



# 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  
January, 4, 2022.

1. On December 20, 2021, UW Researchers United/UAW Local 4121 (Union) filed a Representation Petition to represent a bargaining unit of approximately 1,473 Research Scientist/Engineers (RSEs) employed by the University of Washington (UW) in the following job classifications: RSE Assistant, RSE-1, RSE-2, RSE-3, and RSE-4. UW objected to the inclusion of hundreds of employees from the unit on three grounds: lack of community of interest, statutory exclusions pursuant to RCW 41.56.021(1)(b)(i-iv), and supervisory status.
2. On June 16, 2022, following an election, the Public Employment Relations Commission (PERC) issued an Interim Certification pending the status of the objected-to employees. On June 17, 2022, the Union sent a demand to bargain an initial collective bargaining agreement (CBA) to UW. The parties negotiate under the provisions of RCW 41.56.021.
3. All bargaining unit RSEs were covered by the policies in UW's Professional Staff Program (PSP) when the petition was filed and when certification was issued. The PSP dictates, among other things, how covered employees are hired, compensated, and evaluated and sets forth the policies for leaves and benefits for both overtime eligible and overtime exempt professional staff, including RSEs. The PSP is part of UW's human resource's structure, which requires centralized approval for compensation decisions. Since the filing of the petition and PERC's interim certification, the policies in the PSP covering RSEs have not changed.
4. All RSE Assistants in the bargaining unit were overtime eligible when the petition was filed and remain overtime eligible today. Approximately 70% of the RSE-1, RSE-2, RSE-3, and RSE-4 positions in the unit were overtime exempt when the petition was filed and when certification issued; the remaining RSEs were overtime eligible.
5. On December 26, 2022, UW unilaterally changed the pay structure and associated benefits of 157 RSE-1, RSE-2, RSE-3, and RSE-4 positions from overtime exempt to overtime eligible over the objection of the Union. UW never provided the Union with notice of this change. UW made this unilateral change without reaching agreement or good faith impasse with the Union.
6. Under the PSP, overtime eligible RSEs are required to track all worked and compensated hours, while overtime exempt RSEs are not required to track worked and compensated hours.
7. Under the PSP, a full-time schedule for an overtime eligible RSE consists of 40 hours worked in 7 calendar days. A full-time schedule for an overtime exempt RSE is assumed to be at least 40 hours in 7 calendar days but exempt RSEs are

expected to work to complete job responsibilities regardless of the hours required. Overtime eligible RSEs may not work more than 40 hours (i.e. overtime) without prior approval.

8. Under the PSP, overtime eligible RSEs are compensated for all hours worked over 40 in 7 calendar days at time and one half the regular rate of pay. By mutual agreement between an RSE and manager, overtime eligible RSEs may accrue compensatory time in lieu of overtime payment up to 240 hours. In contrast, exempt RSEs work to complete their job responsibilities and are not eligible for overtime pay or compensatory time accrual.
9. Under the PSP, overtime exempt RSEs are not required to use paid time off for partial day absences, while overtime eligible RSEs must use appropriate paid time off to cover any partial day absence. If an overtime eligible RSE does not have accrued time off, partial day absence(s) are unpaid.
10. Under the PSP, when non-essential UW operations are suspended for less than a week, overtime eligible RSEs that are not able to telework must use one of the following options for work time missed due to the suspension of operations: accrued holiday credit, accrued compensatory time, vacation, personal holiday, unpaid time off, or make-up time missed within 90 days. Overtime exempt RSEs are not required to work during the suspension of non-essential UW operations but remain responsible for meeting work obligations despite suspension of operations. If a suspension of operations lasts less than one work week, exempt RSEs are not required to charge leave balances for time missed.
11. Under the PSP, overtime exempt RSEs are eligible for a lump sum amount added monthly to their gross salary in recognition of the assumption of additional duties or higher-level administrative responsibilities. This additional compensation is called an “administrative supplement.” Overtime eligible RSEs are not eligible to receive administrative supplement payments.
12. Under the PSP, overtime exempt RSEs may qualify for “excess compensation” for all UW work that is not part of the RSEs regular duties. Excess compensation may not exceed 25% of the exempt RSEs regular annual salary. Overtime eligible RSEs are not eligible for excess compensation.
13. Under the PSP, overtime exempt RSEs who take on additional duties, such as teaching a class for a quarter, may receive additional pay for those duties called “period activity pay.” Overtime eligible RSEs are not eligible for period activity pay.
14. On August 15, 2022, the parties held their first negotiation session. The parties continued to negotiate an initial CBA in bargaining sessions on September 27, 2022, October 5, 2022, October 11, 2022, and October 17, 2022. There was then a six-week hiatus in bargaining due to UW’s unavailability. The parties next met to

negotiate on November 28, 2022, with additional bargaining sessions scheduled for December 8, 13, and 15, 2022 and January 5, 10, 18, and 24, 2023.

15. On May 26, 2022, Central UW Human Resources (UWHR) sent an email to administrative and finance leaders in UW's numerous colleges, schools, departments, and units notifying them that the salary threshold would be increasing on January 1, 2023, identifying in an attached spreadsheet the RSEs in each unit that could be impacted by the increased salary threshold, and noting that overtime exempt RSE positions "are subject to a status quo hold..." meaning that "salary and FTE percentages for these RSE jobs may not be changed during the status quo period "except by special permission from Labor Relations." The email also states that "if the salary for an overtime exempt RSE 1, 2, 3, or 4 position falls below the threshold, they must be converted to overtime eligible." No notice of this anticipated change was provided to the Union.
16. On August 25, 2022, UWHR Executive Director of Compensation, Randy West, sent an email to the same administrative and finance leaders, reminding them of the change to the salary threshold and including an updated spreadsheet showing RSEs that would be below the projected Washington State Department of Labor and Industries (L&I) January 1, 2023 salary threshold and informing them that UWHR would be sending updated spreadsheets every other month until implementation of the changed threshold on January 1, 2023. No notice of this anticipated change or the identities of the impacted RSEs was provided to the Union at this time even though the parties were now actively engaged in bargaining an initial CBA.
17. On October 10, 2022, UWHR sent an email to the same administrative and finance leaders of UW's units and to both central and decentralized human resources professionals confirming the new salary threshold effective on January 1, 2023 and providing information about the change and its potential impact on UW employees, including RSEs. No notice about this impending change was provided to the Union at this time.
18. On October 24, 2022, UWHR sent an email to the same administrative and finance leaders of UW's units with the subject "ACTION NEEDED: January 1, 2023, L&I salary threshold change." The email included an updated list of impacted RSEs in each UW unit and asked each unit to:

"review the list of impacted employees in your organization and indicate those employees for whom you plan to either:

- Request a salary or FTE adjustment so that they may **remain overtime exempt** when the L&I changes become effective on January 1, 2023.

- Remain at their current salary and FTE and **become overtime eligible** in January, moving into nonexempt job profiles in the last week of December to prepare to track their hours worked starting on December 26, 2022.

Completed spreadsheets are due to the HR Compensation office by November 7.” (emphasis in original).

UW did not provide notice of these anticipated changes or the identities of the impacted RSEs to the Union.

19. On an unknown date, UWHR created and disseminated a sample letter for use by UW units to notify employees in their organizations that UW would change their pay structure from overtime exempt to overtime eligible on December 26, 2022.
20. On November 8, 2022, an unknown number of bargaining unit RSEs received emails from UW nearly identical to the sample/template letter created and disseminated by UWHR notifying them that their pay structure would be changed from overtime exempt to overtime eligible on December 26, 2022. UW did not provide notice to the Union of this change or these direct communications to bargaining unit RSEs. UW still has not provided the identity of each bargaining unit RSE that received this notice.
21. In mid to late November 2022, the Union began hearing rumors from RSEs that some RSEs had been notified by UW that their pay structure would be changed from overtime exempt to overtime eligible and that they would be required to track their time and get preapproval before working any overtime hours. During the parties’ November 28, 2022, bargaining session for an initial CBA, the Union asked UW about these rumors and UW confirmed that it had in fact already directly notified an unknown number of RSEs that their pay structure would change from overtime exempt to overtime eligible. UW explained that it had been preparing to convert RSEs from overtime exempt to overtime eligible since May due to the anticipated increase in salary threshold on January 1, 2023, pursuant to the Washington Minimum Wage Act (WMWA). The Union noted that UW had failed to provide any notice of this change to the Union nor bargained these changes and stated that it would be following up with an information request and likely a demand to bargain.
22. Prior to UW’s statements during bargaining on November 28, 2022, UW had not communicated anything to the Union regarding its plan to change RSE pay structures and associated benefits from overtime exempt to overtime eligible, much less provided the Union with notice of the change, the identity of the impacted RSEs or an opportunity to bargain.
23. At the November 28, 2022, bargaining session, the Union made a nearly comprehensive CBA proposal with 31 separate articles, including a compensation

proposal. If accepted, the Union's compensation proposal would raise all full-time RSE's in the bargaining unit above the WMWA threshold effective on January 1, 2023. To date, UW has not accepted the Union's compensation proposal or made any counterproposal regarding RSE compensation.

24. On the morning of December 2, 2022, Union Negotiating Committee member Abby Gambrell sent UW's lead negotiator and Director of Labor Relations, Banks Evans, an email demanding to bargain the change to RSE pay structures from overtime exempt to overtime eligible. Specifically, the Union's demand to bargain states:

“The Union respectfully demands to bargain both the decision and impacts of any change to bargaining unit pay structure and associated benefits. No overtime exempt RSE should have their pay structure changed to overtime eligible/hourly and no changes should be made to their associated benefits until bargaining is complete. Any Bargaining unit RSE that has already been notified of such a change must be notified that UW's earlier decision has been retracted.”

25. The Union's December 2, 2022, demand to bargain included an attached request for information (RFI) seeking information related to this change in pay structure including, but not limited to, the following:
- the identity of each RSE whose salary would not meet the salary threshold effective January 1, 2023;
  - whether these yet to be identified RSEs had been notified of UW's intent to change their pay structure and copies of UW communications to the impacted RSEs;
  - the date UW intended to implement this change in RSE pay structure;
  - whether preapproval of overtime hours was required for newly overtime eligible RSEs and if so, the procedure for preapproval;
  - which hours UW considered “hours worked” for RSE's working in the field with assignments spanning multiple days and/or weeks;
  - whether UW would require impacted RSEs to take paid or unpaid time off for partial day absences if/when they became overtime eligible;
  - whether impacted RSEs would remain eligible for “Administrative Supplemental Pay”;
  - whether impacted RSEs would remain eligible for “Excess Compensation Pay”;
  - whether impacted RSEs would remain eligible for “Period Activity Pay”;
  - the total cost associated with implementation of this change;
  - the identity of all RSEs that had their salary or FTE increased during the previous six months for the purpose of keeping their salary above the salary threshold effective on January 1, 2023.

26. On December 2, 2022, UW's lead negotiator Banks Evans responded to the Union's demand to bargain by email, stating:

“All we are doing is moving people from OT exempt to OT eligible (nonexempt) if their salary is below the new threshold when it goes into effect on January 1<sup>st</sup> so that they can be paid any earned overtime which we are legally obligated to pay them. This is not new. This is not a change in practice. This is the status quo...

...

Since this is the status quo and not a change in practice, and since we are merely following the law, I am not seeing where any of this creates a duty to bargain. Definitely not the decision, but I'm honestly not even seeing a duty to bargain the effects. We will be making all changes required by law on January 1<sup>st</sup>... Happy to discuss this more in person at our next bargaining session.”

The parties next bargaining session was scheduled for December 8, 2022. The email also stated that no RSEs were being changed from salaried to hourly, but rather that all impacted RSEs would remain salaried despite being overtime eligible and required to track their hours.

27. On December 8, 2022, UW, through Mr. Evans, provided a partial response to the Union's information request noting that approximately 265 RSE 1-4 positions were impacted by the January 1, 2023 salary threshold change and that “from what I've heard from clients thus far” 134 of these would be converted from exempt to overtime eligible on December 26, 2022 while 69 positions would remain overtime exempt because their department/unit chose to increase their salary and/or FTE prior to January 1, 2023 above the new salary threshold. UW did not know whether an additional 55 RSE positions would be changed to overtime eligible because their units/departments had yet to respond to UWHR. According to UW, 7 impacted RSE positions would not require a change because employment was terminating prior to the new threshold or other miscellaneous reasons. UW did not provide any responses regarding whether the impacted RSEs had been notified; whether overtime work required preapproval and any related processes for preapproval, which hours would constitute “hours worked” for RSEs in the field; whether newly overtime eligible RSEs would be required to use paid or unpaid leave for partial day absences and whether they would remain eligible for various forms of additional compensation that the PSP states are only available to overtime exempt employees. UW also did not provide the identities of RSEs whose combination of salary and FTE were increased over the previous six-months to meet the new salary threshold effective January 1, 2023.
28. At the December 8, 2022, bargaining session for an initial CBA, the Union noted that its November 28, 2022 compensation proposal would bring the impacted RSEs above the salary threshold and that it did not have another proposal regarding UW's announced changes because it was still awaiting information

from UW necessary for such a proposal including, but not limited to, the procedures UW proposed for time tracking, the cost of UW's announced change to RSE compensation, what hours UW proposed as "hours worked" for RSEs in the field, the identity of RSEs whose salary and/or FTE were increased in the previous six months in order stay overtime exempt after January 1, 2023, whether preapproval for overtime was required, and each UW unit's procedures for time tracking, overtime preapproval, and "hours worked" in the field.

29. At the close of the December 8, 2022, bargaining session, UW provided a proposed memorandum of understanding (MOU). The proposed MOU had an expiration date of January 15, 2023, and provided that UW would give each RSE moving from overtime exempt to eligible "written expectations on time tracking and instructions on how to track time" as well as "written expectations and requirements for overtime approval." The proposed "written requirements" and "expectations for overtime approval" that UW would provide under the MOU were not yet known by UW when it presented the MOU. The MOU also included that UW would apply the current PSP rules for employees being moved from exempt to eligible until otherwise bargained.
30. UW cancelled the parties scheduled December 13, 2022, bargaining session due to an illness. UW did not reschedule this bargaining session.
31. On the afternoon of December 14, 2022, UW provided additional but still incomplete responses to the Union's information request. UW stated that RSEs that are converted to overtime eligible would be required to obtain advanced supervisory approval for overtime hours worked and that each unit in which an impacted RSE resides "should have an overtime authorization process and inform employees that they must obtain advance supervisory approval to work more than their regular work schedule." UW did not provide a single overtime authorization process from any of the units in which impacted RSEs reside. UW also noted that RSEs that work unauthorized overtime may be subject to discipline. Additionally, UW stated that it estimated the cost of converting the impacted RSEs from overtime exempt to overtime eligible at approximately \$3,840,286 per year.
32. In its December 14, 2022, email to the Union, UW confirmed that impacted RSEs being converted to overtime eligible would now be required to use paid or unpaid leave to cover partial day absences and would no longer be eligible for administrative supplement pay, excess compensation pay or period activity pay. Prior to being converted to overtime eligible, these RSEs were not required to take leave to cover partial day absences or the suspension of UW operations and were eligible for administrative supplemental pay, excess compensation pay, and period activity pay.
33. In the December 14, 2022, email, UW noted that it was still in the process of determining which impacted RSEs had already been notified that their pay



structure would be changed and was still in the process of collecting communications to RSEs.

34. UW did not provide any responsive information to the Union's December 2, 2022, request to identify any RSE whose salary or FTE was increased during the past six months for the purpose of keeping their salary above the salary threshold. Instead noting that "'for the purpose of keeping their salary above the salary threshold' is not one of the standard reasons we accept for FTE or pay changes." This response was given despite UWHR's direction to impacted units that they should tell UWHR which impacted RSEs would be converted to overtime eligible and which the unit would be requesting a salary or FTE change to enable the RSE to "remain overtime exempt" in its October 24, 2022, email.
35. On December 15, 2022, the parties held a bargaining session for their initial CBA and the Union responded to UW's December 8, 2022 MOU proposal, noting that it was open to a short term MOU that would allow the parties to continue to bargain regarding RSE compensation and conversion of RSEs from overtime exempt to eligible, but that no changes should be made to the overtime eligibility status of any RSE until the parties had completed bargaining on the topic. The Union noted that UW did not have to convert RSEs to overtime eligible to comply with WMWA and instead could comply by increasing RSE compensation above the new threshold as the Union proposed on November 28, 2022. The Union also noted that had UW provided appropriate notice of this change, the parties would have had ample time to bargain in advance of January 1, 2023. The Union then made a proposal that to allow the parties the time necessary to bargain the overtime issue, UW temporarily increase the salary of all full-time overtime exempt RSEs above the January 1, 2023, overtime threshold until February 15, 2023, or the parties reached agreement on an initial CBA, whichever occurred first. UW did not provide a response to the proposal or ask any questions regarding the proposal during the session
36. On December 7, 2022, UW notified the Union that it was available to bargain the announced changes to RSE pay structures on December 16, 19, and 22, 2022. UW never agreed to bargain its decision to convert RSEs from overtime exempt to overtime eligible or otherwise withdrew its December 2, 2022, statement that it did not have an obligation to bargain the decision. The Union agreed to meet on each date offered by UW.
37. On December 16, 2022, the parties met for approximately two hours. Much of this short bargaining session was spent trying to understand UW's position that RSEs that were converted to overtime eligible and required to track their time would remain salaried, not hourly employees. Additional time was spent trying to understand how impacted RSEs were expected to track their time and get preapproval for overtime. UW insisted that individual departments and units were responsible for creating/implementing their own time tracking and overtime approval procedures based on policies maintained by central Administration and

that UW did not have knowledge of the content of these departmental procedures that would apply to newly overtime eligible RSEs. The Union communicated that it would not agree to unknown or non-existent policies established by each UW department/unit/supervisor for time tracking and overtime preapproval and that these policies and procedures must be identified and bargained. When the Union inquired when UW would be providing each unit's written time tracking and overtime authorization procedure, as requested on December 2, 2022, UW responded that it was working on the assumption that each unit already had a process or policy in place but didn't know for sure and would be following up with additional information. The UW website contains an "overtime compensation" page that states that "each unit should have an overtime authorization process and inform overtime eligible employees that they must obtain advance supervisory approval" to work overtime. The Union noted that it needed to understand what was already in place to effectively bargain the issue and because RSEs in the unit were not aware of these policies/procedures in their units. The Union also sought clarity regarding which hours UW considered "hours worked" for RSEs in the field. UW did not provide any responsive information on this issue, noting only that it would comply with state and federal law.

38. At the December 16, 2022, bargaining session, UW rejected the Union's proposal to temporarily raise wages to meet the threshold until February 15, 2022, or agreement on an initial CBA, whichever occurred first. UW provided two reasons for declining the Union's proposal: first, UW stated that "temporary pay is not considered in the determination of if a position meets the threshold" because "only base salary is counted toward the threshold" and second, because UW costed the Union's proposal at approximately \$2.2 million dollars (if the pay increases were implemented for a full calendar year), which it deemed too expensive. UW did not provide a counter proposal during the bargaining session, stating that its December 8, 2022, proposal "remained unchanged." UW did not explain how the Union's proposal costing \$2.2 million was deemed too expensive when UW estimated the cost of converting the impacted RSEs to overtime eligible at the much higher cost of approximately \$3.8 million per year.
39. On Monday, December 19, 2022, the parties again met to bargain regarding UW's announced change to convert a still undetermined number of RSEs from overtime exempt to overtime eligible. Much of the bargaining session was spent discussing outstanding information that UW had yet to provide to the Union, including overtime preapproval and hours tracking policies in the various departments/units in which impacted RSEs reside, and which hours UW considered "hours worked" for RSEs in the field. UW acknowledged that it had not yet provided responses to these requests and committed to working on providing responsive information. During the bargaining session, the Union made a new proposal to alter its December 15, 2022, proposal to address UW's stated concern that temporarily increasing compensation would not allow the impacted RSEs to remain overtime exempt. The Union proposed the language "increase annual base pay" instead of "temporarily increase annual compensation rates" to address UW's concern. UW

did not provide feedback or respond to the Union's proposal but said it would be prepared to respond when the parties next met on Thursday, December 22, 2022.

40. During the December 19, 2022, bargaining session, UW Labor Relations sent an email to approximately 50 UW employees with the subject "URGENT Union information request: Department policies." The email stated that labor relations was seeking departmental policies for (1) overtime approval; (2) hours worked in the field; and (3) time tracking. The email noted that the request was time sensitive, and responses were needed by December 22, 2022 (the date of the parties' next bargaining session). On December 21, 2022, UW provided the Union with responses from various departments and units, including the following:
- On 12/22/22, a representative for UW's School of Public Health responded that none of its departments have any responsive written policies;
  - On 12/20/22, a representative of the College of Built Environments responded that it had no responsive departmental policies;
  - On 12/21/22, a representative of the Department of Immunology stated that it follows UW policy for overtime approval and time tracking, and linked to a UW webpage, which states that every UW unit "should have an overtime authorization process." The response did not contain any information regarding an overtime authorization process for the Department of Immunology.
  - On 12/21/22, a representative for the Department of Pharmacology replied that it does not have any policies responsive to the request.
  - On 12/20/22 a representative for the School of Dentistry responded that it does not have responsive policies, instead "managers are responsible for their own teams" regarding overtime requests, overtime approval, and how time is tracked for their team during field assignments.
  - On 12/20/22 a representative for UW's Psychiatry and Behavioral Sciences Department replied that it does not have any responsive policies.
  - On 12/21/22 a representative for the Department of Microbiology responded that it does not have responsive departmental policies and provided links to the PSP.
  - On 12/20/22, a representative for the Department of Neurology and Neurological Surgery responded that "time tracking is only required for classified, hourly or overtime eligible employees. Any overtime exempt professional staff positions, **such as the RSEs**, are expected to work their standard work schedule." (emphasis added).
  - On 12/19/2022, a representative of the Department of Otolaryngology responded that it did not have any responsive policies.
  - On 12/20/22, a representative for the Radiation Oncology unit of UW Medicine responded that "Radiation Oncology does not have any explicit policies on these topics."
  - On 12/20/22, a representative for the Department of Anesthesiology & Pain Medicine responded that individual managers are responsible for showing new employees how to use workday and time keeping resources as part of

their onboarding responsibilities and that no departmental fieldwork policies existed.

- On 12/20/22, a representative for the College of Education responded that it did not have any responsive policies.
- On 12/21/22, a representative for the College of Engineering (CoE) responded with multiple policies applicable to different units in the College. One policy was provided for leave and timesheet recording in the Dean's Office, while a time tracking spreadsheet was provided in place of a policy for the Department of Industrial and Systems Engineering. The overtime policy for all units within the College's Collaboration Core requires that employees submit requests to work overtime to their supervisor stating, "why they believe overtime is required" and addressing the "tasks to be performed." The Allen School of Computer Science and Engineering did not have an overtime approval process "though employees are expected to obtain approval from their supervisor." For the Department of Electrical and Computer Engineering, the response indicated that it did not have an overtime approval policy applicable to RSEs because "our RSEs affected by union bargaining are currently overtime exempt." The response stated that the Department of Human Centered Design and Engineering "currently does not have a written policy for overtime approval, hours worked in the field, or time tracking. The response noted that the policy in the Department of Materials Science and Engineering required employees to get advanced written approval from the applicable supervisor and administrator which "details dates, amount, and whether it will be for compensation or time off" and that the approval for such requests should be maintained in the employees' personnel record.
- On 12/22/22, a representative of the School of Social Work responded that it does not have any responsive policies.
- On 12/20/2022, a representative for the Department of Comparative Medicine provided that employees are required to get approval from a supervisor or appropriate management for overtime and can only get approval for overtime after it is worked "in an emergency or [when a] critical situation requires work to be done first."
- On 12/20/22, a representative for the Department of Laboratory Medicine and Pathology responded that it doesn't have overtime approval policies and that its staff "are to follow the required process of the appropriate timekeeping system and inform their manager of any discrepancy to their FTE or overtime. Kronos users will use Kronos exception forms. Workday users will notify email or other appropriate communications to their manager."
- On 12/21/22, a representative for the Department of Medicine responded that it "does not have any specific guidelines for overtime approval, hours worked in the field or time tracking, but some divisions within the Department had division specific guidelines. The Allergy and Infectious Diseases Division requires overtime approval by a manager and expects employees working in the field will "work the number of hours agreed upon per the most updated and approved FTE memo/current reflection in workday." The Cardiology Division does not have applicable policies but does expect staff to have

overtime pre-approved. The Division of Dermatology “just uses the policies off the UW HR Website” and noted that “the only time we mention time tracking/OT is in offer letters.” General Internal Medicine requires overtime approval through a specific form and “time in the field would be arranged by employee and supervisor.” The Gerontology and Geriatric Division sends new hires letters that “outline the OT exempt/eligibility status and the need to request permission in advance” using “UW templates.” The Department of Medical Genetics requires that overtime be approved by the Principal Investigator and communicated to the Division Administrator” who is responsible for tracking in workday. The Metabolism, Endocrinology and Nutrition Division does not have an overtime approval policy but noted that “if there is a future need for employees to work overtime, we would just have them get permission from the PI of the lab and maintain emails showing the PI approved it.” The following divisions do not have responsive policies: Nephrology, Oncology, and Rheumatology. The Division of Pulmonary, Critical Care, and Sleep Medicine outline “OT exempt/eligibility status and the need to request permission in advance” in letters sent to new hires, but don’t otherwise have a policy. The Hematology Division does not have a division wide policy, instead “each PI, lab, or team decides how they handle OT.”

41. On December 20, 2022, UW sent the Union a new proposed MOU. Like UW’s previous proposal, it assumed the impacted RSEs would be converted to overtime eligible and offered to allow the Union to “identify additional impacts it would like to bargain.” The proposal did not contain any commitment from UW to actually bargain such identified impacts. In addition, the new proposal added that “Employees moving from overtime Exempt to Overtime Eligible will be provided written expectations on field work as it relates to time tracking, ‘on duty hours’ and unauthorized time,” but did not include what written expectations or work rules would be provided to the impacted RSEs. Finally, UW’s proposal added that the parties “may” agree to schedule a department level JLM [Joint Labor Management] meeting “to share information, express concerns, and present process improvements” related to the newly implemented time tracking requirements. UW’s proposed MOU does not bind UW to participating in such JLMs.
42. On December 21, 2022, UW provided additional responses to the Union’s information requests. In the response, UW clarified that it was not yet able to provide a list of impacted RSEs that had already been notified that their pay structure was being changed on December 26, 2022, because they were waiting on responses from departments/units. UW stated that it was not yet able to provide information regarding UW communications to impacted RSE supervisors regarding the change but would continue to work on providing this information. UW provided non-responsive information to the Union’s request that it clarify what it means to remain “salaried” but overtime eligible and chose not to address how RSEs working in specific scenarios would be compensated. Instead, UW

- provided a link to an e-learning course “Overtime Concepts for Time Entry in Workday” that did not contain responsive information. UW again did not provide responses to the Union’s request for whether all time in the field is considered “hours worked” and should be recorded as such or whether there were UW policies on this topic. UW confirmed that it was continuing to compile a list of RSEs whose salary and/or FTE had been increased during the past six months.
43. On December 22, 2022, the parties met to bargain this issue. Again, the central issue discussed was outstanding information yet to be provided by UW including departmental/unit/supervisor policies regarding time tracking, overtime authorization, and what constitutes hours worked in the field. The Union noted that it is difficult to bargain this topic without this basic information. Much of the bargaining session was spent by UW attempting to explain what it meant for an RSE to be overtime eligible and salaried (rather than hourly). The Union still does not understand how this status is different than being an overtime eligible and hourly employee. Forty-five minutes into the bargaining session, UW declared impasse “on the question of raising salary” and stated that it would be changing 157 RSEs from overtime exempt to overtime eligible on the following Monday, December 26, 2022. The Union stated that it did not believe the parties were even close to impasse. The Union expressed concern that UW felt it was appropriate for each department/unit or even supervisor to create their own policies regarding time tracking, overtime authorization, and “hours worked” without bargaining with the Union and without even a basic understanding of the current practices/policies in each department.
44. On or about December 26, 2022, UW converted 157 RSEs from being overtime exempt to overtime eligible. This change resulted in each of the 157 impacted RSEs losing the ability to take partial day absences without the use of leave; requires them for the first time to track their hours and seek preapproval for any hours worked over 40 in a workweek or be subject to discipline; requires them to use leave to cover work time missed due to the suspension of UW operations when they previously were not required to use leave; and disqualifies them from additional compensation in the form of administrative supplement pay, excess compensation pay, and period activity pay.
45. The parties did not reach agreement or good faith impasse at the December 22, 2022, meeting or at any time prior to UW changing the pay structure and associated benefits of 157 RSEs from overtime exempt to overtime eligible on or around December 26, 2022.
46. By unilaterally changing the pay structure of 157 RSEs as described above without providing the union notice or the opportunity to bargain and without reaching good faith impasse, UW refused to bargain in violation of RCW 41.56.140(4) and committed derivative interference in violation of RCW 41.56.140(1).

## REMEDY REQUESTED

1. The Union respectfully requests an order finding that UW violated its duty to bargain in good faith with the Union by unilateral change as set forth above.
2. The Union respectfully requests that PERC issue an order requiring UW, upon request from the Union, to rescind the changes to RSE pay structures and associated benefits and restore the status quo ante.
3. The Union respectfully requests that PERC issue an order requiring UW to give notice to, and upon request, negotiate in good faith with the Union before changing mandatory subjects of bargaining.
4. The Union respectfully requests that PERC issue an order requiring UW to make whole any bargaining unit employee adversely impacted as a result of UW's unlawful unilateral change.
5. The Union respectfully requests that PERC order all other remedies which it deems just and appropriate.

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 4th day of January, 2023, a true copy of UW Researchers  
3 United/UAW Local 4121's Unfair Labor Practice Complaint, Statement of Facts and Requested  
4 Remedy was served electronically via email to the following:

5 **PERC**  
6 112 Henry Street NE, Suite 300  
7 Olympia, WA 98506  
8 [filing@perc.wa.gov](mailto:filing@perc.wa.gov)

9 **University of Washington**  
10 Banks Evans  
11 Box 354960 Roosevelt Way NE  
12 Seattle, A 98195-4960  
13 [bankse@uw.edu](mailto:bankse@uw.edu)

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

16 DATED this 4th day of January, 2023.

17 By Jacob Metzger

18 Douglas, Drachler, McKee & Gilbrough LLP  
19 1904 Third Ave., Suite 1030  
20 Seattle, WA 98101  
21 206-623-0900  
22 206-623-1432 (fax)  
23 Jacobm@ddmglaw.com  
24  
25



**From:** [Jacob Metzger](#)  
**To:** [PERC, Filing \(PERC\): bankse@uw.edu](#)  
**Cc:** [Amy Bowles](#)  
**Subject:** Researchers United/UAW Local 4121 ULP Complaint, Statement of Facts, and Certificate of Service  
**Date:** Wednesday, January 4, 2023 3:34:05 PM  
**Attachments:** UW Researchers United\_UAW 4121 ULP Complaint\_Statement of Facts and Certificate of Service.pdf

---

External Email

Please find UW Researchers United/UAW Local 4121's ULP Complaint, Statement of Facts and Certificate of Service attached.

Thank you,

Jacob Metzger  
Douglas Drachler McKee & Gilbrough LLP  
1904 Third Ave, Suite 1030  
Seattle, WA 98101  
206-623-0900 ext 234  
206-623-1432 (fax)  
[jacobm@ddmglaw.com](mailto:jacobm@ddmglaw.com)

CONFIDENTIALITY NOTE: THIS E-MAIL TRANSMISSION AND ANY ATTACHMENTS MAY CONTAIN PRIVILEGED OR CONFIDENTIAL INFORMATION. IF YOU HAVE RECEIVED THIS EMAIL IN ERROR, PLEASE ADVISE US BY REPLY EMAIL AND DELETE THE MESSAGE AND ANY ATTACHMENTS WITHOUT COPYING OR DISCLOSING THE CONTENTS. THANK YOU.