

## STATEMENT OF FACTS

Upon information and belief, the Union submits the following statement of facts:

### Background Facts

1. The State of Washington (the “State”) is, and at all relevant times was, a “public employer” within the meaning of RCW 41.80.005(8). The Washington State Department of Corrections (the “DOC”) is a subdivision of the State as defined by RCW 41.80.005(1).

2. Teamsters Local Union No. 117 (the “Union”) is, and at all relevant times was, an employee organization within the meaning of RCW 41.80.005(7).

3. The Union is, and at all relevant times was, the certified collective bargaining representative of multiple bargaining units of employees that work at the DOC’s various institutions.

4. A separate bargaining unit at the Department of Corrections consisting of Community Corrections Officers and Community Corrections support personnel is represented by the Washington Federation of State Employees (WFSE).

5. DOC and the Union are parties to a collective bargaining agreement (CBA) with effective dates from July 1, 2019 to June 30, 2021.

6. Other Unions’ CBAs that cover State government employees, including the CBA that covers WFSE-represented DOC employees, contain specific provisions that allow the State to unilaterally reduce the work hours of those represented employees. In the WFSE CBA that provision is numbered 34.6(A).

7. The Teamsters 117 agreement, however, does not contain a provision that allows the State to unilaterally reduce employee work hours through furloughs.

8. Over the years, the Teamsters 117 bargaining teams consciously decided to bargain a contract that would protect its members from having their wages reduced in the middle of economic downturns.

9. Many years ago, when the State proposed adding a provision to the contract to allow the State to unilaterally cut employee hours, Teamsters 117 rejected that proposal.

10. The Teamsters 117 contract does contain a provision, which is Article 35.4, that allows temporary layoffs. The Union has long taken the position, however, that the purpose of that article is to allow the State to impose targeted temporary layoffs. For example, if there is a temporary lack of work at a facility, for example, the State could use Article 35.4 to layoff impacted workers until the need for work returns.

11. Further, Article 35.4 in the Teamsters 117 CBA requires that temporary layoffs be conducted in accordance with the seniority protections in the contract.

12. The State is aware of the Union's position regarding furloughs and knows that Teamsters 117 will vigorously enforce its contract. In 2011, during the last economic recession and budget shortfall, the Union won a grievance arbitration about whether the State could unilaterally impose mandatory single-day furloughs.

#### Facts Constituting an Unfair Labor Practice

13. On June 17, 2020, the Governor sent out a news release outlining the State's initial response to the revenue shortfall caused by the COVID-19 pandemic. Among other things, the Governor's new release announced that many state employees would be

required to take furloughs. The directive was that furlough-eligible employees would be required to take one furlough day per week from June 28 to July 25 and one furlough day per month through the fall.

14. The Union interprets the Governor's order to require State agencies, such as the Department of Corrections, to impose those furloughs consistently with their existing collective bargaining agreements and obligations to bargain with labor organizations such as Teamsters 117. The order does not require agencies to breach their labor agreements or violate state collective bargaining law.

15. On June 18, 2020, during one of the parties' pre-scheduled contract negotiation meetings, DOC proposed that Teamsters 117 bargaining unit members agree to be subject to mandatory furloughs as directed by the Governor.

16. Union negotiators responded that Teamsters 117 CBA does not allow DOC to unilaterally impose furloughs. Teamsters 117 explained that it had intentionally bargained a contract that did not include a mandatory furlough provision. The Union also explained that, even if the Union's bargaining team were hypothetically inclined to agree to DOC's proposal, because the DOC's proposal would alter the parties' existing contract, the Union's bylaws would require a vote of the membership. Logistically, explained the Union, there would be no way to put the matter to a vote of the membership before June 28, which is the date the furloughs were proposed to begin.

17. Recognizing that DOC did indeed need to respond to the economic downturn by reducing costs, the Union proposed that the parties agree to a memorandum of understanding (MOU) to allow Teamsters 117 bargaining unit members to volunteer to take furloughs.

18. The Union's negotiators perceived that the DOC team was reluctant to agree to a voluntary furlough MOU. The Union urged DOC to give voluntary furloughs a chance insisting that, if DOC properly administered the voluntary furlough program and adequately explained the State's financial situation to the Union's membership, Teamsters 117 members would step up and help the department get through the economic down-turn.

19. Ultimately, the parties were able to agree to a voluntary furlough MOU on June 24, 2020. The MOU committed DOC to work with the Employment Security Department (ESD) to allow volunteering employees to participate in ESD's SharedWork program, which would allow those volunteers to receive partial unemployment insurance while on furloughs.

20. The department, however, never gave the voluntary furlough program a chance to succeed.

21. Even though the Union told DOC that it would be important to communicate with members to encourage them to volunteer to furlough, the department made essentially no effort to encourage volunteers. Assistant Secretary Rob Herzog sent a lackluster email to staff that simply stated that some staff would have the option of voluntarily furloughing and to talk to their supervisors if interested. The email did not attempt to explain the State's revenue shortfall or stress the importance of volunteering to take furloughs.

22. Further, rather than administer the voluntary furlough MOU on a state-wide level from DOC headquarters, DOC left the decisions about whether to allow voluntary furloughs to the superintendents of individual DOC facilities.

23. Because the decision about whether to allow employees to take furloughs was left to the local managers, many supervisors denied bargaining unit member requests to furlough.

24. Predictably, in many cases, the supervisors were less concerned about the state-wide revenue shortfall and more concerned with the operational inconvenience of allowing their staff to take voluntary furlough days.

25. By information and belief, the Union asserts that headquarters did nothing to encourage facility superintendents to approve those reasonable requests to voluntary furlough.

26. As contract negotiations dragged on, the parties continued to discuss furloughs. DOC repeatedly informed the Union that it felt that the voluntary furloughs were not going to achieve the savings that DOC wanted to achieve.

27. When the Union asked DOC how much savings had been achieved through the voluntary furloughs, however, the Union learned that DOC was not actively tracking the furloughs or the savings that they were creating.

28. On September 3, 2020, DOC sent the Union a proposal that it termed a “conversation starter.” The proposal was to layoff 20% of Teamsters 117 employees in positions that do not require relief for up to 60 days by November 30, 2020. DOC made it clear that those temporary layoffs were in lieu of the furloughs being required of other bargaining units.

29. The Union believed that there was no way that DOC could operationally layoff that many employees for that long. The Union concluded that the “conversation starter” proposal was a bluff and an intimidation tactic. The Union rejected the proposal.

30. On September 14, the parties met again to discuss temporary layoffs. DOC presented a different proposal that would require bargaining unit members in certain classifications to take seven (7) temporary layoff days consisting of a block of four (4) days and another block of three (3) days.

31. DOC indicated that it would be implementing the temporary layoffs using the CBA's temporary layoff article, Article 35.4, even if the Union would not agree to the layoffs.

32. The Union expressed that DOC's plan for the layoffs was not consistent with the original intent of Article 35.4 and that there was no precedent for furloughing an entire classification for four days. The Union stressed that laying off so many employees from a single classification at one time raised serious operational and safety issues.

33. DOC responded that it would address those operational and safety issues as they arose.

34. The Union did not agree to DOC's "proposal" for temporary layoffs and DOC implemented its plan without the Union's agreement.

35. On September 25, 2020, Secretary Steve Sinclair wrote a letter to all DOC staff informing them that it would be implementing the temporary layoffs.

36. Sinclair's letter to staff inaccurately suggests that it was required to implement "furloughs" because of the Governor's directive. The letter does not explain that, unlike the contract between DOC and WFSE, the Teamsters 117 contract does not allow the State to unilaterally impose furloughs on its members.

37. Sinclair's letter also inaccurately blames its decision to implement furloughs on the "unsuccessful negotiation[s]" with Teamsters 117.

38. By information and belief, the Union asserts that DOC always intended to implement a plan for seven (7) temporary layoff days consisting of a block of four (4) days and another block of three (3) days. Its engaged in months of surface bargaining with the Union where it presented proposals—such as its “conversation starter” proposal—that it knew would be unacceptable to the Union. While DOC did formally accept the Union’s proposal for voluntary furloughs, it begrudgingly implemented those voluntary furloughs in a manner that appears calculated to ensure that they would fail to achieve the necessary savings. Further, when it did implement mandatory layoffs, DOC sent a communication to the Union’s membership that blamed the Union for management’s decision.

39. The State’s tactics, as described above, which were designed to shift the blame for implementing the furloughs from the Employer to the Union, were calculated to, and in fact did, erode the Union’s support amongst the members of the bargaining unit.

### **VIOLATIONS ASSERTED**

1. The Union alleges that, as described more fully above, the State violated and continues to violate RCW 41.80.110(1)(a) by engaging a series of bargaining tactics designed to frustrate the Union’s attempts to reach an agreement, including surface level bargaining and refusing to make any substantive changes to its furlough proposal after the Union indicated that such a proposal was inconsistent with the existing contract.

2. The Union alleges that, as described more fully above, the State violated and continues to violate RCW 41.80.110(1)(e) by engaging in bargaining tactics and sending communications to the Union’ designed to disrupt the morale of the bargaining

unit employees who comprised the Union's bargaining team and to eroded the Union's support amongst the members of the bargaining unit in general.

### **REMEDY REQUESTED**

The Union requests the following remedies for the aforementioned violations:

1. Findings of fact and conclusions of law consistent with the foregoing;
2. An order holding that the DOC has violated RCW 41.80.110(1)(a) and (e) as alleged above;
3. An order precluding the DOC from continuing to engage in any of the unlawful behavior alleged herein;
4. Make-whole monetary relief for all employees who were subject to furloughs including statutory interest;
5. An order requiring the DOC to comply with the appropriate notice, posting, publication, and reading of the findings;
6. An order to award the Union reimbursement of attorneys' fees and costs associated with bringing this action and any additional proceedings from this case; and
7. Such other relief that PERC deems just and equitable;

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of November, 2020.

TEAMSTERS LOCAL UNION NO. 117

*/s/ Eamon McCleery*

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*Attorney for Complainant*

**CERTIFICATE OF SERVICE**

I certify that on this 3<sup>rd</sup> day of November, 2020, I caused the original of Teamsters Local Union No. 117's Complaint Charging Unfair Labor Practices (with attachments) to be sent via email to:

Public Employment Relations Commission  
P.O. Box 40919  
Olympia, WA 98504-0919  
[filing@perc.wa.gov](mailto:filing@perc.wa.gov)

and copies were sent via email to:

Tanya Aho  
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