

NO. 42697-8-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

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YAKIMA COUNTY DEPUTY SHERIFF'S OFFICERS' GUILD

Appellant

v.

YAKIMA COUNTY and
PUBLIC EMPLOYMENT RELATIONS COMMISSION

Respondents

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STATE OF WASHINGTON
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APPELLANT'S OPENING BRIEF

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ORIGINAL

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I. INTRODUCTION

This administrative review case arises from an Unfair Labor Practice (ULP) Complaint filed by Respondent, Yakima County, against the Appellant, Yakima County Law Enforcement Officers Guild, with the Public Employment Relations Commission (PERC). The County had complained that a Guild contract proposal presented negotiations fell outside the scope of mandatorily bargainable "wages, hours and working conditions," as that phrase is defined in the Public Employees Collective Bargaining Act (PECBA).

The matter was submitted before a PERC Hearing Examiner, Robin Romeo, on cross motions for summary judgment. Romeo ruled for the Guild and dismissed the County's complaint. But the County appealed to the Commission, which then overturned the Examiner.

A Petition was then filed by the Guild to Thurston County Superior Court. The Court affirmed the Commission. The Guild then filed this appeal asserting that its contract proposals at issue here falls firmly *inside* the scope of mandatory subjects of bargaining. The Guild also objects to the overbroad PERC

restraining order which impedes its ability to conduct future contract negotiations.

II. ASSIGNMENT OF ERROR

A. Errors Assigned

The Guild assigns the following errors to the Superior Court:

Assigned Error Number 1: The Superior Court erred by affirming the PERC Decision 10204-A.

Assigned Error Number 2: The Superior Court erred by issuing a cease and desist order against the Guild.

B. Issues Presented

The Guild presents the following Issues relating to the Assigned Errors:

Issue Number 1: PECBA requires that "wages, hours and working conditions" be negotiated. During contract negotiations the Guild proposed, with some clarifying modifications, to continue previous contract language allowing "release time" — a form of paid leave to negotiate and enforce the labor contract. Does paid release time to negotiate the labor contract directly relate to "hours" and "wages," and "working conditions" as defined under PECBA?

Issue Number 2: Court precedent, including the Supreme Court ruling in *State v. Northshore School District*¹ holds that

¹ 99 Wn.2d 232, 662 P.2d 38 (1983).

broad release time is lawful. Did PERC err by concluding in this case that the scope of allowable release time was limited to direct meetings between labor and management?

Issue Number 3: PERC had issued a cease and desist order against the Guild as part of its remedial order. The cease and desist order apparently restrains the Guild from presenting future contract proposals concerning “paid release time for attendance at state or national meetings or conferences concerning training in labor issues concerning administration of the agreement or law enforcement and paid release time to conduct or participate in general membership meetings and/or union board meetings concerning collective bargaining or enforcement of the agreement or to conduct necessary union financial business which cannot otherwise be performed while off duty.” This cease and desist directive was incorporated into the Superior Court order. Did PERC and the Superior Court err by issuing an overbroad restraining order which prohibits the Guild from presenting future contract proposals that might allow lawful release time?

Issue Number 4: No administrative enforcement action was filed by either PERC or The County. Neither claims the Guild is out of compliance with PERC’s cease and desist order. In the absence of any demonstration that the Guild violated PERC’s cease and desist order did the Superior Court properly issue its own cease and desist order.

III. STATEMENT OF THE CASE

As indicated, the facts do not appear to be in dispute and are identified in the County's initial administrative Complaint, its attachments, and the Guild's Answer to the Complaint, all of which are contained in the administrative record.² This matter was resolved on summary judgment cross-motions without a hearing.

The parties had agreed to a Collective Bargaining Agreement (CBA) covering the term 2005-2006. That CBA contains the following language concerning union release time:

7.3 **Guild Meetings:**

A. The Guild may send one or two representatives to state or national meetings or conferences concerning labor or law enforcement. A total of twelve working days with pay are allowed per year, but no representative is allowed more than twelve working days with pay per year. Time off with or without pay shall not exceed five working days per conference per person.

The representatives or the Guild president shall give the Sheriff at least three weeks' notice of each conference or meeting. If the conference or meeting is scheduled on an emergency basis, the representative or Guild president shall give the Sheriff notice as soon as is reasonably possible. The Sheriff may disallow attendance by the Guild representative if the Sheriff has a special need for that employee's expertise at the time of the conference, or if, because of an unforeseen

² The record references in this brief are generally to the original PERC record which should have been transferred intact to this Court.

shortage of available employees, the Sheriff cannot reasonably spare the employee at the time of the conference

B. The Sheriff may routinely allow Guild officers a reasonable amount of time while on duty to conduct or participate in general membership and/or Guild board meetings or to conduct necessary Guild financial business which cannot otherwise be performed while off duty. Guild representatives shall guard against undue interference with the assigned duties and against the use of excessive time in performing such responsibilities.

In 2006, when the parties sat down to negotiate a successor CBA, the County proposed removing Section B in its entirety and modifying Section A to require that all leave be unpaid.³ The Guild's opening proposal presented at the initial negotiation meeting continued the current language.⁴

The County objected that the existing language was overbroad and required it to provide release time for activities outside the scope of bargaining. To clarify its intentions regarding its intended use of release time, the Guild presented a revised proposal as follows (with changes indicated in legislative draft form):

7.3 **Guild Meetings:**

³ CR 3-4.

⁴ *Id.*, CR 4.

A. The Guild may send one or two representatives to state or national meetings or conferences concerning training in labor issues concerning administration of the law enforcement. A total of twelve working days with pay are allowed per year, but no representative is allowed more than twelve working days with pay per year. Time off with or without pay shall not exceed five working days per conference per person.

The representatives or the Guild president shall give the Sheriff at least three weeks notice of each conference or meeting. If the conference or meeting is scheduled on an emergency basis, the representative or Guild president shall give the Sheriff notice as soon as is reasonably possible. The Sheriff may disallow attendance by the Guild representative if the Sheriff has a special need for that employee's expertise at the time of the conference, or if, because of an unforeseen shortage of available employees, the Sheriff cannot reasonably spare the employee at the time of the conference.

B. The Sheriff may routinely allow Guild officers a reasonable amount of time while on duty to conduct or participate in general membership and/or Guild board meetings concerning collective bargaining or enforcement of the agreement ~~or to conduct necessary Guild financial business~~ which cannot otherwise be performed while off duty. Guild representatives shall guard against undue interference with the assigned duties and against the use of excessive time in performing such responsibilities.⁵

But the County then filed an Unfair Labor Practice Complaint with PERC, asserting that, despite the Guild's clarifying

⁵ CR 11 (¶19) and CR 63.

amendments, the revised release time proposal was still outside the scope of collective bargaining.⁶ The Guild answered the Complaint contending otherwise.⁷

Before a formal hearing was commenced, the parties agreed to present the matter to Examiner Robin Romeo on a summary judgment basis, submitting the record of the competing proposals.⁸ Examiner Romeo dismissed the County's Complaint.⁹

Romeo noted that union leave was generally a mandatory subject of bargaining, comparing it to other forms of leave such as sick leave and vacations.¹⁰ Romeo noted that certain forms of union leave could trigger a violation of the unlawful assistance provisions of the law but cited the State Supreme Court decision in *State v. Northshore School District*,¹¹ allowing union release time, and concluded that the Guild's release time proposal did not seek unlawful assistance.¹²

⁶ CR 1-14.

⁷ CR 86-88.

⁸ CR 169-188, 228-234.

⁹ CR 316-325, especially CR 325.

¹⁰ CR 321.

¹¹ 99 Wn.2d 232, 662 P.2d 38 (1983).

¹² CR 322.

The County appealed that dismissal to the Commission.¹³ The Commission disagreed that the release time proposal was similar to other forms of paid leave, and held that it “in no way impacts wages, hours and working conditions.”¹⁴ The Commission reasoned that bargainable release time was limited to those involving direct interaction between the union and the employer and that the Guild proposal, therefore, did not involve a mandatory subject of bargaining.¹⁵

Besides vacating Examiner Romeo’s order, the Commission issued an order of its own. That order included a “Cease and Desist” directive to the Guild. That directive barred the Guild from bargaining to impasse future contract proposals. According to the PERC order, Guild would be unable to bargain to impasses not only its initial proposal but future proposals relating to

[P]aid release time for attendance at state or national meetings or conferences concerning training in labor issues concerning administration of the agreement or law enforcement and paid release time to conduct or participate in general membership meetings and/or union board meetings concerning collective bargaining or enforcement of the agreement or to

¹³ CR 327-329.

¹⁴ *Yakima County*, Decision 10204-A (PECB, 2011) at CR 369.

¹⁵ CR 373-374.

conduct necessary union financial business which cannot otherwise be performed while off duty.¹⁶

The Guild filed a Petition for Review to Thurston County Superior Court challenging the Commission's interpretation of the law and the Guild's proposal. Thurston County Superior Court Judge Christine Pomeroy rejected the Guild's Petition. She also further implemented a cease and desist against the Guild adopting verbatim the restraining language in the PERC order.¹⁷

IV. SUMMARY OF ARGUMENT

A. Summary of Argument

PECBA broadly requires that "wages, hours and working conditions" be negotiated. The Guild's proposal at issue related to whether Guild officers would be allowed "release time" — a form of paid leave to negotiate and enforce the labor contract. Issues concerning paid leave are within the statutorily-defined scope of mandatory "subjects of bargaining" because this subject relates to both to "hours" and "wages," as well as the Guild's ability to enforce "working conditions." Consequently, issues about union leave or

¹⁶ CR 377.

¹⁷ CP 9.

release time fall within the literal scope of the statute. The Washington State Supreme Court has *specifically recognized* that union release time is a legitimate subject of bargaining.

PERC erred by ignoring Supreme Court case precedent and by concluding that the scope of allowable release time was *limited to* direct meetings between labor and management. Neither common sense nor existing case law supports such a draconian restriction on permissible release time. While much of collective bargaining involves direct meetings between the parties, even rudimentary preparation for such meetings would require *some* amount of time not spent directly face-to-face. PERC erred when it restricted the Guild from presenting proposals that such time should be compensable.

The “scope of bargaining” issue presented here does *not* involve the relative merits of release time language, otherwise negotiable through the collective bargaining process, that might impose reasonable regulations on the extent and protocols for release time practices. The Guild understands the employer's interest in ensuring accountability in the use of paid release time. It simply asserts that *the collective bargaining process is the proper place to work out any appropriate accountability rules.*

Rather, at issue here is that the PERC Commission took the radical step, not supported even by its own case precedent (which the hearing examiner *had* properly applied), when it prohibited the Guild (and presumably other labor organizations) from being able to *even negotiate* release time during negotiations except for those narrowly relating to direct meetings between the employer and the union.

The Guild concedes that there is some case law indicating that certain *open-ended* forms of union leave proposals, unrelated to a union's collective-bargaining function, may be outside the scope of bargaining. Specifically, PERC has previously held that overbroad release time arrangements which might result in a form of a "gift" to the union and that such a "gift" creates an environment enabling unlawful interference with employee relations. Therefore, contract proposals which would require the employer to support a union in a manner *disconnected* with the union's relationship to the employer, such as allowing a union organizing for other bargaining units, constitute this type of unlawful support.

But the Guild's release time proposal was *not* open-ended. The County originally voiced some concerns about the pre-existing contract language. The Guild's opening contract proposal

maintained the existing contract language, but recognizing the possibility that the existing contract language could be misinterpreted in a manner violative of existing PERC precedent, the Guild modified its proposal to conform to PERC precedent.

The Guild's clarifying modification to the language should have been sufficient to bring the proposal within the lawful scope of bargaining. As the hearing examiner properly found, the Guild's modified proposal did not involve no "unlawful" employer support of the union. The Guild's modified proposal, by its *express terms*, only permitted release time in connection with *contract administration and contract enforcement*.

The County does not and cannot, under this record, contend that the Guild officers seek release time to administer *other* contracts for *other* employers. The Guild's *only* bargaining collective relationship is with Yakima County.

The proposal to continue the practice of release time for training is intended to enable the Guild representatives to be effective in their discharge of their representation duties of their members *with the County*. To the extent the Commission speculated about circumstances not supported by the record, it erred.

The Superior Court erred by upholding the decision of the Commission and by not reinstating the conclusions reached by the Hearing Examiner. The Superior Court also erred by upholding PERC's initial poorly crafted restraining order which interferes with the Guild's bargaining rights by putting it into the form of an injunction. *Even if* some aspect of the Guild's proposal were deemed overbroad and outside the scope of bargaining, PERC's overbroad restraining order improperly encroached upon the legitimate rights of labor organizations to present release time solutions.

V. LEGAL ARGUMENT

A. Standard of Review

This case involves a Petition for Review of an administrative decision in an adjudicative proceeding. As such, it is governed by the review procedures of the APA defined in RCW 34.05.570(3):

Review of agency orders in adjudicative proceedings. The court shall grant relief from an agency order in an adjudicative proceeding only if it determines that:

(a) The order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied;

(b) The order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law;

(c) The agency has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure;

(d) The agency has erroneously interpreted or applied the law;

(e) The order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this chapter;

(f) The agency has not decided all issues requiring resolution by the agency;

(g) A motion for disqualification under *RCW 34.05.425* or *34.12.050* was made and was improperly denied or, if no motion was made, facts are shown to support the grant of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion;

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) The order is arbitrary or capricious.

In *Pasco Police Officers' Association v. City of Pasco*, the Supreme Court described the appropriate standard of review of PERC rulings:

Decisions of PERC in unfair labor practice cases are reviewable under the standards set forth in the Administrative Procedures Act. *City of Pasco*. *RCW 34.05.570(3)* permits relief from an agency order if the agency erroneously interpreted or applied the law. *Pasco*, 119 Wn.2d at 507. Under the error of law standard, the court may substitute its interpretation of the law for that of PERC. *Public School Employees v. PERC*, 77 Wn. App. 741, 745, 893 P.2d 1132, review denied, 127 Wn.2d 1019, 904 P.2d 300 (1995). See also *Pasco*, 119 Wn.2d at 507 ("an agency is charged

with the administration and enforcement of a statute, the agency's interpretation of the statute is accorded great weight in determining legislative intent when a statute is ambiguous.") (citing Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 828 P.2d 549 (1992)). The court may also grant relief from an agency order if it finds that the order "is not supported by evidence that is substantial when viewed in light of the whole record before the court" RCW 34.05.570(3)(e).¹⁸

As this case was resolved on a summary judgment basis, it is subject to de novo review. While the Superior Court formally adopted the Commission's "Findings," these findings were simply conclusions reached after review of the summary judgment pleadings, and not after an independent review of the facts adduced through a hearing process.

The standard of review is heightened in an enforcement action. Where a court is "called upon to lend its coercive power to the proceedings" it must be "satisfied that the administrative determination is correct."¹⁹ In this case, the County obtained an order not merely affirming the Commission but also obtained a Superior Court restraining order extending the PERC cease and desist order.²⁰

¹⁸ 132 Wn.2d 450, 458, 938 P.2d 450 (1997).

¹⁹ *Highline Community College v. Higher Education Personnel Board*, 45 Wn.App 803, 809, 727 P.2d 990 (1986), review denied, 107 Wn.3d 1030 (1987).

²⁰ CP 9.

The court of appeals does not defer to the Superior Court but instead reviews the underlying agency action.²¹ As indicated in RCW 34.15.574(1), a reviewing court should normally remand an errant agency action rather than rewrite the administrative order:

In a review under RCW 34.05.570, the court may (a) affirm the agency action or (b) order an agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency action, remand the matter for further proceedings, or enter a declaratory judgment order. The court shall set out in its findings and conclusions, as appropriate, each violation or error by the agency under the standards for review set out in this chapter on which the court bases its decision and order. In reviewing matters within agency discretion, the court shall limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency. The court shall remand to the agency for modification of agency action, unless remand is impracticable or would cause unnecessary delay.

B. The Public Employment Relations Commission erred in determining that the Guild Proposal was Outside the Scope of Bargaining.

- 1. The Public Employees Collective Bargaining Act extends a broad right to engage in collective bargaining that extends to all “wages, hours and working conditions.”**

²¹ See *Postema v. Pollution Control Hearing Board*, 142 Wn.2d 68, 77, 11 P.3d 726 (2000) (“[t]his court sits in the same position as the superior court and reviews the Board's decision by applying the standards of review in RCW 34.05.570 directly to the agency record.”)

Yakima County and the Guild are governed by RCW Chapter 41.56 and the Public Employees Collective Bargaining Act (PECBA). PECBA makes it an “unfair labor practice for an employer or union ‘to refuse to engage in collective bargaining.’”²² “Collective bargaining” is defined in RCW 41.46.030(4):

“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 public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

Thus, the duty to bargain extends to “wages, hours and working conditions.” In its decision here, PERC properly described the general duty to “collectively bargain:”

A public employer covered by the Public Employees’ Collective Bargaining Act, Chapter 41.56 RCW, has a duty to bargain with the exclusive bargaining representative of its employees. RCW 41.56.030(4); *Peninsula School District v. Public School Employees*, 130 Wn.2d 401, 407 (1996). “[P]ersonnel matters, including wages, hours, and working conditions” of bargaining unit employees are characterized as mandatory subjects of bargaining. *Federal Way*

²² RCW 41.56.140; RCW 41.56.150

School District, Decision 232-A (EDUC, 1977), citing *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958). The parties' collective bargaining obligations require that the status quo be maintained regarding all mandatory subjects of bargaining, except where such changes are made in conformity with the statutory collective bargaining obligation or the terms of a collective bargaining agreement. *City of Yakima*, Decision 3501-A (PECB, 1998), affirmed, 117 Wn.2d 655 (1991); *Spokane County Fire District 8*, Decision 3661-A (PECB, 1991). An employer or exclusive bargaining representative that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice. RCW 41.56.140(4) and (1); RCW 41.56.150(4) and (1); see also *Snohomish County*, Decision 8733-C (PECB, 2006)(a union did not commit an unfair labor practice by insisting to impasse on a deferred compensation plan).²³

In conducting its analysis as to whether a given proposal falls inside the mandatory scope of bargaining, PERC is required to follow a "balancing test" as enunciated by the State Supreme Court in *IAFF Local Union 1052 v. Public Employment Relations Commission*.²⁴ The court explained this balancing approach as follows:

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. Where a subject both relates to conditions of employment and is a managerial prerogative, the focus of inquiry is to

²³ CR 366.

²⁴ 113 Wn.2d 197, 778 P.2d 32 (1989).

determine which of these characteristics predominates.²⁵

As PERC has acknowledged,²⁶ *IAFF Local Union 1052* mandates that the determination "scope of bargaining questions is thus done on a 'case-by-case basis.'" This case-by-case mandate arose because in *IAFF Local Union 1052*, the Supreme Court had chastised PERC for a "facile characterization" of the union proposal and then reversed PERC for failing to properly engage in the required balancing test:

The problem with PERC's approach is that it assumes, rather than decides, the dispositive issue in this case: whether Local 1052's proposal regarding equipment staffing and deployment concerns a mandatory subject of bargaining. PERC did not determine *from the facts presented to the hearing examiner* that the substance of Local 1052's contract proposal properly may be regarded as a nonmandatory subject of bargaining. Rather, it treated the issue as already decided; according to PERC, equipment staffing "has previously been held to be a permissive subject of bargaining." Pub. Empl. Relations Comm'n Dec. 2448-B PECB, at 3. This approach is inconsistent with PERC's own well-settled practice of determining scope-of-bargaining questions only "after being fully apprised of the facts of each case." *Wenatchee v. Wenatchee Police Guild*, Pub. Empl. Relations Comm'n Dec. 780 PECB, at 1 (1980); see WAC 391-45-550. It is also inappropriate under the law of public employment collective bargaining.²⁷

²⁵ *Id.* at 203.

²⁶ See *City of Pullman*, Decision 8086 (PECB, 2003).

²⁷ *IAFF Local 1052*, supra, at 202.

2. PERC and State court precedent indicate that release time is a mandatory subject of bargaining.

The County's Complaint proceeds under RCW 41.56.150, which makes it an unfair labor practice for a bargaining representative to refuse to engage in collective bargaining. The Guild does not dispute that it is a ULP for a union to insist to impasse on a nonmandatory subject of bargaining. Rather, the Guild contends that the Examiner properly concluded that the union release time clauses proposed here fall *within* the scope of collective bargaining as defined by PECBA.

The lawful scope of collective bargaining is defined in PECBA and extends to "wages, hours and working conditions."²⁸ It is beyond any reasonable dispute that leave time is within the scope of this definition, as it directly involves *both* "wages" and "hours of work."²⁹ Here the County initially did not seem to dispute that union leave falls with that broad definition, but instead contended that the Guild's leave time proposal somehow

²⁸ RCW 41.56.030.

²⁹ *City of Yakima*, Decisions 3564 (PECB, 1990) & 3564-A (PECB, 1991); *Kitsap County*, Decision 8893 (PECB 2005))(reversed on other grounds, Decision 8893-a PECB, 2007).

constituted a type of unlawful assistance outside the scope of bargaining, thereby making it “illegal.”³⁰

The Commission did not appear to find the Guild’s proposal illegal, *per se*. Instead, the Commission found that release time was not similar to bargainable leave, and to be negotiable, had to be limited to meetings with the employer.

The Guild does not dispute that *unrestricted* release time provisions, which essentially subsidize the union in a manner which has *no connection* with the parties’ bilateral collective bargaining relationship, have been deemed to be unlawful support of the labor organization and violative of the PECBA provisions prohibiting “interference.” But union release time *related to the parties’ collective bargaining relationship*, as explained by Examiner Romeo, has long been established as a mandatory subject of bargaining:

In general, leave to conduct union business is a mandatory subject of bargaining. *Axelson, Inc v. NLRB*, 599 F.2d 91 (5th Cir. 1979)(remunerating members of a collective bargaining unit for time spent in negotiation is a mandatory subject); *Media General Operations*, 181 LRRM 2632 (2007); *NLRB v. BASF Wyandotte Corp.*, 798 F.2d 849 (5th Cir, 1986) (Four hours of paid leave time a day to employees to conduct union business was similar to other types of

³⁰ See *ex. rel. Graham. v. Northshore School District*, 99 Wn.2d 232, 662 P.2d 38 (1983); *Seattle School District*, Decision 2079-C (PECB, 1986).

leave such as sick leave, military leave and jury duty leave and was bargainable).

Numerous state courts and public employment boards have also held that the issue of union leave is a mandatory subject of bargaining. *Mich. State AFL-CIO v. Mich. Civil Serv. Comm*, 566 N.W. 2d 258 (reasoning that union leave provides a mutual benefit to the union and the employer by contributing to a peaceful and productive relationship between the state and its employees); *Pinto v. State Civil Service Comm.*, 912 A. 2d 787. See also *In re: Petition of the Assoc. Of Mental Health Specialists*, WI.Emp.Rel.Com. Dec. No. 30787-A.³¹

The County nonetheless contends the Guild's proposal is unlawful, citing to *City of Burlington*³² and *City of Pasco*.³³ The County's citations are misplaced. By the express terms of these decisions, the proposals at issue were fatally flawed in that they allowed *open ended* release time not *restricted to the bilateral relationship of the parties*. These cases must be viewed in the context of the entire body of case law and harmonized with that law.

In State ex rel. Graham v. Northshore School District No. 417,³⁴ the Washington State Supreme Court ruled that broad

³¹ CR 319.

³² Decision 5840 (PECB, 1997).

³³ Decision 3582-A (PECB, 1991).

³⁴ 99 Wn.2d 232, 662 P.2d 38 (1983). The suit challenged school districts' negotiation of "release time," as part of their collective bargaining agreements, in which they allow officers and members of the local education associations to use a limited amount of school time for duties other than normal classroom duties, at the behest of the associations. The Auditor challenged the contract provisions as being (1) beyond the statutory authority of the school districts; (2) unfair labor

release time *was* lawful. The case was decided under analogous provisions of the Educational Employees Collective Bargaining Statute, RCW Chapter 41.59. Specifically, RCW 41.59.140(1)(b) provides that it shall be an unfair labor practice "[t]o dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it."

In *Northshore*, as here, it was alleged that the public employer, in agreeing to allow release time for employees to use at the behest of the employee organizations, "contributed" support to those organizations and thus violated the statute.³⁵ But the court

practices; and (3) unconstitutional gift of public money (this challenge was withdrawn). The Public Employment Relations Commission (PERC) intervened, challenging the court's authority to decide the unfair labor practice charge. The Enumclaw School District release time was used to allow educational employees to attend sessions of the legislature, to participate in grievance-arbitration proceedings, to attend workshops and conferences regarding collective bargaining, arbitration, local education association officer training, legislative issues affecting education, and other topics related to either teaching or labor relations, and to allow an employee serving on the Washington Education Association Board of Directors to attend meetings of that body as well as meetings of local education associations which comprised the constituency for that Director position. *Id.* at 236-27. The grant of release time in that case is very similar to the use of release time in this case.

³⁵ *Id.* at 243. Like the employer here, there was no objection to release time which supported school district functions. The *Northshore* court commented: "Obviously, as noted by the trial court, any leave agreed to must be consistent with operating a school district. In fact, the Auditor emphasizes that there is no objection whatsoever to release time for the conduct of association business `as is demonstrably related to school district functions. Brief of Auditor, at 15. He fears, however, that pursuant to the unlimited nature of the release time as granted in the contracts, the leaves will be used for purposes totally unrelated to the functions of school districts."

upheld the trial court's finding that *there was no illegal contribution*:

If it were concluded otherwise, then every benefit or right received by an employee organization through a collective bargaining agreement with an employer, regardless of the consideration passing from the organization to the employer and regardless of how strenuously bargained for, would be a "contribution" by the employer to the organization, and, if the effect thereof were to benefit or support the organization, it would be illegal.³⁶

The court then added that the employer "agreeing to afford employees release time to engage in certain association business, while of undoubted benefit to the organization and employees, is not a contribution and thus is not proscribed by RCW 41.59.140(l)(b)."³⁷

The *Northshore* Court broadly allowed union release time, finding unobjectionable union release time:

- "for meetings with teachers, school administrators and other staff regarding collective bargaining, grievances, contract administration and other matters necessary to maintenance of harmonious employer-employee relations,"³⁸
- "to allow employees to participate in grievance-arbitration proceedings,"³⁹

³⁶ *Id.* at 238; *Id.* at 243-44 (quoting the trial court).

³⁷ *Id.* at 244.

³⁸ *Id.* at 235.

³⁹ *Id.*

- "[to allow employees] to attend workshops and conferences regarding collective bargaining, arbitration, ... and other topics related to... labor relations."⁴⁰

The *Northshore* trial court explained:

The uncontroverted evidence clearly shows that the various types of leave challenged in this case were used [either (a)] for the purpose . . . of improving curriculum and methods of teaching, or [(b)] in the interest of providing a continuum of sound administration of the organization representing the teacher employees. The former is obviously in the interest of the educational program of the school district, just as much as leaves to attend conferences and institutes. ***The latter, to the extent it tends to promote harmonious employer-employee relations, is equally consistent with the business of operating a school district. Hardly anything at the present time is more important to the success of a school district's educational program than harmonious professional employee relations.***⁴¹

The Supreme Court concluded that "[t]he basis for the trial court's ruling is inherently sound," adding that, if release time were being abused, the remedy would be to restrict its use at "the next round of bargaining."⁴²

Three years later, in a 1986 PECBA case, the Washington Supreme Court reaffirmed its *Northshore* ruling in *Green River Community College v. Higher Education Personnel Board*,

⁴⁰ *Id.* at 236-37.

⁴¹ *Id.* at 238-39 (*emphasis added*).

⁴² *Id.* at 239.

holding that where there was a prevailing practice of release time, the employer committed an unfair labor practice by unilaterally refusing to continue that practice.⁴³ And finally, in another PECBA decision, *Shoreline Community College District No. 7 v. Employment Security Dep't.*,⁴⁴ the Washington Court of Appeals also explicitly recognized that paid union release time was an appropriate subject of collective bargaining.

Until now, Public Employment Relations Commission decisions have not deviated from these principles but have merely defined limits. In *Enumclaw Education Association*,⁴⁵ the Commission found a proposal unlawful when it would allow a union a right to use release time for purposes *not related* to the relationship between the employer and the union:

⁴³ *Green River Community College, District No. 10 v. Higher Education Personnel Board*, 107 Wn.2d 427, 435, 730 P.2d 653 (*en banc*, 1986). To be precise, the Washington Supreme Court determined that the lower tribunal's findings were not clearly erroneous. An important background point is that the fact finder in this case, the Higher Education Personnel Board, "was accorded authority over both the conduct and the obligation of state institutions of higher education to bargain collectively in good faith through inclusion in RCW 28B.16.230 of the unfair labor practice provisions of the Public Employees' Collective Bargaining Act. RCW 41.56.140. Under RCW 41.56.140(4), "[it shall be an unfair labor practice for a public employer ... [t]o refuse to engage in collective bargaining." Under RCW 41.56.160, the HEP Board is directed to prevent unfair labor practices." *Id.* at 436, 730 P.2d at 658. That is, despite the fact that *Green River* arose in an educational context, the statute governing the decision there is the same as the one governing the decision in this case.

⁴⁴ 59 Wn.App. 65, 795 P.2d 1178 (1990).

⁴⁵ Decision 222 (EDUC, 1977).

We do see a serious problem in granting twenty days with pay for ... use on Association business....

Under the terms of the Association's proposal, none of the released time need be spent meeting or conferring with the employer or its representatives. It may be spent on any Association business, including organizing the employees of some other school district.⁴⁶

Therefore as the Executive Director later explained, "[w]hile approving certain other portions of the leave proposal in *Enumclaw* as being acceptable under the unfair labor practice precedents concerning 'domination,' the Commission held that the *unrestricted* leave for union business would be unlawful."⁴⁷

The lack of restrictions on paid leave time was likewise instrumental in the PERC 1990 rejection of a union proposal in *City of Pasco*:

⁴⁶ *Id.* at PD-92-3. The union petitioned for judicial review in the *Enumclaw* case, and the Commission's decision was affirmed by the Superior Court of King County. In its oral opinion, the court held: I do believe that the ... commission was justified ... in holding that it was an unfair practice to accord the twenty day leave. They were justified because there is no restriction on what the twenty days could be used for except for association business but the association may have other business that is not involved with Enumclaw School District. So, they could take off from the school district and go out and do things absolutely foreign to the school district business. All the cases that I have read that you cited where some consideration had been given to the unions has restricted the consideration to elements which are vitally involved with the employer's association. This does not do so. This just gives twenty days off to do anything {the union} wants. They might just take a vacation or anything. I realize it says association business but association business may be far divorced from the business concerning the Enumclaw School District. King County Superior Court, November 21, 1977, Washington Public Employment Relations Reporter at CD-34, 35-36 (quoted in *City of Pasco*, Decision 3582 (PECB, 1990), 1990 WL 656237, at *6-*7).

⁴⁷ *City of Pasco*, Decision 3582 (PECB, 1990) (emphasis supplied).

In the case at hand, the contract language supported by the union suffers from the fatal defect of putting no limitation whatever on the purposes for which the union could use the 96 hours per year of employer-paid leave time. That 96 hours per year could be "spent on any Association business, including organizing the employees of some other [employer]," as in *Enumclaw*.⁴⁸

In *Fort Vancouver Regional Library*,⁴⁹ the Commission acknowledged the seminal NLRB case of *Axelson, Inc.*,⁵⁰ and recognized that "[p]ayment of wages to employees for time spent in negotiations is a mandatory subject of bargaining under the National Labor Relations Act."⁵¹ The need for employees to meet to prepare their collective bargaining positions has been identified as sufficiently important that restricting the union's right to hold meetings with employees, even during work time, has been found to be a ULP when it was for retaliatory purposes.⁵²

In 2002, in *Washington State Department of Corrections*,⁵³ it noted, in reference to its previous *Enumclaw School District* decision:

Commission precedent draws a distinction between negotiations/administration activities by union and

⁴⁸ *Id.* at *7.

⁴⁹ Decisions 2396-B and 2350-C (PECB, 1988), 1988 WL 524438.

⁵⁰ *Axelson, Inc.*, 234 NLRB 414 (1978), enforced 599 F.2d 91 (5TH Cir. 1979).

⁵¹ *Fort Vancouver Regional Library*, *infra* at *11, citing *Axelson*.

⁵² *City of Benton*, Decision 10956 (PECB, 2011).

⁵³ Decision 7870 (PSRA, 2002).

organizing activities by the same union. In *Enumclaw School District*, Decision 222 (EDUC, 1977), *aff'd*, WPERR CD-34 (King County Superior Court, 1977), a proposed "release time" arrangement was faulted because the potential use of employer-paid time for organizing activities would have provided unlawful assistance to the union. That concern was not allayed by the fact that use of employer-paid time under the same proposed language for negotiations) administration activities could have been entirely legitimate.⁵⁴

Until this recent Yakima County decision, these PERC holdings do not appear to be in conflict with the standard established in *Northshore School District* — *that release time is allowable provided it relates somehow to harmonious employer-employee relations*.

The basic notion of *Northshore School District* — that reasonable release time might be involved in effective execution of collective bargaining duties — is also supported by another Court of Appeals decision arising in a different context. In *Ackley-Bell v. Seattle School District*,⁵⁵ the Court of Appeals, citing *Northshore School District*, rejected an employer argument that labor contract pre-negotiation preparations sessions were so unrelated to the employers work so as to be removed from protection of the Worker's Compensation Law. Although the issue arises under an

⁵⁴ *Id.* at *6 (citing *Washington State Patrol*, Decision 2900 (PECB, 1988)).

⁵⁵ 87 Wn. App. 158, 940 P.2d 685 (1997).

admittedly different statutory scheme, the court's reasoning is informative:

A worker is "[a]cting in the course of employment" when "acting at his or her employer's direction or in the furtherance of his or her employer's business[.]" RCW 51.08.013; see Department of Labor & Indus. v. Johnson, 84 Wn. App. 275, 278, 928 P.2d 1138 (1996), review denied, 131 Wn.2d 1025, 937 P.2d 1102 (1997). Whether the employee was being paid their full salary while on leave is not determinative. Belnap, 64 Wn. App. _____ at _____ 220. The District argues that collective bargaining is essentially a negative process that does not advance its business. Statutory authority as well as case law belies this position. In stating the purpose of public employees collective bargaining, the Legislature stated, "[t]he intent and purpose of [the collective bargaining statute] is to promote the continued improvement of the relationship between public employers and their employees[.]" RCW 41.56.010. Additionally, our Supreme Court has recognized that union activity does not solely benefit the Union. State v. Northshore Sch. Dist., 417, 99 Wash. 2d 232, 243-44, 662 P.2d 38 (1983).

Additionally, testimony indicates that, in this case, the collective bargaining process was in furtherance of the District's interests. Specifically, Webster testified that the new, collaborative collective bargaining process was for the benefit of everyone--labor and management. Collective bargaining is thus not incidental to the District. *Cf. Belnap*, 64 Wn. App. at 220 (paid jury duty incidental to employer's business interest). Rather, it is an integral part of creating and promoting working labor relations, which directly relate to an employer's business interest. Thus, we hold that because *Ackley-Bell* was engaged in collective bargaining, she was furthering the District's interests.

The District argues that even if it received some benefit from the bargaining activities of the union negotiators, Ackley-Bell was not engaged in bargaining at the time of her injury because she was at a union meeting, not a joint meeting. Guiding construction of the Industrial Insurance Act is the principle that the act is remedial in nature and therefore must be liberally construed to achieve the purpose of providing compensation to all covered employees injured in their employment. Thus, all doubts must be resolved in favor of the worker. *Littlejohn*, 74 Wn. App. at 425. ***Webster testified that separate meetings were an essential part of the collective bargaining process for management. Her testimony, as well as common sense, indicates that labor prenegotiation meetings were also vital to the collective bargaining process. Indeed, it is difficult to see how a union could bargain effectively without meeting separately to arrive at a united position. We conclude that because the separate meeting was to enhance participation in the joint meeting to follow, the activity furthered the District's interest.*** We therefore need not decide whether the District "directed" Ackley-Bell's activities.⁵⁶

But PERC's holding in this case, that allowable release time is limited to direct face-to-face meetings, cannot be squared with this case law or a reasoned understanding of the negotiations. PERC's claim that member and board meetings are unnecessary⁵⁷ reflects a shocking departure from experience and common sense. Whether a union representative is on paid leave during collective-

⁵⁶ *Id.* at 158 (emphasis added).

⁵⁷ CR 374 at 12.

bargaining business certainly touches on wages, hours and working conditions, and therefore, and the details of the arrangements for release time should be left to the collective bargaining process.

3. The Guild proposal concerning collective bargaining training leave is a mandatory subject of bargaining.

As indicated, union release time is a mandatory subject of bargaining. The Guild concedes that an overbroad release time clause might be nonmandatory and that the specifics of the particular release time proposal must be examined. But the narrowly tailored proposal here relating to release time for training easily falls within the scope of bargaining.

The Commission's conclusion that the County should be able to unilaterally decide all training related issues cannot be squared with the broad collective bargaining rights defined in PECBA. As the State Supreme Court recognized in *IAFF v. PERC*,⁵⁸ issues relating to employee safety, something directly intertwined with training, cannot arbitrarily be classified as *per se* management rights.

⁵⁸ *IAFF Local Union 1052 v. PERC*, 113 Wn.2d 197 (1989).

It is true that in *City of Burlington*,⁵⁹ the PERC did find an *open-ended* release time clause involving union business, including attending union conventions, to be unlawful. The source of the illegality was not discussed at length in the decision, but the Guild understands the problems with the *Burlington* release time clause to be: 1) it was open-ended as to the nature of "union business" which would be allowed; and 2) the union conventions for which release time was sought were not restricted to those which involved training and employment-related subjects. Hence, it suffered the same problems as the clause struck down in *Enumclaw Education Association*⁶⁰ and did not contain the restrictions that allowed the clause to be upheld in *Northshore School District*.

Similarly, an overbroad release time clause was disallowed in *City of Pasco*.⁶¹ The union release time proposal in *City of Pasco* allowed open-ended attendance at "union meetings and conventions." The Executive Director struck the language down indicating that it "suffers from the fatal defect of putting no limitation whatever on the purposes for which the union" could use

⁵⁹ Decisions 5840, 5841, 5842, 5843 (PECB, 1997).

⁶⁰ Decision 222 (EDUC, 1977).

⁶¹ Decisions 3582 and 3582-A (PECB, 1990).

the leave time.⁶² But the Executive Director then aptly noted that "[t]he union *could easily have proposed modifications to cure the 'unrestricted' problem* identified by the Commission and court in *Enumclaw*."⁶³

Conversely, release time for purposes associated with the employer's business, here law enforcement, or for their bilateral collective bargaining process are not the type prohibited by either *City of Pasco* or *City of Burlington*. PERC's existing case law appears largely to address proposals allowing *unrestricted* union release time, which is unlike the specific Guild proposal at issue here. Here the Guild *redrafted* its proposal *to address* the employer's concerns that it not unlawfully assist the union by tying leave to a contract administration purpose.

As Examiner Romeo aptly noted, consistent case law history in other states supports the Guild.⁶⁴ It is true that PERC cases do

⁶² Decision 3582 (PECB, 1990).

⁶³ *Id.* (*emphasis supplied.*)

⁶⁴ In *City of Jacksonville*, 13 FPER ¶ 18250 (1980) the Florida Commission determined that a contractual provision granting paid release time for union officials to transact union business did not constitute unlawful aid or assistance to an employee organization. The Commission concluded that such a provision is lawful because cooperation between employer and employee organization fulfills the overriding legislative policy of promoting harmonious and cooperative relationships between government and its employees. *Id.* A contract provision for paid release time to complete union duties, which results from arms-length negotiations between the union and employer is favored, because it allows the employee organization to perform its representational responsibilities more effectively for the benefit of all concerned. *Id.* The New York Public Employment

not allow release time for the unrestricted purpose of attendance at conventions to advance the *organizing* functions of the union. *But that is not the issue here.* At issue here is release time to attend *training relating to labor relations or law enforcement.* Whether that training is provided by the Statewide police organization, WACOPS; the Guild's legal counsel; or some other organization, it should be deemed lawful.

Nothing in *City of Burlington* or *City of Pasco* supports an opposite conclusion. The clauses in those cases were, by their terms, unrestricted, allowing leave for purposes such as organizing other employee groups or to advance purposes having nothing to do with the relationship between the employer and the union *for that particular bargaining unit.* The essential test of bargainability under the statute has been that a proposal must be

Relations Board explicitly addressed the subject of paid time off for training in *City of Saratoga Springs. In re Local 343, IAFF, AFL-CIO v. City of Saratoga Springs*, 17 NYPER ¶ 3121 (New York Public Employment Relations Board, Case No. U-7428, 1984). There, the New York Board ruled that the fire union's proposal, which would require the city to pay the cost of training any emergency medical technicians (EMTs) who requested training and to provide paid release time for such training, was *mandatorily negotiable since the demand merely sought a form of compensation. Id. (emphasis added); see, also*, 17 PERB 4631 (PERB ALJ 1984). In *In Re Local 589, Int'l Assoc. of Fire Fighters, AFL-CIO v City of Newburgh*, 16 NYPER ¶ 4516 (1983), the New York Board ruled that the union's proposal, providing for 50 annual days of paid release time for the union president or other designated official to attend union conventions and meetings, "at which subjects pertinent to the fire department's fire fighters or the City are on the agenda" was mandatorily negotiable. *Id.*; *Harvey v. Miami Dade County*, 28 Florida Pub. Employee Rep. ¶ 33014 (Florida PERC General Counsel, 2001).

*peculiar to the bargaining unit.*⁶⁵ Like the “facile” analysis rejected by the Supreme Court in *IAFF v. PERC*,⁶⁶ the Commission's decision in this case seems to be an unreflective reaction concerning release time *generally*, rather than a thought out analysis of the *actual contract language* before it.

The County's contention simply seems to be that *any* type of release time that is beneficial to the union is somehow unlawful. That is not the test. The test is *not* whether the union derives *some* benefit; the test is whether the clause provides *no benefit whatsoever to the employer*. Only a “contribution” without adequate consideration constitutes unlawful support. Here the Guild's tailored proposal focuses on areas of *common concern* between the parties: collective bargaining and law enforcement.

To the extent the County contends the Guild's proposal is ambiguous or is subject to potential abuse, its concerns are misplaced in this forum. Facially, the Guild's proposal relates to matters of mutual interest. To the extent this clause *might* be abused to allow release time for matters of no mutual interest, the County retains the right to object and enforce the intended

⁶⁵ RCW 41.56.030(4) expressly defines bargaining subjects as those “peculiar to an appropriate unit.”

⁶⁶ 113 Wn.2d 197 (1989).

C. The Superior Court Erred by Enforcing PERC's overbroad remedy.

The Superior Court erred by issuing its own cease and desist order. This case was not presented as an enforcement action by either the agency or the County.⁷⁰ The sole appeal filed was by the Guild.

PERC has authority by statute to issue cease and desist orders.⁷¹ Injunctive relief is unavailable where an administrative agency issues a cease and desist order and noncompliance is not demonstrated.

California ¶ 21051 (California Public Employment Relations Board 1990). The New Jersey Commission, in *In Re Township of Mine Hill, v. Policemen's Benevolent Association, Local 279*, 13 New Jersey Pub. Employee Rep. ¶ 18056 (1987) reached the same conclusion: "Leaves of absence, including time off to handle organization activities, are terms and conditions of employment." *Id.*, citing *Haddonfield Bd. of Ed.*, P.E.R.C. No. 80-53, 5 NJPER 488 (¶ 10250 1979). See also, *Compton Community College Federation of Employees v. Compton Community College District*, 11 Pub. Employee Rep. for California ¶ 18193 (1987): "In Anaheim Union High School District (1981) PERK Decision No. 177, the Board held that paid release time is also negotiable, because it is related to wages. Similarly, in the private sector, the courts and the National Labor Relations Board have outlawed the unilateral elimination (by employers) of privileges formerly extended to on officers, such as paid time off to conduct on business. See, e.g., *NLRB v. BASF Wyandotte Corp.* (CA 5, 1986) 798 F.2d 849 [123 LRRM 2320." In another case, the New Jersey Commission declared that a proposal for paid release time for the union president and vice president to conduct union business was mandatorily negotiable. *In re State of New Jersey v. State Troopers Fraternal Association of N.J., Inc.* 11 New Jersey Pub. Employee Rep. ¶ 16177 (1985).

⁷⁰ See RCW 34.05.578 and RCW 34.05.582.

⁷¹ See RCW 41.56.160.

Thus if a cease and desist order is being disobeyed or is about to be disobeyed, the Commissioner's remedy is inadequate and injunctive relief is appropriate to enforce the cease and desist order. If the cease and desist order is being obeyed, no injunctive relief is available because the administrative remedy is adequate.⁷²

While there likely will arise future questions concerning the scope of the PERC cease and desist order, as discussed below, *unless and until* those issues arise, it is premature for a Superior Court to further restrain a party subject to an administrative order. PERC has the ability to seek enforcement of its cease and desist order⁷³ and it has not done so. Unless and until the County or PERC demonstrate that the Guild is presenting a proposal in violation of the PERC cease and desist remedy, no further judicial injunctive intervention is warranted.

Furthermore, the Superior Court erred by adopting an overbroad PERC cease and desist order. While no current noncompliance issues exist, and therefore judicial enforcement action is premature, the vague and overbroad nature of the PERC order likely will create *future* compliance questions. As cited above, the terms of the PERC order prohibit the Guild from negotiating to impass any contract proposals relating to:

⁷² *Retail Store Employees Union v. Washington Surveying and Rating Bureau*, 87 Wn.2d 887, 909, 558 P.2d 215 (1976).

⁷³ RCW 41.56.160(3).

issues were bargainable. The court held that PERC was *required* to evaluate “scope of bargaining” determinations in their factual context and that it had erred by failing to do so in that case:

By failing to undertake this sort of analysis in this case, PERC has abdicated its fundamental responsibility to determine the scope of mandatory bargaining under the public employment collective bargaining laws. *Cf. Ford Motor Co. v. NLRB*, 441 U.S. 488, 497, 60 L. Ed. 2d 420, 99 S. Ct. 1842 (1979) (“[c]onstruing and applying the duty to bargain . . . are tasks lying at the heart of the [National Labor Relations] Board's function”). The Legislature has delegated to PERC the delicate task of accommodating the diverse public, employer and union interests at stake in public employment relations. PERC's summary disposition of the scope-of-bargaining question presented in this case does not reflect the “particularity and sensitivity” this task requires.⁷⁶

It found PERC's subject classification in that case to involve a “facile characterization” of the union's proposal based on its scope of bargaining case precedent.⁷⁷ That approach could not be squared with the statute:

Scope-of-bargaining questions cannot be resolved so summarily. Every 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. General understandings -- such as an understanding that staffing levels typically weigh on the managerial

⁷⁶ Id. at 203.

⁷⁷ Id. at 207.

prerogative side of the balance of employer and union interests -- may, of course, inform PERC's analysis. But care must be taken to recognize meaningful distinctions in the circumstances of different cases.⁷⁸

By analogy, the PERC cease and desist order in this case cannot be sustained. PERC cannot and should not evaluate — in advance of any drafting or presentation — the myraid of ways in which the Guild *might* later reformulate its release time proposals to bring it within the ambit of the statute. To the extent PERC and the County believe that *all* forms of release time are outside the scope of bargaining, such a conclusion is insupportable in the face of case precedent. There are a number of alternative ways in which release time requests might be presented. Those should not be judged before they are presented.

VI. CONCLUSION

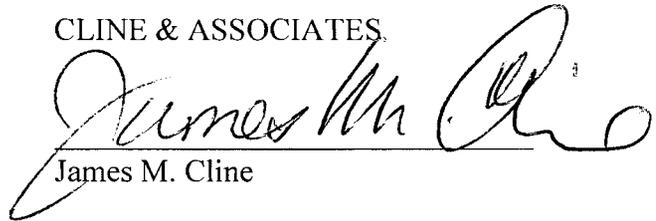
Arguably, the parties' existing CBA language was lawful, but the Guild worked with the County's concerns anyway to clarify that its only intention was to acquire release time in connection to the parties' collective bargaining relationship, not for some other unrelated purpose. The Guild's proposal is negotiable, and the issues the County might raise about theoretical abuse should be

⁷⁸ Id.

addressed in the negotiations and grievance arbitration processes. PERC erred by issuing an overbroad cease and desist order and the Superior Court erred by extending it. The Commissioner's decision should be overturned, the restraining order should be lifted, and the Examiner's Dismissal order should be reinstated.

RESPECTFULLY SUBMITTED this 30th day of January, 2012, at Seattle, Washington.

CLINE & ASSOCIATES,

A handwritten signature in cursive script, appearing to read "James M. Cline", written over a horizontal line.

James M. Cline

DECLARATION OF SERVICE

I, Debora G. Pettersen, Legal Assistant at Cline & Associates, acknowledge that on the below date, I served the foregoing Appellant's Opening Brief and this Declaration of Service in the above-referenced matter in the following manner to the entities below listed.

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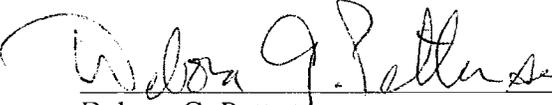
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I certify and acknowledge under the laws of the State of Washington that the foregoing is true.

DATED at Seattle, Washington, this 30th day of January, 2012.


Debora G. Pettersen

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