

IN THE MATTER OF ARBITRATION

BETWEEN

THE INTERNATIONAL UNION,  
UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA, (UAW),  
LOCAL UNION 4121,

Union,

and

THE UNIVERSITY OF WASHINGTON,

Employer.

ARBITRATOR'S OPINION

AND AWARD

FEE AND TUITION

WAIVERS

HEARING SITE:

UW Campus, Seattle, Washington

HEARING DATE:

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REPRESENTING THE UNION:

Paul Drachler  
Douglas Drachler McKee & Gilbrough LLP  
Securities Bldg., Suite 1030  
1904 Third Avenue  
Seattle, WA 98101-1170

On the Brief: Kenneth Lang  
International Representative UAW  
2633 Eastlake Avenue East, Suite 200  
Seattle, WA 98102

REPRESENTING THE EMPLOYER:

Mark K. Yamashita  
Assistant Attorney General  
University of Washington Division  
4333 Brooklyn Avenue NE – 18<sup>th</sup> Floor  
UW Mailbox 359475  
Seattle, WA 98195-9475

ARBITRATOR:

Gary L. Axon  
P.O. Box 190  
Ashland, OR 97520  
(541) 488-1573

**I.           INTRODUCTION**

This case arises out of the University of Washington (Employer or University) imposing two new mandatory student fees on Academic Student Employees (ASEs) effective September 2011. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 4121 (Union) filed a grievance dated September 20, 2011, alleging the Employer violated Articles 1, 2, and 7 of the Collective Bargaining Agreement (CBA) providing tuition and fee waivers would be maintained at current rates/level. The Employer denied the grievance and the Union advanced the case to arbitration.

**II.           STATEMENT OF THE ISSUE**

The parties were unable to agree on a statement of the issue to be decided by the Arbitrator. The Union framed the question to read:

Did the University violate the collective bargaining agreement by imposing the cost of the UPASS fee, and the Facilities Renovation fee, and the Bothell Field fee on Academic Student Employees beginning in Fall Quarter 2011? If so, what shall be the remedy?

The Employer framed the question to read:

Did the Employer violate Article 1, Article 2, and Article 7 of the collective bargaining agreement when the Universal Student U-Pass fee and the Facilities Renovation fee were imposed on students beginning the Fall 2011 academic term?

Based on the evidence and argument of the parties, the Arbitrator formulates the questions to be decided as follows:

Did the Employer violate the parties' Collective Bargaining Agreement when the Universal Student U-Pass fee and the Facilities Renovation fee were imposed on Academic Student Employees beginning the Fall 2011 academic term?

If so, what shall be the remedy?

### III.

#### **RELEVANT CONTRACTUAL PROVISIONS**

##### **ARTICLE 1 – PURPOSE AND INTENT**

Section 1. It is the purpose of this Agreement to provide for the wages, hours and terms and conditions of employment of the employees covered by this Agreement ... .

Section 2. The University will not engage in any activity or enter an agreement or otherwise discuss with any other group or individual for the purpose or effect of undermining the Union as the representative of individuals in the unit. The parties recognize the importance of the shared governance practices developed at the University of Washington. The parties do not intend to restrict, limit, or prohibit the exercise of the functions of the faculty councils, and the Handbook of the University of Washington; nor do the parties intend to restrict, limit, or prohibit the exercise of the functions of the Graduate and Professional Student Senate, the Associated Students of the University or any other student organization in matters not covered by this Agreement.

...

Section 4. The University will not enter into any agreement with employees in the unit for the purpose of undermining the Union in its role as the representative of unit employees. No individual or group of individuals acting independently of the authorized representatives of the University or the International Union and its Local Union may alter, amend, or modify any provisions of this Agreement.

Section 5. Transitional Maintenance of Benefits

A. All material benefits to employees attributable to the ASE positions and which are set forth in written University policy

existing as of the date of the Agreement shall be continued unless involving a subject covered by the terms of the Agreement.

B. Any prior benefit not the subject of a written University policy shall be treated as written if such prior benefit has been:

1. a consistent and ascertainable course of conduct;
2. engaged in for some reasonable length of time;
3. of which both parties (the University and the Union) are aware;
4. which does not alter the written terms of this Agreement or otherwise restrict the rights of the University under this Agreement;
5. which is in respect to a given set of specific circumstances and conditions; and
6. involves a group of employees in a department or hiring unit.

C. The burden is on the Union to establish a maintained benefit as described above.

## **ARTICLE 2 – RECOGNITION**

In accordance with PERC Case No. 16288-E-02-2699, PERC Decisions 8315-PECB and 8315-B, and RCW 41.56.203, the University of Washington hereby recognizes the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO and its Local Union as exclusive bargaining representatives of all regular part-time student employees included in the bargaining unit.

## **ARTICLE 3 – DEFINITIONS**

Section 1. The term “ASE” (Academic Student Employee) shall mean employees covered by this Agreement.

Section 2. The term “Salaried ASE” shall mean an ASE who is appointed on a percentage FTE basis. Appointment percentages may vary, but are normally fifty percent (50%) for at least one academic quarter.

...

## **ARTICLE 7 – FEE AND TUITION WAIVERS**

Tuition and fee waivers for ASEs with a 50% FTE appointment will be maintained at their current rates/level.

Un. Ex. 2.

### **IV. STATEMENT OF FACTS**

In 2004 the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 4121 and the Board of Regents of the University of Washington entered into a Collective Bargaining Agreement. The parties' CBA was renegotiated in 2007, 2010, and 2011. The provisions in the CBA pertinent to this case have not changed since the original language was adopted in 2004.

The current bargaining unit consists of more than 4,000 academic student employees. Most of the bargaining unit employees are salaried 50% full time equivalent (FTE) graduate student Teaching and Research Assistants. As a condition of employment, all ASEs are required to be enrolled as a student at the University. ASEs must pay tuition and fees to the University, unless waived under the parties' contract. Tuition and fee waiver or remission is an important component in determining overall ASE annual compensation for work performed.

When the 2004 CBA was instituted, ASEs with a 50% FTE were granted tuition and fee waivers for both operating and technology fees. A transportation fee called U-Pass was waivable through an opt-out system. The waivable option for the U-Pass was available to any student enrolled at the University, not just student Union

members. The 2004 financial arrangement for 50% FTE academic student employee fee waivers continued until Fall 2011.

On September 16, 2011, the Employer imposed two new mandatory fees on all students enrolled at the University of Washington: (1) a Student Facilities Renovation Fee (FR), and (2) a mandatory Universal U-Pass fee (U-Pass). On September 20, 2011, the Union grieved the imposition of the two new fees on bargaining unit members, citing violations of "Articles 1, 2, 7 and all others that may apply" of the CBA. The Union's grievance stated the imposition of the new fees "... violates Article 7 which provides that tuition and fee waivers for ASEs with a 50% FTE appointment will be maintained at their current rates/level." Un. Ex. 3.

On October 20, 2011, the Employer denied the Union's grievance, stating that the implementation of the recently enacted fees did not breach the parties' CBA. Un. Ex. 5. On October 25, 2011, the Union moved the grievance to arbitration.

An arbitration hearing was held and the parties were accorded the full and complete opportunity to present evidence and argument in support of their respective positions. Post-hearing briefs were timely filed. The grievance is now properly before the Arbitrator for a final and binding decision.

## **V. POSITIONS OF THE PARTIES**

### **A. The Union**

The Union argues that the University violated the parties' CBA when management imposed the cost of two newly created fees on ASEs in the Fall of 2011. First, the imposition of the fees violated the Article 7 requirement that tuition and fee

waivers for ASEs with a 50% FTE appointment be maintained at current rates/level. Second, the unilateral change by the University to existing fee and tuition waivers violated the statutory duty to bargain over waiver or remission of fees and tuition. Finally, the unilateral imposition of the mandatory U-Pass fee violated Article 1 prohibitions against the University reaching agreement with "any other group," and transitional maintenance of benefits requirements.

The plain language in Article 7 dictates that waivers be maintained at current levels. The current rates/level of waivers, which was followed since 2004, required 50% FTE ASEs to pay three fees: Building, SAF, and IMA. When the University converted the U-Pass from waivable to a mandatory fee and added the FR fee, the University violated the contract by not maintaining "current rates/level."

Even if the Arbitrator finds the meaning of Article 7 is not clear on its face, the record still supports the Union's position. The parties had a mutual understanding of what was meant by the language. Existing practice on current rates/level prior to the imposition of the new fees was for 50% FTE ASEs to pay 100 percent of three fees, have the option of waiving the U-Pass fee, and to receive a full waiver of the remainder of the fees. When the University unilaterally imposed the two new fees, the Employer clearly violated the parties understanding, therefore violated Article 7. Subsequent bargaining history reinforces the parties' mutual understanding of Article 7.

The Union contends the CBA, when read as a whole, supports the allegation that the University violated the contract. The Employer's reliance on statutes predating the enactment of the parties' 2004 CBA is misplaced. The only applicable statute is the one under which the parties bargain, and it is specifically incorporated in

Article 2. RCW 41.56.203 says, "tuition and fee remission and waiver is within the scope of bargaining." RCW 41.56.203 makes no distinction between any of the components of tuition and fees, whether student lead, statutorily established, or not. Had it been the intent of the parties to incorporate statutes predating the CBA, the parties would have done so. The University's arguing otherwise is an attempt to rewrite the CBA in its favor. The Union urges the Arbitrator to reject the University's position.

The CBA clearly bars the University from imposing the cost of new fees without meeting its obligation to bargain over tuition and fee remission/waiver. The University made no attempt to fulfill the duty to bargain prior to the imposition of the two fees. The statutory/contractual obligation to bargain must be fulfilled. Because it was not, the Union must prevail.

The mandatory U-Pass was agreed to by student governing bodies and approved by the Board of Regents. The deliberations took place independently from the Union. When the terms of that agreement were imposed on the bargaining unit, the University violated the prohibition against reaching agreement with "any other group." Since 2004 the optional U-Pass was a benefit to the unit. Both parties were aware of this benefit. The opt-out component of the U-Pass was a consistent ascertainable course of conduct as defined in the parties' contract and should be enforced.

The Union disputes the University's contention that it merely acted as a collection agency for the Universal U-Pass fee. The University has the ultimate decision-making authority with respect to implementing student fees. The University collects other fees in a similar fashion as collections for the Universal U-Pass fee. The University did not even consider the CBA at the time it agreed to the implementation of



the mandatory U-Pass fee. The University's collection agency argument is an attempt to circumvent the parties' contract. The argument lacks merit and should be rejected by the Arbitrator.

The Union requests that the Arbitrator find the University violated the CBA and that the University be ordered to waive the two newly imposed fees for all current and prospective 50% FTE ASEs. The Union also asks that the students who paid either of the two newly imposed fees be reimbursed with interest paid.

### **B. The Employer**

The Employer argues the assessment of a mandatory student U-Pass fee and the Facilities Renovation fee do not violate the Collective Bargaining Agreement. The CBA clearly provides that the rate of waiver and remittance for tuition and fees remain the same, but does not preclude the increase in assessment of fees either by the University or the assessment of fees on students by student government. The provision requiring the maintenance of material benefits attributable to ASEs does not apply to mandatory student fees, because the option not to pay those fees is not an employee benefit.

The U-Pass fee and the Facilities fee are not fees imposed on employees of the University as a condition of employment. Students in the bargaining unit, who are employed by the University, pay the fees because of their status as students, not because of their status as employees. The fees or the mandatory payment thereof would not be a subject of the CBA unless the parties bargained their inclusion, which they did not.

The Employer disagrees with the Union's contention that a past practice regarding fee waiver was established. The Union has not sufficiently demonstrated that the past practice of the University has been to relieve bargaining unit members from paying student fees. The authority of the Arbitrator is limited by the contract. In the absence of clear authority to change the mandatory student U-Pass program to permit unit members to opt out of paying those fees, the Arbitrator cannot order a remedy and the grievance must be dismissed.

The terms "fee" and "fee waiver" are not defined in the CBA but are defined by statute. The establishment of tuition and fees are outside the scope of the CBA and the contract does not include any promise by the University to limit tuition or fees. The Facilities Renovation fee was a mandatory fee assessed against all students, and was statutorily allowed. The Associated Students of the University of Washington and the Graduate and Professional Student Senate are student government bodies with statutory authority to establish certain fees to be assessed against students. Both governing bodies were responsible for the changes to the U-Pass program, which affected all students at the Seattle Campus.

The Employer maintains that the contract does not contain any plain language restricting the University from permitting the Universal U-Pass fee and the Facilities Renovation fee from being collected from Seattle campus students, including bargaining unit members. The contract is unambiguous. Tuition and fee waiver will remain at their current levels and rates. The clear meaning of that provision is that the University will not waive any fee or tuition component, including the student U-Pass fee and the Facilities Renovation fee, which it has not previously waived. During all

contract negotiation sessions, the University has rejected the Union's proposals to waive all mandatory fees. Because the plain language is unambiguous, the bargaining history is irrelevant.

The University did not violate the clear language of the contract. A waiver of tuition or fees is not the same as preserving an option given to students to decline a U-Pass. The University has no obligation under the contract to prevent the mandatory fees to be assessed by the Associated Students of the University of Washington and Graduate and Professional Student Senate on students or to permit the bargaining unit members to opt out of either fee. The mandatory fees are assessments against students whether employed or not. If the absence of fees is a material benefit, it is a benefit to students not to employees. If bargaining unit members receive a benefit from not having to pay mandatory fees, it is a benefit derived from their status as students, not employees. The Union improperly seeks to distinguish its bargaining unit members as other than students. They are, however, students first.

The Union's grievance concerning the mandatory student U-Pass fee and the Facilities Renovation fee should be denied. The CBA does not include any obligation by the University to permit unit members to opt out of the U-Pass program or to waive or remit the Facilities Renovation fee. The option to pay these fees is not a material benefit of employees attributable to an ASE position, but instead student fees which do not rise out of the employment relationship between ASEs and the University. The Arbitrator has no authority to rescind the actions of fees imposed by student government. Nor does the Arbitrator have authority under the CBA to jeopardize the

student U-Pass program or to relieve unit members from the costs of their education. Therefore, the grievance must be denied.

## **VI. DISCUSSION**

The Arbitrator holds the Union proved by a preponderance of the evidence that the Employer violated the parties' Collective Bargaining Agreement when the Universal Student U-Pass fee and the Facilities Renovation fee were imposed on 50% FTE Academic Student Employees in the Fall of 2011. This conclusion is supported by an examination of the contract language and the evidence presented at the arbitration hearing. Accordingly, the grievance will be sustained. The reasoning of the Arbitrator is set forth in the discussion that follows.

Your Arbitrator first addresses the Employer's argument that the Universal U-Pass and FR fees:

... are assessments against students whether employed or not. If the absence of fees is a material benefit, it is a benefit to students not to employees. If bargaining unit members receive a benefit from not having to pay mandatory fees, it is a benefit derived from their status as students, not employees.

Er. Br., p. 13.

I find the Employer's logic is faulty and the conclusion lacks merit. The Employer disregards basic tenets inherent in the creation and effects of a collective bargaining agreement as well as the specific contract language in Articles 1, 2, and 3 of the parties' Collective Bargaining Agreement.

A collective bargaining agreement is a legally enforceable contract. The provisions of a collective bargaining agreement are negotiated and mutually agreed on

by the affected parties to the contract. The parties to this contract, and intended beneficiaries, are clearly defined and established. Article 3, Section 1 defines the bargaining unit members covered by the Agreement before me, reading: “The term ‘ASE’ (Academic Student Employee) shall mean employees covered by this Agreement.” Emphasis added. All bargaining unit members covered by the parties’ CBA are students employed by the University. The rights and obligations of the defined employed students are established in the CBA.

Article 1 defines the purpose and intent of the parties for entering into the contract, reading in part:

Section 1. It is the purpose of this Agreement to provide for the wages, hours and terms and conditions of employment of the employees covered by this Agreement ... .  
Emphases added.

The Article 2 recognition clause states, in part:

... the University of Washington hereby recognizes the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO and its Local Union as exclusive bargaining representative for all regular part-time student employees included in the bargaining unit.

Emphasis added.

The plain contract language recognizes the Union as the exclusive bargaining representative for Academic Student Employees. The CBA has a stated purpose of providing “... wages, hours and terms and conditions” for the student employees covered by the Agreement. Tuition and fee waivers are included as “terms and conditions of employment” covered by the Agreement in Article 1. Academic Student Employees are the expressly stated bargaining unit members who are “covered by this Agreement.”

The Arbitrator cannot ignore clearly stated contractual terms. Academic Student Employees do not lose their status as bargaining unit members, nor the protections granted by the CBA, merely because certain mandatory fees are assessed against the entire student body. Academic Student Employees are covered by the CBA and are bound and protected by mutually negotiated contract terms.

Your Arbitrator next addresses the question whether the Universal Student U-Pass fee and the Facilities Renovation fee imposed on 50% FTE Academic Student Employees in Fall 2011 violated the parties' Agreement. Interpretation of a collective bargaining agreement requires an examination of the text of the agreement and the context of the agreement as a whole, not from a single word or phrase. If the language of the agreement is clear and unambiguous, it will not be given another meaning and should be enforced without further analysis. Extrinsic evidence, such as bargaining history and past practice are considered only if the parties adopted language that is ambiguous. Both the Union and Employer argue the contractual provisions before the Arbitrator in this case are clear and unambiguous. Your Arbitrator agrees.

Article 7 of the parties Agreement reads: "Tuition and fee waivers for ASEs with a 50% FTE appointment will be maintained at their current rates/level." Emphasis added. Un. Ex. 2. Article 7 was adopted in 2004 and has remained unchanged since that time. Between 2004 and September 2011, ASEs with a 50% FTE appointment were required to pay the Services and Activities fee, IMA fee, and Building fee. The University granted tuition and fee waivers for the Operating fee and the Technology fee. The U-Pass fee was waivable by opting out of the transportation program. In September 2011 the University unilaterally added the Facilities Renovation

fee and Universal U-Pass fee. Gary Farris, Director of Finance and administration, testified for the University describing the Universal U-Pass as a “new fee.” Tr., p. 122. Your Arbitrator finds that when the two new fees were unilaterally imposed on 50% ASEs in September 2011, tuition and fee waivers were not maintained at current rates/level as required by Article 7.

Much of the University’s case depends on the fact the two newly imposed fees were enacted by student government bodies, therefore not part of the parties’ contract. The University proffered extensive evidence describing the changes made in the U-Pass transportation program. It was established that the cost of the U-Pass program had increased over the years and the viability of the U-Pass program was questioned. In response, two student government bodies, the Associated Students of the University of Washington and the Graduate and Professional Student Senate, negotiated with Transportation Services. Ultimately the University adopted the Universal U-Pass program, which included removing the waiver option for all University students, including Union members. The Union did not participate in the negotiations resulting in the changes eliminating the waiver option. Although your Arbitrator is sympathetic to the University’s plight that the viability of the Universal U-Pass program is dependent upon full student body participation, this fact does not excuse the University from complying with the parties’ contract.

The Article 2 recognition clause clearly establishes the Union as exclusive bargaining representative for all regular part-time student employees included in the bargaining unit. Article 1 of the parties’ contract reads, in part:

Section 2. The University will not engage in any activity or enter an agreement or otherwise discuss with any other

group or individual for the purpose or effect of undermining the Union as the representative of individuals in the unit. The parties recognize the importance of the shared governance practices developed at the University of Washington. The parties do not intend to restrict, limit, or prohibit the exercise of the functions of the faculty councils, and the Handbook of the University of Washington; nor do the parties intend to restrict, limit, or prohibit the exercise of the functions of the Graduate and Professional Student Senate, the Associated Students of the University or any other student organization in matters not covered by this Agreement.

...

Section 4. The University will not enter into any agreement with employees in the unit for the purpose of undermining the Union in its role as the representative of unit employees. No individual or group of individuals acting independently of the authorized representatives of the University or the International Union and its Local Union may alter, amend, or modify any provisions of this Agreement.

Emphases added; Un. Ex. 2.

The plain language of the parties' contract establishes the Union as the exclusive representative for the bargaining unit. Article 1 prohibits the University from entering "an agreement or otherwise discuss with any other group or individual for the purpose or effect of undermining the Union as the representative of individuals in the unit." Article 7 requires: "Tuition and fee waivers for ASEs with a 50% FTE appointment will be maintained at their current rates/level." When the University Board of Regents approved the two new mandatory fees and unilaterally imposed these fees on ASEs with a 50% FTE in violation of Article 7, the contractual prohibition against an "individual or group of individuals acting independently of the authorized representatives of the University or the International Union and its Local Union" against altering, amending, or modifying provisions of the parties' Agreement was violated.



Your Arbitrator agrees with the Employer that the amount of tuition and fees that can be charged by the University is outside the scope of the parties' Agreement. However, the Article 7 requirement for maintenance of tuition and fee waivers is within the scope of the parties' Agreement. For all the above stated reasons, I conclude the Employer violated the parties' CBA when the Universal U-Pass and FR fees were unilaterally imposed, resulting in tuition and fee waivers not being maintained at current rates/level.

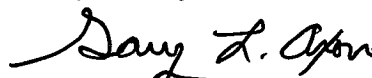
## AWARD

Having reviewed all of the evidence and argument, the Arbitrator holds the Employer violated the Collective Bargaining Agreement when the Universal Student U-Pass fee and the Facilities Renovation fee were imposed on 50% FTE Academic Student Employees beginning the Fall 2011 academic term. The Union's grievance is sustained.

The Arbitrator concludes the Employer is liable to the Union for monetary damages relating to the violation of the Collective Bargaining Agreement. The calculation of monetary damages due, with interest at the legal rate, is remanded back to the parties for computation and payment. The Arbitrator will retain jurisdiction for a period of ninety (90) days from the date of this Award to resolve any disputes arising out of the remedy so ordered.

The fees and expenses of the Arbitrator are payable equally by the Union and the University.

Respectfully submitted,



Gary L. Axon  
Arbitrator

Dated: May 24, 2012