City of Seattle, Decision 12060 (PECB, 2014)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 77, Complainant, vs. CITY OF SEATTLE, Respondent.	CASE 25274-U-12-6471 DECISION 12060 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Robblee Detweiler & Black, P.L.L.P., by *Kristina Detwiler* and *Andy Lukes,* Attorneys at Law, for the union.

Seattle City Attorney's Office, by *Amy B. Lowen,* Attorney at Law, for the employer.

The International Brotherhood of Electrical Workers, Local 77 (union) represents employees in the Seattle City Light Department (City Light) and has an established collective bargaining relationship with the City of Seattle (employer). The union filed this unfair labor practice (ULP) complaint against the employer on November 6, 2012, and an amended the complaint on November 8, 2012. The Public Employment Relations Commission (PERC) uses its preliminary ruling process to define and limit issues for hearing.[1] The preliminary ruling identified the issues for hearing as: Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)], by its unilateral change to disciplinary procedures, without providing an opportunity for bargaining.

Specifically, the union alleges that the employer unilaterally changed disciplinary procedures by starting a Seattle Ethics and Elections Commission (SEEC) investigation of Ron Allen, a bargaining unit employee, after Allen's employing department (City Light) issued a 20-day

[1] WAC 391-45-110.

unpaid suspension to Allen for the same misconduct. The union also argues that the SEEC's threat of monetary "fines" against Allen constituted a unilateral change to disciplinary procedure because "fines" are not a type of discipline identified in the parties' collective bargaining agreement (CBA).

The union filed this ULP complaint with PERC before the SEEC conducted the ethics hearing on Allen's conduct. The SEEC deferred its hearing on the charges against Allen pending the outcome of this ULP case.

ISSUE

Did the employer unilaterally change its disciplinary procedure when the SEEC launched an investigation into Allen's conduct and threatened monetary fines, after City Light had already given him a 20-day unpaid for the same August 2010 ethics violation and misconduct?

The employer unilaterally changed its disciplinary procedure when the SEEC filed charges and threatened to levy monetary fines against Allen for the same incident of misconduct that the employer disciplined Allen for six months earlier. In this case, Allen's ethics violation was specifically identified and addressed in the disciplinary letter and 20-day unpaid suspension that City Light gave Allen in October 2012. The filing of ethics charges by the SEEC after Allen had already been substantially disciplined for the August 2010 ethics violation is not permitted by the CBA or by past practice between the parties. The disciplinary procedure is a mandatory subject of bargaining. The employer's unilateral change in disciplinary procedure is a refusal to bargain under RCW 41.56.140(4).

This ruling does not address the SEEC's ability to investigate employee misconduct and make disciplinary recommendations. However, under the discipline language of the CBA, the facts in this situation, and past practice between the parties, the SEEC needed to conduct its investigation and make recommendations before the employer issued discipline over the same ethics violation. This is not a situation where the SEEC investigation was needed to make sure that City Light did not attempt to sweep an ethics violation under the rug. City Light treated Allen's misconduct

seriously, completed a documented investigation, and substantially disciplined Allen for violating: 1) Workplace expectations on integrity, and 2) Seattle Municipal Code (SMC) 4.16.070-Prohibited Conduct (Code of Ethics).

LEGAL STANDARDS

The purpose of the Public Employees' Collective Bargaining Act is "to promote the continued improvement of the relationship between public employers and their employees. . . ." The Commission achieves this goal by providing a uniform basis for public employees to join labor organizations of their own choosing and to be represented in matters concerning their employment relationship. RCW 41.56.010.

Collective bargaining is the mutual obligation of the employer and the exclusive bargaining representative to meet at reasonable times and negotiate in good faith over grievance procedures and personnel matters, including wages, hours, and working conditions. RCW 41.56.030(4).

A public employer has a duty to bargain with the exclusive bargaining representative of its employees. RCW 41.56.030(4). The duty to bargain in good faith encompasses a duty to engage in full and frank discussions on disputed issues and a duty to explore possible alternatives that may achieve a mutually satisfactory accommodation of the interests of both the employer and the employees. *University of Washington*, Decision 11414-A (PSRA, 2013).

The determination as to whether a duty to bargain exists is a mixed question of law and fact for the Commission to decide. WAC 391-45-550. In deciding whether a duty to bargain exists, the Commission applies a balancing test on a case-by-case basis. The Commission balances two principal considerations: (1) "the relationship the subject bears to the wages, hours, and working conditions" of employees, and (2) "the extent to which the subject lies 'at the core of entrepreneurial control' or is a management prerogative." *International Association of Fire Fighters, Local 1052 v. PERC* (*City of Richland*), 113 Wn.2d 197, 203 (1989). The decision focuses on which characteristic predominates. *Id.*

"The scope of mandatory bargaining is limited to matters of direct concern to employees," while "managerial decisions that only remotely affect 'personnel matters' and decisions that are predominately 'managerial prerogatives,' are classified as non-mandatory subjects." *City of Richland,* 113 Wn.2d at 200, *citing Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d 338, 341 (1986). Mandatory subjects of bargaining include grievance procedures, wages, hours, and working conditions. RCW 41.56.030(4). Permissive subjects of bargaining are management and union prerogatives, along with the procedures for bargaining mandatory subjects, over which the parties may negotiate. *Pasco Police Association v. City of Pasco*, 132 Wn.2d 450, 460 (1997).

In determining whether an unfair labor practice has occurred, the totality of the circumstances must be analyzed. *Walla Walla County*, Decision 2932-A (PECB, 1988); *City of Mercer Island*, Decision 1457 (PECB, 1982). 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). A finding that a party has refused to bargain in good faith is predicated on a finding of bad faith bargaining in regard to mandatory subjects of bargaining. *See Spokane School District*, Decision 310-B (EDUC, 1978).

Past Practice

A complainant alleging a unilateral change must establish the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002), *citing Municipality of Metropolitan Seattle*, Decision 2746-B (PECB, 1990); *City of Kalama*, Decision 6773-A (PECB, 2000).

A past practice is a course of dealing acknowledged by the parties over an extended period of time, becoming so well understood that its inclusion in a collective bargaining agreement is deemed superfluous. *Whatcom County*, Decision 7288-A (PECB, 2002), *citing City of Pasco*, Decision 4197-A (PECB, 1994). To be an established past practice, the practice must be consistent; all parties must have knowledge of it; and the practice must be mutually accepted. *Whatcom County*, Decision 7288-A; *Snohomish County*, Decision 8852-A (PECB, 2007).

Unilateral Change

The duty to bargain requires an employer considering changes that affect a mandatory subject of bargaining to give notice to the exclusive bargaining representative of its employees prior to making that decision. *City of Yakima*, Decision 11352-A (PECB, 2013); *Lake Washington Technical College*, Decision 4721-A (PECB, 1995). Formal notice is not required; however, in the absence of formal notice, the employer must show that the union had actual, timely knowledge of the contemplated change. *Washington Public Power Supply System*, Decision 6058-A (PECB, 1998).

To be timely, notice must be given sufficiently in advance of the decision or the actual implementation of a change to allow a reasonable opportunity for bargaining between the parties. *Washington Public Power Supply System.* The notice would not be considered timely if the employer's action has already occurred when the employer notified the union (a *fait accompli*). *Washington Public Power Supply System.* If a *fait accompli* is found to exist, the union will be excused from requesting bargaining. *Id.* A *fait accompli* will not be found if an opportunity for bargaining existed and the employer's behavior does not seem inconsistent with a willingness to bargain upon request. *Washington Public Power Supply System, citing Lake Washington Technical College,* Decision 4712-A. The Commission focuses on the circumstances as a whole and on whether an opportunity for meaningful bargaining existed. *Washington Public Power Supply System*, Decision 6058-A.

BACKGROUND

The employer and union had a CBA effective January 23, 2006, through January 22, 2009. The parties agreed to a Memorandum of Understanding (MOU) that extend the 2006-2009 CBA from January 23, 2009, through January 22, 2013. The parties' CBA includes a long list of positions that are included in the bargaining unit.

Ron Allen is employed by City Light as a journeyman lineworker. Allen has held this position since 2003. Allen's lineworker position is represented by the union and is covered by the parties CBA.

The City has established an apprenticeship program to train apprentices in the line worker occupation. The line worker apprenticeship program is divided into six training periods. Each period lasts approximately 6 months. The first two weeks of each period is devoted to skills training. This is followed by months of on-the-job-training. Apprentices are tested on the specific period's skills in the last week of the period

RELEVANT FACTS

Allen conducted the second period of apprentice training and testing during the week of August 16, 2010. Between August 16 and 20, 2010, Allen tested the apprenticeship class on second-segment skills, and as the sole tester had the authority to pass or fail each apprentice.

In August 2011, City Light Human Resources received a complaint that Allen had engaged in inappropriate workplace behavior. Specifically, the complaint alleged that Allen had solicited nine bottles of alcohol while acting in his capacity as a testing and training instructor for the lineworker apprenticeship class prior to conducting final testing of the second-step apprentices. City Light commenced an investigation.

On September 26, 2011, during this same time period that City Light was conducting its investigation into Allen's misconduct, the SEEC staff received a confidential Whistleblower report regarding allegations of misconduct. Specifically, the report alleged that Allen engaged in inappropriate conduct in his capacity as a testing and training instructor for the lineworker apprenticeship class in August of 2010. In mid-October 2011, the SEEC began its own investigation into Allen's possible Ethics Code violation.

In November 2011, City Light Employee Relations Coordinator Tommy Howard issued an Investigation Report; in December 2011, Howard issued an Amended Investigation Report.

On May 2, 2012, City Light Superintendent Jorge Carrasco, issued a letter imposing final disciplinary action on Allen. As a result of the disciplinary letter, Allen was suspended without pay for 20 days and prohibited from working out-of-class or being promoted for a one-year

period. The disciplinary letter specified that the discipline was for his conduct in August 2010 that violated workplace expectations on integrity and SMC 4.16.070-Prohibited Conduct (Code of Ethics). Allen completed the 20-day unpaid suspension. The union did not grieve Allen's discipline.

On October 1, 2012, the employer made a new contract language proposal in bargaining. The employer proposed adding language to Article 8-Discipline, which would allow for a separate ethics commission process that includes ability of the SEEC to fine employees. The union did not agree to the proposed language.

On November 7, 2012, more than 13 months after SEEC learned of the allegations against Allen, the SEEC charged Allen with violating the Seattle Ethics Code and provided him with a charging document that outlined the allegations against him. The SEEC allegations involved the same incident of soliciting and accepting alcohol from apprentices that City Light had already disciplined Allen for five months earlier. On November 8, 2012, the union filed an Amended Complaint Charging Unfair Labor Practices against the City.

The SEEC deferred its hearing on the ethics violation charges against Allen pending the outcome of the union's pending unfair labor practice charge.

ANALYSIS

Is the SEEC an agent of the City of Seattle?

The SEEC is a subdivision of the employer. The SEEC is an agency within the City of Seattle tasked with independent enforcement of the employer's ethics code on behalf of the employer. The SEEC's authority to sanction an employee comes out of the employment relationship that an employee has with the City of Seattle.

The employer argues that the SEEC cannot be treated as an extension of management because it is a quasi-policing agency. The employer points to the fact that, while the SEEC has the

authority to make disciplinary recommendations to employing departments and levy fines, the SEEC lacks the power to independently change the employment relationship.

While the SEEC agency director has independent oversight of the agency and acts independently to make sure that employing departments are not ignoring or allowing unethical conduct, the SEEC is an enforcement agent of the employer. SEEC's ability to investigate employee ethics violations comes from the employee's employment relationship with the employer. The SEEC is a subdivision of the employer. The employer is ultimately liable for actions taken by the SEEC.

Balancing Test on Mandatory vs. Permissive Subjects

Employee discipline is a mandatory subject of bargaining based on the facts in this situation. In balancing the parties' competing interests in this situation, the impact on employees' wages, hours and working conditions predominates; making employee discipline a mandatory subject of bargaining.

Mandatory subjects are determined on a case-by-case analysis using the balancing test. The investigation by the SEEC and the possibility of additional disciplinary recommendations and/ or fines has a strong nexus with employee wages, hours, and working conditions. Discipline cuts to the very existence of the employment relationship and can result in the reduction or elimination of wages, hours, and working conditions. The disciplinary investigation relates to managerial prerogative and entrepreneurial control. In this case the employer desires to have two separate investigatory and disciplinary processes that need not occur at the same time but can address the same employee misconduct. Although the employer argues that the SEEC does not have a practice of making disciplinary recommendations, the Seattle Municipal Code gives the SEEC authority to make disciplinary recommendations and follow-up with employing departments and to level fines up to $5,000 per violation.[2] Disciplinary recommendations and fines that can be levied against a person because of their employment status relate to wages, hours and working conditions; making them mandatory subjects of bargaining.

---

[2] SMC 4.16.090(I) and SMC 4.16.100.

Case precedent also supports the conclusion that disciplinary recommendations and/or fines levied by the SEEC are mandatory subjects of bargaining. In *City of Seattle*, Decision 4851-A (PECB, 1995), an Examiner looked at a similar issue involving the SEEC and a different union. The Examiner held that charges filed by SEEC are a mandatory subject of bargaining and explained:

> The action of the executive director of the SEEC in filing charges against a member of the bargaining unit represented by Local 17, and the action of the SEEC holding a public hearing under claim of authority to discipline the bargaining unit member, both affected the working conditions and tenure of employees in the bargaining unit . . . and were within the mandatory scope of collective bargaining under RCW 41.56.030(4) . . . .

In the present case, like in *City of Seattle*, Decision 4851-A, the employer had an obligation to notify the union and provide an opportunity to bargain before making changes to the disciplinary process contained in the CBA.

Relevant Status Quo and Past Practice.

The record did not contain evidence to show a past practice concerning the use of SEEC investigations for any employee in this bargaining unit.

The relevant status quo on discipline is described in the parties CBA, Article 8 - Discipline. Section 8.2 defines the purpose of discipline and types of discipline that may be utilized by the employer and states:

> The parties agree that in their respective roles primary emphasis shall be placed on preventing situations requiring disciplinary actions through effective employee-management relations. The primary objective of discipline shall be to correct and rehabilitate, not to punish or penalize. To this end, in order of increasing severity, the disciplinary actions which the City/Department may take against an employee include:
>
> a. verbal warning
> b. written reprimand
> c. suspension
> d. demotion
> e. termination

> Which disciplinary action is taken depends upon the seriousness of the affected employee's conduct.

The employer argues that the second, separate, investigation and charges filed by the SEEC were not inconsistent with the CBA and past practice. In support of its position the employer argues that the SEEC's use of fines is analogues to the police department issuing a traffic citation to an employee who is operating a motor vehicle on work time and enforcing that citation in municipal court.

The employer's traffic citation example is not analogous to the SEEC. A police officer's authority to pull a driver over comes from traffic laws and the fact that a person is driving; a person's employment status is irrelevant. Traffic law violators receive the same ticket whether they work for the employer or not. Unlike the police department, the SEEC does not have any authority or jurisdiction over the general population. Rather, the SEEC as a department of the employer only has jurisdiction over City of Seattle employees and volunteers. The SEEC is an enforcement arm of the employer on ethics issues. The SEEC's role in enforcing ethics code is distinct from the police department's ability to ticket drivers and does not establish the type of past practice that would be applicable to this case.

Unilateral Implementation

The commencement of the investigation by the SEEC was unilaterally implemented by the employer without agreement from the union or a lawful impasse in bargaining.

The employer made one proposal that concerned SEEC investigation and fines before formally notifying Allen that he was being charged by the SEEC. On October 1, 2012, the employer made a new contract language proposal in bargaining to add language to the discipline article of CBA that would explicitly allow SEEC investigations and fines as a separate process. The language the employer proposed was similar to language in many other CBAs the employer has with other bargaining units. The union did not accept the employer's proposal. Contract negotiations were still under way.

On November 7, 2012, the SEEC charged Allen with violation of the Seattle Ethics Code and provided him with a charging document. The employer unilaterally implemented a change the status quo when the employer, through the SEEC, sent the charging documents to Allen.

There is no evidence that the parties reached a lawful impasse in bargaining over the addition of language on SEEC investigations and fines. Conducting a second SEEC investigation and filing charges after City Light had already disciplined Allen for the same ethics violation was not consistent with the language in the parties' CBA. By unilaterally implementing a change in disciplinary procedure on November 7, 2012, the employer committed a refusal to bargain violation.

Waiver by Contract?

The employer argues that the union waived its right to bargain by agreeing to language in the introductory "Purpose of Agreement" section. Specifically, the language states: "It is recognized that the Department of Lighting is a Department of the City of Seattle that is dedicated to the accomplishment of the municipal functions for which it was created, and all applicable Federal and State Laws and the City Charters are paramount." The employer argues that by agreeing that City Charters are paramount, the union waived its right to bargain over the SEECs role in employee discipline.

Waiver is an affirmative defense. *Lakewood School District,* Decision 755-A (PECB, 1980). A party may waive its right to bargain through the language in its collective bargaining agreement. A contractual waiver of statutory collective bargaining rights must be consciously made, must be clear, and must be unmistakable. *City of Yakima*, Decision 3564-A (PECB, 1991). When a knowing, specific, and intentional contractual waiver exists, an employer may lawfully make changes as long as those changes conform to the contractual waiver. *City of Wenatchee*, Decision 6517-A (PECB, 1999).

The language that the employer cites is vague and does not constitute a clear and unmistakable waiver. The union did not clearly and consciously waive its right to bargain employee

discipline. Rather the union bargained about employee discipline, which is evidenced by the language in the CBA Article 8 - Discipline.

It is noteworthy that the parties' CBA does not contain the type clear and explicit waiver language on the SEEC that the employer negotiated into a significant number of its CBAs with other bargaining units. The fact that the employer negotiated specific waiver language into a significant number of CBAs with other bargaining units, and attempted to bargaining similar waiver language in the new CBA for this bargaining unit, illustrates that the employer is aware of the need to obtain a specific waiver for the SEEC hearing and fine process. The union did not agree to a waiver to allow a separate and distinct investigation and possibility of fines by the SEEC.

REMEDY

A standard remedy is appropriate in this case. The union has requested an extraordinary remedy of attorney fees. RCW 41.56.160 is the statutory basis for a remedial order, including an award of attorney fees. *State ex rel. Washington Federation of State Employees v. Board of Trustees*, 93 Wn.2d 60, 69 (1980). An award of attorney fees should not be commonplace; it should be reserved for cases in which a defense to an unfair labor practice charge can be characterized as frivolous or meritless. *State ex rel. Washington Federation of State Employees*, 93 Wn.2d at 69. "The term 'meritless' has been defined as meaning groundless or without foundation." *Id.* Attorney fees are appropriate in cases in which the employer engages in a pattern of bad faith bargaining. *Lewis County v. PERC*, 31 Wn. App. 853 (Div. 2, 1982), *review denied*, 97 Wn.2d 1034 (1982).

The authority granted to the Commission by the remedial provision of the statute has also been interpreted to authorize an award of attorney fees. Attorney fees can be granted: (1) if such an award is necessary to make the Commission's orders effective, and (2) the defense to the unfair labor practice charge was meritless or frivolous, or the respondent has engaged in a pattern of conduct showing a patent disregard of its good faith bargaining obligation. *Lewis County*, Decision 644-A (PECB, 1979), *aff'd, Lewis County v. PERC*, 31 Wn. App. 853 (1982);

Municipality of Metropolitan Seattle (METRO), Decision 2845-A (PECB, 1988), *aff'd, Municipality of Metropolitan Seattle*, 118 Wn.2d 621 (affirming the Commission's authority to order interest arbitration); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd, Pasco Housing Authority v. PERC*, 98 Wn. App. 809 (2000) (affirming the Commission's order of attorney fees when such an order was necessary to make the order effective, the defenses were frivolous, and the violations evidenced a pattern of bad faith conduct); *Spokane County Fire District 9*, Decision 3773-A (PECB, 1992) (attorney fees awarded for a frivolous appeal) *reversed on other grounds International Association of Fire Fighters, Local 2916 v. Public Employment Relations Commission*, 128 Wn.2d 375 (1995).

In *University of Washington*, Decision 11499-A (PSRA, 2013) the Commission stated "An extraordinary remedy is not appropriate when a standard remedy will suffice. Deviations from the standard remedy, such as not ordering a portion of the standard remedy, attorney fees, and interest arbitration are extraordinary remedies." There is no history or pattern of ongoing behavior of bad faith displayed. The record does not provide a basis to award the extraordinary remedy of payment of the union's attorney fees. Given the Commission's guidance regarding extraordinary remedies, a standard remedy is appropriate.

FINDINGS OF FACT

1. The City of Seattle (employer) is a public employer within the meaning of RCW 41.56.030(12).

2. The International Brotherhood of Electrical Workers, Local 77 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The employer and union had a collective bargaining agreement (CBA) effective January 23, 2006, through January 22, 2009. The parties agreed to a Memorandum of Understanding (MOU) that extend the 2006-2009 CBA from January 23, 2009, through January 22, 2013. The CBA includes a long list of positions that are included in the bargaining unit. The journeyman lineworker position is included in the bargaining unit.

4. Ron Allen is employed by City Light as a journeyman lineworker. Allen has held this position since 2003.

5. Allen conducted the second period of apprentice training and testing during the week of August 16, 2010. Between August 16 and 20, 2010, Allen tested the apprenticeship class on second-segment skills, and as the sole tester had the authority to pass or fail each apprentice.

6. In August 2011, City Light Human Resources received a complaint that Allen had engaged in inappropriate workplace behavior. Specifically, the complaint alleged that Allen had solicited nine bottles of alcohol while acting in his capacity as a testing and training instructor for the lineworker apprenticeship class prior to conducting final testing of the second-step apprentices. City Light commenced an investigation.

7. On September 26, 2011, during this same time period that City Light was conducting its investigation into Allen's misconduct, the Seattle Ethics and Elections Commission (SEEC) staff received a confidential Whistleblower report regarding allegations of misconduct. Specifically, the report alleged that Allen engaged in inappropriate conduct in his capacity as a testing and training instructor for the lineworker apprenticeship class in August of 2010. In mid-October 2011, the SEEC began its own investigation into Allen's possible Ethics Code violation.

8. On May 2, 2012, City Light Superintendent Jorge Carrasco, issued a letter imposing final disciplinary action on Allen. As a result of the disciplinary letter, Allen was suspended without pay for 20 days and prohibited from working out-of-class or being promoted for a one-year period. The disciplinary letter specified that the discipline was for his conduct in August 2010 that violated workplace expectations on integrity and SMC 4.16.070-Prohibited Conduct (Code of Ethics). Allen completed the 20-day unpaid suspension. The union did not grieve Allen's discipline.

9. On October 1, 2012, the employer made a new contract language proposal in bargaining. The employer proposed adding language to Article 8 - Discipline, which would allow for

a separate ethics commission process that includes ability of the SEEC to fine employees. The union did not agree to the proposed language.

10. On November 7, 2012, more than 13 months after SEEC learned of the allegations against Allen, the SEEC charged Allen with violating the Seattle Ethics Code and provided him with a charging document that outlined the allegations against him. The SEEC allegations involved the same incident of soliciting and accepting alcohol from apprentices that City Light had already disciplined Allen for five months earlier.

11. The SEEC deferred its hearing on the ethics violation charges against Allen pending the outcome of the union's pending unfair labor practice charge.

12. The disciplinary procedure is a mandatory subject of bargaining.

13. The relevant status quo is on discipline is described in the parties CBA, Article 8 - Discipline.

14. Section 8.2 of the CBA defines the purpose of discipline and types of discipline that may be utilized by the employer. It does not allow the employer to levy fines against employees.

15. The record did not contain evidence to show a past practice concerning the use of SEEC investigations for any employee in this bargaining unit.

16. There is no evidence that the parties reached a lawful impasse in bargaining over the addition of language on SEEC investigations and fines.

17. The filing of ethics charges by the SEEC after Allen had already been substantially disciplined for the August 2010 ethics violation is not permitted by the CBA or by past practice between the parties.

18. The parties' CBA does not contain the type clear and explicit waiver language on the SEEC that the employer negotiated into a significant number of its CBAs with other bargaining units.

19. The union did not agree to a waiver that allows a separate and distinct investigation and possibility of fines by the SEEC. Rather the union bargained about employee discipline, which is evidenced by the language in the CBA Article 8 - Discipline.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By its actions as described in Findings of Fact 3 through 19, the employer refused to bargain in violation of RCW 41.56.140(4) and committed a derivative interference violation of RCW 41.56.140(1), by unilaterally implementing a second disciplinary process in conflict with the disciplinary procedure contained in the parties Collective Bargaining Agreement.

ORDER

City of Seattle, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Unilaterally changing the disciplinary procedure contained in the Collective Bargaining Agreement (CBA).

   b. Continuing the SEEC investigation and charges over Allen's August 2010 misconduct regarding soliciting and accepting gifts from apprentices, for which the employer previously and substantially disciplined Allen.

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

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

a. Close the SEEC investigation into Allen's October 2010 conduct. Notify the union and Allen in writing of the date that SEEC Case No. 11-1-0929 is closed.

b. Restore the *status quo ante* by reinstating the disciplinary procedure that was in place prior to the unilateral change in disciplinary procedure found unlawful in this order.

c. Give notice to and, upon request, negotiate in good faith with IBEW Local 77, before changing disciplinary procedure.

d. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

e. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the City Council of the City of Seattle, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

f. Notify the complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice provided by the Compliance Officer.

g. Notify the Compliance Officer, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide him with a signed copy of the notice he provides.

ISSUED at Olympia, Washington, this 14th day of May, 2014.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JESSICA J. BRADLEY, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

CASE 25274-U-12-6471
DECISION 12060 - PECB

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union)**
- **Bargain collectively with your employer through a union chosen by a majority of employees**
- **Refrain from any or all of these activities except you may be required to make payments to a union or charity under a lawful union security provision**

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING AND RULED THAT THE *CITY OF SEATTLE* COMMITTED AN UNFAIR LABOR PRACTICE AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY changed the disciplinary procedure in your Collective Bargaining Agreement without fulfilling our bargaining obligations when the SEEC launched an investigation into employee Ron Allen's conduct and threatened monetary fines, after Allen's employing department (City Light) had already given him a 20-day unpaid suspension for the same August 2010 misconduct.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL close the SEEC investigation of Allen's October 2010 misconduct and WE WILL notify IBEW Local 77 and Allen in writing of the date that the SEEC Case is closed.

WE WILL follow the disciplinary process in the Collective Bargaining Agreement.

WE WILL notify the union of proposed changes to the disciplinary procedure and bargain upon request.

WE WILL NOT unilaterally change the disciplinary procedure or implement proposals that have not been bargained to agreement or impasse.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DO NOT POST OR PUBLICLY READ THIS NOTICE.

AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE SUITE 300
PO BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 05/14/2014

The attached document identified as: DECISION 12060 - PECB has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ DIANE THOVSEN

CASE NUMBER:	25274-U-12-06471	FILED:	11/06/2012	FILED BY:	PARTY 2
DISPUTE:	ER UNILATERAL				
BAR UNIT:	ELEC LINEMEN				
DETAILS:	Ron Allen				
COMMENTS:					

EMPLOYER: CITY OF SEATTLE
ATTN: DAVID BRACILANO
PO BOX 34028
SEATTLE, WA 98124-4028
david.bracilano@seattle.gov
Ph1: 206-684-7874 Ph2: 206-684-7999

REP BY: AMY LOWEN
CITY OF SEATTLE
600 FOURTH AVE 4TH FL
PO BOX 94769
SEATTLE, WA 98124-4769
Ph1: 206-615-0055 Ph2: 206-684-8200

PARTY 2: IBEW LOCAL 77
ATTN: LOUIS WALTER
PO BOX 68728
SEATTLE, WA 98168
ibew77@ibew77.com
Ph1: 206-323-4505

REP BY: KRISTINA DETWILER
ROBBLEE DETWILER BLACK
2101 4TH AVE STE 1000
SEATTLE, WA 98121-2392
Ph1: 206-467-6700