worked with us as we requested from the beginning to make sure that what Veronica [Zura] was doing was what we bargained, but you would not allow Brad [Fader] the information he requested. You need to ask [the payroll manager] to not do those calculations because they do not represent what we wanted or expected.

35. Later that day Trippel, Fader, Daniel, and Zura attempted to have a multiparty conference call in response to a text Daniel sent Trippel asking for the payroll to be stopped. On the call, Trippel and Zura shared that all of the retroactive payments had been inputted into the employer's cumbersome payroll system and that it would be impossible to stop the retroactive payments. The employer also highlighted that the business hours of the college ended at noon on Fridays during the summer and that it was Labor Day weekend, thus complicating any possibility of making the changes over the weekend. Daniel and Fader attempted to brainstorm ideas in response to the employer's statement about the inability to postpone, all of which the employer rejected as unrealistic.

36. On Saturday, September 2, 2017, Daniel e-mailed the faculty LISTSERV notifying members that they would be receiving a retroactive payment that could be incorrectly calculated, that the union was denied the right to review and respond to the calculations, and that the employer acted unilaterally with disregard for collective bargaining. Daniel also urged faculty not to spend the retroactive amount until after the union and employer had reviewed the calculations. Later that night Daniel sent a similar e-mail to faculty directly as some faculty might not have been on the faculty LISTSERV.

37. On Wednesday, September 6, 2017, Daniel met with college president Cheryl Roberts regarding the union's concerns. On Thursday, September 7, 2017, the bargaining teams and Zura met. On Friday, September 8, 2017, the bargaining groups, Zura, and Roberts met. Around this time, Fader shared a two-page description of how the employer's calculations were different than the union's. The differences, in summary, included:

- Former employees had been excluded from the retroactive payment.
- Some faculty were missing from the lists used to determine the amount of money for a half-step increment.
- A different amount of turnover dollars was used.

- The amounts allocated for the half increment and sabbatical were less than what had been offered in negotiation.
- There was no allocation for summer funds.
- Part-time faculty were paid missed increments at the same rate of pay as full-time faculty even though their increment amounts are lower.
- The calculation of owed increments did not include weighting for class load or annualization.

38. On September 27, 2017, Daniel read a letter to the college's board of trustees at the board meeting expressing her frustration with the employer's actions during and after negotiations.

39. On October 12, 2017, Daniel met with Stevens; on October 15, 2017, Daniel sent a letter to Roberts summarizing that meeting. Daniel wrote that Stevens had stated the employer would send a communication to faculty indicating that the union was advocating for full-time faculty at the expense of part-time faculty and that the administration had no choice but to respond publicly because Daniel spoke at the board's public meeting. Daniel concluded her letter by stating that based on conversations with Roberts and Stevens, the union could expect a "counter offer" from the college in order to resolve the outstanding dispute regarding the employer's issuance of compensation for missed increments.

40. Roberts responded to Daniel on October 17, 2017, writing in part,

> Second, I would like to respond to your assertions about EVP Steven's efforts to set the record straight. The purpose of her comments was to point to discrepancies between the information presented in your report to the Board of Trustees at its regular meeting of September 27, 2017, and the written record of email discussions on the same topics. She offered you the opportunity to correct the information, rather than having the record corrected by the Administration.
>
> Finally, your letter mentions that you are expecting a "counter offer" to the Federation's request that the faculty be "made whole." You may be

> referring to comments I made during a brief discussion in your office on Thursday, October 12, 2017, where I mentioned some items that the administrative team wanted to discuss regarding implementation of the contract. Unfortunately, neither you nor your faculty team were willing to discuss it during a recent JU/MC meeting. You stated you might be open to hearing our presentation of the facts if the format was similar to the one the faulty team used to present its faculty compensation calculations to me on September 7, 2017.
>
> Outside of the bargaining process, there can be no "counter offer." We have a collective bargaining agreement in place—an agreement that was entered into by both the Federation and Administration, ratified by the Federation's membership and approved by the Board of Trustees at its regular meeting on May 24, 2017. As bargaining has concluded, we must follow the resolution processes stated in the collective bargaining agreement. We continue to be available to work on the issues and under these processes, with the Federation.

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. By its actions described in findings of fact 3 through 40, the employer refused to provide relevant information requested by the union in violation of RCW 28B.52.073(1)(d) and derivatively interfered in violation of RCW 28B.52.073(1)(a).

3. By its actions described in findings of fact 3 through 40, the employer refused to bargain in good faith in violation of RCW 28B.52.073(1)(d) and derivatively interfered in violation of RCW 28B.52.073(1)(a).

4. By its actions described in findings of fact 3 through 40, the employer unilaterally changed the status quo in violation of RCW 28B.52.073(1)(d) and derivatively interfered in violation of RCW 28B.52.073(1)(a).

ORDER

Shoreline Community College, 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 provide information to American Federation of Teachers, Local 1950.

   b. Failing or refusing to bargain in good faith with American Federation of Teachers, Local 1950.

   c. Making unilateral changes to mandatory subjects of bargaining without first providing the union with notice of any proposed changes and an opportunity to bargain over the proposed changes.

   d. In any other manner interfering with, restraining, or coercing its employees in the exercise of their collective bargaining rights under the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 28B.52 RCW:

   a. Provide the American Federation of Teachers, Local 1950 with complete information concerning missed increment compensation.

   b. Give notice to and, upon request, negotiate in good faith with American Federation of Teachers, Local 1950 before making unilateral changes to mandatory subjects of bargaining without first providing the union with notice of any proposed changes and an opportunity to bargain over the proposed changes

c. Contact the compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for posting. Post copies of the notice provided by the compliance officer in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

d. Read the notice provided by the compliance officer into the record at a regular public meeting of the Shoreline Community College Board of Directors, 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 of this order as to what steps have been taken to comply with this order and, at the same time, provide the complainant with a signed copy of the notice provided by the compliance officer.

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

ISSUED at Olympia, Washington, this 8th day of February, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Erin J. Slone-Gomez

ERIN J. SLONE-GOMEZ, 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.

PERC
PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 02/08/2019

DECISION 12973 - CCOL has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 129773-U-17

EMPLOYER: SHORELINE COMMUNITY COLLEGE

REP BY:
CHERYL ROBERTS
SHORELINE COMMUNITY COLLEGE
16101 GREENWOOD AVE N
SEATTLE, WA 98133-5696
clroberts@shoreline.edu

JOHN D. CLARK
OFFICE OF THE ATTORNEY GENERAL
800 5TH AVE STE 2000
SEATTLE, WA 98104-3188
johnc5@atg.wa.gov

PARTY 2: AFT WASHINGTON

REP BY:
KAREN STRICKLAND
AFT WASHINGTON
625 ANDOVER PARK W STE 111
TUKWILA, WA 98188-3332
kstrickland@aftwa.org

LAURA EWAN
SCHWERIN CAMPBELL BARNARD IGLITZIN & LAVITT LLP
18 W MERCER ST STE 400
SEATTLE, WA 98119
ewan@workerlaw.com