

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UW POSTDOCS INTERNATIONAL
UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA,
LOCAL UNION 4121,

Complainant,

vs.

UNIVERSITY OF WASHINGTON,

Respondent.

CASE 136218-U-23

DECISION 14000 - PECB

FINDING OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

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Christina L. Thacker, Assistant Attorney General, Attorney General Robert W. Ferguson, for the University of Washington.

On February 14, 2023, the UW Postdocs International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 4121, (union) filed an unfair labor practice complaint against the University of Washington (employer). A hearing was held before the undersigned Examiner on January 17 and 19, February 6, and May 21 and 22, 2024. The parties filed post-hearing briefs on September 6, 2024.

ISSUES

The issues in this case, as framed by the March 16, 2023, cause of action statement, are as follows:

Employer refusal to bargain in violation of RCW 41.56.140(4) [and if so derivative interference in violation of RCW 41.56140(1)] within six months of the date the complaint was filed, by:

1. Breaching its good faith bargaining obligation during negotiations with the union concerning application of the Washington Minimum Wage Law Act to bargaining unit employees and overtime policies and procedures.
2. Failing and/or refusing to provide relevant information requested by the union concerning application of the Washington Minimum Wage Law Act to bargaining unit employees and overtime policies and procedures.
3. Unilaterally changing employee wages without providing the union an opportunity for bargaining.

Employer interference in violation of RCW 41.56.140(1) within six months of the date the complaint was filed, by asserting for the first time that the WMWA salary threshold does not apply to Postdoctoral Scholars in retaliation for the union filing an unfair labor practice complaint on January 4, 2023, on behalf of its Research Scientist/Engineer bargaining unit.

Based on the record, I find that the employer committed unfair labor practices by breaching its good faith bargaining obligation and failing and/or refusing to provide relevant information requested regarding the application of the Washington State Minimum Wage Act (WMWA) to bargaining unit employees. The union failed to meet its burden of proof regarding the remaining allegations.

BACKGROUND

The employer is a large public university with several campuses and hospitals and has many bargaining units. The union is the exclusive bargaining representative of several of those units, including ones representing graduate students, research scientists and postdoctoral researchers (postdocs). This unfair labor practice proceeding involves the postdoc bargaining unit.¹

Postdocs possess doctoral degrees, are appointed for a defined period of five years or less, and are engaged in full-time research and scholarship under the mentorship of university faculty known as principal investigators. Some postdocs are paid a salary and are known as postdoc scholars while

¹ There is a factual reference to an unfair labor practice proceeding involving the research scientists bargaining unit.

others are paid via stipend and are called postdoc fellows. Employees in medical clinical positions are not considered postdocs and are excluded from the bargaining unit.

The postdoc bargaining unit is relatively new. The unit's first contractual bargaining agreement (CBA) was effective from 2019 to 2021. In article 23.3 of this first contract, the parties agreed that postdocs were exempt from overtime payments. Postdocs did not report their time, and their working hours were not tracked. However, even when the first contract was negotiated, the parties were aware that the Washington State Department of Labor and Industries (L&I) was considering changing the salary threshold exemption so more employees would be entitled to overtime. WAC 296-128-530; WAC 296-128-545. Both the union and the employer participated in the public rulemaking process. The union was enthusiastic about the proposed changes, and the employer expressed concerns about how costly the changes would be.

The salary threshold does not apply to physicians providing patient care. WAC 296-128-530(3).

While postdoc salaries were below the salary threshold in 2019, the parties were aware that the salaries might exceed the threshold as the rules changed. In their first bargaining agreement,² they agreed to a memorandum of understanding (MOU) regarding "time reporting" that allowed either party to reopen article 23 of the CBA if postdoc scholar salaries fell below the threshold. It also allowed the employer to require overtime eligible employees to report their time. This MOU was also included in the parties' second collective bargaining agreement.

The proposed rules were adopted, and a new threshold would apply each year. By October 2022, L&I announced the 2023 threshold, effective January 1, 2023, and projected thresholds for later years. Unless the postdocs' salaries were raised, they would be below the threshold and therefore may be entitled to overtime. Due to this announcement, on October 15, 2022, the employer triggered the contract reopener and the hour tracking requirement from the MOU.

² The parties' first collective bargaining agreement was effective from July 1, 2019, to January 31, 2021, the second CBA from March 1, 2021, to January 31, 2023, and the third or current CBA from June 14, 2023, to January 31, 2025.

The union and the employer were already scheduled to begin bargaining for their third collective bargaining agreement very soon, and so the parties agreed to incorporate this reopener bargaining into their scheduled contract bargaining sessions.

On October 21, 2022, the union made an information request about overtime processes and hour tracking. The employer responded that processes would be determined for each individual bargaining unit by department supervisors or principal investigators. The union found this approach unsatisfactory and believed it was too vague to meaningfully bargain the overtime processes.

The parties had a bargaining session on November 7, 2022, and the union proposed raising postdoc wages to be above the salary threshold for the entire duration of the CBA. In short, no time tracking or overtime would be required under the union's proposal, and postdocs would receive a very large raise. The employer asserted that the union's proposal was too expensive. The union made a second information request, asking for specific details about who would be making decisions for each bargaining unit employee and when more information would be available regarding individual decisions and how they would be determined. The union also made an information request about how the employer determined the costs of the union's proposal.

At the parties' November 21, 2022, bargaining session, the employer made its first wage proposal, raising the postdoc scholars' wages just over the 2023 overtime threshold as of January 1, 2023, and raising the postdoc fellows' wages on their next appointment, reappointment, or anniversary date.

The parties continued to meet and bargain through the end of 2022. The parties disagreed about whether the postdoc fellows, who were paid via stipend, not salary, were subject to the overtime threshold and if their wages should be the same as the postdoc scholars.

December 22, 2022, was the final bargaining session before the January 1, 2023, salary threshold went into effect. The parties were anticipating that they would eventually reach a three-year deal, and thus far, the employer's proposal set a salary above the overtime threshold only for the first year of the contract. The proposal also did not have wage parity for the scholars and the fellows.

However, the union believed the parties were on track to quickly reach an agreement that would ultimately exceed the threshold for all three years of the contract. The union encouraged the implementation of the employer's 2023 postdoc scholar wage proposal for January 1, 2023, even though the parties had not yet reached a full agreement. The employer made the increase before January 1, 2023.

Meanwhile, the union and the employer were also bargaining a contract for the Research Scientists and Engineers (RSE) bargaining unit. That unit also had employees with wages that fell below the January 1, 2023, threshold. In November 2022, the employer had notified the union that it planned to convert all those employees into overtime-eligible positions. The union demanded to bargain that decision, and the parties did not reach an agreement. On January 4, 2023, the union filed an unfair labor practice complaint against the employer regarding unilaterally converting the RSE unit to overtime eligible positions.³

By the time that the parties had their next postdoc bargaining session on January 9, 2023, the employer's bargaining team was aware that the union had filed a complaint for the RSE bargaining unit. At this meeting the employer told the union for the first time that it no longer believed any employees in the postdoc bargaining unit were subject to the overtime threshold. This was a shock to the union. While the employer had already asserted that the postdoc fellows were not subject to the overtime threshold because they were paid via a stipend versus a salary, it changed its position when it stated that it also believed that the salaried postdoc scholars were not subject to the overtime threshold.

Not surprisingly, the union had questions. The employer initially asserted attorney client privilege, as its analysis and conversations about the postdocs being exempt had involved its attorneys. The employer also stated that its attorneys had verbal conversations with the attorneys representing L&I. Both the employer's attorneys and L&I's attorneys are within the office of the Washington State Attorney General.

³ See *University of Washington*, Decision 13865 (PECB, 2024), pending appeal before the Commission.

The employer said that it had been seeking clarification about whether the overtime threshold applied to postdoc scholars. The employer's theory was that postdocs are like medical residents because they are being trained for a limited amount of time. The employer told the union that the university president's office was drafting a letter to L&I, seeking clarification about whether the salary threshold applied.

The union alleged that the employer's change in position regarding the postdoc scholars being eligible for overtime was a reaction to the union's RSE complaint. The employer argued that its position was unrelated to the unfair labor practice complaint filing; rather it had evolved over time, and the timing was based on when the president's office had given permission to the employer's bargaining team to inform the union that the employer no longer believed that the salary exemption applied to postdoc scholars. The employer claimed that it had been exploring this theory for years but had opted for an "overly cautious" approach, not making this "alternative approach" known to the union in 2022 when it triggered the MOU reopener.

On January 12, 2023, the union updated its information requests to inquire about the employer's quest for clarification on whether or not postdoc scholars were overtime eligible or if they were exempt like medical residents. This was in addition to the information requests that the union asserted were still outstanding regarding how the employer had estimated costs for the union's wage proposal and the overtime approval processes that would be used for bargaining unit employees. The employer's position was that it had given complete responses to the union's earlier information requests.

Regarding the employer's change in position over whether postdoc scholars were overtime eligible or if they were like medical residents, the employer first replied that there was no documentation related to the request. The employer refused to provide any documentation, claiming that any documentation was privileged.

The employer's president sent a letter dated March 31, 2023, to L&I arguing that postdocs should not be subject to the salary threshold, like medical physicians, and the employer provided the union with a copy of this letter. The union responded with its own letter to L&I in April, arguing for the threshold to apply. L&I rejected the employer's arguments and found that the threshold did apply.

The parties continued to bargain, and in June 2023, after a historic strike, they reached an agreement.

The application of the salary threshold to postdocs was an important and critical issue to the parties, as it was intertwined so closely with wages and hours, both of which are fundamental bargaining topics. The employer stated in both the rulemaking process and at the bargaining table that paying the postdoc wages high enough to exceed this threshold was too expensive. The union saw the change from a salaried position to an hourly position, with time tracking, as a fundamental change to postdoc work, and by resisting this shift, the union saw an opportunity to significantly increase the wages of its bargaining unit members. Both parties engaged in strategies and took positions to further their goals, to the frustration of the other side.

ANALYSIS

Applicable Legal Standards

Burden of Proof

The complainant has the burden of proof in unfair labor practice cases. WAC 391-45-270(1)(a).

Duty to Bargain

Public employers and unions representing public employees have a duty to bargain in good faith over mandatory subjects of bargaining. RCW 41.56.030(4). This includes the duty to meet at reasonable times, to negotiate in good faith, and to execute a written agreement with respect to grievance procedures and personnel matters including wages, hours, and working conditions. *See State ex rel. Bain v. Clallam County Board of County Commissioners*, 77 Wn.2d 542 (1970). Neither party is required to make a concession or reach an agreement. RCW 41.56.030(4).

Whether a party has failed to negotiate in good faith is a mixed question of fact and law. *Pasco Police Officers' Association v. City of Pasco*, 132 Wn.2d 450, 469 (1997).

Full and Frank Discussions

Good faith collective bargaining requires full and frank discussions on disputed issues. *Mansfield School District*, Decision 4552-B (EDUC, 1995). A party may violate its duty to bargain in good

faith by one per se violation, such as refusing to meet at reasonable times and places or refusing to make counterproposals. *Snohomish County*, Decision 9834-B (PECB, 2008). A party may also violate its duty to bargain in good faith through a series of questionable acts that, when examined as a whole, demonstrate a lack of good faith bargaining but none of which by themselves would be per se violations. *Id.* When analyzing conduct during negotiations, the Commission examines the totality of the circumstances to determine whether an unfair labor practice has occurred. *Shelton School District*, Decision 579-B (EDUC, 1984).

Refusing to Provide Information

The duty to bargain includes an obligation to provide relevant information needed by the opposite party to properly perform its duties in the collective bargaining process. *City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992). Failure to provide relevant information upon request constitutes a refusal to bargain unfair labor practice. *University of Washington*, Decision 11414-A (PSRA, 2013).

Unilateral Change

As a general rule, an employer has an obligation to refrain from unilaterally changing terms and conditions of employment unless it gives notice to the union; provides an opportunity to bargain before making a final decision; bargains in good faith, upon request; and bargains to agreement or to a good faith impasse concerning any mandatory subject of bargaining. *Port of Anacortes, Decision 12160-A* (PORT, 2015); *Griffin School District*, Decision 10489-A (PECB, 2010) (citing *Skagit County*, Decision 8746-A (PECB, 2006)).

Interference

An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996).

Application of Standard(s)*Full and Frank Discussions*

The employer and the union had strong opposing public views on the L&I proposed salary threshold. For years, both had engaged in the rulemaking process. And both had been outwardly acting in the shared belief that the salary threshold would apply to the postdoc scholars. In October 2022, the employer triggered the parties' contract reopener. In doing so, the employer said that it had acted because the salary threshold would apply on January 1, 2023. If the employer had doubts about the salary threshold applying, it should have said so. *See City of Clarkston*, Decision 3246 (PECB, 1989) (finding that a union had violated its duty to bargain in good faith by changing its set of proposed comparables in interest arbitration eligible contract negotiations without notifying the employer, even though the union's change was due to statutory changes). The employer should have notified the union that it was questioning its belief that the threshold applied. And given the tight timing before the deadline, if the employer wanted to explore making an argument to L&I that the postdocs should be treated like medical residents, it owed the union a frank conversation. *See City of Brewster*, Decision 10976 (PECB, 2011) (finding that an employer's lack of communication was the antithesis of a full and frank discussion and that reversing tentative agreements thwarted any progress towards a new agreement). The employer failed to do this in a timely manner. The employer's lawyers and L&I's lawyers were already having informal conversations about the salary threshold before the union even knew that the employer was questioning the outwardly shared belief that the postdoc scholars were going to be exempt from overtime. The shared belief that postdoc scholars were going to be entitled to overtime was extremely critical to the November and December 2022 bargaining sessions, because the salary threshold would begin to apply on January 1, 2023.

Both the employer and L&I are represented by the Office of the Attorney General. Like all parties, the employer is entitled to attorney client privilege, but not as a way to shield bad faith bargaining practices. In bargaining, it is often helpful and appropriate to get clarification from a state regulatory agency about a matter that impacts bargaining. However, under the facts in this case, the employer reached out to the regulatory agency, in the midst of bargaining the reopener that the

employer triggered by its stated belief that the threshold applied.⁴ The employer acted in bad faith because it had outwardly expressed a fundamental shared belief with the union while inwardly having doubts and then changing its position, without having a timely full and frank conversation with the union.

As a large institution, the employer attempted to justify its failure to have a timely conversation with the union based on the large amount of time it takes for the employer to coordinate between its levels of decision making. The employer's internal communication involved its president's office. This does not excuse the employer's actions. The employer's slow decision making might even require more transparency instead of less. The employer should have triggered the contract reopener with a frank conversation with the union that it was no longer certain the wage threshold applied. The employer should have given the union notice that this uncertainty was leading to contact with L&I about whether postdocs are like medical residents and whether the threshold should apply. As the record is not clear about when exactly the employer began to have informal verbal conversation between its lawyers and L&I's lawyers, it is not possible to know exactly when a timely conversation could have happened, but it is clear that by January 2023, when the employer informed the union, the conversation was tardy. By then the parties had been bargaining for months with the assumption that January 1 was a critical date.

Refusing to Provide Information

The employer failed to properly respond to the union's January 12, 2023, information request regarding the employer's position that the salary threshold did not apply to the postdoc scholars. When informing the union that it had been having informal verbal discussions with L&I about postdoc scholar overtime eligibility, the employer cited attorney client privilege. When the union made its information request, the employer claimed that there were no responsive documents. Later employer claimed any documents were protected by privilege, and the employer still did not provide any information about the documents. A privilege log and redacted documents would have preserved the employer's right to keep privileged information confidential, while still

⁴ The conversations were not just between the employer and its attorneys; the employer's attorneys were also having informal conversations with L&I attorneys about this issue.

demonstrating that the employer had reviewed its documents and considered how much was confidential. Instead, the employer's response was in bad faith, showing that the employer was using attorney client privilege as a reason to block information about this topic, without attempting to explore what documents existed and if all of these documents were actually fully privileged.

The union failed to meet its burden of proof regarding the other duty to provide information allegations. These were concerning the employer's cost assessments of the union's proposal and the overtime processes. While the union was unsatisfied with the employer's responses, the employer did respond, and the union failed to adjust its requests to lead to more productive negotiations. *See Kitsap County, Decision 9326-B* (PECB, 2010) (finding that if the requesting party does not believe the information provided sufficiently responds to the original request, the requesting party has a duty to contact the responding party and engage in meaningful discussions about what type of information the requestor is seeking).

Unilateral Change

The union encouraged the employer to increase the postdoc scholars' salaries on January 1, 2023. Therefore, the action was not unilateral. Even if the union was misled or had incomplete information on the employer's belief regarding whether the salary threshold applied, the union had encouraged the employer to increase the wages, so the action was bilateral.

Interference

The employer announced it had changed its position on postdocs and the salary threshold after the union filed an unfair labor practice complaint. That unfair labor practice complaint, like the salary threshold discussion, dealt with the new overtime rules but is not related to the postdoc bargaining unit. It was related to the RSE unit, a different group of employees represented by the same union.

The employer is a large institution with many bargaining units. Causal connections can be enough to prove interference, but for this employer, unfair labor practice complaints are not unusual.⁵

⁵ There was no evidence in the record showing how common it is for unfair labor practices to be filed against the employer, but I am taking administrative notice of the fact that unfair labor practice complaints against this employer are not unusual.

Under these specific facts, I do not believe an employee could reasonably believe that the employer's action is connected to the other bargaining unit's unfair labor practice. *See Kennewick School District*, Decision 5632-A. While the parties are certainly frustrated with each other, and the employer's frustration was evident in January 2023, I do not see a convincing connection to the other unfair labor practice from the evidence presented.

CONCLUSION

The employer failed to bargain in good faith with the union over changes to the salary threshold. Furthermore, the employer refused to provide information, such as a privilege log, so that the union could understand how the employer's position evolved on this issue so critical to the parties' bargaining. The employer's actions made bargaining to an agreement more difficult, and they constitute unfair labor practices.

REMEDY

"Where 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)). 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. *Id.* (citing RCW 41.56.160(2)). The standard remedy includes ordering 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 into the record. *City of Anacortes*, Decision 6863-B (PECB, 2001).

I am applying the standard remedy of ordering the employer to cease and desist and to publicly read the notice into its governing board's record. The employer must give notice to and, upon request, negotiate in good faith with the union concerning employee wages. As I have also found a failure to provide information violation, I am ordering the employer to provide the requested information, by way of a privilege log and redacted documents for any privileged information, and to give the union notice and, upon request, to bargain in good faith before failing or refusing to provide relevant collective information.

FINDINGS OF FACT

1. The University of Washington (employer) is a public employer within the meaning of RCW 41.56.030(13).
2. The UW Postdocs International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 4121, (union) is a bargaining representative within the meaning of RCW 41.56.030(2).
3. The employer is a large public university with several campuses and hospitals and has many bargaining units.
4. The union is the exclusive bargaining representative of a bargaining unit consisting of postdoctoral researchers (postdocs).
5. The union also represents other bargaining units including ones representing graduate students and research scientists.
6. Postdocs possess doctoral degrees, are appointed for a defined period of five years or less, and are engaged in full-time research and scholarship under the mentorship of university faculty known as principal investigators. Some postdocs are paid a salary and are known as postdoc scholars while others are paid via stipend and are called postdoc fellows. Employees in medical clinical positions are not considered postdocs and are excluded from the bargaining unit.
7. The postdoc bargaining unit is relatively new. The unit's first contractual bargaining agreement (CBA) was effective from 2019 to 2021. In article 23.3 of this first contract, the parties agreed that postdocs were exempt from overtime payments. Postdocs did not report their time, and their working hours were not tracked. However, even when the first contract was negotiated, the parties were aware that the Washington State Department of Labor and Industries (L&I) was considering changing the salary threshold exemption so more employees would be entitled to overtime.

8. Both the union and the employer participated in the public rulemaking process. The union was enthusiastic about the proposed changes, and the employer expressed concerns about how costly the changes would be.
9. The salary threshold does not apply to physicians providing patient care.
10. While postdoc salaries were below the salary threshold in 2019, the parties were aware that the salaries might exceed the threshold as the rules changed. In their first bargaining agreement, they agreed to a memorandum of understanding (MOU) regarding “time reporting” that allowed either party to reopen article 23 of the CBA if postdoc scholar salaries fell below the threshold. It also allowed the employer to require overtime eligible employees to report their time. This MOU was also included in the parties’ second collective bargaining agreement.
11. The parties’ first collective bargaining agreement was effective from July 1, 2019, to January 31, 2021, the second CBA from March 1, 2021, to January 31, 2023, and the third or current CBA from June 14, 2023, to January 31, 2025.
12. The proposed rules were adopted, and a new threshold would apply each year. By October 2022, L&I announced the 2023 threshold, effective January 1, 2023, and projected thresholds for later years. Unless the postdocs’ salaries were raised, they would be below the threshold and therefore may be entitled to overtime. Due to this announcement, on October 15, 2022, the employer triggered the contract reopener and the hour tracking requirement from the MOU.
13. The union and the employer were already scheduled to begin bargaining for their third collective bargaining agreement very soon, and so the parties agreed to incorporate this reopener bargaining into their scheduled contract bargaining sessions.
14. On October 21, 2022, the union made an information request about overtime processes and hour tracking. The employer responded that processes would be determined for each individual bargaining unit by department supervisors or principal investigators. The union found this approach unsatisfactory and believed it was too vague to meaningfully bargain the overtime processes.

15. The parties had a bargaining session on November 7, 2022, and the union proposed raising postdoc wages to be above the salary threshold for the entire duration of the CBA. In short, no time tracking or overtime would be required under the union's proposal, and postdocs would receive a very large raise. The employer asserted that the union's proposal was too expensive. The union made a second information request, asking for specific details about who would be making decisions for each bargaining unit employee and when more information would be available regarding individual decisions and how they would be determined. The union also made an information request about how the employer determined the costs of the union's proposal.
16. At the parties' November 21, 2022, bargaining session, the employer made its first wage proposal, raising the postdoc scholars' wages just over the 2023 overtime threshold as of January 1, 2023, and raising the postdoc fellows' wages on their next appointment, reappointment, or anniversary date.
17. The parties continued to meet and bargain through the end of 2022. The parties disagreed about whether the postdoc fellows, who were paid via stipend, not salary, were subject to the overtime threshold and if their wages should be the same as the postdoc scholars.
18. December 22, 2022, was the final bargaining session before the January 1, 2023, salary threshold went into effect. The parties were anticipating that they would eventually reach a three-year deal, and thus far, the employer's proposal set a salary above the overtime threshold only for the first year of the contract. The proposal also did not have wage parity for the scholars and the fellows. However, the union believed the parties were on track to quickly reach an agreement that would ultimately exceed the threshold for all three years of the contract. The union encouraged the implementation of the employer's 2023 postdoc scholar wage proposal for January 1, 2023, even though the parties had not yet reached a full agreement. The employer made the increase before January 1, 2023.
19. Meanwhile, the union and the employer were also bargaining a contract for the Research Scientists and Engineers (RSE) bargaining unit. That unit also had employees with wages that fell below the January 1, 2023, threshold. In November 2022, the employer had notified the union that it planned to convert all those employees into overtime-eligible

- positions. The union demanded to bargain that decision, and the parties did not reach an agreement. On January 4, 2023, the union filed an unfair labor practice complaint against the employer regarding unilaterally converting the RSE unit to overtime eligible positions.
20. By the time that the parties had their next postdoc bargaining session on January 9, 2023, the employer's bargaining team was aware that the union had filed a complaint for the RSE bargaining unit. At this meeting the employer told the union for the first time that it no longer believed any employees in the postdoc bargaining unit were subject to the overtime threshold. This was a shock to the union. While the employer had already asserted that the postdoc fellows were not subject to the overtime threshold because they were paid via a stipend versus a salary, it changed its position when it stated that it also believed that the salaried postdoc scholars were not subject to the overtime threshold.
 21. Not surprisingly, the union had questions. The employer initially asserted attorney client privilege, as its analysis and conversations about the postdocs being exempt had involved its attorneys. The employer also stated that its attorneys had verbal conversations with the attorneys representing L&I. Both the employer's attorneys and L&I's attorneys are within the office of the Washington State Attorney General.
 22. The employer said that it had been seeking clarification about whether the overtime threshold applied to postdoc scholars. The employer's theory was that postdocs are like medical residents because they are being trained for a limited amount of time. The employer told the union that the university president's office was drafting a letter to L&I, seeking clarification about whether the salary threshold applied.
 23. The union alleged that the employer's change in position regarding the postdoc scholars being eligible for overtime was a reaction to the union's RSE complaint. The employer argued that its position was unrelated to the unfair labor practice complaint filing; rather it had evolved over time, and the timing was based on when the president's office had given permission to the employer's bargaining team to inform the union that the employer no longer believed that the salary exemption applied to postdoc scholars. The employer claimed that it had been exploring this theory for years but had opted for an "overly

cautious” approach, not making this “alternative approach” known to the union in 2022 when it triggered the MOU reopener.

24. On January 12, 2023, the union updated its information requests to inquire about the employer’s quest for clarification on whether or not postdoc scholars were overtime eligible or if they were exempt like medical residents. This was in addition to the information requests that the union asserted were still outstanding regarding how the employer had estimated costs for the union’s wage proposal and the overtime approval processes that would be used for bargaining unit employees. The employer’s position was that it had given complete responses to the union’s earlier information requests.
25. Regarding the employer’s change in position over whether postdoc scholars were overtime eligible or if they were like medical residents, the employer first replied that there was no documentation related to the request. The employer refused to provide any documentation, claiming that any documentation was privileged.
26. The employer’s president sent a letter dated March 31, 2023, to L&I arguing that postdocs should not be subject to the salary threshold, like medical physicians, and the employer provided the union with a copy of this letter. The union responded with its own letter to L&I in April, arguing for the threshold to apply. L&I rejected the employer’s arguments and found that the threshold did apply. The parties continued to bargain, and in June 2023, after a historic strike, they reached an agreement.
27. The application of the salary threshold to postdocs was an important and critical issue to the parties, as it was intertwined so closely with wages and hours, both of which are fundamental bargaining topics. The employer stated in both the rulemaking process and at the bargaining table that paying the postdoc wages high enough to exceed this threshold was too expensive. The union saw the change from a salaried position to an hourly position, with time tracking, as a fundamental change to postdoc work, and by resisting this shift, the union saw an opportunity to significantly increase the wages of its bargaining unit members. Both parties engaged in strategies and took positions to further their goals, to the frustration of the other side.

28. The employer and the union had strong opposing public views on the L&I proposed salary threshold. For years, both had engaged in the rulemaking process. And both had been outwardly acting in the shared belief that the salary threshold would apply to the postdoc scholars. In October 2022, the employer triggered the parties' contract reopener. In doing so, the employer said that it had acted because the salary threshold would apply on January 1, 2023. The employer's lawyers and L&I's lawyers were already having informal conversations about the salary threshold before the union even knew that the employer was questioning the outwardly shared belief that the postdoc scholars were going to be exempt from overtime. The shared belief that postdoc scholars were going to be entitled to overtime was extremely critical to the November and December 2022 bargaining sessions, because the salary threshold would begin to apply on January 1, 2023.
29. The employer's internal communication involved its president's office. By January 2023, when the employer informed the union, the conversation was tardy. By then the parties had been bargaining for months with the assumption that January 1 was a critical date.
30. While the union was unsatisfied with the employer's other information request responses, the employer did respond, and the union failed to adjust its requests to lead to more productive negotiations.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.56 RCW and chapter 391-45 WAC.
2. By its actions described in findings of fact 1–29, the employer refused to bargain in violation of RCW 41.56.140(4) [and if so derivative interference in violation of RCW 41.56140(1)] by breaching its good faith bargaining obligation during negotiations with the union concerning application of the Washington Minimum Wage Act to bargaining unit employees and overtime policies and procedures.

3. By its actions described in findings of fact 1-30, the employer refused to bargain in violation of RCW 41.56.140(4) [and if so derivative interference in violation of RCW 41.56140(1)] by failing and/or refusing to provide relevant information requested by the union concerning the application of the Washington Minimum Wage Act to bargaining unit employees and overtime policies and procedures.
4. By its actions described in findings of fact 1–18, 27, and 28 the employer did not refuse to bargain in violation of RCW 41.56.140(4) [and if so derivative interference in violation of RCW 41.56140(1)] by unilaterally changing employee wages without providing the union an opportunity for bargaining.
5. By its actions described in findings of fact 1-29, the employer did not interfere with collective bargaining rights in violation of RCW 41.56.140(1) by asserting for the first time that the WMWA salary threshold does not apply to Postdoctoral Scholars in retaliation for the union filing an unfair labor practice complaint on January 4, 2023, on behalf of its Research Scientist/Engineer bargaining unit.

ORDER

The University of Washington, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:
 - (a) Breaching its good faith bargaining obligation during negotiation with the UW Postdocs International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 4121 concerning employee wages.
 - (b) Refusing to provide relevant information requested by the UW Postdocs International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 4121 about postdoc scholar overtime eligibility that was requested on January 12, 2023, that related to contract negotiations.

- (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) Give notice to and, upon request, negotiate in good faith with the UW Postdoc International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 4121 concerning employee wages.
 - (b) Provide the UW Postdoc International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 4121 with the complete information as described in the union's request for information dated January 12, 2023, about postdoc scholar overtime eligibility, and for documents with privileged information, provide a privilege log and redacted documents.
 - (c) Give notice to and upon request, negotiate in good faith with the UW Postdoc United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 4121, before failing or refusing to provide relevant collective bargaining information requested by the union.
 - (d) 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.
 - (e) Read the notice provided by the compliance officer into the record at a regular public meeting of the Board of Regents of the University of Washington 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 the compliance officer provides.

ISSUED at Olympia, Washington, this 5th day of December, 2024.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



EMILY H. MARTIN, 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.