

NO. 38447-1-III

IN THE COURT OF APPEALS,
OF THE STATE OF WASHINGTON
DIVISION III

WASHINGTON STATE COUNCIL OF COUNTY AND
CITY EMPLOYEES, AFSCME COUNCIL 2, AND LOCAL
270,

Respondents,

v.

CITY OF SPOKANE, a Washington municipal corporation,

Appellant.

BRIEF OF AMICUS CURIAE SNOHOMISH COUNTY

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I. IDENTITY OF AMICUS CURIAE

Snohomish County is political subdivision of the State of Washington that operates as a home rule Charter County with a Council/Executive form of government. Under the Charter and ordinances of Snohomish County, the Executive is responsible for negotiating collective bargaining agreements under parameters set by the Council. The Council maintains ultimate responsibility for setting labor policy and over labor negotiations.

Snohomish County has over 3000 full-time-equivalent employees with unionized employees comprising almost three quarters of the workforce within 36 separate bargaining units. AFSCME represents the majority of the unionized employees.

II. INTRODUCTION

Snohomish County and other counties and political subdivisions similarly situated have an interest in ensuring uniform interpretation regarding the scope and limitations of its permissive bargaining obligations. The principal issue here is

whether one party in a public collective bargaining relationship can mandate permissive preconditions before it will engage in bargaining on mandatory subjects. In this case, the City of Spokane in its Charter has mandated an unwavering position on the terms of engagement with collective bargaining representatives by requiring that all contract bargaining sessions be advertised under the Open Public Meetings Act and be made “transparent and open to public observation” regardless of any bargaining representative’s position on this permissive subject. Amicus Snohomish County urges the Court to hold that such a mandate induces bad faith bargaining conduct and is void.

III. STATEMENT OF THE CASE

Snohomish County adopts Respondent’s Statement of the Case from the Brief of Respondents. The most critical aspect of the facts, however, is the text of paragraphs A and B to Section 40 of the Charter of the City of Spokane:

Section 40: Open Collective Bargaining
Negotiations

A. As of December 1, 2019, the City of Spokane will conduct all collective bargaining contract negotiations in a manner that is transparent and open to public observation both in person and through video streaming or playback. This section does not require the city to permit public comment opportunities during negotiations.

B. The City of Spokane shall provide public notice of all collective bargaining negotiations in accordance with the Open Public Meetings Act (RCW 42.30.060-42.30.080.)

CP 4, ¶ 3.1.

IV. ARGUMENT

Chapter 41.56 RCW requires public employers and exclusive bargaining representatives to bargain in good faith regarding mandatory subjects, including wages, hours, and working conditions. RCW 41.56.030(4). Parties are not required to bargain on permissive or nonmandatory subjects of bargaining, including managerial and union prerogatives and procedures for bargaining mandatory subjects. Klauder v. San Juan County Deputy Sheriffs' Guild, 107 Wn.2d 338, 342 (1986). It is an unfair labor practice to bargain to impasse on a permissive subject of bargaining. Id. Similarly, a party commits

an unfair labor practice when it conditions its willingness to bargain on a permissive subject. Spokane County, Decision 13435 at *6 (PECB 2021).

In Lincoln County. v. Pub. Emp. Relations Comm'n, 15 Wn. App. 2d 143, 157, 475 P.3d 252 (2020), review denied, 197 Wn.2d 1003 (2021), this Court held that whether collective bargaining is conducted in public or private is a permissive subject such that neither party could impose its preferred procedure on the other. The Public Employment Relations Commission (PERC) has consistently ruled that such ground rules or bargaining procedures are permissive subjects about which parties are not required to bargain. State - Fish and Wildlife, Decision 11394-A (PSRA, 2012), aff'd, Decision 11394-B (PSRA, 2013), aff'd, Fish and Wildlife Officers' Guild v. Department of Fish and Wildlife, 191 Wn. App. 569 (2015); State - Office of Financial Management, Decision 11084-A (PSRA, 2012); City of Sumner, Decision 6210 (1998), corrected, Decision 6210-A (1998). Yet the parties to a collective

bargaining relationship are required to engage and bargain in good faith on mandatory subjects.

In this case, Section 40 of the Spokane City Charter requires that the City take an unwavering position on a permissive subject of bargaining as a precondition to substantive bargaining. Such a mandate embedded in the governing documents of a party to a collective bargaining agreement induces bad faith negotiations and avoidance of substantive bargaining. The Section 40 mandate creates an untenable position: Because the question of meeting privately or publicly is a permissive subject, and thus neither party is required to discuss let alone reach agreement, the City is required not to agree to private meetings and therefore cannot meet without an agreement it cannot force any union to make. It therefore cannot bargain substantively in good faith under the shadow of an unreasonable mandate.

V. CONCLUSION

For the foregoing reasons, Snohomish County urges the Court to uphold the invalidation of Section 40 of the Spokane City Charter.

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Respectfully submitted this 17th day of February, 2022.

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