Lincoln County (Teamsters Local 690), Decision 12844-A (PECB, 2018)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LINCOLN COUNTY, Complainant, vs. TEAMSTERS LOCAL 690, Respondent.	CASE 128814-U-17 DECISION 12844-A - PECB CASE 128815-U-17 DECISION 12845-A - PECB DECISION OF COMMISSION
TEAMSTERS LOCAL 690, Complainant, vs. LINCOLN COUNTY, Respondent.	CASE 128818-U-17 DECISION 12846-A - PECB CASE 128819-U-17 DECISION 12847-A - PECB DECISION OF COMMISSION

Paul M. Ostroff, Attorney at Law, Lane Powell PC, for Lincoln County.

Jack Holland and *Michael R. McCarthy*, Attorneys at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for Teamsters Local 690.

Collective bargaining is the mutual obligation of the public employer and exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement on mandatory subjects of bargaining. RCW 41.56.030(4). Inherent in this obligation is the duty for parties to communicate with one another. The bargaining obligation and the duty to communicate require parties to offer their viewpoints and positions, consider the viewpoints and positions of the other party, and find an effective means to negotiate and reach a written agreement on mandatory subjects of bargaining.

In this case, both parties believed they could impose how bargaining would be conducted on the other party. In the end, neither party fulfilled its statutory obligation to bargain in good faith, because both parties conditioned negotiations over mandatory subjects on a permissive subject of bargaining.

The facts of this case are not disputed. On September 6, 2016, Lincoln County (employer) enacted Resolution 16-22, which resolved to "conduct all collective bargaining contract negotiations in a manner that is open to the public."[1]

The employer and Teamsters Local 690 (union) were parties to two collective bargaining agreements, one covering commissioned officers and one covering non-commissioned employees of the sheriff's office. Both agreements were effective from January 1, 2014, through December 31, 2016.

On January 17, 2017, the employer and union met and negotiated during the public session of a Lincoln County Commission meeting. Unable to reach an agreement on the terms of a successor collective bargaining agreement, the employer and union required additional negotiations. The parties scheduled a second meeting for February 27, 2017. The events of this meeting are what gave rise to the unfair labor practice complaints.

The February 27, 2017, bargaining session took place during the public session of a Lincoln County Commission meeting. Chairman Rob Coffman called the meeting to order. Union business representative Joe Kuhn stated that the union was ready and willing to bargain. Kuhn then introduced the union's attorney Jack Holland, who said the union was willing to bargain but would do so in accordance with the parties' prior practice of bargaining in private. Holland asked that anyone not directly involved in the negotiations leave the room.

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1 Employer Ex. 3.

Coffman responded that the employer was ready to bargain and would do so in accordance with the employer's resolution. Holland and Coffman repeated their positions several times. The union team left the room.

Coffman kept the meeting open until the union team left the building. Then, he adjourned the meeting.

The employer filed two unfair labor practice complaints alleging that the union had refused to meet with the employer. The union filed two unfair labor practice complaints alleging that the employer had refused to bargain unless the union agreed to bargain in a public meeting. Examiner Jamie L. Siegel held a hearing and concluded that both the union and the employer had refused to bargain by conditioning their willingness to bargain on a permissive subject of bargaining. Both parties appealed.

The issues before the Commission are whether the union refused to bargain when it left the February 27, 2017, meeting and would not agree to bargain publicly; whether the employer refused to bargain on February 27, 2017, when it would not agree to bargain privately; and what the appropriate remedy is when two parties condition their bargaining on a permissive subject of bargaining.

We affirm the Examiner. Both parties conditioned their willingness to negotiate on the other party agreeing to bargain in a unilaterally predetermined manner. In most unfair labor practice cases, an order requiring the parties to negotiate is an appropriate remedial order. Under the circumstances presented here, we find it necessary to craft a remedial order that will effectuate the purposes of Chapter 41.56 RCW, the Public Employees' Collective Bargaining Act.

ANALYSIS

Parties' Preliminary Arguments

The employer argued that the Unfair Labor Practice Manager's decision in *Lincoln County*, Decision 12648 (PECB, 2017), found that the employer did not commit an unfair labor practice

when it adopted Resolution 16-22. We disagree. The Unfair Labor Practice Manager did not rule on the merits of the union's complaint. Rather, she dismissed the complaint at the preliminary ruling stage for failure to state a cause of action.

When a party files an unfair labor practice complaint with the agency, an unfair labor practice administrator reviews the complaint to determine whether the facts alleged state a cause of action. WAC 391-45-110. The agency's unfair labor practice administrators act as gatekeepers to ensure complainants allege sufficient facts to proceed to hearing.

If the unfair labor practice administrator concludes that a complaint does not allege sufficient facts to proceed to hearing, he or she issues a deficiency notice. WAC 391-45-110(1). The complainant then has 21 days to file an amended complaint. *Id.* If the amended complaint alleges sufficient facts to proceed to hearing, the unfair labor practice administrator issues a preliminary ruling. WAC 391-45-110(2). The preliminary ruling establishes the time frame in which a respondent must file an answer. *Id.* The case is then assigned to an examiner, who will conduct a hearing on the merits and issue a decision. However, if the amended complaint does not state a cause of action, the unfair labor practice administrator dismisses the complaint. WAC 391-45-110(1). Complaints alleging insufficient facts are dismissed without a hearing on the merits.

In *Lincoln County*, Decision 12648, the Unfair Labor Practice Manager concluded that the facts the union alleged were insufficient to state a cause of action for a unilateral change to a mandatory subject of bargaining. The Unfair Labor Practice Manager did not rule on whether the employer had committed an unfair labor practice. The agency did not hold a hearing on the merits, so *Lincoln County*, Decision 12648, was not a ruling on the merits of the union's complaint in that case.

The union asked the Commission to find that Chapter 42.30 RCW, the Open Public Meetings Act (OPMA), preempted Resolution 16-22, and, thus, the employer acted improperly. The union is correct that the Commission has ruled on preemption in the past. *See City of Seattle*, Decision 4687-B (PECB, 1997). In this case, however, it is not necessary for us to reach that issue. We have decided this case based upon Chapter 41.56 RCW.

Applicable Legal Standards

Standard of Review

The Commission applies its experience and specialized knowledge in labor relations to decide cases. RCW 34.05.461(5). The Commission reviews conclusions and applications of law, as well as interpretations of statutes, de novo. The Commission also reviews findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B (PECB, 2002).

The Commission reviews factual findings for substantial evidence in light of the entire record. Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *City of Vancouver v. Public Employment Relations Commission*, 107 Wn. App. 694, 703 (2001); *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B. The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7007-A (PECB, 2000). This deference, while not slavishly observed on every appeal, is highly appropriate in fact-oriented appeals. *C-TRAN (Amalgamated Transit Union, Local 757)*, Decision 7087-B.

Duty to Bargain

Chapter 41.56 RCW "'regulates the subjective conduct and motivations of the parties in a collective bargaining situation, but expressly refrains from mandating any result or procedure for achieving final resolution of an intractable bargaining dispute.'" *Pasco Police Officers' Association v. City of Pasco*, 132 Wn.2d 450, 460 (1997), *citing Unilateral Employer Action Under Public Sector Binding Interest Arbitration*, 6 J.L. & Com. 107, 113–14 (1986). This agency or the courts intervene "only when the conduct of a party indicates a refusal to bargain in good faith," which is defined as "'an absence of a sincere desire to reach agreement.'" *Pasco Police Officers' Association v. City of Pasco*, 132 Wn.2d at 460.

A public employer and a union representing public employees have a duty to bargain over mandatory subjects of bargaining. RCW 41.56.030(4). As an element of good faith, a party is

required to make proposals on mandatory subjects of bargaining. *Pasco Police Officers' Association v. City of Pasco*, 132 Wn.2d at 460, *citing Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d 338, 341 (1986). "[N]either party shall be compelled to agree to a proposal or be required to make a concession . . . ." RCW 41.56.030(4). Thus, a balance must be struck to reflect the natural tension between the parties' obligations to bargain in good faith and the statutory admonition that parties are not required to make concessions or reach agreements. *City of Everett (International Association of Fire Fighters, Local 46)*, Decision 12671-A (PECB, 2017); *Walla Walla County*, Decision 2932-A (PECB, 1988); *City of Snohomish*, Decision 1661-A (PECB, 1984).

If a subject of bargaining is permissive, parties may negotiate, but each party is free to bargain or not to bargain and to agree or not agree. *Pasco Police Officers' Association v. City of Pasco*, 132 Wn.2d at 460; *Whatcom County*, Decision 7244-B (PECB, 2004). Agreements on permissive subjects of bargaining "must be a product of renewed mutual consent" and expire with the parties' collective bargaining agreement. *Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d at 344. A party commits an unfair labor practice when it bargains to impasse over a permissive subject of bargaining. *Id.* at 342.

Whether a particular subject of bargaining is mandatory is a mixed question of law and fact for the Commission to decide. WAC 391-45-550. To decide, the Commission balances "the relationship the subject bears to [the] 'wages, hours and working conditions'" of employees and "the extent to which the subject lies 'at the core of entrepreneurial control' or is a management prerogative." *International Association of Fire Fighters, Local Union 1052 v. Public Employment Relations Commission*, 113 Wn.2d 197, 203 (1989).

Permissive subjects fall into different categories. Some permissive subjects, such as an employer's authority to determine its budget, are managerial prerogatives. *Spokane Education Association v. Barnes*, 83 Wn.2d 366, 376 (1974). When a permissive subject of bargaining is a managerial prerogative, the employer is free to make a change before bargaining the effects of its decision. *Port of Seattle*, Decision 11763-A (PORT, 2014); *Central Washington University*, Decision

10413-A (PSRA, 2011). Similarly, if the permissive subject is a union prerogative, the union would be free to make a change before bargaining.

Remedy

The Legislature created the Commission to provide uniform and impartial adjustment and settlement of disputes arising from employer-employee relations. The Legislature further intended the Commission to provide efficient and expert administration of public labor relations. RCW 41.58.005. To fulfill the Commission's mission to adjust disputes, the Legislature granted the Commission the power to remedy unfair labor practices. RCW 41.56.160(1); *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. 333, 347 (2014). Chapter 41.56 RCW is remedial in nature, and its "provisions should be liberally construed to effect its purpose." *International Association of Fire Fighters, Local 469 v. City of Yakima*, 91 Wn.2d 101, 109 (1978).

"Agencies enjoy substantial freedom in developing remedies." *Municipality of Metropolitan Seattle v. Public Employment Relations Commission*, 118 Wn.2d 621, 634 (1992). The Commission has authority to issue appropriate orders that, in its expertise, the Commission "believes are consistent with the purposes of the act, and that are necessary to make its orders effective unless such orders are otherwise unlawful." *Id.* at 634–35. *See also Snohomish County*, Decision 9834-B (PECB, 2008).

The standard remedy for an unfair labor practice violation orders the offending party to cease and desist and, if necessary, to restore the status quo; make employees whole; post notice of the violation; and publicly read the notice and orders the parties to bargain from the status quo. *City of Anacortes*, Decision 6863-B (PECB, 2001). Requiring the employer to read a copy of the notice at a meeting of its governing body has become part of the standard remedy for an employer who is found to have committed an unfair labor practice violation. *Seattle School District*, Decision 5542-C (PECB, 1997); *University of Washington*, Decision 11414 (PSRA, 2012), *aff'd*, Decision 11414-A (PSRA, 2013); *City of Yakima*, Decision 10270-A (PECB, 2011).

Application of Standards

Procedures for bargaining are permissive subjects of bargaining.

"[P]arties need not bargain on other matters which are referred to as permissive or nonmandatory issues including those that deal with the procedures by which wages, hours and the other terms and conditions of employment are established." *Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d at 341–42. While parties are not required to bargain over permissive subjects of bargaining, bargaining procedures do not belong exclusively to either the employer or the union. This is because neither party can "hold collective bargaining hostage to unilaterally imposed preconditions on negotiations." *UPS Supply Chain Solutions, Inc.*, 366 NLRB No. 111, 2018 NLRB Lexis 216, 10 (2018); *Mason County*, Decision 3116-A (PECB, 1989) (holding that a party may not insist on the withdrawal of litigation as a condition of bargaining); *City of Yakima*, Decision 1130 (PECB, 1981).

How negotiations are conducted relates neither to the employees' interest in wages, hours, and working conditions nor to the employer's entrepreneurial control. How negotiations are conducted is a matter of the relationship between the employer and the union. The "how" is the framework for discussing wages, hours, and working conditions and is a permissive subject of bargaining

Both parties asked the Commission to find their proposed method of collective bargaining preferable. While we rely on Washington State labor law to reach our decision in this case, we note that collective bargaining has historically taken place in private meetings. We further note that the National Labor Relations Board and federal courts have opined that collective bargaining occurs best when it is conducted off the record, in the sense that the sessions are not transcribed or recorded. *See NLRB v. Bartlett-Collins Co.*, 639 F.2d 652, 656 (1981), *citing Bartlett-Collins Co.*, 237 NLRB 770 (1978) (stating the presence of a court reporter "has a tendency to inhibit the free and open discussion necessary for conducting successful collective bargaining" and that parties

may talk for the record rather than progress toward agreement); *Latrobe Steel Co. v. NLRB*, 630 F.2d 171 (1980).[2]

The question of whether the OPMA applied to public-sector collective bargaining came before the Commission in *Mason County*, Decision 2307-A (PECB, 1986). Following a court of appeals decision finding that collective bargaining was subject to the OPMA in *Mason County v. Public Employment Relations Commission*, 54 Wn. App. 36 (1989), the Legislature created an exception allowing collective bargaining negotiations to take place outside of open public meetings. RCW 42.30.140(4). Once the parties reach an agreement, the employer is then required to ratify the agreement in an open public meeting. RCW 42.30.060; *State ex rel. Bain v. Clallam County Board of County Commissioners*, 77 Wn.2d 542, 547–49 (1970); *Mason County*, Decision 10798-A (PECB, 2011); *see Chimacum School District*, Decision 12623-A (PECB, 2017). This affords the parties the opportunity to negotiate in a private setting while satisfying the employer's obligation to take final action on any agreements in an open meeting.

While collective bargaining has historically taken place in private meetings, the employer provided statutes from 10 other states that provide for varying degrees of open collective bargaining in the public sector.[3] However, some of those states do not have the same collective bargaining mechanism as Washington. Idaho, for example, has neither a collective bargaining law similar to Washington's laws nor an agency similar to the Public Employment Relations Commission. Under Oregon's public meetings law, negotiations are open unless both parties "request that negotiations be conducted in executive session." Oregon Revised Statutes 192.660(3). Each state has devised its own scheme for collective bargaining and public meetings.

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2 In *City of Pullman*, Decision 8086 (PECB, 2003), *aff'd*, Decision 8086-A (PECB, 2003), the issue before the examiner was whether recording an investigatory interview was a mandatory subject of bargaining. In reaching her decision, the examiner distinguished recording during negotiations and recording during an investigatory interview.

3 Alaska, Florida, Idaho, Iowa, Kansas, Minnesota, Montana, Oregon, Tennessee, and Texas. Employer's Post-Hearing Brief, Appendix B.

We are aware that open negotiations are becoming more common. A quick internet search reveals that open bargaining appeals to some unions and employers.[4] In the Royal City School District, for example, the employer and union are currently negotiating in open meetings.[5] The employer has posted notice of negotiations and proposals on its website.[6]

Other than requiring parties to negotiate in good faith, Chapter 41.56 RCW does not prescribe how parties will bargain. The parties must discuss and agree on how to conduct their negotiations. An issue as significant as how a collective bargaining agreement will be negotiated requires more communication than the parties saying they are available and ready to bargain but only in the way they want.

Through discussion and negotiations, parties can come to agreement on procedures for bargaining. Some parties use an interest-based model, while others choose a more traditional approach. Some parties find ground rules useful, while others do not. Some parties agree not to discuss their negotiations in the media. Some parties, especially those we have observed in strike situations, post their formal proposals on their websites immediately after a negotiation session has ended. Parties are only limited by their lack of resourcefulness when creating a bargaining procedure.

In any event, both the employer and union must agree on the process. To reach agreement, they must talk to each other and make proposals about how to conduct negotiations.

We see no reason to treat the question of whether negotiations should be held in open public meetings differently than other procedures for how bargaining will be conducted.

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4 Merrie Najimy, *Seven Steps to Opening Up Bargaining*, LABOR NOTES (February 1, 2016), http://www.labornotes.org/2016/02/seven-steps-opening-bargaining.

5 *Teachers Union Collective Bargaining Session Open to the Public in Royal City*, SUN TRIBUNE (June 26, 2018, 11:10 a.m.), http://www.suntribunenews.com/local_news/20180626/teachers_union_collective_bargaining_session_open_to_the_public_in_royal_city.

6 *Collective Bargaining Negotiations Notice*, ROYAL SCHOOL DISTRICT, https://www.royal.wednet.edu/rsd/en/505-collective-bargaining-negotiations-notice-2 (last visited August 16, 2018).

A party commits an unfair labor practice when it conditions negotiations over mandatory subjects of bargaining on a permissive subject of bargaining.

"The fact that an issue is a non-mandatory subject of bargaining does not of itself require that one substantive result be favored over another. It implies only that the parties may not preclude other negotiations on the basis of that issue." *Latrobe Steel Co. v. NLRB*, 630 F.2d at 178, *citing NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958); *Mason County*, Decision 3116-A; *Public Utility District 1 of Clark County*, Decision 2045-B (PECB, 1989); *Whatcom County*, Decision 7244-B (holding that an employer may make proposals on waivers of bargaining rights but may not take a waiver, which is a permissive subject of bargaining, to impasse); *Success Village Apartments, Inc.*, 347 NLRB 1065 (2006) (finding an employer committed an unfair labor practice when it refused to meet in face-to-face negotiations with the union). Neither party can insist on how to conduct negotiations—either in private or in an open meeting—as a precondition to negotiating mandatory subjects of bargaining.

Here, the employer determined that to pass a tax increase, its interests would be best served by negotiating collective bargaining agreements in public. The employer passed Resolution 16-22, establishing a policy to negotiate in open meetings. The employer did not propose to the union that the parties conduct collective bargaining in public. Rather, through its correspondence and conduct, the employer imposed negotiations in open public meetings on the union.

The union could have proposed to the employer a plan for how to conduct negotiations privately or how to conduct negotiations regarding sensitive employee issues. Instead, at the February 27, 2017, meeting, the union said it was ready to bargain but would do so only in private, and the employer said it was ready to bargain but would do so only under its resolution in an open public meeting.

Negotiations over how to achieve transparency in collective bargaining could have allowed the parties to agree on a process that would have met both the employer's interest in transparency and the union's interest in privacy. The employer could have communicated with the union about its interest in opening the process and sought agreement from the union on how to move forward.

By engaging in back and forth discussion about their interests and goals, the parties may have found some middle ground that would have met both of their needs. The parties could have discussed providing public notice of their negotiation sessions, posting proposals on the employer's website, or providing bargaining updates, among other things. However, neither party proposed to the other a method for negotiations. The parties never discussed the issue.

So, it is no surprise that the parties reached a stalemate. Neither party would discuss mandatory subjects of bargaining unless and until the other party capitulated. Both sides conditioned negotiations over mandatory subjects of bargaining on a permissive subject of bargaining. In doing so, the union and the employer refused to bargain mandatory subjects.

The collective bargaining obligation is not onerous. RCW 41.56.030(4) requires the parties to meet at reasonable times and negotiate in good faith over mandatory subjects of bargaining. Neither the union nor the employer did this. To avoid finding itself in violation of the collective bargaining laws, an employer or a union must raise the issue of how to conduct negotiations with the other side. Otherwise, the parties should continue to negotiate as they have previously negotiated. In this case, neither the employer nor the union raised the issue of how to conduct negotiations with the other party but instead drew lines in the sand and refused to fulfill their statutory obligations unless and until the other party capitulated.

The Legislature granted public employees the right to negotiate mandatory subjects of bargaining with their employer through their chosen representative. By conditioning bargaining on agreement on ground rules, the employer and union have prevented the employees from exercising their statutory rights.

The parties erred by refusing to negotiate mandatory subjects of bargaining by insisting that the other party capitulate to their demands on a permissive subject of bargaining.

An appropriate remedial order requires the parties to negotiate in good faith from the status quo. In collective bargaining, good-faith negotiations never take place "from scratch." Rather, they take place from the status quo. *Shelton School District*, Decision 579-B (EDUC, 1984). "In practical

application, one of the principal distinctions between 'mandatory' and 'permissive' subjects is that the *status quo* must be maintained on mandatory subjects after the expiration of a collective bargaining agreement, while obligations concerning a permissive subject expire with the contract in which they were contained." *City of Yakima*, Decision 3564-A (PECB, 1991). Agreements on permissive subjects of bargaining "must be a product of renewed mutual consent" and expire with the parties' collective bargaining agreement. *Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d at 344; *Cowlitz County*, Decision 12483-A (PECB, 2016).

Procedures for conducting collective bargaining are permissive subjects of bargaining. Unlike budgetary matters, which are the employer's prerogative, and internal union affairs, which are the union's prerogative, bargaining procedures belong solely to neither party but to both parties simultaneously. Thus, it would be in error to allow one party to impose its will on the other.

On appeal, the union contends that the Examiner's remedial order "begs the question, 'What do we do now?'" What the parties do now is what the parties have been refusing to do since February 27, 2017. The parties must fulfill their statutory obligation. The parties must bargain.

The Examiner entered an appropriate remedial order consistent with agency practice. An order requiring parties to bargain recognizes that the parties have the most information about their situation and are in the best position to make a decision. A bargaining order affords the parties the creativity and space to generate solutions that work for them. A bargaining order recognizes that there will be some give and take. When reaching an agreement on how to conduct their bargaining, the parties can compromise on other issues as well, provided neither party insists on how bargaining should be conducted as a condition of negotiating mandatory subjects.

We are aware that the parties hold strong beliefs that could quickly lead to a stalemate that may impede the parties from carrying out their statutory duty to meet and negotiate over mandatory subjects, including wages, hours, and working conditions. It is our duty as the Commission to fashion remedies that will effectuate the applicable statute. To provide a uniform and impartial system to resolve labor relations disputes, we must at times fashion remedies that impart consistency and direction to the parties. When parties become entrenched in their positions and

lose sight of their statutory obligation, they need help to move forward to resolution. Therefore, we find it appropriate to provide a framework for the parties to negotiate.

To best effectuate the purposes of Chapter 41.56 RCW, we order the employer and the union to cease and desist from insisting as a condition of bargaining that the other party agree to bargain in private or in public. If either party continues to insist on how to conduct negotiations as a condition for negotiating mandatory subjects of bargaining, that party will expose itself to further violations of the act.

We order the parties to negotiate in good faith over the method by which the parties will conduct their negotiations. The policy of Washington State is to allow employees to negotiate with their employer through a representative of their own choosing. RCW 41.56.010. Public employers and the unions selected by the employees must negotiate in good faith. RCW 41.56.030(4). In this case, the parties have not discussed or made proposals about how they will conduct their negotiations.

If after two good-faith negotiation sessions the parties are unable to reach an agreement on how to conduct their negotiations, the Commission will appoint a mediator to assist the parties. If after engaging in good-faith negotiations and mediation the parties cannot reach agreement, to best effectuate the purposes of Chapter 41.56 RCW, we find it would be in the parties' best interest to remove the barrier that prevents them from carrying out their statutory duty. The historic practice of collective bargaining in Washington generally and the practice of this employer and union specifically has been through private negotiations.[7] Thus, if the parties are unable to come to a resolution through good-faith negotiations and mediation, the parties will negotiate from the status quo—that is, in private meetings.

Our remedial authority is broad and permits us to order negotiations consistent with the parties' past practice of negotiating in private. The goal of this remedial order is to ensure that the parties ultimately fulfill their statutory obligation to negotiate in good faith over mandatory subjects of bargaining.

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7 Tr. 241:4–17.

As noted, neither party will satisfy its obligation to negotiate in good faith or comply with this order if it responds to the other party's proposals on how to conduct the negotiations by simply saying "no" and waiting out the compliance process. If a party does not fully embrace its statutory obligation to negotiate in good faith, then it risks further violations of the act.[8] We are optimistic that the parties will be able to reach an agreement on how to conduct their negotiations.

CONCLUSION

Both the union and the employer refused to negotiate mandatory subjects of bargaining when they preconditioned negotiations on a permissive subject of bargaining. Thus, both the employer and the union refused to bargain in violation of the statute. We affirm the Examiner.

Regarding our remedy, Washington State policy favors collective bargaining negotiations. In this case, the parties ignored their statutory obligation to bargain in good faith over mandatory subjects of bargaining by conditioning negotiations on how bargaining was to take place. They did not bargain about how they would bargain. The parties are in the best position to decide how to negotiate. The remedy simply requires the parties to do what they have refused to do: bargain.

ORDER

The findings of fact and conclusions of law issued by Examiner Jamie L. Siegel are AFFIRMED and adopted as the findings of fact and conclusions of law of the Commission. The Examiner's order is VACATED and the following order is substituted:

ORDER – TEAMSTERS LOCAL 690

Teamsters Local 690, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

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[8] The Commission historically has not taken repeat offenses lightly and considers continued illegal behavior when fashioning remedies. *See Lewis County*, Decision 644 (PECB, 1979).

1. CEASE AND DESIST from

   a. insisting as a condition of bargaining with Lincoln County that negotiations take place in private meetings.

   b. refusing to bargain by failing to meet and discuss mandatory subjects of bargaining.

   c. in any other manner interfering with, restraining, or coercing 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. Bargain in good faith without conditioning bargaining on permissive subjects of bargaining.

   b. If after two good-faith negotiation sessions the parties do not have agreement on how to conduct negotiations, submit a request for mediation to the Commission.

   c. If the parties are unable to reach agreement on how to conduct negotiations after good-faith bargaining and mediation, conduct collective bargaining sessions in private meetings.

   d. Contact a compliance officer at the Public Employment Relations Commission to receive official copies of the required notice posting. Post copies of the notice provided by the compliance officer 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. The union's Secretary-Treasurer shall read the notice provided by the compliance officer into the record at a regular meeting of the governing body or board of the union 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 the compliance officer with a signed copy of the notice provided by the compliance officer.

ORDER – LINCOLN COUNTY

Lincoln County, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from

   a. insisting as a condition of bargaining with Teamsters Local 690 that negotiations take place in public meetings.

   b. refusing to bargain by failing to meet and discuss mandatory subjects of bargaining.

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. Bargain in good faith without conditioning bargaining on permissive subjects of bargaining.

b. If after two good-faith negotiation sessions the parties do not have agreement on how to conduct negotiations, submit a request for mediation to the Commission.

c. If the parties are unable to reach agreement on how to conduct negotiations after good-faith bargaining and mediation, conduct collective bargaining sessions in private meetings.

d. Contact a compliance officer at the Public Employment Relations Commission to receive official copies of the required notice posting. Post copies of the notice provided by the compliance officer 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.

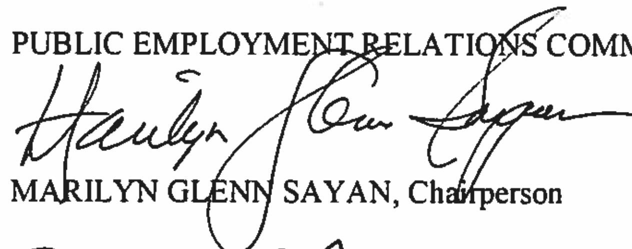
e. Read the notice provided by the compliance officer into the record at a regular public meeting of the Board of Lincoln County Commissioners and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

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 the compliance officer with a signed copy of the notice provided by the compliance officer.

ISSUED at Olympia, Washington, this 29th day of August, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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DECISIONS 12844-A – PECB, 12845-A – PECB, 12846-A – PECB, and 12847-A - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: DEBBIE BATES

CASE NUMBERS: 128814-U-17, 128815-U-17, 128818-U-17, and 128819-U-17

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