STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

UNITED AUTO WORKERS LOCAL 4121, Complainant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE 136127-U-23 DECISION 13865 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Jacob Metzger and Amy Bowles, Attorneys at Law, Douglas Drachler McKee & Gilbrough LLP, for United Auto Workers Local 4121.

Thomas V. Vogliano, Assistant Attorney General, Attorney General Robert W. Ferguson, for the University of Washington.

On January 4, 2023, the United Auto Workers Local 4121 (union) filed an unfair labor practice complaint on behalf of its Research Scientists and Engineers (RSE) bargaining unit against the University of Washington (employer or UW). An Unfair Labor Practice Administrator issued a cause of action statement certifying claims for further processing on January 18, 2023. The employer filed an answer on February 8, 2023. The undersigned Examiner conducted a hearing via videoconference on December 6, 7, 8, and 20, 2023, and the parties filed post-hearing briefs on March 8, 2024, to complete the record.

ISSUE

This dispute stems from changes the employer made to some bargaining unit employees' overtime eligibility status in response to the January 1, 2023, increases to the state overtime salary threshold implemented by the Washington State Department of Labor and Industries (L&I).

As framed by the complaint and the cause of action statement, the issue is as follows:

> Did the employer refuse to bargain in violation of RCW 41.56.140(4) [and if so, derivative interference in violation of RCW 41.56.140(1)] by unilaterally changing the Research Scientist/Engineers' pay structure, without providing the union an opportunity for bargaining?

The union has not met its burden of proving the unilateral change claim.

BACKGROUND

Changes to Washington State L&I Rules Governing Overtime Exemptions

In 2019, L&I issued new rules governing overtime exemptions under Washington state's Minimum Wage Act. These rules require that employees be paid overtime for all hours worked over 40 in a workweek unless, among other requirements, their salary meets the minimum salary threshold. WAC 296-128-530; WAC 296-128-545.

According to L&I, to be considered an overtime exempt employee a worker must 1) be paid a fixed salary, 2) have a salary that meets or exceeds the minimum salary threshold, and 3) meet the requirements of the job duties tests. The annual increases to the overtime threshold limits are structured as multipliers of the minimum wage. Annual salary thresholds began on July 1, 2020, and they are scheduled to increase through January 1, 2028. WAC 296-128-545.

The first adjustment to the overtime threshold was implemented by L&I effective July 1, 2020. The second adjustment was implemented on January 1, 2021. The third was on January 1, 2022. Each time, the employer complied with the L&I rules and converted employees—including RSEs whose salaries fell below the new threshold amount—from overtime exempt to overtime eligible.

Since 2020, the central UW Human Resource's compensation department has estimated overtime threshold changes, done an analysis, and provided the UW Admin Council, Human Resource Community, and UW Medical Center's leadership with a list of employees in each UW subdivision who are likely to be impacted by an upcoming overtime salary threshold change.

The union argues that it was unaware of the annual change to overtime salary threshold limits. However, the L&I overtime threshold information is codified in WAC 296-128-545 and was publicly available to all employees, employers, and labor organizations.

Formation of the RSE Bargaining Unit

On December 20, 2021, the union filed a petition to represent a bargaining unit of approximately 1,458 unrepresented Research Scientists and Engineers (RSEs) at UW. RSEs employed at UW perform a diverse range of research and engineering work across virtually all disciplines. On June 16, 2022, following an election, PERC issued an interim certification pending the status of the objected-to employees. The union was certified as the exclusive bargaining representative of a bargaining unit that includes all full-time and regular part-time RSE-Assistants, RSE-1s, RSE-2s, RSE-3s, and RSE-4s. *University of Washington*, Decision 13519 (PECB, 2022); *University of Washington*, Decision 13519-C (PECB, 2023).

Overtime Eligible vs. Overtime Exempt Employees in the RSE Bargaining Unit

Since the date the union filed its petition for representation, and thereafter, a significant portion of the RSEs' wage rates have necessitated that their positions be classified as overtime eligible. The total number of overtime eligible RSEs in the bargaining unit has ranged from approximately 410 to 565 RSEs out of approximately1,400 bargaining unit employees.

Based on rules established by L&I, only employees who earn a salary that is above a state-established salary threshold amount are permitted to be classified as overtime exempt. If an employee's salary is less than the salary threshold amount, an employer cannot require an employee to work uncompensated overtime and must pay them overtime if they work over 40 hours in a week.

There are clear distinctions between how wages and hours are tracked and compensated for overtime eligible positions versus overtime exempt positions by this employer.

- Overtime eligible employees are required to track and record their time. Exempt employees are not required to track or record their time.

- Overtime eligible employees are paid overtime rates for all hours over 40 in a workweek. There is no overtime pay or compensatory time available for exempt employees.
- The workweek for full time overtime eligible employees consists of 40 hours worked in 7 calendar days while full time exempt employees are expected to work to complete job responsibilities and do not lose pay if they work less than 40 hours in a given week.
- Overtime eligible employees "must use appropriate paid leave to cover a partial-day absence" or take unpaid time off. Overtime exempt employees may take partial day absences without losing pay or having to use paid leave.

From the time the union filed its representation petition until the parties reached agreement on their initial collective bargaining agreement (CBA) in June of 2023, all bargaining unit RSEs were considered professional staff subject to the policies in the employer's professional staff program (PSP). The PSP contains categories of "additional compensation" available only to exempt employees. Administrative supplement pay is additional compensation available only to exempt employees to compensate them for the assumption of additional duties or higher-level administrative responsibilities. Period activity pay is compensation available only to overtime exempt employees who take on additional duties, such as teaching a class. Overtime pay is only available to overtime eligible employees.

Status Quo Agreement

Prior to bargaining their initial CBA, the employer and the union entered into a "status quo agreement," dated July 27, 2022. The status quo agreement set forth rights and notice requirements with regard to salary and full-time equivalent (FTE) adjustments for RSEs. The status quo agreement explicitly authorized the employer to move forward with any of the salary adjustments listed and specified that notice to the union would be provided only when the pay increase was more than 10 percent. For pay increases of 10 percent or less, the union would not be provided individual notice, but it would be provided a list upon request. In its brief the union clearly states that "[t]he unilateral change at issue is the conversion of previously exempt RSEs to overtime eligible positions, not the salary increases some RSEs received for the purpose of keeping them above the 2023 salary threshold."

Initial Contract Bargaining

During a contract bargaining session on November 28, 2022, the union asked the employer if it was planning to convert RSEs from overtime exempt to overtime eligible positions. The employer confirmed its plan to convert RSEs whose salary rates fell below the new 2023 state overtime threshold from overtime exempt to overtime eligible. Banks Evans, the lead negotiator for the employer, told the union that the employer had converted RSEs that fell below the new salary threshold to overtime eligible positions for the past three years, and "there isn't anything to notify [the union] of." The union disagreed and stated that it would follow up with a request for information and likely a demand to bargain this change.

Notification of Changes to Overtime Exempt Status

In November of 2022, the employer began directly notifying individual bargaining unit RSEs that if their salaries fell below the threshold, then their positions would be converted from overtime exempt to overtime eligible starting on December 26, 2022, to comply with the increase in the 2023 salary threshold. During this time, the union's bargaining committee began to hear from bargaining unit RSEs that they had been directly contacted by department administrators and told their positions would be converted to overtime eligible positions.

Demand to Bargain

On December 2, 2022, the union sent the employer a demand "to bargain both the decision and impacts of any change to bargaining unit pay structure and associated benefits" and demanded that the employer cease any overtime eligible conversions until such bargaining was complete. Evans responded on behalf of the employer and wrote, "I am not seeing where any of this creates a duty to bargain. Definitely not the decision, but I'm honestly not even seeing a duty to bargain the effects. We will be making all changes required by law on January 1st." Evans asked the union to explain its position that "this is a mandatory subject of bargaining." On December 6, 2022, the union responded by renewing its demand to bargain and explaining, "PERC Decision 13353 (City of Spokane, 2021) helps explain why we believe this is a mandatory subject…" On December 7, 2022, Evans responded and maintained the employer's position that it was acting within the status

quo and past practice and stated, "Nonetheless, we will work on processing your information request and we are happy to meet and receive your proposals."

Bargaining

The union and the employer met on December 8, 15, 16, 19, and 22, 2022, and exchanged several proposals. The unions' proposals all focused on raising the salaries of all bargaining unit RSEs to bring them above the overtime eligibility threshold. The employer's proposals all sought to address implementation and effects questions raised by the union and did not include salary increases. The parties did not reach an agreement that would raise effected employees' salaries before the new overtime threshold limits became effective on January 1, 2023. Because no agreement had been reached, the employer maintained status quo wage rates.

The parties later reached agreement on their initial CBA in June of 2023, which included an agreement on wage rates.

Change in Overtime Exempt Status

On December 26, 2022, the employer implemented the overtime eligibility conversion for 157 RSEs whose salaries had remained unchanged but who, based on the new L&I threshold numbers, were no longer eligible to be overtime exempt. This group of 157 employees was treated by the employer in the same manner as the approximately 400 RSEs who were already overtime eligible as of December 20, 2021, when the union's petition for representation was filed. The new group of 157 overtime eligible RSEs were subject to all the same overtime related policies that had been in place since the filing of that December 20, 2021, representation petition. Likewise, any related salary or FTE adjustments that effectively maintained the overtime exempt status of RSEs (94 total) were made in accordance with the same UW professional staff policies. The union was clear in its brief that "[t]he unilateral change at issue is the conversion of previously exempt RSEs to overtime eligible positions, not the salary increases some RSEs received for the purpose of keeping them above the 2023 salary threshold."

After the overtime eligible conversions were implemented on December 26, 2022, the employer offered to continue engaging in effects bargaining with the union. The union did not follow up with the employer to engage in effects bargaining.

The impacted RSEs began tracking their work hours on December 26, 2022, the first day of the pay period when the new overtime threshold rates became effective. Between December 26, 2022, and June 2023 when a contract agreement was reached, a total of 1,186.75 overtime hours were incurred by the group of newly overtime eligible RSEs.

ANALYSIS

Applicable Legal Standard(s)

Burden of Proof

In unfair labor practice proceedings, the ultimate burdens of pleading, prosecution, and proof all lie with the complainant. WAC 391-45-270(1)(a); *City of Seattle*, Decision 8313-B (PECB, 2004). This burden of proof requires the complainant to show, by a preponderance of the evidence, that the respondent has committed the complained-of unfair labor practice. *Whatcom County*, Decision 8512-A (PECB, 2005).

Duty to Bargain

A public employer has a duty to bargain with the exclusive bargaining representative of its employees over mandatory subjects of bargaining. RCW 41.56.030(4). An employer that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice. RCW 41.56.140(4).

Unilateral Changes

The parties' collective bargaining obligation requires that the status quo be maintained regarding all mandatory subjects of bargaining, except when any changes to mandatory subjects of bargaining are made in conformity with the statutory collective bargaining obligation or a term of a collective bargaining agreement. *City of Yakima*, Decision 3503-A (PECB, 1990), *aff'd*, *City of*

Yakima v. International Association of Fire Fighters, Local 469, 117 Wn.2d 655 (1991); *Spokane County Fire District 9*, Decision 3661-A (PECB, 1991).

To prove a unilateral change, the complainant must prove that the dispute involves a mandatory subject of bargaining and that there was a decision giving rise to a duty to bargain. *Kitsap County*, Decision 8292-B (PECB, 2007) (citing *Municipality of Metropolitan Seattle (METRO) (ATU Local 587)*, Decision 2746-B (PECB, 1990)). A complainant alleging a unilateral change must establish both the existence of a relevant status quo or past practice and a meaningful change to a mandatory subject of bargaining. *Whatcom County*, Decision 7288-A (PECB, 2002); *City of Kalama*, Decision 6773-A (PECB, 2000). For a unilateral change to be unlawful, the change must have a material and substantial impact on the terms and conditions of employment. *Kitsap County*, Decision 8893-A (PECB, 2007) (citing *King County*, Decision 4893-A (PECB, 1995)).

The Commission has consistently held that the wages of bargaining unit employees become a subject for collective bargaining as soon as a union becomes the exclusive bargaining representative of the employees involved. *Centralia School District*, Decision 7423 (PECB, 2001); *City of Moses Lake*, Decision 6328 (PECB, 1998); *Snohomish County Fire District 3*, Decision 4336-A (PECB, 1994).

Status Quo

When a case involves a newly certified bargaining unit, the relevant status quo is determined as of the date of the filing of the union's representation petition. WAC 391-25-140(2) provides that,

> Changes of the status quo concerning wages, hours or other terms and conditions of employment of employees in the bargaining unit are prohibited during the period that a petition is pending before the agency under this chapter.

This rule applies from the date that a representation petition is filed up to the point that either the representation petition fails or the bargaining unit is certified. Thereafter, if a bargaining unit is certified, the obligation to maintain the status quo continues, uninterrupted, by means of the parties' collective bargaining obligations, as discussed above. It is well settled that wages and hours of work are mandatory subjects of bargaining. *King County Library System*, Decision 9039

(PECB, 2005) (citing *City of Seattle*, Decision 651 (PECB, 1979); *City of Poulsbo*, Decision 2068 (PECB, 1985)).

The term "status quo" encompasses both a general "status quo" and a "dynamic status quo" obligation. Both terms embody the idea that unilateral action to change a term of the employer-employee relationship regarding wages, hours, and working conditions is prohibited. The "dynamic status quo" rule recognizes occasional circumstances when the status quo may not be static. For example, where a term of employment includes step increases for which employees qualify by length of service, a refusal to grant those step increases during bargaining is unlawful because payment of earned step increases is a term of the employment relationship and is the status quo. *Snohomish County*, Decision 1868 (PECB, 1984). The exception for maintenance of the dynamic status quo ensures that questions concerning representation and/or bargaining obligations do not block the occurrence of routine, non-discretionary changes to employees' working conditions. *Clark County*, Decision 5373 (PECB, 1995), *aff'd*, Decision 5373-A (PECB, 1996).

In dynamic status quo cases, the Public Employment Relations Commission has distinguished between step increases and general wage increases. The difference is that "general wage increases are usually far less concrete, do not follow an established or fixed formula, and allow the employer discretion as to whether to grant an increase at all." *Lewis County PUD*, Decision 7277-A (PECB, 2002). A dynamic status quo may exist where actions are taken to follow through with changes that were set in motion prior to the filing of a representation petition. *King County*, Decision 6063-A (PECB, 1998). Changes of conditions announced prior to the filing of the representation petition "are part of the 'dynamic status quo', along with previously scheduled wage and benefits increases." *Emergency Dispatch Center*, Decision 3255-B (PECB, 1990).

If expected by the employees, changes that are part of a dynamic status quo do not disrupt a bargaining relationship. *King County*, Decision 6063-A, *supra* (citing *NLRB v. Katz*, 369 U.S. 736 (1962)). Thus, where wage increases are previously scheduled, they are part of the dynamic status quo, and it would be unlawful to withhold them just because a representation petition is filed. *Id.*

In *Snohomish County*, Decision 1868, the employer violated its status quo obligation by failing to grant step increases based on length of service under a wage scale.

Application of Standards

Wages, hours, and working conditions are mandatory subjects of bargaining. The salary rates and overtime eligibility issues raised in this case relate to both wages and hours and are mandatory subjects of bargaining.

The element of the unilateral change test that the union has not met in this case is proving that the employer's actions constituted a change to the relevant status quo.

In this case, the relevant status quo included an established employer practice addressing annual increases to the overtime eligibility threshold mandated by L&I. Since 2020, each time L&I adjusted its salary threshold, the employer notified employees whose salaries fell below the threshold that their positions would become overtime eligible. As required by L&I, overtime eligible employees track their hours worked. These adjustments ensure that the employer remains in compliance with state wage and hour requirements.

The union is correct that there is no past practice between the parties concerning overtime threshold adjustments. The parties were engaged in initial contract bargaining, and their collective bargaining relationship was still forming. There was not adequate time to develop past practices in the collective bargaining relationship between the parties. Rather there was a status quo practice that had established how the employer would address L&I annual salary threshold increases.

The employer utilized the same process it had used since 2020 when it notified employees of the January 1, 2023, salary threshold increase and resulting changes to overtime eligible status. The employer maintained status quo wages while initial contract bargaining was taking place. Maintaining the relevant status quo is the legally obligated default until the parties reach an agreement to make changes.

The union raised concerns about the effects of converting employees to overtime eligible status, and the employer offered to bargain over the effects. During the bargaining meetings held in December 2022 to address the overtime threshold increase, the union's proposals were exclusively focused on raising the salaries of RSEs to bring them above the overtime eligibility threshold and allow the effected employees to remain overtime exempt. The employer made proposals to address effects concerns raised by the union. The union never directly engaged with the employer's proposals regarding the implementation and effects of employees becoming classified as overtime eligible. There is no allegation that the employer refused to engage in effects bargaining in this case.

The union relies heavily on *City of Spokane*, Decision 13353 (PECB, 2021) as support for its position that a unilateral change occurred. In that case, the Examiner evaluated whether the employer had refused to bargain by unilaterally changing employees' pay structures and benefits in response to the new rules governing overtime exemptions from Washington state's Minimum Wage Act that became effective July 1, 2020. As a result of this change, employees represented by the union were no longer exempt from state overtime requirements. The Examiner found that "the employer's act of changing the status quo of employees who were previously overtime exempt and entitled to the partial leave benefit negotiated in the parties CBA without first engaging in a good faith bargaining constituted an unlawful unilateral change to a mandatory subject of bargaining." There are several key factors that distinguish this situation from the facts in *City of Spokane.*

- The events in the *City of Spokane* case took place in 2020 when L&I first adopted new rules that started the annual increases to the overtime eligibility threshold. Because these L&I rules were new, the parties had no relevant status quo process or past practice for handling the annual increases to the overtime threshold salary requirements.
- The parties in *City of Spokane* had an established bargaining relationship. The parties were subject to a CBA, which was effective from 2017 to 2021. The CBA contained a partial leave benefit that had been negotiated for all employees. The employer unilaterally announced that the employees being converted from overtime exempt to overtime eligible

would no longer be allowed to utilize the partial leave benefit outlined in article VI, section G.4 in the parties' CBA.

- At the time the dispute arose in *City of Spokane*, all bargaining unit employees were overtime exempt. The parties' status quo process and CBA did not consider the possibility that bargaining unit employees could be mandated by L&I to become overtime eligible. The CBA did not contain provisions to address overtime eligible employees.

In this case with UW, the bargaining relationship was newly certified, and the parties were actively bargaining over an initial CBA. The parties had an obligation to maintain the relevant status quo while engaging in initial contract bargaining. The bargaining unit already contained both overtime eligible and overtime exempt RSEs. There was a relevant status quo that addressed both overtime eligible and overtime exempt RSEs' hours and working conditions. The concept that L&I would annually increase the overtime eligibility threshold was not new in late 2022. The employer responded to increases to the L&I overtime threshold that became effective on July 1, 2020, January 1, 2021, and January 1, 2022. Each time the employer notified RSEs whose salaries fell below the new threshold that they would be converted to overtime eligible. In late 2022 the employer maintained status quo wages and acted consistently with status quo processes for notifying effected RSEs of their conversion from overtime exempt to overtime eligible due to the January 1, 2023 threshold increase. For these reasons, I reach a different legal conclusion in this case than the Examiner reached in *City of Spokane.*

Another case that addressed changes made by an employer in response to changes in state law is *Whatcom County*, Decision 13082-A (PECB, 2020). In that case the Commission evaluated whether the employer refused to bargain by unilaterally implementing the maximum employee premiums for Paid Family Medical Leave (PFML) without providing the union an opportunity to bargain. The bargaining unit was eligible for interest arbitration. The Commission found that "before the employer could implement the PFML premiums, the employer was required to give notice to the union and, upon request, bargain in good faith to an agreement or impasse . . . . By unilaterally implementing the employee PFML contributions, the employer refused to bargain and violated RCW 41.56.140(4)."

There are several key factors that distinguish this situation involving the RSEs at the University of Washington from the facts in *Whatcom County*.

- The parties in *Whatcom County* had an established bargaining relationship. The parties were subject to a CBA, which was effective at the time the dispute arose. The bargaining unit was also interest arbitration-eligible.
- In *Whatcom County*, the parties were dealing with the newly implemented Paid Family Medical Leave Act (PFMLA). There was no bargaining history or past practice between the parties to address premium payments because the entire program was newly created. The Commission explained, "The PFMLA did not create a new status quo. The status quo was the wages and terms and conditions of the collective bargaining agreement in effect before the employer implemented the PFML contributions. . . ." In the case involving UW the concept of overtime eligibility threshold limits was not new. The relevant status quo already included an employer process for addressing annual adjustments to the L&I overtime thresholds in the two years prior.
- Another important distinction is the nature of the different state laws. The PFMLA states, "An employer *may* elect to pay all or any portion of the employee's share of the premium for family leave or medical leave benefits, or both." (emphasis added). The word "may" provides for discretion in how the employee's share of premiums are paid. As the Commission explained, "[T]he legislature provided employers, whether public or private, represented or not, several paths to take when dealing with the matter of required PFML premiums. . . ."
- L&I overtime rules are clear that in order for an employee to be overtime exempt eligible, "an employee *must* be compensated on a salary or fee basis . . . an amount not less than" (emphasis added) the prescribed annual multiplier of the minimum wage. While there is discretion concerning classifying employees who have salaries over the threshold as overtime exempt, the law does not allow for discretion in classifying employees with salaries below the threshold as overtime eligible.

In *Whatcom County* the Commission explained that "[a] change to the law does not alter the status quo between the parties absent an unambiguous legislative directive." In the case of UW, the law change was not new and had already been incorporated into the relevant status quo that existed when the representation petition was initially filed. Additionally, the obligation of employers in the state of Washington to classify employees making salaries below the annual established overtime threshold limits as overtime eligible is unambiguous.

Other Arguments

The parties' status quo agreement is not a key factor in this decision. The status quo agreement did not address the process of changing employees' overtime exempt status due to changes in the L&I salary threshold. The status quo agreement allowed the employer to increase wages by up to 10 percent without notifying the union. This explains why the employer was able to lawfully increase some, but not all, of the effected employees' wage rates to bring them above the overtime threshold. The union has been clear that it is not taking issue with the salary increases some RSEs received for the purpose of keeping them above the 2023 salary threshold.

There was significant testimony and discussion in the parties' briefs about information requests and responses related to the conversion of RSEs from overtime eligible status to overtime exempt. The cause of action statement issued on January 18, 2023, only includes a unilateral change allegation. Refusal to provide information is not an allegation addressed in this decision.

The parties make various arguments about whether a lawful impasse was reached during bargaining over the overtime threshold in December of 2022. Because I find that the employer's actions did not constitute a change to the status quo, it is not necessary to evaluate whether the parties reached a lawful impasse in bargaining.

CONCLUSION

The employer did not violate RCW 41.56.140(4) when it notified RSEs making less than $65,478.40 that their job positions were becoming overtime eligible because their salaries, which remained unchanged, fell below the new 2023 state overtime salary threshold.

Public employers, including those with represented employees, are required to comply with L&I wage and hour laws and rules. The employer's actions were consistent with maintaining the relevant status quo and complying with the annually implemented overtime salary threshold adjustments set by L&I.

The union requested to bargain over job positions that had been identified by the employer as needing to become overtime eligible on January 1, 2023. The union and the employer met five times in December 2022 to specifically discuss the changes in the overtime salary threshold. The parties were simultaneously engaged in initial contract bargaining, which included bargaining over wages. The union proposed that the employer raise all bargaining unit employees' salaries to bring them above the overtime eligibility threshold. The parties did not reach an agreement that would raise effected employees' salaries before the new overtime salary threshold limits became effective on January 1, 2023.

Because no agreement had been reached, the employer maintained status quo salary rates. Consistent with the relevant status quo, the employer notified effected employees whose salaries fell below the new salary threshold of the change in their overtime eligibility status. These employees were treated the same as all other overtime eligible employees in the bargaining unit. As required by L&I, the impacted employees became eligible to earn overtime pay for hours worked more than 40 hours a week and had to start tracking their hours worked. The union did not prove that the employer unilaterally changed the relevant status quo that applied to the RSE bargaining unit employees with regards to L&I annual adjustments to the overtime salary threshold.

FINDINGS OF FACT

1. The University of Washington (employer or UW) is a public employer within the meaning of RCW 41.56.030(13).

2. The United Auto Workers Local 4121 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. On December 20, 2021, the union filed a petition to represent a bargaining unit of approximately 1,458 unrepresented Research Scientists and Engineers (RSEs) at UW.

4. On June 16, 2022, following an election, PERC issued an interim certification pending the status of the objected-to employees. The union was certified as the exclusive bargaining representative of a bargaining unit that includes all full-time and regular part-time RSE-Assistants, RSE-1s, RSE-2s, RSE-3s, and RSE-4s.

5. In 2019, the Washington State Department of Labor and Industries (L&I) issued new rules governing overtime exemptions under Washington state's Minimum Wage Act. These rules require that employees be paid overtime for all hours worked over 40 in a workweek unless, among other requirements, their salary meets the minimum salary threshold.

6. The L&I overtime threshold information is codified in WAC 296-128-545 and was publicly available to all employees, employers, and labor organizations.

7. The first adjustment to the overtime threshold was implemented by L&I effective July 1, 2020. The second adjustment was implemented on January 1, 2021. The third was on January 1, 2022. Each time, the employer complied with the L&I rules and converted employees—including RSEs whose salaries fell below the new threshold amount—from overtime exempt to overtime eligible.

8. Since the date the union filed its petition for representation, and thereafter, a significant portion of the RSEs' wage rates have necessitated that their positions be classified as overtime eligible. The total number of overtime eligible RSEs in the bargaining unit has ranged from approximately 410 to 565 RSEs out of approximately1,400 bargaining unit employees.

9. During a contract bargaining session on November 28, 2022, the union asked the employer if it was planning to convert RSEs from overtime exempt to overtime eligible positions. The employer confirmed its plan to convert RSEs whose salary rates fell below the new 2023 state overtime threshold from overtime exempt to overtime eligible.

10. On December 2, 2022, the union sent the employer a demand "to bargain both the decision and impacts of any change to bargaining unit pay structure and associated benefits" and demanded that the employer cease any overtime eligible conversions until such bargaining was complete.

11. The salary rates and overtime eligibility issues raised in this case relate to both wages and hours and are mandatory subjects of bargaining.

12. The union and the employer met on December 8, 15, 16, 19, and 22, 2022, and exchanged several proposals. The unions' proposals all focused on raising the salaries of all bargaining unit RSEs to bring them above the overtime eligibility threshold. The employer's proposals all sought to address implementation and effects questions raised by the union and did not include salary increases. The parties did not reach an agreement that would raise effected employees' salaries before the new overtime threshold limits became effective on January 1, 2023.

13. There is no past practice between the parties concerning overtime threshold adjustments. The parties were engaged in initial contract bargaining, and their collective bargaining relationship was still forming. There was not adequate time to develop past practices in the collective bargaining relationship between the parties.

14. The relevant status quo included an established employer practice addressing annual increases to the overtime eligibility threshold mandated by L&I. Since 2020, each time L&I adjusted its salary threshold, the employer notified employees whose salaries fell below the threshold that their positions would become overtime eligible. As required by L&I, overtime eligible employees track their hours worked. These adjustments ensure that the employer remains in compliance with state wage and hour requirements.

15. The employer maintained status quo wages for RSEs while initial contract bargaining was taking place.

16. On December 26, 2022, the employer implemented the overtime eligibility conversion for 157 RSEs whose salaries had remained unchanged but who, based on the new L&I

threshold numbers, were no longer eligible to be overtime exempt. This group of 157 employees was treated by the employer in the same manner as the approximately 400 RSEs who were already overtime eligible as of December 20, 2021, when the union's petition for representation was filed. The new group of 157 overtime eligible RSEs were subject to all the same overtime related policies that had been in place since the filing of that December 20, 2021, representation petition.

17. After the overtime eligible conversions were implemented on December 26, 2022, the employer offered to continue engaging in effects bargaining with the union. The union did not follow up with the employer to engage in effects bargaining.

CONCLUSIONS OF LAW

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

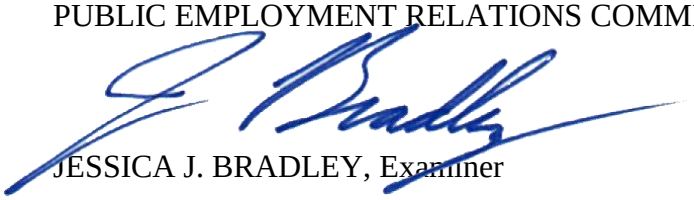
2. By the actions described in findings of fact 3-17, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and derivatively RCW 41.56.140(1).

ORDER

The complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JESSICA J. BRADLEY, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

RECORD OF SERVICE

ISSUED ON 06/05/2024

DECISION 13865 - PECB has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: REBECCA VANCE

CASE 136127-U-23

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