

BEFORE  
GARY AXON  
IMPARTIAL ARBITRATOR

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In the Matter of Arbitration

Between

THE UNIVERSITY OF WASHINGTON

Employer,

And

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

Union.

(Regarding Fee and Tuition Waivers, Hearing Held March 7, 2012)

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POST-HEARING BRIEF OF UNION

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## TABLE OF CONTENTS

### Page

<b><u>INTRODUCTION</u></b> .....	1
<b><u>ISSUE</u></b> .....	1
<b><u>RELEVANT CONTRACTUAL PROVISIONS</u></b> .....	2
<b><u>STATEMENT OF FACTS</u></b> .....	3
I. BACKGROUND .....	3
A. The UAW Academic Student Employee Bargaining Unit at the University of Washington .....	3
B. The University's Imposition of the Cost of Newly-Created Fees on ASEs in Fall Quarter 2011 .....	4
<b><u>ARGUMENT</u></b> .....	5
I. THE UNIVERSITY UNILATERALLY IMPOSED THE COST OF NEWLY-ESTABLISHED FEES ON ASEs, IN VIOLATION OF THE REQUIREMENT IN ARTICLE 7 THAT IT MAINTAIN FEE AND TUITION WAIVERS FOR 50% FTE ASEs AT THEIR CURRENT RATES/LEVEL .....	6
A. The plain meaning of the language in Article 7 makes clear that the University violated the Contract .....	6
B. In addition to the clarity of the plain meaning, the parties had a mutual understanding of the intent of the "current rates/level" language in Article 7 .....	7
1. The Union and the University left 2004 negotiations with an understanding that Article 7 would maintain the existing fee and tuition waiver scheme for 50% ASEs .....	7
2. Subsequent bargaining history reinforces the mutual understanding regarding Article 7 established in 2004 .....	8
3. Neither party ever communicated an alternative understanding that Article 7 would allow the University discretion to impose the cost of newly-established fees on 50% ASEs .....	10

## TABLE OF CONTENTS (continued)

4. The University never communicated to the Union during bargaining or during the grievance process that it believed it lacked authority to waive fees other than the Operating and Technology Fees .....	11
II. THE UNIVERSITY VIOLATED ITS DUTY TO BARGAIN, INCORPORATED INTO ARTICLE 2, WHEN IT ESTABLISHED AND IMPOSED THE COST OF NEW FEES ON 50% ASEs IN FALL 2011 WITHOUT WAIVING OR REMITTING THE FEES .....	12
A. Article 2 (Recognition) incorporates RCW 41.56.203 into the Contract and thus imposes on the University a duty to bargain over "tuition and fee remission and waiver" .....	13
B. The record makes clear that the University made no effort to fulfill its duty to bargain prior to imposing the cost of the new fees on ASEs .....	13
C. RCW 41.56 supersedes earlier statutes bearing on the University's authority to establish and waive fees .....	14
III. THE UNIVERSITY VIOLATED ARTICLE 1, IN ADDITION TO ARTICLES 2 AND 7, WHEN IT CHANGED THE UPASS FEE TO A MANDATORY FEE AND IMPOSED THE COST ON ALL ASEs .....	14
A. In establishing and imposing the cost of the mandatory UPASS on all ASEs, the University violated the prohibition in Article 1 on reaching agreement with "any other group" on matters within the scope of bargaining .....	15
B. In changing the UPASS fee from an optional to a mandatory fee for all ASEs, the University failed to uphold the "transitioned maintenance of benefits" as required in Article 1 .....	16
C. The University's "collection agency" argument lacks merit and ultimately has no bearing on whether or not it violated the Contract .....	17
<u>CONCLUSION</u> .....	18

## INTRODUCTION

This case hinges on whether the University of Washington (hereinafter "University") violated Articles 1, 2 and 7 of the collective bargaining agreement (hereinafter "Contract") between the University and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 4121 (hereinafter collectively "Union") when the University began imposing the cost of newly-created student fees (Facilities Renovation or FR fee and UPASS fee) on bargaining unit employees in Fall Quarter 2011.<sup>1</sup> The Union contends that the University violated the Contract when it imposed the cost of these fees because in doing so: the University failed to maintain tuition and fee waivers for 50% FTE employees at their current rates/level, as required by Article 7; the University imposed the cost of the fees unilaterally without fulfilling their statutory duty to bargain over fee and tuition waivers/remissions, in violation of Article 2, which incorporates the collective bargaining statute into the Contract; and the University failed to uphold the transitioned maintenance of benefits required under Article 1 by unilaterally changing the UPASS fee from an optional fee, waivable by individual choice, to a mandatory fee for all ASEs.

## ISSUE

At a hearing before Arbitrator Gary Axon on March 7, 2012, the parties stipulated that the grievance is properly before the arbitrator. The Union asserted that the issue before the arbitrator is:

Did the University violate the collective bargaining agreement by imposing the cost of the UPASS fee, 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? [UX 1].<sup>2</sup>

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<sup>1</sup> The original grievance included the Bothell Field fee as well. While there is no evidence that any ASE has been required to pay that fee, the Union retains its position that such required payment would violate the Contract.

<sup>2</sup> Citations to the record will be "Tr. x:y" where "x" is the page number and "y" is the line number. Citations to exhibits will be "JX" for Joint Exhibits, "UX" for Union Exhibits, and "EX" for Employer Exhibits.



## **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, to recognize the continuing joint responsibility of the parties to provide efficient and uninterrupted services and satisfactory employee conduct to the public, and to provide an orderly, prompt, peaceful and equitable procedure for the resolution of differences between employees and the Employer.

#### **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 of Washington, or any other student organization in matters not covered by this Agreement.

#### **Section 3.**

If, during its term, the parties hereto should mutually agree to modify, amend or alter the provisions of this Agreement, in any respect, any such changes shall be effective only if reduced to writing and executed by the authorized representatives of the University and the International Union, UAW and its Local Union.

#### **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.**

Transitioned 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 this 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 representative for all regular part-time student employees included in the bargaining unit.

## **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.

## **STATEMENT OF FACTS**

### **I. BACKGROUND**

#### **A. The UAW Academic Student Employee Bargaining Unit at the University of Washington**

The Union represents over 4,000 Academic Student Employees (hereinafter “ASEs”) at the University of Washington. This bargaining unit includes Teaching Assistants, Research Assistants, Staff Assistants, Readers, Graders, and Tutors, essentially all student employees engaged in instructional or research work at the University. While most employees in the bargaining unit work on a salaried, 50% FTE basis as graduate student Teaching and Research Assistants, the unit also includes a smaller number of less-than-50%-FTE salaried employees as well as hourly employees [UX 2, pp. 2, 12-14; and Tr. 10:9-20, 11:1-6]. ASEs are required, as a condition of employment, to be enrolled as students at the University. As such, they must pay

tuition and fees to the University, unless waived under the Contract [UX 2, p. 2; and Tr. 11:15-21].

The waiver or remission of tuition and fees plays a critical role in determining ASEs' overall annual compensation, especially now that the total cost of tuition and fees has risen to nearly \$13,000 for the 2011-12 academic year. Any increase in un-waived fees therefore functions as a reduction in ASE compensation. For example, if the new mandatory fees imposed this year continue as un-waived, they will add up by next year to a total of \$513 per year or an approximately 3.5 percent pay cut for a typical 50% ASE earning \$15,000 per year. The 2002 statute granting ASEs collective bargaining rights acknowledges the unique importance of this feature of ASE employment terms by specifically requiring that "tuition and fee remission and waiver is within the scope of bargaining" [UX 7; UX 8, p.1; UX 9, p.1; and Tr. 31:13-32:11].

The Union and the University have negotiated four Contracts since the Union was first certified in 2004 [Tr. 5:15-17]. The current Contract language in Article 1 (Purpose and Intent), Article 2 (Recognition), and Article 7 (Fee and Tuition Waivers) was negotiated in the initial round of bargaining that led to the first Contract in 2004 and has remained the same since. The parties reached agreement on subsequent successor Contracts in 2007, 2010, and 2011 [UX 2, p. 6; UX 13; and Tr. 26:24-27:7].

#### B. The University's Imposition of the Cost of Newly-Created Fees on ASEs in Fall Quarter 2011

During Fall Quarter 2011, which commenced – for ASE payroll purposes – on September 16, 2011, the University imposed the cost of three new mandatory student fees on ASEs: (1) the Universal UPASS fee, a subsidized public transit pass, which for years had been an optional fee – in other words, waivable by individual choice; (2) the Student Facilities Renovation Fee (FR Fee), a fee for the cost of renovating student activities buildings on the Seattle campus;

and (3) the Bothell Field Fee, a fee charged to all students at the Bothell campus to pay for intramural sports fields [UX 8, p.1].<sup>3</sup>

On or about September 15, 2011, the Union became aware that the University had imposed the cost of these new fees on ASEs and filed a grievance alleging that the Contract had been violated [UX 3, 4, 5, 6]. The Union alleged that the University violated Articles 1, 2, and 7 when it imposed the cost of the new fees on ASEs. The Union sought as remedy that the University cease imposing the cost of these fees on ASEs and to make ASEs whole retroactively [UX 3]. This grievance is now before the arbitrator.

### **ARGUMENT**

The Union contends that the University violated the contract when it imposed the cost of the newly-created fees on ASEs in Fall 2011. The University violated the Contract in these ways: (1) the imposition of the cost of these fees on 50% FTE ASEs violated the requirement in Article 7 that "tuition and fee waivers for ASEs with a 50% FTE appointment will be maintained at their current rates/level"; (2) the unilateral change to the existing scheme of fee and tuition waivers for 50% FTE ASEs violated the requirement incorporated into Article 2 that the University has a duty to bargain over the waiver or remission of fees and tuition; and (3) the unilateral imposition of a mandatory UPASS fee on all ASEs not only violated Article 7 in relation to 50% ASEs, but also violated the prohibition against the University reaching agreement with "any other group" other than the Union and the "transitioned maintenance of benefits" requirement in Article 1 in relation to all ASEs [UX 2, pp. 1, 2, 6].

The University has argued erroneously throughout the grievance process that it did not violate the Contract when it imposed the cost of these newly-created fees on ASEs in Fall 2011. The University has offered two main arguments to justify its position. First, the University has argued that because students established and imposed the cost of these new fees on

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<sup>3</sup> See note 1 above. For simplicity, the Union brief from here forward will only discuss the U-PASS and FR fees.

themselves, the University is merely serving as a “collection agency” for the students and has in no way violated the Contract or any bargaining duty with the Union [UX 4]. Second, the University has argued that the Contract could not – and, therefore, does not – require it to waive the new fees because there is no clear statutory authority under which to waive the new fees [Tr. 120:2-6]. The evidence in the record establishes without ambiguity that neither of these arguments has a foundation in the Contract, the law or the facts. In short, the record not only sustains the Union’s position that the University violated the Contract in Fall 2011, but also refutes the University’s reasoning in denying the grievance.

I. THE UNIVERSITY UNILATERALLY IMPOSED THE COST OF NEWLY-ESTABLISHED FEES ON ASES, IN VIOLATION OF THE REQUIREMENT IN ARTICLE 7 THAT IT MAINTAIN FEE AND TUITION WAIVERS FOR 50% FTE ASES AT THEIR CURRENT RATES/LEVEL

The evidence shows that in 2003-2004 there was a clear, existing fee and tuition waiver scheme for 50% FTE ASES that the parties incorporated into Article 7 of the Contract. Under that scheme, the “current rates/level” of tuition and fee waivers fell into three categories as applied to ASES with a 50% FTE appointment.

- (1) No (or 0%) waiver of the Building, Services and Activities, and IMA fees;
- (2) Optional full (or 100%) waiver of the U-PASS fee; and
- (3) Full (or 100%) waiver of all remaining fees (At that time, Operating fee and Technology fee) to cover the bulk of total tuition and fees [UX 11 and UX 14].

The University violated the Contract in Fall 2011 when it established new mandatory fees and imposed the cost of those fees on 50% ASES, since it failed to maintain fee and tuition waivers at the “current rates/level” as required under Article 7.

A. The plain meaning of the language in Article 7 makes clear that the University violated the Contract

The current language in Article 7 is unambiguously clear: “Tuition and fee waivers for ASES with a 50% FTE appointment will be maintained at their current rates/level.” The current rates/level of these waivers in 2003-2004, at the time of agreement to the language in Article 7,

was that described above: – the ASE pays three fees (Building, SAF, IMA), has the option of waiving one (UPASS), and has full waiver of the remaining fees (Operating and Technology) that make up the bulk of total tuition and fees [UX 14]. As Union witness David Parsons explained, “the current practice as it existed from 2004 was that 50 percent FTE ASEs would have a waiver system available to them where they would pay the three fees, building, SAF and IMA” [Tr. 62:3-6].

The University changed that practice in Fall 2011 by establishing two new, additional mandatory fees at the Seattle campus and failing to waive them for 50% FTE ASEs, which added an additional \$246 per year in un-waivable mandatory fees for this group of employees [UX 8, p. 1, UX 10, and UX 14; Tr. 37:12-16]. In the case of the UPASS fee, the University took a fee that had been waivable by individual choice and converted it into a mandatory, un-waived fee for 50% ASEs. In the case of the FR fee, it created an entirely new fee and failed to waive it for 50% ASEs. While the FR fee is only \$18 for the 2011-2012 year, it is projected to increase dramatically to \$285 for the 2012-13 year [UX 9, p. 1]. By creating and failing to waive these new fees for 50% ASEs, the University violated Article 7 on its face since it did not maintain “current rates/level.”

B. In addition to the clarity of the plain meaning, the parties had a mutual understanding of the intent of the “current rates/level” language in Article 7

Even if, *arguendo*, the plain meaning of Article 7 was not clear on its face, the record demonstrates that the Union and the University had a mutual understanding of this language that sustains the Union’s position that the University violated the Contract when it failed in Fall 2011 to maintain fee and tuition waivers for 50% ASEs at “their current rates/level.”

1. The Union and the University left 2004 negotiations with an understanding that Article 7 would maintain the existing fee and tuition waiver scheme for 50% ASEs

Union witness David Parsons – the only witness in this case who attended all negotiations between the parties and thoroughly reviewed the bargaining history in preparation for the hearing – provided un-rebutted testimony that, at the time the parties were crafting the language in Article 7, the University communicated that its intent was to “stay with their existing practice” [UX BH 2; Tr. 48:7-49:8]. As Parsons put it in his testimony, “while we had agreed that these fees would be paid by 50 percent ASEs, the building, SAF and IMA, we had never had as part of our agreement any concession that new fees could be imposed under the agreement” [Tr. 38:1-4].

During the 2004 negotiations, the Union had attempted to expand this scheme in order to, first, provide tuition and fee waivers to a larger group of ASEs beyond those with 50% appointments and, second, expand the number of existing fees that were waived. In the end, the Union and University agreed to the language in Article 7 that maintained the existing scheme [UX 13, UX BH 1, and UX BH 2]. Again, the record demonstrates clearly that the “existing practice” or “current rates/level” at the time was for a 50% FTE ASE to pay 100 percent of three fees, have the option of waiving the UPASS fee, and receive a full waiver of the remainder of the fees [Tr. 33:6-22]. In Fall 2011, when the University created and imposed the cost of the FR and UPASS fees on 50% ASEs as un-waived fees, it clearly vacated this understanding and, therefore, violated Article 7.

## 2. Subsequent bargaining history reinforces the mutual understanding regarding Article 7 established in 2004

Subsequent negotiations between the parties in 2007, 2010, and 2011 further establish the mutual understanding that the 2004 language in Article 7 would maintain the existing tuition and fee waiver scheme. In successor negotiations after 2004, the Union again attempted to expand tuition and fee waivers to more ASEs and to secure waiver of more of the fees not waived under the 2004 scheme codified in Article 7 [UX 13; UX BH 1-BH 8; and Tr. 45:9-58:19]. In 2007, for example, the Union attempted through its last proposal to (1) expand application of the existing waiver scheme to 25% FTE ASEs, (2) add the Building Fee to the group of fees

waived for covered ASEs, and (3) expand the prohibition against imposing the cost of new fees on ASEs by lowering the threshold for coverage from 50% to 25% FTE [see, in particular, UX BH 4, p. 3; and Tr. 50:20-53:7]. This third part of the Union's proposal underscores the fact that the original Contract language already protected 50% FTE ASEs against new fees; the Union was proposing that that Contract protection be extended to other ASEs. In the end, the parties agreed in 2007 to maintain the existing language in Article 7 [UX 13; and UX BH 4].

While the tuition and fee waiver issue received less attention in the 2010 negotiations, it was a central feature of 2011 bargaining, the history of which further reinforces the Union's position that the University violated Article 7 in the Fall of 2011. Through a variety of proposals in 2011, the Union again attempted to expand tuition and fee waivers along the same lines as in 2004 and 2007. However, unlike previous negotiations, in addition to maintaining the language of Article 7, the Union and University agreed to a new Side Letter on "Fee Relief" that provides further evidence of the parties' mutual understanding of the intent of Article 7.

Under Side Letter G, the University agreed to provide compensation to 50% ASEs to "offset projected increases in the Building Fee and the Services and Activities Fee from the 2010-11 year to the 2011-12 year" [UX 2, p. 35]. The side letter was premised on the aforementioned mutual understanding of the intent of Article 7. Since the University continued to refuse to expand waivers even for the 50% FTE ASEs, the parties agreed to the side letter to hold the out-of-pocket cost stable for those ASEs. Union witness David Parsons' un-rebutted testimony about the purpose of the side letter makes this point clear: "...for those unwaived fees, again the building fee, the SAF and IMA, we're going to provide relief from the fees that are going to increase, and that was the building and the SAF...the IMA wasn't projected to increase" [Tr. 57:11-22]. The fact that the side letter makes no mention of other fees presumes that no other fees – including any newly established fees – would be paid out-of-pocket by 50% ASEs, consistent with the original intent of Article 7 that it would maintain the practice/scheme under which the 50% ASE paid out-of-pocket for the Building, SAF, and IMA fees, had the



option of waiving the UPASS fee, and received full waiver of the other fees. This logic of the side letter is also consistent with the 2007 proposals that presumed the existing Article 7 language protected 50% ASEs against paying any newly-established fees. As Parsons made clear under cross-examination, for example, the side letter does not mention the Universal UPASS because “there was no universal UPASS fee at that time” – it was waivable by individual choice under the scheme codified in Article 7 back in 2004 [Tr. 76:14-16]. So, when the parties agreed to retain the language in Article 7 again in 2011, they agreed that 50% ASEs would continue to only be responsible for paying the Building, SAF, and IMA fees.

3. Neither party ever communicated an alternative understanding that Article 7 would allow the University discretion to impose the cost of newly-established fees on 50% ASEs

The University’s position in the grievance relies on the assumption that it has the discretion under Article 7 to impose the cost of any newly-created student fee on ASEs who have a 50% FTE appointment. However, the record includes no evidence that would suggest either party understood the “current rates/level” language to mean that the University would have the unfettered right to impose the cost of additional mandatory fees on 50% ASEs as it did in Fall 2011. In fact, David Parsons, the only witness to have attended all bargaining sessions since 2004, provided un-rebutted testimony that the parties never agreed that the University would have this right. “Our position was that the 50 percent folks were protected,” Parsons stated additionally, and “there was never agreement that new fees could be imposed” [Tr. 49:17-50:2]. Asked whether the Union agreed to 50% ASEs paying a mandatory UPASS fee, whether the University proposed to the Union that 50% ASEs pay a mandatory UPASS fee, whether the Union ever agreed that the University could implement new mandatory unwaived fees for ASEs, and whether the University ever raised any of these issues in negotiations, Parsons responded with an unequivocal “No” [Tr. 58:20-59:10]. Parsons further testified, under cross-examination by University counsel, that “we did not have an agreement that new fees could be imposed [on 50% ASEs]” [Tr. 62:8-9].

Given the centrality of tuition and fee waivers to ASEs' overall compensation, allowing the University unfettered discretion to create additional mandatory, un-waived fees would produce an absurd, nonsensical result that would undermine the overall economic foundation of the Contract. If the grievance is denied, a typical 50% ASE would suffer a 3.5 percent reduction in overall compensation as of the 2012-13 academic year. Adding this reduction to the out-of-pocket costs for the three fees that Article 7 indisputably requires them to pay already, a typical ASE in 2012-13 would pay roughly 9.2 percent of her/his overall compensation back to the University [UX 9, p.1].

4. The University never communicated to the Union during bargaining or during the grievance process that it believed it lacked authority to waive fees other than the Operating and Technology Fees

The University's position in the grievance also relies on the erroneous assertion that it cannot waive any fees other than the Operating and Technology fees because it lacks statutory authority to do so, and that Article 7 can, therefore, only mean that the University will continue to waive those two fees for 50% ASEs. However, the University's position not only has no basis in fact or the Contract, but also the University never communicated this position until after the Union filed the grievance. In fact, contrary to the University's post-grievance characterization, Union witness David Parsons – again, in un-rebutted testimony under cross-examination from University counsel – stated that “we actually did have an understanding that there was authority” for the University to waive more than the Operating and Technology fees [Tr. 64:10-11]. It is also important to note that the University never offered this explanation of its refusal to expand the fee waiver system in negotiations or its denial of the grievance until the arbitration hearing [UX 4 and UX 5].

The Contract read as a whole, as well as the record in this case also support this understanding. While the University has pointed to various statutes going back to the 1990s that establish authority to create and waive certain fees, the only relevant statute in this case is RCW 41.56.203, the statute under which the parties bargain [EX 7; and UX 7]. This is the only

relevant statute because (1) it is the only statute incorporated into the Contract (via Article 2) and (2) because it was established long after the other statutes and thus supersedes them.<sup>4</sup> When RCW 41.56.203 says “tuition and fee remission and waiver is within the scope of bargaining,” it makes no distinction between any of the components of tuition and fees as “student-led” or “statutorily established” or not [UX 7].

If the intent of Article 7 was to have the very specific meaning that the University would only waive fees for 50% ASEs that were specifically referenced in statutes that predate the collective bargaining statute as incorporated into the Contract under Article 2, a reasonable person would have to assume the language of Article 7 would say so. The University’s position on this matter represents an attempt to convince the arbitrator to re-write the Contract in response to its desire to deny the grievance, which would lead to a de facto 3.5 percent cut in overall compensation for the typical affected ASE. The arbitrator should reject this effort by the University.

## II. THE UNIVERSITY VIOLATED ITS DUTY TO BARGAIN, INCORPORATED INTO ARTICLE 2, WHEN IT ESTABLISHED AND IMPOSED THE COST OF NEW FEES ON 50% ASEs IN FALL 2011 WITHOUT WAIVING OR REMITTING THE FEES

Even if, *arguendo*, it were not clear that the University violated Article 7 when it imposed the cost of newly-established fees on 50% ASEs in Fall 2011, the Contract clearly bars the University from imposing the cost of such fees without meeting its obligation to bargain over “tuition and fee remission and waiver.” The record makes clear that the University made no effort to fulfill its duty to bargain over the waiver or remission of these fees prior to imposing them on 50% ASEs in Fall 2011.

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<sup>4</sup> RCW 41.56.905 provides that “if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control.” This provision applies to all of RCW 41.56. *Rose v. Erickson*, 106 Wn.2d 420, 424 (1986). Consequently, to the extent that the statutes cited by the University in EX 7 are inconsistent or conflict with RCW 41.56.203, such conflict must be resolved in favor of the dominance of RCW 41.56. *Metro. Seattle v. Div. 587, ATU*, 118 Wn.2d 639, 644 (1992); *City of Pasco v. PERC*, 119 Wn.2d 504, 510-11 (1992); *Peninsula School District v. Public School Employees*, 130 Wn.2d 401, 407-08 (1996).

- A. Article 2 (Recognition) incorporates RCW 41.56.203 into the Contract and thus imposes on the University a duty to bargain over “tuition and fee remission and waiver”

Article 2 clearly incorporates RCW 41.56.203 into the Contract [UX 2]. As such, the Contract imposes the duty to bargain per 41.56.203 over “tuition and fee remission and waiver” [UX 7; Tr. 29:25-31:12]. While the Union maintains that Article 7 prohibits the University from imposing the cost of the new fees on 50% ASEs in Fall 2011, even if Article 7 was ambiguous on that question because it does not speak to new fees that did not exist in 2004, the University at minimum is still obligated under Article 2 to bargain over the potential waiver or remission of those fees prior to their imposition since it is a mandatory subject of bargaining under the statute through the Contract. Even if one concluded that Article 7 did not envision all newly-created fees being waived for 50% ASEs, it could not – given the centrality of tuition and fees to overall ASE compensation – mean the opposite, that the University retained the right to institute any new fee as an un-waived fee for ASEs [Tr. 31:13-32:11]. At minimum, if a specific fee was not envisioned when the parties agreed to Article 7, the University must fulfill its statutory/Contractual obligation to bargain over the remission or waiver of those fees prior to requiring ASEs to pay them.

- B. The record makes clear that the University made no effort to fulfill its duty to bargain prior to imposing the cost of the new fees on ASEs

The University failed to fulfill its obligation to bargain over the waiver or remission of the UPASS and FR fees prior to their implementation in Fall 2011. As tuition and fee waivers were a major topic of negotiations in the spring of 2011, the University had ample opportunity to make proposals on this matter. Yet, the University did not raise the UPASS or FR fees at any time during the bargaining process. Testimony from Mr. Parsons and the bargaining history documents make clear that the University never raised either fee in the course of 2011 negotiations [UX BH 7; UX BH 8; and Tr. 58:20-59:10]. In fact, the University’s own exhibits indicate that it was engaged in developing the plans to implement the mandatory UPASS program at the same time that it was engaged in contract negotiations with the Union, yet the

University never once raised the fee to the Union, let alone made a proposal to the Union on the matter [EX 4]. While the Union, hypothetically, *could have* known of University deliberations with student government on the U-PASS in spring 2011, as University counsel has asserted, this would in no way have relieved the University of its duty to bargain with the Union over changes to Article 7 with the Union [UX BH 7; UX BH 8; and Tr. 22:4-20].

C. RCW 41.56 supersedes earlier statutes bearing on the University's authority to establish and waive fees

The University's alleged concern that it does not have authority to waive any fees other than those specifically authorized in statute has no merit. RCW 41.56 establishes full authority to waive or remit tuition and fees because it supersedes all other statutes. RCW 41.56.203 provides that "tuition and fee remission and waiver is within the scope of bargaining." There is nothing in RCW 41.56.203 which limits the authority of the University to waive or remit any particular component of tuition or fees through collective bargaining. The statutes cited by the University in EX 7 do not provide otherwise. Moreover, to the extent any provision of these statutes is inconsistent or conflicts with RCW 41.56.203, such conflict must be resolved in favor of the dominance of RCW 41.56. *Metro. Seattle v. Div. 587, ATU*, 118 Wn.2d 639, 644 (1992); *City of Pasco v. PERC*, 119 Wn.2d 504, 510-11 (1992); *Peninsula School District v. Public School Employees*, 130 Wn.2d 401, 407-08 (1996).

III. THE UNIVERSITY VIOLATED ARTICLE 1, IN ADDITION TO ARTICLES 2 AND 7,  
WHEN IT CHANGED THE UPASS FEE TO A MANDATORY FEE AND IMPOSED  
THE COST ON ALL ASEs

In addition to violating Articles 2 and 7 by imposing the cost of the UPASS and FR fees on 50% ASEs, the University also violated Article 1 (Purpose and Intent) when it imposed the cost of the mandatory UPASS on all ASEs in the bargaining unit.

- A. In establishing and imposing the cost of the mandatory UPASS on all ASEs, the University violated the prohibition in Article 1 on reaching agreement with “any other group” on matters within the scope of bargaining

Article 1 states clearly that the University “will not 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.” It states further that “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” [UX 2, p. 1]. The clear purpose of these sections is to acknowledge that the student government bodies maintain “shared governance practices” on matters outside the scope of bargaining, but that the Contract and duty to bargain with the Union prevail on matters within the scope of bargaining [Tr. 39:9-40:16]. The record in this case makes clear that the University violated Article 1 on both counts. Mr. Charles Plummer testified, for example, that the Graduate and Professional Student Senate (GPSS) and Associated Students of the University of Washington (ASUW) – both groups distinct from the Union – used legislation passed in their bodies to “issue an MOU with Transportation Services and create the universal U-PASS fee,” which the University then imposed on bargaining unit employees [Tr. 93:2-7].

While the University has denied at various points during the grievance process that the institution imposed the mandatory U-PASS on ASEs, the University’s own policies make clear that implementation of the new fee was “contingent on the regent’s [sic] approval” [UX 4; and EX 2, p. 3]. In short, the University reached agreement with the two student government bodies on converting the U-PASS fee from one that was optional – or waivable by choice – to a mandatory fee that the University required all ASEs to pay. As these deliberations all took place “independently of the authorized representatives of...the International Union and its Local Union,” the University’s agreement to the MOU clearly violated Article 1, Sections 2 and 4 [UX 2, p. 1].

- B. In changing the UPASS fee from an optional to a mandatory fee for all ASEs, the University failed to uphold the “transitioned maintenance of benefits” as required in Article 1

The University’s unilateral termination of the optional UPASS fee also represents a clear violation of the “transitioned maintenance of benefits” requirement in Article 1. Even if, hypothetically, the optional UPASS were not considered to be “set forth in University policy,” per Article 5, Section A, the optional UPASS met the conditions in Section B that would make it “treated as written”: a consistent and ascertainable course of conduct; engaged in for some reasonable length of time; of which both parties were aware; did not alter the Contract; in respect to a given set of specific circumstances and conditions; and involved a group of employees in a hiring unit (the University of Washington Seattle campus) [UX 3, pp. 1-2].

Prior to Fall 2011, all ASEs – who must be students as a condition of employment, and by the statutory definition, as incorporated into Article 2, of the bargaining unit – had the option of waiving the UPASS fee by returning the UPASS before the tuition and fees due date. University witness Joshua Kavanagh, Director of Transportation, described well what he called the “opt-out U-PASS program” which existed prior to the first Contract up until Fall 2011. The University would mail a U-PASS sticker to each student, including ASEs, prior to the quarter. “At that point a fee was placed on the student account,” Mr. Kavanagh testified. “Any student [including ASEs] who did not want to participate in the program at that point would need to return the sticker” and would have the fee waived from their account. This fee appeared alongside all of the other tuition and fees on the student account [UX 7; UX 12; and Tr. 134:6-25]. When the University imposed the mandatory U-PASS in Fall 2011, and ceased allowing ASEs to opt-out or waive the fee for themselves, it took away this benefit, failed to uphold the “transitioned maintenance of benefits,” and, therefore, violated Article 1. While this was a benefit available to all students, not just ASEs, since ASEs must be students as a condition of employment and are covered by the Contract, the University’s action as it affected ASEs represents an unambiguous violation of Article 1, Section 5. In implementing the

mandatory U-PASS fee, the University thus not only violated Article 7 in relation to 50% ASEs, but it also violated Article 1 in relation to all ASEs (including 50% ASEs) who previously had the clear, long-established right to opt out of or waive the fee.

C. The University's "collection agency" argument lacks merit and ultimately has no bearing on whether or not it violated the Contract

The University has argued that because students established and imposed the cost of the new fees on themselves, the University will merely serve as a "collection agency" for the students and has in no way violated the Contract or any bargaining duty with the Union [UX 4]. This argument has no merit. First, the University retains ultimate decision making authority with respect to implementing student imposed fees. The University's policy on voluntary fees of students makes implementation of the fee contingent on the approval of the University Regents. [EX 2, p. 3]. Second, neither the collective bargaining statute nor the Contract make any distinction between fees as "student led" or otherwise. Article 1 speaks very clearly on the "transitioned maintenance of benefits" that applies to all ASEs. It also makes clear that student organizations may engage in their historical shared governance procedures, but only as long as they do not infringe on matters within the scope of bargaining such as fee and tuition waivers. Third, the University functions in a similar "collection agency" fashion in relation to the Technology fee, which it collects and holds in an account for a student-led committee that "determines the expenditure of this fee," and the University waives this fee for 50% ASEs [EX 1, p.1]. Finally, there is no evidence in the record that the University even considered the Contract at the time it was agreeing to the MOU implementing the mandatory U-PASS [UX BH 7; and UX BH 8]. Even if, hypothetically, the Union *could have* known of University deliberations with student government regarding the mandatory U-PASS in the spring of 2011, as University counsel has asserted, this in no way negates the fact that the University never even attempted to notify the Union of its intentions to impose the mandatory U-PASS on ASEs or to bring it up in negotiations [Tr. 22:4-20]. In short, the University's "collection agency" argument has no merit, appears to be a post-grievance rationalization for



having taken action without consideration of its obligations under the Contract, and should be rejected.

### **CONCLUSION**

For all of the foregoing reasons, the Union respectfully requests that the Arbitrator find that the University violated the Contract and that: (1) the University be ordered to immediately waive the Facilities Renovation Fee for any current and prospective 50% FTE ASEs; (2) the University be ordered to make whole with interest all 50% FTE ASEs who have paid for the cost of the Facilities Renovation Fee; (3) the University be ordered to immediately restore the opt-out system for the cost of the mandatory U-PASS fee for all current and prospective ASEs, regardless of FTE (since its imposition violates Article 7 for 50% ASEs and Articles 1 and 2 for all ASEs); (4) the University be ordered to make whole with interest all ASEs who have paid the mandatory U-PASS fee but would have opted out due to their desire to not participate; and (5) the Arbitrator provide any other remedies that the Arbitrator may find appropriate.