

NO. 44183-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

KITSAP COUNTY CORRECTIONAL OFFICERS' GUILD, INC.

Appellant

v.

KITSAP COUNTY and
KITSAP COUNTY SHERIFF

Respondents

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY *cm*
DEPUTY

APPELLANT'S OPENING BRIEF

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ORIGINAL

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I. INTRODUCTION

The Kitsap County Correctional Officers' Guild ("Guild") represents all of the corrections officers employed by the Kitsap County ("County") Sheriff's Office. After indirectly learning that the County intended to layoff two Guild members at the start of the 2012 calendar year, the Guild submitted a timely demand to bargain over the County's unilateral decision to engage in layoffs. The County has refused to bargain over the layoff decision with the Guild, and instead chose to file a claim in Mason County Superior Court seeking a declaratory judgment that the County has no duty to bargain over its decision to "reduce the jail budget, operations, or staffing levels." [CP 338]

The County's original claim is not justiciable because the Guild never sought to bargain over the budget for the jail or its operations or staffing levels. Instead, the Guild's demand to bargain centered on the County's decision to layoff two of its members without fulfilling any of its obligations to bargain in good faith. The decision to engage in layoffs, under the scope of bargaining balancing test, is a mandatory subject of bargaining. The County's failure to engage in good faith bargaining on this subject is an unfair labor practice.

II. ASSIGNMENTS OF ERROR

A. Errors Assigned.

The Appellant, Kitsap County Correctional Officers' Guild, asserts that the Mason County Superior Court made the following errors:

1. Denying the Guild summary judgment on its motion seeking judgment that Kitsap County committed an unfair labor practice by refusing to negotiate in good faith and interfering with the rights of the Guild through the unilateral layoff of Guild members and for all damages associated with this unlawful act, based on the October 9, 2012 Order of the Honorable Lisa Sutton; and
2. Denying the Guild summary judgment on its motion for injunctive relief to prohibit Kitsap County from conducting any further layoffs of Guild members until it has fully discharged all of its obligations under RCW Chapter 41.56, based on the October 9, 2012 Order of the Honorable Lisa Sutton; and
3. Granting Kitsap County's Motion for Summary Judgment on its declaratory judgment action, based on the October 9, 2012 Order of the Honorable Lisa Sutton.

B. Issues Presented.

The Guild presents the following issues relating to these assigned errors:

1. For a claim to be justiciable, the party asserting such a right must present an actual, present, and existing dispute at issue between the parties. The County sought a declaratory judgment order over the Guild's alleged claim to bargain over the County's decision to "reduce its jail budget, staffing levels, and operations." Since the Guild has never made such a claim, has the County presented a justiciable claim for which relief is available? (Assignment of Error No. 3)

2. To assess whether a potential subject of bargaining is mandatory or permissive under RCW Chapter 41.56, the courts must apply a scope of bargaining balancing test to assess the degree to which the topic touches on a wage, hour, or working condition versus a traditional managerial prerogative. The courts are required to apply this balancing test in all unfair labor practice cases where a unilateral change in a mandatory subject of bargaining is alleged. Is the Court's failure to apply and analyze the balancing test in error warranting reversal? (Assignment of Errors No. 1 and 2)
3. Layoffs and other employment actions like furloughs have been deemed mandatory subjects of bargaining when they are motivated by an employer desire to reduce labor costs. Kitsap County, after implementing a 2012 budget reduction, decided to save on labor costs through the decision to layoff two members of the Guild at the start of 2012. Did Kitsap County's decision to refuse to notify and bargain in good faith with the Guild over this decision constitute an unfair labor practice? (Assignment of Errors No. 1 and 2)
4. Whether the Guild is entitled to damages to remedy the unfair labor practice and attorneys' fees for having to bring this action to recover wages lost by its members as the result of the County's unlawful layoffs? (Assignment of Error No. 1)

III. STATEMENT OF THE CASE

The Guild represents all full-time and regular part-time corrections officers in the Kitsap County Sheriff's Office, Corrections Division, excluding sergeants, confidential employees and all other employees. [CP 364 ¶3] The employees represented by the Guild work in the County jail and are primarily responsible for the housing, control, and care of all inmates secured in the Kitsap County Jail. [CP 328 ¶5]

At the time of the initiation of proceedings at issue herein, the most recent collective bargaining agreement between the Guild and the County was for the period commencing January 1, 2007 through December 31, 2009. [CP 364 ¶6] The parties began negotiations for a successor agreement during the Summer of 2009. After reaching an impasse in negotiations around in 2010, the parties filed for mediation with the Public Employment Relations Commission (“PERC”). [CP 364 ¶7] Around May of 2011, the parties again reached an impasse during mediation, and around June 1, 2011, PERC certified the parties for interest arbitration. [CP 364-5 ¶7] An interest arbitration hearing in front of Arbitrator Howell Lankford was held on February 6, 2012 through February 9, 2012, and a final decision was issued on June 1, 2012. The new collective bargaining agreement stemming from the arbitration award is for the period of January 1, 2010 through December 31, 2012. [CP 365 ¶7]

On October 24, 2011, the Guild’s President, Terry Cousins, learned that two of the Guild’s members had been contacted by, and met with, the Chief of the Criminal Division, Ned Newlin. [CP 365 ¶8] President Cousins was told by the members that Chief Newlin had informed them that they would likely be laid off as of January 1, 2012. [CP 365 ¶8] Prior to this meeting, no member of the Guild’s Executive Board had been contacted by the County notifying them of the possibility of layoffs

starting in 2012, and as a result no Guild representatives attended this meeting with Chief Newlin. [CP 365 ¶8]

Immediately upon learning of this information, Guild President Cousins drafted a demand to bargain letter. [CP 365 ¶9] The letter was hand delivered to Chief Newlin's secretary on October 24, 2011. [CP 365 ¶9] In the letter, Cousins stated the Guild demanded that the County bargain any layoffs and the associated impacts of any layoffs. [CP 365 ¶9] In a follow-up email, the Guild's attorney also communicated with the County's Labor Relations Manager, Fernando Conill, the next day on October 25, 2011, reiterating the Guild's demand to bargain the decision over the layoffs. [CP 365-6 ¶11]

The parties eventually agreed to set up a face-to-face meeting to discuss the Guild's demand letter on November 8, 2011. [CP 366 ¶13] In advance of this meeting, the Guild's representative made an extensive request for information concerning the County's current fiscal situation and budget for 2012. [CP 366 ¶11] Some information pertinent to the County's fiscal situation was provided on November 5th [CP 366 ¶12], but the Guild had inadequate time to review all the material in advance of the November 8th bargaining meeting. [CP 366 ¶13] At that meeting, the County stated its position that the two layoffs were necessitated by budget cutbacks, but the Guild indicated it was still reviewing the County's fiscal

data and did not necessarily agree. [CP 366 ¶14] The parties went on to discuss some proposals over the impacts of any layoffs. [CP 366 ¶14] No further meetings were scheduled. [CP 366 ¶14]

On December 1, 2011, the Guild's legal counsel sent an email reply to Mr. Conill reiterating the Guild's demand to bargain both the decision over the layoffs and any impacts and that, upon further review and analysis, the Guild did not believe there to be any budget constraint necessitating layoffs in 2012. [CP 367 ¶15] At this juncture, the Guild had completed its review of the County's fiscal and budget data and determined that there was no financial need for any budget cutbacks in the Jail's 2012 budget and that, instead, it appeared the Board of County Commissioners had made a *policy decision* to reduce the Jail's budget and staffing. [CP 367 ¶15] The Guild also supplied the County with further legal argument and case law supporting its position that any decision to engage in layoffs was a mandatory subject of bargaining and that the County had to fulfill its bargaining obligations in advance of any final decision. [CP 367 ¶15]

In response, by way of email on December 13th, Mr. Conill stated, for the first time, that the County's position was that it had no obligation to bargain over its decision to conduct layoffs and that a final decision to layoff two Guild members starting in 2012 had already been made. [CP

367 ¶16] A few days later, on December 17th, the Guild's legal counsel responded to Mr. Conill's email arguing why the County's legal rationale behind its belief that it did not have to engage in decisional bargaining over the layoffs was in error and again restating the Guild's desire to meet and bargain in good faith over any decision on layoffs. [CP 368 ¶17] No further discussions or negotiations occurred on this matter, as the County filed the subsequent action herein on December 22, 2011. [CP 368 ¶18]

The two Guild members were laid off on January 1, 2012. [CP 368 ¶19] Both officers have suffered significant financial hardship as a result of the layoffs. [CP 368 ¶19] As of June of 2012, Officer Jones remained actively looking for alternative employment but had yet to secure a new position. [CP 368 ¶19] Officer Page, who had to endure a second round of being laid off by Kitsap County at the outset of 2012, remained unemployed for some time until securing employment at the Puget Sound naval shipyard, as of June 2012. [CP 368 ¶19]

IV. SUMMARY OF ARGUMENT

As a threshold matter, before any ruling on the merits, the elements of justiciability must be met establishing the Court's jurisdiction in any matter. The Superior Court erred in granting an order in favor of the County regarding its declaratory judgment action because the County has failed to present an actual, present, and existing dispute between the

parties for which the courts would have jurisdiction to rule. The ruling sought by the County from this Court is that the Guild does not have the right to bargain over the County's decision to "reduce the jail budget, operations, or staffing levels." [CP 338]. The Guild has made no such demand; therefore, the elements of justiciability concerning the County's claim have not been met.

The trial court also erred in denying the Guild's counterclaim, also seeking a declaratory judgment, that the County committed an unfair labor practice ("ULP") in contravention of RCW chapter 41.56 through its refusal to bargain, and interference with the rights of the Guild, by unilaterally imposing layoffs on Guild members without bargaining in good faith. The decision to engage in layoffs is a mandatory subject of bargaining that must be negotiated and either agreed upon or imposed through a binding interest arbitration award before the County can implement such an action. The County's failure to discharge this good faith bargaining obligation herein should be declared to be in bad faith and an unfair labor practice, and they should be enjoined from further action until they have discharged all of their duties under the Public Employees Collective Bargaining Act, RCW Chapter 41.56.

Under the scope of bargaining balancing analysis, the Court must weigh how directly an issue impacts employee "wages, hours, and

working conditions” against those topics that are traditionally considered to be managerial prerogatives. In the past, application of this balancing analysis to the subject of layoffs has divided along the line of the employer’s motivation behind the layoffs or other type of work reduction, like furloughs. When the motivation is found to be one where the employer seeks to reduce labor costs, the subject of layoffs has been found to be a mandatory subject of bargaining. In contrast, when any layoffs are only an indirect result of programmatic or service changes by the employer, bargaining is only permissive.

The record in this matter is clear that the County’s motivation for engaging in layoffs was to reduce labor costs. There is no evidence that the County changed the scope of the enterprise by, for instance, closing a section of the jail or eliminating certain programs. The impact on employee wages and working conditions in this case is significant, and through the application of the balancing test it is clear that the layoffs here were mandatory subjects of bargaining. The County’s refusal to bargain over the layoff decision constituted an unfair labor practice.

The Guild has sought an award of damages for back wages owed to its members, pursuant to the collective bargaining agreement, that were denied as a result of the unlawful layoffs. PECBA empowers PERC, and in turn this Court, to issue damage awards and attorney fees to effectuate

the purpose of the statute. Additionally, the Wage Recovery Act mandates an award of attorneys' fees to the Guild for defending, and having to bring a claim, in Superior Court for the recovery of lost wages, and for this action on appeal.

V. ARGUMENT

A. Standard of Review.

The rule on Summary Judgment, Civil Rule 56(c) provides in pertinent part:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

“The standard of review for an order granting or denying summary judgment is *de novo*, and the appellate court performs the same inquiry as the trial court.”¹ “Summary judgment is proper when the record demonstrates there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”² “All facts and reasonable inferences are considered in a light most favorable to the nonmoving party.”³

B. The Superior Court’s Order Granting Judgment in Favor of the County Was In Error Because the County’s Claim Was

¹ *Aba Sheikh v. Choe*, 156 Wn.2d 441, 447, 128 P.3d 574 (2006).

² *Munich v. Skagit Emergency Commc 'ns Ctr.*, 175 Wn.2d 871, 877 (2012).

³ *Id.*

Not Justiciable.

1. The Court’s Jurisdiction Can Only be Invoked When There is an Actual Case or Controversy.

Under the Uniform Declaratory Judgment Act (“UDJA”), “the requirement of standing tends to overlap justiciability requirements.”⁴ “Justiciability is a threshold inquiry and must be answered in the affirmative before a court may address the merits of a litigant’s claim.”⁵ Naturally, therefore, the Court must first determine whether the claim is even justiciable. Under the UDJA, “a person whose rights, status, or other legal relations are affected by a statute may have any question of the construction of that statute determined by a court.”⁶ Washington State courts have long held that to invoke the UDJA, chapter 7.24 RCW, a plaintiff must establish:

(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.⁷

2. There is No Case or Controversy Herein Because the Guild Never Demanded to Bargain any Decision to

⁴ *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (citing *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 203, 11 P.3d 762 (2000)).

⁵ *Coppernoll v. Reed*, 155 Wn.2d 290, 300, 119 P.3d 318 (2005). See *To-Ro Trade Shows v. Collins*, 144 Wn.2d at 411.

⁶ *Branson v. The Port of Seattle*, 152 Wn.2d 862, 877, 101 P.3d 67 (2004).

⁷ *To-Ro Trade Shows v. Collins*, 144 Wn.2d at 411 (quoting *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)).

“Reduce the Jail Budget, Operations, or Staffing Levels.”

The Order by the Superior Court granting the County a declaratory judgment ruling is in error because the County never presented an actual, present, and existing dispute between the parties, in violation of the justiciability requirement. The basis for the County’s complaint seeking a declaratory judgment is allegedly grounded in the Guild’s demand to bargain over the County’s decision to “reduce the jail budget, operations, or staffing levels.” [CP 338] Nevertheless, in presenting this claim, the County is *unable to point to one iota of evidence* that the Guild ever made such a demand. The reason for this, of course, is because the Guild never requested to bargain over the “jail budget, operations, or staffing levels;” therefore, the justiciability requirement concerning the County’s claim has not been met.

The Guild has the authority to frame any demand to bargain as it sees fit, and it in fact did so in its original demand to bargain letter that Guild President Cousins presented to Chief Ned Newlin on October 24, 2011 upon learning about the possibility of layoffs. At the outset of this letter, President Cousins stated the Guild’s demand as follows: “We are demanding to bargain any layoffs of Corrections Officers and the impacts to our working conditions.” [CP 365 ¶9 and CP 372] In a follow up email shortly thereafter to the County’s Director of Labor Relations, Fernando

Conill, the Guild's legal counsel reiterated the demand, stating: "Our expectation, based on that demand letter, is to engage the County over any possible layoff decision in advance of a final decision." [CP 365-6 ¶11 and CP 376]

The County cannot point to a single piece of evidence where the Guild ever came close to demanding to bargain the County's budget, operations, or staffing levels. Instead, all the County can do is lift passages that are out of context where the Guild's representatives made some mention of the County's budget and twist the record to support their maneuvered assertion that the Guild made a demand to bargain the County's budget that the Guild, in fact, never did. These efforts should be rejected.

As a result, there is no actual, present, and existing dispute between the parties concerning bargaining over the County's budget, operations, or staffing levels because the record clearly shows the Guild never made such a demand of the County, nor did it ever attempt to engage the County in bargaining over these topics. Instead, the Guild's efforts were limited to seeking to engage with the County in decisional bargaining over its desire to layoff some Guild members in an effort to save on labor costs, which is a discrete and separate topic of bargaining. The County's efforts for a declaratory judgment in this matter and its

arguments in opposition to the Guild’s appeal should be rejected because this Court does not have jurisdiction to hear a claim that is only hypothetical and not the subject of an actual and present dispute between the parties.

C. The Superior Court Erred in Failing to Properly Analyze Whether the Layoff Decision Was a Mandatory Subject of Bargaining under RCW, Chapter 41.56.

1. A Balancing Test Must be Applied When Determining Whether a Subject of Bargaining is Mandatory or Permissive.

Kitsap County and the Guild are governed by RCW Chapter 41.56, the Public Employees Collective Bargaining Act (“PECBA”). PECBA makes it an “unfair labor practice for an employer “to refuse to engage in collective bargaining.”⁸ “Collective bargaining” is defined in RCW 41.56.030(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.” PERC has had numerous occasions to expound upon the

⁸ RCW 41.56.140.

meaning of the duty to “collectively bargain,” which standard has repeatedly been encapsulated as follows:

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). “[P]ersonnel matters, including wages, hours, and working conditions” of bargaining unit employees are characterized as mandatory subjects of bargaining. *Federal Way 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), *aff’d*, 117 Wn.2d 655 (1991); *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991). An employer 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)⁹

Bargaining subjects are classified as “mandatory,” “permissive” and “illegal.”¹⁰ PERC has indicated: that “[m]atters affecting wages, hours, and working conditions are mandatory subjects of bargaining, while matters considered remote from ‘terms and conditions of employment’ or which are regarded as a prerogative of employers or of unions have been categorized as ‘nonmandatory’ or ‘permissive.’”¹¹

PECBA case law recognizes certain “management rights” which are exempt from the duty to bargain. As instructed by the State Supreme

⁹ *City of Yakima*, Decision 11352 (PECB, 2012).

¹⁰ *Yakima County*, Decisions 6594-C and 6595-C (PECB, 1999).

¹¹ *Id.*; see also *Federal Way School District*, Decision 232-A (EDUC, 1977).

Court, when matters touch on “wages, hours and working conditions” but also touch on “management rights,” the courts and PERC are to apply a “balancing test” to determine if a subject is or is not a “mandatory subject of bargaining.”¹² Commenting on this standard, PERC has said: “The critical consideration in determining whether an employer has a duty to bargain a matter is the nature of the impact on the bargaining unit.”¹³ PERC has been consistent and clear: What it looks to in determining whether a change is within the scope of bargaining is the essential nature of the change, *not the creative label that a party might attach to the change.*¹⁴

The duty to bargain is broad and a subject is not automatically exempt from bargaining simply because it *somehow involves* management

¹² See *International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 197, 778 P.2d 32 (1989).

¹³ *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991).

¹⁴ As the Commission explained in *Yakima County*, Decisions 6594-C and 6595-C (PECB, 1999):

In determining whether an issue is a mandatory subject of bargaining, the Commission weighs the extent to which the issue affects personnel matters. Where a subject relates to conditions of employment and is a managerial prerogative, the focus of inquiry is to determine which of these characteristics predominates. *International Association of Fire Fighters, Local 1051 v. Public Employment Relations Commission (City of Richland)*, 113 Wn.2d 197 (1989). The critical consideration in determining whether an employer has a duty to bargain a matter is the nature of the impact on the bargaining unit. *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991).

In *City of Richland*, Decision 6120 (PECB, 1997), the Examiner rejected an employer’s attempt to cast as management right to determine “staffing” what essentially was skimming of bargaining unit work. He noted: “The Commission and its Examiners thus go beyond characterizations and labels to analyze the facts demonstrated by a full evidentiary record.” See also *City of Wenatchee*, Decision 8802 (PECB, 2004)(“Whether a staffing proposal is a mandatory or permissive subject of bargaining depends on the nature of the proposal.”).

rights. For example, in *King County v. PERC*,¹⁵ the Court of Appeals rejected King County's claim that its right to regulate jail security exempted it from a duty to negotiate with the nurses' union as to whether nurses had to wear a badge identifying their names. The nurses' union argued — and PERC had agreed — that this touched on employees' safety concerns, a working condition, and was therefore subject to the duty to bargain. In upholding PERC, the Court of Appeals demonstrated an application of the balancing test:

King County asserts that the jail's name badge policy is a fundamental management prerogative which directly affects the "operational integrity of the jail." It claims that if decisions such as this one "were required to be made through the Jail's negotiations with its eleven different bargaining units, the result would be chaos and possible loss of control over a facility which necessarily requires strict and careful control over matters affecting security." King County cites numerous sources which support its argument that decisions affecting the safety and security of correctional facilities must remain in the hands of the correctional administrator. To tailor those sources to the facts of this case, King County cites two cases which held that employers were not required to bargain with employees over uniform changes which were implemented to further the facilities' missions. Those cases are not helpful here, however, because the employees in those cases were not relying on personal safety concerns. When union members' reasons for objecting to a proposed policy are not compelling, their interests are clearly outweighed by those of an employer who relies on internal order and discipline as a reason for the policy. But here, the nurses object to the jail's policy because they believe it will jeopardize their safety, a much more significant concern than those raised in the cases King County relies on.¹⁶

¹⁵ 94 Wn.App. 431, 438-39, 979 P.2d 130 (1999).

¹⁶ *Id.*

In upholding PERC, the Court also cited the standard used by the National Labor Relations Board (which PERC often cites as persuasive authority),¹⁷ that the “scope of bargaining” test involved whether the issue touched on a “legitimate concern” to the union.¹⁸

2. The Superior Court Erred by Failing to Engage in the Scope of Bargaining Balancing Test.

With the exception of the relatively few topics that undoubtedly fall within the precise definition of “collective bargaining” in RCW 41.56.030, most potential subjects of bargaining must be analyzed under the scope of bargaining balancing test in order to determine their status as mandatory or permissive. Properly classifying a subject of bargaining as mandatory or permissive is critical, for it is through this classification that it can subsequently be determined whether an employer committed a refusal to bargain unfair labor practice, contrary to RCW 41.56.140, by unilaterally changing a term and condition of employment that is a mandatory subject of bargaining. The Superior Court failed to apply or analyze the elements within the balancing test in assessing the Guild’s claim that the County committed a ULP, and through this failure, the decision is reversible as a matter of law.

The Order from the Superior Court makes no specific findings or

¹⁷ See *Nucleonics Alliance, Local 1-369 v. WPPSS*, 101 Wn.2d 24, 677 P.2d 108 (1984).

¹⁸ *Id.* at 440.

conclusions on whether the layoff decision made by the County falls within the mandatory or permissive category. [CP 8-10] The extent of the Superior Court's findings in this regard is limited to the transcript of statements made during oral argument. The relevant portion of those proceedings is as follows:

And so in conclusion on this important legal issue, I am finding that the layoff that resulted here from a reduction in budget and operations is not a mandatory subject of arbitration, and I looked at the City of Bellevue case which cited mandatory furlough layoffs. So I am persuaded by the county's position that it's not a mandatory subject of bargaining.¹⁹

With the exception of this statement by Judge Sutton that the decision to conduct the layoff was not a mandatory subject of bargaining, the record is devoid of any indication that the Superior Court conducted the required balancing test or what the results of such analysis were in this case. In the absence of such an analysis, the conclusion that the layoff decision in this case was not a mandatory subject of bargaining is legally defective because nothing in the record indicates this conclusion was reached as a product of engaging in the scope of bargaining balancing test. The absence of an application of the balancing test to determine how to classify the issue of layoffs in this case as a subject of bargaining agitates toward reversal of the Superior Court's Order.

D. It Was in Error for the Superior Court to Deny the Guild's

¹⁹ RP (10/11/12) 7:10-16.

Motion for Summary Judgment that Kitsap County Committed an Unfair Labor Practice by Refusing to Engage in Collective Bargaining.

1. Kitsap County Refused to Engage in Collective Bargaining When it Unilaterally Changed a Mandatory Subject of Bargaining.

A core PECBA requirement is that negotiations *precede* any decision to change “wages, hours or working conditions.” An employer commits an unfair labor practice by effecting changes in wages, hours, or working conditions of union represented employees without *first*: “(a) giving notice to the Union; (b) providing an opportunity for bargaining *before* making the decision on a proposed change; and (c) bargaining in good faith to agreement or impasse *prior to* unilaterally implementing any change.”²⁰

For bargaining units subject to the statutory “interest arbitration” provisions,²¹ a classification of a subject as negotiable carries an additional consequence — no change is permitted without either the “consent” of the other party or a resolution by the interest arbitration panel.²²

As indicated, PECBA requires bargaining over “working

²⁰*Skagit County*, Decision 8886 (PECB, 2005) (emphasis supplied). *Id.* (citing *City of Vancouver*, Decision 808 (PECB, 1980)). “The notice must be given in such a manner as to allow time for the union to ‘explore all the possibilities, provide counter-arguments and offer alternative solutions or proposals regarding the issue raised by the proposed change.’” *Id.*

²¹ RCW 41.56.430-492 (includes subchapters 430, 440, 450, 452, 465, 470, 473, 475, 480, 490 and 492).

²² RCW 41.56.470.

conditions.” Job security is a paramount “working condition.” Specifically, the Commission noted that it “has repeatedly held that the decision to lay off employees is a mandatory bargaining subject.”²³ The employer’s obligation to bargain extends to temporary or short term layoffs.²⁴

An employer may not evade the duty to negotiate a layoff by characterizing it as an “operational shutdown.” Where an employer decides to lay off employees for “economic reasons rather than due to a change in the scope of its operations, such a layoff decision is a mandatory subject of bargaining.”²⁵ As the Examiner noted in *North Franklin School*

²³*City of Kelso*, Decision 2633-A (PECB, 1988). See *Tacoma-Pierce County Employment and Training Consortium*, Decision 10280 (PECB, 2009) (noting that “because the employer’s layoff decision had a significant impact on employees’ wages, hours and working conditions, the decision is a mandatory subject of bargaining”). *City of Centralia*, Decision 1534-A (PECB, 1982); *City of Mercer Island*, Decision 1026-A (PECB, 1981); *South Kitsap School District*, Decision 472 (PECB, 1978)). NLRB cases are similar: *Pan American Grain Co.*, 2007 NLRB LEXIS 530, (2007) (affirming the ALJ’s finding that the Respondent’s decision to lay off employees was a mandatory subject of bargaining); *Tri Tech Services*, 340 NLRB 894, 895 (2003) (“It is well established that the layoff of unit employees is a change in terms and conditions of employment over which an employer must bargain.”) (citing *Taino Paper Co.* 290 NLRB 975, 977-978 (1988); *Peat Mfg. Co.*, 261 NLRB 240 (1982)); *Davis Electric Wallingford Corporation, et al*, 318 NLRB 375 (1995) (finding that employer committed unfair labor practice when it unilaterally gave employees three (3) working days notice of layoffs and refused to bargain). See also *Quality Packaging Inc.*, 265 NLRB 1141, *2 (1982) (ordering the employer to cease and desist from “unilaterally altering its method of recalling employees from layoff without notice to or bargaining with the Union as the exclusive bargaining representative of its employees”).

²⁴ See *East Coast Steel, Inc. and Shopmen’s Local Union No. 807, of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO*, 317 NLRB 842, 846 (1995) (finding that employer violated its duty to bargain when it failed to properly bargain temporary layoff of employees on three days due to predictable supply shortfalls).

²⁵ *Pan American Grain Co.*, 2007 NLRB LEXIS 530, *12 (2007) (citing *Adair Standish*

District: “[T]he Commission has held, also consistent with federal precedent, that an employer has an obligation to bargain when a desire to reduce employee work hours is motivated solely for the purpose of reducing its labor costs.”²⁶

Here Kitsap County claims that it can exempt itself from the duty to bargain simply by labeling the decision to layoff Guild members as a budgetary requirement within management’s sole prerogative. PERC has consistently rejected this approach in the past.²⁷ Beginning with *South Kitsap School District*,²⁸ PERC has held that layoffs that are economically motivated are mandatory subjects of bargaining. Subsequent decisions by PERC have confirmed that “the decision to lay off employees is a mandatory subject of bargaining.”²⁹ This obligation to bargain has been extended by the Commission to also include the policies and procedures associated with any layoffs.³⁰

PERC’s position has been upheld by the courts. In *Metro v.*

Corp., 290 NLRB 317, 319 (1988) (finding unlawful failure to bargain over economically motivated layoffs), enforced in relevant part 912 F.2d 854 (6th Cir. 1990); see also *Fibreboard Paper Prods Corp. v. NLRB*, 379 U.S. 203, 213-214, 85 S. Ct. 398, 13 L.Ed.2d 233 (1964).

²⁶ Decision 5945 (PECB, 1997).

²⁷ See e.g., *City of Kalama*, Decisions 6739, 6740 and 6741 (PECB, 1999).

²⁸ Decision 472 (PECB, 1978).

²⁹ *Tacoma and Pierce County Employment Training Consortium*, Decision 10280 (PECB, 2009) (citing *City of Kelso*, Decision 2633-A (PECB, 1988), *aff’d.* in part and *rev’d.* in part, 57 Wn. App. 721, 790 P.2d 185 (1990), review denied, 115 Wn.2d 1010, 797 P.2d 512 (1990)); See also *Yakima County*, Decision 11621 (PECB, 2013); *Stevens County*, Decision 2602 (PECB, 1987); *City of Centralia*, Decision 1534-A (PECB, 1983).

³⁰ *Tacoma and Pierce County Employment Training Consortium*, Decision 10280-A (PECB, 2009).

PERC,³¹ the employer argued that its decision over whether reorganization of a “commuter pool program” was one strictly of management rights. The Court rejected that claim, noting that the employees had been transferred to a different work group where they would be subject to new working conditions:

We agree that Metro is not required to bargain over changes in the scope and direction of the commuter pool program which do not primarily concern conditions of employment. Metro may reorganize a significant facet of its operation without bargaining, so long as the wages, hours and working conditions of represented employees are not affected. It is clearly implicit in *PERC*’s order, however, that restoration of the commuter pool program to its former status is limited to the wages, hours and working conditions of the five transferred employees represented by Local 17. Its order does not affect management personnel, nor does it infringe upon Metro’s prerogative to change the direction of its operations. *PERC*’s exercise of its power under RCW 41.56.160 to compel Metro to comply with its duties under RCW 35.58.265 presents no conflict with Metro’s transportation function.³²

This standard, first adopted by *PERC* and subsequently confirmed by the Washington State courts, originated in decisions by the NLRB and federal courts interpreting the National Labor Relations Act (“NLRA”). The NLRB has, on repeated occasions, confronted the issue over whether the decision to layoff employees is a mandatory subject of bargaining, consistently finding that the decision to layoff when motivated by

³¹ 60 Wn. App. 232, 803 P.2d 41 (1991), *aff’d.* in part, *rev’d.* in part, 118 Wn.2d 621, 826 P.2d 158, 1992, Wash. LEXIS 67 (1992) (Supreme Court reversed separate aspect of decision which required Metro to submit dispute to binding interest arbitration.).

³² *Id.* at 238.

economic reasons is a mandatory subject of bargaining.³³ The premise behind much of this case law is the idea that the union may be able to point out unforeseen problems with any layoffs or it may be able to convince the employer to retain the employees.³⁴ Even if the probability of convincing the employer otherwise is low, the Supreme Court has dismissed that argument, noting:

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.³⁵

2. Layoffs and Other Work Reductions Motivated by Economic Savings Have Repeatedly Been Found to be Mandatory Subjects of Bargaining.

PERC actually has a widely developed body of case law on the direct issue in front of this Court that is far more coherent and easily distinguishable than the County has previously presented. The County's attempt to portray PERC as wildly inconsistent on this issue with no clear body of case law stems from a misguided understanding as to how PERC

³³ See *Amsterdam Printing and Litho Corp.*, 223 NLRB No. 66, 92 LRRM 1243 (1976); *Torrington Constr. Co.*, 198 NLRB 1158, 81 LRRM 1102 (1972); *Howmet Corp.*, 197 NLRB 471, 80 LRRM 1555 (1972); *Assonet Trucking Co., Inc.*, 156 NLRB 350, 61 LRRM 1048 (NLRB 1965); *Dixie Ohio Express Co.*, 167 NLRB 573, 66 LRRM (BNA)1092 (1967) *enforcement denied sub nom*, *NLRB v. Dixie Ohio Exp. Co.*, 409 F.2d 10, 70 LRRM 3336 (6th Cir. 1969); See also Morris, THE DEVELOPING LABOR LAW, 800 (2nd Ed. 1983) (listing "layoffs" under the heading of "obvious and settled examples" of mandatory bargaining subjects under NLRA).

³⁴ See *Dixie Ohio Express Co.*, 167 NLRB 573 (1967).

³⁵ *Fibreboard Paper Prods. Corp. v. NLRB*, 379 U.S. 203, 85 S. Ct. 398, 13 L.Ed.2d 233 (1964).

has categorized past analogous cases, and the key distinguishing factor that PERC relies upon in these related, but distinct, line of cases in an effort to determine when the decision to engage in layoffs constitutes a mandatory subject of bargaining.

Central to the inquiry in separating out those cases where layoffs have been deemed to be mandatory subjects of bargaining is the employer's motivation process that results in the eventual layoff. In one set of cases directly addressing layoffs, elaborated on below, PERC has identified the employer's main motivating factor as a *desire to reduce labor costs or an economic motivation* to change employee wages, hours and working conditions. In these cases, the decision to engage in layoffs (and other work reductions like furloughs) itself has been found to be a mandatory subject of bargaining. These decisions stand in contrast to a second set of cases where layoffs often incidentally result that stem from an original decision by the employer that involved a *programmatic change or an alteration to the services* to be provided by that employer, which, under the balancing analysis, more closely align with a traditional managerial prerogative. The County's inability and lack of motivation to distinguish between these two more nuanced, yet critically important differences, is what has lead us to these proceedings.

When an employer is motivated to reduce its labor costs or make

other changes to wages, hours and working conditions on a temporary or permanent basis, including laying off personnel and severing the employment relationship completely, it has repeatedly been found to be a decision implicating a mandatory subject of bargaining. In *City of Kelso*,³⁶ for example, the City unilaterally decided to contract out its firefighting work by partially annexing itself to the Cowlitz County Fire Protection District No. 2. The resulting annexation meant the City's firefighters would be laid off. In commenting on the City's motivation, PERC noted:

Thus, a change driven primarily, if not exclusively, by considerations of labor costs was a foregone conclusion before the union ever had a chance to present its views on the matter. At a later point in time, this union was quite willing to offer substantial concessions to save the jobs of its members. We cannot know what concessions the union might have offered in January, 1985 to save the jobs of two if its members, since the employer did not give it the opportunity required by law.³⁷

Thus, in concluding that labor costs motivated the ultimate decision to layoff, PERC found that "layoffs" are "among the types of issues where there is a duty to give notice and bargain."³⁸

Similarly, in *City of Bellevue*,³⁹ the Hearing Examiner found that the layoff decision was economically motivated. Within such a

³⁶ Decision 2633 (PECB, 1988).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Decision 10830 (PECB, 2010) (reversed in part on other grounds).

motivating structure, through the application of the subjects of bargaining balancing test, the Examiner found:

The employer's decision to lay off its dispatchers caused the employees to lose wages, health care and continued investment in retirement benefits. This impact is being balanced with employer's interest to manage its workforce. On balance, in this case, the extent to which the employer's action impacts employee wages, hours and working conditions predominates over the extent to which the action is an essential management prerogative. There is no greater possible impact on an employee than the complete loss of the employment relationship. I find that the employer's decision to lay off ... is a mandatory subject of bargaining.⁴⁰

In a recent and directly analogous case to our own involving King County and the Technical Employees Association, PERC confronted the question of whether furloughs constituted a mandatory subject of bargaining. This case is of particular importance for the matter in front of this Court because, as PERC discussed, furloughs only differ from layoffs in that layoffs are "generally seen as a permanent or indefinite separation from work" whereas furloughs are "generally temporary in nature."⁴¹ But, both topics directly affect the employment relationship and negatively impact employee wages. Also, in this case, the employer argued that its

⁴⁰ While this decision was reversed, in part, by the full Commission on appeal, it did so upon concluding that the employer had decided to "get out of the business," which was a managerial prerogative. The ultimate decision to layoff, the Commission concluded, was only a consequence of the earlier decision to exit the dispatch business, which original decision itself was found to be a non-mandatory subject of bargaining. The decision of the Commission, therefore, falls within the second line of cases described below that fit within the "programmatic decision" category. The Examiner's reasoning that economically motivated layoff decisions, themselves, constitute mandatory subjects of bargaining, remains an accurate statement of PERC's current case law.

⁴¹ *King County*, Decisions 10576-A, 10577-A, 10578-A (PECB, 2010).

reason for unilaterally implementing the furloughs was to balance its 2009 budget, which is the same argument that Kitsap County makes herein.

On appeal to the full Commission, PERC agreed with the Examiner's finding that the employer's "chief motivation for imposing furloughs was to reduce labor costs."⁴² Specifically, it found:

In reaching this conclusion, the Examiner found that the employer's stated reason for deciding to implement furloughs was to achieve labor savings, and not to eliminate services. The Examiner noted that the employer had the right to determine and manage its own budget, and considered the impact of the looming financial crisis. These facts did not make the decision to furlough employees a permissive one. We agree.⁴³

Further, the Commission went on to contrast the *King County*⁴⁴ case with *Wenatchee School District*,⁴⁵ and in so doing highlighted the critical distinction in this body of case law that Kitsap County either overlooks or fails to understand. "Unlike *Wenatchee School District*, where the respondent made a wholesale change to the scope of its operation, this employer's decision to close its offices *does not constitute a programmatic change to an employer service*, rather the decision to implement furloughs simply precludes certain services from being available on ten days of the year."⁴⁶ King County was not making

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Decision 3240 (PECB, 1990).

⁴⁶ *King County, supra.*

changes to the services it provided; rather, it was using the furloughs to achieve a savings in labor costs and help balance its 2009 budget. As a result, with this motivating mechanism at play, the issue of furloughs, like layoffs, was found to be a mandatory subject of bargaining.

Programmatic or service changes have been at the heart of second line of cases relied upon by the County in earlier proceedings, to which the County incorrectly cited as authority for the alleged proposition that layoffs are not a mandatory subject of bargaining. Three of those cases—*City of Anacortes*,⁴⁷ *City of Bellevue*,⁴⁸ and *City of Kirkland*⁴⁹—all involved significant changes to the employer’s operation where PERC concluded the employer had decided to “get out of the business” with respect to a previous service it had provided. In each of these cases, the cities decided to cease operating independent emergency communications center and instead join with other municipal jurisdictions to form a new regional communication centers through an interlocal agreement. While the outcome of these changes was always layoffs, the original and central decision concerned the scope of the operations provided by an employer. The point here is well made by the full Commission on the appeal in the *City of Bellevue* matter, where they ultimately concluded:

⁴⁷ Decision 6830-A (PECB, 2000).

⁴⁸ Decision 10830-A (PECB, 2012).

⁴⁹ Decision 10883-A (PECB, 2012).

The employer's decision to go out of business is an essential management prerogative that is a permissive subject of bargaining. Thus, the employer did not have a duty to bargain the decision to close its operations. Laying off employees was a result of the decision to close its operations, not a separate decision.⁵⁰

The layoffs in all three cases were found to be *only incidental* to an underlying management prerogative to alter its service level and close some of its operations. Unlike the first set of cases detailed above, where no such service level changes were implicated and the motivating mechanism behind the layoffs was a desire to reduce labor costs; in these cases, layoffs were only a necessary consequence of an underlying programmatic change that PERC ruled the employer ultimately had the right to determine.

3. The County Committed a ULP by Unilaterally Implementing Layoffs of Guild Members.

The record is clear and uncontested that the County failed to provide adequate notice and an opportunity to bargain its desire to layoff two members of the Guild at the outset of the 2012 calendar year. The Guild learned of the County's intentions in October of 2011, only after the decision had already been made to move forward with the layoffs. [CP 365 ¶8] After repeated demand to bargain letters and requests to the County to bargain the layoff decision and its effects, the County steadfastly maintained its opposition to bargain the decision and instead

⁵⁰ *City of Bellevue, supra.*

filed the legal action herein. [CP 368 (¶¶16-18)] Those elements of a ULP violation, in contravention of RCW 41.56.140(4), are all undoubtedly met. The only question that remains is whether the layoff decision, in and of itself, constitutes a mandatory subject of bargaining.

The application of the subjects of bargaining balancing test in this case weighs in favor of deeming the layoff decision made by Kitsap County as a mandatory subject of bargaining. The duty to collectively bargain includes the requirement to meet at reasonable times and negotiate in good faith over personnel matters, including wages, hours and working conditions. Laying off employees to reduce labor costs, as occurred here, strikes at the heart of employee wages and working conditions.

Layoffs have a direct and obvious impact on employee wages, because severing the employment relationship ends the employee's rights to wages from their employer in entirety. PERC has also found that the topic of job security, implicated by the subject of layoffs, is a core "working condition" within the category of mandatory subjects of bargaining. Although certain operational elements touching on managerial prerogatives are implicated in this case, on balance, the close proximity with which a layoff decision designed to reduce labor costs sits in relation to the meaning of a "wage, hour, or working condition" militates toward concluding that this decision was a mandatory subject of

bargaining. As noted by the Hearing Examiner in *City of Bellevue*: “[T]here is no greater possible impact on an employee than the complete loss of the employment relationship.”⁵¹

The case at hand also fits squarely within a line of related cases decided by both PERC and the courts wherein employment actions – like layoffs or furloughs – are found to constitute mandatory topics of bargaining because the employer’s motivation for such decisions were economically based as a way of reducing labor costs. For instance, in *City of Kelso*,⁵² PERC rightly concluded that the city’s motivation in contracting out the firefighting work was driven by its efforts to reduce its labor costs rather than a decision to get out the business of providing fire services to city residents. The impetus for the layoffs – to reduce labor costs – tipped the balance in favor of such a decision constituting a mandatory subject of bargaining and lent itself to resolution through the collective bargaining process. As discussed by PERC, if the city had properly given notice and an opportunity to bargain, the union could have presented other cost saving measures mitigating the need for layoffs while still helping the city achieve the costs savings it desired.

Likewise, in *King County*,⁵³ PERC has already addressed, and

⁵¹ Decision 10830 (PECB, 2010).

⁵² Decision 2633 (PECB, 1988).

⁵³ Decisions 10576-A, 10577-A, 10578-A (PECB, 2010).

rejected, employer claims that certain employment actions – in that case mandatory furloughs – when done to achieve budgetary goals should fall in favor of being declared a managerial prerogative. Even with budgetary constraints in mind, PERC has found that this does not supersede the fact that when the employer’s main motive is to reduce labor costs (in contrast to program or service reductions), actions like layoffs or furloughs are mandatory subjects of bargaining. As PERC noted, while King County had the right to manage and set its budget, if it wants to achieve particular savings in its budget through furloughs, it has to negotiate that decision with the union.

The situation herein, therefore, is unlike a separate line of PERC cases, largely relied upon by the County, where layoffs were deemed to be a secondary or tertiary effect of an original decision that involved a programmatic or service change for which the employer was entitled to make unilaterally. Those cases would only be applicable to the legal parameters of this case if the facts of this case demonstrated that, for example, the layoffs stemmed from a decision by the County to close a section of the jail or reduce or eliminate a particular program it had offered, thus decreasing the need for a particular staffing level. These are not the facts at hand.

The County has not submitted any evidence concerning any

change to the scope of the jail enterprise in Kitsap County, including any programmatic revisions. In contrast, the record clearly demonstrates that the County perceived that some type of fiscal contraction at this time was necessary, for a variety of proffered reasons, and it chose to achieve reductions in the budget for the County jail through the reduction in union represented personnel (in the form of mandatory layoffs), to save on labor costs. This point is not in serious contention.

It would be one matter if the County had shut down a section of the jail or gone out of the business in its entirety, which it has some degree of managerial prerogative to determine. As PERC has made clear, any layoffs stemming from an earlier management decision to change the scope of the enterprise is not, in and of itself, bargainable because the subsequent layoffs only stem from an earlier decision for which the County could unilaterally determine. In this case, however, there were no such programmatic changes. The County simply decided it wanted to save on labor costs to meet a self-imposed budget reduction, and it accomplished that by unilaterally determining to layoff two members of the Guild. When economic savings and a reduction in labor costs are the motivating factors precipitating the layoff, it is clear that the layoff decision itself becomes a mandatory subject of bargaining.

The logic behind this result is born out in the meaning of collective

bargaining and the process associated therewith. To the extent any employer determines that it wants to reduce labor costs, and in turn reduce the budget for a particular department, it may have the right to establish those parameters. But the means by which those reductions are achieved, which invariably affect the wages of employees, are bargainable.

For example, relying on the facts of this case, the County could have approached the Guild concerning its desire to reduce its labor costs and propose that this be achieved through layoffs. Without negotiating with the County over its budget, per se, the Guild could respond in any number of ways that still met the County's budget goals without resulting in layoffs. It could, for instance, propose that instead of laying off two members, that the entire membership take a certain number of furlough days in the year. Alternatively, it could propose a suspension or certain premium or specialty pays, or their removal from the collective bargaining agreement in their entirety, reducing the County's overall costs while maintaining the existing number of personnel. There are any number of possible outcomes, but the point here is that the net effect of the new budget reality must be the product of bilateral negotiations because such discussions have a direct and immediate impact on the wages and working conditions of employees.

The collective bargaining statute gives paramount importance to

the fact that in a represented environment, public employers cannot unilaterally impose conditions of employment on employees that affect their wage, hours, or working conditions. The County can set their budget, but if their decision to set it at a particular level necessarily impacts a wage, hour or working condition, then they are obligated to bargain over the means by which that is achieved. Without such a requirement, employers could effectively nullify the entire purpose of RCW Chapter 41.56 by unilaterally resetting their budgets to fundamentally alter collective bargaining agreements and the terms and conditions of employment. The absurdity of such a result was not intended by the legislature, and it should be rejected here.

E. The Guild is Entitled to Applicable Attorneys' Fees

1. Attorney Fees are Appropriate to Remedy Unfair Labor Practice Violations and in Wage Withholding Actions

Pursuant to RAP 18.1, the Guild respectfully requests that this Court grant it attorneys' fees and costs on appeal. This request is supported by RCW 49.48.030, the statute that provides for the award of attorneys' fees in a wage recovery case.

RCW 49.48.030, in pertinent part, states: "[I]n any action in which any person is successful in recovering judgment for wages or salary owed to him, reasonable attorney's fees, in an amount to be determined by the

court, shall be assessed against [his] employer or former employer.” In *International Association of Fire Fighters, Local 46 v. City of Everett*,⁵⁴ the Supreme Court of Washington held this statute applied to labor unions recovering wages for its members through a CBA grievance:

We have previously recognized Washington’s long and proud history of being a pioneer in the protection of employee rights. The Legislature evinced a strong policy in favor of payment of wages due employees by enacting a comprehensive [statutory] scheme to ensure payments of wages. Attorney fees are authorized under remedial statutes to provide incentives for aggrieved employees to assert their statutory rights. Furthermore, remedial statutes should be liberally construed to advance the Legislature’s intent to protect employee wages and [to] assure payment. Therefore, the terms of RCW 49.48.030 must be interpreted to effectuate this purpose.

2. The Guild is Entitled to an Award of Attorneys’ Fees Through Its Efforts to Recover Member Wages as a Result of the County’s Unlawful Actions.

In this case, if the Guild is correct that the County failed to discharge its obligation to bargain in good faith, and in turn interfered with the rights of the Guild, resulting in an unfair labor practice, the resulting layoff of two of its members at the start of 2012 was, in and of itself, unlawful. While the Guild’s damages may themselves be monetary in nature, as a result of this unlawful act, its members have undoubtedly suffered a financial harm as a result of their layoffs through the loss of wages and other benefits of employment through Kitsap County. Should

⁵⁴ 146 Wn.2d 29, 42 P.3d 1265 (2002).

the Guild's efforts herein prevail, and monetary relief is ordered in the form of lost wages, the Guild is entitled to recovery of its attorneys' fees incurred as a result of this appeal.

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VI. CONCLUSION

For the foregoing reasons, this matter should be remanded with an order directing that the Order of the Mason County Superior Court be reversed, that the Guild's motion for summary judgment be granted and that attorney's fees for all court actions be awarded.

Respectfully submitted this 21st day of February, 2013.

CLINE & ASSOCIATES



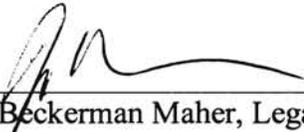
Christopher J. Casillas, WSBA No. 34394
Attorneys for Appellant

DECLARATION OF SERVICE

I certify that on February 21, 2013, I caused to be served via electronic mail and U.S. Mail a true and accurate copy of the foregoing *APPELLANT'S OPENING BRIEF* and this *DECLARATION OF SERVICE* in the above-captioned matter on the party listed below:

Ms. Jacquelyn M. Aufderheide
Ms. Deborah A. Boe
Kitsap County Prosecuting Attorney's Office
614 Division St., MS-35
Port Orchard, WA 98366
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Attorneys for Respondent

Dated this 21st day of February, 2013, at Seattle, Washington.



Joy Beckerman Maher, Legal Assistant

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RCW 35.58.265

Acquisition of existing transportation system — Assumption of labor contracts — Transfer of employees — Preservation of employee benefits — Collective bargaining.

If a metropolitan municipal corporation shall perform the metropolitan transportation function and shall acquire any existing transportation system, it shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he or she enjoyed as an employee of such system prior to such acquisition. The metropolitan municipal corporation shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization.

[2009 c 549 § 2105; 1965 c 91 § 1.]

Notes:

Retention of employees, preservation of pension rights and other benefits upon acquisition of metropolitan facility: RCW [35.58.380](#) through [35.58.400](#).

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RCW 41.56.030 Definitions.

As used in this chapter:

(1) "Adult family home provider" means a provider as defined in RCW [70.128.010](#) who receives payments from the medicaid and state-funded long-term care programs.

(2) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(3) "Child care subsidy" means a payment from the state through a child care subsidy program established pursuant to RCW [74.12.340](#) or [*74.08A.340](#), 45 C.F.R. Sec. 98.1 through 98.17, or any successor program.

(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.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Family child care provider" means a person who: (a) Provides regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) receives child care subsidies; and (c) is either licensed by the state under RCW [74.15.030](#) or is exempt from licensing under chapter [74.15](#) RCW.

(8) "Individual provider" means an individual provider as defined in RCW [74.39A.240](#)(4) who, solely for the purposes of collective bargaining, is a public employee as provided in RCW [74.39A.270](#).

(9) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(10)(a) "Language access provider" means any independent contractor who provides spoken language interpreter services for department of social and health services appointments or medicaid enrollee appointments, or provided these services on or after January 1, 2009, and before June 10, 2010, whether paid by a broker, language access agency, or the department.

(b) "Language access provider" does not mean an owner, manager, or employee of a broker or a language access agency.

(11) "Public employee" means any employee of a public employer except any person (a)

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elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to (i) the executive head or body of the applicable bargaining unit, or (ii) any person elected by popular vote, or (iii) any person appointed to office pursuant to statute, ordinance or resolution for a specified term of office as a member of a multimember board, commission, or committee, whether appointed by the executive head or body of the public employer, or (d) who is a court commissioner or a court magistrate of superior court, district court, or a department of a district court organized under chapter 3.46 RCW, or (e) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (e) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(12) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(13) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) firefighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other firefighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

[2011 1st sp.s. c 21 § 11; 2010 c 296 § 3; 2007 c 184 § 2; 2006 c 54 § 2; 2004 c 3 § 6; 2002 c 99 § 2. Prior: 2000 c 23 § 1; 2000 c 19 § 1; 1999 c 217 § 2; 1995 c 273 § 1; prior: 1993 c 398 § 1; 1993 c 397 § 1; 1993 c 379 § 302; 1992 c 36 § 2; 1991 c 363 § 119; 1989 c 275 § 2; 1987 c 135 § 2; 1984 c 150 § 1; 1975 1st ex.s. c 296 § 15; 1973 c 131 § 2; 1967 ex.s. c 108 § 3.]

Notes:

*Reviser's note: RCW 74.08A.340 was repealed by 2012 c 217 § 2.

Effective date -- 2011 1st sp.s. c 21: See note following RCW 72.23.025.

Conflict with federal requirements -- 2010 c 296: See note following RCW 41.56.510.

Part headings not law -- Severability -- Conflict with federal requirements -- 2007 c 184: See notes following RCW 41.56.029.

Severability -- Effective date -- 2004 c 3: See notes following RCW 74.39A.270.

Effective date -- 1995 c 273: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 273 § 5.]

Effective dates -- 1993 c 398: "(1) Sections 3 and 5 of this act shall take effect July 1, 1995.

(2) Sections 1, 2, 4, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 398 § 7.]

Intent -- Severability -- Effective date -- 1993 c 379: See notes following RCW [28B.10.029](#).

Purpose -- Captions not law -- 1991 c 363: See notes following RCW [2.32.180](#).

Severability -- 1987 c 135: See note following RCW [41.56.020](#).

Effective date -- 1984 c 150: "This act shall take effect on July 1, 1985." [1984 c 150 § 2.]

Effective date -- 1975 1st ex.s. c 296: See RCW [41.58.901](#).

Construction -- Severability -- 1973 c 131: See RCW [41.56.905](#), [41.56.910](#).

Public employment relations commission: Chapter [41.58](#) RCW.


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RCW 41.56.140

Unfair labor practices for public employer enumerated.

It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

(2) To control, dominate, or interfere with a bargaining representative;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining with the certified exclusive bargaining representative.

[2011 c 222 § 2; 1969 ex.s. c 215 § 1.]

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RCW 41.56.160

Commission to prevent unfair labor practices and issue remedial orders and cease and desist orders.

(1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief.

[1994 c 58 § 1; 1983 c 58 § 1; 1975 1st ex.s. c 296 § 24; 1969 ex.s. c 215 § 3.]

Notes:

Effective date -- 1975 1st ex.s. c 296: See [RCW 41.58.901](#).

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[41.56.230](#) << [41.56.430](#) >> [41.56.440](#)

RCW 41.56.430

Uniformed personnel — Legislative declaration.

The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

[1973 c 131 § 1.]

Notes:

Construction -- Severability -- 1973 c 131: See RCW [41.56.905](#), [41.56.910](#).

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RCW 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.]

Notes:

Effective date -- 1975 1st ex.s. c 296: See RCW [41.58.901](#).

Construction -- Severability -- 1973 c 131: See RCW [41.56.905](#), [41.56.910](#).

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**RCW 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

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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.]

Notes:

Severability -- 1983 c 287: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 287 § 6.]

Effective date -- 1975 1st ex.s. c 296: See RCW 41.58.901.

Construction -- Severability -- 1973 c 131: See RCW 41.56.905, 41.56.910.



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RCW 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.]

Notes:

Severability -- 1983 c 287: See note following [RCW 41.56.450](#).

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RCW 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 traditionally 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;

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(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.]

Notes:

***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).

Effective date -- 1995 c 273: See note following RCW 41.56.030.

Effective dates -- 1993 c 398: See note following RCW 41.56.030.



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RCW 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.]

Notes:

Construction -- Severability -- 1973 c 131: See RCW [41.56.905](#), [41.56.910](#).

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RCW 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 necessary to implement these provisions in a collective bargaining agreement and, on completion of negotiations, must be advised on the elements of these provisions.

(b) Provisions that are entered into before the legislature approves the funds necessary to implement the provisions must be conditioned upon the legislature's subsequent approval of the funds.

(5) The governor shall submit a request for funds necessary to implement the wage and wage-related matters in the collective bargaining agreement or for legislation necessary to implement the agreement. Requests for funds necessary to implement the provisions of bargaining agreements may not be submitted to the legislature by the governor unless such requests:

(a) Have been submitted to the director of financial management by October 1st before the legislative session at which the requests are to be considered; and

(b) Have been certified by the director of financial management as being feasible financially for the state or reflects the decision of an arbitration panel reached under RCW [41.56.475](#).

[2005 c 438 § 1; 1999 c 217 § 3.]

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**RCW 41.56.475**

Uniformed personnel — Application of chapter to Washington state patrol — Mediation and arbitration.

In addition to the classes of employees listed in *RCW [41.56.030\(7\)](#), the provisions of RCW [41.56.430](#) through [41.56.452](#) and [41.56.470](#), [41.56.480](#), and [41.56.490](#) also apply to Washington state patrol officers appointed under RCW [43.43.020](#) as provided in this section, subject to the following:

(1) Within ten working days after the first Monday in September of every odd-numbered year, the state's bargaining representative and the bargaining representative for the appropriate bargaining unit shall attempt to agree on an interest arbitration panel consisting of three members to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. 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: (a) 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 a 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 (b) 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. Immediately upon selecting an interest arbitration panel, the parties shall cooperate to reserve dates with the arbitration panel for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the names of the members of the arbitration panel and the dates reserved for bargaining and arbitration. This subsection imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(2) The mediator or arbitration panel may consider only matters that are subject to bargaining under RCW [41.56.473](#).

(3) The decision of an arbitration panel is not binding on the legislature and, if the legislature does not approve the funds necessary to implement provisions pertaining to wages and wage-related matters of an arbitrated collective bargaining agreement, is not binding on the state or the Washington state patrol.

(4) In making its determination, the arbitration 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, shall take into consideration the following factors:

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

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(b) Stipulations of the parties;

(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and

(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of matters that are subject to bargaining under RCW 41.56.473.

[2008 c 149 § 1; 2005 c 438 § 2; 1999 c 217 § 4; 1993 c 351 § 1; 1988 c 110 § 2; 1987 c 135 § 3.]

Notes:

***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).

Severability -- 1987 c 135: See note following RCW 41.56.020.



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RCW 41.56.480

Uniformed personnel — Refusal to submit to procedures — Invoking jurisdiction of superior court — Contempt.

If the representative of either or both the uniformed personnel and the public employer refuse to submit to the procedures set forth in RCW [41.56.440](#) and [41.56.450](#), the parties, or the commission on its own motion, may invoke the jurisdiction of the superior court for the county in which the labor dispute exists and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. A decision of the arbitration panel shall be final and binding on the parties, and may be enforced at the instance of either party, the arbitration panel or the commission in the superior court for the county where the dispute arose.

[1975 1st ex.s. c 296 § 30; 1973 c 131 § 7.]

Notes:

Effective date -- 1975 1st ex.s. c 296: See RCW [41.58.901](#).

Construction -- Severability -- 1973 c 131: See RCW [41.56.905](#), [41.56.910](#).

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RCW 41.56.490

Uniformed employees — Strikes prohibited — Violations — Contempt of court.

The right of uniformed employees to engage in any strike, work slowdown, or stoppage is not granted. An organization recognized as the bargaining representative of uniformed employees subject to this chapter that willfully disobeys a lawful order of enforcement by a superior court pursuant to RCW [41.56.480](#) and [41.56.490](#), or willfully offers resistance to such order, whether by strike or otherwise, is in contempt of court as provided in chapter [7.21](#) RCW. An employer that willfully disobeys a lawful order of enforcement by a superior court pursuant to RCW [41.56.480](#) or willfully offers resistance to such order is in contempt of court as provided in chapter [7.21](#) RCW.

[1989 c 373 § 24; 1973 c 131 § 8.]

Notes:

Severability -- 1989 c 373: See RCW [7.21.900](#).

Construction -- Severability -- 1973 c 131: See RCW [41.56.905](#), [41.56.910](#).

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RCW 41.56.492

Application of uniformed personnel collective bargaining provisions to employees of public passenger transportation systems — Conditions.

In addition to the classes of employees listed in *RCW [41.56.030](#)(7), the provisions of RCW [41.56.430](#) through [41.56.452](#), [41.56.470](#), [41.56.480](#), and [41.56.490](#) shall also be applicable to the employees of a public passenger transportation system of a metropolitan municipal corporation, county transportation authority, public transportation benefit area, or city public passenger transportation system, subject to the following:

(1) Negotiations between the public employer and the bargaining representative may commence at any time agreed to by the parties. If no agreement has been reached ninety days after commencement of negotiations, either party may demand that the issues in disagreement be submitted to a mediator. The services of the mediator shall be provided by the commission without cost to the parties, but nothing in this section or RCW [41.56.440](#) shall be construed to prohibit the public employer and the bargaining representative from agreeing to substitute at their own expense some other mediator or mediation procedure; and

(2) If an agreement has not been reached following a reasonable period of negotiations and mediation, and the mediator finds that the parties remain at impasse, either party may demand that the issues in disagreement be submitted to an arbitration panel for a binding and final determination. In making its determination, the arbitration 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 decisions [decision], shall take into consideration the following factors:

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

(b) Stipulations of the parties;

(c) Compensation package comparisons, economic indices, fiscal constraints, and similar factors determined by the arbitration panel to be pertinent to the case; and

(d) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

[1993 c 473 § 1.]

Notes:

*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).



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RCW 49.48.030

Attorney's fee in action on wages — Exception.

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 or former employer: PROVIDED, HOWEVER, That this section shall not apply if the amount of recovery is less than or equal to the amount admitted by the employer to be owing for said wages or salary.

[2010 c 8 § 12048; 1971 ex.s. c 55 § 3; 1888 c 128 § 3; RRS § 7596.]

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