

Lincoln County (Teamsters Local 690), Decision 12844-B (PECB, 2021)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

Caleb Jon Vandebos, Attorney at Law, Freedom Foundation, for Lincoln County.

Jack Holland, Attorney at Law, Reid, McCarthy, Ballew & Leahy, L.L.P., for Teamsters Local 690.

BACKGROUND

In *Lincoln County (Teamsters Local 690)*, Decision 12844-A (PECB, 2018), the Commission concluded that the employer and union refused to bargain when they conditioned negotiating mandatory subjects of bargaining on the other party agreeing to bargain in a predetermined manner. The Examiner ordered the parties to “[b]argain in good faith without conditioning bargaining on nonmandatory subjects of bargaining.” *Lincoln County (Teamsters Local 690)*, Decision 12844, p. 21 (PECB, 2018). When the Commission affirmed the Examiner, it modified

the remedy. *Lincoln County (Teamsters Local 690)*, Decision 12844-A. To remedy the unfair labor practices, the Commission ordered the parties to negotiate in good faith over how they would conduct their negotiations. Decision 12844-A at 14. The Commission also ordered the parties to engage in two good-faith negotiation sessions and, if they were unable to reach an agreement, then the Commission would appoint a mediator. *Id.* If the parties were still unable to come to an agreement, the Commission would then order the parties to negotiate from the status quo in private meetings. *Id.* Both parties appealed the Commission's decision to court.

On November 3, 2020, the Washington State Court of Appeals, Division III, issued a decision on the employer's and union's appeals. *Lincoln County v. Public Employment Relations Commission*, 15 Wn. App. 2d 143 (2018), *rev denied*, 2021 Wash. LEXIS 173 (Apr. 7, 2021).¹ The Court of Appeals affirmed the Commission's decision finding both parties committed unfair labor practices. *Lincoln County v. Public Employment Relations Commission*, 15 Wn. App. 2d 143 (2020), *review denied* 2021 Wash. LEXIS 173 (Wash. Apr. 7, 2021). The court further concluded that "status quo is not an appropriate remedy when parties are unable to agree on a permissive subject of bargaining." *Id.* at 158-9. The court remanded for the Commission to reconsider the appropriate remedy. *Id.* at 159.

ISSUE

What is the appropriate remedy when a party refuses to bargain by conditioning negotiations of a mandatory subject of bargaining on agreeing to a nonmandatory subject of bargaining, *i.e.*, bargaining publicly or privately? The appropriate remedy when a party refuses to bargain by conditioning negotiations on a nonmandatory subject of bargaining is an order to cease and desist, bargain in good faith give appropriate notice.

¹ The union filed an appeal with the Washington State Supreme Court. On April 7, 2021, the Washington State Supreme Court denied review. On April 20, 2021, the Court of Appeals issued a mandate remanding the case to the Lincoln County Superior Court. On June 28, 2021, the Lincoln County Superior Court remanded the case to the Commission.

ANALYSIS

Applicable Legal Standards

The Legislature created the Commission to provide uniform and impartial adjustment and settlement of disputes arising from employer-employee 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).

If the Commission finds that a party has committed an unfair labor practice, "it must 'issue [an] appropriate remedial order[.]'" *Amalgamated Transit Union, Local 1384 v. Kitsap Transit*, 187 Wn. App. 113, 126 (2015) (citing RCW 41.56.160(1)); *Benton County*, Decision 12920-A (PECB, 2019). "An appropriate remedial order requires the offending party 'to cease and desist from [the] unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of' chapter 41.56 RCW." RCW 41.56.160(2). 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." *Municipality of Metropolitan Seattle v. Public Employment Relations Commission*, 118 Wn.2d 621, 634–35 (1992). *See also Snohomish County*, Decision 9834-B (PECB, 2008).

"Parties to a collective bargaining agreement *must* bargain on mandatory subjects." *Kitsap County v. Kitsap County Corr. Officers Guild*, 193 Wn. App. 40, 45 (2016). "Parties *may* bargain on permissive subjects, but they are not obligated to bargain to impasse." *Id.*

Application of Standard

The sole matter for consideration by the Commission is how to remedy a situation in which both parties impermissibly conditioned negotiating mandatory subjects of bargaining on a permissive subject of bargaining, *i.e.*, whether to negotiate in public or in private.

When parties cannot agree on the procedures for collective bargaining, the remedy is to order the parties to cease and desist from insisting on a permissive subject of bargaining as a condition of negotiating mandatory subjects of bargaining, bargain in good faith, post a notice and read the notice at a meeting of its governing body. *See City of Tukwila*, Decision 1975 (PECB, 1984) (ordering the union to cease and desist from insisting on the inclusion of interest arbitration in the collective bargaining agreement as a condition of executing the agreement); *City of Sumner*, Decision 6210 (PECB, 1998) (ordering the employer to cease and desist from condition bargaining mandatory subject on an agreement on ground rules); *Columbus Printing Pressmen & Assistants' Union No. 252*, 219 NLRB 268 (1975) (ordering the respondent to cease and desist on insisting on arbitration as a method to resolve the contract); *UPS Supply Chain Solutions, Inc.*, 208 NLRB LEXIS 216 (2018) (ordering the employer to cease and desist from insisting as a condition of bargaining that the union agree to a ground rule that the union translate its initial Spanish language bargaining proposals into English.); *Mercy, Inc. d/b/a American Medical Response*, 346 NLRB 1004 (2006) (ordering the employer to cease and desist from insisting on certain nonmandatory subjects as ground rules.).

CONCLUSION

Both the employer and union conditioned negotiations of mandatory subjects of bargaining on a nonmandatory subject of bargaining. To remedy the violation, we order the employer and the union to cease and desist, bargain in good faith and give appropriate notice.

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. Conditioning the bargaining of mandatory subjects upon agreement to bargain in public.

- b. 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 nonmandatory subjects of bargaining.
 - b. Contact the compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for 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.
 - c. 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.
 - d. 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.
 - e. 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 the compliance officer provides.

ORDER – TEAMSTERS LOCAL 690

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

1. CEASE AND DESIST from:
 - a. Conditioning the bargaining of mandatory subjects upon agreement to bargain in PRIVATE.
 - b. 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 nonmandatory subjects of bargaining.
 - b. Contact the compliance officer at the Public Employment Relations Commission to receive official copies of the required notice for 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.

- c. 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.
- d. 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.
- e. 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 the compliance officer provides.

ISSUED at Olympia, Washington, this 16th day of September, 2021.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARILYN GLENN SAYAN, Chairperson



MARK BUSTO, Commissioner

Commissioner Kenneth J. Pedersen did not participate in the consideration or decision of this case.

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under RCW 34.05.542.



RECORD OF SERVICE

ISSUED ON 09/16/2021

DECISIONS 12844-B – PECB and 12845-B - PECB have been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASES 128814-U-17 and 128815-U-17

EMPLOYER: LINCOLN COUNTY

REP BY: LINCOLN COUNTY COMMISSIONERS
LINCOLN COUNTY
450 LOGAN ST BOX 28
DAVENPORT, WA 99122
rcoffman@co.lincoln.wa.us

PAUL M. OSTROFF
LANE POWELL PC
601 SW 2ND STE 2100
PORTLAND, OR 97204
ostroffp@lanepowell.com

ERIC R. STAHLFELD
FREEDOM FOUNDATION
PO BOX 552
OLYMPIA, WA 98507
estahlfeld@freedomfoundation.com

CALEB JON F. VANDENBOS
FREEDOM FOUNDATION
PO BOX 552
OLYMPIA, WA 98507
calebjon@vandenboslaw.com

PARTY 2: TEAMSTERS LOCAL 690

REP BY: JACK HOLLAND
REID, MCCARTHY, BALLEW & LEAHY, L.L.P.
100 W HARRISON ST NORTH TOWER STE 300
SEATTLE, WA 98119-4143
jack@rmbllaw.com

VAL HOLSTROM
TEAMSTERS LOCAL 690
1912 N DIVISION STE 200
SPOKANE, WA 99207-2271
vholstrom@teamsterslocal690.org



RECORD OF SERVICE

ISSUED ON 09/16/2021

DECISIONS 12846-B – PECB and 12847-B - PECB have been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: DEBBIE BATES

CASES 128818-U-17 and 128819-U-17

EMPLOYER: LINCOLN COUNTY

REP BY: STEPHANIE OLSON
FREEDOM FOUNDATION
PO BOX 552
OLYMPIA, WA 98507
solson@myfreedomfoundation.com

LINCOLN COUNTY COMMISSIONERS
LINCOLN COUNTY
450 LOGAN ST BOX 28
DAVENPORT, WA 99122
rcoffman@co.lincoln.wa.us

PAUL M. OSTROFF
LANE POWELL PC
601 SW 2ND STE 2100
PORTLAND, OR 97204
ostroffp@lanepowell.com

ERIC R. STAHLFELD
FREEDOM FOUNDATION
PO BOX 552
OLYMPIA, WA 98507
estahlfeld@freedomfoundation.com

CALEB JON F. VANDENBOS
FREEDOM FOUNDATION
PO BOX 552
OLYMPIA, WA 98507
calebjon@vandenboslaw.com

PARTY 2: TEAMSTERS LOCAL 690

REP BY: JACK HOLLAND
REID, MCCARTHY, BALLEW & LEAHY, L.L.P.
100 W HARRISON ST NORTH TOWER STE 300
SEATTLE, WA 98119-4143
jack@rmbllaw.com

VAL HOLSTROM
TEAMSTERS LOCAL 690
1912 N DIVISION STE 200
SPOKANE, WA 99207-2271
vholstrom@teamsterslocal690.org