STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TEAMSTERS LOCAL 117, Complainant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE 131056-U-18 DECISION 13083 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
UNIVERSITY OF WASHINGTON, Complainant, vs. TEAMSTERS LOCAL 117 Respondent.	CASE 131168-U-18 DECISION 13084 - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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Jennifer K. Schubert, Assistant Attorney General, Attorney General Robert W. Ferguson, for the University of Washington.

On October 22, 2018, Teamsters Local 117 (union) filed an unfair labor practice complaint against the University of Washington (employer) with the Public Employment Relations Commission (PERC). A preliminary ruling issued on November 13, 2018, found the complaint stated a cause of action in violation of RCW 41.80.110(1) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] for employer refusal to bargain by breaching its good faith bargaining obligations and refusing to honor agreements reached in bargaining.

On December 4, 2018, the employer filed an unfair labor practice complaint against the union. A preliminary ruling issued on December 12, 2018, found the employer's complaint stated a cause

of action in violation of RCW 41.80.110(2)(d) [and if so, derivative interference in violation of RCW 41.80.110(2)(a)] for union refusal to bargain by breaching its good faith bargaining obligations by refusing to reduce the parties' actual agreement to writing and by submitting regressive economic proposals. The two cases were consolidated as they involved the same parties and similar allegations.

I held a hearing on June 4 and 5, 2019. Both the union and the employer filed post-hearing briefs.

ISSUES

1. Did the union breach its good faith bargaining obligation by submitting a proposal that was more expensive than a previous proposal?

No. The evidence submitted was insufficient to find that this action was an unfair labor practice. It was not clear that the union intended for its proposal to be more expensive and, without waiting for a counter offer, the union quickly replaced the proposal with another one that created very significant economic movement in the employer's direction.

2. Did the union breach its good faith bargaining obligation by refusing to reduce the parties' actual agreement to writing?

No. The parties' actual agreement was not clear as the union and employer had a different understanding on the issue of the paid family medical leave premium. The employer made a drafting mistake that included language by which the employer would pay the entire premium. The union was not aware this language was included by mistake and thought the employer intended to include the language in an effort to reach agreement. When the union voted on the agreement, the union's deliberation included discussions of the tentative agreement as drafted. After the mistake was discovered, the union was willing to renegotiate this term after ratification, but no agreement was reached. The parties proceeded as if they had an agreement, finalizing their contract even though they disagreed about whether the employer would pay the full paid family medical leave premium. It is not an unfair labor practice for the union to refuse to adjust the language in the ratified collective bargaining agreement.

3. Did the employer breach its good faith bargaining obligations by refusing to honor agreements reached in bargaining?

Yes. The totality of the circumstances demonstrate that the employer should be bound to the tentative agreement document that the employer drafted, the union ratified, the parties failed to modify by way of further negotiation, and the parties finalized as if they had an agreement.

BACKGROUND

The employer and union bargained their 2019–20 collective bargaining agreement in the late spring and summer of 2018. The employer's chief negotiator was Kristi Aravena, and the union's chief negotiator was Matt House. On May 31, the parties agreed on ground rules including, "New items can only be added after June 19, 2018 by mutual agreement." As the parties reached the June 19 deadline, they had some articles marked as open, meaning that more negotiation was desired to reach an agreement. Open items included wages and how to handle the new paid family medical leave law.

The new state paid family medical leave law created new benefits of paid leave for when workers need time off to recover from a serious illness or injury, to care for an ill family member or a new child, and for certain military-related events, such as spending time with a spouse prior to deployment. The law's funding mechanism is similar to an insurance premium. The law anticipated dividing premium payments between employers and employees with a default percentage split, but the law permits unions and employers to make agreements that differ from the default premium split.

The 2018 negotiation was the first opportunity for the employer and the union to bargain the new law's premium. Adopting an approach consistent with how the state was bargaining with unions statewide, the employer desired a contract that split premiums in a way that matched the statute or allowed the statute to govern (by remaining silent on the subject of the split). While the union had previously made package proposals that agreed with the mandatory split, its proposal on August 8 included the employer paying the entire premium.

The employer considered the union's August 8 proposal to be regressive as it calculated the proposal to be more expensive than the union's previous economic packages. The employer also considered the provision that the employer pay the full paid family medical leave premium a violation of the parties' ground rules, as it was first proposed after the June 19 deadline for new issues. The union considered any proposal after its initial June 14 proposal to be a what-if offer and its initial offer to be its "protected position." As the union's August 8 proposal was below what it considered to be its "protected position," it disagreed with the employer's assessment of the August 8 proposal being a regressive proposal.

Prior to the parties' next bargaining session on August 20, Aravena and House had a conversation. Aravena objected to the union's paid family medical leave premium proposal as regressive and not something that the payroll system would accommodate and contended that the employer was not going to do something for this unit that it was not doing for other employees. They also discussed the wage portions of the package proposal. House responded that he had a proposal prepared to present at bargaining that he thought would please the employer. This new proposal was to be given to the employer without waiting for a counter offer on the prior proposal.

At the August 20 bargaining session, the employer told the union that the proposal was a $75,000 increase over the union's previous proposal, and the employer considered this increased proposal to be a clear unfair labor practice. The employer said the union had a "lackadaisical" attitude toward the statutory October 1 deadline that the parties faced to reach an agreement. According to the employer's bargaining notes, Aravena stated, "I want to be clear that if we don't have a contract to approve, officers get no increases. Perhaps there was a special situation in the past, but now we won't jump through hoops, but I want to be transparent that . . . we won't do that again."

As planned, the union presented its new package proposal without waiting for a counter offer from the employer. The union estimated that this new package moved closer to the employer by $400,000–$500,000 and included the default statutory split for the paid family medical leave premium, as well as other changes. This paid family medical leave language would be part of Article 12, which also contained bereavement leave. The parties' existing contract allowed for three days of bereavement leave, and until August 20 the union had been proposing increasing

bereavement leave to five days. As part of the August 20 package, the union was willing to remain at three days and remove its proposed language that would have the employer pay the entire paid family medical leave premium.

In reaction to this package, the employer said that it was about ready to tentatively agree to a few items and that its main issue had been addressed. The union responded that it was not necessarily interested in tentatively agreeing to some of the items, without an agreement on the package as a whole. According to the employer's bargaining notes, Aravena said that she would print out the tentative agreements, and it would be up to the union whether or not it wanted to sign them right away or later with a package.

Tentative agreement documents for Articles 9, 10, and 12 were created by the administrative assistant who was the employer's bargaining team note taker. In drafting the Article 12 document, the assistant started with an electronic copy of the union's August 8 proposal, not the employer's most recent proposal, which would have been her regular method of drafting tentative agreements. She changed bereavement leave from five days to three days but forgot to delete the language about the employer paying the full paid family medical leave premium. Aravena assumed that the Article 12 tentative agreement document would be identical to the employer's last proposal and signed it without reviewing it. These documents were then signed by the union. The bargaining continued without further discussion about the paid family medical leave premium.

On September 24, the parties completed their negotiations. The union's vote was scheduled for September 26. On September 25, House sent Aravena a redlined version of the entire contract. Aravena found multiple errors but not the employer's paid family medical leave premium error. She told House that she did not want to be responsible for the redlined version because she did not have time to review the document. The union proceeded with its vote, based on the tentative agreement documents.

Because the bargaining unit employees worked in shifts, House conducted the election on September 26 in two stages. Some bargaining unit members voted in the morning and others in the afternoon. The union's internal deliberation included disappointment that the agreement only had a two percent wage increase in both years of the contract. Although the paid family medical

leave provision was a relatively small economic item, the bargaining unit viewed having this new economic benefit as a positive reason to vote for the contract, especially as the union members were concerned with the cost of the premium going up in the future.

On September 26, after some members had already voted in the morning but before others were to vote in the afternoon, Aravena noticed the Article 12 tentative agreement mistake. She had been preparing for an internal meeting on implementation of the paid family medical leave provision. Seeing the error, she e-mailed House stating that she assumed he had not noticed the error and asked him to sign a new Article 12 that did not have the employer paying the entire premium. House responded that the union was aware of the Article 12 language and that the union had believed it was movement by the employer to work toward a deal and thus had not considered the language to be an error.

After the vote, the parties continued to negotiate by telephone and e-mail. The employer offered a $100 signing bonus and a free Upass (bus pass) in exchange for the removing the language that had the employer paying the full premium. The union declined this trade as the bus pass was of little value to bargaining unit members because of their schedules. The union said that if the payroll system made implementation of the agreement not possible, it would agree to a "monthly/quarterly/annual payment equal to the pretax value."[1] The parties failed to reach an agreement on Article 12, finalized their contract, and filed unfair labor practice complaints alleging that that the other party was failing to bargain in good faith.

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[1] The e-mail said "monthly/quarterly/annual payment equal to the employee share of the pretax value of the taxation." As the union was looking for a benefit of equal value to the portion of the premium in dispute, I believe that a payment equal to the disputed portion of the premium is what is being communicated with this sentence. In light of this bargaining history, my Order also includes an equivalent payment option.

ANALYSIS

Applicable Legal Standards

Good Faith Bargaining Obligation

The Public Employees' Collective Bargaining Act, chapter 41.56 RCW, governs the relationship between the union and the employer. The Commission has addressed the issue of good faith versus bad faith bargaining on multiple occasions. RCW 41.56.030(4) defines collective bargaining as

> the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided [by chapter 41.56 RCW].

The Commission has adopted a totality of circumstances approach when analyzing conduct during negotiations. *Shelton School District*, Decision 579-B (EDUC, 1984). The Commission elaborated on this approach in *City of Snohomish*, stating that the "conduct of the party being charged with a refusal to bargain must be evaluated in the totality of circumstances, and evidence of good faith bargaining will be considered along with the evidence of bad faith." *City of Snohomish*, Decision 1661-A, *citing National Labor Relations Board v. Virginia Electric & Power Co.*, 314 U.S. 469 (1941) and *Island County (Teamsters Local 411)*, Decision 857 (PECB, 1980). A party may violate its duty to bargain in good faith either by one per se violation, such as refusal to make counterproposals, or through a series of questionable acts that when examined as a whole demonstrate a lack of good faith bargaining but by themselves would not be a per se violation. *Snohomish County*, Decision 9834-B (PECB, 2008). It is important to stress, however, that the evidence must support the conclusion that the respondent's total bargaining conduct demonstrates a failure or refusal to bargain in good faith or an intention to frustrate or avoid an agreement. *Central Washington University*, Decision 10413-A (PSRA, 2011), *citing City of Clarkston (International Association of Fire Fighters, Local 2299)*, Decision 3246 (PECB, 1989).

Regressive Bargaining

Regressive bargaining occurs when a party attempts to make an existing proposal less attractive or escalates its demands at a late stage of bargaining. *City of Wenatchee*, Decision 8898-A (PECB, 2006). In determining whether or not a regressive offer amounts to an unfair labor practice, the totality of the circumstances are considered. *Spokane County*, Decision 12028 (PECB, 2014).

What-if Offers

Parties are encouraged to engage in free and open exchanges of ideas as part of the collective bargaining process. *City of Redmond*, Decision 8879-A (PECB, 2006); *see also* WAC 391-45-550. What-if offers are a lawful and valuable tool for exploring alternative proposals during collective bargaining negotiations. *Whatcom County*, Decision 7244-B (PECB, 2004). When making what-if offers, the intent of the offer must be clearly expressed and must not be ambiguous. *Snohomish County Fire District 1 (International Association of Fire Fighters, Local 1828)*, Decision 12669 (PECB, 2017).

Ground Rules

The Commission does not have jurisdiction over allegations concerning violations of ground rules. *Everett Housing Authority*, Decision 12506 (PECB, 2015). The Commission has long held that agreements made by parties on ground rules to guide their negotiations become contracts, like any other agreement they reach in collective bargaining. Thus, any remedy for alleged violations of agreed-upon ground rules must be sought through any applicable contractual procedures (e.g., grievance arbitration) or through the courts. The Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of the statutes it administers. *City of Walla Walla*, Decision 104 (PECB, 1976); *City of Sumner*, Decision 6210 (PECB, 1998).

Mutual Mistake

Courts will grant relief to a party claiming that a contract does not state the real agreement, where the mistake is mutual. *Olympic Memorial Hospital*, Decision 1587 (PECB, 1983), *citing West Coast Telephone v. Local Union No. 77, International Brotherhood of Electrical Workers*,

431 F.2d 1219 (9th Cir. 1970); FRANK ELKOURI & EDNA ASPER ELKOURI, HOW ARBITRATION WORKS 346 (3rd ed. 1973).

Mutual mistake is described as follows in 66 Am. Jur. 2d Reformation of Instruments §22:

> A mutual mistake required for reformation of an instrument is a mistake shared by both parties to the instrument at the time of reducing their agreement to writing, and the mistake is mutual if the contract has been written in terms that violate the understanding of both parties, that is, if it appears that both have done what neither intended.

To find mutual mistake, the complainant has the burden to prove that the signed agreement does not reflect what the parties intended the agreement to reflect. *Clallam County*, Decision 11829 (PECB, 2013).

Burden of Proof

Where an unfair labor practice is alleged, the complainant bears the burden of proof and must prove by a preponderance of the evidence that the complained-of allegation occurred. WAC 391-45-270(1)(a); *Cowlitz County*, Decision 7007-A (PECB, 2000). The respondent is responsible for the presentation of its defense and bears the burden of proof as to affirmative defenses. WAC 391-45-270(1)(b); *Whatcom County*, Decision 8512-A (PECB, 2005).

Application of Standards

Regressive Bargaining

The employer has alleged that the union breached its good faith bargaining obligation by submitting a regressive economic bargaining proposal. The proposal at issue was made on August 8, 2018, when the union made a package proposal that was more expensive than its previous economic package. However, in determining whether or not this proposal amounts to an unfair labor practice, that package must be examined in the context of the full bargain, including the package proposal that the union made on August 20.

House testified that the August 8 package proposal was like a what-if offer. His explanation was that all of the package proposals that the union made after its initial offer should have been

interpreted as what-if offers. When making what-if offers, the intent of the offer must be clearly expressed and must not be ambiguous. *Snohomish County Fire District 1 (International Association of Fire Fighters, Local 1828)*, Decision 12669. The evidence does not support a finding that House clearly communicated that the August 8 package was a what-if offer and so it will be analyzed as an actual proposal but also within the context of events that occurred on August 20.

In anticipation of the August 20 bargaining session, the union prepared a new package proposal that made very significant economic movement in the employer's direction, intending to give it to the employer without waiting for a counter offer. Prior to the bargaining session, House alerted Aravena to the union's intention to make a new offer at the start of the meeting. According to House, the intent of the August 8 package had been to give the employer a package that was different but not more expensive than its protected position. The question of whether House's understanding of what-if proposals and protected positions is correct is not relevant to this decision because, as stated above, the evidence does not support a finding that the union had communicated to the employer that it had made what-if offers. The fact that the union quickly backed away from its August 8 package and substituted it with the August 20 package (which moved significantly closer to the employer's proposal) is critical in determining that the union did not breach its good faith bargaining obligation.

The union's August 8 package proposal was approximately $75,000 more expensive than its prior package, but its August 20 package proposal was about $400,000–$500,000 less expensive. Regressive bargaining occurs when a party attempts to make an existing proposal less attractive or escalates its demands at a late stage of bargaining. *City of Wenatchee*, Decision 8898-A (PECB, 2006); *City of Clarkston (International Association of Fire Fighters, Local 2299)*, Decision 3246. This test is based on the subjective intent of the parties. I find House's testimony credible that the union attempted to present a package that was not regressive. More importantly, I find the fact that the August 8 package was followed by a major economic move from the union on August 20 indicates that the totality of the circumstances does not support a finding that the union's August 8 proposal was an unfair labor practice. The fact that they union had backed off its August 8

proposal so quickly and made an offer to get the bargaining significantly back on track is the critical factor in my determination.

Ground Rules

The union's August 8 offer included the economic provision of having the employer pay the entire paid family medical leave premium. The employer has argued that this was in violation of the parties' ground rules, which included a June 19 deadline for new issues. PERC does not have jurisdiction over allegations concerning violations of ground rules. *Everett Housing Authority*, Decision 12506.[2] However, the facts show that on August 8 the parties had identified paid family medical leave as an issue in this negotiation prior to June 19. So introducing a package that includes having the employer pay the full premium is not evidence that the union was attempting to frustrate the bargaining by introducing a new issue.

The Article 12 Mistake

Both parties have alleged that the other party has committed an unfair labor practice regarding the Article 12 tentative agreement document. The union has argued that the employer refused to bargain by failing to honor the collective bargaining agreement as written, which includes having the employer pay the full paid family medical leave premium. The employer has argued that the parties had a mutual mistake regarding Article 12, and the union committed an unfair labor practice by concealing the employer's mistake and failing to reform the contract.

The evidence in this case demonstrates a series of mistakes, some mutual and others unilateral. Ultimately, the employer finalized the collective bargaining agreement knowing that a provision was drafted differently than intended. The employer also was aware that the bargaining unit members had voted on the agreement knowing that the terms had the employer paying the full paid family medical leave premium. After failed attempts to resolve the disagreement about Article 12, the parties proceeded to the statutory deadline as if they had a full agreement. And so as the parties finalized their contract, they disagreed about Article 12. This does not indicate a mutual mistake

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[2] The preliminary ruling in this proceeding did not include a violation of the ground rules as a possible unfair labor practice, only regressive bargaining.

where both parties believe they are agreeing to something different than what is written into the contract.

The employer argued that the union's bargaining team knew or should have known that the Article 12 tentative agreement was drafted with a mistake and that the union concealed this mistake. The employer also argued that the conception that the employer intended to pay the full premium was unbelievable, and that the employer's behavior at the table demonstrated that the parties understood that the employer would not be paying the full premium. The employer additionally argued that the union must have known of the Article 12 mistake because (1) the employer had objected to the union's August 8 proposal when the union proposed that the employer pay the full premium; (2) the union's August 20 package proposal did not have the employer paying the full premium, and the employer's preparation of a tentative agreement document on Article 12 for the union to sign was made in response to the union's August 20 proposal; and (3) after the tentative agreement was signed, the parties did not discuss language about the employer paying the full premium until September 26, when the employer notified the union that it detected the error.

The employer made prior objections to paying for the full premium, but the union saw this provision as a relatively small economic concession and so the union could have reasonably believed that the employer changed its stance on this item. The employer had expressed wanting uniformity with other bargaining units' agreement on the paid family medical leave as well as its concerns about whether the payroll system could handle the full premium being paid by the union. The bargaining unit already had some payroll differences with other bargaining units, so these prior objections did not clearly put the union on notice that the employer would not ever agree to pay the full premium.

The Article 12 language tentative agreement was reached after the union gave the employer a package proposal that did not have the employer paying the full premium. The employer's bargaining notes demonstrate, however, that the union voiced a concern about agreeing to stand-alone tentative agreements on single articles when the union's movement was conditional on the acceptance of a package. The parties were building a full agreement by making tentative

agreements to individual articles. In order to make progress to a full agreement, it is possible that one party would tentatively agree to an article without an equal exchange of value from the other side, or agree to a provision after initially voicing a concern. In the case of Article 12, the tentative agreement did not just include the paid family medical leave premium, it also included the union dropping its proposal to increase the number of bereavement days. While this exchange is not objectively balanced, it is possible that a party would agree to an unbalanced exchange to make progress. The employer argued that the union should not have considered this proposal possible because the employer had not costed the expense of paying the full paid family medical leave premium. It is not unreasonable or impossible for a party to reach an agreement when every element is not costed out, especially if the cost is relatively low. I do not find that the employer's decision not to cost out this item would have put the union on notice that the employer would never alter its stance regarding paying the full premium.

In retrospect, the union's failure to question the Article 12 tentative agreement was a mistake, as was the parties' mutual decision not to agree on a redlined version of the entire agreement, as was the employer's decision not to review the tentative agreements prior to the beginning of the union's ratification vote. These series of mistakes make this situation different from the fact pattern in *Olympic Memorial Hospital*, Decision 1587, where the mistake was mutual and both parties ratified the agreement thinking they had reached an agreement that was different than what was actually written into the contract. Here, the parties knew they had a difference in their understanding of the agreement as the union was completing its ratification vote, and as the parties were converting their tentative agreement document into a finalized contract.

After the union's vote, Aravena and House attempted to continue to negotiate; however, no agreement was reached on how to address the mistake. The employer offered the bargaining unit $100 signing bonuses and free bus passes, both economic provisions it had agreed to with other bargaining units. The union viewed bus passes to have little value because of their work schedules as police officers. The parties were up against a statutory deadline of October 1 to complete bargaining, and they proceeded as if they had reached a full tentative agreement. This deadline was particularly significant for this negotiation, as the parties missed the statutory deadline in their

previous collective bargaining cycle, and the employer strongly stated on August 20 that it would be unwilling to reach an agreement after the deadline.

Overall, the employer brought limited parameters to the bargaining table and signaled a strong unwillingness to bargain beyond the October 1 deadline. On September 26, the employer was aware of its drafting mistake and also that the union was willing to renegotiate Article 12 if a suitable economic item of value to replace the payment of the full paid family medical leave premium was offered. The employer's proposed solution was the $100 signing bonus and a bus pass that had little value to this bargaining unit. Overall, the employer's mistakes, coupled the union's willingness to continue to negotiate after its ratification vote and the pressure of the October 1 deadline, do not justify the employer' decision to not follow the language embodied in the collective bargaining agreement, and so amount to an unfair labor practice. It is not an unfair labor practice for the union to refuse to correct the employer's unilateral mistake in the Article 12 tentative agreement document.

FINDINGS OF FACT

1. University of Washington (employer) is an institution of higher education within the meaning of RCW 41.80.005(10).

2. Teamsters Local 117 is an employee organization within the meaning of RCW 41.80.005(7).

3. The employer and union bargained their 2019–20 collective bargaining agreement in the late spring and summer of 2018. The employer's chief negotiator was Kristi Aravena, and the union's chief negotiator was Matt House.

4. On May 31, the parties agreed on ground rules including, "New items can only be added after June 19, 2018 by mutual agreement." As the parties reached the June 19 deadline, they had some articles marked as open, meaning that more negotiation was desired to reach an agreement. Open items included wages and how to handle the new paid family medical leave law.

5. The new state paid family medical leave law funding mechanism is similar to an insurance premium. The law anticipated dividing premium payments between employers and employees with a default percentage split, but the law permits unions and employers to make agreements that differ from the default premium split.

6. The 2018 negotiation was the first opportunity for the employer and the union to bargain the new law's premium. Adopting an approach consistent with how the state was bargaining with unions statewide, the employer desired a contract that split premiums in a way that matched the statute or allowed the statute to govern (by remaining silent on the subject of the split).

7. The bargaining unit already had some payroll differences with other bargaining units.

8. While the union had previously made package proposals that agreed with the mandatory split, its proposal on August 8 included the employer paying the entire premium.

9. The employer considered the union's August 8 proposal to be regressive as it calculated the proposal to be more expensive than the union's previous economic packages. The employer also considered the provision that the employer pay the full paid family medical leave premium a violation of the parties' ground rules, as it was first proposed after the June 19 deadline for new issues. The union considered any proposal after its initial June 14 proposal to be a what-if offer and its initial offer to be its "protected position." As the union's August 8 proposal was below what it considered to be its "protected position," it disagreed with the employer's assessment of the August 8 proposal being a regressive proposal.

10. Prior to the parties' next bargaining session on August 20, Aravena and House had a conversation. Aravena objected to the union's paid family medical leave premium proposal as regressive and not something that the payroll system would accommodate and contended that the employer was not going to do something for this unit that it was not doing for other employees. They also discussed the wage portions of the package proposal. House responded that he had a proposal prepared to present at bargaining that he thought

would please the employer. This new proposal was to be given to the employer without waiting for a counter offer on the prior proposal.

11. At the August 20 bargaining session, the employer told the union that the proposal was a $75,000 increase over the union's previous proposal, and the employer considered this increased proposal to be a clear unfair labor practice. The employer said the union had a "lackadaisical" attitude toward the statutory October 1 deadline that the parties faced to reach an agreement. According to the employer's bargaining notes, Aravena stated, "I want to be clear that if we don't have a contract to approve, officers get no increases. Perhaps there was a special situation in the past, but now we won't jump through hoops, but I want to be transparent that . . . we won't do that again."

12. As planned, the union presented its new package proposal without waiting for a counter offer from the employer. The union estimated that this new package moved closer to the employer by $400,000–$500,000 and included the default statutory split for the paid family medical leave premium, as well as other changes. This paid family medical leave language would be part of Article 12, which also contained bereavement leave. The parties' existing contract allowed for three days of bereavement leave, and until August 20 the union had been proposing increasing bereavement leave to five days. As part of the August 20 package, the union was willing to remain at three days and remove its proposed language that would have the employer pay the entire paid family medical leave premium.

13. In reaction to this package, the employer said that it was about ready to tentatively agree to a few items and that its main issue had been addressed. The union responded that it was not necessarily interested in tentatively agreeing to some of the items, without an agreement on the package as a whole. According to the employer's bargaining notes, Aravena said that she would print out the tentative agreements, and it would be up to the union whether or not it wanted to sign them right away or later with a package.

14. Tentative agreement documents for Articles 9, 10, and 12 were created by the administrative assistant who was the employer's bargaining team note taker. In drafting the Article 12 document, the assistant started with an electronic copy of the union's

August 8 proposal, not the employer's most recent proposal, which would have been her regular method of drafting tentative agreements. She changed bereavement leave from five days to three days but forgot to delete the language about the employer paying the full paid family medical leave premium. Aravena assumed that the Article 12 tentative agreement document would be identical to the employer's last proposal and signed it without reviewing it. These documents were then signed by the union. The bargaining continued without further discussion about the paid family medical leave premium.

15. On September 24, the parties completed their negotiations. The union's vote was scheduled for September 26. On September 25, House sent Aravena a redlined version of the entire contract. Aravena found multiple errors but not the employer's paid family medical leave premium error. She told House that she did not want to be responsible for the redlined version because she did not have time to review the document. The union proceeded with its vote, based on the tentative agreement documents.

16. Because the bargaining unit employees worked in shifts, House conducted the election on September 26 in two stages. Some bargaining unit members voted in the morning and others in the afternoon. The union's internal deliberation included disappointment that the agreement only had a two percent wage increase in both years of the contract. Although the paid family medical leave provision was a relatively small economic item, the bargaining unit viewed having this new economic benefit as a positive reason to vote for the contract, especially as the union members were concerned with the cost of the premium going up in the future.

17. On September 26, after some members had already voted in the morning but before others were to vote in the afternoon, Aravena noticed the Article 12 tentative agreement mistake. She had been preparing for an internal meeting on implementation of the paid family medical leave provision. Seeing the error, she e-mailed House stating that she assumed he had not noticed the error and asked him to sign a new Article 12 that did not have the employer paying the entire premium. House responded that the union was aware of the

Article 12 language and that the union had believed it was movement by the employer to work toward a deal and thus had not considered the language to be an error.

18. After the vote, the parties continued to negotiate by telephone and e-mail. The employer offered a $100 signing bonus and a free Upass (bus pass) in exchange for the removing the language that had the employer paying the full premium. The union declined this trade as the bus pass was of little value to bargaining unit members because of their schedules. The union said that if the payroll system made implementation of the agreement not possible, it would agree to a benefit of equal value to the portion of the premium. The parties failed to reach an agreement on Article 12, finalized their contract, and filed unfair labor practice complaints alleging that that the other party was failing to bargain in good faith.

19. The parties were up against a statutory deadline of October 1 to complete bargaining, and they proceeded as if they had reached a full tentative agreement. This deadline was particularly significant for this negotiation, as the parties missed the statutory deadline in their previous collective bargaining cycle, and the employer strongly stated on August 20 that it would be unwilling to reach an agreement after the deadline. Overall, the employer brought limited parameters to the bargaining table and signaled a strong unwillingness to bargain beyond the October 1 deadline.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to chapter 41.80 RCW and chapter 391-45 WAC.

2. Based on findings of fact 3 through 19, the employer violated of RCW 41.80.110(1)(e) [and if so, derivative interference in violation of RCW 41.80.110(1)(a)] by refusing to bargain by breaching its good faith bargaining obligations and refusing to honor agreements reached in bargaining.

3. Based on findings of fact 3 through 19, the employer failed to sustain the burden of proof to establish that the union violated RCW 41.80.110(2)(d) [and if so, derivative interference

in violation of RCW 41.80.110(2)(a)] for refusing to bargain by breaching its good faith bargaining obligations by refusing to reduce the parties' actual agreement to writing and by submitting regressive economic proposals.

ORDER

The University of Washington, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Breaching its good faith bargaining obligations by refusing to honor agreements reached in bargaining.

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

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of chapter 41.80 RCW:

   a. Abide by the language in Article 12 of the parties' collective bargaining agreement regarding the paid family medical leave premium, or make an equivalent payment to bargaining unit employees.

   b. Make employees whole for premium contributions deducted from their pay that contradict Article 12 of the parties' collective bargaining agreement.

   c. Contact a 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 Board of Regents of the University of Washington, 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 15th day of October, 2019.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

EMILY H. MARTIN, 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.

RECORD OF SERVICE

ISSUED ON 10/15/2019

DECISION 13083 - PSRA 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 131056-U-18

EMPLOYER: UNIVERSITY OF WASHINGTON

REP BY:
BANKS EVANS III
UNIVERSITY OF WASHINGTON
4300 ROOSEVELT WAY NE
PO BOX 354960
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bankse@uw.edu

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PARTY 2: TEAMSTERS LOCAL 117

REP BY:
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PUBLIC EMPLOYMENT RELATIONS COMMISSION

RECORD OF SERVICE

ISSUED ON 10/15/2019

DECISION 13084 - PSRA 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 131168-U-18

EMPLOYER: UNIVERSITY OF WASHINGTON

REP BY:
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