

Statement of Facts
Higher Education Collective Bargaining Agreement
2023-2025 CBA

1. The Washington Public Employees Association UFCW Local 365 (“WPEA” or “Union”) is an exclusive bargaining representative, as that term is defined in RCW 41.80.005(9).
2. WPEA has a “Higher Education” collective bargaining agreement (“CBA”) that includes representation of classified staff at Bellevue College, Big Bend Community College, Cascadia Community College, Clark College, Columbia Basin College, Edmonds College, Grays Harbor College, Olympic College, Pierce College, Skagit Valley College, Tacoma Community College, Walla Walla Community College and Wentachee Valley College. Each of these colleges is an “institution of higher education” as defined in RCW 41.80.005 (10).
3. The Washington State Office of Financial Management Labor Relations Section (“LRS”) negotiates on behalf of the Higher Education institutes under the master agreement.
4. The most recent Higher Education CBA became effective July 1, 2021.
5. WPEA sent notice of our intent to bargain a successor agreement with the LRS on February 2, 2022, within the specified time periods in the CBA. The notice included Amanda Hacker being the Lead Negotiator for the HE successor bargaining.
6. On February 15, 2022, WPEA received notification that Melanie Schwent, Labor Negotiator at LRS, would be bargaining the Higher Education CBA for the state.
7. In late March 2022, Ms. Schwent and Ms. Hacker conferred by phone and discussed getting bargaining dates and the Union’s desire to start negotiations as soon as possible.
8. On April 5, 2022, Ms. Schwent emailed a list of dates to Ms. Hacker that included the following dates: May 12, June 9, July 20, July 27, August 4, August 17, August 18, August 24, August 25, September 7, September 14 and September 15.
9. On April 22, 2022, Ms. Schwent and Ms. Hacker discussed the dates by phone. Ms. Hacker confirmed the dates for WPEA and expressed concerns with the limited dates in May and June. Ms. Schwent indicated that these dates were a start and we could look for more, if necessary.
10. On May 10, 2022, Ms. Hacker sent an email to Ms. Schwent asking to discuss bargaining on May 12 and notified Ms. Schwent that WPEA had not yet received an invitation for the bargaining session scheduled for the 12th. The following day, May 11,

2022, Ms. Schwent responded at 7:04 a.m. that she would ask her “LR Assistant” to send the zoom invitation and apologized for not having done so previously. At 7:20 a.m. Ms. Schwent sent a follow-up email indicating that she did not have a “hold” on her calendar for the 12th. At 9:05 a.m., Ms. Hacker sent an email stating that WPEA’s team was holding May 12th as a formal bargaining session. Ms. Hacker then called Ms. Schwent at approximately 9:15 a.m. and Ms. Schwent indicated that the May 12th date was not confirmed on her end and her team would not be present. Ms. Hacker expressed concern about not having any alternate dates in May for WPEA to present some initial proposals prior to our next scheduled date on June 9. Ms. Hacker requested that Ms. Schwent find some available time and said that a full day wasn’t necessary. During that call, Ms. Schwent committed to looking at May 24th as a possible date for initial proposals from WPEA. She also offered June 8th, 29th, and 30th, as more options for dates in June. The parties agreed to work with their respective teams to confirm those dates.

11. On May 12, 2022, Ms. Schwent sent an email confirming the May 24th date and including the following list of dates: June 8, July 20, July 27, August 8, August 17, August 18, August 24, August 25, September 7, September 14 and September 15. The previously confirmed June 9th date was not on the list. The August 17th and 24th dates were noted as a “Team Prep Day” and all three September dates were noted as “tentative.” At 3:40 p.m., Ms. Hacker responded to the email stating that she could confirm the May 24th date the following Monday and asked for clarification on the “Team Prep Day” notes as well as why the dates that were discussed the day prior were not included in the list. In the same email, Ms. Hacker again expressed the Union’s concerns about lack of bargaining dates and specifically stated that, with the amount of dates scheduled, the Union was concerned about not reaching agreement in time to have a ratified contract by or before October 1, 2022 – pointing out that over a ten week period, there was only one confirmed bargaining session.

12. On May 13, 2022, Ms. Schwent responded that her team was still holding the dates in June that we discussed on May 11th and stated that she could get back to us on those dates “early next week.”

13. On May 16, 2022, Ms. Hacker sent an email to Ms. Schwent to confirm the May 24th date for initials from WPEA and reasserted the request to clarify what a “Team Prep Day” meant and if we were scheduled for formal bargaining on August 17th and August 24th. Ms. Hacker again expressed concerns about not having enough bargaining dates to reach an agreement.

14. On May 17, 2022, Ms. Schwent responded to Ms. Hacker’s email and stated “We are committed to meeting our bargaining obligations in good faith but I believe the below gives us enough time to reach an agreement on a new collective bargaining agreement.” Ms. Schwent’s email also had the following list of dates: May 24, June 8, June 9, June 29, June 30, July 20, July 27, August 4, August 17, August 18, August 24, August 25, September 7 (tentative), September 14 (tentative) and September 15 (tentative).

15. On May 24, 2022, from 1:30 – 4:00 p.m., the parties met for formal negotiations and the Union presented 25 initial proposals. The next confirmed bargaining date was June 8, 2022. At the conclusion of our bargaining session, Ms. Schwent indicated that we would need to cancel the June 8th date, which would make our next scheduled bargaining date June 9th.

16. On June 9, 2022, the parties met for formal negotiations. The Employer did not come prepared with counters and spent the time in joint session asking clarifying questions and verbally discussing current contract language proposals. At the conclusion of the session, WPEA had not received any written proposals from the Employer. WPEA did provide one additional initial proposal to the Employer. The next confirmed bargaining session was on June 29, 2022.

17. On June 16, 2022, Ms. Schwent sent an email to Ms. Hacker stating that she understood that WPEA needs to have a fully TA'ed agreement by September 10, 2022, in order to meet the October 1st deadline and asked if we would like to find alternative dates for the three dates scheduled in September. Ms. Hacker responded the same day and stated "We absolutely want to add dates prior to September 10th. We have consistently made that known. What we think we have heard is that there are no available dates for your team. If that has changed, we would be more than happy (we would be relieved) to schedule more." Ms. Schwent responded later that day stating that she would talk to her team and let us know what she could schedule.

18. On June 29, 2022, the parties met for formal negotiations. In Article 8 of the CBA, the Union had proposed language for overtime eligible employees to be able to carry forward earned exchange time for 60 days after the end of the fiscal year (June 30th). When presenting the initial proposal on Article 8, WPEA explained that this is language that exists in another contract negotiated by the OFM for Higher Education institutions. The Union further explained that this language would be helpful for members in payroll or finance because their busiest time of the year was the two months prior to the end of the fiscal year. When Ms. Schwent presented the Employer's response to the Union's proposal, she stated that accepting this proposal would be a problem for management because of their payroll system and how budgets are put together" and she stated that it was not possible to cash out compensatory time after June 30th. The Union pointed out again that this is language that the Employer has to be able to do because they are, in fact, doing it now for the Washington Federation of State Employees represented staff – two of the bargaining units represented under the WPEA CBA have both WPEA and WFSE represented staff. After discussing the Employer's verbal response on this article, Ms. Schwent suggested that we break for an early lunch and management will talk about the Union's concerns and come back with answers to the questions. The parties broke for lunch at 11:25 a.m.

19. The parties reconvened in a joint session at 1:48 p.m. and Ms. Schwent began the session stating that the Employer believes that the contract is a "mature agreement" and that it is "working" the way it is written. She indicated that the Employer needs to know where the problem is in order to be compelled to change any current contract language. Ms. Hacker responded that the Union's team understands how bargaining

works and that sometimes the answer is “no” but the answer cannot be no every time and that the Employer is going to need to compromise on issues. Ms. Schwent responded with “I could say the same, we need compromise on the Union’s side.” Ms. Hacker pointed out that the Union would need to get a proposal from the Employer in order to show compromise and, to date, one has not been provided.

20. Ms. Schwent moved forward with presenting the Employer’s counter proposals and moved to Article 7. When discussing the Employer’s response to the Union’s initial proposal in Article 7.4 to combine lunch and break periods, Ms. Schwent stated that this was a “one-off” issue because it was a problem that originated out of Big Bend Community College. Ms. Schwent went on to explain that the Union would need to show a history of “multiple grievances” being filed around an issue before the Employer would consider a change. Ms. Schwent again stated that the Employer feels like the language in the CBA is “working” and that without the history of grievances, there is nothing to compel them to change it. Ms. Hacker explained that this would be an issue for the parties if that is what the Employer expected. She briefly explained the process the Union follows to solicit contract proposals from the membership and that the way we prioritize our issues for bargaining is not related to grievance history. Ms. Hacker asked Ms. Schwent if the Employer was saying that they would not consider proposals without grievances to point to. Ms. Schwent said that that is not what she said and proceeded to clarify that “management feels that the language is working and don’t have a desire to change it. Tell me where this is not working. What I am hearing you say is that if you disagree with what we say then we are not bargaining in good faith.” Ms. Hacker responded that “if the management team expects that we have a grievance history for all of our proposals, we need to address that now because we will not be able to meet that expectation. I believe what I heard you say is that you are going to need to see grievances in order to negotiate different language.” Ms. Schwent responded “I am saying that we are going to assert current contract language where we do not see a problem in the language. This language has been working for a long time.” Ms. Schwent went on to present the remainder of Article 7 and the Employer’s initial proposal for Appendix B. At the conclusion of the full-day bargaining session, WPEA had received two counters and one initial proposal from the Employer team.

21. Having not heard anything about additional bargaining dates since Ms. Schwent email on June 16th indicating that the Employer team was looking for more dates to replace the tentative dates in September, the Union brought up the issue of dates before breaking for the day. Ms. Schwent asked what dates the Union was proposing and Ms. Hacker explained that this was a priority and her team could be flexible with dates. Ms. Hacker also shared that the Union’s team does not need all of their members present in order to agree to bargaining. The only dates that WPEA was not able to agree to were the dates that Ms. Hacker was otherwise scheduled for bargaining with the OFM on a separate contract. Ms. Schwent asked for the dates that Ms. Hacker was not available and that was provided to Ms. Schwent by email on June 29th. Ms. Schwent committed to getting available dates to the Union the following morning.

22. On June 30, 2022, the parties met for their third full-day bargaining session that was scheduled from 9:00 a.m. – 4:00 p.m. The Employer team was not ready to meet in joint session until 1:45 p.m. The Employer team provided an Employer Counter

Proposal #3 for Article 7, an initial proposal to move the Telework MOU to the body of the contract and a Data Sharing MOU. Ms. Schwent indicated that the Employer had a compensation initial to propose before the end of the day but they needed more time to work on it, so the parties went back to their caucus rooms.

23. At 2:10 p.m. Ms. Schwent emailed the following dates for possible bargaining: July 5, July 7 and July 21. Her email also proposed eliminating August 4th from the already confirmed list of dates due to “conflicts that have presented themselves for multiple team members.”

24. When the parties reconvened in a joint session, it was 3:51 p.m. and there was limited time to go over the compensation proposal that was provided by email at 3:43 p.m. that day. Ms. Schwent did a two minute overview of the Employer’s initial proposal and the remainder of the time was spent on trying to confirm the dates offered in Ms. Schwent’s email. The Employer had offered the following Tuesday, July 5, as a bargaining date. July 4th was a Holiday and that left one business day for the parties to confirm July 5th as a bargaining date. Ms. Hacker explained that some of the Union’s team has blackout dates – meaning that they were precluded from taking accrued leave that week - the holiday week due to it being the beginning of the quarter for a number of the represented colleges. Ms. Hacker asked Ms. Schwent if the Employer team had considered the timing of that date and if the members who were otherwise scheduled to work would be released for bargaining. Ms. Schwent asked her team to respond to the question and the only team member who responded was Gerald Gabbard, Clark College, by stating that it wasn’t his responsibility to get our team release time. Ms. Hacker clarified that it was the Employer’s responsibility and suggested that the team discuss this and get back to the Union as soon as possible about if July 5th was an available date for bargaining. Ms. Schwent committed to letting the Union know by the end of the day.

25. The following day, July 1, 2022, having not heard anything from Ms. Schwent about the July 5th date, and needing to confirm the date because it was the next business day (with Monday being the holiday), Ms. Hacker sent a text message to Ms. Schwent asking if she was able to confirm that July 5th would work for bargaining. At 5:10 p.m., Ms. Schwent responded that she had heard from her team and the date would not work because one of the WPEA team members was not available due to previously scheduled training. Ms. Hacker asked for clarification on why the date would not work because one of the WPEA team members would not be present and Ms. Schwent responded, “Apparently one of your members is involved in clergy training next week and it is my understanding you wanted your entire team.” Ms. Hacker immediately responded with “No. That is not what we said. We said the opposite of that. We said that we DIDN’T need our whole team. Just most of them.” Ms. Schwent responded that “that is not what we heard” and offered to confirm the second date that week, July 7th. Ms. Schwent also requested that Ms. Hacker talk with her team and propose “additional dates” so that her team could check their calendars. The Union sent out a poll for available dates for bargaining the following day, July 2nd.

26. On July 5, 2022, Ms. Hacker emailed Ms. Schwent confirming that the Union’s team would be available for bargaining on July 7th and provided the following dates for

additional bargaining: Preferred dates - July 15, July 18, July 19, July 26, July 27, July 28, August 3, August 4, August 17, August 18, August 24, August 25, August 31, September 1, September 2, September 6 and September 7. Backup dates – July 22, August 8, August 11, August 16, August 22, August 23 and August 29.

27. On July 7, 2022, the parties met for their fourth full day bargaining session. During this session, the Union's team presented two initial proposals and two counter proposals. The Employer's team presented three initial proposals and two counter proposals. At the conclusion of the bargaining session, the Union again brought up bargaining dates and said that they were still waiting for an answer on the dates that were requested and provided on July 5th. Ms. Schwent said that the Employer team would try and have a response by the end of that day. The next confirmed bargaining session was July 20, 2022.

28. On July 11, 2022, Ms. Schwent emailed Ms. Hacker and offered the following additional dates for bargaining: July 28 from 2:00 – 5:00p.m., August 31 from 10:00 a.m. – 4:00p.m. and September 1 from 10:00 a.m. – 4:00 p.m. Ms. Schwent included the other agreed-upon dates in the email as well, with the exception of the July 20th bargaining date. Danielle Plesser, the Second Chair for the Union, responded later the same day letting Ms. Schwent know that the July 20th bargaining date was not on the list she sent.

29. On July 12, 2022, Ms. Schwent responded to Ms. Plesser's email and stated that the July 20th date was a tentative date and she would have a better idea the following day on if she could confirm the 20th. The Union's team received a confirmation on June 2, 2022, at 11:43 a.m., from OFM for the July 20th date. The June 2nd confirmation states "WPEA HE 2023-25 contract negotiations has been confirmed for the above-mentioned date/time" and included a calendar invitation for July 20th from 9:00 a.m. – 4:00 p.m.

30. On July 13, 2022, having not heard back from Ms. Schwent, Ms. Plesser sent a follow-up email at 4:35 p.m. asking for the status of bargaining on July 20th.

31. On July 14, 2022, Ms. Schwent responded that she likely would not have an answer on her availability for the 20th until the following Monday. Ms. Plesser again followed up the afternoon of July 18th because she had not heard back from Ms. Schwent about the 20th. Ms. Plesser let Ms. Schwent know that the Union's team was notified that afternoon that we would not be bargaining on the 20th because we had not heard back from her about availability. Ms. Plesser listed the remainder of the agreed-upon bargaining dates for confirmation from Ms. Schwent. Ms. Schwent responded at 7:05 p.m. asking her LR Assistant to send invitations for the additional dates and did not mention the July 20th date. Ms. Schwent said that her team would look at calendars again to see if we can find additional dates.

32. On July 27, 2022, the parties met for their fifth full day bargaining session. The parties were scheduled to begin bargaining at 9:00 a.m. Ms. Schwent emailed Ms. Hacker notifying her that the Employer would not be available to meet until 10:00 a.m.

At 10:05 a.m., Ms. Schwent texted Ms. Hacker that the Employer needed more time to present proposals but that they were agreeable to meeting to get Union proposals. Ms. Hacker suggested waiting until the Employer would have counters and Ms. Schwent indicated that the Employer would be prepared at 1:30 p.m. to present counters. The parties eventually agreed to reconvening at 2:45 p.m. that afternoon. The Union presented five initial proposals, including eight current contract proposals, and four counter proposals at the conclusion of the bargaining session. The Employer presented five counter proposals at the conclusion of the bargaining session.

33. Before concluding the bargaining session on July 27, 2022, Ms. Hacker shared the Union's concerns about progress at the table. At the conclusion of the fifth full day bargaining session, the parties had agreed to one tentative agreement (TA) and had made little to no progress on most other proposals that the Employer received on May 24, 2022. Ms. Schwent indicated that her team is doing the best they can to respond to proposals and shared that a lot of the time in bargaining had been spent "arguing" with the Union about "41.80." Ms. Hacker attempted to go over the number of proposals passed by the parties, to illustrate the disparity, but Ms. Schwent indicated she had the list and again reiterated that her team is doing the best they can. Ms. Schwent committed to having "all of the counters" to the proposals from May 24th by "the next session." When Ms. Hacker reminded Ms. Schwent that the next scheduled session was the afternoon of the following day, July 28, Ms. Schwent said that she had forgotten that the next session was the following day and that she wanted to retract her commitment and that they would do "the best we can." When the parties broke for the day, the next confirmed bargaining session was for July 28, 2022, from 2:00 p.m. – 5:00 p.m.

34. On July 28, 2022, at 2:02 p.m., Ms. Hacker texted Ms. Schwent asking if the Union's team should go to the joint session room. Ms. Schwent responded that her team was still writing proposals and she would text us soon. At 3:08 p.m., Ms. Schwent texted "We can agree to your TA list. Sending over Appendix D, which may answer your question from yesterday about Article 4." In addition, Ms. Schwent offered to put the August 4th bargaining session back on the calendar as an additional date. The Union did not receive any proposals from the Employer's team. At 4:05 p.m., Ms. Schwent texted "We are getting closer to trying to get you language on the training. I don't want to just give you back articles where we are saying reasserting CCL. We have an Appendix that I can send over then proposing we call it a day and use all of the 4th for bargaining." Ms. Hacker responded that the Union team was very disappointed that the parties were not able to productively bargain and that the Union's team had no other choice but to acquiesce to the suggestion to break for the day because there is nothing we can accomplish without the Employer's involvement. The next confirmed bargaining session is August 4, 2022.

35. Despite multiple attempts on the part of the Union, the Employer has refused to agree to additional bargaining dates that would be sufficient to complete this contract and get it ratified prior to October 1, 2022. The Employer has consistently canceled or eliminated dates that were previously agreed-upon and confirmed by the parties, without providing an equivalent amount of bargaining dates to make up for that time. When the parties do meet for negotiations, the Employer is rarely prepared to meet in

joint session at the agreed-upon time – multiple full day bargaining sessions (scheduled from 9:00 a.m. – 4:00 p.m.) did not result in the parties meeting until well into the late afternoon and with not enough time to completely present proposals. With the amount of time it takes the Employer to respond to Union proposals, we will not be able to reach a TA'ed agreement without a significant time commitment from the Employer's team.

36. The parties CBA outlines master contract bargaining and release time for the Union's team members in Article 39.11 – WPEA HE Master Agreement Negotiations. Subsection 39.11.A.1 states "The Employer will approve paid release time for the first seven (7) days of formal negotiations for one (1) Union team member, from each institution of higher education listed in the Preamble, who are scheduled to work on the day negotiations are being conducted. For all remaining formal negotiation sessions and travel to and from the sessions, the Employer will approve compensatory time, vacation leave, personal holiday, or leave without pay, or at the discretion of their supervisor, an employee may be allowed to adjust their work hours."

37. As of July 28, 2022, the parties have used seven of the seven formal bargaining sessions paid for by the Employer. At the conclusion of the seventh formal bargaining session, the parties had one tentative agreement out of sixty-five separate articles, appendices and MOUs. The Employer's inability to be productive during formal bargaining sessions has resulted in the Union's burden for pay being substantially higher than is reasonable and agreed to by the parties as well as interferes in members' ability to participate in contract negotiations as a member of the bargaining team.

38. As of July 28, 2022, the parties have met for thirty-seven hours of formal bargaining. Of those thirty-seven hours, approximately 10 hours have been in joint session. The majority of the time spent in joint session has been the Union presenting proposals.

39. WPEA must have a ratified contract by October 1, 2022, in order to meet our obligation under RCW 41.80. With approximately half of our total bargaining dates being completed, and the Employer's lack of response to proposals from the Union, WPEA runs a very serious risk of not meeting the October 1st requirement and not getting the HE CBA funded through the appropriate process.

Remedies Requested

1. WPEA seeks findings that the Employer violated RCW 41.80.110 (1)(e) by refusing to bargain collectively in good faith through the repeated cancellation of agreed upon bargaining dates as well as their unwillingness or inability to actually meet with the Union to bargain during large portions of bargaining sessions to which the Employer did ultimately appear.
2. WPEA seeks findings that the Employer violated RCW 41.80.110 (1)(e) by refusing to bargain collectively in good faith through when they repeatedly asserted that a Union proposal was not possible due to their payroll system and budgeting when that is demonstrably false.
3. WPEA seeks findings that the Employer violated RCW 41.80.110 (1)(e) by refusing to bargain collectively in good faith through when their representative asserted that, without a history of grievances, the Employer would not consider changes to the contract.
4. WPEA seeks findings that the Employer violated RCW 41.80.110 (1)(e) by refusing to bargain collectively in good faith and violated RCW 41.80.110 (1)(a) by interfering with members' ability to participate as a member of the Union bargaining team when they used up collectively bargained compensation for bargaining team members without actual collective bargaining.
5. WPEA seeks findings that the Employer violated RCW 41.80.110 through derivative interference as a result of the above actions and violations.
6. WPEA seeks findings that these violations of RCW 41.80.110 were willful.
7. WPEA seeks an order requiring a notice posted in all employee work areas and delivered to all employees working from home that it violated RCW 41.80.110 and reiterating the Employer's responsibilities to bargain in good faith under RCW 41.80.
8. WPEA seeks an order requiring the Employer to pay fifty-five additional hours of bargaining for each team member to make up for the dates that were not productive in June and July.
9. WPEA seeks an order requiring the Employer to provide in good faith sufficient additional bargaining dates and times to complete contract negotiations within legislatively required deadlines.
10. WPEA seeks an order requiring the Employer to act in good faith for all remaining bargaining sessions.

11. WPEA seeks an order requiring the Employer to reimburse the WPEA for any and all staff pay and legal fees incurred to dispute these willful violations of RCW 41.80.