

SKALBANIA & VINNEDGE
ATTORNEYS AT LAW
A PROFESSIONAL SERVICE CORPORATION

May 12, 2022

***VIA FIRST CLASS MAIL
and EMAIL***

USW Local 12-369
797 Stevens Drive
Richland, WA 99352

Re: Information Regarding Vote on Proposed Agreement between EN and USW

To: USW Bargaining Unit Members at EN,

I am providing this information to you as the legal counsel for USW Local 12-369, in order to help ensure that you are well-informed when you exercise your right to vote on a package that has been recommended by a PERC mediator. This package, if ratified by both parties, would result in a new collective bargaining agreement between EN and USW Local 12-369.

This is a brief explanation as to how the bargaining process has gotten to this point.

Members of the NSO bargaining unit are subject to RCW 41.56.

This means that there is a three-step bargaining process that potentially needs to be followed between EN and USW in order to determine the working conditions of NSO's:

- 1) Direct bargaining with EN across the bargaining table;
- 2) Mediation;
- 3) Interest Arbitration.

Whenever the direct bargaining process is not working, either party can ask the Washington State Public Relations Commission (PERC) to appoint one of PERC's employees as a mediator in order to assist the parties to try to reach an agreement.

Although PERC mediators do not have the legal authority to "make" a party change the proposals that were made prior to mediation, PERC mediators can make recommendations to the parties regarding potential compromises that they believe are in the parties' best interests, based upon their knowledge and experience with the collective bargaining process that has developed under RCW 41.56.

That is what has occurred in this instance.

As you know, EN and USW engaged in a lengthy bargaining process directly across the bargaining table that did not result in an agreement being reached. As a result, the parties jointly requested mediation. PERC then appointed one of its employees, Jamie Siegel, to act as the parties' mediator in this instance.

Ms. Siegel is an experienced mediator who, as a result of the lengthy mediation process between the parties that she has presided over, has become familiar with the positions of the parties and with the issues that they have been unable to voluntarily resolve on their own.

After a lengthy mediation process that also did not result in a full agreement between the parties, Ms. Siegel agreed, at the request of the parties, to issue a recommendation regarding the manner in which, in her opinion, the parties should settle their remaining unresolved issues.

Ms. Siegel issued her recommendation in good faith based upon her expectations as to how an interest arbitrator would rule if the parties were unable to reach a voluntary agreement during mediation. Ms. Siegel's intent in issuing her recommendation was to assist the parties to reach a resolution of their bargaining process that Ms. Siegel believed would be similar to the outcome that would occur if the parties went to interest arbitration.

Ms. Siegel's intent in issuing her recommendation was also therefore to give the parties an opportunity to reach an agreement that she believed would be similar to the outcome of a divisive interest arbitration proceeding without the need for them to actually participate in the time consuming, risky and divisive hearing process that would be required in interest arbitration.

Ms. Siegel's recommendation is a compromise. It is a better offer for the USW than EN ever made to the USW during either the bargaining or mediation process, but it also asks the USW to accept compromises that the USW did not offer to make to EN during the bargaining or mediation process.

Ms. Siegel's recommendation must be accepted or rejected as a package. Ms. Siegel, as part of the package that she is recommending, is recommending that the parties should accept all TA's that were reached by the parties prior to mediation and she is also recommending that the parties should agree to renew all existing Letters of Agreement with necessary updates (the parties have also agreed to do this). TA's reached before mediation are included in the redline version of the proposed CBA that is being provided to you as part of this information package. To save space, however, the Letters of Agreement are not being included in this package (although, again, the existing Letters of Agreement, with appropriate updates, would be renewed if both parties ratify Ms. Siegel's recommendation).

It is also important to know the following information about various components of the package that the mediator has recommended:

Retroactivity of General Wage Increase

The General Wage Increase (GWI) will be retroactive and paid in a lump sum. The lump sum will be calculated on hours paid to each officer (minus applicable taxes and deductions) from November 3, 2020, through the date the ratified and approved collective bargaining agreement is implemented.

GWI retroactive payments will be paid to officers on the Energy Northwest payroll at the time of contract ratification, as well as retirees since November 3, 2020. Retiree is defined as an employee eligible for PERS retirement benefits on or before the date of separation from Energy Northwest.

Energy Northwest will make best efforts to pay retroactive compensation in a timely manner.

Timing of Other Changes

Unless otherwise specified in the attached or in the tentative agreements reached, changes take effect upon the 2020-2024 Collective Bargaining Agreement being ratified and approved. When reference is made to “ratified and approved”, it means when the union membership has ratified the agreement and the employer’s governing body has approved it.

All provisions of the existing collective bargaining agreement and LOAs, except as modified herein, remain unchanged.

Both parties continue to maintain “protected positions” that they could still take into interest arbitration if one or both parties reject Ms. Siegel’s recommendation. This means that if this matter goes to arbitration, the USW might do either better or worse than Ms. Siegel’s recommendation, depending on any ruling that is ultimately issued by a neutral arbitrator.

However, Ms. Siegel issued her recommendation under the belief that her proposed compromise would likely be very similar to any award that was actually issued by an interest arbitrator. One factor that was considered by Ms. Siegel in this regard was the terms of the actual interest arbitration award that was recently issued by an arbitrator in order to resolve the most recent bargaining process between the IBEW and EN.

The parties have agreed that if interest arbitration does become necessary in this instance that neither party will be allowed to share any information with the neutral arbitrator about the mediator’s recommendation. So, the mediator’s recommendation will not have any influence on the outcome of any interest arbitration.

Technically, if one or both parties votes against the mediator’s recommendation, the next step would be to return to mediation. Under the circumstances, however, this would almost certainly quickly result in interest arbitration.

In that event, the parties would convene an interest arbitration panel. This interest arbitration panel would have the authority to issue legally binding orders to the parties as to how to resolve issues

that the parties were unable to resolve as part of either the bargaining or the mediation process.

The interest arbitration panel would consist of three members:

- 1) a partisan arbitrator selected solely by the union who would be an advocate for the union;
- 2) a partisan arbitrator selected solely by the employer who would be an advocate for the employer; and
- 3) a neutral arbitrator selected by both parties who would preside over the arbitration process and who would cast the deciding vote on all contested issues.


The neutral arbitrator on an interest arbitration panel usually is someone who does not have either a strong union background or a strong management background (because both parties must agree to select the neutral arbitrator).

Specifically, the parties select the neutral arbitrator by taking turns striking arbitrators from a panel of professional arbitrators provided by PERC until only one arbitrator is left. The USW will of course strike the arbitrators who are most pro-management and EN will strike the arbitrators who are most sympathetic to the Union. This means that the neutral arbitrator who is ultimately selected by the parties will likely be someone who would be inclined to issue a “middle of the road” arbitration award that was not particularly favorable to either party.

Neutral arbitrators are also professionals who make their living by arbitrating disputes between unions and employers. As a result, they naturally want both employers and unions to keep selecting them in the future. This circumstance also encourages neutral interest arbitrators to issue “middle of the road” interest arbitration awards that are not particularly favorable either to unions or to management, with the hope that this will help them get hired again in the future. Ms. Siegel also took these factors into account in issuing her recommendation.

Sincerely,

SKALBANIA & VINNEDGE


Alex Skalbania

/tc