

LABOR UPDATES

WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION DECISIONS

LABOR LEGISLATION

Senate Bill 5041 (ESSB 5041) (effective January 1, 2026)

Washington's ESSB 5041 significantly expands unemployment insurance eligibility by allowing employees engaged in a qualifying labor strike, as well as workers affected by an employer-initiated lockout, to receive unemployment benefits under certain circumstances. Benefits do not begin immediately; rather, eligibility arises on the second Sunday following the start of a strike, after which claimants must satisfy the standard one-week waiting period, resulting in benefits becoming available approximately 15 to 21 days after the strike commences if the labor dispute remains unresolved. Eligible workers may receive up to six weeks of unemployment compensation during the strike or lockout. The legislation represents a substantial shift from prior law, under which striking workers were generally ineligible for unemployment benefits, and employers should anticipate the possibility of increased unemployment insurance costs and experience ratings when striking employees qualify for and receive benefits.



WRITTEN BY:
David Worley
Marley Masser

PERC DECISIONS

1. DISCIPLINE, DISCRIMINATION, AND RETALIATION FOR PROTECTED ACTIVITY

Amalgamated Transit Union Local 587 v. King County, 136581-U-23 (Jan. 16, 2025)

Amalgamated Transit Union (ATU) alleged the County removed Chuck Lare from his elected seat on the Atlantic Base safety committee in reprisal for protected activity the day after he challenged the County's reduction of employee-elected members. The Commission affirmed a violation of RCW 41.56.140(1) because serving on, and advocating about, the safety committee was protected activity (safety is a mandatory subject, and a Department of Labor & Industries (L&I)-mandated committee does not strip statutory protection). The County's stated staffing/charter rationale was pretext, given its inconsistency with past practice and minimal staffing impact.

KEY TAKEAWAYS

- Employee advocacy on workplace safety and committee composition is protected; adverse action closely following it supports a causal-connection inference.
- A nondiscriminatory reason will not hold up if applied inconsistently—deviation from past practice and written policy is classic evidence of pretext. Employers should document a role-neutral, consistently applied basis before acting.

2. EMPLOYER NEUTRALITY IN REPRESENTATION ELECTIONS

Teamsters Local 839 v. Franklin County, 139156-U-24 & 138123-E-24 (Nov. 26, 2025)

During a Teamsters/Fraternal Order of Police (FOP) runoff, the County let the FOP's attorney host a pizza lunch for a pre-assembled group on a mandatory training day. Uniformed supervisors facilitated it and spoke favorably about the FOP while the County was simultaneously resisting Teamsters' access. The Commission found the County breached its neutrality duty (WAC 391-25-140(3)) and unlawfully assisted the FOP and interfered with employees (RCW 41.56.045(1), (2)). It vacated the election, ordered a rerun with equal Teamsters access, and awarded attorney fees because the defense was meritless and ignored precedent that employers answer for supervisors' conduct.

KEY TAKEAWAYS

- Once a petition is filed, employers should not show preference between competing unions; it should not extend access, facilities, or a platform to one that it would not equally give the other.
- The employer is bound by supervisors' conduct; a supervisor's disclaimer that they are not advocating does not cure the perception of favoritism.
- Meritless defenses and disregard of settled precedent can trigger attorney-fee liability.

3. THE DUTY TO BARGAIN—MANDATORY SUBJECTS AND UNILATERAL CHANGE

King County Corrections Guild v. King County, 137840-U-23 (Mar. 11, 2026)

After more than 14 years of accommodating officers with medical restrictions against mandatory overtime, the County proposed three medical separations of officers who had exhausted protected leave. The Commission affirmed a violation of RCW 41.56.045(4): creating a new ongoing requirement for continued employment is a mandatory subject, and under the *City of Richland* balancing test employees' job-security interest predominated. Compliance with The Americans with Disabilities Act (ADA) and the Washington Law Against Discrimination (WLAD) was not a defense, because those laws permit but do not compel separation, so there was no legal necessity.

KEY TAKEAWAYS

- Before treating any capacity (e.g., the ability to work mandatory overtime) as an essential function that can end employment, give the union notice and bargain, even within a disability-accommodation process.
- Following antidiscrimination law is not a shield unless the law actually required the action.
- Status quo is judged practically by impact on the unit; a sudden cluster of separations after years of accommodation reads as a change.

IBEW Local 77 v. King County, 135403-U-22 (Apr. 15, 2025)

The County changed the minimum certification requirements for Railway Electrical Workers (REW), who work with lethal voltages, without bargaining. Although minimum hiring qualifications are generally a management prerogative, credited employee testimony tied the REW qualifications directly to worker safety, tipping the balance to mandatory; the unilateral change violated the duty to bargain. The Commission softened the remedy to status quo ante plus bargaining over impacts, with no forced removal of incumbents.

KEY TAKEAWAYS

- The general rule that qualifications are managerial has an exception when changes to qualification requirements affects mandatory subjects of bargaining, such as safety (i.e., working conditions). Where a qualification change credibly affects unit-member safety, employers must bargain first.
- Build a record: the County lost partly because it offered no witnesses to rebut the union's safety testimony.
- Have clear and unmistakable waiver language in the Collective Bargaining Agreement (CBA) management rights clause.

UAW Local 4121 v. University of Washington, 136127-U-23 (June 11, 2025)

After L&I raised the Washington Minimum Wage Act (MWA) overtime salary threshold, the University of Washington (UW) let departments give discretionary salary and FTE increases to 94 Research Scientists and Engineers so they would remain overtime-exempt during an open first-contract period. The Commission held UW was not required to bargain the reclassification of employees to overtime-eligible (that is dictated by statute), but the discretionary raises to avoid that classification were a mandatory subject and an unlawful unilateral change. The Commission noted that the Union's status quo guidelines were not a clear waiver. The raises were preserved (no claw back absent a union request), and bargaining was ordered.

KEY TAKEAWAYS

- Employers should separate what the law compels (e.g., reclassification) from what it chooses (e.g., discretionary raises). The compelled part is not bargainable, whereas the discretionary part is.
- Waiver of bargaining must be conscious, clear, and unmistakable. General “status quo guidelines” will not cover discretionary moves they do not specifically authorize.

SEIU Local 925 v. University of Washington, 141275-U-24C (Feb. 18, 2026)

After SEIU filed representation petitions, UW excluded petitioned-for professional staff from FY25 merit raises. UW had approved a 3% pool but had not set individual amounts (a 0.5–10% range) when the petitions were filed. The Commission found mostly no violation: because UW retained discretion over individual amounts, the raises were not part of the “dynamic status quo.” The exception was the School of Medicine, which had already fixed and announced a flat 3% before the petition—there, withholding the raise unlawfully altered the status quo.

KEY TAKEAWAYS

- Once a petition is filed the employer must hold the status quo (WAC 391-25-140(2)). A planned change is part of the dynamic status quo only if the decision was final, non-discretionary, and communicated so employees could expect it.
- Predetermined, fixed increases must continue during the petition’s pendency; genuinely discretionary, unallocated increases need not. Watch for pockets (like one school) where discretion was already exhausted.
- On a procedural note, UW’s appeal brief was stricken as untimely; an inadvertent calendaring error did not justify a waiver.

4. THE DUTY TO BARGAIN—DECISION VERSUS EFFECTS

SEIU Local 925 v. King County, 137655-U-23 (Feb. 3, 2026)

Facing jail deaths, 116 corrections vacancies, and overtime pressure, the County ran a pilot to house some detainees at SCORE, a non-County jail. The Commission held the decision to contract with SCORE was a permissive subject—a core entrepreneurial, level-of-service decision—so there was no duty to bargain the decision itself. The County did have to bargain effects, and substantial evidence showed it did so in good faith (e.g., client access, do-not-record lists, meeting space, a retention bonus). The Commission dismissed the complaint and clarified that the public-interest prong asks whether the decision is “amenable to resolution through the bargaining process.” Here it was not, because the drivers were outside the affected unit.

KEY TAKEAWAYS

- Scope-of-operations, level-of-service, and location decisions generally remain management prerogatives but the duty to bargain effects is real and must be discharged in good faith.

- The distinction turns on why the employer acted: decisions driven by labor cost or to reassign/reduce unit work tend to be mandatory; decisions driven by operational needs outside the unit tend to be permissive.
- Good-faith effects bargaining does not require written proposals or solving every problem; rolling, responsive action can satisfy the duty.

IAFF Local 452 v. City of Vancouver, 141385-U-24 (Oct. 16, 2025)

The City deployed pick-up-truck “squad” rescue units as single-unit response vehicles without bargaining. The Examiner dismissed the refusal-to-bargain complaint. Although the City implemented the plan unilaterally and no contract provision waived bargaining, the *City of Richland* balancing test tipped toward management—deciding how to deploy squad trucks in emergency response is a management prerogative, not a mandatory subject. A duty to bargain the effects remained, but the record showed no refusal to bargain those effects.

KEY TAKEAWAYS

- Unilateral implementation of a permissive (management-prerogative) decision is lawful; the label attached to the change does not control, the balancing test does.
- The decision being permissive does not preserve an effects claim automatically; a union must affirmatively pursue effects bargaining.

5. GOOD-FAITH BARGAINING AND THE DUTY TO PROVIDE INFORMATION

UAW Local 4121 v. University of Washington, 136218-U-23 (July 2, 2025)

UW and UAW bargained postdoc wages on the shared premise that postdocs would become overtime-eligible. Late in negotiations UW abruptly asserted postdocs were exempt under a medical-resident regulation, invoked unspecified L&I “conversations,” and withheld the analysis on privilege grounds, resulting in a strike. The Commission affirmed a violation of RCW 41.56.140(4): the good-faith duty requires “full and frank” discussion, and UW shifted its position late, relied on a facially unreasonable reading of the regulation, refused to substantiate it, and separately failed to provide requested relevant information.

KEY TAKEAWAYS

- A mid-stream reversal on a premise the parties negotiating on invites a bad-faith finding, especially near contract expiration and without disclosure.
- Employers should not use attorney-client privilege as a blanket to avoid substantiating a bargaining position or answering a relevant information request.

King County Regional AFIS Guild v. King County, 135058-U-22 (Mar. 26, 2025)

The Guild alleged surface bargaining, information-request failures, and a unilateral change in letting Guild attorneys attend *Loudermill* (pre-discipline) hearings. The Commission found no surface bargaining and held the County could treat one stale request as closed, but the County violated the duty on a later request by delaying and delivering documents on the eve of a hearing. Most consequentially, the Commission reversed the view that *Loudermill*-related matters are outside its jurisdiction: unilateral changes to mandatory subjects (discipline procedures) are within Public Employment Relations Commission's (PERC) reach even where they overlap due-process rights.

KEY TAKEAWAYS

- Employers should respond to information requests promptly and communicate about scope and delay; treat requests as a matter of genuine communication rather than evasion, and do not dump documents right before a hearing.
- Bargained or past-practice rights layered on top of *Loudermill* protections—such as union representation at pre-discipline hearings—are mandatory subjects; do not change them unilaterally on the assumption PERC lacks jurisdiction.

6. INTERFERENCE, WEINGARTEN, AND DOMINATION—PLEADING STANDARDS***Public School Employees of Washington v. Evergreen School District, 144984-U-26 (Apr. 20, 2026)***

At the cause-of-action stage under WAC 391-45-110 (a preliminary ruling, not a decision on the merits), the Examiner held the union's allegations—that the District pressured employees to accept representatives other than their chosen union president and to shorten the CBA's 48-hour window to arrange representation—stated claims for unilateral change, denial of *Weingarten* representation, interference, and discrimination. The Commission dismissed the domination allegation because domination requires proof the employer intended to control the union's internal affairs (e.g., financial support or favoring a rival), which the pleadings did not show.

KEY TAKEAWAYS

- Interfering with an employee's choice of union representative, or with contractual representation timelines, can support Weingarten and interference claims.
- Domination is a distinct and higher bar than interference, requiring intent to control the union's internal affairs.

7. TIMELINESS AND THE SIX-MONTH LIMITATIONS PERIOD***Teamsters Local 117 v. University of Washington, 137668-U-23 (Feb. 25, 2026)***

The Teamsters alleged unlawful skimming when UW contracted unarmed security patrols to an outside firm. The Commission dismissed the complaint as untimely. The limitations clock for contracting-out runs from when the contracted work begins, but actual or constructive notice can start it earlier. In this instance, a joint labor-management meeting and communications took place months before the work began.

KEY TAKEAWAY

- Clear, documented notice of a contracting decision can start the six-month clock and foreclose a later challenge. Employers should provide (and document) that notice early.

Xenia Davidsen Perea v. City of Everett, 143103-U-25C (PECB, June 4, 2026)

The complaint challenged continued union-dues deductions after the employee revoked her authorization. The Commission dismissed it as untimely, rejecting the continuing-violation doctrine; the deductions had continued for months due to administrative error, and the employee had been reimbursed.

KEY TAKEAWAYS

- The six-month statute of limitations is applied strictly, even to ongoing deduction errors.
- Fix payroll/deduction errors promptly once a revocation is received. The City's delayed correction is what generated the dispute.

8. REMEDIES AND COMPLIANCE

King County Regional AFIS Guild v. King County, 127743-U-15 (Nov. 17, 2025)

In long-running compliance proceedings, the Commission ordered the County to purge an internal investigation file and related reprimand whose retention period had expired, and confirmed that interest accrues on monetary make-whole awards under WAC 391-45-410, from the date of violation to payment.

KEY TAKEAWAYS

- Remedial obligations can persist for years, and interest runs on lost-overtime and similar make-whole awards.
- Employers should purge disciplinary records once the retention period lapses absent a demonstrated need to retain them.

Disclaimer: This summary is not legal advice and is based upon current statutes, regulations, and related guidance that is subject to change, with or without notice. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps employers must take under applicable laws. For legal advice on these or related issues, please consult qualified legal counsel directly.