STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Complainant, vs. SPOKANE COUNTY, Respondent.	CASES 134478-U-21, 134479-U-21, 134480-U-21, 134481-U-21, 134482-U-21, 134483-U-21 DECISION 13510 - PECB ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Ed Stemler, General Counsel, and *Natalie Hilderbrand* and *Gordon Smith*, Staff Representatives, for the Washington State Council of County and City Employees.

John Grasso, Senior Deputy Prosecuting Attorney, Spokane County Prosecuting Attorney Larry H. Haskell, for Spokane County.

On September 23, 2021, the Washington State Council of County and City Employees, Council 2 (union) filed six unfair labor practice complaints against Spokane County ("employer") alleging similar allegations on behalf of six bargaining units. A preliminary ruling and consolidation notice was issued on October 6, 2021, with an amended version issued on October 7, 2021. The employer filed its answer on November 10, 2021.

On December 20, 2021, the union filed a motion for summary judgment. On February 4, 2022, the employer responded with a "brief/motion to dismiss." In this filing, the employer argued against summary judgment for the union (but also argued that no facts were in dispute as to its statute of limitations defense) and that the union's complaint should be dismissed as untimely. The union filed a reply brief on February 10, 2022.

ISSUES

1. Is the union's complaint timely?

2. Is there a genuine issue of material fact or is summary judgment appropriate?

3. Is the union entitled to judgment as a matter of law?

For the reasons that follow, no genuine issues of material fact exist to necessitate a hearing in this matter. The union's complaint presents timely allegations, and the union is entitled to judgment as a matter of law.

BACKGROUND

The union represents numerous bargaining units of employees within the employer's workforce. The six bargaining units on whose behalf the union brings the instant complaint include: Local 1553 (Courthouse), Local 1135 (Road Department), Local 492J (Juvenile Court), Local 492FC (Sheriffs Forensics), Local 492SP (Sheriffs Support), and Local 1553S (Supervisors). The first five of these bargaining units have historically been subject to one master collective bargaining agreement, and the most recent master agreement expired on December 31, 2020. The separate collective bargaining agreement for Local 1553S also expired on December 31, 2020. Gordon Smith and Natalie Hilderbrand were the union representatives representing the five master agreement units and Local 1553S, respectively, during the relevant time period.

On December 13, 2018, the Spokane County Board of County Commissioners passed Resolution 18-0950, entitled "IN THE MATTER OF IMPROVING TRANSPARENCY BY NEGOTIATING COLLECTIVE BARGAINING AGREEMENTS IN A MANNER OPEN TO THE PUBLIC." The resolution declared it to be the policy of the employer to conduct all collective bargaining negotiations in public. The resolution also required that the employer provide advance public notice of all negotiations in accordance with the Open Public Meetings Act (chapters 42.30.060–.080 RCW), that bargaining sessions be audio recorded, and that the

employer post copies of all bargaining proposals exchanged during bargaining sessions on its website within two business days.[1]

The union's attempts to bargain successor agreements for its six bargaining units in the wake of Resolution 18-0950's passage—and in the shadow of evolving case law arising from *Lincoln County (Teamsters Local 690)*, Decision 12844 (PECB, 2018)—are the focus of this unfair labor practice dispute. This dispute also comes on the heels of the parties' dispute in Cases 133084-U-20 and 133085-U-20. Those cases resulted in Examiner decision *Spokane County*, Decision 13435 (PECB, 2021), finding that the employer unlawfully preconditioned bargaining with two other union bargaining units, Local 492 and Local 492CL, on permissive ground rules.

Facts before the Six-Month Statute of Limitations

Whereas the instant six bargaining units' collective bargaining agreements (CBAs) expired on December 31, 2020, Local 492 and Local 492CL's CBAs expired on December 31, 2019. Thus, in the wake of Resolution 18-0950's passage, the parties first discussed successor contract negotiations for Local 492 and Local 492CL. During 2019 and 2020, the parties engaged in bargaining and numerous mediation sessions with a Public Employment Relations Commission (PERC) mediator over ground rules for those bargains. In sum, the parties did not agree on ground rules.[2]

The parties attempted to schedule a substantive bargaining session for those CBAs in October 2020, and the employer issued a Notice of Open Meeting inviting the public to the session. The employer renewed its insistence on a ground rules proposal that included holding bargaining sessions in public, posting public notice of all bargaining sessions in accordance with the Open

---

[1] The Spokane County Board of County Commissioners passed a similar resolution to Resolution 18-0950 on December 11, 2018, but for reasons not clear from the record, chose to enact Resolution 18-0950 just two days later to supersede the original.

[2] Both parties offered exhibits with their summary judgment briefs detailing the history of the parties' prior bargaining regarding ground rules for the Local 492 and Local 492CL successor agreements. I take administrative notice of the findings of fact in *Spokane County*, Decision 13435, as needed to fill in the gaps.

Public Meetings Act, publishing proposals on the employer's website, prescribing limitations for off-the-record discussions, and requiring that all on-the-record portions of bargaining sessions be audio recorded. The employer contemporaneously described these ground rules as applying to "L492 and all AFSCME locals." The union ultimately did not attend the meeting and filed unfair labor practice complaints, which became Cases 133084-U-20 and 133085-U-20, on October 14, 2020.

This led the parties to discuss how they would proceed with respect to bargaining the CBAs for the instant six bargaining units. On October 16, 2020, employer Human Resources Manager Randy Withrow emailed Smith, stating in relevant part:

> As you are aware, we have the Master Contract expiring on December 31, 2020. May I ask you to provide me with the Union's position on the remaining Council 2 locals? Spokane County remains ready, willing and able to negotiate while complying with the County resolution. As stated to you when we agreed to commence negotiations with Local 492, I am obligated to follow Resolution 18-0950 and post such agreed to meetings as open meetings. If the Union's position remains not to participate in negotiations under these circumstances, then the County will conclude you are not able to agree to meeting with any Council 2 locals under the conditions stipulated under the resolution.

On October 20, 2020, Smith responded and affirmed that the union's position against negotiating under the employer's open bargaining conditions applied to all of the union's bargaining units.

The Court of Appeals, Division Three, issued its decision in *Lincoln County v. Public Employment Relations Commission*, 15 Wn. App. 2d 143 (2020), on November 3, 2020. On November 13, 2020, both Smith and Hilderbrand emailed Withrow and demanded substantive

bargaining over their bargaining units' CBAs in accordance with the union's interpretation of the court's decision.[3] Smith wrote, in relevant part:

> Per the recent Lincoln County Court of Appeals decision, I believe the County has an obligation to bargain for successor agreements for contracts that are in effect and under "status quo" which is closed negotiation meetings.
>
> Therefore the Master Agreement Locals and I wish to immediately commence bargaining for their successor agreement utilizing this "status quo" doctrine (bargaining in private).

Hilderbrand wrote, in relevant part:

> Randy, per the recent Lincoln County Court of Appeals decision, WSCCCE-Council 2 and I believe the County has an obligation to bargain for a successor agreement for Contracts that are in effect and under the "status quo" which is closed negotiation meetings.
>
> Therefore Local 1553-S and I are again formally requesting to negotiate their CBA and we wish to immediately commence bargaining for their successor agreement utilizing this "status quo" doctrine (bargaining in private).

Both Smith and Hilderbrand attached written opening contract proposals for their respective bargaining units, provided their teams' available meeting dates, and further stressed their urgent desire to meet. Smith's opening contract proposal for the master agreement included proposals regarding the contract term, wages, the grievance procedure, and various benefits. Hilderbrand's opening proposal for the Local 1553S agreement included proposals regarding the contract term,

---

[3] Whether Smith and Hilderbrand correctly interpreted the Court of Appeals' holding regarding the *status quo* doctrine in their November 13, 2020, emails is immaterial to my analysis of the merits of the instant case, whereas the employer did not file an unfair labor practice complaint against the union alleging insistence on a permissive subject and the only question is whether the employer unlawfully insisted. The court's holding and the Commission's subsequent decision on remand in *Lincoln County (Teamsters Local 690)*, Decision 12844-B (PECB, 2021), regarding remedies inform the remedy section below, however.

wages, union security, discipline and discharge, the grievance procedure, and various types of leaves and benefits.

On November 20, 2020, Withrow responded to the union's emails, stating, in relevant part:

> Spokane County does not concur with Council 2's interpretation of the recent Court of Appeals decision in the Lincoln County case. This decision has now been appealed to the Supreme Court. Your filing of the [Local 492 and Local 492C] [Unfair Labor Practice] has halted negotiations and your clarification on the remaining Council 2 locals stops bargaining on those locals. . . .
>
> I remain obligated to follow Resolution 18-950. . . .
>
> We could proceed if Council 2 withdrew the [Unfair Labor Practice] and accepted the PERC mediator's recommendation on Resolution 18-0950. . . . At this time, Spokane County continues to be willing to negotiate successor agreement[s] with Council 2 with the understanding we will follow Resolution 18-0950 and post any negotiating sessions as an open meeting.

The parties had subsequent communications in November and December 2020 but reached no agreement on the terms of a bargaining session.

On December 1, 2020, the union filed a contract mediation request with PERC for each of the master agreement units. On December 4, 2020, the union filed a contract mediation request for Local 1553S. PERC assigned a mediator, who reached out to the parties and offered mediation dates. Whether the employer responded to the mediator's scheduling emails is unclear from the record. In one December 8, 2020, email, however, Withrow remarked to the union that the employer "fail[ed] to see the logic in requesting mediation when no County proposals have been sent to the Union and no negotiating sessions have taken place." He accused the union of utilizing mediation to "circumvent addressing the issue of whether negotiations will take place in an open or closed format."

The parties' CBAs expired December 31, 2020, with no substantive progress toward successor agreements.

At some point, Withrow retired and the employer hired Joshua Groat as its new Human Resources director and labor relations manager.

Facts within the Six-Month Statute of Limitations

In May 2021, the assigned PERC mediator reached out to the parties again. The mediator obtained Groat's name and contact information from the union. This appears to have sparked renewed communication between the parties about successor bargaining.[4]

May–June 2021 Correspondence regarding Master Agreement Negotiations

On May 28, 2021, Smith emailed Groat regarding the master agreement. Smith stated that he was reiterating the union's request that bargaining commence over the "substantive Master Contract issues." Smith sent Groat the union's previously sent written opening contract proposal. Smith urged that the negotiations were a "high priority" to the union and stated the union would be available to meet "on nearly any dates."

On June 2, 2021, Groat responded by email. Groat stated, in relevant part:

> The County is more than eager to get to the bargaining table to negotiate a new successor Master Contract and the ground rules under the Spokane County resolution and the previously sent ground rules proposal. If the Union is willing to move forward with this understanding, I will work with my team to set up some possible dates that we could meet.

May–June 2021 Correspondence regarding Local 1553S Negotiations

On May 26, 2021, Groat emailed Hilderbrand to clarify the status of the parties' negotiation regarding Local 1553S. Groat wrote that he had been contacted by the mediator but was not able to find any evidence that the parties had previously commenced negotiations regarding Local 1553S's contract and therefore did not think that mediation was appropriate. Groat stated

---

[4] The Examiner takes judicial notice that the Washington Supreme Court had also issued its decision denying review of *Lincoln County v. Public Employment Relations Commission*, 15 Wn. App. 2d 143 (2020) on April 7, 2021. *See Lincoln County v. Public Employment Relations Commission*, 197 Wn.2d 1003 (2021).

that the employer was "extremely eager" to begin negotiations for a successor agreement for Local 1553S and asked the union to inform him whether and when it wished to meet.

On May 28, 2021, Hilderbrand responded to Groat's email. She stated that the union had previously requested to bargain regarding Local 1553's contract and had provided an opening contract proposal to the employer on November 13, 2020. She attached the union's previously sent proposal. Hilderbrand also stated:

> Again, Josh, I reiterate my request that we commence bargaining the substantive issues for each of these Locals so we can negotiate a successor agreement . . . . Given that this issue has been and still is a high priority for the Union, our Union negotiation teams will be available to meet with the County on nearly any dates that would work best for you all. Please provide me with some dates and times to commence bargaining . . . .

On June 2, 2021, Groat responded to Hilderbrand via email. Groat stated, in relevant part:

> I am happy to see that the groups you represent our [sic] eager to get to the table to begin negotiations! As I let you know on our phone call Wednesday, Spokane County is available and will to [sic] commence negotiations on ground rules and a successor CBA under the Spokane County resolution and the previously forwarded ground rules proposal. We are ready to meet and discuss any good faith proposals that bring the parties together to begin negotiations.

Groat then agreed to put together dates and a location at which the parties could meet under its conditions.

Further Attempts to Schedule Mediation

On June 2, 2021, the mediator emailed Hilderbrand, Smith, and Groat, offering new mediation dates. Hilderbrand responded on July 8, 2021, affirming the union's interest in mediation and providing the union team's available dates. There is no evidence that the employer responded to the renewed attempts to schedule mediation.

No Substantive Bargaining Attempts by Employer

Through the date that the unfair labor practice complaints were filed, September 23, 2021, the parties had not engaged in substantive bargaining. The employer had not provided substantive responses or counterproposals to the union's opening contract proposals. Significantly, unlike in *Lincoln County*, *supra*, only the union has filed an unfair labor practice complaint.

ANALYSIS

Applicable Legal Standards

Statute of Limitations

"[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." RCW 41.56.160(1). The six-month statute of limitations begins to run when the complainant knows or should know of the violation. *City of Bellevue*, Decision 9343-A (PECB, 2007) (citing *City of Bremerton*, Decision 7739-A (PECB, 2003)). The start of the six-month period, also called the triggering event, occurs when a potential complainant has "actual or constructive notice" of the complained-of action. *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

The Commission has previously rejected a continuing violation theory. In *City of Bremerton*, Decision 7739-A, the Examiner found that the union's complaint was untimely because the union was aware of the existence of a "me too" clause and a parity clause in two other collective bargaining agreements more than six months prior to filing a complaint. The union argued that it met its burden of proof to establish a continuing violation by showing that the clauses interfered with its bargaining rights. The Commission affirmed the Examiner. At any time in the future, if the "me too" clause interfered with the union's rights, it could file a complaint. Absent actual evidence that the existing "me too" clause interfered with employee rights within the statute of limitations, the complaint was untimely.

Multiple violations, each giving rise to its own statute of limitations, may occur as part of a larger event. In *Seattle School District*, Decision 9982-A (PECB, 2009), the employer investigated an employee complaint against the union representing the employee. The union filed its complaint on

March 13, 2007, and the employer conducted the investigation between May 2006 and July 19, 2006. The Examiner found that events occurring before September 13, 2006, were time barred. The Commission agreed. The union was aware that the employer was investigating the complaint. The events occurring more than six months prior to the union filing its complaint were outside the statute of limitations. However, certain events, such as the issuance of the investigator's report, resulting discipline, and other procedural violations, may occur at different times and may be independent triggering events.

Facts occurring after the filing of an unfair labor practice complaint may be considered as background information where relevant but do not have substantive weight to support the finding of an unfair labor practice violation. *Central Washington University*, Decision 10118-A (PSRA, 2010) (confirming a party may only be required to redress claims for which it has been placed on notice); *Skagit County*, Decision 8886-A (PECB, 2007) (declining to consider allegations of "unilateral change" arising after original complaint, where union did not raise the allegations in an amended complaint); *but see Snohomish County Police Staff and Auxiliary Services Center*, Decision 12342-A (PECB, 2016) (finding evidence of events occurring after a complaint has been filed may be relevant to the case).

Summary Judgment

An Examiner may grant a motion for summary judgment "if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." WAC 10-08-135. "A material fact is one upon which the outcome of the litigation depends." *State – General Administration*, Decision 8087-B (PSRA, 2004) (citing *Clements v. Travelers Indemnity Co.*, 121 Wn.2d 243 (1993)). The Commission applies the same standards in ruling on motions for summary judgment as do Washington courts. *State – General Administration*, Decision 8087-B.

The party moving for summary judgment has the burden of demonstrating the absence of any genuine issue as to a material fact. "A summary judgment is only appropriate where the party responding to the motion cannot or does not deny any material fact alleged by the party making the motion. . . . Entry of a summary judgment accelerates the decision-making process by

dispensing with a hearing where none is needed." *Pierce County*, Decision 7018-A (PECB, 2001) (citing *City of Vancouver*, Decision 7013 (PECB, 2000)). When the moving party shows that there are no genuine issues as to any material fact, the nonmoving party bears a responsibility to present evidence demonstrating that there are material facts in dispute. *City of Seattle (Seattle Police Management Association)*, Decision 12091 (PECB, 2014).

Consistent with Civil Rule 56, if the nonmoving party fails to do so, summary judgment may then be appropriate. *Id.*; *Atherton Condominium Apartment-Owners Association Board of Directors v. Blume Development Co.*, 115 Wn.2d 506 (1990). Civil Rule 56(e) specifically states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Pleadings and briefs can be sufficient to determine if there is a genuine issue of material fact. *Pierce County*, Decision 7018-A (citing *City of Seattle*, Decision 4687-A (PECB, 1996)).

The Commission does not grant summary judgment motions lightly since doing so involves making a final determination without the benefit of a hearing. *City of Orting*, Decision 7959-A (PECB, 2003).

Duty to Bargain

Chapter 41.56 RCW imposes a mutual obligation on public employers and exclusive bargaining representatives to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to mandatory subjects of bargaining. RCW 41.56.030(4). Mandatory subjects of bargaining include wages, hours, and working conditions. Permissive or nonmandatory subjects of bargaining include managerial and union prerogatives, and procedures for bargaining mandatory subjects. *Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d 338, 342 (1986).

PERC determines whether a particular subject is a mandatory subject of bargaining. WAC 391-45-550. To make the determination, a balancing test is applied on a case-by-case basis. *International Association of Fire Fighters, Local 1052 v. Public Employment Relations Commission*, 113 Wn.2d 197, 203 (1989). The subject's relationship to employee wages, hours, and working conditions is balanced against the extent to which the subject is a management or union prerogative. *City of Seattle*, Decision 11588-A (PECB, 2013). The decision focuses on which characteristic predominates. *Id.*

While PERC encourages parties to discuss all matters in dispute between them, parties are not required to bargain over nonmandatory subjects. *Cowlitz County*, Decision 12483-A (PECB, 2016). A party commits an unfair labor practice when it bargains to impasse over a nonmandatory subject of bargaining. *Klauder v. San Juan County Deputy Sheriffs' Guild*, 107 Wn.2d 338. Similarly, a party commits an unfair labor practice when it conditions its willingness to bargain on a nonmandatory subject. *Public Utility District 1 of Clark County*, Decision 2045-B (PECB, 1989), *review denied*, *Clark Public Utility v. Public Employment Relations Commission*, 116 Wn.2d 1015 (1991); *City of Sumner*, Decision 6210 (PECB, 1998), *corrected*, Decision 6210-A (PECB, 1998); *Taylor Warehouse Corp. v. National Labor Relations Board*, 98 F.3d 892 (6th Cir. 1996); *Quality Roofing Supply Co*., 357 NLRB 789 (2011); *Bakery Workers Local 455 (Nabisco Brands)*, 272 NLRB 1362 (1984); *The Adrian Daily Telegram*, 214 NLRB 1103 (1974).

PERC has consistently ruled—and recently reiterated—that ground rules or bargaining procedures are a nonmandatory subject of bargaining about which parties are not required to bargain. *Lincoln County*, Decision 12844-A (PECB, 2018), *aff'd in rel. part*, *Lincoln County v. Public Employment Relations Commission*, 15 Wn. App. 2d 143, *review denied*, 197 Wn.2d 1003; *see also State – Fish and Wildlife*, Decision 11394-A (PSRA, 2012), *aff'd*, Decision 11394-B (PSRA, 2013), *aff'd*, *Fish and Wildlife Officers' Guild v. Department of Fish and Wildlife*, 191 Wn. App. 569 (2015); *State – Office of Financial Management*, Decision 11084-A (PSRA, 2012); *City of Sumner*, Decision 6210, *corrected*, Decision 6210-A.

Application of Standards

Statute of Limitations

Neither party alleges a dispute of material fact regarding the employer's timeliness argument. The employer argues that the union was required to file its claim within six months of the date that it knew or should have known of Resolution 18-0950's passage. The employer relies primarily on unilateral change precedent and frames its passage of Resolution 18-0950 as its enactment of a change.

The claim certified by the Unfair Labor Practice Administrator in this case was not a unilateral change claim; rather, it was a claim for refusal to bargain by insisting that collective bargaining sessions occur in public. The acts alleged to constitute the violation were the employer's insistence on permissive ground rules when the union demanded substantive bargaining over the parties' expired agreement —not the employer's announcement that it would, in the future, rely on Resolution 18-0950 and insist on permissive ground rules.

Using the actual acts alleged to constitute a violation as the triggering event for the six-month statute of limitations, rather than some pronouncement of future acts, is consistent with this agency's broader precedent. For example, in *City of Bremerton*, an Examiner found that a case predicated on the mere existence and inherent unlawfulness of "me too" and parity clauses was untimely filed, as the clauses had been bargained in a previous bargaining cycle and no timely facts alleged any actual adverse impact on the parties' ongoing bargaining. *City of Bremerton*, Decision 7739 (PECB, 2002). The Commission affirmed the Examiner and held that "speculation alone is not sufficient to warrant a ruling in proceedings before the agency." *City of Bremerton*, Decision 7739-A. The Commission explained that, in the future, if the clauses were alleged to actually adversely impact bargaining, a new claim could be timely filed. *Id*.

This framing is also consistent with the Unfair Labor Practice Administrator's treatment of a complaint similar to this union's in *Lincoln County*, Decision 12648 (PECB, 2017). In *Lincoln County*, the Unfair Labor Practice Administrator dismissed a union's complaint against an employer, which was based only on the employer's passage of a public bargaining resolution without any allegation of subsequent conduct constituting a refusal to bargain. *Lincoln County*,

Decision 12648. That union timely refiled a new case when the factual record had been further developed. *See Lincoln County (Teamsters Local 690)*, Decision 12844 (PECB, 2018).

My conclusion that the employer's conduct starting in May 2021 presents a timely claim for refusal to bargain (despite the employer's earlier refusal in 2020) is also consistent with the National Labor Relations Board (NLRB)'s approach to refusal to bargain claims. The NLRB has held that "[r]epeated refusals to recognize and bargain . . . are not merely reiterations of an initial refusal to bargain, but are separate unlawful refusals." *Bentson Contracting Co.*, 298 NLRB 199, 200 (1990), *aff'd in rel. part*, *Bentson Contracting Co. v. National Labor Relations Board*, 941 F.2d 1262, 1264 (1991). The events before the six-month statute of limitations period may present relevant background, but the essential facts needed to prove the union's claim—its demand to bargain the mandatory subjects of a successor agreement and the employer's refusal and insistence on permissive ground rules—occurred within the six months preceding the union's complaint. This is sufficient to allege a timely claim.

No Genuine Issues of Material Fact

Summary judgment is appropriate here as no material facts in dispute have been presented to necessitate a hearing.

When the moving party shows that there are no genuine issues as to any material fact, the nonmoving party bears a responsibility to demonstrate that there are material facts in dispute. *City of Seattle (Seattle Police Management Association)*, Decision 12091. It may not rest "upon the mere allegations or denials . . . but a response, by affidavits or as otherwise provided in [Civil Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Civil Rule 56(e).

The employer claimed in its brief that there were "clear disputes as to material facts." The employer stated that such factual disputes "include[ed] but [were] not limited to, the Union's assertions that Spokane County has committed an unfair labor practice by showing an unwillingness to negotiate in good faith." The employer's arguments amount to a dispute about the legal *effect* of the body of facts outlined above, not a dispute about what the material facts themselves are. Indeed, both parties relied on the same general body of timely communications in

their briefs, but the union contends that those facts constitute a violation while the employer claims that they show a willingness to bargain.[5] The employer also raises arguments about the union's conduct before the timely period; but the employer did not file a complaint against the union.

Union Entitled to Judgment as a Matter of Law

The Commission's case law is clear that parties cannot precondition bargaining over mandatory subjects on permissive ground rules. *Lincoln County*, Decision 12844-A (PECB, 2018), *aff'd in rel. part*, *Lincoln County v. Public Employment Relations Commission*, 15 Wn. App. 2d 143, *review denied*, 197 Wn.2d 1003. Through its late May 2021 emails, the union demanded substantive bargaining over its successor agreements for the instant six bargaining units. It furnished substantive contract proposals on mandatory subjects including contract terms, wages, grievance procedures, and benefits, and offered dates to meet with the employer. On June 2, 2021, the employer claimed a desire to meet but preconditioned its willingness on the union's acquiescence to proposed ground rules—permissive subjects—that included holding meetings in public, audio recording bargaining sessions, and publishing proposals on the employer's website. The employer was not entitled to do so.

Remedy

Fashioning remedies is a discretionary act of the Commission. *University of Washington*, Decision 11499-A (PSRA, 2013) (citing *Public Utility District 1 of Clark County*, Decision 2045-B (PECB, 1989)); *State – Corrections*, Decision 11060-A (PSRA, 2012). The statutes the Commission administers are remedial in nature, and the provisions of those statutes should be liberally

---

[5] In some instances, one party offered a more complete version of an email exchange than the other; e.g., one party's version contained the email attachments whereas the other party's version of the same email only *referenced* the attachments. Neither side disputed the authenticity of any exhibits filed by the other, however. Each side also offered exhibits that either pertained to matters outside the timely period (e.g., after the unfair labor practice was filed) or were irrelevant to the material issues raised: the sequence of events needed to establish whether, in the six months preceding the complaint, the union had demanded bargaining over mandatory subjects and whether the employer preconditioned such bargaining on permissive ground rules.

construed to effect their purposes. *See International Association of Fire Fighters, Local 469 v. City of Yakima*, 91 Wn.2d 101, 109 (1978).

The Commission's authority to fashion remedial orders has included awards of attorney fees and interest arbitration. *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).

> "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."

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

The union seeks extraordinary remedies above and beyond what the Commission ordered in *Lincoln County*, Decision 12844-B. It seeks an order requiring the employer to participate in mediation, the imposition of binding interest arbitration, and an order directing that any wage increases bargained by the parties be retroactively applied back to 2020. The union cites the length of time since the expiration of the prior collective bargaining agreements and the November 2021 decision of another PERC Examiner finding similar misconduct by this employer with respect to two other union bargaining units. *See Spokane County*, Decision 13435.

Whether or not the union's requested remedies are within the discretionary power of this agency, I am not persuaded that there is sufficient basis to exceed the *Lincoln County* remedy in the first instance with respect to these six bargaining units. I note that *Spokane County*, Decision 13435, was issued *after* the events underlying the instant unfair labor practice case occurred—thus, the employer did not have a chance to consider the Examiner's order in that matter before committing its violation here. And to the extent that the union may be alleging in its briefing that the employer has failed to comply with the Examiner's order in *Spokane* County, Decision 13435, such

allegations are beyond my jurisdiction and more appropriately raised in the post-hearing compliance process in those cases.

The standard remedy prescribed in *Lincoln County (Teamsters Local 690)*, Decision 12844-B, is appropriate.

CONCLUSION

The employer refused to bargain, by conditioning its willingness to bargain on a nonmandatory subject of bargaining.

FINDINGS OF FACT

1. The union represents numerous bargaining units of employees within the employer's workforce. The six bargaining units on whose behalf the union brings the instant complaint include: Local 1553 (Courthouse), Local 1135 (Road Department), Local 492J (Juvenile Court), Local 492FC (Sheriffs Forensics), Local 492SP (Sheriffs Support), and Local 1553S (Supervisors).

2. The first five of these bargaining units have historically been subject to one master collective bargaining agreement, and the most recent master agreement expired on December 31, 2020. The separate collective bargaining agreement for Local 1553S also expired on December 31, 2020.

3. Gordon Smith and Natalie Hilderbrand were the union representatives representing the five master agreement units and Local 1553S, respectively, during the relevant time period.

4. On December 13, 2018, the Spokane County Board of County Commissioners passed Resolution 18-0950, entitled "IN THE MATTER OF IMPROVING TRANSPARENCY BY NEGOTIATING COLLECTIVE BARGAINING AGREEMENTS IN A MANNER OPEN TO THE PUBLIC." The resolution declared it to be the policy of the employer to conduct all collective bargaining negotiations in public. The resolution also required that

the employer provide advance public notice of all negotiations in accordance with the Open Public Meetings Act (chapters 42.30.060–.080 RCW), that bargaining sessions be audio recorded, and that the employer post copies of all bargaining proposals exchanged during bargaining sessions on its website within two business days.

5. The union's attempts to bargain successor agreements for its six bargaining units in the wake of Resolution 18-0950's passage—and in the shadow of evolving case law arising from *Lincoln County (Teamsters Local 690)*, Decision 12844 (PECB, 2018)—are the focus of this unfair labor practice dispute. This dispute also comes on the heels of the parties' dispute in Cases 133084-U-20 and 133085-U-20. Those cases resulted in Examiner decision *Spokane County*, Decision 13435 (PECB, 2021), finding that the employer unlawfully preconditioned bargaining with two other union bargaining units, Local 492 and Local 492CL, on permissive ground rules.

6. Whereas the instant six bargaining units' collective bargaining agreements (CBAs) expired on December 31, 2020, Local 492 and Local 492CL's CBAs expired on December 31, 2019. Thus, in the wake of Resolution 18-0950's passage, the parties first discussed successor contract negotiations for Local 492 and Local 492CL. During 2019 and 2020, the parties engaged in bargaining and numerous mediation sessions with a Public Employment Relations Commission (PERC) mediator over ground rules for those bargains. In sum, the parties did not agree on ground rules.

7. The parties attempted to schedule a substantive bargaining session for those CBAs in October 2020, and the employer issued a Notice of Open Meeting inviting the public to the session. The employer renewed its insistence on a ground rules proposal that included holding bargaining sessions in public, posting public notice of all bargaining sessions in accordance with the Open Public Meetings Act, publishing proposals on the employer's website, prescribing limitations for off-the-record discussions, and requiring that all on-the record portions of bargaining sessions be audio recorded. The employer contemporaneously described these ground rules as applying to "L492 and all AFSCME

locals." The union ultimately did not attend the meeting and filed unfair labor practice complaints, which became Cases 133084-U-20 and 133085-U-20, on October 14, 2020.

8. This led the parties to discuss how they would proceed with respect to bargaining the CBAs for the instant six bargaining units. On October 16, 2020, employer Human Resources Manager Randy Withrow emailed Smith, stating in relevant part:

> As you are aware, we have the Master Contract expiring on December 31, 2020. May I ask you to provide me with the Union's position on the remaining Council 2 locals? Spokane County remains ready, willing and able to negotiate while complying with the County resolution. As stated to you when we agreed to commence negotiations with Local 492, I am obligated to follow Resolution 18-0950 and post such agreed to meetings as open meetings. If the Union's position remains not to participate in negotiations under these circumstances, then the County will conclude you are not able to agree to meeting with any Council 2 locals under the conditions stipulated under the resolution.

9. On October 20, 2020, Smith responded and affirmed that the union's position against negotiating under the employer's open bargaining conditions applied to all of the union's bargaining units.

10. The Court of Appeals, Division Three, issued its decision in *Lincoln County v. Public Employment Relations Commission*, 15 Wn. App. 2d 143 (2020), on November 3, 2020. On November 13, 2020, both Smith and Hilderbrand emailed Withrow and demanded substantive bargaining over their bargaining units' CBAs in accordance with the union's interpretation of the court's decision. Smith wrote, in relevant part:

> Per the recent Lincoln County Court of Appeals decision, I believe the County has an obligation to bargain for successor agreements for contracts that are in effect and under "status quo" which is closed negotiation meetings.
>
> Therefore the Master Agreement Locals and I wish to immediately commence bargaining for their successor agreement utilizing this "status quo" doctrine (bargaining in private).

11. Hilderbrand wrote, in relevant part:

> Randy, per the recent Lincoln County Court of Appeals decision, WSCCCE-Council 2 and I believe the County has an obligation to bargain for a successor agreement for Contracts that are in effect and under the "status quo" which is closed negotiation meetings.
>
> Therefore Local 1553-S and I are again formally requesting to negotiate their CBA and we wish to immediately commence bargaining for their successor agreement utilizing this "status quo" doctrine (bargaining in private).

12. Both Smith and Hilderbrand attached written opening contract proposals for their respective bargaining units, provided their teams' available meeting dates, and further stressed their urgent desire to meet. Smith's opening contract proposal for the master agreement included proposals regarding the contract term, wages, the grievance procedure, and various benefits. Hilderbrand's opening proposal for the Local 1553S agreement included proposals regarding the contract term, wages, union security, discipline and discharge, the grievance procedure, and various types of leaves and benefits.

13. On November 20, 2020, Withrow responded to the union's emails, stating, in relevant part:

> Spokane County does not concur with Council 2's interpretation of the recent Court of Appeals decision in the Lincoln County case. This decision has now been appealed to the Supreme Court. Your filing of the [Local 492 and Local 492C] [Unfair Labor Practice] has halted negotiations and your clarification on the remaining Council 2 locals stops bargaining on those locals. . . .
>
> I remain obligated to follow Resolution 18-950. . . .
>
> We could proceed if Council 2 withdrew the [Unfair Labor Practice] and accepted the PERC mediator's recommendation on Resolution 18-0950. . . . At this time, Spokane County continues to be willing to negotiate successor agreement[s] with Council 2 with the understanding we will follow Resolution 18-0950 and post any negotiating sessions as an open meeting.

14. The parties had subsequent communications in November and December 2020 but reached no agreement on the terms of a bargaining session.

15. On December 1, 2020, the union filed a contract mediation request with PERC for each of the master agreement units. On December 4, 2020, the union filed a contract mediation request for Local 1553S. PERC assigned a mediator, who reached out to the parties and offered mediation dates. Whether the employer responded to the mediator's scheduling emails is unclear from the record. In one December 8, 2020, email, however, Withrow remarked to the union that the employer "fail[ed] to see the logic in requesting mediation when no County proposals have been sent to the Union and no negotiating sessions have taken place." He accused the union of utilizing mediation to "circumvent addressing the issue of whether negotiations will take place in an open or closed format."

16. The parties' CBAs expired December 31, 2020, with no substantive progress toward successor agreements.

17. At some point, Withrow retired and the employer hired Joshua Groat as its new Human Resources director and labor relations manager.

18. In May 2021, the assigned PERC mediator reached out to the parties again. The mediator obtained Groat's name and contact information from the union. This appears to have sparked renewed communication between the parties about successor bargaining. The Washington Supreme Court had also issued its decision denying review of *Lincoln County v. Public Employment Relations Commission*, 15 Wn. App. 2d 143 (2020) on April 7, 2021. *See Lincoln County v. Public Employment Relations Commission*, 197 Wn.2d 1003 (2021).

19. On May 28, 2021, Smith emailed Groat regarding the master agreement. Smith stated that he was reiterating the union's request that bargaining commence over the "substantive Master Contract issues." Smith sent Groat the union's previously sent written opening contract proposal. Smith urged that the negotiations were a "high priority" to the union and stated the union would be available to meet "on nearly any dates."

20. On June 2, 2021, Groat responded by email. Groat stated, in relevant part:

> The County is more than eager to get to the bargaining table to negotiate a new successor Master Contract and the ground rules under the Spokane County resolution and the previously sent ground rules proposal. If the Union is willing to move forward with this understanding, I will work with my team to set up some possible dates that we could meet.

21. On May 26, 2021, Groat emailed Hilderbrand to clarify the status of the parties' negotiation regarding Local 1553S. Groat wrote that he had been contacted by the mediator but was not able to find any evidence that the parties had previously commenced negotiations regarding Local 1553S's contract and therefore did not think that mediation was appropriate. Groat stated that the employer was "extremely eager" to begin negotiations for a successor agreement for Local 1553S and asked the union to inform him whether and when it wished to meet.

22. On May 28, 2021, Hilderbrand responded to Groat's email. She stated that the union had previously requested to bargain regarding Local 1553's contract and had provided an opening contract proposal to the employer on November 13, 2020. She attached the union's previously sent proposal. Hilderbrand also stated:

> Again, Josh, I reiterate my request that we commence bargaining the substantive issues for each of these Locals so we can negotiate a successor agreement . . . . Given that this issue has been and still is a high priority for the Union, our Union negotiation teams will be available to meet with the County on nearly any dates that would work best for you all. Please provide me with some dates and times to commence bargaining . . . .

23. On June 2, 2021, Groat responded to Hilderbrand via email. Groat stated, in relevant part:

> I am happy to see that the groups you represent our [sic] eager to get to the table to begin negotiations! As I let you know on our phone call Wednesday, Spokane County is available and will to [sic] commence negotiations on ground rules and a successor CBA under the Spokane County resolution and the previously forwarded ground rules proposal. We are ready to meet and discuss any good faith proposals that bring the parties together to begin negotiations.

24. Groat then agreed to put together dates and a location at which the parties could meet under its conditions.

25. On June 2, 2021, the mediator emailed Hilderbrand, Smith, and Groat, offering new mediation dates. Hilderbrand responded on July 8, 2021, affirming the union's interest in mediation and providing the union team's available dates. There is no evidence that the employer responded to the renewed attempts to schedule mediation.

26. Through the date that the unfair labor practice complaints were filed, September 23, 2021, the parties had not engaged in substantive bargaining. The employer had not provided substantive responses or counterproposals to the union's opening contract proposals. Significantly, unlike in *Lincoln County*, *supra*, only the union has filed an unfair labor practice complaint.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has statutory jurisdiction in this matter pursuant to chapter 41.56 RCW and chapter 391-45 WAC.

2. By the actions described in findings of fact 1 through 26, the employer refused to bargain in violation of RCW 41.56.140(4), and derivatively interfered with employee rights RCW 41.56.140(1), by conditioning bargaining on a permissive subject.

ORDER

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

1. CEASE AND DESIST from:

    a. Refusing to meet and negotiate with the union unless the union acquiesces to permissive ground rules including meeting 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 County Commissioners of Spokane County, 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.

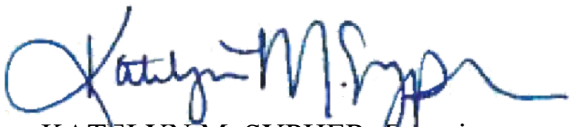
d. Notify the complainant, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide the complainant with a signed copy of the notice provided by the compliance officer.

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 12th day of May, 2022.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



KATELYN M. SYPHER, 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.

RECORD OF SERVICE

ISSUED ON 05/12/2022

DECISION 13510 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE NOS. 134478-U-21, 134479-U-21, 134480-U-21, 134481-U-21, 134482-U-21, 134483-U-21

EMPLOYER: SPOKANE COUNTY

REP BY:
SPOKANE CO COMMISSIONERS
SPOKANE COUNTY
W 1116 BROADWAY
SPOKANE, WA 99260
gvasquez@spokanecounty.org

JOHN GRASSO
SPOKANE COUNTY
1115 W BROADWAY AVE 2ND FLOOR
SPOKANE, WA 99260
jgrasso@spokanecounty.org

PARTY 2: WSCCCE

REP BY:
CHRIS DUGOVICH
WSCCCE
PO BOX 750
EVERETT, WA 98206-0750
c2everett@council2.com

NATALIE HILDERBRAND
WSCCCE
1105 W FRANCIS AVE STE C
SPOKANE, WA 98205
natalieh@council2.com

GORDON SMITH, JR.
WSCCCE
1105 W FRANCIS AVE STE C
SPOKANE, WA 98205
gordons@council2.com

ED STEMLER
WSCCCE
PO BOX 750
EVERETT, WA 98206
ed@council2.com