

King County, Decision 10576 (PECB, 2009)

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CLINE & ASSOCIATES

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

TECHNICAL EMPLOYEES  
ASSOCIATION,

Complainant,

vs.

KING COUNTY,

Respondent.

CASE 22175-U-09-5558  
DECISION 10576 - PECB

CASE 22176-U-09-5559  
DECISION 10577 - PECB

CASE 22177-U-09-5560  
DECISION 10578 - PECB

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER

Cline & Associates, by *James M. Cline* and *Christina T. Sherman*, Attorneys At Law, for the union.

Davis, Wright, & Tremaine, by *Henry E. Farber* and *Kelsey M. Sheldon*, Attorneys At Law, for the employer.

On January 5, 2009, the Technical Employees Association (union) filed three unfair labor practice complaints with the Public Employment Relations Commission naming King County (employer) as the respondent. There was one complaint for each of its three King County transit and wastewater bargaining units. In each of the complaints, the union alleged that the employer interfered with employee rights and refused to bargain in good faith when it implemented mandatory leave without pay for employees and when it changed the status quo while representation petitions were pending. The union also alleged that the employer interfered with employee rights and refused to bargain in good faith when it insisted on the terms of a parity agreement with other unions, delayed wage proposals, refused to provide information requested by the union, failed to provide a written counter-proposal, unilaterally established deadlines during contract negotiations, and illegally circumvented the union and had direct dealings with

bargaining unit members. A preliminary ruling was issued on January 21, 2009, finding causes of action under RCW 41.56.140(4) and (1) for all the union's charges. Six days of hearings on the allegations were held before the undersigned examiner beginning on March 30, 2009. The parties filed post-hearing briefs and reply briefs. Upon the request of the employer, the parties also provided additional briefing on *Griffin School District*, Decision 10489 (PECB, 2009) in relation to the issue of mandatory furloughs.

### ISSUES PRESENTED

1. Did the employer interfere with employee rights and refuse to bargain in violation of RCW 41.56.140 (1) and (4) when it implemented mandatory days off (furlough days) without pay for bargaining unit employees?
2. Did the employer interfere with employee rights in violation of RCW 41.56.140(1) by failing to maintain the status quo while a representation petition was pending?
3. Did the employer illegally enter into parity agreements with other unions which restrained it from good faith bargaining, thereby violating RCW 41.56.140(4)?
4. Did the employer illegally delay its wage proposals during negotiations, thereby breaching its duty to bargain in good faith in violation of RCW 41.56.140(4)?
5. Did the employer refuse to provide relevant information requested by the union during contract negotiations in violation of RCW 41.56.140(4)?
6. Did the employer fail to provide a written counter-proposal during negotiations in violation of RCW 41.56.140(4)?
7. Did the employer unilaterally establish deadlines for discussions during collective bargaining, thereby violating RCW 41.56.140(4)?

8. Did the employer illegally circumvent the union and have direct dealings with bargaining unit members?

I find that by failing to bargain its decision to implement the furlough program and by failing to provide the union with relevant information, the employer committed an unfair labor practice in violation of RCW 41.56. I also find that the employer unlawfully interfered with the union, as representative of the non-supervisory bargaining unit of transit employees, in violation of RCW 41.56.140, when it implemented the furlough program and failed to maintain the status quo while a representation petition was pending.

However, the union did not meet its burden of proof in establishing that during bargaining the employer: illegally entered into parity agreements with other unions, delayed its wage proposals, failed to provide a written counterproposal, established deadlines, or circumvented the union. Further, the employer did not commit an unfair labor practice when it implemented the furlough program while a representation petition was pending involving the supervisory bargaining unit of the Wastewater Treatment Division. Finally, the union alleged in all three complaints that the employer changed the status quo during the pendency of a representation petition; however, only two of the bargaining units were involved in representation proceedings. Therefore, the allegation regarding staff employees of the Wastewater Treatment Division must be dismissed.

#### APPLICABLE LEGAL STANDARDS:

RCW 41.56.030(4) describes the duty of a public employer and union to bargain as follows:

"Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer . . . .

Under RCW 41.56.160, the Commission is empowered to hear violations of this duty, determine unfair labor practice allegations, and issue appropriate remedies. WAC 391-45-270(1)(a)

provides that the complainant in any unfair labor practice proceeding has the burden of proof. In addition, RCW 41.56.140 reads as follows:

It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

.....  
(4) To refuse to engage in collective bargaining.

#### Mandatory Subjects of Bargaining

The union is alleging that the employer unilaterally implemented a mandatory subject of bargaining, unpaid furlough days, without fulfilling its duty to bargain. Whether a particular subject is a mandatory subject of bargaining is a question of law and fact for the Commission to decide. WAC 391-45-550. When determining whether a particular matter is a mandatory subject of bargaining, the Commission evaluates each case on an individual basis and utilizes a balancing approach. *See International Association of Fire Fighters, Local 1052 v. The Public Employment Relations Commission*, 113 Wn.2d 197, 203 (1989). On one side of the balance is the relationship the subject bears to wages, hours and working conditions. On the other side is the extent to which the subject lies at the core of entrepreneurial control or is a management prerogative. Where the Commission rules that a particular subject matter bears a more significant effect on wages, hours, and working conditions, the subject matter is deemed a mandatory subject of bargaining.

#### Duty to Bargain

Once employees exercise their statutory right to designate an exclusive bargaining representative, their employer is prohibited from taking unilateral action with respect to mandatory subjects of bargaining. *Snohomish County Fire District 3*, Decision 4336-A (PECB, 1994). As recently restated in *Griffin School District*, Decision 10489 (PECB, 2009), an employer has an obligation to notify a bargaining representative of its proposed change regarding a mandatory subject of bargaining and to provide the union with an opportunity to demand bargaining. The employer must also, for a reasonable period following notice to the union, maintain the status quo with respect to wages, hours and working conditions in order to permit meaningful bargaining. *North Franklin School District*, Decision 5945-A (PECB, 1998).

Thus, a public employer who unilaterally changes the existing working conditions, wages, or hours of work of organized employees and does not provide the bargaining unit with an opportunity to negotiate, may, depending on the specific facts of the case, be committing an unfair labor practice. The change, however, must represent a departure from an established, consistent practice, and it must be meaningful, substantial, and significant in order to give rise to the duty to bargain. A one-time occurrence does not necessarily equate to an actual change in policies or procedures. *See King County*, Decision 4258-A (PECB, 1994). In addition, a party alleging a unilateral change carries the burden in proving that an unfair labor practice has occurred. *See City of Tacoma*, Decision 6793-A (PECB 2000).

#### Derivative Interference

The union also alleges that the employer violated the statute by interfering with employees rights. In this case, a “derivative” interference violation may be found where an employer has been found to have refused to bargain in good faith. *Washington State Patrol*, Decision 4757-A (PECB, 1995).

#### ANALYSIS

The union represents three separate bargaining units of technical employees in King County’s Wastewater Treatment Division and in its Transit Division. In the Wastewater Treatment Division, the union represents one bargaining unit comprised of supervisors and a separate bargaining unit comprised of non-supervisory employees. In the Transit Division, the union represents the non-supervisory employees.

The union and the employer began to negotiate successor contracts for all three bargaining units in February of 2008. On August 20, 2008, the employer began discussing its budget situation during a meeting with the Labor Roundtable Group, an open forum for monthly communications between unions and employees. The union, however, was not a part of that forum. By that date, it was becoming clear to management that there were significant budget problems on the horizon. Against the developing fiscal crisis, the employer had to submit its proposed 2009

budget to the King County Council in mid-October. Normally, the King County Council would then adopt the final budget for the next year by late November.

On October 13, 2008, County Executive Ron Sims submitted his budget proposal to the Council and announced his proposal to have operational office and service shutdowns throughout the county. Hundreds of positions were proposed to be eliminated, and a variety of services were proposed to be reduced or eliminated. In addition, he proposed that the agreed-upon cost of living adjustment be reduced and that merit increases would be eliminated.

The King County Coalition of Labor Unions represents a variety of labor organizations at King County who negotiate jointly with the employer. Unlike the Labor Roundtable Group, the Coalition of Unions was not open to all bargaining units. This union was not a member of this coalition.

The Coalition of Unions began having discussions with the employer about possible “mandatory periods of time off without pay” (furloughs) on October 14, 2009. By October 27, 2008, thirteen unions associated with the coalition tentatively agreed to the furlough program. The following day, the employer sent out a global e-mail informing county employees that the furlough program would be applicable to all county executive departments. During a telephone conference with the union that occurred on October 30, 2008, Amy Bann, a labor representative for the employer, stated that it intended to also furlough employees in the three bargaining units represented by the union.

The employer calculated that the furlough program would result in savings of over \$8 million in its general fund and over \$14 million in its non-general fund. Savings in the transit division was estimated to be over \$1 million. Beth Goldberg, the employer’s Deputy Director of the Office of Management and Budget, testified that the furloughs would save the county money and jobs while helping to balance the budget.

On November 3, 2008, David Levin, a labor negotiator for the employer, informed the union by letter that the employer would impose the furlough program on the union’s bargaining unit

members. He offered to negotiate the effects of the furlough. The union countered with a demand to negotiate the decision to impose furloughs on its represented employees.

The employer eventually mailed signature pages to the union for an agreement on its furlough program and imposed a deadline of December 8 for the union to sign the agreements. During a conference call on December 4, 2008, facilitated by a labor mediator, Bann refused to discuss the issue of the furlough program with the union. The parties eventually had a meeting in mid-December regarding the furloughs. On January 2, 2009, the employer imposed the first of ten furlough days on the union's bargaining units.

On October 7, 2008, against this backdrop of the contract negotiations and the implementation of the furlough program, Teamsters Local 117 filed a representation petition involving the union's non-supervisory bargaining unit in the Transit Division. On November 18, 2008, the Executive Director of the Public Employment Relations Commission ordered that talks regarding a successor collective bargaining agreement be suspended and that the status quo should remain in effect.

On November 20, 2008, Teamsters 117 filed another representation petition involving the union's supervisory bargaining unit located in the Wastewater Treatment Division. No representation petition was filed involving staff employees in the Wastewater Treatment Division.

**ISSUE 1:** Did the employer interfere with employee rights and refuse to bargain in violation of RCW 41.56.140 (1) and (4) when it implemented the furlough program for represented employees?

#### **Furloughs as Mandatory Subjects of Bargaining**

The employer directed that in 2009, ten days of furloughs without pay would be implemented for all three of the union's bargaining units. This action would clearly have a significant impact on the wages and hours of these represented employees. As a result of these furloughs, employee pay would be reduced by nearly 4%. Goldsberg testified that if the furloughs were implemented,

the Wastewater Division would save \$936,000 in salary for 2009, and the Transit Division would save \$269,000 in salary for 2009. The furloughs would also reduce the number of employee hours worked while potentially increasing employee workloads. Because of its immediate effects on hours, wages, and working conditions, I find that furloughs are mandatory subjects of bargaining. Therefore, the employer had the duty to provide sufficient notice to the union and bargain its decision to implement a furlough program.

The employer argues that its furlough decision is solely within management rights as it has the right to determine its budget and that the decision to furlough employees was a part of that determination. Without such a right, the employer asserts that it could not respond to economic crises.

The employer's argument, however, fails to take into account that its right to determine budget priorities and unilaterally implement those priorities must be balanced against its duty to bargain with the representatives of its organized employees and the impact on those employees. As was clearly stated in testimony, an essential element of the employer's furlough program was to achieve savings from a reduction in labor costs. Such a direct impact on bargaining unit employees demands that the employer fulfill its duty to bargain. Furthermore, the employer did not seem to recognize that through bargaining, options for savings other than furloughs, might have been proposed and considered.

#### Business Necessity Defense

The employer also raised the affirmative defense of business necessity. It argues that it was relieved of its duty to bargain its decision to implement the furlough program because it faced an economic emergency. To establish a business defense, the employer must demonstrate that:

- 1) a business necessity existed,
- 2) adequate notice of the proposed change was provided, and
- 3) bargaining over the effects did occur or the union waived bargaining.

*City of Tukwila*, Decision 9691-A (PECB, 2008).

According to the employer, it, like many other industries and business in 2008, faced severe economic upheaval. There existed global, national, and local financial crises, which severely impacted the employer's economic stability. Property tax revenue, which is tied to the employer's general fund, fell sharply due to the burst of the housing bubble. Sales taxes, which help support Metro Transit Services, fell sharply. Thus, the decision to cut services, the employer argues, was a management prerogative, brought on by a business necessity, and it is beyond the purview of union interference.

As demonstrated in *City of Tukwila*, an employer can raise the defense of business necessity when compelling practical or legal circumstances necessitate an immediate, unilateral change in a mandatory subject of bargaining. In that case, the Commission found that although the employer was on a strict time-line, it still had some time to bargain with the union before making a change in a mandatory subject of bargaining.

In the present case, the evidence demonstrates that although the employer had limited time to develop a balanced budget proposal, there was still sufficient time to bargain with this union concerning the furlough decision and its impacts. The employer was considering the furlough program as early as October 3, 2008, when it communicated that option to the King County Coalition of Unions, where this union was not involved. The employer could have initiated talks with the union concerning the furlough issue at the same time, but, for reasons not clear from the record, it chose otherwise. Moreover, the defense of business necessity includes the duty to provide adequate notice. Notice of an anticipated change in a mandatory subject of bargaining must be timely, giving sufficient time in advance of the actual change to allow a reasonable opportunity for bargaining between parties. *City of Vancouver*, Decision 808 (PECB, 1980). In the present case, the employer failed to provide the union adequate notice, even when it clearly had the opportunity.

The decision to implement the furlough program was presented as a proposal to this union only after the Coalition of Unions voted. At the very least, the employer should have provided notice to the union and communicated its desire to pursue furloughs. More possibilities, counter-

arguments, and alternate solutions could have been explored by both parties at this time, allowing for meaningful bargaining.

Equally important, the employer was not required to issue mandatory furloughs without pay. The employer had other options to achieve a balanced budget, options which might very well have been suggested by the union had it been given the chance. It is also noted that there was nothing in the record to indicate that there were any obstacles in negotiating with the union. Because the employer had time to bargain and other options were available, the employer cannot claim the defense of business necessity.

#### Waiver Defense

A union may waive, through inaction or by its conduct, a unilateral change in a mandatory subject of bargaining implemented by an employer, if the union was afforded notice and an opportunity to bargain upon the matter, but does not take advantage of the notice and opportunity. *Lake Washington Technical College*, Decision 4721-A (PECB, 1995). A specific and timely request for bargaining will generally support a finding that there has been no waiver by inaction. Where, however, an employer presents the union with a *fait accompli*, no waiver by inaction will be found. *City of Tukwila*, Decision 2434-A (PECB, 1987).

In the present case, the employer asserts that the union waived its right to bargain the implementation of the furlough program. This argument fails on many levels. The record reflects that the union consistently requested to bargain the furlough decision as well as the impacts of that decision. In addition, it is clear from the evidence presented that the employer had already decided that the furloughs were going to be implemented when it finally provided notice to the union. It, therefore, presented the union with no real opportunity to bargain. See *City of Moses Lake*, Decision 6328 (PECB, 1998), which describes a *fait accompli* as “the decision to make a change had already been determined when the employees were notified of the change.” Lastly, as noted earlier, the employer failed to give the union adequate notice about its decision.

### Failed To Bargain

There is no dispute that the employer refused to negotiate its decision to implement the 10-day furlough program. On November 3, 2008, Levin notified the union that furloughs were scheduled to start beginning January 2009. After November 3, he continued to communicate that the employer would only bargain the effects of the furlough. Bann testified that she called the union on October 30 and offered them the opportunity to bargain the effects of implementing the furloughs, but importantly, not its decision to implement the furloughs. The employer's unwillingness to discuss its decision to implement was also exemplified in its December 4, 2008, conference with the union. At that meeting, Bann refused to discuss the decision to implement the furlough.

### Conclusion

In conclusion, the employer's decision to implement a mandatory furlough program created a mandatory subject of bargaining. As such, the employer had the duty to bargain with the union over the implementation of the program and any effects. The employer failed to establish a business necessity defense that would excuse it from its bargaining duties. The union did not waive its right to bargain the furlough program. And because the employer failed to bargain its decision to implement the furlough program, it committed an unfair labor practice in violation of RCW 41.56.140(4).

**ISSUE 2:** Did the employer interfere with employee rights by failing to maintain the status quo while a representation petition is pending?

When a representation petition is filed that seeks to change the representation of an existing bargaining unit, employers are prohibited from unilaterally changing mandatory subjects of bargaining, except where such changes are made in conformity with the collective bargaining obligation or the terms of a collective bargaining agreement. WAC 391-25-140(2).

### Representation Petition For Wastewater Supervisors

In the present case, on October 30, 2008, the employer informed the union that it intended to implement the furlough program on the union's three bargaining units. On November 3, 2008,

Levin memorialized that intent in a letter. Teamsters Local 117 filed a petition on November 20, 2008, regarding Wastewater Treatment Division supervisory bargaining unit. However, because the filing occurred after the date of the announcement of the pending furloughs, the employer's implementation was not precluded by WAC 391-25-140(2) and the representation status quo doctrine. Therefore, that portion of the union's claim must be dismissed. It is noted, however, that the employer was still precluded from making unilateral changes by the general status quo doctrine that existed during the pendency of the collective bargaining agreement.

#### Representation Petition for Transit Employees

The Teamsters Local 117 filed a representation petition involving the Transit staff employees on October 7, 2008. This occurred prior to the employer notifying the union that it intended on implementing furloughs. On November 18, the Executive Director of the Commission ordered that bargaining for a successor contract cease and that WAC 391-25-140 and, therefore, both the representation and contract status quo doctrines apply to the wages, hours of work and working conditions of this bargaining unit.

The union argues that the employer should have maintained the status quo and not initiated the furlough program. The employer argues that satisfying the status quo doctrine would prevent it from its fiduciary responsibilities to the citizens of King County. It would not be allowed to address its budgetary problems with this bargaining unit. The employer also asserts that it would be nonsensical to tell them that it should have negotiated the effects of the furloughs when the Executive Director ordered them to not bargain a successor agreement.

At no point, however, did the employer petition the Commission to stay its obligation to maintain the status quo. It acted unilaterally and implemented the furloughs. I find that employer failed to maintain the status quo while a representation petition was filed involving the Transit non-supervisory unit. By failing to maintain the status quo, the employer could have negatively impacted the bargaining unit member's perception of the union.

Wastewater Non-Supervisor Unit

No representation petition has been filed involving the bargaining unit comprised of non-supervisors in the Wastewater Treatment Division. Therefore, the allegation that the employer was obligated to maintain the representation status quo is not applicable. This portion of the union's complaint is dismissed as inconsistent with the facts of the case.

Conclusion

The employer failed to maintain the status quo while a representation petition was filed involving the Transit Division non-supervisory unit. However, in regard to the Wastewater Treatment supervisory unit, the filing of the representation petition involving Wastewater supervisors occurred after the announcement of the pending furloughs. Thus, implementation of the furloughs is not precluded by WAC 391-25-140(2). As there was no representation petition pending for the bargaining unit comprised of non-supervisors in the Wastewater Treatment Division, the implementation of the furloughs is not precluded by WAC 391-25-140(2).

**ISSUE 3:** Did the employer illegally agree to parity agreements with other unions, thereby violating RCW 41.56.140?

The union alleges that the employer's furlough agreement with other bargaining agents also had an illegal effect on its bargaining units. The employer's agreement with the Coalition of Unions includes the following provision:

By October 30, 2008, the Employer will produce to the unions a list of furlough-eligible classifications and work units within the Executive Branch. Furloughs for employees, classifications and work units within the Executive Branch will be for no less time and under circumstances not more favorable than the employees furloughed pursuant to this agreement

The union argues that the employer implemented the furlough program on its members as a result of complying with this agreement. According to the union, the employer insisted on this language and refused to consider any other alternative during their negotiations with them. The union contends that the employer's adherence to the clause forced it to implement the furlough program on bargaining unit members.

I find that this part of the union's complaint must be dismissed. There is no reference to the union's bargaining units in the agreed upon language and therefore, no automatic imposition of the furloughs. The employer may have been trying to apply or impose the same language that it had developed elsewhere, but there was no "me too" clause. This charge is also dismissed as inconsistent with the facts of the case.

**ISSUE 4:** Did the employer illegally delay its wage proposals during negotiations thereby breaching its duty to bargain in good faith in violation of RCW 41.56.140?

The parties began negotiating a successor contract in February 2008. Chief among the issues to be discussed were wages. At that time, Bann was the labor negotiator for the employer.

On August 5, 2008, the union presented the employer with a proposal. The next meeting between the parties occurred on September 16, 2008. Bann testified that at this meeting, she explained to the union that the employer's counterproposal would include no wage increases. Proposed employee wages, she further explained, would include regular step and merit increases, however.

The union argues that the employer came to the table at this September meeting with no wage proposal. And in fact, the employer, according to the union, delayed submitting a wage proposal to them until December 29, 2008.

The Commission has adopted a totality of circumstances approach when analyzing conduct during negotiations. In *City of Clarkston*, Decision 3246 (PECB, 1989), the Commission found that the employer committed an unfair labor practice, specifically noting:

[T]he employer created a context of bad faith to such a degree that its position on specific items cannot be evaluated in isolation. A position taken by a party in a context of good faith bargaining may be perfectly lawful, while the same position if adopted as part of an overall plan to frustrate agreement, and to penalize employees for trying to exercise their statutory right to bargain collectively, cannot be given agency imprimatur.

Thus, a party may violate its duty to bargain in good faith either by one per se violation, such as refusal to make counter proposals, or through a series of questionable acts which when examined as a whole demonstrate a lack of good faith bargaining, but by themselves would not be a per se violation. It is important to stress, however, the evidence must support the conclusion that the respondent's total bargaining conduct demonstrates a failure or refusal to bargain in good faith or an intention to frustrate or avoid an agreement.

I find that in the present case, the record does not support that the employer purposely delayed submitting wage proposals in an effort to frustrate an agreement or penalize the bargaining units. The employer provided the union with proposals that included no wage increases as exemplified in the September 16, 2008, wage proposal. A legitimate wage proposal may include no wage increases. Therefore, the part of the union's complaints must be dismissed.

**ISSUE 5:** Did the employer refuse to provide relevant information requested by the union during contract negotiations in violation of RCW 41.56.140?

After the announcement of the implementation of the furlough program, the union sought specific information as to the justification of the program in various e-mails and phone conversations. The union argues that the employer refused to provide it with the information it requested. According to the union, the employer's conduct was exemplified in the December 4, 2008 phone conference with the parties and the mediator, where Bann refused to discuss the implementation of the furlough as well as an e-mail exchange that occurred on November 26, 2008, which is described below.

In a November 26, 2008, e-mail, Levin responds to a union request. He wrote:

On November 13, 2008, TEA made the following request for information:

....

(1) Total Wastewater Design and Construction Budget for Fiscal Years 2007, 2008, and 2009

(2) Total unit bargaining unit salaries for 2007, 2008, and 2009. . . .

I will mail you a CD ROM with documents that respond to your requests.

On that same day, Cline responded to Levin's e-mail, asking to whom the furlough program specifically applies, especially in light of the representation petition with the Transit Division. The e-mail also reiterated Cline's position regarding the status quo.

Bann then responded, stating that the furlough effects agreement does not create a contract with TEA for wages in 2009 or 2010. Bann explained that if the union agreed to the furlough agreement, the employer may be willing to put a COLA on the table for 2009 and 2010. The exchange continued that day as Cline expresses his confusion at Bann's response. She then sent Cline an e-mail which stated the questions and issues he raised are precisely why the employer has been urging to meet with the union. Bann's e-mail then summarized the employer's views.

Cline ended the exchange with an e-mail that contains the following questions:

Are you proposing to extend the Coalition agreement to TEA?

If yes, to number 1, when will that wage be implemented if there is no signed contract in effect on January 1, 2009?

Is the County extending an irrevocable guarantee of a certain wage?

If there is no furlough agreement reached, is the County to withhold regular pay steps (and merit increases) for any of the bargaining units?

Bann testified that at that point, the employer was trying to get the union to the table to bargain. According to the employer, only face-to-face meetings were going to clear up any confusion regarding its positions. It specifically notes that the union used the fact that Cline was going on vacation to delay meetings with the employer.

The employer also argues that it provided the union with factual information where it could. Further, many of the union information requests were actually questions asking for explanations regarding bargaining positions. According to the employer, it would have been ridiculous to try to try to provide answers to complex questions over the phone or by e-mail.

As to the allegation that the employer did not provide information during a December 4, 2008 phone call, Bann testified as to the reason she hung up the phone with the union during the phone conference. According to her, she was only prepared to discuss scheduling meeting dates with the mediator and the union. She had no notes nor her team with her, and she had a meeting following this phone call. The union, she insists, wanted to dive into the issue of the furloughs and was resistant to setting dates. The union would not agree to set any dates. Bann stated that she ended the phone call by saying the parties had not met the purpose of the phone call and that she was going to end the call.

It is noted that on December 4, 2008, shortly before the above-mentioned phone call, the union re-sent Bann its list of questions, some of which were “yes/no” questions while others called for short answers. The employer did not respond to the questions. Bann responded at one point that she would not be deposed, implying to me that the questions were more of a deposition rather than questions usually raised during bargaining.

The purpose of the labor law statutes and decisions concerning behavior during bargaining is to ensure that full and meaningful conversations are held between certified bargaining agents and employers. Such conversations can lead to better understanding and, hopefully, agreement. Under RCW 41.56, the employer has the duty to fully engage in bargaining discussions regarding mandatory subjects of bargaining. Implicit in that requirement is the duty for the employer to explain what their proposal encompasses, especially when there is no written copy of that proposal. I find that the questions asked by the union in their e-mails did not require complex answers, and the employer committed an unfair labor practice when it chose not to respond to its questions.

**ISSUE 6:** Did the employer fail to provide a written counter-proposal during negotiations in violation of RCW 41.56.140?

As discussed earlier, Cline sent Levin an e-mail on November 13, 2008, in which he requests specific bargaining information. That e-mail also stated, “Amy has already presented a verbal proposal . . . we request that you put your latest proposal in writing. Recall that the County made

no wage proposal before we had filed for mediation. So, we still await that formal wage proposal.”

Employers are obligated to negotiate mandatory subjects of bargaining. A bargaining representative is not necessarily required to make a comprehensive written proposal at the bargaining table. In general, verbal proposals and what-if-this proposals that generate verbal and what-if responses can be appropriate. *International Association of Fire Fighters, Local 2829*, Decision 8863 (PECB 2005). Indeed, in this case, the union followed up the employer’s verbal proposals with questions and statements of concern. As verbal proposals are appropriate, this part of the petition must be dismissed.

**ISSUE 7:** Did the employer unilaterally establish deadlines for discussions during collective bargaining thereby violating RCW 41.56.140?

On October 3, 2008, the employer notified the Coalition of Unions that it intended to freeze cost of living adjustments that had been granted and was preparing to implement mandatory furloughs without pay. After securing an agreement with the Coalition of Unions concerning the furloughs, Bann communicated to the union that the employer was implementing the furlough program. When Browne inquired as to why Wastewater would be included in the furlough program, Bann replied that all would have to share the pain. Dates for possible in-person meetings were discussed. Bann testified that the union declined to set a date, opting instead to get back to her following their membership meeting on November 6, 2008.

The following November, Levin took over some responsibility for negotiating on behalf of the employer. On November 3, 2008, he communicated that the employer was willing to bargain the effects of its decision to implement furloughs. Those terms, according to the employer, were to be a starting point for effects bargaining.

Throughout the next few weeks, the employer made various attempts to schedule meetings. Due to scheduling conflicts, no meetings were scheduled. The employer specifically notes that the union was not ready to meet in November because its representative was not available for a most

of that month. On November 12, the employer gave the union a deadline of November 19 to provide bargaining dates or it would treat the union as if it waived its rights. The union responded with information questions and bargaining questions as demonstrated by the November 13, 2008 e-mail sent by Cline.

The deadlines imposed by the employer eventually passed. The employer still sat down with the union to bargain the contract and specifically issues related to wages. In addition, the employer provided the factual information requested by the union.

As discussed above, the employer established deadlines for certain terms of the contract in relation to the approval of the budget by the Council and its decision to implement the furlough program. While the employer imposed deadlines on the union, no adverse effects occurred because of those deadlines. The deadlines came and went and the parties continued to negotiate. The employer continued to bargain with the union beyond its self-imposed deadlines. The employer did not cut off bargaining, and therefore, it did not commit an unfair labor practice by merely stating that it had deadlines.

**ISSUE 8:** Did the employer illegally circumvent the union and have direct dealings with bargaining unit members?

The union alleges that the employer had illegal dealings with its bargaining unit members as exemplified in e-mails from Christine True, the director of the Wastewater Treatment Division, meetings held by True, and an e-mail from Sims. On October 13, 2008, True, sent an e-mail to Wastewater employees indicating that the Wastewater budget included employee furloughs. That message reads, in part, “the Executive has proposed substantial reductions. . . . Wastewater employees are not funded by the general fund . . . We are not immune from the financial crisis. . . Wastewater budget submitted to council contains adjustments in salary savings based upon the merit, COLA, and furloughs the Executive proposed last week.”

On November 26, 2008, True e-mailed employees in her division a synopsis of recent developments in the Wastewater budget and the impact of those developments. In that e-mail,

she also announced that she would be conducting three all-hands meetings. That e-mails states, “We will be working through the details of the furlough. . . . We will be working with unions and employees affected to develop an implementation plan . . . I will provide an opportunity to discuss and answer budget-related questions.”

True testified that because the economic situation came so suddenly, she thought it was a good idea to talk to her employees and address any concerns or questions. In early December 2008, True then held a series of meetings which were open to all Wastewater employees.

On October 28, Sims sent an e-mail to county employees stating that the Coalition of Unions reached agreement. That e-mail reads, in part:

I am pleased to share news that includes a sacrifice from all of us.

The essence of the agreement is a 4.88 cost of living adjustment and step increases. . . . All employees, except those deemed to be providing essential services, would take 10 days unpaid furlough in 2009.

If you are a union member, you will be hearing full details from your union representatives and their recommendations.

The Commission looks to the purpose and tone of the communications to determine if direct dealing and illegal circumvention have occurred. Where a communication is informative and non-coercive in nature, the Commission will not find that the employer circumvented the union. *See Spokane County, Decision 2793 (PECB, 1987) and Bellevue School District, Decision 10198 (EDUC, 2008)*. I find that the employer’s contact with bargaining unit members was of an informative nature. There was no intent to disparage, discredit, or undermine the union. Rather, the communications sought to inform all employees on the status of the budget and how the employer’s proposed furloughs may be implemented.

## CONCLUSION

By failing to bargain its decision to implement the furlough program and failing to provide the union with relevant information, the employer committed an unfair labor practice in violation of

RCW 41.56. Further, the employer unlawfully interfered with the union, as representative of the non-supervisory bargaining unit of transit employees, in violation of RCW 41.56.140, when it implemented the furlough program and failed to maintain the status quo while a representation petition was pending.

However, the union did not meet its burden of proof in establishing that during bargaining, the employer illegally adhered to a parity agreement, delayed its wage proposals, failed to provide a written counterproposal, established deadlines, and circumvented the union. Further, the employer did not commit an unfair labor practice when it implemented the furlough program while a representation petition was pending involving the supervisory bargaining unit of the Wastewater Division.

### REMEDY

In its brief, the union requests that it be awarded attorney fees. An order may contain an award of attorney fees where the examiner deems it necessary to make the order more effective, as where the party has repeatedly violated the statute in a similar manner. *Municipality of Metropolitan Seattle v. Public Employment Relations Commission*, 118 Wn.2d 621 (1992) and *City of Anacortes*, Decision 6863-B (PECB, 2001). The Commission precedent frequently refers to the use of attorney fees as an “extraordinary” remedy and thus, it is used sparingly. Attorney fees may also be awarded where a defense to the unfair labor practice charge could be characterized as frivolous or meritless. *State ex. rel. Washington Federation of State Employees v. Board of Trustees*, 93 Wn.2d 60 (1980). In the facts presented, the union has not shown a repetitive pattern of illegal conduct, egregious or willful bad acts, or a frivolous defense on the part of the employer. The union’s request for attorney fees is denied.

### FINDINGS OF FACT

1. King County (employer) is a municipal corporation of the State of Washington, and is a public employer within the meaning of RCW 41.56.030. The employer operates a public transportation system and wastewater treatment facilities.

2. The Technical Employees Association (union) is the exclusive bargaining representative of certain employees employed by the employer within the meaning of RCW 41.56.030(3). The union represents three bargaining units with this employer: a non-supervisory unit in the Transit Division, a supervisory unit, and a non-supervisory unit in the Wastewater Treatment Division.
3. The employer and union were parties to a collective bargaining agreement which expired in June 30, 2008, and they began bargaining for a successor labor contract in February of 2008.
4. The King County Coalition of Labor Unions (Coalition) was comprised of labor organizations representing a variety of bargaining units composed of the employer's employees. The union is not a member of this Coalition.
5. The national and local economies in the summer of 2008 created tremendous budget challenges for the employer as it attempted to develop a budget proposal for 2009. The employer faced additional pressure as it sought to balance the budget within its adopted time-lines. The King County Executive normally submits a budget to the King County Council in mid-October and the King County Council normally adopts the final budget by late November.
6. On October 3, 2008, the employer notified the King County Coalition of Unions that it may need to impose lay offs and furloughs. The employer invited the coalition to discuss alternate ways to achieve labor savings. The union did not receive this information.
7. On October 13, 2008, the employer announced its intention to shut down services throughout the county for 10 days in 2009 and place most employees on unpaid furloughs for those 10 days.
8. On October 13, 2008, Christine True, director of the Wastewater Division, sent an e-mail to employees that indicated that the Wastewater budget included employee furloughs. In

early December 2008, she also held a series of meetings that described how Wastewater would implement the furlough program.

9. On October 14, 2008, the employer began negotiations with the King County Coalition of Labor Unions about the furloughs. The Technical Employees Association was not included in the negotiations.
10. On October 27, 2008, the Coalition and the employer reached a tentative agreement about the furlough program. On October 28, 2008, the employer sent a general message to its employees stating that the Coalition had reached agreement with the employer.
11. The tentative agreement between the Coalition and the employer included the following provision:

By October 30, 2008, the Employer will produce to the unions a list of furloughs-eligible classifications and work units within the Executive Branch. Furloughs for employees, classifications and work units within the Executive Branch will be for no less time and under circumstances not more favorable than the employees furloughed pursuant to this agreement

12. On October 30, employer representative Amy Bann notified the union that the furlough program would be applicable to its bargaining unit members.
13. The union demanded to bargain the employer's decision to implement the furlough program and the effects of the furlough program.
14. In response, the employer offered to bargain only the effects of its decision on furloughs with the union.
15. The employer began implementing the furlough program throughout the county on January 2, 2009.

16. The furlough program directly impacted the union's bargaining unit employees in terms of wages and hours of work. Bargaining unit members in Wastewater Treatment Division would lose a combined \$936,000 in salary for 2009, and bargaining unit members in the Transit Division would lose a combined total of \$269,000.
17. On October 7, 2008, Teamsters Local 117 filed a representation petition involving the Transit non-supervisory employees represented by the union.
18. The Executive Director of the Commission, under WAC 391-25-(5), issued an order requiring the status quo to remain in effect for employees in the Transit non-supervisory bargaining unit.
19. On November 20, 2008, The Teamsters Local 117 filed a petition regarding Wastewater Treatment Division supervisory employees represented by the union.
20. No representation petition was pending during any material time for Wastewater Treatment Division non-supervisory employees.
21. On November 12, the employer gave the union a deadline of November 19 to provide bargaining dates and stated that if it did not receive dates, that it would treat the union as if it waived its rights. Despite its deadline the employer continued to negotiations with the union.

#### 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. The decision to implement mandatory days off without pay is a mandatory subject of bargaining under RCW 41.56.140(4). As such, the employer has the duty to bargain its decision as well as the effects of its decision.

3. The employer did not establish a business necessity defense that would relieve it of its bargaining obligation under RCW 41.56.030 because it was not required to use only the furlough program to reduce its budget deficit and it did not establish that it did not have time to give the union appropriate notice and bargain the effects of its decision.
4. The employer refused to bargain and derivatively interfered with employees rights in violation of RCW 41.56.140(1) and (4) when it implemented the furlough program, which required employees from the bargaining unit composed of Wastewater Treatment supervisors to take days off without pay and when it refused to negotiate its decision to implement the program with the union.
5. The employer refused to bargain and derivatively interfered with employees rights in violation of RCW 41.56.140(1) and (4) when it implemented the furlough program, which required employees from the bargaining unit composed of Wastewater staff employees to take days off without pay and when it refused to negotiate its decision to implement the program with the union.
6. The employer refused to bargain and derivatively interfered with employees rights in violation of RCW 41.56.140(1) and (4) when it implemented the furlough program, which required bargaining unit employees in the Transit Division to take days off without pay and when it refused to negotiate its decision to implement the program with the union.
7. The employer did not interfere with the union in violation of RCW 41.56.140(1) when it implemented a furlough program while a representation petition was pending involving the Wastewater Treatment Division supervisor bargaining unit.
8. The employer did not interfere with the union in violation of RCW 41.56.140 (1) when it implemented mandatory furloughs for the non-supervisory bargaining unit in the Wastewater Treatment Division.

9. The employer unlawfully interfered with the union, as representative of the Transit non-supervisory unit in violation of RCW 41.56.140, when it implemented a furlough program and failed to maintain the status quo while a representation petition was pending.
10. The union did not meet its burden of proof in establishing that the employer illegally circumvented the union and directly dealt with bargaining unit members in any of its three bargaining units.
11. The union did not meet its burden of proof in establishing that the employer: illegally delayed wage proposals, illegally adhered to a parity agreement, or imposed unreasonable deadlines that negatively impacted bargaining in any of its three bargaining units.

ORDER

KING COUNTY, its officers and agents, shall immediately take the following actions to remedy its unfair labor practice:

1. CEASE AND DESIST from:

- a. Unilaterally reducing the number of employee work days, and as a result, reducing compensation by issuing mandatory days off without pay for the bargaining unit employees represented by the Technical Employees Association in the employer's transit and wastewater departments.
- b. Refusing to bargain the decision to implement the furlough program or the effects of such implementation.

- c. Acting in any manner that interferes with, restrains, or coerces 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. Restore the status quo ante by reinstating wages, hours, and working conditions which existed for the employees in the affected bargaining units prior to the implementation of the furlough program found unlawful in this order including the appropriate interest on all money amounts due.
  - b. Give notice to and, upon request, negotiate in good faith with the Technical Employees Association before changing wages, hours, or working conditions of its represented employees.
  - c. Post copies of the notice provided by the Compliance Officer of the Public Relations Commission in conspicuous places on the employer's premises where notices to all the union's bargaining units are usually posted. The notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of the initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.
  - d. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the King County Council 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.
  - e. 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.

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

ISSUED at Olympia, Washington, this 22<sup>nd</sup> day of October, 2009.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



TERRY WILSON, 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.



**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

# NOTICE

**THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT KING COUNTY COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:**

WE UNLAWFULLY unilaterally implemented a mandatory furlough program.

WE UNLAWFULLY refused to discuss the decision to implement furloughs.

WE UNLAWFULLY interfered with the union, as representative of the non-supervisory bargaining unit of transit employees, when we failed to maintain the status quo while a representation petition was pending.

**TO REMEDY OUR UNFAIR LABOR PRACTICES:**

WE WILL reinstate the wages, hours, and working conditions which existed for the bargaining unit employees prior to our unilateral actions which were found to be unlawful in this order.

WE WILL notify the union and, upon request, bargain with the union, any future decision that concerning mandatory days off without pay for bargaining unit employees.

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

**DO NOT POST OR PUBLICLY READ THIS NOTICE.**

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

The full decision is published on PERC's website, [www.perc.wa.gov](http://www.perc.wa.gov).



# PUBLIC EMPLOYMENT RELATIONS COMMISSION

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

MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

## RECORD OF SERVICE - ISSUED 10/22/2009

The attached document identified as: **DECISION 10576 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:  ROBBIE DUFFIELD

CASE NUMBER: 22175-U-09-05658 FILED: 01/02/2009 FILED BY: PARTY 2  
DISPUTE: ER MULTIPLE ULP  
BAR UNIT: SUPERVISORS  
DETAILS: Design and Construction of the Wastewater Division/Supervisors  
COMMENTS:

EMPLOYER: KING COUNTY  
ATTN: JAMES JOHNSON  
500 FOURTH AVE RM 450  
MS ADM-ES-0450  
SEATTLE, WA 98104-2372  
Ph1: 206-205-5321 Ph2: 206-296-8556

REP BY: HENRY FARBER  
DAVIS WRIGHT TREMAINE  
777 108TH AVE NE STE 2300  
BELLEVUE, WA 98004-5149  
Ph1: 425-646-6100 Ph2: 425-646-6138

PARTY 2: TECHNICAL EMPLOYEES ASSN  
ATTN: ROGER BROWNE  
KING STREET CENTER  
PO BOX 4353  
SEATTLE, WA 98104-0353  
Ph1: 206-684-1950

REP BY: JAMES CLINE  
CLINE AND ASSOCIATES  
1001 4TH AVE STE 2301  
SEATTLE, WA 98154  
Ph1: 206-838-8770



# PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

## RECORD OF SERVICE - ISSUED 10/22/2009

The attached document identified as: **DECISION 10577 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY: /s/ ROBBIE DUFFERD

CASE NUMBER: 22176-U-09-05659 FILED: 01/02/2009 FILED BY: PARTY 2  
DISPUTE: ER MULTIPLE ULP  
BAR UNIT: MIXED CLASSES  
DETAILS: Design and Construction Section of Transit Division  
COMMENTS:

EMPLOYER: KING COUNTY  
ATTN: JAMES JOHNSON  
500 FOURTH AVE RM 450  
MS ADM-ES-0450  
SEATTLE, WA 98104-2372  
Ph1: 206-205-5321 Ph2: 206-296-8556

REP BY: HENRY FARBER  
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777 108TH AVE NE STE 2300  
BELLEVUE, WA 98004-5149  
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PARTY 2: TECHNICAL EMPLOYEES ASSN  
ATTN: ROGER BROWNE  
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PO BOX 4353  
SEATTLE, WA 98104-0353  
Ph1: 206-684-1950

REP BY: JAMES CLINE  
CLINE AND ASSOCIATES  
1001 4TH AVE STE 2301  
SEATTLE, WA 98154  
Ph1: 206-838-8770



## PUBLIC EMPLOYMENT RELATIONS COMMISSION


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MARILYN GLENN SAYAN, CHAIRPERSON  
PAMELA G. BRADBURN, COMMISSIONER  
THOMAS W. McLANE, COMMISSIONER  
CATHLEEN CALLAHAN, EXECUTIVE DIRECTOR

### RECORD OF SERVICE - ISSUED 10/22/2009

The attached document identified as: **DECISION 10578 - PECB** has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
BY:  ROBBIE DUFFIELD

CASE NUMBER: 22177-U-09-05660 FILED: 01/02/2009 FILED BY: PARTY 2  
DISPUTE: ER MULTIPLE ULP  
BAR UNIT: MIXED CLASSES  
DETAILS: Design and Construction of the Wastewater Division / All Employees  
COMMENTS:

EMPLOYER: KING COUNTY  
ATTN: JAMES JOHNSON  
500 FOURTH AVE RM 450  
MS ADM-ES-0450  
SEATTLE, WA 98104-2372  
Ph1: 206-205-5321 Ph2: 206-296-8556

REP BY: HENRY FARBER  
DAVIS WRIGHT TREMAINE  
777 108TH AVE NE STE 2300  
BELLEVUE, WA 98004-5149  
Ph1: 425-646-6100 Ph2: 425-646-6138

PARTY 2: TECHNICAL EMPLOYEES ASSN  
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KING STREET CENTER  
PO BOX 4353  
SEATTLE, WA 98104-0353  
Ph1: 206-684-1950

REP BY: JAMES CLINE  
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Ph1: 206-838-8770