



UNFAIR LABOR PRACTICE COMPLAINT

Is this an amended complaint? Yes No If yes, provide the case number: _____

PARTIES Include information for all parties involved.

COMPLAINANT

Contact _____

Title _____

Address _____

City, State, ZIP _____

Phone _____ Ext. _____

Email _____

UNION

Contact _____

Title _____

Address _____

City, State, ZIP _____

Phone _____ Ext. _____

Email _____

EMPLOYER

Contact _____

Title _____

Address _____

City, State, Zip _____

Phone _____ Ext. _____

Email _____

ALLEGED VIOLATION

Indicate who the alleged violation is against:

Employer Union Both*

*If the alleged violation is against both the union and the employer, two separate complaints must be filed with two statements of facts describing the alleged violation(s) against each respondent.

BARGAINING UNIT

If the alleged violation relates to more than one bargaining unit, a separate complaint must be filed for each unit.

Identify Bargaining Unit _____

Collective Bargaining Agreement (CBA) _____

Have the Parties Ever Had a CBA? Yes No

Start Date _____ End Date _____

STATEMENT OF FACTS

Prepare and submit with this complaint a statement of facts using numbered paragraphs to clearly and concisely describe the alleged violation(s).

The following must be included:

- Specific allegations and required elements;
- Times, dates, places, and participants in occurrences;
- Whether a related grievance has been filed and its status;
- A description of the remedies requested.

For more information refer to WAC 391-45-050.

COMPLAINANT REPRESENTATIVE

Name _____

Address _____

Phone _____ Ext. _____

Signature _____

Title _____

City, State, ZIP _____

Email _____

Date _____

UNFAIR LABOR PRACTICE
STATEMENT OF FACTS
February 14, 2023

1. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 4121 (Union) and the University of Washington (UW) are parties to a collective bargaining agreement (CBA) covering UW Postdoctoral Scholars (postdocs), effective March 1, 2021 – January 31, 2023. The parties negotiate under the provisions of RCW 41.56.513.
2. The bargaining unit includes postdocs in the following classifications: Postdoctoral Scholar, Postdoctoral Scholar Interim, Postdoctoral Scholar Conditional,¹ Postdoctoral Scholar – Fellow, and Postdoctoral Scholar Paid Direct. Compensation for Postdoctoral Scholar – Fellows and Postdoctoral Scholar Paid Directs are described as “stipends” by UW, while all other postdocs (more than 75% of the bargaining unit) are compensated with wages. The postdoc CBA contains an experience-based wage scale that establishes minimum compensation amounts at each experience level. The compensation minimums at each experience level in the CBA are the same for all represented classifications, regardless of whether the compensation is termed a “salary” or “stipend.” The CBA allows UW to provide compensation to individual postdocs at rates above the minimums established in the salary table. The experience-based salary scale has been included in every CBA since the inception of the bargaining unit.
3. Since the creation of the postdoc bargaining unit in 2018, and the ratification of the parties first CBA in June of 2019, all bargaining unit postdocs have been overtime exempt and none have been required to track their time. The parties most recent CBA and all previous CBAs, contain an article titled “Time and Effort Commitment” that states that “full-time postdoctoral scholars do not receive overtime compensation or compensatory time off.” All bargaining unit postdocs are full-time.
4. The Washington State Minimum Wage Act (WMWA) is the law governing minimum wage, overtime and certain other aspects of pay for employees that work in Washington State. The WMWA is enforced and administered by the Department of Labor and Industries (L&I). In 2019, L&I updated the employment rules that determine which workers in Washington are required by law to earn overtime pay. Under the approved 2019 changes, the minimum salary a worker must receive to be exempt from overtime will increase incrementally until it reaches 2.5 times the state minimum wage by 2028. Beginning on January 1, 2021, and each following January 1, increases in the minimum wage are calculated according to changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as set out in RCW 49.46.020. The yearly minimum wage rates are based on the 12-month percentage change in the CPI-W from August to August. Every year on September 30, L&I releases updated minimum wage

¹ Postdoctoral Scholar, Postdoctoral Scholar Interim and Postdoctoral Scholar Conditional together are referenced throughout this complaint as “Postdoctoral Scholars”, this term excludes Postdoctoral-Fellows and Paid Direct Postdocs, whose compensation is deemed a “stipend” by UW.

rates that are effective on January 1st of the following year. The August CPI-W data is publicly available each year two to three weeks prior to L&I's September 30th announcement of the upcoming years minimum wage. On September 30, 2022, L&I announced that the minimum salary a worker must receive to be exempt from overtime would be \$64,478.

5. During negotiations for the CBA that expired on January 31, 2023, the parties executed a memorandum of understanding (MOU) titled "Time Reporting." When the MOU was executed and presently, all postdoctoral scholars covered by the CBA were full-time overtime-exempt professional appointees. The MOU allows either party to reopen the "Time and Effort Commitment" article of the CBA if changes to federal or state overtime eligibility regulations altered the overtime exempt status of any postdoctoral scholar covered by the CBA. The MOU states:

During negotiations, the parties reached agreement on the following regarding Time Reporting:

Postdoctoral Scholars are currently full-time overtime exempt professional appointees. Should changes to the federal or state overtime eligibility regulations alter the overtime exempt status of any of the Postdoctoral Scholars covered by this agreement, either party may re-open Article 23 Time and Effort Commitment. The parties agree that in accordance with state and federal law, the Employer may require overtime-eligible employees to accurately report time worked using either a positive time or exception time reporting process as determined by the Employer... Topics of bargaining may include but not be limited to the following: overtime approval procedures and meal and rest breaks scheduling. (emphasis added).

6. The parties had extensive discussions regarding the need for the MOU premised on the shared understanding that (1) the WMWA salary threshold is applicable to bargaining unit Postdocs and (2) that the salary threshold in Washington State was likely to rise higher than the salaries of bargaining unit postdocs during the duration of the CBA. The parties also shared the understanding that pursuant to the WMWA, any bargaining unit Postdoc whose salary fell below the threshold would become overtime eligible which would require UW to pay overtime and track the time worked by overtime-eligible postdocs or require UW to raise wages above the threshold to keep the impacted postdocs overtime-exempt. At no time during negotiations of the MOU did UW express any uncertainty regarding application of the WMWA salary threshold to bargaining unit postdocs.
7. On Saturday, October 15, 2022, UW Labor Relations Negotiator Jennifer Mallahan sent an email to Union President Sam Sumpter and UAW International Representative David Parsons, notifying the Union that the new salary threshold effective January 1, 2023 (which Mallahan cited as \$65,484 annually), would be higher than the salary of

bargaining unit Postdoctoral Scholars and as a result, UW would be moving these postdocs into new overtime eligible classifications and would need to track their hours in order to pay overtime for any hours worked over 40 in a work week. UW's email also notified the Union that it was reopening "Article 23 – Time and Effort Commitment" per the "MOU – Time Reporting." Specifically, the email stated:

The Washington State Department of Labor and Industries (L&I) announced the new state minimum wage effective January 1, 2023: \$15.74 per hour. Importantly, the Washington state overtime threshold for overtime exempt jobs as of January 1, 2023 is set by state rule at 2 times the state minimum wage and will be \$1,259.20/wk.

...

Currently, postdoctoral scholars who are full-time UW salaried employees are considered overtime exempt professionals subject to these new minimum thresholds. These include postdoctoral scholars in the following 3 workday job profiles:

1. Postdoctoral scholar
2. Interim postdoctoral scholar
3. Postdoctoral scholar conditional

This email serves as notice that that postdoctoral scholars in these 3 job profiles that do not meet these new minimum thresholds, will need to be moved into newly created Workday job profiles for non-exempt postdoctoral scholars. This will mean that these postdoctoral scholars are not overtime exempt and they will need to track their hours worked and be paid overtime at time-and-a-half for any hours worked over 40 in a workweek effective January 1, 2023. Per the 'MOU – Time Reporting', this email also serves as notice the University is reopening Article 23 – Time and Effort Commitment. (Emphasis added).

8. Postdocs in the Fellow and Paid Direct classifications were not included in UW's October 15, 2023, notice because UW has taken the position that because their compensation is deemed a "stipend", the WMWA salary threshold does not apply to them.
9. On Monday, October 17, 2022, Sumpter responded to UW demanding to bargain the decision to move bargaining unit postdoctoral scholars to overtime eligible positions and noting that the Union looked forward to learning the details of UW's proposal regarding these changes during the parties already scheduled initial bargaining session for a successor CBA on October 21, 2022.
10. On October 17, 2022, Mallahan responded to the Union noting that UW would discuss Article 23 during the previously scheduled bargaining session on October 21, 2022.

Mallahan also quoted the MOU and stated: “Given this MOU, we do not have to bargain the decision regarding overtime eligibility and requirements for overtime eligible employees to track time.” (Emphasis added).

11. The parties held their first bargaining session for a successor contract on October 21, 2022. The parties discussed postdoc compensation structures in the context of the new salary threshold and UW’s October 15, 2022, notice. The Union inquired whether UW’s notice was meant to convey that UW had already made the decision to convert postdocs to overtime eligible positions or that UW was considering making that change. UW asserted that it had already made the decision based on the application of the WMWA to postdoc salaries. Mallahan clarified UW’s position, stating “...the notice was a notice, and the university does intend – there will be a need based on the salaries for postdocs that no longer meet the threshold to track their time. That is a decision that has been made.” UWHR Director of Compensation Randy West stated during the bargaining session that converting postdocs to overtime eligible positions “is a matter of legal compliance with Washington state law” and described his understanding of the requirements of the WMWA as applied to postdocs.
12. While the Union’s initial written response to UW’s notice demanded to bargain UW’s decision, during bargaining on October 21, 2022, the Union conceded that the “Time Reporting” MOU waived its right to bargain UW’s decision to convert overtime exempt postdocs to overtime eligible positions but maintained that UW had an obligation to bargain the impacts of the decision and the now reopened Time and Effort Commitment Article of the CBA. UW did not contest that it had a duty to bargain the impacts of its decision and the Time and Effort Commitment Article of the CBA.
13. During the October 21, 2022, bargaining session, the Union noted that in order to bargain the impacts of UW’s decision and new Time and Effort Commitment Article, it needed a better understanding of UW’s positions, including but not limited, to the following:
 - What process UW proposes to use for overtime approval and whether preapproval of overtime hours would be required?
 - If preapproval for overtime is required, will postdocs that work overtime without preapproval be subject to discipline?
 - Who would approve overtime for postdocs if preapproval is required?
 - What hours constitute “hours worked” for postdocs working in the field for several days to several weeks at a time?
 - How does UW propose meal and rest breaks be handled?
 - What is the basis for UW’s position that the salary threshold does not apply to postdoc Fellows and Paid Directs?

14. UW provided preliminary responses to some of the Union's inquiries during bargaining on October 21, 2022, and acknowledged that its plan to convert postdocs to overtime eligible positions was still in its early stages and many details still needed to be worked out and discussed with the Union.
15. During the October 21, 2022, bargaining session, West explained UW's position that Fellows and Paid Directs were not impacted by the increasing salary threshold because the law only applied to salaried employees and that a "stipend" is intended to reimburse for expenses and is not considered salary under the law. The Union noted that it did not believe that the law was cut and dry regarding what constitutes a salary. In response, Mr. West stated that "it might be helpful to send portions of the state law because that is really what we're responding to." (Emphasis added).
16. During the October 21, 2022, bargaining session, Mallahan stated that UW would likely require postdocs to get preapproval to work overtime. Mallahan also stated that it was likely that postdocs would be subject to discipline if they did not get preapproval prior to working overtime but acknowledged that specifics regarding time reporting and discipline would need to be discussed with the Union.
17. During the October 21, 2022, bargaining session, The Union noted its concern with UW's position that converting postdocs to overtime eligible positions was inevitable, and asked if UW would consider a proposal to raise postdoc wages above the threshold prior to December 31, 2022. The Union asserted that based on its calculations, a postdoc at the lowest step of the wage scale would only need to work 6 hours of overtime per week to equal a salary above the threshold and that according to the Union's survey of all Postdocs, 85% of bargaining unit postdocs reported working over 50 hours per week.
18. During the October 21, 2022, bargaining session, West stated that UW would provide cost estimates for raising salaries above the threshold and conversely for paying overtime if salaries were not raised above the threshold. At the end of the bargaining session the Union noted that it would develop a formal request for information and the parties agreed to continue the discussion at future bargaining dates.
19. On the afternoon of October 21, 2022, the Union sent UW a request for information (RFI) related to Postdoc overtime approval, time tracking, the application of the salary threshold to bargaining unit employees, and the costs associated with converting bargaining unit employees to new overtime eligible positions.
20. Regarding hours tracking and overtime approval, the Union requested the following information from UW in its October 21, 2022, RFI:
 - What do you propose the OT approval process be?
 - Do you propose that overtime be preapproved?
 - Who would be responsible for approving a Postdoc's overtime?
 - What factors will be considered in approving or denying overtime?

- How do you propose postdocs track their hours when research assignments span several days or weeks (e.g. field work or similar)?

UW initially responded to the Union's information request on October 27, 2022. In response to the first four requests above, UW stated: "Departments, PIs [Principal Investigators], and/or supervisors will determine the process that works for their area." In response to the Union's request regarding UW's proposal for tracking time in the field, UW responded: "This is a process that individual employees will have to work out within their departments with the approving supervisor" and did not provide any additional details.

21. Regarding meal and rest breaks, the Union requested the following information from UW in its October 21, 2022, RFI:

- What is your proposed process to schedule postdoc meal periods?
- What is your proposed process to schedule Postdoc rest breaks?
- Will Postdocs need supervisor approval to modify scheduled rest and meal breaks?

UW responded to the Union's RFIs related to meal and rest breaks on October 27, 2022, as follows: "These are not shift employees so the meal and rest breaks will be accordance with the WAC 296-126-092."

22. In its October 21, 2022, RFI, the Union requested that UW "provide your estimate of costs associated with implementing your proposed plan to track postdoc overtime hours." UW responded to this request on October 27, 2022. Instead of providing a costing estimate for the bargaining unit as requested, it provided the costing for a hypothetical example of a single Postdoc Scholar working 10-hours of overtime a week for a calendar year. UW estimated that a single Postdoc Scholar making the minimum salary would cost UW approximately \$20,000 in overtime wages per year.

23. The parties next met to negotiate on November 7, 2022, for an entire day. The days discussions focused on UW's decision to convert Postdoc Scholars to overtime eligible positions. UW did not communicate or otherwise indicate at any time during this bargaining session that it no longer believed or doubted or had yet to determine whether the WMWA salary threshold applied to Postdoctoral Scholars [notwithstanding UW's position that the salary threshold does not apply to Fellows and Paid Directs].

24. During the morning of the November 7, 2022, bargaining session, the Union expressed that it was struggling to understand the potential impacts of UW's decision and thus how to bargain those impacts because UW's responses to the Union's RFI seemed to indicate that any consequences of the decision would be determined by PIs, supervisors and departments at a future unknown date. The Union asked whether any PIs, departments, or supervisors had yet made determinations regarding time tracking and overtime approval. UW responded that the departments were still "planning what they expect that to look like." When the Union inquired when UW anticipated it would start to hear from PIs

regarding how time tracking would work, UW responded “before January 1, 2023.” The Union expressed its concern that if determinations were not made until the day prior to the new threshold going into effect, there wouldn’t be time to bargain. UW responded, “we will cross that bridge when we get to it, because before determinations are made, we can’t tell you what’s going to happen.” Mallahan specifically asked the Union, in reference to the WMWA, whether the Union agreed that the law applies to Postdoctoral Scholars. The Union responded “yes”.

25. During the November 7, 2022, bargaining session, the Union asked UW what it considered to be the beginning of a postdoc shift in the context of a WAC that requires meal breaks to be taken no more than 5 hours from the beginning of the shift. UW again responded that this was another area that was “individualized”, had not yet been determined, and would have to be worked out at the department, PI, or supervisor level. The parties then discussed broadly the difficulties in determining what constitutes “hours worked” for postdoc researchers. UW suggested that shifts begin, and time should be tracked, from the time a postdoc reports to their lab (in the case of a postdoc that works in a lab). The Union noted that much of a postdocs work is not done in the lab and that a postdocs work includes time spent thinking through their research/ideas and that the complexity of postdoc work is why the parties have always agreed that postdocs should be overtime exempt. Postdoc and Union bargaining committee member Tucker Burgin noted that as a theoretical researcher, his most valuable work is often not done at his desk and noted that he recently had an idea at 3 a.m., spent several hours building up and writing down his idea before going to the office/lab the next day to work on the idea. Burgin noted that the work he did creating the concept was much more important to his postdoc duties than the office/lab work that followed.

26. In response to the Union’s concerns regarding what constitutes “hours worked” and “shifts” for postdocs whose work is unstructured and often not clearly defined, UW Lead Negotiator Laura Hartless stated:

If you have proposals for how tracking hours would work for your specific departments, we would entertain them – but we came up with the best we can do given what the law is – maybe you guys [union] have proposals that we haven’t come up with. (Emphasis added).

27. During the November 7, 2022, bargaining session, UAW International Representative David Parsons responded that the change in the salary threshold was forcing the parties to recognize the dramatic increase in economic insecurity and the WMWA was structured to ensure that employers can’t sidestep the need to increase pay for employees dealing with this economic reality. Parsons then stated that one option for complying with the law was to pay overtime which requires time tracking which creates numerous problems for both postdocs and UW. Parsons then reiterated the Union’s position that the better option for compliance with the WMWA is raising postdoc wages above the salary threshold, negating the anticipated difficulties tracking time and likely being less expensive than paying overtime hours worked by postdocs.

28. After lunch during the November 7, 2022, bargaining session, the Union presented a wage proposal that increased the compensation of all bargaining unit postdocs, effective January 1, 2023, above the new salary threshold of approximately \$65,508 per year for 2023. It also included increases in compensation that would keep all bargaining unit postdocs above L&Is projected salary threshold effective January 1, 2024. In the prior agreement (2021-2023) wage increases were effective July 1st. UW did not provide a response to the Union's wage proposal during the November 7, 2022, bargaining session.
29. During the November 7, 2022, bargaining session, the Union also made proposals regarding Articles in the CBA including, Intellectual Property and Academic Rights, Orientation, Time Off and Leave, Health Care Benefits Amounts, Titles and Classifications, Childcare, and Appointments and Reappointments. UW did not make any proposals during bargaining on this date.
30. On November 10, 2022, the Union wrote to UW in response to UW's RFI responses and the lack of information provided by UW regarding how it proposed to track time, approve overtime, how working hours in the field would be calculated, how meal and rest breaks would be scheduled, what constitutes "staying on duty" for purposes of meal and rest breaks, when a draft overtime eligible job profile would be created and shared with the Union and when UW would have more information from its various departments and subdivisions so that it could provide responsive information to the Union.
31. The parties next bargaining session was on November 18, 2022. During this bargaining session, UW provided CBA counter proposals regarding Orientation and Healthcare Benefits Amounts and the Union provided CBA proposals on Professional Development and Career Counseling, Transportation, MOU – Postdoctoral Scholar Paid Direct, and MOU – Immigration Status and Visas.
32. During the November 18, 2022, bargaining session UW did not communicate or otherwise indicate that it no longer believed or doubted or had yet to determine whether the WMWA salary threshold applied to Postdoctoral Scholars.
33. The parties next bargaining session took place on November 21, 2022. On this date, UW made its first compensation proposal. UW's proposal raised the minimum compensation for Postdoc Scholars (not including Fellows and Paid Direct) to \$65,508 effective January 1, 2023, above the new salary threshold. UW's wage proposal was conditioned on the parties reaching agreement by the end of 2022. In presenting the increase, Mallahan stated that the increased wage would impact more than 75% of the bargaining unit and keep UW postdoc compensation competitive and "in line with the UC [University of California] system." The proposal also eliminated the step increases and experience-based wage scale that was part of every prior Postdoc CBA. UW had not made a proposal for duration of the contract, and their Compensation proposal did not include any increases for 2024 or 2025, other than to reference that Postdoctoral Scholars who received an increase in 2023 would not be eligible for another until 2024. UW's

- proposal also would raise Postdoc-Fellow compensation to the same \$65,508 minimum, but the proposed increase for Fellows was effective on the date of their new appointment on or after January 1, 2023, rather than prior to January 1, 2023. UW's offer did not include an increase to Paid Direct postdocs, keeping their minimum salary level at \$53,760. UW explained that the proposed increase would not be effective for Fellows on January 1, 2023, because some fellowships do not allow compensation to be increased mid-appointment and UW did not have the administrative capacity to look at each Fellow and determine whether their fellowship allowed for mid-appointment compensation increases prior to January 1, 2023. UW asserted that Postdoc Paid Directs are not UW employees, despite their inclusion in the bargaining unit.
34. During the November 21, 2022, bargaining session UW did not communicate or otherwise indicate that it no longer believed or doubted or had yet to determine whether the WMWA salary threshold applied to Postdoctoral Scholars or that it had changed its stated position that the WMWA salary threshold applied to Postdoc Scholars.
 35. On December 7, 2022, the parties again met to negotiate. The Union responded to UW's proposal to raise most postdoc wages above the salary threshold, stating that it appreciated the proposal moving "most postdoc salaries above the overtime threshold and think it is an important move forward" but reiterated its desire to bring all postdocs above the threshold. The Union asserted a strong interest in ensuring Postdoc compensation was equitable across all titles as was the existing status quo. The Union's proposal again raised all minimum postdoc compensation above the salary threshold and included compensation increases intended to keep postdocs above the anticipated salary threshold for the duration of the successor CBA.
 36. During the December 7, 2022, bargaining session UW did not communicate or otherwise indicate that it no longer believed or doubted or had yet to determine whether the WMWA salary threshold applied to Postdoctoral Scholars.
 37. The parties next met to negotiate on Friday, December 16, 2022. The parties did not discuss compensation or issues related to overtime and hours tracking on this date, instead focusing on reaching tentative agreements on other articles of the CBA to potentially conclude all CBA negotiations prior to January 1, 2023.
 38. During the December 16, 2022, bargaining session UW did not communicate or otherwise indicate that it no longer believed or doubted or had yet to determine whether the WMWA salary threshold applied to Postdoctoral Scholars.
 39. The parties next met to bargain on Monday, December 19, 2022. At the start of the day, the Union sought additional clarity from UW regarding application of the new salary threshold to Postdoc Fellows, and UW reiterated its position that because Fellows were paid a "stipend", the salary threshold was not applicable, but Fellows were "in effect, overtime exempt" and thus did not need to track time even if their compensation remained below the salary threshold on January 1, 2023.

40. During the December 19, 2022, bargaining session, the Union asked UW if it had contemplated a duration for the successor CBA. UW Vice President for Human Resources Mindy Kornberg responded that UW was anticipating a “three-year contract like before.” The parties prior CBA had a duration of 21-months and the parties have never previously had a CBA with a duration over two years.
41. The Union presented its third compensation proposal during the December 19, 2022, bargaining session. The Union’s proposal maintained the experience-based wage scale, made some concessions regarding postdoc eligibility for additional wage increases, and again proposed that all postdoc compensation be brought above the salary threshold for 2023, 2024 and 2025. In addition, the Union specifically communicated that it wanted to ensure that “all postdocs stay above the L&I minimum for overtime exemption” for the duration of the proposed three-year CBA. The Union explained that its proposed increases for 2024 and 2025 were intended to keep postdocs just above the salary threshold in order to maintain their overtime exempt.
42. During the December 19, 2022, bargaining session, UW did not communicate or otherwise indicate any change in its position that the increasing WMWA salary threshold applied to Postdoc Scholars.
43. The parties next bargained on Wednesday, December 21, 2022. UW did not communicate or otherwise indicate any change in its position that the increasing WMWA salary threshold applied to Postdoc Scholars during this bargaining session.
44. The parties final bargaining session prior to January 1, 2023, occurred on December 22, 2022. The parties had previously scheduled additional bargaining dates for the successor CBA on January 4, 9, 11, and 12, 2023. During the December 22, 2022, bargaining session, UW reasserted its compensation proposal first presented on December 16, 2022, raising the minimum compensation for Postdoc Scholars to \$65,508, on January 1, 2023, and keeping all bargaining unit postdocs overtime exempt and not having to track time in 2023. UW further proposed that Postdoc Scholars who receive an increase of 1% or less on or about January 1, 2023, would be eligible for 1% increases during the life of the agreement. The Union responded as follows:

We do appreciate that you’ve previously made substantial movement on wages and we’re looking forward to continuing our progress on some of the complicated issues around this. We also know that the clock is running down and we need to move ahead in advance of the January 1, 2023, Minimum Wage Act implementation date. As such, we wanted to communicate that we don’t have any objection to your moving ahead with your proposal to raise Postdoc wages over \$65,500. We of course will continue to make proposals on Compensation and all of the other outstanding issues in our upcoming January bargaining sessions. (Emphasis added).

45. The Union's position communicated at the table on December 22, 2022, was premised on what it believed to be a shared understanding with UW that the WMWA threshold applied to Postdoc Scholars.
46. The Union then presented a proposed MOU raising all bargaining unit postdoc minimum compensation to \$65,508 effective January 1, 2023. The Union noted that its proposal keeps wages "above the overtime threshold while maintaining pay parity between job titles, which is an extremely important issue to the union, while additional details of our wages and compensation article are worked out." The Union also expressly stated that it intended to continue bargaining with UW, stating "we look forward to continuing to make proposals on our outstanding issues and hear your proposals with an eye toward reaching agreement by January 31, 2023."
47. In response to the Union's proposed MOU, UW presented a proposed MOU that raised the minimum salary for all Postdoc Scholars above the threshold to \$65,508 on January 1, 2023, and contemplated the parties continuing to negotiate the remaining articles of the successor CBA. The Union rejected UW's proposed MOU stating:
- We're not comfortable signing your MOU proposal. We're concerned about equity issues that carving up the unit in this way introduces... we think its unfortunate that you haven't agreed to increase the wages of Fellows and Paid Directs and for that reason we're not going to enter into this MOU.
- The bargaining session ended without agreement or a clear understanding of whether UW would implement the salary increases it had proposed to bring Postdoc Scholars above the salary threshold prior to January 1, 2023, and negating the need for time tracking. The Union noted that it would not object to the University increasing wages for Postdoc Scholars on January 1. The parties both understood at this time that, given the rejection of the Union's proposal, UW would not be raising all Fellow and Paid Direct wages above the new threshold and would not be requiring them to track time starting on January 1, 2023, because of its position that the salary threshold does not apply to these classifications.
48. UW did not communicate or otherwise indicate any change in its position that the increasing WMWA salary threshold applied to Postdoc Scholars during the December 21, 2022, bargaining session.
49. On or before January 1, 2023, UW raised Postdoc Scholar salaries to \$65,508 and kept all bargaining unit postdocs in overtime exempt job classifications that do not require time tracking. UW raised the "stipends" of some Postdoc – Fellows with appointment anniversary dates in January 2023 above the threshold while other Fellows with January anniversary dates did not receive any increase.
50. The parties next met to bargain on January 4, 2023. The parties discussed multiple outstanding CBA articles but did not discuss compensation, overtime, or time tracking

issues. UW did not indicate any change in its position that the increased WMWA salary threshold applied to postdoc scholars during this bargaining session.

51. On January 4, 2023, UAW 4121 filed an Unfair Labor Practice Complaint against UW on behalf of its Research Scientist/Engineer (RSE) bargaining unit, alleging that UW refused to bargain when it unilaterally changed the pay structure of 157 bargaining unit RSEs from exempt to overtime eligible based on application of the WMWA salary threshold effective January 1, 2023, without notice or the opportunity to bargain and without reaching good faith impasse.
52. The parties next met to bargain on January 9, 2023. UW made a compensation proposal that was identical to its December 16 and 22 proposals, except that it changed tenses to reflect that Postdoctoral Scholars had already received a wage increase on January 1, 2023 (it's proposals in 2022 provided that postdocs would be receiving such increases in the future). The proposal again included a 1% compensation increase on the date of the anniversary of their appointment in 2024 and 2025. This 1% increase would not be above the rising salary thresholds as projected by L&I in 2024 or 2025. In response to the proposal, the Union asked UW what their proposal would mean regarding hours tracking in 2024. UW stated that no time tracking would be required in 2023 because of the recent salary increase and that it preferred to deal with time tracking separately from wages. The Union noted that it had requested information from UW regarding its proposals for time tracking and overtime which it had yet to receive. UW Lead Negotiator Laura Hartless responded "...Time tracking will be handled similarly as it has been handled across UW as a whole, it's not a new procedure for us."
53. Following Hartless' comment, UW Vice President of Human Resources Mindy Kornberg stated:

At this point, we've done a lot of analysis and we don't believe the L&I minimums apply to this group of postdocs. And we're seeking more clarity around that. And that's why, in the event that it does, then we would need to track time, because we have no money to go up from the minimums. We attempted to go up to the minimums this year... but our position right now is we are seeking more clarity at this time around whether that applies to this group of postdocs.
54. Prior to Kornberg's statement on January 9, 2023, UW never communicated or otherwise indicated any uncertainty or that it was doing an ongoing analysis regarding application of the WMWA salary threshold to Postdoctoral Scholars. UW's October 15, 2022, notice to the Union reopening the CBA, states: "Currently, Postdoctoral Scholars who are full-time UW salaried employees are considered overtime exempt professionals subject to these new minimum thresholds." (Emphasis added).
55. The Union responded by noting its strong disagreement to UW's new position and asked UW to explain the contradiction between its notice reopening the contract based on

application of the new salary threshold to Postdoc Scholars and their new position that the threshold does not apply to Postdoc Scholars. UW Lead Negotiator Hartless responded: “Well, we’ve done a lot of additional review and we have just changed our position. After doing some additional review and looking at the Statute and L&I position we have changed our position.” The Union stated that it would be following up with additional information requests regarding UW’s changed position.

56. The parties next bargaining session was on January 11, 2023. The Union again asked UW what changed between October 15, 2022, when UW reopened the contract based on its own assertion that the salary threshold applied to Postdoc Scholars and January 9, 2023, when UW first communicated its new position that the salary threshold does not apply to Postdoctoral Scholars. UW Assistant Vice President of Labor Relations Banks Evans responded:

...in the fall we’re approaching the opener deadline in the CBA for these conversations. Also, January 1st is approaching. We continued to have conversations, speak to people about the application of this change. And what our options were both internally and externally...As part of those conversations internally and externally we decided internally that it was in our best interest to increase salaries and take that off the table... (Emphasis added).

The Union then asked UW what new information changed its position between October 15, 2022, and January 9, 2023. Hartless replied “That’s between us and the Attorney General’s Office (AGO). It is seeking clarity.”

57. The Union responded by inquiring specifically if UW was consulting with the AGO, state agencies and/or other people. Hartless responded that UW did not need to disclose such information because it related to their position on wages and concluded “we’ve said why we’ve changed to seeking clarity and leaning towards thinking the law is not applicable...” The Union reiterated the importance of understanding UW’s position to be able to bargain effectively and that it did not understand UW’s theory regarding why the WMWA doesn’t apply to Postdoc Scholars or what facts led UW to change its position at some time between October 15, 2022, and January 9, 2023.

Hartless responded as follows:

where that info comes from or what we’re relying on is not a point of bargaining. We’re seeking clarity on that, and that clarity may go back to the law not applying, or it may go to the law applying... As Banks Evans stated, when we started bargaining this contract the negotiations weren’t going to be over on January 1st. We did what was in our best interest... (Emphasis added).

58. The Union then asked UW if it had a timeline for when it would finalize its’ position regarding application of the threshold. Hartless responded:

Not at this time. We have a timeline for the contract, we've expressed desire for a 3 year contract, and we have those years that we still have to negotiate for, and we have to find a way to make sure things are in compliance, even if that means time tracking.

The Union responded by stating that it understood that UW wasn't willing to share information about who it was speaking to, but asked if UW could provide the "types of questions it was asking"? Hartless responded:

...[UW] is not willing to say anything else, is not willing to disclose our sources because it's not necessary for what we're talking about here. There are all those other factors that prevent a complete answer to be given because it is unknown. I'm willing to have a conversation around this, I'm just not willing to share our sources. It's reputable sources within our purview. We're continuing to engage in conversations about wages.

The Union responded that it was very confused regarding the reasons for UW's abrupt change in position and that it couldn't understand where UW was coming from without additional information and clarification.

59. Later in the day on January 11, 2023, Kornberg stated that she wanted to provide more information about UW's changed position on application of the salary threshold to Postdoc Scholars. Kornberg stated:

...I'd like to give more information to you about the Universities position on why we don't believe this statute applies...For the last two and a half years we've been working with L&I and seeking clarification from them. We've always maintained that we didn't believe this applied to postdocs because other similarly situated employees have been exempted. We've been seeking clarification from L&I. They haven't issued anything yet...I want to be very clear, this isn't a position we just took. We've always taken this position. We can't afford this. When it became apparent we haven't heard from them one way or the other we needed to take a more formal position for you that's why we've said this....
(Emphasis added).

The Union responded by asking UW if it could provide its formal request to L&I seeking clarification regarding application of the threshold to Postdoc Scholars. Kornberg responded that all of UW's conversations with L&I were communicated orally, that UW was working on a written request to L&I and that UW would share that written request to L&I with the Union once it was sent to L&I.

60. After this discussion, the Union introduced a new package CBA proposal including new Compensation and Duration proposals. The Union proposed a duration of February 1, 2023 to September 30, 2024, and compensation exceeding the salary threshold for 2023 and L&I's projected salary threshold for 2024. UW asked if the duration proposal was intended to line up with L&I's announcement of the 2025 salary threshold, which the Union confirmed. The Union also stated that no previous postdoc CBA was ever for a duration of over two years.
61. Kornberg responded that UW could not afford the proposal. Specifically, Kornberg stated: "We can't agree to something we don't have the money for. We can't afford it." (Emphasis added).
62. The parties met again to negotiate the next day on January 12, 2023. UW provided a new package CBA proposal with a duration of February 1, 2023 to January 31, 2026 and reasserted its compensation proposal from January 9, 2023, which would keep Postdoc Scholars below L&I's projected 2024 salary threshold.
63. The Union responded to UW's compensation proposal by walking through its own calculations showing that converting Postdoc Scholars to overtime eligible positions and paying them overtime in 2024 would be more expensive to the University than the Union's proposal keeping them above the threshold. The Union also stated its position that keeping postdocs above the threshold would provide UW greater budget predictability.

Evans responded that the Union's calculations assumed that the University could still afford to hire the same number of Postdocs. Stephanie Harrington responded that these calculations assumed that postdoc overtime would be approved in all cases and Hartless reiterated these points. The Union then asked if UW was suggesting that hours currently worked by postdocs would not be approved if UW was required to pay overtime for such hours. UW responded that the supervisor would have to make a decision regarding whether to allow such overtime hours to be worked if the threshold applies to postdocs. UW also stated that it didn't trust the Union's data showing that postdocs nationally work an average of 53 hours per week and its own survey showing that over 85% of UW postdocs estimated that they worked more than 50 hours per week. The Union then asked UW if it could share whether it had done any similar analysis, and if so, what its calculations showed. UW did not provide a response to the Union's inquiry.

64. Later during the bargaining session on January 12, 2023, the Union made a package CBA proposal with a proposed duration of February 1, 2023 to December 31, 2024. The Union's proposal made concessions on postdoc compensation, including getting rid of the experience-based pay scale that was a part of every previous Postdoc CBA, and lowered the minimum compensation of all bargaining unit postdocs from its previous proposal while still keeping them above the projected threshold for 2024. The Union explained that it understood UW's desire for a three-year contract, but given the uncertainty caused by UW's new position, the Union wasn't comfortable extending the length of the CBA to three years, preferring to keep the traditional two-year CBA term and ensuring another

chance to bargain prior to the effective date of the 2025 salary threshold, which was projected to increase again.

65. Before bargaining concluded on January 12, 2023, the Union noted that it had many outstanding RFIs for which UW had not yet provided adequate responses.
66. Following the January 12, 2023, bargaining session, the Union sent UW new RFIs and clarifications regarding information that was still outstanding from its October 21, 2022, RFI. For each October 21, 2022 RFI to which UW had previously responded that “departments, PIs, and/supervisors will determine the needs and processes that work best for their area”, the Union’s new RFI requested “When will each Department, PI, and/or Supervisor make this determination and communicate it to the Union and the impacted Postdocs?” On January 24, 2023, UW responded as follows: “All Departments will follow the terms and conditions of the negotiated CBA when determining a process that works for their area.” No other information was provided by UW in response to this RFI.
67. In response to Kornberg’s statement on January 11, 2023, that UW had been working with L&I over the past “two and a half years” seeking clarification on whether the salary threshold applied to UW Postdocs, the Union’s January 12, 2023, RFI requested the following: “For the years 2021, 2022, and 2023: any questions that have been posed to L&I about overtime eligibility of Postdocs and associated responses.”

UW responded on January 24, 2023, stating “When the letter to L&I is sent, a copy will be provided to the Union.” UW did not provide any other information regarding its work with L&I about application of the salary threshold to UW postdocs over the previous years as referenced by Kornberg.

On January 31, 2023, the Union responded to UW, noting that its January 24, 2023, RFI response was “non-responsive” and “delays our ability to reach agreement.” The Union’s response continued as follows:

Please provide any questions that have been posed to L&I about overtime eligibility of postdocs and associated responses. If the University is claiming that there are zero records related to these questions, please say so. If the University is claiming that there are records but that the University cannot provide them, please say so and explain why they cannot be provided. In any case, please provide the questions, whether or not they are documented, explaining questions to L&I regarding the applicability of the [WMWA] to Postdocs.

UW has not yet provided additional information responsive to the Union’s request.

68. In response to Kornberg’s numerous statements on January 9th and 11th, 2023, that UW could “not afford” the Union’s compensation proposals keeping postdocs above the salary threshold in 2024, the Union made the following RFI on January 12, 2023:

The Union requests an actual estimated cost for UW’s decision to move some Postdocs from salaried/overtime exempt to hourly, overtime eligible on January 1, 2024. This includes UW’s estimate of the total number of impacted Postdocs in the bargaining unit, UW’s estimation of the total overtime hours worked by Postdocs that were formerly overtime exempt, and any incidental costs such as... costs for any Workday programming necessary to track Postdoc hours etc. If UW has not estimated the cost of this decision for the Postdoc bargaining unit, please say so.

On January 24, 2023, UW responded “The University has not estimated costs in this way.” UW did not provide the Union with any alternative way that it had estimated the costs of converting Postdoc Scholars to overtime eligible positions in 2024 or any other explanation of its statements that it couldn’t afford the Union’s compensation proposals.

69. On January 31, 2023, the Union noted that UW’s January 24, 2023, response that it “had not estimated costs in this way” was non-responsive and requested that UW “provide your estimate of costs associated with tracking all hours and paying all postdoc overtime hours.” UW not yet provided a response to this request.

70. In the January 12, 2023, RFI, the Union requested “any and all relevant budget documents from the years 2021, 2022, and 2023 that the University is considering in determining the financial feasibility of its proposals.” UW responded on January 24, 2023, stating “The University has not estimated budgets in this way” even though the Union’s request does not reference estimated budgets.

On January 31, 2023, the Union responded to UW’s January 24, 2023, RFI response, noting that UW’s failure to provide responsive information was delaying the Union’s ability to reach agreement, and clarifying that if UW is relying on budget documents from years other than 2021-23, those documents should also be provided. UW has not yet provided any documents responsive to this request.

71. In the January 12, 2023, RFI, the Union requested “any and all departmental policies that define and instruct how overtime hours are to be tracked and reported.” UW responded as follows on January 24, 2023:

Since we are not currently and do not currently plan to require time tracking we do not have the policies or procedures to implement time tracking. If we do end up requiring time tracking at some point in the future we would develop the records.

72. On January 31, 2023, the Union added a request to its ongoing RFI asking “what steps UW anticipates taking to implement time tracking and overtime payments for postdocs on 1/1/24?” UW has not provided a response to this request.
73. The parties next bargained on January 20, 2023. The Union again made a package proposal with the same duration, but additional concession on Postdoc wages that would keep bargaining unit postdocs above the salary threshold in 2023 and the projected threshold in 2024. The parties reached tentative agreements on some CBA articles and scheduled additional bargaining dates on January 26 and 30, prior to the CBAs expiration on January 31, 2023. Before the bargaining session closed, the Union made the following statement:

...[the parties] have had a longstanding consensus about what Article 23 [Time and Effort Commitment] and the time reporting MOU mean, and this language that we bargained in the contracts stemmed from that shared understanding. That is what led to those articles being negotiated in the contract and the successor agreement as well. What you raised last time is that now you’re not sure if you have a different position about the overtime exempt status of postdocs in the unit that brings up significant concerns for us so we can’t sign off on the MOU until we understand your position on this and we can’t agree to continue time and effort reporting and the MOU pending an explanation from you on your understanding of it.

Mallahan then stated that UW had a “different understanding” of why the parties agreed to that language in previous negotiations and stated that the language was there “should there be a need to time track.” She did not then reconcile the University’s current position (that the salary threshold might not apply at all) with this historical understanding or her October 15, 2022 notice, citing the application of the threshold to Postdoc Scholars as justification for reopening the CBA. UW did not provide any further explanation regarding its new position that the WMWA salary threshold does not apply to Postdoc Scholars.

74. The parties next met to negotiate the successor CBA on January 26, 2023. Bargaining on this date did not focus on wage, duration or overtime provisions. UW did not provide any additionally explanation regarding its new position that the WMWA salary threshold does not apply to Postdoc Scholars during this bargaining session.
75. The parties next met to negotiate the successor CBA on January 30, 2023. The Union presented another package proposal to UW. The package included a wage proposal with significant concessions from the Union. The Union proposed for the first time that Fellows receive equal pay to Postdoc Scholars no later than April 1, 2023, whereas all previous proposals included Fellows receiving increases equal to Postdoc Scholars on January 1, 2023. The proposal also did not bring Paid Direct minimum compensation above the salary threshold for 2023 or above the projected salary threshold for 2024. The

Union noted that it was making these concessions in recognition of the complications raised by UW regarding Fellow and Paid Direct funding sources and in the interest of reaching an agreement but noted its position that not raising compensation for Fellows equal to Postdoc Scholars “essentially penalizes Postdocs who have acquired fellowship funding and is fundamentally bad for the University.”

76. The Union’s January 30, 2023, package included the same duration from February 1, 2023 to December 31, 2024, but the Union also noted that if the University would agree to the Union’s compensation proposal, the Union would be willing to look at a longer duration with reopener language for Fall of 2024 and 2025.
77. UW presented its own package proposal during the January 30, 2023, bargaining session that included the same 3-year duration proposal as it made on January 12, 2023, and did not include wage increases in 2024 that would keep postdocs above the threshold. This proposal increased minimum pay for Paid Direct Postdocs in 2024 unless funded at a higher rate by a non-UW entity/funding source and specified that other terms of that Article would not apply to Paid Directs. The Union responded that it continued to believe that the salary threshold applies to Postdoc Scholars, that UW’s proposal would require postdocs to track hours in 11-months time which was problematic because the Union still did not understand how UW proposed to track postdoc hours.
78. Hartless responded that UW hasn’t tracked time for postdocs previously and noted “they’re not shift workers, so the flexibility of scheduling time and breaks would really be at least departmentally based maybe to the point where it’s what the postdoc needs along with the PI. Other than that, we don’t have any information.”

Union Bargaining Committee member Max Friedfeld responded: “That’s the problem. We’re not comfortable with individual advisors to work this out with postdocs. We can’t agree to that because it will create inequity for how postdocs will be tracking hours amongst the unit. There won’t be any standard way that hours are tracked across the unit.”

79. Late in the afternoon of the January 30, 2023, bargaining session, the Union made a new compensation proposal which included a concession lowering the minimum salary for Paid Direct postdocs and maintaining its position regarding the rest of the compensation proposal. After making the proposal, the Union again reiterated its lack of understanding regarding UW’s position on the applicability of the salary threshold to Postdoc Scholars and the obstacle this lack of understanding presented to reaching agreement on the successor CBA. Specifically, Union bargaining team member Sarah Pristash stated:

[UW’s] package includes your wage proposal and your proposal to continue Article 23 Time and Effort Commitment and the Time Reporting MOU, but you have not provided sufficient information necessary for us to understand your legal position or any specifics related to a plan to track overtime hours. This legal position reversal, your lack of consideration of the cost and cost estimates,

and the lack of a clear plan for implementing an hours tracking system is delaying our ability to reach agreement.

The Union then noted that it was available to continue negotiating the following day and that it appeared the parties were likely to need to schedule additional bargaining dates in February. The Union suggested scheduling half-day bargaining sessions in each week of February.

80. Hartless responded that UW was aware of the parties need to reach agreement on a successor CBA then stated “we don’t think the law applies to postdocs and we’ve asked for clarification, so we wouldn’t be implementing anything around hours tracking unless we got” contrary information. UW then caucused. After that caucus, Hartless asked the Union why it couldn’t use the same approach the parties had previously used to navigate uncertainty regarding the salary threshold, specifically the MOU – Time Reporting. Parsons, who had participated in UW/UAW Postdoc negotiations in 2018/19 and 2021 responded:

When we negotiated, if you’re talking about the Time Reporting MOU, there was no question, no ambiguity from UW about application of the law as reflected by the language that says ‘the parties talked extensively.’

...There was some question about what the threshold was going to be. We thought it would increase. In that case, either party could open, that’s exactly what [UW] did in October. Only in the last couple of weeks did you open the notion that UW is unclear about the applicability of the law. We’ve asked many questions. Last time you mentioned internal conversations, talked to the AGO, L&I. We’ve asked for questions we’ve asked for documents. We haven’t gotten any of those. That’s why we can’t say sure lets copy and paste our agreement from before, because you’ve changed the intent.

81. Hartless responded that UW believed that the salary threshold does not apply to any Postdocs, “Mindy [Kornberg] said she got new information that made us think we had a new position. Mindy [Kornberg] said that she would share with you our letter that we sent to L&I, but we haven’t sent it yet.”

Parsons then interjected, “sorry to interrupt. You said you have new information that prompted the change in opinion. What is the new information?”

Hartless responded “assessments by more people. UW is a huge organization. We don’t need to get into it again. If our current position is proven wrong, then we’ve got time to negotiate anything that might impact what happens in 2024. Part of why the MOU was triggered was because we were going into negotiations... (Emphasis added).

Parsons then reiterated the Union's position:

...You're asking us to commit to substantial uncertainty for 3 years. If we were talking about a year agreement that would be different. Our proposal gets us past this year and January 2024, 11 months from now. As we said earlier today, we'd be willing to look at longer duration with the possibility of some sort of reopener language in our years. But until you feel like you can clearly articulate to us what your questions are about the law, provide what you think the costs are. We believe our proposal is better for postdocs, more cost effective and predictable. Doesn't put us in a system we can't anticipate and at best would put where supervisors and departments are negotiating amongst themselves. That is not something we're comfortable with at this time.

82. On January 31, 2023, the Union followed up on UW's January 24, 2023, responses to the Union's ongoing RFI regarding postdoc hours tracking, overtime approval, hours worked in the field, how meal and rest breaks would be scheduled and when UW would get this information from its departments and subdivisions and communicate it to the Union. The Union once again noted that UW's lack of substantive responses was delaying the parties ability to reach agreement at the bargaining table.
83. The parties agreed to meet and negotiate again on February 10, 2023. Evans stated that UW would provide the Union with an update regarding its written formal letter to L&I later that week. UW has yet to provide any written letter to L&I or any update regarding the letter first referenced by Kornberg on January 11, 2023.

The parties met to negotiate the successor CBA on February 10, 2023. UW made a package proposal that included counter proposals on Wages and Duration. UW proposed a CBA duration of February 1, 2023 to January 31, 2026, the same three-year duration it proposed on January 12, 2023. UW's wage proposal remained the same for Postdoc Scholars, providing 1% wage increases on the appointment anniversary date of Postdoc Scholars in 2024, 2025, and 2026. For Fellows with appointments, reappointments, or anniversary dates after February 1, 2023, UW proposed increasing their "stipend" to \$65,508 effective on their appointment/anniversary date or on July 1, 2023, whichever is earlier. Fellows would be eligible for a 1% increase on their appointment/anniversary date in 2024, 2025, and 2026. UW proposed that Paid Direct postdocs must receive minimum compensation from their non-UW funding source of \$53,760 in 2023, and a minimum of \$54,840 from non-UW sources in 2024. UW's proposal did not include compensation increases in 2025 or 2026 for Paid Direct postdocs.

84. During the February 10, 2023, bargaining session, UW also clarified that under its proposal if a postdoc received a Paid Direct fellowship from an external agency that was below this proposed minimum, UW would not allow the postdoc to accept the Fellowship. Previously, bargaining unit Paid Direct postdocs with Fellowships paying

less than the CBA minimums were eligible for UW funding to raise their compensation to at least the minimum level provided in the CBA.

85. The Union responded to UW's wage proposal by pointing out that UW's proposal does not address hours tracking and overtime in years two (2024) and three (2025) of its proposal. The Union stated:

As we've said many times, your abrupt change in position in January and your continued failure to provide information about your legal theory regarding overtime has compromised our ability to come to a timely solution about years two and three in the contract."

...

We just want to know what it is you plan to ask [L&I], what is your legal theory and what is your question?

Hartless responded:

Well if there's a legal theory that we've discussed with any attorneys I'd bet a lot of that would fall under privileged information and we won't share that. If a document has privileged information and it can't be removed, we are not required to share it... we're not interested in sharing a draft because it might change. I don't think its appropriate and we're not required to.

The Union responded: "So this is a huge part of the problem, we understand the privilege, but we cannot creatively negotiate solutions if we have no idea what your position is."

86. The February 10, 2023, bargaining session concluding with the parties discussing additional bargaining dates and mediation.
87. UW refused to bargain in violation of RCW 41.56.140(4) and committed derivative interference in violation of RCW 41.56.140(1) by engaging in bad faith bargaining when it intentionally misled the Union by using the Time Reporting MOU to reopen the Time and Effort Commitment Article of the CBA in its October 15, 2022, notice asserting that Postdoctoral Scholars "are considered overtime exempt professionals subject to these new minimum thresholds" and restated that position in its October 17, 2022 correspondence. UW's bad faith bargaining continued through bargaining sessions on October 21, November 7, 18, 21, December 7, 16, 19, 21, 22, 2022, and January 4, 2023, by not disclosing that it did not believe or doubted or had yet to determine whether the salary threshold did, in fact, apply to Postdoctoral Scholars and was actively engaged in conversations with unknown individuals and/or parties as well as L&I in an ongoing effort to determine whether the salary threshold applied to Postdoctoral Sholars.
88. UW refused to bargain in violation of RCW 41.56.140(4) and committed derivative interference in violation of RCW 41.56.140(1) by breaching its good faith bargaining

obligation during the October 21, 2022, bargaining session when it intentionally misled the Union by stating that “there will be a need based on the salaries of the postdocs that no longer meet the threshold to track their time” without disclosing that it did not believe or doubted or had yet to determine whether there would, in fact, be any need for Postdoc Scholars to track their time in 2023 because it had not yet made a determination whether the salary threshold applied to Postdoc Scholars and was actively engaged in conversations with unknown individuals and/or parties as well as L&I in an ongoing effort to make this determination.

89. UW refused to bargain in violation of RCW 41.56.140(4) and committed derivative interference in violation of RCW 41.56.140(1) by engaging in bad faith bargaining when it abruptly changed its position during bargaining on January 9, 2023, by asserting for the first time that the WMWA salary threshold does not apply to Postdoctoral Scholars without any explanation of its rationale for its new position and when the parties negotiations since October 21, 2022, were premised and shaped by the shared understanding that absent a salary increase above the salary threshold prior to January 1, 2023, Postdoc Scholars would become overtime eligible and be required to track time.
90. UW refused to bargain in violation of RCW 41.56.140(4) and committed derivative interference in violation of RCW 41.56.140(1) by bargaining in bad faith when it implemented a one-year wage increase on or before January 1, 2023, based on the then shared understanding that doing so was necessary to keep Postdoc Scholars overtime exempt in 2023, then leveraging this wage increase in bargaining by refusing to move from its position that the CBA should have an unprecedented duration of 3-years despite the uncertainty it created regarding Postdoc Scholar overtime eligibility in 2024, 2025, and 2026.
91. UW engaged in bad faith bargaining when Ms. Kornberg falsely stated during the parties January 11, 2023, bargaining session that UW has “always maintained that we didn’t believe [the salary threshold] applied to postdocs...I want to be very clear, this isn’t a position we just took. We’ve always taken this position” despite UW taking the opposite position in its October 15, 2022, notice and maintaining that opposite position at all subsequent bargaining sessions prior to January 9, 2023.
92. UW interfered with protected employee rights in violation of RCW 41.56.140(1) on January 9, 2023, when it abruptly changed its position during bargaining by asserting for the first time that the WMWA salary threshold does not apply to Postdoctoral Scholars in retaliation for the Union filing an Unfair Labor Practice complaint on January 4, 2023, on behalf of its RSE bargaining unit.
93. UW refused to bargain in violation of RCW 41.56.140(4) and committed derivative interference in violation of RCW 41.56.140(1) by not providing the following relevant information necessary for the proper performance of the Union’s duties in the collective bargaining process:

- The content of any of the questions or the types of questions it purportedly posed to L&I regarding overtime eligibility of postdocs over a two-and-a-half-year period and associated L&I responses as requested by the Union orally during the January 11, 2023, bargaining session and requested in writing for the years 2021, 2022, and 2023, by the Union on January 12, 2023, and for years other than 2021-23 on January 31, 2023.
 - Any information explaining its abrupt change in position regarding application of the salary threshold to Postdoctoral Scholars or explaining the reasoning behind its position that the salary threshold does not apply to Postdoctoral Scholars as requested during bargaining on January 9th and 11, 2023 and requested in writing on January 12 and 31, 2023.
 - UW's estimated cost of moving Postdoctoral Scholars to overtime eligible positions as requested by the Union in its October 21, 2022, RFI and clarified and re-requested in its January 12 and 31 2023, RFI, in response to UW's position at the bargaining table that it could "not afford" the Union's compensation proposals.
 - Any budget documents from the years 2021, 2022, and 2023 that UW considered in determining the financial feasibility of its own compensation proposals as requested by the Union in its January 12 and 31 2023, RFIs, in response to UW's position at the bargaining table that it could "not afford" the Union's compensation proposal.
 - Information necessary for the Union to anticipate and bargain the impacts of UW's announced decision to convert Postdoc Scholars to overtime eligible positions, including but not limited to, how UW envisioned or proposed the overtime approval process and meal and rest break scheduling and approval processes would work and what hours UW considered "hours worked" for postdocs working in the field over multiple days and/or weeks, as requested by the Union in its October 21, 2022, and January 12 and 31 2023, RFIs, and requested orally during bargaining session on October 21 and November 7, 2022, and January 30, 2023.
94. UW engaged in bad faith bargaining by failing to communicate honestly in an effort to reach agreement regarding application of the WMWA salary threshold to Postdoctoral Scholars throughout the duration of the parties bargaining since UW reopened the CBA in its October 15, 2022, notice.
95. UW refused to bargain in violation of RCW 41.56.140(4) and committed derivative interference in violation of RCW 41.56.140(1) by failing to meet its good faith bargaining obligation through its entire course of conduct designed to frustrate and delay the collective bargaining process as described above.

REMEDY REQUESTED

1. The Union respectfully requests that PERC issue an order finding that UW violated its duty to bargain in good faith with the Union as set forth above.
2. The Union respectfully requests that PERC issue an order requiring UW, upon request from the Union, to cease and desist from bad faith bargaining with the Union as set forth above.
3. The Union respectfully requests that PERC issue an order requiring UW, upon request from the Union, to promptly provide the Union with the requested information regarding UW's reasoning and rationale for its position that the WMWA salary threshold does not apply to Postdoc Scholars, costing and budgetary information and/or documents related to converting Postdoc Scholars to overtime eligible positions, and information regarding hours tracking, hours worked in the field and meal and rest breaks for overtime eligible postdocs as set forth above.
4. The Union respectfully requests that PERC issue an order requiring UW, upon request from the Union, to make whole any bargaining unit employee adversely impacted by UW's bad faith bargaining as set forth above.
5. The Union respectfully requests that PERC issue an order requiring UW to post a notice provided by PERC in conspicuous places on UW's premises continuously for 60 consecutive days from the date of the initial posting, to send the notice by email to all bargaining unit postdocs, and to read the notice aloud at the next UW Board of Regents meeting following issuance of the order.
6. The Union respectfully requests that PERC order all other remedies which it deems just and appropriate.

CERTIFICATE OF SERVICE

I certify that on the 14th day of February 2023, a true copy of UAW Local 4121's Unfair Labor Practice Complaint, Statement of Facts and Requested Remedy was served electronically via email to the following:

PERC

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Olympia, WA 98506
filing@perc.wa.gov

University of Washington

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Box 354960 Roosevelt Way NE
Seattle, WA 98195-4960
bankse@UW.edu

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 14th day of February, 2023.

By *Jacob Metzger*
Jacob Metzger

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