NO 93033-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

73637-0-I

KITSAP COUNTY CORRECTIONAL OFFICERS' GUILD

Respondents,

vs.

KITSAP COUNTY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONERS

Kitsap County and the Kitsap County Sheriff request review of the Court of Appeals decisions designated in Part II of this petition.

II. COURT OF APPEALS DECISION

Petitioners seek review of the Court of Appeals decision terminating review, *Kitsap County v. Kitsap County Correctional Officers' Guild,* No. 73637-0-I, published at 2016 WL 1090154, and Part II of the earlier decision in this matter, *Kitsap County v. Kitsap County Correctional Officers' Guild,* No. 44183-7-II, published at 149 Wn.App. 987 (2014), concerning waiver.[1] Copies of both decisions are in the Appendix.

III. ISSUES PRESENTED FOR REVIEW

A. Does the Division I opinion, that a decision to balance the budget by laying off employees must be bargained with the union, conflict with U.S. Supreme Court precedent that an employer is not required to collectively bargain an economically motivated decision to reduce operations and staff, where the County, in the performance of its legislative authority and statutory duties, reduced the budget and staffing levels because of declining revenues and increased costs?

B. Does the Division I opinion conflict with this Court's precedent that a union has no right to demand that a public agency's budget decisions be

[1] The 2016 Court of Appeals Division I opinion is in Appendix A, and the 2014 Court of Appeals Division II opinion is in Appendix B.

collectively bargained?

C. Does the Division I opinion interfere with the County's nondelegable legislative budget authority, and create an irreconcilable conflict between the County's statutory budget and statutory collective bargaining duties?

D. Are the Division I and II opinions in direct conflict where Division II held that layoff provisions in the parties' collective bargaining agreement (CBA) and civil service rules constitute a waiver and a permissive subject of bargaining that expires with the CBA, but Division I held that the layoff provisions are a mandatory subject of bargaining?

IV. STATEMENT OF CASE

A. Procedural History

On December 21, 2011, Kitsap County filed a Complaint for Declaratory Judgment in Mason County Superior Court seeking a declaratory ruling whether the County's decision to reduce the jail budget, operations, and staffing levels is a mandatory subject of bargaining.[2] If the budget decision was not a mandatory subject of bargaining, the County was required to bargain only the impacts of the decision. If the budget decision was a mandatory subject of bargaining, then the County could not reduce the jail budget unless the Guild agreed, either directly or through an agreement imposed by an interest arbitrator.[3]

[2] CP 767-773.
[3] CP 1340.

The Correctional Officers Guild (Guild) answered and filed a counterclaim requesting declaratory relief.[4] On October 11, 2012, the superior court granted the County's Motion for Declaratory Judgment, ruling the layoffs resulted from a reduction in budget and operations and were not mandatory subjects of bargaining.[5, 6]

The Guild appealed the superior court's ruling to the Court of Appeals.[7] Division II remanded the case back to the superior court to conduct a balancing test on the record.[8] Division II also held that terms in the parties' CBA to utilize civil service rules in layoffs was a waiver which expired with the CBA.[9]

On remand, the Public Employment Relations Commission (PERC) intervened as a party.[10] The superior court again reviewed the entire record, conducted a detailed balancing test, and again determined that the County did not have a mandatory duty to bargain the decision to reduce the budget, reduce staffing levels, or the resulting layoffs of employees.[11]

PERC and the Guild appealed the superior court's decision.[12] The second appeal was transferred to Division I, which reversed the superior

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[4] CP 753-766.
[5] October 11, 2012 Transcript of Proceedings, p. 7 (CP 263-264).
[6] CP 1010-1012.
[7] CP 269.
[8] Appendix B, p.10
[9] Id. at 7.
[10] CP 162-163.
[11] CP 27-33.
[12] CP 5-7, 15-17.

court holding that balancing the budget by laying off employees is a mandatory subject of bargaining.[13]

B. Factual History

While the superior court's findings of fact are not disputed, the balancing test used by the courts to determine whether layoffs are a mandatory subject of bargaining is a fact specific analysis. Thus, consideration of the facts resulting in the layoffs at issue here is necessary.

1. County Legislative Authority and Statutory Budget Obligations.

Chapter 36.40 RCW prescribes the process for establishing annual County budgets. Each July, the County's chief financial officer issues notice to each County officer to submit estimates of revenues and expenditures for preparation of a preliminary budget.[14] Public meetings on the preliminary budget are held each fall, and at a hearing on the first Monday each December the Board adopts a budget fixing each item in detail.[15] The adopted budget constitutes the appropriations for the ensuing year, and County officials are limited to the expenditures and liabilities as fixed by the Board.[16]

2. The Recession.

In 2008, the midst of the recession, revenues were less than budgeted

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[13] Appendix A, p. 21.
[14] CP 1278-1279; see also 1130-1135; and see RCW 36.40.010.
[15] CP 1280-1283. See also RCW 36.40.040-.080.
[16] See also RCW 36.40.100.

by more than $2 million, requiring the Board to make mid-year cuts to meet anticipated deficits. Then, just four months after it went into effect, the Board had to amend its 2009 budget, reducing expenditures by more than $4.2 million. In 2010, the Board reduced the budget by another $5.7 million. Between 2008 and 2011, 68 employees were laid off.[17]

On February 22, 2011, in a memorandum to all employees, the Board reported on the sad state of the County's finances:

> . . . As we enter 2011, we are without enough resources to maintain the status quo and we cannot afford the service levels our citizens have come to expect. Since 2008, we have unfunded and eliminated approximately 150 positions, and reduced the hours for an additional 183. . . This means that every budget cycle from now on will require cuts because our on-going revenue growth can never keep up with our growth for on-going expenses. . .[18]

The Board's budgetary decisions were focused on the economic viability of the County.[19] While the elimination of positions and resulting layoffs had a direct impact on employment, no evidence was presented that the Board's decisions concerned exclusively an aspect of the employment relationship or were motivated by anti-union animus.

3. Budget Appropriations for the Kitsap County Jail.

By law, the County's annual budget must include appropriations for a jail for confining prisoners.[20] Kitsap County's jail is operated and

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[17] CP 1182, 1214, 1223, 1239.
[18] CP 1151-1154
[19] CP 1180-1182.
[20] RCW 2.28.139 (county "shall furnish a jail or suitable place for confining prisoners").

supervised by the Sheriff. About 37 percent of the County's general fund funds the Sheriff's operating costs, 15 percent of which funds the jail.[21] As a consequence of declining revenues, in 2010 four correctional officer positions were eliminated and the officers laid off. The *impacts* of these layoffs were negotiated with the Guild,[22] consistent with the longstanding civil service rules.[23]

In 2011 the County's overall budget was cut another $2 million, but the jail was able to offset some of the cuts it would have faced due to a $1 million revenue contract with South Correctional Entity (SCORE).[24] During collective bargaining, the Guild and the County had numerous discussions about the likelihood of staff reductions when the SCORE contract terminated in the fall of 2011. In fact, officers were encouraged to apply to SCORE. One officer who would have been laid off was hired.[25]

For budget year 2012, the jail projected a reduction of more than $935,000 in revenue. Loss of revenue from the SCORE contract, declining revenue for housing inmates from the Washington Department of Corrections, continuing increases in inmate food services and health care costs, and the costs associated with unfunded mandates for DUI and

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[21] CP 1330.
[22] Id.
[23] CP 1164.
[24] CP 1330.
[25] CP 1330-1331.

DWLS enhanced sentences, sex offender registration, and DNA sample collections. Consequently, in late October 2011, the County's correctional officers were notified that the 2012 budget would result in the reduction of jail operations and positions.[26]

4. Notice of Decisions to Reduce the Jail's Budget and the Guild's Demand to Bargain.

Throughout 2011, the Guild and jail employees were well aware of the state of the County's overall budget, the pending loss of the SCORE contract, and anticipated reductions in the jail's budget. Public hearings on the 2012 budget were advertised, the budget was debated in public meetings, and the Guild and County discussed the County's and jail's finances during collective bargaining.[27]

In addition to the notice sent by the Board to all employees in February 2011, notice about reductions in the jail's budget was delivered to each employee on October 24, 2011, when Chief Newlin sent an email describing the basis for the Board's reduction of the Sheriff's budget:

> We defunded four (4) open deputy positions, cut approximately $400,000 in fleet expenses, along with approximately another $100,000 for line items, defunded two (2) open corrections officer positions, .75 FTE of jail maintenance staff, and eliminated the Community Service Work Contract (alternative) with Kitsap Community Resources, which saved an additional $70,000. We made these cuts understanding the bleak budget picture for the county general fund.

[26] CP 1331.
[27] Id.

> Even with these significant cuts, the bottom line is that the Sheriff's Office (including the jail) is now directed to take an additional $513,000 cut from our budget requests for 2012. This is a significant reduction and one with significant impacts. In putting together a package of reductions for the Sheriff's Office these past few days, the Executive Staff was able to come up with enough savings to substantially reduce the number of additional staff positions lost in 2012. We were able to do this by further cuts to supplies and services through the Sheriff's Office (including the jail). Even with these additional cuts, the unfortunate reality is that this magnitude of cut will require the loss of three (3) additional positions in the jail.
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> This is not a decision that was made lightly and it causes me great angst to do so, but there is no other reasonable alternative to us. We will attempt to mitigate the impact by offering voluntary RIF opportunities similar to what we did in late 2008. . . [28]

The day after the above letter was sent, and less than six weeks before the Board was statutorily mandated to adopt a budget,[29] the County received a demand from the Guild to "bargain the decision to conduct any layoffs plus any associated effects/impacts."[30] Responding to the demand, the County agreed to bargain the impacts of the layoffs as it had done in the past and cited to language in the CBA and civil service rules.[31] At no time during 2011 did the Guild offer economic concessions or even suggest them as a possibility. Instead the Guild argued it had the right to negotiate the Board's decision to reduce the jail's budget.[32]

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[28] CP 1335-1336.
[29] RCW 36.40.080.
[30] CP 1338.
[31] CP 1325.
[32] CP 1326-1328.

5. Collective Bargaining, Civil Service Rules, and Waiver.

The Guild and County were parties to a CBA which expired in 2009.[33] The parties engaged in negotiations for a successor contract, but were unsuccessful in reaching an agreement. Under the duty to maintain the status quo, the County looked to the expired CBA for addressing issues pertaining to layoffs, [34] which are as follows:[35]

> 1. Article I, Section I - Management Rights
> It is expressly recognized that such [management] rights, powers, authority and functions include, but are by no means whatever limited to . . . the right to establish, change, combine or eliminate jobs, positions, job classifications and descriptions . . . the number of employees.
>
> 2. Article J, Section I – Relationship to Civil Service Rules
> Except as expressly limited by its terms, nothing in this Agreement shall supersede any matter delegated to the Kitsap County Civil Service Commission by State law or by ordinance, resolution or laws of or pertaining to the County of Kitsap and such Commission shall continue to have primary authority over subjects within the scope of its jurisdiction and authority. If there then should be a conflict between any provisions of this Agreement and Civil Service, then the provisions of this Agreement shall govern.

Also relevant to issues presented here are the Kitsap County Civil Service Rules. In 1994, the Kitsap County Civil Service Commission established the following rules for layoff:[36]

> Section 10.3.01 The Appointing Authority may lay off any employee in the Classified Service whenever such action is made necessary by

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[33] CP 1156.
[34] RCW 41.56.470.
[35] CP 1158.
[36] CP 1163-1164.

> reason of a shortage of work or funds, the abolition of a position because of changes in organization or other reasons outside the employee's control which do not reflect discredit on the services of the employee; however, no regular or probationary employee shall be laid off while there are provisional employees serving in the same class of position for which the regular or probationary employee is eligible and available.
>
> Section 10.3.02 Layoff of probationary or regular employees shall be made in inverse order of seniority in the class involved. . .[37]

The County reasoned that, with the above-cited provisions in the CBA, civil service rules, and past practice, it did not have a mandatory duty to bargain the decision to layoff corrections officers.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Division I's opinion conflicts with decisions of the U.S. and Washington State Supreme Courts, interferes with the County's nondelegable legislative authority, and creates an irreconcilable conflict between the County's statutory budget and collective bargaining duties. Division I and II's opinions are in direct conflict with one another, with one holding that layoff provisions in the parties' CBA and civil service rules constitute a waiver that expires with the CBA, and thus is a permissive subject of bargaining, and the other holding that the layoff provisions are a mandatory subject of bargaining.

Division I's opinion also creates confusion for public employers by

[37] In February 2010, the Civil Service Commission amended Civil Service Rule 10.3.03 so that laid off employees would remain on the reinstatement list for two years instead of one. The language in the CBA applicable to layoffs did not change. CP 1179-1280.

deciding these important issues based on semantics instead of considering the reasons for layoffs. Division I acknowledged that if the Guild had asked to bargain "staffing levels" instead of "layoffs," the County would not have to bargain.[38]

The issues presented here are of great importance, and should not be reduced to mere semantics.[39] This Court has not addressed public agency decisions to lay off employees and the collective bargaining process since its decision in *Spokane Educ. Assoc. v. Barnes*,[40] and public employers, employees, unions, and PERC need clear guidelines concerning the duty to bargain collectively.[41]

A. Division I Opinion Conflicts with U.S. Supreme Court Precedent.

Two U.S. Supreme Court cases, *Fibreboard* and *First Nat'l,* exemplify the importance of considering the reasons for layoffs.[42] In

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[38] Appendix A, pp. 11-12. The COA decision illogically holds that a County can lay off employees as a matter of policy and/or staff reduction and not bargain, but if the County must layoff to balance the budget that must be bargained.

[39] In *First Nat'l Maintenance v. NLRB*, 452 U.S. 666, 670 (1981), employees were terminated when the employer discontinued operations, in *Spokane Educ. Assoc. v. Barnes*, 83 Wn.2d 366, 367 (1974), teachers' contracts were not renewed pursuant to a budget reduction adopted by the school district, and here, the layoffs occurred pursuant to a budget reduction adopted by the County. In all three cases, employees lost their jobs due to eliminated or reduced operations and/or staffing levels.

[40] *Spokane Educ. Assoc.*, 83 Wn.2d 366 (1974). This Court's decision in *Int'l Ass'n of Fire Fighters, Local Union 1052 v. PERC*, 113 Wn.2d 197, 205 (1989), did not directly address layoffs, but it recognized that "[t]he law is clear that general staffing levels are fundamental prerogatives of management."

[41] "[T]he delicate task of accommodating the diverse public, employer and union interests at stake in public employment relations . . ." was recognized by this Court in *Int'l Ass'n of Fire Fighters, Local Union 1052 v. PERC*, 113 Wn.2d at 203.

[42] *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 218 (1964); *First Nat'l Maintenance v. NLRB*, 452 U.S. 666 (1981).

Fibreboard, the Court held that layoffs due to contracting out work to non-union workers are a mandatory subject of bargaining. Justice Stewart cautioned, however, that "[t]he Court most assuredly does not decide that every managerial decision which necessarily terminates an individual's employment is subject to the duty to bargain."[43] The *Fibreboard* Court emphasized that every case must be considered on its own facts.[44]

Seventeen years after *Fibreboard*, the U.S. Supreme Court engaged in a more nuanced balancing test to determine whether the decision to terminate part of a business operation was a mandatory subject of bargaining.[45] In *First Nat'l*, the Court stated:

> [I]n view of an employer's need for unencumbered decision making, bargaining over management decisions that have a substantial impact on the continued availability of employment should be required only if the benefit, for labor-management relations and the collective bargaining process, outweighs the burden placed on the conduct of the business.[46]

The *First Nat'l* Court held that "an economically motivated decision to shut down part of a business" did not benefit the collective bargaining process and would burden the employer if ordered to bargain.[47]

The present case is similar to the *First Nat'l* line of cases for the reason that, unlike the *Fibreboard* case, contracting out work did not

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[43] *Fibreboard*, 379 U.S. at 318.
[44] *Id.*
[45] *First Nat'l*, 452 U.S. at 679.
[46] *Id.*
[47] *Id.* at 680 (*quoting Fibreboard*, 379 U.S. at 213).

occur here. County corrections officer positions were not replaced with outside labor.

The Court of Appeals distinguishes the present case from *First Nat'l* because the County did not shut down part of its operation due to the loss of the SCORE contract. But the reasoning in *First Nat'l* applies as equally to reductions in operations as to elimination of operations. The revenue from the SCORE contract served to increase the scope of jail operations and funding for positions, but with the loss of that contract and revenue, the Board decided that operations and positions had to be reduced.

B. The Division I Opinion Conflicts with this Court's Precedent that Unions have No Right to Demand to Bargain the Elimination of Positions Due to Budget Reductions.

The *Fibreboard* and *First Nat'l* cases concerned private entities. A public agency's legislative authority and statutory duties add other issues to consider when determining whether layoffs resulting from budget decisions are mandatory subjects of bargaining.

In *Spokane Educ. Assoc. v. Barnes*, the Washington State Supreme Court recognized the insurmountable burden to a public agency of bargaining budget allocations resulting in layoffs with a union.[48] The Court held that the union had no right to bargain the budget allocation of the school district resulting in the layoff of 214 staff:

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[48] *Spokane Education Ass'n v. Barnes,* 83 Wn.2d 366, 377 (1974).

> It is obvious that they cannot be expected to negotiate for an unreasonable length of time or to delay decisions which must be made before statutory or other relevant deadlines. It is the board of directors upon which the duty is imposed by statute to make decisions in managing the affairs of the district and in each case the final decision rests with the board.[49]

Division I distinguished *Spokane* by reasoning that because the union in that case did not make a timely demand to bargain, the school district did not have to bargain the layoffs. However, the Court in *Spokane* also held that the school district was not obligated to bargain the allocation of the budget which resulted in layoffs.[50] The *Spokane* Court did not allow semantics to confuse the issue.[51] The Court properly focused on the reasons for the layoffs and concluded that budget allocations are not amenable to bargaining, whether or not the budget is a "policy."

Courts in other states have considered the burden of bargaining the decision to lay off employees due to a budget crisis and concluded that the burden to a public agency is "intolerable," that it would "significantly interfere with the determination of government policy," and that it "severely restricts the city in its ability to function."[52]

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[49] *Id.* at 377.
[50] *Id.* at 376.
[51] *Id.* at 376 ("We do not think that the budget of a school district can properly be considered a statement of policy, although many if not all of the items going in to a budget reflect policy decisions").
[52] *See, Bay City Education Ass'n v. Bay City Public Schools*, 430 Mich. 370, 382, 422 N.W. 2d 504 (1988) (school district's decision to transfer its special education services because of budgetary issues is not "the type of situation where labor concessions may have alleviated the employer's economic considerations, a situation providing an incentive for both labor and management to confer voluntarily prior to making a

C. The Division I Opinion Creates a Conflict Between the County's Statutory Budget and Collective Bargaining Duties.

Division I's explanation that the County could bargain layoffs without bargaining budget allocations is unrealistic. As the *Spokane*, *First Nat'l*, and *Fibreboard* cases establish, where the bargaining process outweighs the burden on the conduct of the business, management must be free from the constraints of mandatory bargaining. The *First Nat'l* Court recognized the insurmountable burden on the employer to bargain budget allocation resulting in layoffs, stating: "the union's practical purpose in participating . . . will be to seek to delay or halt the closing."[53] The Washington State Supreme Court also recognized the consequences of delaying a statutory budget cycle in the *Spokane* case.[54]

If layoffs resulting from reductions in budgets are a mandatory subject of bargaining, no budget adjustments could be implemented by public employers until a contract settlement or arbitration award is reached.[55] As

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change"); *Local 195, IFPTE, AFL-CIO v. State of New Jersey*, 88 N.J. 393, 403, 443 A.2d 187 (1982) (recognizing that negotiations should occur "unless such negotiated agreement would significantly interfere with the determination of government policy"); *Metropolitan Council No. 23 and Local 1277, of the American Federation of State, County and Municipal Employees ALF-CIO v. City of Center Line*, 414 Mich. 642, 327 N.W. 2d 822 (1982) (holding that a layoff clause "severely restricts the city in its ability to function effectively and poses serious questions with regard to political accountability for such decisions); *Berkeley Police Association v. City of Berkeley*, 76 Cal. App. 3d 931, 143 Cal. Rptr. 255 (1978) (holding that policy change on internal review systems is not negotiable because "to require public officials to meet and confer with their employees regarding fundamental policy decisions . . . would place an intolerable burden upon fair and efficient administration of state and local government).

[53] *First Nat'l*, 452 U.S. at 679.

[54] *Spokane Education Ass'n*, 83 Wn.2d at 377.

the *First Nat'l* and *Spokane* Courts anticipated, unions will undoubtedly seek to delay budget reductions resulting in layoffs.

Division I stated that "[t]he record does not contain evidence that two months was too short to engage in potentially fruitful negotiations."[56] But for uniformed employees, if the employer and union are unable to reach agreement on mandatory subjects of bargaining, the issues are submitted to mediation, and if mediation is unsuccessful, then interest arbitration, a process that takes most of, if not more than, a year.[57] Public employers would not be able to meet their statutory budget deadlines if they had to bargain, mediate, and arbitrate layoffs resulting from reduced budget allocations and staffing levels.

The other issue with Division I's opinion is that where no settlement with uniformed employees is reached, layoffs resulting from budget reductions will now be delegated to an arbitrator to decide. Division I's opinion will result in an unlawful delegation of legislative powers.[58] While

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[55] Uniformed employees are eligible for interest arbitration, and during the pendency of arbitration proceedings, terms and conditions of employment may not be changed absent agreement. RCW 41.56.440-.470.

[56] Appendix A, pp. 19-20.

[57] RCW 41.56.440-.470.

[58] *Mun. of Metro. Seattle v. Div. 587, Amalgamated Transit Union*, 118 Wn.2d 639, 643 (1992) (Were the Legislature vests a municipal corporation with legislative powers, specifically placing certain duties or powers under the control of the municipal corporation, those powers may not be delegated absent specific statutory authorization); *citing* Lake *Wash. Sch. Dist. 414 v. Lake Wash. Educ. Ass'n*, 109 Wn.2d 427, 431 (1987); *Lutz v. Longview*, 83 Wn.2d 566, 570 (1974); *and Roehl v. PUD 1*, 43 Wn.2d 214, 240 (1953).

the County has the authority and the obligation to engage in collective bargaining over terms and conditions of the employment relationship,[59] it also has an obligation to maintain the economic viability of County government, making responsible decisions that fund not only Sheriff operations, but the operations of all other County officers and the services they deliver to the public.[60]

Another important consideration is that even if an interest arbitrator were to find that a budget decision resulting in layoffs was proper, the arbitrator could not order layoffs retroactively—can employees who were retained pending the arbitrator's decision be required to refund their wages back to the date the layoffs should have occurred? An arbitrator cannot retroactively change the budget—can funds allocated to and expended by the Auditor for elections be retroactively reallocated to the jail?

Finally, Division I's reliance on the Guild's contention that it would have offered economic concessions is misplaced. The Guild had most of a year to offer concessions, but it did not. If it had, the County may have engaged in permissive bargaining for a limited period.

D. Division I and II Opinions are in Direct Conflict.

Division II held that the provision in the CBA and civil service rules regarding layoffs constituted a waiver, and the waiver was a permissive

[59] *Mun. of Metro. Seattle, supra,* 118 Wn. 2d at 644.
[60] *First Nat'l,* 452 U.S. at 677.

subject of bargaining that expired with the CBA. In contrast, Division I held that the layoff provision in the CBA was a mandatory subject of bargaining. The confusion lies in the use of the term "waiver."

In its Complaint, the County asserted an affirmative defense of waiver *by* contract. PERC, the NLRB, and the courts recognize that an employer does not have to bargain over a contractual provision which has already been explicitly and knowingly negotiated by the parties.[61] Division II confused the County's affirmative defense of waiver by contract with a waiver provision *in* a contract.

The Washington State Supreme Court explained that waivers in a contract "most often arise during the pendency of a collective bargaining agreement and focus on whether a union has given its assent (or waived objections) to unilateral employer action."[62] Waivers are generally a permissive subject and as such, a party cannot insist on bargaining.[63]

In contrast, waivers by contract "are defenses used by *employers* to a charge that they have acted unilaterally without satisfying their obligation to bargain with the union."[64] The contract provisions at issue here, set out in Section IV.B.5 of this petition, were bargained and constitute waiver by

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[61] *See, Pasco Police Officers' Assn. v. City of Pasco*, 132 Wn.2d 450, 462-63, 938 P.2d 827 (1997).
[62] *Id.* at 462, *citing NLRB v. McClatchy Newspapers Inc.*, 964 F.2d 1153, 1157 (D.C. Cir. 1992).
[63] *Id.* at 463.
[64] *Id.*

contract.[65]

Under Division II's decision, every negotiated term in the contract would be a waiver which would render every negotiated term a permissive subject – an absurd result. On the other hand, Division I's decision, that layoffs due to budgetary constraints are a mandatory subject of bargaining, means that the provision survives the expiration of the CBA and that the Guild has waived bargaining.[66] Thus, the Court of Appeals' decisions are in direct conflict.

Under the law of status quo, the management rights and civil service provisions in the CBA remained in effect after expiration of the CBA, and the County has a valid claim of waiver by contract. Even if this Court were to determine that the management rights clause expired with the CBA, the civil service rules would be applicable to the layoffs because the rules do not conflict with the CBA.[67]

IV. CONCLUSION

A union representing public employees has no right to collectively bargain a public agency's decision to reduce staffing levels and layoff employees, where the decision to layoff was the result of a budget reduction, and where the decision to layoff was not for the purpose of

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[65] CP 1158.
[66] RCW 41.56.470. *See also Pasco Police Officers' Assn.* 132 Wn.2d at 467.
[67] RCW 41.14.070.

replacing union members with non-union employees. A public employer's decision to layoff as the result of a budget and staffing reduction is not amenable to collective bargaining, nor is the decision to layoff amenable to a remedy in interest arbitration. However, a public employer must bargain the impacts of the decision to layoff, and may engage in permissive bargaining.

A bargained for provision in a collective bargaining agreement and the civil service rules which mandate when layoffs may occur and the process for layoffs survive the expiration of the contract. If the Court holds that layoffs due to a budget reduction are a mandatory subject of bargaining, then the public employer's affirmative defense that the union has waived bargaining the decision to layoff is valid.

For the reasons set forth above, the Petitioner, Kitsap County, where the respectfully requests that the Court accept review.

Submitted this 20th day of April, 2016.

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CERTIFICATE OF SERVICE

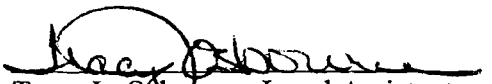
I, Tracy L. Osbourne, certify under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On April 20, 2016, I caused to be served in the manner noted a copy of the foregoing document upon the following:

Christopher Casillas Cline & Casillas 520 Pike Street, Suite 1125 Seattle, WA 98101 [X] Via U.S. Mail [ ] Via Fax: [X] Via E-mail: ccasillas@clinelawfirm.com [ ] Via Hand Delivery	Mark S. Lyon, AAG Transportation & Public Const. Div. P.O. Box 40113 Olympia, WA 98504-0113 [X] Via U.S. Mail [ ] Via Fax: [X] Via E-mail: markl1@atg.wa.gov [ ] Via Hand Delivery

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED April 20, 2016, at Port Orchard, Washington.



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To: Tracy L. Osbourne
Cc: Jacquelyn M. Aufderheide; Deborah A. Boe
Subject: RE: Petition for Review - Kitsap County v. Kitsap County Correctional Officers' Guild

Rec'd 4/20/16

Supreme Court Clerk's Office

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From: Tracy L. Osbourne [mailto:TOsbourn@co.kitsap.wa.us]
Sent: Wednesday, April 20, 2016 3:28 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
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Subject: Petition for Review - Kitsap County v. Kitsap County Correctional Officers' Guild

Attached please find Kitsap County's Petition for Review. The appendices exceeded the page limit and per instruction, will be sent via U.S. Mail. Filed by:

KITSAP COUNTY V. KITSAP COUNTY CORRECTIONAL OFFICERS' GUILD
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Sincerely,
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APPENDIX A

Court of Appeals Division I
Case No. 73637-0-I
Published Opinion
Filed: March 21, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

KITSAP COUNTY and KITSAP COUNTY SHERIFF, Respondents, v. KITSAP COUNTY CORRECTIONAL OFFICERS' GUILD, INC., and PUBLIC EMPLOYMENT RELATIONS COMMISSION, Appellants.	)	No. 73637-0-I DIVISION ONE PUBLISHED OPINION FILED: March 21, 2016

BECKER, J. — Faced with a directive from the board of county commissioners to cut the budget of the sheriff's office, the Kitsap County Sheriff laid off two jail officers. The officers' union, appellant Kitsap County Correctional Officers' Guild, demanded to bargain the layoff decision. Kitsap County and the Kitsap County Sheriff (the county) refused and proceeded to obtain a declaratory judgment that the layoff decision was not a mandatory subject of bargaining. The court perceived the Guild's position as a demand to bargain the level of funding allocated to the jail's budget. This was error. The subject of the demand to bargain was the layoff decision, not the budget. Adopting a budget is a

management prerogative. But when a public sector employer proposes to balance the budget by laying off workers who are represented by a union, the union must have the opportunity to bargain over whether the cost saving can be achieved by other means.

The Public Employees' Collective Bargaining Act, chapter 41.56 RCW, requires a public employer to bargain collectively with a union representing its employees. Mandatory bargaining subjects include wages, hours, and working conditions. Permissive bargaining subjects include managerial decisions that only remotely affect personnel matters and decisions that are predominantly managerial prerogatives. Kitsap County v. Kitsap County Corr. Officers' Guild, Inc., 179 Wn. App. 987, 998, 320 P.3d 70 (2014). Parties to a collective bargaining agreement *must* bargain on mandatory subjects. They *may* bargain on permissive subjects, but they are not obliged to bargain to impasse. If an employer makes a unilateral decision regarding a permissive bargaining subject, the employer is still required to bargain over the effects of the decision upon a mandatory subject such as wages, hours, and working conditions. Kitsap County, 179 Wn. App. at 997-98.

In February 2011, the county was still experiencing budgetary problems stemming from the 2008 recession. The board of county commissioners notified all county employees to expect more budget cuts in the 2012 budget as revenues were still declining.

The sheriff operates and supervises the county jail. Of the portion of the overall budget allocated to the sheriff by the county commissioners, the sheriff

has the authority to determine how funds will be distributed and utilized within the programs of the sheriff's office.

In 2011, the most recent collective bargaining agreement between the county and the Guild had expired two years earlier. Negotiations for a new agreement had twice reached an impasse. The parties were certified for an interest arbitration that had not yet occurred.

In the last quarter of the year, the jail projected that its revenues would be reduced by $935,000. On October 24, 2011, corrections chief Ned Newlin sent an email to all correctional officers entitled "2012 Budget Update." He explained that even after some significant cuts had been made to supplies and services, "the bottom line is that the Sheriff's Office (including the jail) is now directed to take an additional $513,000 cut from our budget requests for 2012."

Newlin announced that the sheriff's office would take the cut by eliminating three positions in the jail—the two correctional officer positions lowest in seniority and an open position. Newlin stated in the letter, "This is not a decision that was made lightly and it causes me great angst to do so, but there is no other reasonable alternative available to us."

The next day, Newlin received a demand to bargain letter from the president of the Guild. The Guild represents correctional officers who are responsible for the housing, control, and care of the inmates. The letter stated, "We are demanding to bargain the decision to conduct any layoffs plus any associated effects/impacts. Layoffs are a mandatory subject of bargaining [and] our input was not invited or incorporated in the discussions you held with two of

our bargaining unit members this afternoon." The Guild requested that the status quo be maintained until the parties had bargained the layoff decision and reached an agreement. The Guild was prepared to "explore some potential cost saving measures with the County to at least avoid one of the layoffs, if not both."

The county engaged only in impacts bargaining, limited to voluntary layoff procedures, changes in duties as a consequence of the layoffs, and safety issues. The county did not retreat from its refusal to bargain the layoff decision itself. The layoff of two correctional officers was effective on January 1, 2012.

The county brought the dispute directly to superior court through a complaint for a declaratory judgment. The Public Employee Relations Commission (PERC) is empowered to enforce the act, but its jurisdiction is not exclusive. Because interpretation of a statute is a question of law, the superior court may also decide in the first instance whether an unfair labor practice exists under a particular set of facts. State ex rel. Graham v. Northshore Sch. Dist. No. 417, 99 Wn.2d 232, 239-40, 662 P.2d 38 (1983). The county chose the superior court as a forum rather than PERC because in the county's view, PERC's decisions have created uncertainty about when layoffs are a mandatory subject of bargaining.[1]

It is an unfair labor practice to refuse to bargain a mandatory subject to impasse. It is also an unfair labor practice to demand to bargain a permissive subject to impasse. Kitsap County, 179 Wn. App. at 998. The county's complaint asked the court to declare that the Guild committed an unfair labor practice when

[1] Brief of Respondents at 32.

it insisted that the layoff decision was a mandatory subject. The Guild cross-claimed and moved for summary judgment declaring that the county had committed an unfair labor practice by refusing to bargain the layoff decision. After a hearing, the court signed a proposed order granting the county's motion and denying the Guild's motion. The Guild appealed.

That first appeal was decided by Division Two of this court in March 2013. Kitsap County, 179 Wn. App. at 987. The court determined that the issue of layoffs was related both to a mandatory subject of bargaining and a permissive subject. In such a case, a balancing test is used to determine which characteristic predominates. Int'l Ass'n of Fire Fighters, Local Union 1052 v. Pub. Emp't Relations Comm'n, 113 Wn.2d 197, 203, 778 P.2d 32 (1989).

Under RCW 41.56.030(4), the duty to bargain extends to "personnel matters, including wages, hours and working conditions."[2] "The scope of mandatory bargaining thus is limited to matters of direct concern to employees. Managerial decisions that only remotely affect 'personnel matters', and decisions that are predominantly 'managerial prerogatives', are classified as nonmandatory subjects." Int'l Ass'n of Fire Fighters, Local Union 1052, 113 Wn.2d at 200.

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[2] As defined by the act:
"Collective bargaining" means 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 employer.
RCW 41.56.030(4).

The court found the record inadequate to determine whether the trial court had engaged in the balancing analysis.[3] "Arguably, the layoffs heavily impact employees' working conditions, but, on these facts, the County's duty to implement a budget weighs on the management prerogative side of the balance. With such significant interests on each side of the balance, it is important that the trial court carefully consider the specific facts of this case and balance the competing interests." Kitsap County, 179 Wn. App. at 999. Following International Association of Fire Fighters, the court remanded "for the trial court to conduct a balancing test based on the facts of this case." Kitsap County, 179 Wn. App. at 1000.

On remand, PERC moved for permission to intervene in view of its interest in promoting uniform application of the law of labor relations in the area of public employment, see RCW 41.58.005(1), particularly its interest in developing uniform standards for determining what subjects of bargaining are mandatory. The trial court allowed intervention. The parties submitted additional evidence and briefing. In August 2014, the trial court again ruled in favor of the county. This time, to demonstrate application of the balancing test, the court adopted and entered findings and conclusions prepared by the county. The findings of fact are undisputed:

> 1. The evidence before this Court was well developed, including testimony and exhibits submitted to the Court from the record in a four-day interest arbitration hearing.

[3] The trial court had inquired of the parties whether the order was sufficiently detailed and was advised by both parties that it was.

2. The Kitsap County Board of Commissioners adopts an annual budget fixing revenues and expenditures for the ensuing fiscal year.
3. In adopting a budget the Board of County Commissioners takes into consideration revenue sources including revenue from property and sales taxes, reductions in revenue from annexations, the existence or elimination of grant funding, the County's debt servicing obligations, and managing reserves.
4. In adopting a budget the Board of County Commissioners takes into consideration expenditures necessary to provide public services, including whether the services are mandated by law or proprietary, the level of services needed, and the amount of revenues available to fund particular services.
5. The Kitsap County Sheriff's Office is limited in the making of expenditures or incurring of liabilities as fixed in the budget by the Board of County Commissioners.
6. For year 2012, the Kitsap County Board of County Commissioners adopted a budget reducing the Sheriff's jail budget by $935,000 because of declining County revenues.
7. The Sheriff's Office reduced the jail's budget by $935,000 as established in the budget adopted by the Board of County Commissioners.
8. The Sheriff's Office reduced the jail's budget in part by eliminating two corrections officer positions.
9. On October 24, 2011, two corrections officers were informed that their positions would be eliminated and they would be laid off as of January 1, 2012, due to the budget reduction.
10. The Corrections Officers' Guild demanded to bargain the layoffs, and the County agreed to bargain the impact of layoffs, and did bargain the impact with the Guild.
11. Two corrections officers were laid off on January 1, 2012.
12. No allegation or evidence exists that the reduction of the County's or Sheriff's budget, the elimination of two corrections officer positions, or the layoff of two corrections officers was motivated by retaliation.

The court concluded from the findings that the layoff decision was a permissive subject of bargaining. The Guild and PERC appeal from this decision.

We must first decide what standard of review to apply. The county suggests that the findings of fact entered by the court are entitled to deference.

But the findings of fact do not resolve conflicts in evidence. Because there is no genuine issue of material fact and only the court's conclusions are disputed, it is appropriate to treat the declaratory judgment as an order resolving cross motions for summary judgment. Our review is de novo. CR 56(c); Kitsap County, 179 Wn. App. at 997.

Two United States Supreme Court cases provide the framework for analyzing whether a layoff decision will be classified as permissive or mandatory: Fibreboard Paper Products Corp. v. National Labor Relations Board, 379 U.S. 203, 85 S. Ct. 398, 13 L. Ed. 2d 233 (1964), and First National Maintenance Corp. v. National Labor Relations Board, 452 U.S. 666, 101 S. Ct. 2573, 69 L. Ed. 2d 318 (1981). In Fibreboard, employees were laid off as a result of the employer's decision to contract out the work union employees had been performing. In that situation, the Court held the layoffs to be a mandatory bargaining subject. Because the decision did not alter the employer's basic operation, requiring the employer to bargain "would not significantly abridge his freedom to manage the business." Fibreboard, 379 U.S. at 213. The Court noted that the employer was induced to contract out the work by assurances that economies could be derived by reducing the work force, decreasing fringe benefits, and eliminating overtime payments, all of which had "long been regarded as matters peculiarly suitable for resolution within the collective bargaining framework." Fibreboard, 379 U.S. at 213-14.

> Yet, it is contended that when an employer can effect cost savings in these respects by contracting the work out, there is no need to attempt to achieve similar economies through negotiation with existing employees or to provide them with an opportunity to

> negotiate a mutually acceptable alternative. The short answer is that, although it is not possible to say whether a satisfactory solution could be reached, national labor policy is founded upon the congressional determination that the chances are good enough to warrant subjecting such issues to the process of collective negotiation.
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> . . . While "the Act does not encourage a party to engage in fruitless marathon discussions at the expense of frank statement and support of his position." [National] Labor [Relations] Board v. American Nat. Ins. Co., 343 U.S. 395, 404, [72 S. Ct. 824, 829, 96 L. Ed. 1027 (1952)] it at least demands that the issue be submitted to the mediatory influence of collective negotiations. As the Court of Appeals pointed out, "[i]t is not necessary that it be likely or probable that the union will yield or supply a feasible solution but rather that the union be afforded an opportunity to meet management's legitimate complaints that its maintenance was unduly costly."

Fibreboard, 379 U.S. at 214.

By contrast, First National is a case where the employer made an economically motivated decision to shut down a part of its business. First Nat'l, 452 U.S. at 680. As a result of a financial dispute with one of its customers, the employer terminated the contract and discharged the employees who worked for that customer. The employer claimed it had no duty to bargain about its decision to terminate operations, and the court agreed. The issue raised was whether the shutdown decision should be considered part of the employer's "retained freedom to manage its affairs unrelated to employment." First Nat'l, 452 U.S. at 677. The Court concluded that "the harm likely to be done to the employer's need to operate freely in deciding whether to shut down part of its business purely for economic reasons outweighs the incremental benefit that might be gained through the union's participation in making the decision." First Nat'l, 452 U.S. at 686.

Washington courts and PERC follow Fibreboard and First National. The parties agree that under First National, there is no duty to bargain when layoffs are an indirect result of programmatic or service changes by the employer. They also agree that under Fibreboard, bargaining the layoff decision is mandatory when an employer decides to reduce labor costs by replacing union workers with nonunion workers. The county argues that when a public employer lays off employees in response to a budget shortfall, it is more like the partial shutdown of operations in First National. In the county's view, the decision to layoff the two correctional officers implicated a core management prerogative: the county's duty to maintain a balanced budget.

The trial court ratified the county's position that the layoff decision was a component of the decision to reduce the jail's budget. Although the findings of fact correctly state that the Guild "demanded to bargain the layoffs," the court did not balance the competing interests involved in the layoff decision. Rather, the court balanced the competing interests in "the decision to reduce the budget, reduce staffing levels, and layoff employees."

> Balancing the relationship between the decision to reduce the budget, reduce staffing levels, and layoff employees bears to conditions of employment on the one side, and to entrepreneurial control or management prerogative on the other, the Court must determine which characteristic predominates.[4]

The court concluded, "The decision to reduce the budget and staffing levels lies at the core of entrepreneurial control and management prerogative."[5] The court reasoned that the layoff decision was a result of the decision to reduce the

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[4] Conclusion of Law B.
[5] Conclusion of Law D.

budget and was therefore necessarily and inherently a management prerogative: "the decision involves the performance of statutory duties in that the Board of County Commissioners has a statutory duty to adopt a budget and the Kitsap County Sheriff's Office must abide by the budget adopted for it by the Commissioners."[6] The court concluded that bargaining over the layoffs could not be fruitful "because the employer cannot negotiate the level of revenues and expenditures fixed and adopted in the budget."[7]

In applying the balancing test, the first step is to characterize accurately the decision that is the subject of the bargaining demand. The county's position on appeal depends entirely on redefining the Guild's position as a demand to bargain over the reductions in the budget. The county claims the Guild demanded to bargain "the Board's decision to reduce the budget in order to balance expenditures with revenues."[8] If that were true, the county's position would likely prevail. A public employee organization does not have the right to negotiate with the employer "upon the subject of budget allocations." Spokane Educ. Ass'n v. Barnes, 83 Wn.2d 366, 374, 517 P.2d 1362 (1974). As stated in PERC's brief, "Funding rates, allocation of county budget among county agencies and similar decisions are properly decisions of the voters and elected public officials."[9]

Contrary to the county's rhetoric about the budget, however, the record is clear that the Guild's demand was only to bargain over the layoff decision. The

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[6] Conclusion of Law F.
[7] Conclusion of Law G.
[8] Brief of Respondents at 27.
[9] Brief of Appellant PERC at 29.

Guild consistently recognized that it was the prerogative of the county commissioners to reduce the jail's budget to meet the shortfall in revenues. The budget set for the jail by the county commissioners did not specifically require or itemize layoffs of employees. The Guild demanded to bargain over the jail's decision to achieve the reduction by laying off two employees. By mischaracterizing the Guild's position as a demand to bargain the budget, the county thoroughly undermines its argument. The layoff decision alone was the subject of the Guild's demand to bargain.

It is also inaccurate for the county to say that the Guild was demanding to bargain over "staffing levels." In using that phrase, the county invokes the principle that "general staffing levels are fundamental prerogatives of management." Int'l Ass'n of Fire Fighters, Local Union 1052, 113 Wn.2d at 205. That principle, however, refers to programmatic decisions about how large or how small an agency should be as a matter of policy—for example, whether a community "'will have a large police force, a small one, or none at all.'" Int'l Ass'n of Fire Fighters, Local Union 1052, 113 Wn.2d at 205, quoting Yakima v. Yakima Police Patrolman's Ass'n, Pub. Empl. Relations Comm'n Dec. 1130-PECB, at 4 (1981) (examiner's opinion). Chief Newlin did not decide as a matter of policy that the jail staff had become too large. He did not announce a programmatic decision to reduce inmate population or reorganize the jail's services in a way that could be managed with fewer correctional officers. Indeed, he expressed "great angst" at having to cut staff. His layoff decision represented his unilateral judgment that laying off the two officers was the only way to comply with the

budget set by the county commissioners after all other possible cuts had been considered and implemented. For this reason, his layoff decision was not analogous to the employer's decision in First National to shut down the part of the operation affected by the loss of a customer. It was a decision to reduce labor costs in order to meet the budget cut.

All parties cite and discuss decisions by PERC in support of their respective positions. Administrative decisions are not binding on a court, but a court may find guidance in an agency's interpretation of the law. Miotke v. Spokane County, 181 Wn. App. 369, 325 P.3d 434, review denied, 181 Wn.2d 1010 (2014).

The county claims PERC's decisions are inconsistent with each other. The county cites 10 cases to demonstrate the alleged inconsistency.[10] The cited

[10] Pub. Sch. Emps. of Wenatchee v. Wenatchee Sch. Dist., No. 7425-U-88-1542, 1990 WL 656165 (Wash. Pub. Emp't Relations Comm'n Sept. 1, 1990); Pub. Sch. Emps. of Wash. v. N. Franklin Sch. Dist., No. 12665-U-96-3022, 1998 WL 84382 (Wash. Pub. Emp't Relations Comm'n Feb. 1, 1998); Anacortes Police Guild v. City of Anacortes, No. 13634-U-98-03336, 2000 WL 1448857 (Wash. Pub. Emp't Relations Comm'n July 5, 2000); Wash. State Council of County & City Emps. v. Tacoma-Pierce County Health Dep't, No. 14710-U-99-03693, 2001 WL 1069585 (Wash. Pub. Emp't Relations Comm'n April 26, 2001); Wash. Fed'n of State Emps. v. State Attorney Gen., No. 21156-U-07-5399, 2010 WL 1644961 (Wash. Pub. Emp't Relations Comm'n April 16, 2010); Wash. Fed'n of State Emps. v. State Corrs., No. 23325-U-10-5941, 2011 WL 1979692 (Wash. Pub. Emp't Relations Comm'n May 10, 2011); Kirkland Police Officers' Guild v. City of Kirkland, No. 22415-U-09-5718, 2012 WL 1385445 (Wash. Pub. Emp't Relations Comm'n April 13, 2012); Bellevue Police Support Guild v. City of Bellevue, No. 22416-U-09-5719, 2012 WL 1385444 (Wash. Pub. Emp't Relations Comm'n April 13, 2012); Int'l Ass'n of Fire Fighters, Local 451 v. City of Centralia, No. 11233-U-94-2625, 1996 WL 387999 (Wash. Pub. Emp't Relations Comm'n June 1, 1996); Teamsters Local Union 252 v. Griffin Sch. Dist., No. 22170-U-08-5653, 2010 WL 2553112 (Wash. Pub. Emp't Relations Comm'n June 18, 2010).

cases, however, show PERC to be consistent.[11] In seven of them, PERC ruled that a reduction in staffing was not a mandatory subject of bargaining where the employer was closing operations, reorganizing, or changing the scope of services.[12] Another was decided on the ground that although the decision to conduct layoffs was "within the 'mandatory' category," the union waived its right to bargain layoff decisions.[13] In two cases that did not involve a change in operations or services, PERC ruled that the employer had a duty to bargain the layoff decisions because the employer was making layoffs to save labor costs.[14] In these cases and others, PERC has maintained the distinction that flows from Fibreboard and First National: generally, a layoff decision motivated by budget cuts is a mandatory subject of bargaining because of the impact it has on wages, hours, and working conditions, while a decision to change an agency's programmatic priorities or scope of operations is a permissive subject because it implicates management prerogatives.

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[11] It is true that two different PERC hearing examiners heard nearly identical cases and ruled opposite on the duty to bargain issue. See Kirkland Police Officers' Guild v. City of Kirkland, No. 22415-U-09-5718, 2010 WL 4058051 (Wash. Pub. Emp't Relations Comm'n Oct. 7, 2010); Bellevue Police Support Guild v. City of Bellevue, No. 22416-U-09-5719, 2010 WL 3283656 (Wash. Pub. Emp't Relations Comm'n Aug. 12, 2010). But PERC has since reconciled these conflicting decisions. See City of Kirkland, 2012 WL 1385445; City of Bellevue, 2012 WL 1385444.

[12] Wenatchee Sch. Dist., 1990 WL 656165; State Attorney General, 2010 WL 1644961; City of Anacortes, 2000 WL 1448856; Tacoma-Pierce Health, 2001 WL 1069585; State Corrs., 2011 WL 1979692; City of Kirkland, 2012 WL 1385445; City of Bellevue, 2012 WL 1385444.

[13] N. Franklin Sch. Dist., 1998 WL 84382, at *2.

[14] City of Centralia, 1996 WL 387999; Griffin Sch. Dist, 2010 WL 2553112.

Three PERC decisions in particular are illustrative. The first involved the Wenatchee School District's decision to convert from half-day to full-day kindergarten as a means of managing a budget crisis.[15] Making the change to full day kindergarten resulted in the elimination of mid-day bus runs, and that saved the school district the wages and benefits for the bus drivers who had driven those runs. PERC rejected the union's argument that the decision to convert to full-day kindergarten had to be bargained. PERC's decision cited Spokane Educ. Ass'n, 83 Wn.2d at 366, recognizing and applying the principle that an employer has "no duty to bargain the decision to reduce its budget."[16] Noting that the decision was "clearly a decision regarding the educational program to be offered," PERC concluded that the employer's prerogative of defining the curriculum outweighed the decision's relationship to the wages, hours and working conditions of the employees.[17]

In PERC's Wenatchee School District decision, like in First National, management interests predominated because the decision at issue involved a change in services or a closure of facility or operations. On the other side of the spectrum is a PERC case where the Griffin School District responded to a budget squeeze by reducing the school calendar from 260 working days to 240 working days, with the result that union employees lost 20 days of paid work.[18] PERC concluded that the reduction in the work calendar was a mandatory subject of bargaining. The district was not reducing its services or closing its facilities on

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[15] Wenatchee Sch. Dist., 1990 WL 656165.
[16] Wenatchee Sch. Dist., 1990 WL 656165, at *4.
[17] Wenatchee Sch. Dist., 1990 WL 656165, at *4.
[18] Griffin Sch. Dist., 2010 WL 2553112.

certain days. Thus, its decision did not implicate the entrepreneurial right of employers to control the level of service they provide. "Despite the employer's legitimate need to achieve budgetary savings, the decision to close facilities for 20 days impacted employee wages and hours so substantially that the decision must be bargained."[19] The union, PERC concluded, had a "legitimate interest in being afforded the opportunity to work with the employer through collective bargaining to provide possible alternatives to reducing the wages and hours of certain of its bargaining unit employees."[20]

In the third case, PERC ruled that King County's decision to furlough its employees was a mandatory subject of bargaining.[21] King County faced budget deficits and revenue shortfalls as a result of the 2008 financial crisis. The county decided to shut down all nonessential services and furlough the affected employees for 10 days in order to save enough money to balance the budget. PERC acknowledged that the county had the right to determine and manage its own budget. But that "did not make the decision to furlough employees a permissive one."[22] The county's chief motivation for imposing the furloughs was to reduce labor costs. Unlike the Wenatchee School District case, where the respondent made a wholesale change to the scope of its operation, "this

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[19] Griffin Sch. Dist., 2010 WL 2553112, at *6.
[20] Griffin Sch. Dist., 2010 WL 2553112, at *7.
[21] Tech. Emps. Ass'n v. King County, No. 22175-U-09-5658, 2010 WL 2553113 (Wash. Pub. Emp't Relations Comm'n).
[22] King County, 2010 WL 2553113, at *7.

employer's decision to close its offices does not constitute a programmatic change to any employer service."[23]

Here too, the decision to layoff the two officers was a decision to meet budget cuts by reducing labor costs. The layoffs were not related to programmatic changes, and they did not implicate Kitsap County's entrepreneurial right to control the level of service provided in the jail. The fact that the county had a legitimate need to achieve budgetary savings and had a statutory duty to manage its own budget did not make the layoff decision a permissive subject of bargaining.

The bargaining unit employees clearly had an interest in the county's decision to implement layoffs. "There is no greater possible impact on an employee than the complete loss of the employment relationship."[24] Even the county concedes that the impact of layoffs on employees was "obvious and significant." A declaration in the record details the financial, personal, and emotional impacts of these two layoffs on the officers who lost their jobs.

No one accuses the county of having an anti-union or retaliatory motive to make the layoffs. But contrary to the county's argument, that does not bring this situation back to the First National side of the spectrum. What is critical is that bargaining the layoffs would not significantly abridge the prerogative and duty of the county commissioners to adopt a budget. The predominant impact of the layoff decisions was on wages, hours, or working conditions in the bargaining

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[23] King County, 2010 WL 2553113, at *7.
[24] Bellevue Police Support Guild, 2010 WL 3283656, at *12.

unit. The reason why such a decision must be subject to negotiation has been succinctly explained by Judge Richard Posner:

> The rule that requires an employer to negotiate with the union before changing the working conditions in the bargaining unit is intended to prevent the employer from undermining the union by taking steps which suggest to the workers that it is powerless to protect them. Of course, if the change is authorized by the collective bargaining agreement, it is not in derogation of the union and is not an unfair labor practice. But there was no agreement here. Laying off workers works a dramatic change in their working conditions (to say the least), and if the company lays them off without consulting with the union and without having agreed to procedures for layoffs in a collective bargaining agreement it sends a dramatic signal of the union's impotence.

Nat'l Labor Relations Bd. v. Advertisers Mfg. Co., 823 F.2d 1086, 1090 (7th Cir. 1987).

Corrections chief Newlin stated when announcing the layoffs that "there is no other reasonable alternative available to us." His announcement made the layoff decision a fait accompli before the Guild had the opportunity to suggest alternatives. Yet the possibility existed that bargaining with the Guild could have revealed reasonable alternatives to layoffs.

The Guild claims it could have offered various concessions, such as changes in the work schedule, furlough days for officers, or suspension of certain premium or specialty pays. A declaration from Guild president Terry Cousins confirms that the Guild was "ready and willing to explore some potential cost saving measures with the County to at least avoid one of the layoffs, if not both."

Although it is not possible to say that bargaining will necessarily result in a satisfactory solution, "national labor policy is founded upon the congressional

determination that the chances are good enough to warrant subjecting such issues to the process of collective negotiation." Fibreboard, 379 U.S. at 214.

In the King County furlough case, PERC commented that "no outside force compelled the employer to choose furloughs as the means by which to reduce its budget."[25] Similarly here, no outside force compelled the sheriff to reduce the jail budget by laying off members of the Guild.

The county contends there was not enough time to bargain the layoffs. The county analogizes to the time crunch faced by the school board in Spokane Educ. Ass'n, 83 Wn.2d 366. In that case, the school board had a statutory deadline for giving notices of nonrenewal to employees who were not going to be rehired for the ensuing school year. Four days before the deadline, voters rejected a special levy, necessitating a reduction in the budget. The next day, the teachers' association made a request to negotiate "'budget allocations and other policy decisions related to the reduced school program.'" Spokane Educ. Ass'n, 83 Wn.2d at 370. The school board, while willing to negotiate to explore the possibility of rehiring, nevertheless felt compelled to send out the nonrenewal notices before the looming deadline. The teacher's association unsuccessfully sought a writ to prevent the notices from being sent. Affirming, the Supreme Court took the view that the request was not made within a reasonable time. Spokane Educ. Ass'n, 83 Wn.2d at 372. The situation here was not comparable. The Guild requested to bargain the layoffs on October 25, 2011. More than two months remained before the layoffs were to occur. The record does not contain

[25] King County, 2010 WL 2553113, at *9.

evidence that two months was too short to engage in potentially fruitful negotiations.

The county emphasizes its statutory responsibility to finalize a balanced budget for 2012 by the end of the year. The county contends that agreeing to bargain the allocation of funds within the county budget would have presented an intolerable risk of creating a large budget deficit. Again, though, the demand was to bargain layoffs, not the budget. The county also argues there was not enough time to bargain layoffs, given the fact that interest arbitration can take months to resolve an issue bargained to impasse. This argument too must fail, as it would mean that the possibility of interest arbitration that might extend beyond the current annual budget cycle could always be used to justify a refusal to bargain over wages, hours and working conditions. When a demand to bargain about a mandatory subject arises after a budget is set, the employer does not have to agree to a specific proposal. But the employer must be willing to consider alternatives suggested by the union and potentially agree on them, even if it means an adjustment to a previously established budget amount. See City of Spokane v. Spokane Police Guild, 87 Wn.2d 457, 465, 553 P.2d 1316 (1976).

In the Griffin School District case, PERC provided guidance for public employers when faced with a budget crisis:

> Chapter 41.56 RCW does not handcuff employers from taking action in the wake of a financial crisis. Should an employer be faced with a situation where it needs to make a change to a certain mandatory subject of bargaining, it should inform the union of the issue, the importance of the issue to the employer (including the timeline in which the employer needs to complete bargaining), and, upon request, bargain in good faith. If the employer and union reach a lawful impasse, then the employer is permitted to lawfully

> implement its last offer on that topic, while remaining willing to bargain all other mandatory subjects of bargaining, and remain willing to return to bargaining regarding the subject of bargaining implemented by the employer if the union makes such a request.[26]

PERC's guidance is sensible. The county's assertion that bargaining the layoffs would have introduced intolerable risk into the budget process is speculation not supported by the record.

Balancing the interests, we conclude that although the county's need to achieve budgetary savings was a legitimate interest, the county's interest in the method by which the savings would be achieved was not at the core of its management prerogatives. The decision to achieve budget savings by laying off the officers was suitable for collective bargaining, and it so substantially impacted wages, hours, and working conditions in the bargaining unit that the decision was a mandatory subject of bargaining.

WAIVER

The county argues that even if the layoffs are a mandatory subject of bargaining, the Guild waived its right to bargain over layoffs.

The collective bargaining agreement that expired in 2009 included language stating that nothing in the agreement supersedes "any matter delegated to" the Kitsap County Civil Service Commission by state law or ordinance. The civil service rules applicable to the sheriff's employees provide that layoffs made necessary by a shortage of funds will be done through seniority. "The Appointing Authority may layoff any employee . . . whenever such

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[26] Griffin Sch. Dist., 2010 WL 2553112, at *10.

action is made necessary by reason of a shortage of work or funds . . . in inverse of seniority."

In the first appeal, the county argued that the Guild had waived its right to bargain layoffs by the provision in the collective bargaining agreement delegating certain matters to the civil service commission. The court did not reach the question of whether the quoted language amounted to a waiver of the right to bargain layoffs. Instead the court determined that "waivers are permissive subjects that expire with the collective bargaining agreement unless they are renewed by mutual consent." Kitsap County, 179 Wn. App. at 996. Because the agreement containing the alleged waivers had expired in 2010, the parties had not yet negotiated a new agreement, and there was no evidence at the time of the layoffs that the parties had agreed to renew the alleged waivers, the court concluded the alleged waivers expired in 2010. Kitsap County, 179 Wn. App. at 996.

The single issue on remand was for the court to conduct the balancing test. The trial court did not reconsider waiver on remand. Nevertheless, the county renews the waiver argument in the present appeal, with this addition: that the civil service rules govern layoffs regardless of what was in the collective bargaining agreement.

To a great extent, the county's argument is barred by the law of the case doctrine. The law of the case doctrine stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation. The doctrine seeks to promote

finality and efficiency in the judicial process. Roberson v. Perez, 156 Wn.2d 33, 41, 123 P.3d 844 (2005). The law of the case doctrine is discretionary, not mandatory. Subsequent appellate reconsideration of an identical issue will be granted only where the holding of the prior appeal is clearly erroneous and application of the doctrine would result in manifest injustice. Folsom v. County of Spokane, 111 Wn.2d 256, 759 P.2d 1196 (1988); see also RAP 2.5(c)(2). The holding in the first appeal—that a waiver expires when the agreement expires—is not clearly erroneous. And the county does not persuasively demonstrate that reconsidering that holding is necessary to avoid a manifest injustice.

To the extent that the first appeal leaves room for the county to argue that the civil service rules preclude bargaining over layoffs, we reject the argument. A waiver of a right to bargain must be clear, unmistakable, and knowingly made, and it must specifically address the subject upon which the waiver is claimed. Kitsap County, 179 Wn. App. at 995. By this standard, we cannot say that the prior collective bargaining agreement included a waiver of the right to bargain layoffs by its reference to the civil service rules.

REMEDY

The trial court provided declaratory relief only. The county contends a declaratory order suffices to clarify the parties' bargaining obligations. PERC and the Guild ask for a more detailed remedial order.

Under the act, PERC has the authority to issue "appropriate remedial orders." RCW 41.56.160(1). The act is to be liberally construed to accomplish its purpose. Mun. of Metro. Seattle v. Pub. Emp't Relations Comm'n, 118 Wn.2d

621, 633, 826 P.2d 158 (1992). The purpose of the act "is to provide public employees with the right to join and be represented by labor organizations of their own choosing, and to provide for a uniform basis for implementing that right." City of Yakima v. Int'l Ass'n of Fire Fighters, AFL-CIO Local 469, 117 Wn.2d 655, 670, 818 P.2d 1076 (1991), quoted in Mun. of Metro. Seattle, 118 Wn.2d at 633. With that purpose in mind, the Supreme Court has interpreted the statutory phrase "appropriate remedial orders" to be those necessary to effectuate the purposes of the collective bargaining statute and to make PERC's lawful orders effective. Mun. of Metro. Seattle, 118 Wn.2d at 633.

Considering that the purpose of the act is to provide "a uniform basis" for implementing the right of collective bargaining, we hold that the court has the same authority and obligation as PERC to issue an appropriate remedial order. If PERC determines that any person has engaged in an unfair labor practice, a cease and desist order is appropriate, and PERC may also take affirmative action such as ordering the payment of damages and the reinstatement of employees. RCW 41.56.160(2). PERC's authority to fashion a remedy that suits the case is broad. Mun. of Metro. Seattle, 118 Wn.2d at 633.

The situation in the present case is clear-cut: either the county committed an unfair labor practice by refusing to bargain the layoffs, or the Guild committed an unfair labor practice by insisting on the right to bargain to impasse. Because we conclude that the layoff decision was a mandatory subject of bargaining, it follows that the county is the party who committed an unfair labor practice and that an appropriate remedial order should be entered. We remand for the trial

court to decide what directives to include in the order. The court should consider PERC's precedent and practice in the matter of remedies. See Mun. of Metro. Seattle, 118 Wn.2d at 634 (recognizing PERC's expertise in the relation of remedy to policy). The trial court may also consider on remand the Guild's arguments for an award of attorney fees.

We reverse and remand for entry of judgment in favor of the Guild and an appropriate remedial order.

Becker, J.

WE CONCUR:

Leach, J.

Dwyer, J.

APPENDIX B

Court of Appeals Division II
Case No. 44183-7-II
Published Opinion
Filed: March 13, 2014

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KITSAP COUNTY and KITSAP COUNTY SHERIFF, Respondents, v. KITSAP COUNTY CORRECTIONAL OFFICERS' GUILD, INC., Appellant.	No. 44183-7-II PUBLISHED OPINION

PENOYAR, J.P.T.[1] — This action arises from Kitsap County's decision to lay off two corrections officers for budgetary reasons. The officers' union, the Kitsap County Correctional Officers Guild (Guild), demanded to bargain the decision to lay off the officers. The County agreed to bargain the effects of the layoffs but not the decision. The County sought a declaratory judgment in superior court stating that layoffs are a permissive bargaining subject and the Guild committed an unfair labor practice when it demanded to bargain the decision. The Guild filed a cross motion for summary judgment seeking (1) a declaration that layoffs are a mandatory bargaining subject and (2) an injunction against further layoffs without bargaining. The trial court granted declaratory judgment in the County's favor.

The Guild appeals, arguing that the County's claim was not justiciable, layoffs are a mandatory bargaining subject, and it is entitled to attorney fees on appeal. The County argues that, even if the layoffs are a mandatory subject, the Guild waived its right to bargain. We hold that the parties have an actual, present dispute regarding the right to bargain the layoffs; thus, the County's claim is justiciable. Additionally, the Guild did not waive its right to bargain over

[1] Judge Joel Penoyar is serving as a judge pro tempore of the Court of Appeals, Division II, pursuant to CAR 21(c).

layoffs because the contractual waivers had expired. However, the trial court was required to conduct a balancing test to determine whether the layoffs in this case are a mandatory bargaining subject. The record does not reflect that the court engaged in this analysis. Accordingly, we remand for the trial court to conduct a balancing test based on the facts of this case. Attorney fees are not appropriate at this stage of the proceedings, but they may be awarded on remand.

FACTS

I. LAYOFFS

The County's 2012 jail budget projected a $935,000 revenue loss. Consequently, on October 24, 2011, the County informed two corrections officers that they would be laid off on January 1, 2012. The County stated that the layoffs were the result of budget reductions. When the officers informed the Guild of the impending layoffs, the Guild sent a letter to the County demanding to bargain the decision to conduct layoffs. The Guild also requested information related to the County's budget.

The parties met on November 8, 2011, and discussed the effects of the layoffs. After the meeting, the County sent the Guild a draft letter of understanding, stating that there would be two layoffs and allowing for voluntary layoffs in place of the scheduled involuntary layoffs. The Guild responded by clarifying that its original demand letter requested that the County bargain over both the decision to lay off employees and the effects of that decision. Because the parties did not reach an agreement on the decision to lay off the officers, which the Guild argued was a mandatory subject of bargaining, the Guild requested further meetings with the County. The County agreed to meet again and discuss the effects of the layoffs, but it stated that it believed the Guild had waived the right to bargain the decision based on provisions in the collective bargaining agreement and the Guild's failure to raise bargaining over the decision at the

November meeting. The parties did not meet again, and the County laid off the two officers on January 1, 2012.

II. 2010-12 COLLECTIVE BARGAINING AGREEMENT

The parties' collective bargaining agreement expired on December 31, 2009, and they were unable to reach an agreement over a new contract. The 2007-09 agreement contained the following provisions:

> SECTION I—RIGHTS OF MANAGEMENT
>
> 1. All management rights, powers, authority and functions . . . shall remain vested exclusively in Employer. It is expressly recognized that such rights, powers, authority and functions include . . . the right to establish, change, combine or eliminate jobs, positions, job classifications and descriptions . . . [and] the determination of the number of employees.

Clerk's Papers (CP) at 155-56.

> SECTION J—RELATIONSHIP TO CIVIL SERVICE RULES
>
> 1. Except as expressly limited by its terms, nothing in this Agreement shall supersede any matter delegated to the Kitsap County Civil Service Commission by State law or by ordinance, resolution or laws of or pertaining to the County of Kitsap and such Commission shall continue to have primary authority over the subjects within the scope of its jurisdiction and authority. If there then should be a conflict between any provisions of this Agreement and Civil Service, then the provisions of this Agreement shall govern.

CP at 156. The Civil Service Rules state, "The Appointing Authority may lay off any employee in the Classified Service whenever such action is made necessary by reason of a shortage of work or funds." CP at 162. The rules also include the process for layoffs and reinstatement.

The parties sought arbitration over the 2010-12 collective bargaining agreement.[2] Hearings were held in February 2012, and the arbitrator issued an award in June 2012. The

[2] The new agreement is not in the record.

provisions relating to management rights and the Civil Service Rules were not at issue in the arbitration.

III. SUPERIOR COURT ACTION

In June 2012, the County filed a motion for declaratory judgment in superior court, seeking a declaration that (1) the County had no legal duty to bargain the decision to "reduce the jail budget, operations, or staffing levels," (2) the Guild's demand to bargain the decision was an unfair labor practice, (3) the Guild's demand to bargain the decision breached the collective bargaining agreement, and (4) under the collective bargaining agreement, the Guild waived its rights to bargain layoffs resulting from "reductions in the jail's budget, operations, or staffing levels." CP at 338-39. The Guild filed a cross motion for summary judgment, seeking a declaratory judgment that the layoffs are a mandatory subject of bargaining and that the County committed an unfair labor practice by refusing to bargain the decision to conduct layoffs. The Guild also sought an injunction barring the County from conducting further layoffs until it satisfied its obligation to bargain with the Guild.

The trial court granted the County's motion for declaratory judgment and denied the Guild's cross motion for summary judgment. The Guild appeals.

ANALYSIS

I. JUSTICIABILITY

The Guild first argues that the County's claim was not justiciable because it did not present an actual, present, and existing dispute between the parties. We disagree.

The County's complaint alleged that the Guild demanded to "bargain to impasse the decision to reduce the jail budget, operations, or staffing levels." CP at 338. The Guild argues that it never demanded to bargain over the "jail budget, operations, or staffing levels"; rather, it

demanded that the County bargain "the decision to conduct any layoffs plus any associated effects/impacts." Appellant's Br. at 12; CP at 336. The Guild asserts, therefore, that there is no present dispute between the parties concerning the County's budget, operations, or staffing levels.

We review the justiciability of a claim de novo. *City of Longview v. Wallin*, 174 Wn. App. 763, 777, 301 P.3d 45 (quoting *Am. Traffic Solutions, Inc. v. City of Bellingham*, 163 Wn. App. 427, 432, 260 P.3d 245 (2011)), *review denied*, 178 Wn.2d 1020 (2013). A party invoking the jurisdiction of the court under the Uniform Declaratory Judgment Act must first present a justiciable controversy. *Wallin*, 174 Wn. App. at 777 (quoting *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001)). A justiciable controversy requires

> "(1) . . . an actual, present[,] and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract[,] or academic, and (4) a judicial determination of which will be final and conclusive."

Wallin, 174 Wn. App. at 777-78 (quoting *To-Ro Trade Shows*, 144 Wn.2d at 411). Courts must liberally construe complaints. CR 8(f).

Courts must liberally construe complaints. CR 8(f). Here, although the parties each characterize the dispute differently, the core issue is the same for both parties: whether the County had a mandatory duty to bargain the decision to implement layoffs. And the County's own argument before the trial court included discussion over the justiciable issue of whether the County had a mandatory duty to bargain the decision to conduct layoffs. This is an actual and present dispute between the parties that will continue until there is a judicial resolution. The County presented a justiciable controversy.

II. WAIVER

The County argues that the Guild contractually waived its rights to bargain over the layoffs. We disagree because any waivers expired in 2010 with the former collective bargaining agreement.

Waiver is an affirmative defense to a "unilateral change/refusal to bargain" unfair labor practice. *Pasco Police Officers' Ass'n v. City of Pasco*, 132 Wn.2d 450, 463, 938 P.2d 827 (1997) (quoting *Seattle Police Mgmt. Ass'n v. City of Seattle*, No. 8937-U-90-1967, 1992 WL 753329, at *13 (Wash. Pub. Emp't Relations Comm'n Sept. 24, 1992)). The employer bears the burden of proving that the union waived bargaining rights. *Yakima County Law Enforcement Officer's Guild v. Yakima County*, No. 23986-U-11-6135, 2013 WL 6773512, at *4 (Wash. Pub. Emp't Relations Comm'n Dec. 10, 2013). A waiver must be "'clear and unmistakable.'" *Pasco Police Officers' Ass'n*, 132 Wn.2d at 462 (quoting *Metro. Edison Co. v. NLRB*, 460 U.S. 693, 708, 103 S. Ct. 1467, 75 L. Ed. 2d 387 (1983)). It must also be knowingly made and must specifically address the subject upon which the waiver is claimed. *Pasco Police Officers' Ass'n*, 132 Wn.2d at 462. A waiver can be found by action, such as agreeing to a contract provision, or by inaction, such as failing to object to an act or proposal. *Pasco Police Officers' Ass'n*, 132 Wn.2d at 462 (quoting *WSCCCE v. Spokane County*, No. 5187-U-84-913, 1985 WL 291967, at *12 (Wash. Pub. Emp't Relations Comm'n Mar. 15, 1985)). Courts will not find a waiver "'unless it is clear that the parties were aware of their rights and made the conscious choice . . . to waive them.'" *Pasco Police Officers' Ass'n*, 132 Wn.2d at 462 (quoting *NLRB v. New York Tel. Co.*, 930 F.2d 1009, 1011 (2d Cir. 1991)).

We must first determine whether the waivers from the 2007-09 collective bargaining agreement were in effect at the time the layoffs occurred. During the pendency of proceedings

before an arbitration panel, existing hours, wages, and working conditions shall not be changed by either party's unilateral action. RCW 41.56.470. But waivers are permissive subjects that expire with the collective bargaining agreement unless they are renewed by mutual consent. *City of Spokane Managerial & Prof'l Ass'n v. City of Spokane*, No. 23815-U-11-6077, 2012 WL 440798, at *2 (Wash. Pub. Emp't Relations Comm'n Feb 8, 2012) Here, the agreement containing the alleged waivers had expired in 2010 and the parties had not yet negotiated a new agreement. The decision to implement layoffs occurred in October 2011 and the employees were laid off in January 2012. There is no evidence at the time of the layoffs that the parties had agreed to renew the alleged waivers. Therefore, the alleged waivers expired in 2010.

The County additionally argues that the Guild waived its rights to bargain the layoff decision because it allowed layoffs in the past without demanding the right to bargain the decision. Although the waivers in the collective bargaining agreement had expired, we may look to the parties' bargaining history for evidence that the Guild waived the right to bargain the layoffs. *See Int'l Ass'n of Fire Fighters, Local 469 v. City of Yakima*, No. 7900-U-89-1699, 1991 WL 733702, at *13 (Wash. Pub. Emp't Relations Comm'n 1991). In 2010, the County laid off four officers because of budget cuts. The parties met and bargained the effects of the layoffs. The County implies that the Guild did not demand to bargain the decision, but the record only contains evidence of the outcome of the bargaining, it does not contain evidence of what the Guild demanded to bargain. The County has the burden of proving that the Guild clearly and unmistakably waived its bargaining rights. The County has not met its burden here.

III. MANDATORY SUBJECT

Next, the Guild argues that the trial court erred when it denied the Guild's summary judgment motion because layoffs are a mandatory bargaining subject and the County committed

an unfair labor practice when it refused to bargain the decision to lay off two officers. Because the trial court failed to first conduct the balancing test to determine whether the layoffs in this case are mandatory or permissive subjects, we hold that the trial court erred and remand for the court to conduct the balancing analysis.

We review a summary judgment order de novo, engaging in the same inquiry as the trial court. *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Folsom*, 135 Wn.2d at 663. We construe the facts and reasonable inferences in favor of the nonmoving party. *Korslund v. DynCorp Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005). Summary judgment is appropriate if reasonable persons could reach only one conclusion from the evidence presented. *Korslund*, 156 Wn.2d at 177.

There are three broad categories of collective bargaining subjects: mandatory, permissive, and illegal. *Yakima County v. Yakima County Law Enforcement Officers' Guild*, 174 Wn. App. 171, 181, 297 P.3d 745 (quoting *Patrol Lieutenants Ass'n v. Sandberg*, 88 Wn. App. 652, 657, 946 P.2d 404 (1997)), *review denied*, 178 Wn.2d 1012 (2013). Parties to a collective bargaining agreement *must* bargain in good faith on mandatory subjects; they *may* bargain on permissive subjects, but they are not obliged to bargain to impasse. *Sandberg*, 88 Wn. App. at 657 (quoting *Pasco Police Officers' Ass'n*, 132 Wn.2d at 460). Even if an employer makes a unilateral decision regarding a permissive bargaining subject, the employer is still required to bargain over the effects of the decision on mandatory bargaining subjects. *Pub. Sch. Emps. of Wash. v. Wash. State Univ.*, No. 24440-U-11-6258, 2013 WL 1561271, at *2 (Wash. Pub. Emp't Relations Comm'n Apr. 9, 2013).

Mandatory bargaining subjects include wages, hours, and working conditions. *Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d 338, 341, 728 P.2d 1044 (1986). Permissive bargaining subjects include "[m]anagerial decisions that only remotely affect 'personnel matters,' and decisions that are predominantly 'managerial prerogatives.'" *Int'l Ass'n of Fire Fighters, Local Union 1052 v. Pub. Emp't Relations Comm'n*, 113 Wn.2d 197, 200, 778 P.2d 32 (1989). It is an unfair labor practice to refuse to bargain a mandatory subject to impasse and to demand to argue a permissive subject to impasse. RCW 41.56.140(4); *Yakima County*, 174 Wn. App. at 182.

Where an issue involves both mandatory and permissive subjects, courts use a balancing test to determine whether it is mandatory or permissive. *Yakima County*, 174 Wn. App. at 182. "On one side of the balance is the relationship the subject bears to 'wages, hours[,] and working conditions.' On the other side is the extent to which the subject lies 'at the core of entrepreneurial control' or is a management prerogative." *Int'l Ass'n of Fire Fighters*, 113 Wn.2d at 203 (quoting *Spokane Educ. Ass'n v. Barnes*, 83 Wn.2d 366, 376, 517 P.2d 1362 (1974)). Where the subject both relates to conditions of employment and is a management prerogative, the court must determine which characteristic predominates. *Int'l Ass'n of Fire Fighters*, 113 Wn.2d at 203. This involves a case-by-case analysis. *Int'l Ass'n of Fire Fighters*, 113 Wn.2d at 203.

In *International Ass'n of Fire Fighters*, our Supreme Court held that the Washington Public Employees Relations Commission (PERC) erred when it determined that a subject was permissive without first conducting the balancing test. 113 Wn.2d at 207. There, PERC concluded, and the superior court affirmed, that equipment staffing was a nonmandatory bargaining subject. *Int'l Ass'n of Fire Fighters*, 113 Wn.2d 202. In reaching this conclusion,

PERC did not balance the specific facts relating to the management prerogatives at issue and the decision's impact on working conditions; instead, it declared, based on previous decisions, that equipment staffing was a nonmandatory subject. *Int'l Ass'n of Fire Fighters*, 113 Wn.2d at 202. The court held that PERC erred by failing to conduct a fact-specific balancing, noting, "[e]very case presents unique circumstances, in which the relative strengths of the public employer's need for managerial control on the one hand, and the employees' concern with working conditions on the other, will vary." *Int'l Ass'n of Fire Fighters*, 113 Wn.2d at 207. Therefore, the court remanded for PERC to conduct the proper balancing test. *Int'l Ass'n of Fire Fighters*, 113 Wn.2d at 207.

The trial court in this case similarly failed to balance on the record the County's management prerogatives against the layoffs' impact on working conditions. Arguably, the layoffs heavily impact employees' working conditions, but, on these facts, the County's duty to implement a budget weighs on the management prerogative side of the balance. With such significant interests on each side of the balance, it is important that the trial court carefully consider the specific facts of this case and balance the competing interests.

The trial court erred when it failed to conduct the balancing test to determine whether the layoffs in this situation are mandatory or permissive bargaining subjects. We remand for the trial court to engage in the balancing analysis.

IV. ATTORNEY FEES

The Guild requests attorney fees on appeal under RCW 49.48.030. RCW 49.48.030 states, "In any action in which any person is successful in recovering judgment for wages or salary owed to him or her, reasonable attorney's fees, in an amount to be determined by the court, shall be assessed against said employer." Because we are remanding to the trial court for

further proceedings, the Guild has not yet successfully recovered employee wages or salaries. Attorney fees may be appropriate on remand, but they are not recoverable here under RCW 49.48.030.

We remand for the trial court to conduct a balancing test based on the facts of this case.

Penoyar, J.P.T.

We concur:

Maxa, J.

Lee, J.

APPENDIX C

Mason County Superior Court
Cause No. 11-2-01285-2
Court's Findings of Fact and
Conclusions of Law on Remand
(with Cover Letter from Visiting Judge Sutton)
Filed: August 28, 2014

Superior Court of the State of Washington
For Thurston County
Family and Juvenile Court

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August 28, 2014

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RE: Kitsap County, et al. v. Kitsap County Correctional Officers Guild v. PERC
Mason County Cause No. 11-2-01285-2

Dear Counsel:

This case involves the issue of whether a budget cut resulting in layoffs by Kitsap County was a mandatory or permissive subject of collective bargaining. The Court of Appeals remanded this matter in order for the trial Court to conduct a balancing test.

This case originally arose over Kitsap County's decision to lay off two corrections officers for budgetary reasons. The County's 2012 jail budget projected a $935,000 revenue loss. On October 24, 2011, the County informed two corrections officers that they would be laid off on January 1, 2012. The Kitsap County Correctional Officers Guild, demanded to bargain the decision to lay off the officers. The County sought a declaratory judgment in Superior Court stating that layoffs are a permissive

bargaining subject and argued that the Guild committed an unfair labor practice when it demanded to bargain the decision. The Guild then filed a cross motion for summary judgment seeking: 1) a declaration that the layoffs are a mandatory bargaining subject and 2) an injunction against further layoffs without bargaining.

Kitsap County and Kitsap County Sheriffs argued that the budget cuts made by the Kitsap County Commissioners in 2012 were required by statute and thus constituted a policy decision which lies at the heart of management's prerogative. The union, Kitsap County Correctional Officers Guild, argued that the budget cut impacted wages and were a mandatory subject of bargaining. After hearing extensive oral arguments during two hearings, this Court in 2012 granted Kitsap County's motion for declaratory judgment and denied Kitsap County Sheriff's cross motion. The order proposed by the parties was prepared by the Guild's attorney. At the time of the entry of this order, the Court inquired whether the order was sufficiently detailed and the Court was advised by both counsel that the order as proposed was adequate. The Court signed the proposed order and the Guild then filed its appeal.

Upon remand, PERC, having first learned of this case, filed a motion to intervene. This Court granted PERC's motion. Although initially the parties in 2012 agreed that the case presented a legal issue only, on remand, PERC and the Guild contended that additional evidence is or may be necessary in order for this Court to conduct a proper balancing inquiry as required. After considering these arguments, this Court set a new case scheduling order which permitted the parties to file any additional evidence by August 1, 2014. The Court required the parties to submit proposed findings and conclusions of law and invited additional briefing if warranted.

The Guild filed additional evidence attached to the July 31, 2014 declaration of Ms. Cousins. Kitsap County filed a responsive brief objecting to the new evidence. Kitsap County also objected to the Guild's new legal theory which they now advanced (that the impact on working conditions in the jail requires mandatory bargaining). The County disputed the factual recitations in Ms. Cousin's declaration that safety was impacted due to the reduction of the two correctional officers as this legal theory was not advanced previously by the Guild and the County disputed that staff safety was compromised by the budget cuts. The County noted that there had been no increase in staff assaults, litigation, or suicides since the two layoffs in 2012. The County argued that Ms. Cousins and the Guild were advised of and well aware of the budget cuts, the proposed layoffs, and the reasons for these decisions, and the programmatic changes that resulted from the budget cuts. County's responsive brief, p. 2.

This Court has reviewed the entire Mason County court file several times. This Court also reviewed the additional evidence filed by the Guild and Kitsap County on remand, the additional briefs by the parties, and PERC's brief. This Court is persuaded that the County's decision to cut the jail's budget (resulting in the layoff of two corrections officers) was a permissive subject of collective bargaining, not a mandatory subject. The Court adopts the proposed findings of fact and conclusions of law offered by the County as they reflect accurately the balancing test conducted both times by this Court, first in 2012 and now in 2014 on remand. The findings and conclusions are attached.

Yours very truly,

Lisa L Sutton

Lisa Sutton, Presiding Judge
Family and Juvenile Court
Thurston County Superior Court

LS:bvm
Enclosures

cc: Mason County Superior Court

THURSTON COUNTY SUPERIOR COURT
JUDGE LISA L. SUTTON PRESIDING
Department 7

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR MASON COUNTY

KITSAP COUNTY and KITSAP COUNTY SHERIFF,

Plaintiffs,

v.

KITSAP COUNTY CORRECTIONAL OFFICERS GUILD, INC.,

Defendant.

MASON COUNTY SUPERIOR COURT
NO. 11-2-01285-2

COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW ON REMAND

THIS MATTER having come on regularly for hearing before the undersigned Judge of the above-entitled Court on remand from the Court of Appeals; and the Court having considered the records and files herein, and being fully advised in the premises, now, therefore, makes the following findings of fact and conclusions of law:

1. FINDINGS OF FACT

1. The evidence before this Court was well developed, including testimony and exhibits submitted to the Court from the record in a four-day interest arbitration hearing.

2. The Kitsap County Board of Commissioners adopts an annual budget fixing revenues and expenditures for the ensuing fiscal year.

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www.kitsapgov.com/pros

3. In adopting a budget the Board of County Commissioners takes into consideration revenue sources including revenue from property and sales taxes, reductions in revenue from annexations, the existence or elimination of grant funding, the County's debt servicing obligations, and managing reserves.

4. In adopting a budget the Board of County Commissioners takes into consideration expenditures necessary to provide public services, including whether the services are mandated by law or proprietary, the level of services needed, and the amount of revenues available to fund particular services.

5. The Kitsap County Sheriff's Office is limited in the making of expenditures or incurring of liabilities as fixed in the budget by the Board of County Commissioners.

6. For year 2012, the Kitsap County Board of County Commissioners adopted a budget reducing the Sheriff's jail budget by $935,000 because of declining County revenues.

7. The Sheriff's Office reduced the jail's budget by $935,000 as established in the budget adopted by the Board of County Commissioners.

8. The Sheriff's Office reduced the jail's budget in part by eliminating two corrections officer positions.

9. On October 24, 2011, two corrections officers were informed that their positions would be eliminated and they would be laid off as of January 1, 2012, due to the budget reduction.

10. The Corrections Officers' Guild demanded to bargain the layoffs, and the County agreed to bargain the impact of layoffs, and did bargain the impact with the Guild.

11. Two corrections officers were laid off on January 1, 2012.

12. No allegation or evidence exists that the reduction of the County's or Sheriff's budget, the elimination of two corrections officer positions, or the layoff of two corrections officers was motivated by retaliation.

II. CONCLUSIONS OF LAW

A. The decision to reduce the budget, reduce staffing levels, and layoff employees involve both mandatory and permissive subjects of bargaining.

B. Balancing the relationship between the decision to reduce the budget, reduce staffing levels, and layoff employees bears to conditions of employment on the one side, and to entrepreneurial control or management prerogative on the other, the Court must determine which characteristic predominates.

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C. Chapter 36.40 RCW requires the Board of County Commissioners to adopt an annual budget, and sets out the process required for doing so. Officials and departments file their estimates of revenues and expenditures with the County's chief financial officer, following which a preliminary budget is prepared, public meetings on the preliminary budget are held, and at a hearing on the first Monday in December the Board adopts a budget fixing each item in detail. The adopted budget constitutes the appropriations for the ensuing year, and County officials are limited to the expenditures and liabilities as fixed for that office or department.

D. The decision to reduce the budget and staffing levels lies at the core of entrepreneurial control and management prerogative.

E. The decision to layoff two corrections officers impacts the two employees who lost their jobs.

F. Having considered the specific facts relating to the entrepreneurial control and management prerogatives at issue and the decision's impact on working conditions, the Court concludes that entrepreneurial control and management prerogative predominate. The subject of budgeting and staffing levels are central to entrepreneurial control and management prerogative. In addition, the decision involves the performance of statutory duties in that the Board of County Commissioners has a statutory duty to adopt a budget and the Kitsap County Sheriff's Office must abide by the budget adopted for it by the Commissioners.

G. Bargaining over the layoff of employees resulting from the decision to reduce the budget and staffing levels and from the performance of statutory duties to adopt a budget and limit the making of expenditures or incurring of liabilities as fixed in the budget cannot be fruitful for the collective bargaining process because the employer cannot negotiate the level of revenues and expenditures fixed and adopted in the budget.

H. The layoff of the two corrections officers was a permissive subject of bargaining.

I. Kitsap County and the Kitsap County Sheriff did not have a mandatory duty to bargain the decision to reduce the budget, reduce staffing levels, or layoff two corrections officers.

DONE IN OPEN COURT this 29 day of August, 2014.

JUDGE LISA L. SUTTON

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APPENDIX D

Chapter 36.40 RCW
and
RCW 41.56.440- .470

36.39.060 Senior citizens programs—Long-term care ombuds programs—Authorization. (1) Counties, cities, and towns are granted the authority, and it is hereby declared to be a public purpose for counties, cities, and towns, to establish and administer senior citizens programs either directly or by creating public corporations or authorities to carry out the programs and to expend their own funds for such purposes, as well as to expend federal, state, or private funds that are made available for such purposes. Such federal funds shall include, but not be limited to, funds provided under the federal older Americans act, as amended (42 U.S.C. Sec. 3001 et seq.).

(2) Counties, cities, and towns may establish and administer long-term care ombuds programs for residents, patients, and clients if such a program is not prohibited by federal or state law. Such local ombuds programs shall be coordinated with the efforts of other long-term care ombuds programs, including the office of the state long-term care ombuds established in RCW 43.190.030, to avoid multiple investigation of complaints. [2013 c 23 § 67; 1983 c 290 § 13; 1979 c 109 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 36.40 RCW
BUDGET

Sections

County road property tax revenues, budgeting of for services: RCW 36.33.220.

Flood control zone district budget as affecting: RCW 86.15.140.

Juvenile detention facilities, budget allocation may be used for: RCW 13.16.080.

Metropolitan municipal corporation costs in: RCW 35.58.420.

36.40.010 Estimates to be filed by county officials. On or before the second Monday in July of each year, the county auditor or chief financial officer designated in a charter county shall notify in writing each county official, elective or appointive, in charge of an office, department, service, or institution of the county, to file with him or her on or before the second Monday in August thereafter detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service, or institution for the ensuing fiscal year. [2009 c 337 § 6; 1963 c 4 § 36.40.010. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

36.40.020 Commissioners to file road and bridge estimate and estimate of future bond expenditures. The county commissioners shall submit to the auditor a detailed statement showing all new road and bridge construction to be financed from the county road fund, and from bond issues theretofore issued, if any, for the ensuing fiscal year, together with the cost thereof as computed by the county road engineer or for constructions in charge of a special engineer, then by such engineer, and such engineer shall prepare such estimates of cost for the county commissioners. They shall also submit a similar statement showing the road and bridge maintenance program, as near as can be estimated.

The county commissioners shall also submit to the auditor detailed estimates of all expenditures for construction or improvement purposes proposed to be made from the proceeds of bonds or warrants not yet authorized. [1963 c 4 § 36.40.020. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

36.40.030 Forms of estimates—Penalty for delay. The estimates required in RCW 36.40.010 and 36.40.020 shall be submitted on forms provided by the county auditor or chief financial officer designated in a charter county and classified according to the classification established by the state auditor. The county auditor or chief financial officer designated in a charter county shall provide such forms. He or she shall also prepare the estimates for interest and debt redemption requirements and any other estimates the preparation of which properly falls within the duties of his or her office.

Each such official shall file his or her estimates within the time and in the manner provided in the notice and form and the county auditor or chief financial officer designated in a charter county may deduct and withhold as a penalty from the salary of each official failing or refusing to file such estimates as herein provided, the sum of fifty dollars for each day of delay: PROVIDED, That the total penalty against any one official shall not exceed two hundred fifty dollars in any one year.

In the absence or disability of any official the duties required herein shall devolve upon the official or employee in charge of the office, department, service, or institution for the time being. The notice shall contain a copy of this penalty clause. [2009 c 337 § 7; 1995 c 301 § 62; 1963 c 4 § 36.40.030. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

36.40.040 Preliminary budget. Upon receipt of the estimates the county auditor or chief financial officer designated in a charter county shall prepare the county budget which shall set forth the complete financial program of the county for the ensuing fiscal year, showing the expenditure program and the sources of revenue by which it is to be financed.

The revenue section shall set forth the estimated receipts from sources other than taxation for each office, department, service, or institution for the ensuing fiscal year, the actual receipts for the first six months of the current fiscal year and the actual receipts for the last completed fiscal year, the estimated surplus at the close of the current fiscal year and the amount proposed to be raised by taxation.

The expenditure section shall set forth in comparative and tabular form by offices, departments, services, and institutions the estimated expenditures for the ensuing fiscal year, the appropriations for the current fiscal year, the actual expenditures for the first six months of the current fiscal year including all contracts or other obligations against current appropriations, and the actual expenditures for the last completed fiscal year.

All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington state association of counties and the Washington state association of county officials.

The county auditor or chief financial officer designated in a charter county shall set forth separately in the annual budget to be submitted to the county legislative authority the total amount of emergency warrants issued during the preceding fiscal year, together with a statement showing the amount issued for each emergency, and the legislative authority shall include in the annual tax levy, a levy sufficient to raise an amount equal to the total of such warrants: PROVIDED, That the legislative authority may fund the warrants or any part thereof into bonds instead of including them in the budget levy. [2009 c 337 § 8. Prior: 1995 c 301 § 63; 1995 c 194 § 7; 1973 c 39 § 1; prior: 1971 ex.s. c 85 § 4; 1969 ex.s. c 252 § 1; 1963 c 4 § 36.40.040; prior: (i) 1923 c 164 § 2; RRS § 3997-2. (ii) 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.050 Revision by county commissioners. The budget shall be submitted by the auditor or chief financial officer designated in a charter county to the board of county commissioners on or before the first Tuesday in September of each year. The board shall thereupon consider the same in detail, making any revisions or additions it deems advisable. [2009 c 337 § 9; 1963 c 4 § 36.40.050. Prior: 1923 c 164 § 3, part; RRS § 3997-3, part.]

36.40.060 Notice of hearing on budget. The county legislative authority shall then publish a notice stating that it has completed and placed on file its preliminary budget for the county for the ensuing fiscal year, a copy of which will be furnished any citizen who will call at its office for it, and that it will meet on the first Monday in October thereafter for the purpose of fixing the final budget and making tax levies, designating the time and place of the meeting, and that any taxpayer may appear thereat and be heard for or against any part of the budget. The notice shall be published once each week for two consecutive weeks immediately following adoption of the preliminary budget in the official newspaper of the county. The county legislative authority shall provide a sufficient number of copies of the detailed and comparative preliminary budget to meet the reasonable demands of taxpayers therefor and the same shall be available for distribution not later than two weeks immediately preceding the first Monday in October. [1985 c 469 § 47; 1963 c 4 § 36.40.060. Prior: 1923 c 164 § 3, part; RRS § 3997-3, part.]

36.40.070 Budget hearing. On the first Monday in October in each year the board of county commissioners shall meet at the time and place designated in the notice, whereat any taxpayer may appear and be heard for or against any part of the budget. The hearing may be continued from day to day until concluded but not to exceed a total of five days. The officials in charge of the several offices, departments, services, and institutions shall, at the time the estimates for their respective offices, departments, services or institutions are under consideration be called in and appear before such hearing by the board at the request of any taxpayer and may be questioned concerning such estimates by the commissioners or any taxpayer present. [1963 c 4 § 36.40.070. Prior: 1943 c 145 § 1, part; 1941 c 99 § 1, part; 1923 c 164 § 4, part; Rem. Supp. 1943 § 3997-4, part.]

36.40.071 Budget hearing—Alternate date for budget hearing. Notwithstanding any provision of law to the contrary, the board of county commissioners may meet for the purpose of holding a budget hearing, provided for in RCW 36.40.070, on the first Monday in December. The board of county commissioners may also set other dates relating to the budget process, including but not limited to the dates set in RCW 36.40.010, 36.40.050, and 36.81.130 to conform to the alternate date for the budget hearing. [1971 ex.s. c 136 § 1.]

36.40.080 Final budget to be fixed. Upon the conclusion of the budget hearing the county legislative authority shall fix and determine each item of the budget separately and shall by resolution adopt the budget as so finally determined and enter the same in detail in the official minutes of the board, a copy of which budget shall be forwarded to the state auditor. [1995 c 301 § 64; 1963 c 4 § 36.40.080. Prior: 1943 c 145 § 1, part; 1941 c 99 § 1, part; 1923 c 164 § 4, part; Rem. Supp. 1943 § 3997-4, part.]

36.40.090 Taxes to be levied. The board of county commissioners shall then fix the amount of the levies necessary to raise the amount of the estimated expenditures as finally determined, less the total of the estimated revenues from sources other than taxation, including such portion of any available surplus as in the discretion of the board it shall be advisable to so use, and such expenditures as are to be met from bond or warrant issues: PROVIDED, That no county shall retain an unbudgeted cash balance in the current expense fund in excess of a sum equal to the proceeds of a one dollar and twenty-five cents per thousand dollars of assessed value levy against the assessed valuation of the county. All taxes shall be levied in specific sums and shall not exceed the amount specified in the preliminary budget. [1973 1st ex.s. c 195 § 33; 1963 c 4 § 36.40.090. Prior: 1943 c 145 § 1, part; 1941 c 99 § 1, part; 1923 c 164 § 4, part; Rem. Supp. 1943 § 3997-4, part.]

Additional notes found at www.leg.wa.gov

36.40.100 Budget constitutes appropriations—Transfers—Supplemental appropriations. The estimates of expenditures itemized and classified as required in RCW 36.40.040 and as finally fixed and adopted in detail by the board of county commissioners shall constitute the appropriations for the county for the ensuing fiscal year; and every county official shall be limited in the making of expenditures or the incurring of liabilities to the amount of the detailed appropriation items or classes respectively: PROVIDED, That upon a resolution formally adopted by the board at a regular or special meeting and entered upon the minutes, transfers or revisions within departments, or supplemental appropriations to the budget from unanticipated federal or state funds may be made: PROVIDED FURTHER, That the board shall publish notice of the time and date of the meeting at which the supplemental appropriations resolution will be adopted, and the amount of the appropriation, once each week, for two consecutive weeks prior to the meeting in the official newspaper of the county. [1985 c 469 § 48; 1973 c 97 § 1; 1969 ex.s. c 252 § 2; 1965 ex.s. c 19 § 1; 1963 c 4 § 36.40.100. Prior: 1945 c 201 § 1, part; 1943 c 66 § 1, part; 1927 c 301 § 1, part; 1923 c 164 § 5, part; Rem. Supp. 1945 § 3997-5, part.]

36.40.120 Limitation on use of borrowed money. Moneys received from borrowing shall be used for no other purpose than that for which borrowed except that if any surplus shall remain after the accomplishment of the purpose for which borrowed, it shall be used to redeem the county debt. Where the budget contains an expenditure program to be financed from a bond issue to be authorized thereafter no such expenditure shall be made or incurred until such bonds have been duly authorized. [1963 c 4 § 36.40.120. Prior: 1945 c 201 § 1, part; 1943 c 66 § 1, part; 1927 c 301 § 1, part; 1923 c 164 § 5, part; Rem. Supp. 1945 § 3997-5, part.]

36.40.130 Excess of expenditures, liability. Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations or as revised by transfer as in RCW 36.40.100 or 36.40.120 provided shall not be a liability of the county, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his or her official bond. The county auditor shall issue no warrant and the county commissioners shall approve no claim for any expenditure in excess of the detailed budget appropriations or as revised under the provisions of RCW 36.40.100 through 36.40.130, except upon an order of a court of competent jurisdiction, or for emergencies as hereinafter provided. [2009 c 337 § 10; 1963 c 4 § 36.40.130. Prior: 1945 c 201 § 1, part; 1943 c 66 § 1, part; 1927 c 301 § 1, part; 1923 c 164 § 5, part; Rem. Supp. 1945 § 3997-5, part.]

36.40.140 Emergencies subject to hearing. When a public emergency, other than such as are specifically described in RCW 36.40.180, and which could not reasonably have been foreseen at the time of making the budget, requires the expenditure of money not provided for in the budget, the board of county commissioners by majority vote of the commissioners at any meeting the time and place of which all the commissioners have had reasonable notice, shall adopt and enter upon its minutes a resolution stating the facts constituting the emergency and the estimated amount of money required to meet it, and shall publish the same, together with a notice that a public hearing thereon will be held at the time and place designated therein, which shall not be less than one week after the date of publication, at which any taxpayer may appear and be heard for or against the expenditure of money for the alleged emergency. The resolution and notice shall be published once in the official county newspaper, or if there is none, in a legal newspaper in the county. Upon the conclusion of the hearing, if the board of county commissioners approves it, an order shall be made and entered upon its official minutes by a majority vote of all the members of the board setting forth the facts constituting the emergency, together with the amount of expenditure authorized, which order, so entered, shall be lawful authorization to expend said amount for such purpose unless a review is applied for within five days thereafter. [1969 ex.s. c 185 § 3; 1963 c 4 § 36.40.140. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

Additional notes found at www.leg.wa.gov

36.40.150 Emergencies subject to hearing—Right of taxpayer to review order. No expenditure shall be made or liability incurred pursuant to the order until a period of five days, exclusive of the day of entry of the order, have elapsed, during which time any taxpayer or taxpayers of the county feeling aggrieved by the order may have the superior court of the county review it by filing with the clerk of such court a verified petition, a copy of which has been served upon the county auditor. The petition shall set forth in detail the objections of the petitioners to the order and the reasons why the alleged emergency does not exist. [1963 c 4 § 36.40.150. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.160 Emergencies subject to hearing—Petition for review suspends order. The service and filing of the petition shall operate to suspend the emergency order and the authority to make any expenditure or incur any liability thereunder until final determination of the matter by the court. [1963 c 4 § 36.40.160. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.170 Emergencies subject to hearing—Court's power on review. Upon the filing of a petition the court shall immediately fix a time for hearing it which shall be at the earliest convenient date. At such hearing the court shall hear the matter de novo and may take such testimony as it deems necessary. Its proceedings shall be summary and informal and its determination as to whether an emergency such as is contemplated within the meaning and purpose of this chapter exists or not and whether the expenditure authorized by said order is excessive or not shall be final. [1963 c 4 § 36.40.170. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.180 Emergencies subject to hearing—Nondebatable emergencies. Upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, epidemic, riot, or insurrection, or for the immediate preserva-

tion of order or of public health or for the restoration to a condition of usefulness of any public property the usefulness of which has been destroyed by accident, or for the relief of a stricken community overtaken by a calamity, or in settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of any public utility owned by the county, or to meet mandatory expenditures required by any law, the board of county commissioners may, upon the adoption by the unanimous vote of the commissioners present at any meeting the time and place of which all of such commissioners have had reasonable notice, of a resolution stating the facts constituting the emergency and entering the same upon their minutes, make the expenditures necessary to meet such emergency without further notice or hearing. [1963 c 4 § 36.40.180. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.190 Payment of emergency warrants. All emergency expenditures shall be paid for by the issuance of emergency warrants which shall be paid from any moneys on hand in the county treasury in the fund properly chargeable therewith and the county treasurer shall pay such warrants out of any moneys in the treasury in such fund. If at any time there are insufficient moneys on hand in the treasury to pay any of such warrants, they shall be registered, bear interest and be called in the manner provided by law for other county warrants. [1963 c 4 § 36.40.190. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.195 Supplemental appropriations of unanticipated funds from local sources. In addition to the supplemental appropriations provided in RCW 36.40.100 and 36.40.140, the county legislative authority may provide by resolution a policy for supplemental appropriations as a result of unanticipated funds from local revenue sources. [1997 c 204 § 4.]

36.40.200 Lapse of budget appropriations. All appropriations shall lapse at the end of the fiscal year: PROVIDED, That the appropriation accounts may remain open for a period of thirty days, and may, at the auditor's discretion, remain open for a period not to exceed sixty days thereafter for the payment of claims incurred against such appropriations prior to the close of the fiscal year.

After such period has expired all appropriations shall become null and void and any claim presented thereafter against any such appropriation shall be provided for in the next ensuing budget: PROVIDED, That this shall not prevent payments upon uncompleted improvements in progress at the close of the fiscal year. [1997 c 204 § 2; 1963 c 4 § 36.40.200. Prior: 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

36.40.205 Salary adjustment for county legislative authority office—Ratification and validation of preelection action. If prior to the election for any county legislative authority office, a salary adjustment for such position to become effective upon the commencement of the term next following such election is adopted by ordinance or resolution of the legislative authority of such county, and a salary adjustment coinciding with such preceding ordinance or resolution thereof is properly adopted as part of the county budget for the years following such election, such action shall be deemed a continuing part of and shall ratify and validate the preelection action as to such salary adjustment. [1975 1st ex.s. c 32 § 1.]

36.40.210 Monthly report. On or before the twenty-fifth day of each month the auditor shall submit or make available to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the current fiscal year to the first day of said month, together with the unexpended and unencumbered balance of each appropriation. He or she shall also set forth the receipts from taxes and from sources other than taxation for the same periods. [2009 c 337 § 11; 1963 c 4 § 36.40.210. Prior: 1923 c 164 § 7; RRS § 3997-7.]

36.40.220 Rules, classifications, and forms. The state auditor may make such rules, classifications, and forms as may be necessary to carry out the provisions in respect to county budgets, define what expenditures shall be chargeable to each budget account, and establish such accounting and cost systems as may be necessary to provide accurate budget information. [1995 c 301 § 65; 1963 c 4 § 36.40.220. Prior: 1923 c 164 § 8; RRS § 3997-8.]

36.40.230 No new funds created. This chapter shall not be construed to create any new fund. [1963 c 4 § 36.40.230. Prior: 1923 c 164 § 9; RRS § 3997-9.]

36.40.240 Penalty. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars nor more than five hundred dollars. [1963 c 4 § 36.40.240. Prior: 1923 c 164 § 10; RRS § 3997-10.]

36.40.250 Biennial budgets—Supplemental and emergency budgets. In lieu of adopting an annual budget, the county legislative authority of any county may adopt an ordinance or a resolution providing for biennial budgets with a mid-biennium review and modification for the second year of the biennium. The county legislative authority may repeal such an ordinance or resolution and revert to adopting annual budgets for a period commencing after the end of a biennial budget cycle. The county legislative authority of a county with a biennial budget cycle may adopt supplemental and emergency budgets in the same manner and subject to the same conditions as the county legislative authority in a county with an annual budget cycle.

The procedure and steps for adopting a biennial budget shall conform with the procedure and steps for adopting an annual budget and with requirements established by the state auditor. The state auditor shall establish requirements for preparing and adopting the mid-biennium review and modification for the second year of the biennium.

Expenditures included in the biennial budget, mid-term modification budget, supplemental budget, or emergency budget shall constitute the appropriations for the county dur-

ing the applicable period of the budget and every county official shall be limited in making expenditures or incurring liabilities to the amount of the detailed appropriation item or classes in the budget.

In lieu of adopting an annual budget or a biennial budget with a mid-biennium review for all funds, the legislative authority of any county may adopt an ordinance or a resolution providing for a biennial budget or budgets for any one or more funds of the county, with a mid-biennium review and modification for the second year of the biennium, with the other funds remaining on an annual budget. The county legislative authority may repeal such an ordinance or resolution and revert to adopting annual budgets for a period commencing after the end of the biennial budget or biennial budgets for the specific agency fund or funds. The county legislative authority of a county with a biennial budget cycle may adopt supplemental and emergency budgets in the same manner and subject to the same conditions as the county legislative authority in a county with an annual budget cycle.

The county legislative authority shall hold a public hearing on the proposed county property taxes and proposed road district property taxes prior to imposing the property tax levies. [1997 c 204 § 3; 1995 c 193 § 1.]

Reviser's note: 1995 c 193 directed that this section be added to chapter 36.32 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 36.40 RCW.

Chapter 36.42 RCW
RETAIL SALES AND USE TAXES

County and city sales and use taxes: Chapter 82.14 RCW.

Chapter 36.43 RCW
BUILDING CODES AND FIRE REGULATIONS

Sections

Electrical construction regulations applicable to counties: RCW 19.29.010.

Energy-related building standards: Chapter 19.27A RCW.

State building code: Chapter 19.27 RCW.

36.43.010 Authority to adopt. The boards of county commissioners may adopt standard building codes and standard fire regulations to be applied within their respective jurisdictions. [1963 c 4 § 36.43.010. Prior: 1943 c 204 § 1; Rem. Supp. 1943 § 4077-10.]

36.43.020 Area to which applicable. The building codes or fire regulations when adopted by the board of county commissioners shall be applicable to all the area of the county situated outside the corporate limits of any city or town, or to such portion thereof as may be prescribed in such building code or fire regulation. [1963 c 4 § 36.43.020. Prior: 1943 c 204 § 2; Rem. Supp. 1943 § 4077-11.]

36.43.030 Enforcement—Inspectors. The boards of county commissioners may appoint fire inspectors or other inspectors to enforce any building code or fire regulation adopted by them. The boards must enforce any building code or fire regulation adopted by them. [1963 c 4 § 36.43.030. Prior: 1943 c 204 § 3; Rem. Supp. 1943 § 4077-12.]

36.43.040 Penalty for violation of code or regulation. Any person violating the provisions of any building code or any fire regulation lawfully adopted by any board of county commissioners shall be guilty of a misdemeanor. [1963 c 4 § 36.43.040. Prior: 1943 c 204 § 4; Rem. Supp. 1943 § 4077-13.]

Chapter 36.45 RCW
CLAIMS AGAINST COUNTIES

Sections

Assessor's expense when meeting with department of revenue as: RCW 84.08.190.

Autopsy costs as: RCW 68.50.104, 68.50.106.

Claims, reports, etc., filing: RCW 1.12.070.

Compromise of unlawful, when: RCW 43.09.260.

Costs against county, civil actions: RCW 4.84.170.

Courtrooms, expense of sheriff in providing as county charge: RCW 2.28.140.

Diking, drainage, or sewerage improvement assessments as: RCW 85.08.500, 85.08.530.

Elections, expense of registration of voters as: RCW 29A.08.150.

Expense of keeping jury as: RCW 4.44.310.

Flood control
by counties jointly, county liability: RCW 86.13.080.
districts (1937 act) assessments as: RCW 86.09.526, 86.09.529.

Health officers' convention expense as: RCW 43.70.140.

Incorporation into city or town of intercounty areas as: RCW 35.02.240.

Liability of county on failure to require contractors bond: RCW 39.08.015.

Lien for labor, material, taxes on public works: Chapter 60.28 RCW.

Metropolitan municipal corporation costs as: Chapter 35.58 RCW.

Municipal court expenses as: RCW 35.20.120.

Port district election costs as: RCW 53.04.070.

Railroad grade crossing costs as: Chapter 81.53 RCW.

Reclamation district commission expenses as: RCW 89.30.070.

Regional jail camps, cost of committing county prisoners to as: RCW 72.64.110.

Superior court, expenses of visiting judge as: RCW 2.08.170.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

Veterans' meeting place rental as: RCW 73.04.080.

Vital statistics registrars' fees as charge against: RCW 70.58.040.

36.45.010 Manner of filing. All claims for damages against any county shall be filed in the manner set forth in chapter 4.96 RCW. [1993 c 449 § 10; 1967 c 164 § 14; 1963 c 4 § 36.45.010. Prior: 1957 c 224 § 7; prior: 1919 c 149 § 1, part; RRS § 4077, part.]

Purpose—Severability—1993 c 449: See notes following RCW 4.96.010.

Severability—Purpose—1967 c 164: See notes following RCW 4.96.010.

Tortious conduct of political subdivisions and municipal corporations, liability for damages: Chapter 4.96 RCW.

Additional notes found at www.leg.wa.gov

41.56.440 Uniformed personnel—Negotiations—Declaration of an impasse—Appointment of mediator. Negotiations between a public employer and the bargaining representative in a unit of uniformed personnel shall be commenced at least five months prior to the submission of the budget to the legislative body of the public employer. If no agreement has been reached sixty days after the commencement of such negotiations then, at any time thereafter, either party may declare that an impasse exists and may submit the dispute to the commission for mediation, with or without the concurrence of the other party. The commission shall appoint a mediator, who shall forthwith meet with the representatives of the parties, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect an agreement: PROVIDED, That a mediator does not have a power of compulsion. [1979 ex.s. c 184 § 1; 1975-'76 2nd ex.s. c 14 § 1; 1975 1st ex.s. c 296 § 28; 1973 c 131 § 3.]

Additional notes found at www.leg.wa.gov

41.56.450 Uniformed personnel—Interest arbitration panel—Powers and duties—Hearings—Findings and determination. If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. Within seven days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chair of the arbitration panel. Upon the failure of the arbitrators to select a neutral chair within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chair of the panel: (1) By mutual consent, the two appointed members may jointly request the commission to, and the commission shall, appoint a third member within two days of such request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chair shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chair shall be shared equally between the parties.

The arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chair of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chair of the arbitration panel, unless the parties agree to a longer period.

The neutral chair shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chair shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious. [2012 c 117 § 87; 1983 c 287 § 2; 1979 ex.s. c 184 § 2; 1975-'76 2nd ex.s. c 14 § 2; 1975 1st ex.s. c 296 § 29; 1973 c 131 § 4.]

Additional notes found at www.leg.wa.gov

41.56.452 Interest arbitration panel a state agency. An interest arbitration panel created pursuant to RCW 41.56.450, in the performance of its duties under chapter 41.56 RCW, exercises a state function and is, for the purposes of this chapter, a state agency. Chapter 34.05 RCW does not apply to proceedings before an interest arbitration panel under this chapter. [1983 c 287 § 3; 1980 c 87 § 19.]

Additional notes found at www.leg.wa.gov

41.56.465 Uniformed personnel—Interest arbitration panel—Determinations—Factors to be considered. (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) The average consumer prices for goods and services, commonly known as the cost of living;

(d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and

(e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or tradi-

tionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in *RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

(2) For employees listed in *RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

(3) For employees listed in *RCW 41.56.030(7) (e) through (h), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.

(4) For employees listed in RCW 41.56.028:

(a) The panel shall also consider:

(i) A comparison of child care provider subsidy rates and reimbursement programs by public entities, including counties and municipalities, along the west coast of the United States; and

(ii) The financial ability of the state to pay for the compensation and benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) The public's interest in reducing turnover and increasing retention of child care providers;

(ii) The state's interest in promoting, through education and training, a stable child care workforce to provide quality and reliable child care from all providers throughout the state; and

(iii) In addition, for employees exempt from licensing under chapter 74.15 RCW, the state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

(5) For employees listed in RCW 74.39A.270:

(a) The panel shall consider:

(i) A comparison of wages, hours, and conditions of employment of publicly reimbursed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States; and

(ii) The financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(b) The panel may consider:

(i) A comparison of wages, hours, and conditions of employment of publicly employed personnel providing similar services to similar clients, including clients who are elderly, frail, or have developmental disabilities, both in the state and across the United States;

(ii) The state's interest in promoting a stable long-term care workforce to provide quality and reliable care to vulnerable elderly and disabled recipients;

(iii) The state's interest in ensuring access to affordable, quality health care for all state citizens; and

(iv) The state's fiscal interest in reducing reliance upon public benefit programs including but not limited to medical coupons, food stamps, subsidized housing, and emergency medical services.

(6) Subsections (2) and (3) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW. [2007 c 278 § 1; 1995 c 273 § 2; 1993 c 398 § 3.]

***Reviser's note:** RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13).

Additional notes found at www.leg.wa.gov

41.56.470 Uniformed personnel—Arbitration panel—Rights of parties. During the pendency of the proceedings before the arbitration panel, existing wages, hours, and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his or her rights or position under chapter 131, Laws of 1973. [2012 c 117 § 88; 1973 c 131 § 6.]

Additional notes found at www.leg.wa.gov

41.56.473 Uniformed personnel—Application of chapter to Washington state patrol—Bargaining subjects. (1) In addition to the entities listed in RCW 41.56.020, this chapter applies to the state with respect to the officers of the Washington state patrol appointed under RCW 43.43.020, except that the state is prohibited from negotiating any matters relating to retirement benefits or health care benefits or other employee insurance benefits.

(2) For the purposes of negotiating wages, wage-related matters, and nonwage matters, the state shall be represented by the governor or the governor's designee who is appointed under chapter 41.80 RCW, and costs of the negotiations under this section shall be reimbursed as provided in RCW 41.80.140.

(3) The governor or the governor's designee shall consult with the chief of the Washington state patrol regarding collective bargaining.

(4) The negotiation of provisions pertaining to wages and wage-related matters in a collective bargaining agreement between the state and the Washington state patrol officers is subject to the following:

(a) The state's bargaining representative must periodically consult with a subcommittee of the joint committee on employment relations created in RCW 41.80.010(5) which shall consist of the four members appointed to the joint committee with leadership positions in the senate and the house of representatives, and the chairs and ranking minority members of the senate transportation committee and the house transportation committee, or their successor committees. The subcommittee must be consulted regarding the appropriations