



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 WSU-CASE/UAW Local 4121

Contact David Parsons

Title International Representative

Address P.O. Box 665

City, State, ZIP Pullman, WA 99163

Phone 206-604-1522 **Ext.** _____

Email dparsons@uaw.net

UNION See above.

Contact _____

Title _____

Address _____

City, State, ZIP _____

Phone _____ **Ext.** _____

Email _____

EMPLOYER Washington State University

Contact Kendra Hsieh

Title Director of Labor Relations

Address 139 French Admin. Bldg.

City, State, Zip Pullman, WA 99163

Phone 509-335-4522 **Ext.** _____

Email kfonten@wsu.edu

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 Academic Student Employees

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, and places of occurrences and the names of the participants;
- 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 Amy Bowles

Address 1215 Fourth Ave, Suite 1350

Phone 206-623-0900 **Ext.** 233

Signature /s/ Amy Bowles

Title Attorney

City, State, ZIP Seattle, WA 98161-1012

Email amyb@ddmglaw.com

Date 9/18/2023

UNFAIR LABOR PRACTICE
STATEMENT OF FACTS
September 18, 2023

1. On May 4, 2022, WSU CASE/ UAW Local 4121 (Union) filed a Representation Petition to represent a bargaining unit of all academic student employees employed by Washington State University (WSU) pursuant to RCW 41.56.205. All employees in the bargaining unit are academic student employees (ASEs) in classifications including, but not limited to, those enumerated in RCW 41.56.205(1)(a)-(g).
2. On November 9, 2022, following a card check, the Washington State Public Employment Relations Commission (PERC) issued an Interim Certification recognizing UAW Local 4121 as the exclusive bargaining representative for the ASEs at WSU.
3. On November 29, 2022, the Union emailed a demand to bargain an initial collective bargaining agreement (CBA) to Kendra Hsieh, WSU Director of Labor Relations and Disability Services.
4. WSU's Student Health Insurance Plan provides health insurance coverage to eligible ASEs.¹ The vast majority of ASEs in the bargaining unit are covered by WSU's Student Health Insurance Plan. United Healthcare administers the WSU Student Health Insurance Plan. WSU employs Brown & Brown Insurance as its health insurance plan broker. WSU's Student Health Insurance Plan rates are approved and reviewed by the Washington State Office of Insurance Commissioner (OIC).
5. All eligible ASEs were covered by WSU's Student Health Insurance Plan for plan year 2021-2022 when the Union filed its petition on May 4, 2022. When PERC issued the interim certification on November 9, 2022, all eligible ASEs were covered by WSU's Student Health Insurance Plan for plan year 2022-2023. The 2022-2023 plan was effective for eligible ASEs on August 16, 2022, at 12:01 a.m.
6. The WSU Student Health Insurance Plan coverage for plan year 2022--2023 included, but was not limited to, terms and costs and benefits as follows:
 - United Healthcare Network of Preferred Providers.
 - Out of Pocket Maximum: \$7,000 per person/\$14,000 per family.
 - No Prescription Drug Benefit.
 - Maximum vision exam coverage of \$65 per policy year.
 - Preventative care services for adults:
 - Diabetes screenings available age 40 to 70.

¹ The Student Health Insurance Plan at issue is available for (1) graduate and professional students in the health sciences; (2) graduate students enrolled in the plan as a benefit associated with an assistantship; and (3) graduate students who opt-in for enrollment on the plans.

- Abdominal aortic aneurysm one-time screening for men of specified ages.
 - Syphilis screening for all adults.
 - Fall prevention with exercise intervention or physical therapy and vitamin D use intervention for adults 65 and over.
 - Preventative care services for women:
 - Breast cancer mammography screenings every 2 years for women between 50 and over and as recommended by a provider for women 40-49 or women at higher risk for breast cancer.
 - Chlamydia infection screening for younger women and other women at higher risk.
 - Gonorrhea screening for women at higher risk.
 - Osteoporosis screening for women over age 60 depending on risk factors.
 - Syphilis screening for all pregnant women and other women at increased risk.
 - Preventative care services for children:
 - Obesity screening and counseling, including behavioral management activities such as weight-loss goals.
 - Fluoride supplements for children without fluoride in their water source.
 - Medical emergency: coverage without explicit exclusion for minor injuries or minor sickness.
7. On or about May 9, 2023, the Union became aware that WSU planned to implement some benefit and costs changes for the Student Health Insurance Plan for plan year 2023-2024 when Kendra Hsieh, WSU Director of Labor Relations and Disability Services, emailed the Union that “WSU is proposing all represented ASEs who meet criteria outlined on the WSU Student Insurance website be afforded Option 3 on page 1 of the WSU Student Plan Highlights for the 2023-2024 plan year, pending Office of the Commissioner approval on benefits and rates.” The Union was aware, as of May 5, 2023, that Option 3 identified changes to out-of-pocket expenses, prescription drug coverage and providers, and vision exam service coverage only. The Union became aware of the full extent of WSU’s unilateral changes to plan year 2023-2024 benefits and costs when it compared the plan year 2023-2024 Student Health Insurance Plan benefits summary and WSU’s rate filing approved by the Washington State Office of Insurance Commissioner (OIC) on July 12, 2023. The rate filing included certificate of reviews, policy for review and rate proposals for the Student Health Insurance Plan for plan year 2023-2024.
8. Brown & Brown, on behalf of WSU, filed WSU’s rate filing for the Student Health Insurance Plan for plan year 2023-2024 with the Washington State Office of Insurance Commissioner (OIC) on May 16, 2023. OIC approved the rate filing on July 12, 2023 and the plan was effective August 16, 2023 at 12:01 a.m. for eligible ASEs.

9. Representative examples of unilateral changes to WSU's Student Health Insurance Plan costs and benefits for plan year 2023-2024 include, but are not limited to, the following changes to out-of-pocket maximums, prescription drug benefits and copays, the cost of vision exam coverage, preventative care services and other benefits as described:
- Out-of-pocket expenses of \$5,000 per person/\$10,000 per family, instead of \$7,000/\$14,000 per family in plan year 2022-2023.
 - Prescription Drug Coverage expanded beyond Cougar Health Services. No such option existed in plan year 2022-2023.
 - Pharmacy Benefit Manager (PBM), Optum RX. No such (PBM) existed in the plan year 2022-2023.
 - Prescription drug copays (\$20 for generic, \$40 for preferred brand and \$80 for non-preferred brand). No such co-pays existed in plan year 2022-2023.
 - Vision exam coverage up to \$100 per policy year. The maximum coverage in plan 2022-2023 was \$65 per policy year.
 - Preventative care services for adults:
 - Diabetes screenings at age 35 instead of age 40.
 - Fall prevention with exercise intervention no longer includes coverage for physical therapy or vitamin D.
 - Abdominal aortic aneurysm one-time screening now covered for men ages 64 to 75 only, instead of at specified ages only in plan year 2022-2023.
 - Preventative care services for adults now includes the following benefits not available in plan year 2022-2023:
 - Anxiety and drug screening are available for adults.
 - Behavioral counseling to promote a healthy diet and physical activity for adults at high risk of cardiovascular disease.
 - Prediabetes screenings.
 - Preventative care services for women:
 - Breast cancer mammography screenings are now only available for ages 50-74. Plan year 2022-2023 provided coverage for women ages 40-49 at the recommendation of the provider.
 - Osteoporosis screening is covered at age 65 and older instead of 60 and older in plan year 2022-2023.
 - Syphilis screening for all pregnant women and or other women only if increased risk of infection. No such limitation existed in plan year 2022-2023.
 - Preventative care services for women now includes the following benefits not available in plan year 2022-2023:
 - Routine anemia screening for pregnant women.
 - Anxiety screening for pregnant and postpartum women.
 - Behavioral counseling aimed at promoting healthy weight gain in pregnancy.

- Low dose aspirin after 12 weeks gestation for women at high risk for preeclampsia.
- Chlamydia infection screening for all pregnant women, younger women, and other women at higher risk of infection.
- Gonorrhea screening for all pregnant women and other women at high risk of infection.
- Osteoporosis screening with bone measurement in postmenopausal women younger than 65 who are at increased risk of osteoporosis.
- Preventative care services for children:
 - Fluoride supplements are covered starting at age 6 months. No such limitation on age existed in plan year 2022-2023.
 - Obesity screening and counseling now covers only age 6 and older. No such limitation on age existed in plan year 2022-2023.
- Preventative care services for children now includes the following benefits not available in plan year 2022-2023:
 - Anxiety screenings for children and adolescents ages 8 to 18 years.
 - Syphilis screening for adolescents who are at increased risk for infection.
- Benefits for donor human milk added to include coverage for eligible infants unable to receive human milk or chest feed or whose parent is unable to produce sufficient quantities of milk or participate in chest feeding. No such benefit existed in plan year 2022-2023.
- Medical emergency: Expenses will not be paid for minor injuries or minor sickness, no such limitation on medical emergency care existed in plan year 2022-2023.
- Foot care: Expansion of covered foot care from the plan year 2022-2023 to include conditions associated with metabolic, neurologic or peripheral vascular disease instead of diabetes only in the prior plan.
- Fertility agents: Excludes coverage for fertility agents or sexual enhancement drugs such as Parlodel, Pergonal, Clomid, Profasi, Metrodin, Serophene, or Viagra. No such exclusion existed in plan year 2022-2023.
- Evacuation benefits: Domestic students, insured spouse or Domestic Partner and insured minor child(ren) are no longer eligible for evacuation benefits. No such exclusion existed in plan year 2022-2023.

10. On August 16, 2023 at 12:01 a.m. WSU unilaterally changed the health care plan coverage for all eligible ASEs. WSU did not provide the Union with notice or the opportunity to bargain this change or the impacts of this change.

11. The Student Health Insurance Advisory Board (SHIAB) at WSU provides input and feedback to WSU Administration and Finance officials on the Student Health

Insurance Plan. It is not a decision-making body and has no decision-making authority. It is an advisory board. It is also not a labor-management committee. Members include graduate student representatives who may also be ASEs in the bargaining unit. Members also include graduate student officers from the Graduate and Professional Student Association (GPSA) who represent members of the Student Health Insurance Plan who are not in the ASE bargaining unit. Membership does not include a formal union designee or representative, or a WSU Labor Relations designee.

12. Sometime prior to November 9, 2022, WSU communicated to Brown & Brown that it would like to initiate requests for proposals (RFPs) to make changes to the carrier and/or plan for the Student Health Insurance Plan for plan year 2023-2024. RFPs are a standard part of a competitive bidding process which enables parties to evaluate costs and alternatives to existing plans by soliciting bids from qualified insurance carriers. The process itself can result in the revisions to projected costs, and is essential for evaluating considerations in healthcare plan design and coverage, such as provider networks to determine whether alternatives better suit the needs of the covered population. At a SHIAB meeting on November 9, 2022, Kelly Chavez, with Brown & Brown, presented information on the Student Health Insurance Plan, including the following timeline for WSU to make changes to plan year 2023-2024:

- February 2023: WSU decides to market other carriers.
- March 2023: Brown & Brown solicit Student Health Insurance Plan proposals through RFPs to other carriers.
- March 2023: United Healthcare Plan renewal to be received.
- April 2023: Options to be reviewed.
- April 2023: WSU to make renewal decisions.
- May 2023: Implement changes and start the OIC approval process.
- August 2023: Plan renewal effective.

SHIAB graduate student member, GPSA President and one of the GPSA representatives, Sam Edgerton, asked about how collective bargaining will affect the contract and timeline, and whether WSU will include the Union. Kelley Westhoff, WSU Executive Director of Budget, Planning, and Analysis, responded that the Union will be involved and approving each step along the way. WSU did not provide any notice to the Union and the Union was not involved in approving any step of the process along the way. WSU did not provide to the Union notice of its intent to make changes to the Student Health Insurance Plan for plan year 2023-2024 until May 5, 2023.

13. The SHIAB next met on December 5, 2022, where SHIAB graduate student member and Union bargaining committee member, Ninh Khuu, renewed Sam Edgerton's question from SHIAB's November 9, 2022 meeting. Khuu asked how WSU intended for the healthcare plan renewal bids to work with the collective bargaining process. Tammy Barry, WSU Vice Provost for Graduate and

Professional Education, member of WSU's bargaining committee and SHIAB WSU member, told the SHIAB that they were working with WSU Labor Relations to involve the Union through the formal negotiations process. At this time WSU failed to provide notice of proposed changes to Student Health Insurance plan benefits for plan year 2023-2024 and failed to provide the Union an opportunity to bargain.

14. On February 6, 2023, Aurora Brinkman, Union bargaining committee member, and David Parsons, UAW International Representative, met with Kendra Hsieh, WSU Director of Labor Relations and Disability Services, to discuss the role of various graduate assistant programs and committees, such as the Graduate and Professional Student Association (GPSA) and the Student Health Insurance Advisory Board (SHIAB). Hsieh asked whether the Union had any concerns about SHIAB continuing to meet and discuss matters pertaining to the health insurance plan. Brinkman and Parsons noted that while the parties' bargaining committees would make decisions in negotiations about the Student Health Insurance Plan, including, but not limited to changes for plan year 2023-2024, groups like SHIAB would be good spaces to continue conversations about the health plan and exchange information and ideas. Hsieh agreed. Brinkman and Parsons also noted that the Union would be providing an extensive request for information regarding health insurance as soon as the parties had scheduled dates for bargaining their initial CBA.
15. On February 22, 2023, the parties held their first negotiation session to bargain for an initial CBA. The parties continued to negotiate in bargaining sessions on March 6, 20, 26, and 30, 2023; April 3, 10, 19, and 24, 2023; May 15, 24, and 30, 2023; June 6 and 21, 2023; July 12 and 20, 2023; August 2, 15, 23 and 31, 2023; and September 7 and 13, 2023.. The parties currently have additional bargaining sessions scheduled for September 19, 2023; and October 3 and 31, 2023.
16. During the parties initial bargaining session on February 22, 2023, the Union informed WSU verbally and in writing that it intended to bargain for "Improve[d] medical, vision, and dental healthcare coverage so that all ASEs and their dependents can access quality care at all campuses and extension centers. Expand pharmacy coverage beyond Cougar Health Services." Union bargaining committee member Aurora Brinkman specifically called out the problem of the United Healthcare limited network, and that the current plan had "...very limited medical coverage accessible outside of CHS (Cougar Health Services)." Brinkman also said that as a result of this "A large number of ASEs forgo healthcare. The healthcare plan we have is insufficient and is drastically negatively impacting student's mental and physical health as well as their well-being."
17. On February 22, 2023, the Union presented WSU with a request for information (RFI) and requested that WSU respond by April 1, 2023. The Union's healthcare

related RFIs are numbered 14 – 21. The requests for healthcare related information includes the following:

Healthcare

14. All utilization data of the health insurance plan for bargaining unit employees, namely:
 - a. The number of covered employees, broken down by campus/location and by year.
 - b. The number of bargaining unit employees who are reaching their deductibles, broken down by plan and by year.
 - c. The number of bargaining unit employees who are reaching their plan's OOP (Out of Pocket Maximum), broken down by plan and by year.
 - d. A list of all claims denials and reasons for the denials, including the type of claim denied, for each bargaining unit employee.
 - e. Utilization information related to on-campus mental health providers at Counseling and Psychological Services (CAPS) and the WSU Psychology Clinic.
 - f. All documentation regarding wait-lists, wait-times before getting access to a provider, and how many bargaining unit employees have maxed out their annual mental health benefits.
 - g. All documents regarding dental insurance coverage and utilization broken down by campus, international student status, and year.
 - h. All documents regarding vision insurance coverage and utilization broken down by campus, international student status, and year.
 - i. All documents regarding prescription insurance coverage and utilization broken down by campus, international student status, and year.

15. All documents and policies regarding coverage of benefits for dependents, including research information that was utilized to determine whether to exclude coverage for dependents as part of the premium.

16. Utilization information related to each health insurance plan for all dependents of bargaining unit employees. Please provide all plan utilization data, including but not limited to information that is possessed by WSU or has been provided or can be provided by Brown and Brown Insurance:
 - a. The number of employees with covered dependents, broken down by campus/location, employee international status, and year

- b. The number of dependents who are reaching their deductibles, broken down by campus/location, employee international status, and year.
- c. The number of dependents who are reaching their plan's OOP (Out of Pocket Maximum), broken down by campus/location, employee international status, and year.
- d. A list of all claims denials and reasons for the denials, including the type of claim denied, for each dependent.
- e. All documents regarding dependent dental insurance coverage and utilization broken down by campus/location, employee international status, and year.
- f. All documents regarding dependent vision insurance coverage and utilization broken down by campus/location, employee international status, and year.
- g. All documents regarding prescription insurance coverage and utilization broken down by campus/location, employee international status, and year.

17. The following information about services provided at Cougar Health Services:

- a. A list of services provided at Cougar Health Services (CHS) that are covered under the bargaining unit employee health plan.
- b. A list of services provided at Cougar Health Services (CHS) that are not covered under the bargaining unit employee health plan.
- c. A list of the average cost of each service (e.g., vaccinations, physicals, birth control, individual therapy) provided by CHS that are covered and not covered under the bargaining unit employee health plan.
- d. Break down of the CHS budget with information related to how much comes from health fees paid by bargaining unit employees along with utilization rates by bargaining unit employees

18. All documents and contracts with the health insurance brokers for the University that have played a role in negotiating health insurance plans for bargaining unit employees for each coverage year between 2017-2022.

19. All documents and contracts with any insurance carriers contracted with the University for health insurance places for bargaining unit employees for each coverage year between 2017-2022

20. All information regarding requests for proposals for the years of 2012-2022, including copies of each request.

21. All information, documents, and communication pertaining to fees paid to compensation for the health insurance brokers for the years 2012-2022.

18. On March 2, 2023, Joel Schwartzkopf, WSU Assistant Vice Chancellor for Student Health, and Well-Being, emailed members of the SHIAB:

I wanted to touch base with a quick update on the student insurance plans. Kelley (Westhoff) and I have been in **frequent** communication regarding the forthcoming options from Brown & Brown, and we're still waiting to hear back from them. Once we do, we'll schedule a meeting with this group to take a look at what is presented. We are still on track to follow the attached timeline."

(emphasis added). Although WSU had frequent communication with Brown & Brown regarding options, it did not provide any notice to the SHIAB or the Union regarding its frequent communication and discussion with Brown & Brown regarding the timeline or WSU's decision to initiate RFPs to make changes to the carrier, and/or preferred provider network, and other benefits and costs for the plan year 2023-2024. Nor did they provide information pursuant to the Union's information request to ascertain details of the plan's network, utilization, costs and history.

19. On March 2, 2023, WSU did not provide any notice to the Union of WSU's anticipated changes to the healthcare plan or its plan to implement changes at this time, or in the five months since November 9, 2022. Even though parties were now actively engaged in bargaining an initial CBA and the Union had demanded to bargain healthcare, including improvements to medical, vision and dental healthcare and expansion of the network and pharmacy coverage beyond Cougar Health Services, WSU failed to provide notice or respond to these demands.
20. On March 3, 2023, the Union sent WSU an email, in response to a request by WSU, to prioritize its February 22, 2023, requests for information. The Union prioritized its healthcare related RFIs over other requests, and identified the healthcare RFIs at numbers 14, 15, 16, 17, 18, 19, and 20 as a priority.
21. On March 8, 2023, at 12:34 p.m, SHIAB graduate student member and GPSA President Sam Edgerton responded to Joel Schwartzkopf's, WSU Assistant Vice Chancellor for Student Health and Well-Being, March 2, 2023 email. Edgerton asked whether WSU planned to go out to bid, and asked, again, how the timeline for plan renewal and changes works in connection with the collective bargaining process. Specifically, Edgerton emailed:

...I am writing today to follow up on a few questions that came up among GPSA members. First, is there any follow-up yet on whether or not we are going to go out to bid? Based on the timeline, it looked like that decision was to be made in February.

Second, how does the future planning schedule work in connection with the current bargaining session happening?

And last, will we be meeting as a group following Spring Break?...

(emphasis added).

22. Later on March 8, 2023, Joel Schwartzkopf, WSU Assistant Vice Chancellor for Student Health, and Well-Being, replied to SHIAB graduate student member and GPSA President Sam Edgerton's March 8, 2023 email. Schwartzkopf replied that SHIAB will meet as soon as WSU hears back from Brown & Brown. Schwartzkopf did not respond to Edgerton's questions regarding whether WSU planned to go out to bid or how the timeline works in connection with the collective bargaining process.
23. On March 17, 2023, Jessa Lataweic, WSU Labor Relations Assistant, emailed a response to some of the Union's requests for information. At this time, WSU failed to provide responses to several of the Union's healthcare requests for information identified at numbers 14-21 that were necessary in order for the Union to understand and bargain improvements to the Student Health Insurance Plan, including, but not limited to, network providers, costs and options for the plan year 2023-2024 . Specifically, WSU failed to provide responses to 14(b)-(f) and (i), 15 (b)-(d), 16(a) - (d) and 17(a)-(d).
24. During a March 20, 2023 bargaining session, Union bargaining committee member Aurora Brinkman, requested that the parties have small table discussions about WSU's Student Health Insurance Plan, including the topic of how to review possible alternatives to United Healthcare as the plan carrier. Brinkman requested that WSU representatives knowledgeable about the Student Health Insurance Plan attend a bargaining session, including Joel Schwartzkopf, WSU Assistant Vice Chancellor for Student Health, and Well-Being, and a representative from Brown & Brown. Kendra Hsieh, WSU Director of Labor Relations and Disability Services, responded that WSU would like the Union to provide some questions so they could identify the right person to have the conversation with the Union.
25. During the March 20, 2023, bargaining session, Kendra Hsieh, WSU's Director of Labor Relations and Disability Services, requested from the Union a list of topics to bargain regarding the Student Health Insurance Plan.
26. On March 26, 2023, in response to Kendra Hsieh's, WSU Director of Labor Relations and Disability Services, request on March 20, 2023, the Union sent an email to WSU stating that it sought to discuss the current Student Health Insurance Plan, including, but not limited to the provider network, coverage provided at Cougar Health Services in Pullman and partnered clinics at other campuses, and the Union's outstanding RFIs. In addition, the Union emailed that:

In your response to 16A of our RFI, the presentation provided notes that Brown and Brown is currently soliciting plan proposals; **please provide a copy of the Request for Proposals.** We would also like to hear more about what you're referring to as the "reviewing" stage on slide 12 of that presentation and **what changes are being proposed.** In addition, we would like to discuss how we will reach agreement on what is sent to the Insurance Commissioner for plan renewal.

WSU did not respond to this email.

27. On March 27, 2023, Union bargaining team member Aurora Brinkman, emailed WSU Labor Relations a list of articles and topics the Union planned to propose at the bargaining table, including healthcare and benefits.
28. On March 31, 2023, Jessa Lataweic, WSU Labor Relations Assistant, emailed a response to some of the Union's requests for information. At this time, WSU failed to provide responses to the Union's healthcare requests for information identified at numbers 14-21 that were necessary in order for the Union to understand the Student Health Insurance Plan, including, but not limited to, network information, costs and options for the plan year 2023-2024. Specifically, WSU failed to provide responses to 14(b)-(f) and (i), 15 (b)-(d), 16(a)- (d) and 17(a)-(d).
29. On April 10, 2023, at the conclusion of a bargaining session for the parties' initial CBA, Priyanka Bushana, UAW staff, asked WSU when their healthcare team could attend a bargaining session to answer the Union's questions regarding the Student Health Insurance Plan. Kendra Hsieh, WSU Director of Labor Relations and Disability Services, responded that WSU had a meeting or email planned with "them" on April 11, 2023, to determine availability. Hsieh identified "Kelley and Joel" as WSU's healthcare representatives that communicate with Brown & Brown. WSU did not provide any specific availability for "Kelly and Joel" to attend a future bargaining session. WSU also did not provide notice of changes being proposed until May 5, 2023 and did not provide the RFP until May 9, 2023.
30. On April 18, 2023, the Union notified WSU by email that it had failed to respond to several of the Union's outstanding healthcare RFIs and that several of the responses that were provided were non-responsive or incomplete. The Union's email also included a request for an update on when it can expect a response to the requests the Union prioritized for WSU, and identified, for WSU, those healthcare requests for information that were incomplete, and necessary in order for the Union to understand the Student Health Insurance Plan, including, but not limited to, costs and options for the plan year 2023-2024 . Specifically, the Union identified the following unanswered RFIs:
 - #14(b) – (d): WSU's response did not include number of bargaining unit employees who are reaching their

deductibles, number of bargaining unit employees who are reaching their plan's out-of-pocket maximum and list of claims denials, including reason for denials.

- #14 (f): WSU's response did not include information about the number of bargaining unit employees who reached their CAPS session limit.
- #15: WSU's response did not address the Union's request for any research utilized to determine dependent premium costs during plan renewal. WSU also failed to include two files it identified as being in its response.
- #16: WSU's response does not address questions in #16(b) – (d) regarding number of dependents who reach deductibles, out-of-pocket maximum, and list of claims denials, including reason for denials.
- #17(a)-(b): WSU's response does not address the Union's request for information on a list of services provided at Cougar Health Services covered under the bargaining unit employee health plan and a list of services provided at Cougar Health Services not covered under the bargaining unit employee health plan.
- #20: WSU has not provided a currently active request for proposal as requested in the Union's March 26, 2023 email. The Union requested a response.

31. During a bargaining session on April 19, 2023, Union bargaining committee member Aurora Brinkman requested an update from WSU regarding a meeting with WSU's healthcare team to answer the Union's questions about the Student Health Insurance Plan. Kendra Hsieh, WSU Director of Labor Relations and Disability Services, replied that they are having trouble coordinating schedules. Brinkman also requested an update on the status of WSU's response to the Union's outstanding RFIs, including those regarding healthcare. Brinkman emphasized that the Union filed the RFI on February 22, 2023, provided additional information to WSU regarding its request on March 3, 2023, and that to date, WSU had failed to provide the information requested by the Union. Brinkman also emphasized that it had been almost two months since the Union's initial RFI, and the Union was missing information necessary to create a well-informed proposal. Hsieh replied that WSU will look at the Union's priority healthcare requests for information.

32. On Friday, April 21, 2023, at 4:30 p.m., Jessa Lataweic, WSU Labor Relations Assistant, emailed the Union's bargaining committee that Kelley Westhoff, WSU Executive Director of Budget, Planning, and Analysis, and Joel Schwartzkopf, WSU Assistant Vice Chancellor for Student Health and Well-Being, are available during the currently scheduled Monday, April 24, 2023 bargaining session for the initial CBA, from 8:30 – 9:00 a.m. or 4:00 – 5:00 p.m., to answer some of the

Union's questions about the Student Health Insurance Plan.

33. On Saturday, April 22, 2023, the Union's bargaining committee emailed Jessa Lataweic, WSU Labor Relations Assistant, that the times Kelley Westhoff, WSU Executive Director of Budget, Planning, and Analysis, and Joel Schwartzkopf, WSU Assistant Vice Chancellor for Student Health and Well-Being are available on Monday, April 24, 2023, do not work for the Union because WSU provided late notice on the Friday before a Monday bargaining session, and the agenda for the Monday, April 24, 2023, bargaining session was already set. The Union's bargaining committee requested additional availability to schedule the discussion with Westhoff and Schwartzkopf. WSU never responded to the Union's request and did not offer alternative days or times for the discussion.
34. On Friday, May 5, 2023 at 3:00 p.m. during a meeting between WSU and the Union regarding the Union's outstanding RFIs with WSU, Kendra Hsieh, WSU Director of Labor Relations and Disability Services, asserted that WSU needed to make a decision on healthcare plan coverage by May 10, 2023. Hsieh did not share the changes to benefits for plan year 2023-2024 that WSU was considering. Prior to this conversation the Union was unaware of the May 10, 2023 deadline and the particular significance of such a deadline. It did not know why May 10, 2023 in particular was established by WSU as a deadline. At this point WSU still had not provided the Union with any information regarding the status of WSU's request for proposals (RFPs) for Student Health Insurance Plan carriers and/or benefit changes, including the RFP itself, benefit plan change options for the plan year 2023-2024, and WSU's recommendation for benefit and cost changes.
35. On Friday, May 5, 2023, at 5:01 p.m. Kendra Hsieh, WSU Director of Labor Relations and Disability Services, emailed the Union's bargaining committee that "WSU received the attached options for student health insurance from Brown and Brown on May 1, 2023" and intended to approve plan design changes by May 11, 2023. The attached options document included the one-page document of "WSU Student Plan Highlights: Medical Benefits and Premiums". The one-page document identified a plan renewal date of August 1, 2023 and options to consider for plan year 2023-2024. This document still failed to provide meaningful information that the Union had requested in its healthcare RFIs, identified at numbers 14-21, that were necessary in order for the Union to understand the Student Health Insurance Plan, including, but not limited to, network information, costs and options for the plan year 2023-2024.
36. The "WSU Student Plan Highlights" one-page document identified options available for WSU to consider if WSU wanted to make changes to the healthcare plan and an option if WSU did not make changes to the 2022-2023 healthcare plan. Specifically, the one-page "WSU Student Plan Highlights" identified medical benefits and premiums for the following:

- 2022/2023 Plan Year
- 2023/2024 Plan Year
- Option 1
- Option 2
- Option 3

The summary included the following medical benefits: annual deductible, out-of-pocket maximum, coinsurance payment schedule, professional services, facility charges, prescription drug coverage, vision, accidental death and dismemberment, emergency evacuation and repatriation. More specifically, the document highlighted the following options available for plan renewal or benefit plan changes:

- The 2023/2024 Plan Year carried over the identical medical benefits and coverage as 2022/2023 Plan Year.
- Option 1 included adding Optum Rx as pharmacy benefit manager (PBM).
- Option 2 included adding Optum Rx as PBM, and a 3-tier plan for in-network pharmacies (including Cougar Health Services).
- Option 3 included adding Optum Rx as PBM, a 3-tier plan for in-network pharmacies (including Cougar Health Services) and changing routine eye exam coverage per policy year from \$65 to \$100.

37. Although Kendra Hsieh, WSU Director Labor Relations and Disability Services, emailed the Union on May 5, 2023 at 5:01 p.m. that she received the information from Brown & Brown on May 1, 2023, WSU did not forward the information to the Union for five days. On May 5, 2023, WSU did not provide the Union with any notice regarding what option it planned to recommend as a bargaining proposal.

38. On Friday May 5, 2023 at 5:01 p.m., in addition to the one-page “WSU Student Plan Highlights” document, Kendra Hsieh, WSU Director Labor Relations and Disability Services, emailed that Brown & Brown told Kelley Westhoff, WSU’s Executive Director of Budget, Planning, and Finance, that the deadline for filing plan renewal applications with the OIC was May 11, 2023, so WSU must communicate a decision by May 10, 2023, in order to prepare for filing on May 11, 2023. Hsieh emailed that WSU had not made a recommendation to WSU leadership and that she was available on Monday (May 8, 2023) to answer the Union’s questions and that “we have held various blocks of time on Tuesday (May 9, 2023) morning between 8:30 – 12 to meet with UAW as well as discuss next steps.”

39. Prior to WSU’s Friday May 5, 2023 at 5:01 p.m. email, WSU had not provided any notice to the Union regarding its consideration of implementing benefit changes to Student Health Insurance Plan for eligible ASEs for plan year 2023-2024, the options WSU considered for the Student Health Insurance Plan changes for plan year 2023-2024, the costs associated with the plan and any proposed

changes for plan year 2023-2024, or an opportunity to bargain the changes for plan year 2023-2024.

40. On Friday, May 5, 2023, at 1:00 p.m. when the SHIAB met for the first time since December 5, 2022, WSU made a presentation to the SHIAB that included summaries of various plan options WSU was considering that would change the Student Healthcare Insurance Plan for plan year 2023-2024 and identified for SHIAB the option it planned to recommend. The presentation made no mention of plans to bargain with the Union. WSU told SHIAB members, for the first time, that the request for proposal (RFP) process for 2023-2024 had been completed, that only plan design changes offered by United Healthcare would be considered, and that WSU favored and planned to recommend Option 3 for plan year 2023-2024. WSU shared the one-page “WSU Student Plan Highlights” document with the SHIAB. SHIAB members did not see a copy of WSU’s RFP. Graduate student SHIAB members and Union bargaining committee members active on the SHIAB were not asked for their input or recommendations on May 5, 2023, or at any time between December 5, 2022 and May 5, 2023. WSU did not notify the Union of its preferred option to change benefits and costs for the plan year 2023-2024 on May 5, 2023.

41. On Sunday, May 7, 2023 at 4:25 p.m., in response to Kendra Hsieh’s May 5, 2023 at 5:01 p.m. email, the Union’s bargaining committee emailed Kendra Hsieh, WSU Director Labor Relations and Disability Services, a demand to bargain changes to the Student Health Insurance Plan for the plan year 2023-2024. Specifically, the Union’s demand to bargain states:

As you know, we’ve demanded to bargain any changes to the healthcare plan since beginning negotiations. While we understand the time sensitivity of the 5/10 decision you notified us about on Friday, we **demand to bargain** it and are happy to meet on Tuesday morning.

(emphasis added). The Union also requested that WSU identify what plan it had decided to recommend or make any kind of proposal regarding the healthcare plan changes. Specifically, it stated, “The document you sent listed several possible healthcare plans. Please clarify what you are proposing regarding these plans.”

42. The Union’s May 7, 2023 at 4:25 p.m. email to Kendra Hsieh, WSU Director of Labor Relations and Disability Services, also included a renewal of its months long request for RFPs related to healthcare plans for the years 2012-2022 stating:

In February, we submitted our initial RFI, where we asked for all information regarding requests for proposals related to the healthcare plans for the years 2012-2022. You stated that there were no RFPs between 2012-2022, and **when we followed up to ask for the current RFP, we received no response. Please provide the RFPs, and any information used to evaluate the differences between the proposals that you sent us.**

(emphasis added).

43. On Monday, May 8, 2023 at 4:07 p.m., Jessa Lataweic, WSU Labor Relations Assistant, emailed Union bargaining committee member Aurora Brinkman, a Zoom invitation for the Union to meet with WSU and discuss the Union's demand to bargain on May 9, 2023 from 9:30 – 11:00 a.m. Lataweic did not respond to the Union's May 7, 2023 request that WSU identify what plan option it decided to recommend, make any kind of proposal, or respond to the Union's renewal of its request for information for WSU's RFPs and any information used to evaluate the difference between the options for the Student Health Insurance Plan for plan year 2023-2024.
44. On Tuesday May 9, 2023, the Union and WSU met from 9:30 a.m. – 12:09 p.m. to discuss WSU's plan to make benefit changes to the Student Health Insurance Plan for plan year 2023-2024. During the meeting, Kendra Hsieh, WSU Director of Labor Relations and Disability Services, said that the "drop dead deadline...(is) this Thursday [May 11, 2023]" and that WSU is "looking at option 3." The Union renewed its demand to bargain and request for documentation regarding the requests for proposals. Aurora Brinkman, Union bargaining committee member, reminded WSU that the Union has been asking for months to bargain with them on healthcare and that to best understand the proposal and how WSU decided on Option 3, it needs WSU to fulfill the request for information, including for WSU's requests for proposals immediately. WSU did not provide the RFP, information about the costs of the plan, or other information it had not provided in response to the Union's RFI during the parties meeting on May 9, 2023.
45. During the May 9, 2023, meeting, Kelly Chavez, with Brown & Brown, said that Brown & Brown first met with WSU to discuss WSU's request to bid out the Student Health Insurance Plan for plan year 2023-2024 in November 2022.
46. During the May 9, 2023, meeting, Kelly Chavez, with Brown & Brown, also said WSU first received information regarding plan options and changes for the Student Health Insurance Plan for plan year 2023-2024 from United Healthcare in early-April 2023. Chavez said that in early-April 2023, WSU and Brown & Brown met to go over United Healthcare's plan renewal and refined some of the options into the one-page WSU Student Plan Highlights document.
47. During the May 9, 2023, meeting, David Parsons, UAW International Representative, said that the Union has only been provided a summarized version of the plan benefit and cost options, the one-page WSU Student Plan Highlights document first provided to the Union the evening of Friday, May 5, 2023. Parsons emphasized that they heard today that WSU has had extensive discussions, without the Union, regarding carrier and benefit options and has only provided the WSU Student Plan Highlights document to the Union despite the Union's repeated requests to have its healthcare RFIs fulfilled. Parsons also noted that

WSU's failure to provide information responsive to the RFIs left the Union without the information necessary to make informed decisions as to what the Union could agree to and that by failing to provide notice and the opportunity to bargain, WSU's proposal was a *fait accompli*.

48. During the May 9, 2023 meeting, Union bargaining committee member Aurora Brinkman, noting that with limited information and time to analyze the options presented, verbally presented the Union's counter proposal to WSU's Option 3. The Union's counter proposal included, but is not limited, to the following:
- Out of pocket maximum: \$1,000 per person/\$2,000 per family (instead of Option 3's \$5,000 per person/\$10,000 per family).
 - Co-insurance payment: 90% PPO coverage for in-network providers and 80% for out of network (instead of Options 3's 80% PPO coverage for in network providers and 60% for out of network).
 - Coinsurance: 90% PPO coverage for in network providers and 80% for out of network (instead of Option 3's 80% PPO coverage for in network providers and 60% out of network).
 - Emergency Room: \$100 copay (instead of Option 3's \$200 copay).
 - Urgent Care: \$10 copay (instead of Option 3's \$25 copay).
 - Professional Services: \$10 copay (instead of option 3's \$25 copay).
 - Diagnostic X-ray and Lab: coinsurance coverage at 90% (instead of Option 3's 80%). In-patient and out-patient facility charges: coinsurance coverage at 90% (instead of Option 3's 80%).
 - Prescription Drug Coverage:
 - In-network: Copays at \$10 for generic, \$20 for preferred brand, and \$40 for non-preferred brand (instead of Option 3's \$20 for generic, \$40 for preferred brand and \$80 for nonpreferred brand).
 - Out-of-network: 90% for generic, 80% for preferred brand and 80% for non-preferred brand (instead of Option 3's 80% for generic, 70% for preferred brand, and 70% for non-preferred brand).

WSU refused to consider the Union's proposal or provide a counter proposal different from Option 3. Kendra Hsieh, WSU Director of Labor Relations and Disability Services, said that WSU had decided Option 3 was the best option for the Student Health Insurance Plan for plan year 2023-2024. Hsieh claimed that the Union's proposal is outside of projected costs. In response to the Union's requests to confirm it was rejecting the Union's proposal, Hsieh said WSU does not have the budget for it and Option 3 is the best option. In response to the Union's request for a counterproposal Hsieh provided a non-counter, and did not provide information about its budget or how another option would exceed it. Specifically, Hsieh identified Option 3 as WSU's counterproposal.

49. During May 9, 2023, Marissa Parker, UAW staff, reiterated that with limited information and inadequate time to analyze the options presented, Option 3 appeared better than other options, but did not agree to WSU's proposal. WSU had failed to provide notice before May 5, 2023 and was refusing to bargain.
50. On May 9, 2023, at 1:00 p.m. WSU responded to the Union's request for a copy of the requests for proposals sent out to healthcare providers. Specifically, Jessa Latawiec, WSU Labor Relations Assistant, emailed the Union the information WSU received from Brown & Brown for WSU's 2023 bid specs. The RFP does not include a date. It states:

Dear Invited Bidder:

You are invited to provide a proposal for the Washington State University Student Programs. Invited bidders will submit proposals to Brown & Brown Seattle for evaluation. To facilitate the preparation of your proposal, you will find attached to this Request the following:

1. Benefit Brochures
2. Claims History
3. Rate History

The RFP identifies the Student Health Insurance Plan for eligible international and non-international students. In addition, the RFP includes the following:

Profile

...Respondents should provide a proposal for services that are most similar to the current lines of coverage, benefits design and administrative/operational protocols. Respondents may provide alternatives and recommendations in any and all areas for evaluation.

The school would like to include pharmacy benefit management in plan for 2023-24 plan year, with the ability to provide prescriptions to students who reside out of state (note that today all pharmacy is distributed through their own Cougar Health Services)...

Plan Design:

Respondents should quote based on current lines of coverage and plan design (see attached Benefit Brochures), or plan design most similar to current plans. Please delineate any differences or systemic limitations and provide alternatives as necessary.

Please specify:

- Provider Network AND ability to support custom network for on-campus providers in certain locations
- Virtual Health benefits available

- **DESCRIBE AND (sic) ‘DEAL-BREAKER’ BENEFITS, NETWORK OR COST-CONTAINMENT PROGRAMS, OR ABSENCE OF SUCH PROGRAMS.**

The RFP provided to the Union is undated. However, WSU’s timeline as presented by Brown & Brown at the November 9, 2022, SHIAB meeting was for bids to go out in March 2023. WSU responded to the Union’s request for a copy of the RFP, over two months after the Union’s initial request for any RFPs and on the eve of WSU’s asserted deadline to decide on the Student Health Insurance Plan renewal and benefit changes for the plan year 2023-2024.

51. On May 9, 2023, at 5:35 p.m. Kendra Hsieh, WSU Director of Labor Relations and Disability Services, emailed the Union’s bargaining committee that:

WSU is proposing all represented ASEs who meet criteria outlined on the WSU Student Insurance website be afforded Option 3 on page 1 of the WSU Student Plan Highlights for the 2023-2024 plan year, pending Office of the Commissioner approval on benefits and rates. While Option 1 and 2 would be a lower cost, Option 3 provides the best benefits of the plans that are not cost prohibitive (Options A and B).

WSU did not provide any next steps or offer to bargain the impacts of a change to the Student Health Insurance Plan for plan year 2023-2024 as reflected in its selected Option 3.

52. Kendra Hsieh’s, WSU Director Labor Relations and Disability Services, May 9, 2023, at 5:35 p.m. email also included the following message to “Dave” (David Parsons, UAW International Representative)

“...as we consider this issue it may be helpful for the parties to discuss the impact of RCW 41.56.021(4) specifically (f) and the implications to our bargaining. The plain language here reads as we shall not bargain and may indicate health care benefits is not a mandatory subject of bargaining.

WSU’s use of 41.56.021(4) as the statutory framework for the parties collective bargaining is inaccurate. The bargaining unit’s collective bargaining rights are covered by RCW 41.56.205 which contains no enumerated limitations on bargaining mandatory subjects, such as healthcare benefit plan changes.

53. On May 9, 2023, at 5:58 p.m. the Union’s bargaining committee emailed Kendra Hsieh, WSU Director of Labor Relations and Disability Services, rejecting WSU’s proposal to implement Option 3, the only proposal made by WSU, that WSU rejected the Union’s counterproposal to Option 3, planned to implement Option 3 as the plan change, and has neglected its collective bargaining obligations. The Union also reiterated that it has been seeking to bargain the

Student Health Insurance Plan benefit and costs changes for plan year 2023-2024 for months and has repeatedly requested information from WSU to make well-informed proposals on healthcare. The Union renewed its demand to bargain future insurance plans and described that WSU has presented the Union with a *fait accompli* as to the Student Health Insurance Plan for plan year 2023-2024. The Union wrote that it had no meaningful time to bargain, and that “it has become clear that you (WSU) have already made this decision regardless of our input.” In addition, the Union wrote:

...we heard many times during this morning’s meeting that students were involved in the health care plan selection process. To say that this plan renewal was informed by student involvement is a gross overstatement. As Tammy confirmed during our meeting today, SHIAB is an advisory board and not a decision-making board. This aligns with our experience. ASEs on the health advisory board have noted that while feedback is occasionally solicited and even more rarely incorporated, we are excluded from any meaningful decision-making process, not informed of key timelines, and often presented with false choices in which the decision has actually already been made. Further, we will reiterate **that this student input does not absolve WSU of the legal obligation to bargain in good faith with the elected representatives of the WSU-CASE bargaining committee.** We chose to form a union precisely to ensure that these decisions get bargained, even while spaces like SHIAB continue to meet and function...

(emphasis added). WSU did not respond to the Union’s email.

54. On May 12, 2023, at 4:07 p.m., the Union’s bargaining committee emailed Kendra Hsieh, WSU Director of Labor Relations and Disability Services, again because WSU did not respond to the Union’s May 9, 2023, email. The Union renewed its request for WSU’s position on the plan changes after the parties’ May 9, 2023, discussion and requested any “documents sent to OIC regarding the 2023/24 health insurance plan...as soon as possible.” The Union also requested clarification regarding why WSU thinks that RCW 41.56.021 is the appropriate statutory framework for the bargaining unit’s collective bargaining rights. The Union reminded WSU that per the parties’ April 3, 2023, tentative agreement on Recognition, the parties agreed that the bargaining unit is covered by RCW 41.56.205, which does not limit the scope of healthcare bargaining, unlike RCW 41.56.021. WSU did not respond to this email.
55. On May 15, 2023, the parties met for a previously scheduled bargaining session for the parties’ initial CBA. At the bargaining session, Union bargaining committee member, Aurora Brinkman, renewed the Union’s request for WSU’s position following the parties’ May 9, 2023 discussion and its request for any “documents sent to the OIC regarding the 2023/24 health insurance plan...as soon as possible.” Kendra Hsieh, WSU Director of Labor Relations and Disability

Services, responded that she had made a request to “Kelly” and confirmed that WSU formalized its selection of Option 3 in its filing with the Washington State Office of Insurance Commissioner (OIC). The Union also renewed its request that WSU provide some clarity regarding why it thinks RCW 41.56.021 governs the ASE bargaining unit’s collective bargaining rights and limits WSU’s ability to bargain health insurance benefits. Hsieh responded that the parties could discuss the topic later, and WSU attorney and negotiator Rodney Younker responded that WSU needed some input and legal guidance from its attorney general. To date WSU has not responded to the Union’s request for clarity regarding its position that RW 41.56.021 governs the bargaining unit’s collective bargaining rights.

56. On May 16, 2023, Brown & Brown filed WSU’s plan renewal application for the Student Health Insurance Plan for plan year 2023-2024 with the Washington State Office of Insurance Commissioner (OIC). On May 5, 2023, Kendra Hsieh, WSU Director of Labor Relations and Disability Services, had communicated to the Union the filing was due May 11, 2023. It was in fact due seven days later on May 18, 2023. WSU effectively denied the Union about eight additional days to bargain changes to the Student Health Insurance Plan by asserting the filing was due May 10, 2023, rather than its actual due date of May 18, 2023.
57. On May 24, 2023, at a previously scheduled bargaining session, Union bargaining committee member, Whitney Shervey, renewed, again, the Union’s request for the Student Health Insurance Plan healthcare policy documents sent to the Washington State Office of Insurance Commissioner (OIC) for plan year 2023-2024.
58. On May 25, 2023, Jessa Lataweic, WSU Labor Relations Assistant, responded to the Union’s request for Student Health Insurance Plan documents filed with the Washington State Office of Insurance Commissioner (OIC) for plan year 2. The information included Certificates for Review, Policies for Review and Preliminary Rates for both the international (ISHIP) and non-international (SHIP) Student Health Insurance Plan renewal applications filed with OIC on May 16, 2023. The Policies for Review included the full extent of the benefit costs and changes for plan year 2023-2024. The Union received these documents after WSU made its decision on Option 3 for the Student Health Insurance Plan for plan year 2023-2024 and filed with OIC.
59. On May 25, 2023, Jessa Lataweic, WSU Labor Relations Assistant, provided a response to some of the Union’s requests for information. At this time, WSU failed to provide responses to several of the Union’s healthcare requests for information identified at numbers 14-21 that were necessary in order for the Union to understand the Student Health Insurance Plan and bargain alternatives. Specifically, WSU failed to provide responses to 14(b)-(f) and (i), 15 (b)-(d), 16(b) - (d) and 17(a)-(b).

60. At the June 21, 2023, bargaining session the Union made an economic proposal, including a healthcare plan proposal on plan design. The Union provided proposed contract language. The Union's proposal expands coverage in multiple areas including mental health, gender-affirming care, prescription coverage and dental coverage. The Union's proposal includes, but is not limited to, the following:

- Plan design for medical, dental and vision benefits including, but not limited to:
 - Out-of-Pocket Maximum: \$1,000 per person/\$2,000 per family.
 - Deductible Preferred Provider: \$300.
 - Deductible Out-of-Network: \$300.
 - Preferred Provider: 95%.
 - Co-insurance out-of-network: 95%.
 - Prescription Drug Benefit: \$10 copay (generic), \$25 copay (preferred), \$35 copay (non-preferred).
 - Vision Services: No maximum coverage.
- WSU will provide the Union with utilization reports monthly.
- The parties will meet three times per year (December, March and June) to discuss the student insurance plan. At the December meeting the parties will discuss whether to automatically renew the plan or initiate requests for proposals. If WSU initiates an RFP to select a carrier, then it will bargain with the Union and provide renewal documents.
- The SHIAB shall include one official union representative.

61. The Washington State Office of Insurance Commissioner (OIC) approved WSU's renewal application on July 12, 2023, after numerous objections by the OIC and a request by Brown & Brown in July to amend the application because it had failed to submit the renewal with the updated out-of-pocket maximums (from \$7,000 per person/\$14,000 per family to \$5,000 per person/\$10,000 per family).

62. On August 15, 2023, at a previously scheduled bargaining session for the initial CBA, WSU presented "**WSU'S PACKAGE PROPOSAL RE ECONOMICS**" in response to the Union's July 21, 2023 package economic proposals. WSU's package proposal includes "items presented in conceptual form. WSU will provide proposed contract language if the concepts are accepted." WSU's proposal includes, but it is not limited to, the conceptual form of wage, fee and tuition waiver, insurance and leave proposals. Regarding healthcare insurance, WSU specifically proposes:

Insurance

- Maintain current plan options and premium sharing through August 15, 2024.
- The parties will reopen the Insurance Article of the CBA effective November 1, 2023, to negotiate regarding any

changes to insurance benefits and costs for the year beginning August 16, 2024.

- In presenting this proposal, WSU stated that, due to the changes it had unilaterally made to the plan benefits, it would need additional time to accumulate the data that would be necessary to negotiate changes for the plan year 2024-2025. Its proposal presumed that the rest of the terms of the CBA would be finalized and that the parties would be discussing health care separately in a reopener. WSU attorney and negotiator Rodney Younker said “what we’re proposing is a reopener in November to bargain over the insurance arrangement of both the arrangement and the costs. We think delaying that discussion to a little bit later to the Fall, to November, when we can get a little bit more information on costs/etc. We just don’t have a better idea than that right now given where we are on the calendar.” By insisting on delaying negotiations further due to their unilateral changes to the plan, WSU continued to demonstrate an unwillingness to bargain the impacts of these changes.
63. At the August 23, 2023, bargaining session the Union made a counterproposal to WSU’s August 15, 2023 package economic proposal, including a counter to WSU’s healthcare proposal. The Union’s package counter proposal rejects WSU’s proposal to open the CBA’s healthcare insurance article on November 1, 2023 and proposed starting negotiations for the Student Health Insurance Plan for plan year 2024-2025 immediately. The Union’s counterproposal re-asserts its June 21, 2023 healthcare proposal in a package with other economic proposals including Wages, Fee and Tuition Waivers, Child and Dependent Care, and Housing. WSU attorney and negotiator Rodney Younker responded that, due to the new benefits design of the plan, WSU would need months of additional time before they could negotiate. Younker said “we don’t have any experience under our new plan, so everyone is gonna be shooting in the dark here. Until we move into the new year and there’s actually some claims experience with the new system.”
64. On August 25, 2023, the Union’s bargaining committee emailed Kendra Hsieh, WSU Director of Labor Relations and Disability Services, and Rodney Younker, WSU attorney and negotiator, to renew its healthcare requests for information, including, but not limited to, information necessary for costing healthcare plan options such as 14(i) monthly utilization reports for prescriptions dispensed at Cougar Health Services. The Union also renewed its request for WSU’s RFPs for the Student Health Insurance Plan for plan year 2023-2024, including, but not limited to, “copies of any Requests for Proposals (RFPs) prepared and/or filed since March 2023, any responses received or any documentation regarding plans, timelines or materials being prepared for additional RFPs to be filed.” The Union also renewed a request it made during an August 23, 2023 bargaining session for a small table discussion on the Student Health Insurance Plan with Brown & Brown on such topics as outstanding RFPs.

65. At the September 13, 2023 bargaining session, Kelly Chavez, with Brown & Brown, reiterated the reasons behind WSU's proposal to delay bargaining further as a result of the unilateral changes they'd made to the benefit design of the plan: "The carriers are looking at 2 years of claims, to price out what they think that will cost in the future. Historical information, what students spend(sic) in the past, what the market is doing in terms of trends, changes in population, to forecast what pricing will be in the future. They like to have as much information as possible for the current spend and current population. Usually, that's at least 6 months into the current plan year to forecast." Had WSU negotiated the changes to the Student Health Insurance Plan for plan year 2023-2024, the parties could have planned ahead to ensure that they had any experience data necessary - including possibly from other universities with similar employee pools - to consider future changes to the plan, including preferred provider networks.
66. During the September 13, 2023 bargaining session, Marissa Parker, UAW staff, asked Kelly Chavez, with Brown & Brown, whether Brown & Brown had dental, vision and pharmacy ASE and ASE dependent utilization data for the Student Health Insurance Plan because WSU previously indicated that it did not track this data. Chavez replied that Brown & Brown has access to and can run reports on dental, vision, and pharmacy plan user utilization despite WSU's previous assertions it did not track that data.
67. On or about August 16, 2023 at 12:01 a.m. for ASEs in the bargaining unit, WSU unilaterally implemented Student Health Insurance Plan changes for the plan year 2023-2024. This change resulted in WSU altering benefits and costs from the plan year 2022-2023. Eligible ASEs now had:
- Out-of-pocket expenses of \$5,000 per person/\$10,000 per family, instead of \$7,000/\$14,000 per family in plan year 2022-2023.
 - Prescription Drug Coverage expanded beyond Cougar Health Services. No such option existed in plan year 2022-2023.
 - Pharmacy Benefit Manager (PBM), Optum RX. No such (PBM) existed in the plan year 2022-2023.
 - Prescription drug copays (\$20 for generic, \$40 for preferred brand and \$80 for non-preferred brand). No such copays existed in plan year 2022-2023.
 - Vision exam coverage up to \$100 per policy year. The maximum coverage in plan 2022-2023 was \$65 per policy year.

In addition, ASEs and their eligible dependents now had the following preventative care services and benefits that were not available in plan year 2022-2023:

- Anxiety and drug screening are available for adults.
- Behavioral counseling to promote a healthy diet and physical activity for adults at high risk of cardiovascular disease.
- Prediabetes screenings at age 35 instead of 40 in plan year 2022-2023.
- Routine anemia screening for pregnant women.

- Anxiety screening for pregnant and postpartum women.
- Behavioral counseling aimed at promoting healthy weight gain in pregnancy.
- Low dose aspirin after 12 weeks gestation for women at high risk for preeclampsia.
- Chlamydia infection screening for all pregnant women, younger women and other women at higher risk of infection.
- Gonorrhea screening for all pregnant women and other women at high risk of infection.
- Osteoporosis screening with bone measurement in postmenopausal women younger than 65 who are at increased risk of osteoporosis.
- Anxiety screenings for children and adolescents ages 8 to 18 years.
- Syphilis screening for adolescents who are at increased risk for infection.
- Benefits for donor human milk include coverage for eligible infants unable to receive human milk or chest feed or whose parent is unable to produce sufficient quantities of milk or participate in chest feeding. No such benefit existed in plan year 2022-2023.
- Expansion of covered foot care from the plan year 2022-2023 to include conditions associated with metabolic, neurologic or peripheral vascular disease instead of diabetes only in the prior plan.

In addition, the plan year 2023-2024 restricts or limits the following benefits ASEs and their eligible dependents previously enjoyed under the plan year 2022-2023:

- Fall prevention with exercise intervention no longer includes coverage for physical therapy or vitamin D as it did in plan year 2022-2023.
- Abdominal aortic aneurysm one-time screening now covered for men ages 64 to 75 only, instead of at specified ages only in plan year 2022-2023.
- Fluoride supplements are covered at age 6 months. No such limitation on age existed in plan year 2022-2023.
- Obesity screening and counseling now covers only age 6 and older. No such limitation on age existed in plan year 2022-2023.
- Breast cancer mammography screenings are now only available for ages 50-74, instead of for women ages 40-49 at the recommendation of providers in plan years 2022-2023.
- Osteoporosis screening is covered at age 65 and older instead of 60 and older in plan year 2022-2023.
- Syphilis screening for all pregnant women and or other women only if increased risk of infection. No such limitation existed in plan year 2022-2023.
- Fertility agents or sexual enhancement drugs such as Parlodel, Pergonal, Clomid, Profasi, Metrodin, Serophene, or Viagra.. No such exclusion existed in plan year 2022-2023.

- Evacuation benefits no longer include coverage for domestic students, insured spouse or Domestic Partner and insured minor child(ren). No such exclusion existed in plan year 2022-2023.
68. WSU's unilateral implementation of Student Health Insurance Plan changes for plan year 2023–2024 also occurred while bargaining for an initial CBA was underway and after the Union demanded to bargain healthcare benefits and coverage for the parties initial CBA, including, but not limited to, expanding the network of preferred providers, and expanding pharmacy coverage beyond Cougar Health Services. WSU's unilateral implementation without negotiations and after the Union's demand to bargain at the initial CBA table, selected the priorities absent negotiation from the Union, and in contradiction to the clearly expressed priorities of the bargaining unit as expressed by the elected committee. This interfered with the Union's ability to participate effectively in the collective bargaining process for the parties initial CBA. It also created a substantial delay in bargaining the initial CBA because WSU claims that it is unable to bargain the Student Health Insurance Plan for plan year 2024-2025 without approximately six months of data on plan year 2023-2024 utilization. WSU has engaged in bad-faith bargaining.
69. On or about September 18, 2023, WSU failed to provide relevant information in response to the Union's February 22, 2023 ongoing healthcare requests for information that the Union needed for the proper performance of its collective bargaining duties, including, but not limited to necessary information to bargain changes to WSU's Student Health Insurance Plan options for the plan year 2023-2024 and create well-informed healthcare proposals for the initial CBA. WSU has failed to provide complete responses to the Union's healthcare requests for information. WSU has at no time notified the Union that it believes the Union's outstanding healthcare requests for information are not relevant to the collective bargaining process. The relevant information that WSU failed to provide includes, but it is not limited to, the following:
- #14(b)-(d): WSU failed to provide information on the number of dependents who reach deductibles, out-of-pocket maximum, and list of claims denials, including reason for denials.
 - #14(e): WSU failed to provide utilization data for CAPs and the Psychology Clinic.
 - #14(f): WSU's failed to provide information about the number of bargaining unit employees who reached their CAPS session limit or information regarding wait-times for individuals to be able to see a regular provider.
 - #14(i): WSU failed to provide utilization data for prescription drug coverage necessary to create future successful Student Health Insurance Plan requests.
 - #15: WSU failed to provide any research utilized to determine dependent premium costs during plan renewal.

- #16(b)-(d): WSU failed to provide information on the number of dependents who reach deductibles, out-of-pocket maximum, and list of claims denials, including reason for denials.
- #16(g): WSU failed to provide utilization data for prescription drug coverage necessary to create future successful Student Health Insurance Plan requests.
- #17(a)-(b): WSU failed to provide the Union information on a list of services provided at Cougar Health Services covered under the bargaining unit employee health plan and a list of services provided at Cougar Health Services not covered under the bargaining unit employee health plan.

By failing to respond to the Union's request for information also WSU refused to bargain and derivatively interfered with employee rights in violation of RCW 41.56.140(1) and (4).

70. By unilaterally changing the healthcare coverage for eligible ASEs as described above without providing the union notice or the opportunity to bargain the change or the impacts of the change, and by failing to consider the Union's proposal(s), WSU refused to bargain and derivatively interfered with employee rights in violation of RCW 41.56.140(1) and (4).

REMEDY REQUESTED

1. The Union respectfully requests an order finding that WSU violated its duty to bargain in good faith with the Union by unilateral change.
2. The Union respectfully requests an order finding that WSU violated its duty to bargain in good faith by failing to respond to the Union's request for information as set forth above.
3. The Union respectfully requests that PERC issue an order requiring WSU to give notice to, and upon request, negotiate in good faith with the Union before changing the Student Health Insurance Plan coverage.
4. The Union respectfully requests that PERC issue an order requiring WSU to immediately bargain the impacts of its unlawful unilateral change to the Student Health Insurance Plan 2023-2024 plan year.
5. The Union respectfully requests that PERC issue an order requiring WSU to cease and desist from failing to provide relevant information in response to the Union's request for information.
6. The Union respectfully requests that PERC issue an order requiring WSU to post notice of its refusal to bargain in good faith and its failure to respond to the Union's requests for information. The Union respectfully requests that these notices be posted on WSU's premises where all notices to bargaining unit members are usually posted for a period of at least sixty consecutive days from the date of the initial posting.

7. The Union respectfully requests that PERC issue an order requiring WSU to read notice at a future bargaining session and WSU Board of Regents meeting of its refusal to bargain in good faith and its failure to respond to the Union's requests for information. The Union respectfully requests that the notice be read into the record at a regular public meeting of the Board of Regents within 60 days of PERC's order and that a copy of the notice is submitted into the official minutes.
8. The Union respectfully requests that PERC issue an order requiring WSU to make whole any bargaining unit employee adversely impacted as a result of WSU's unlawful unilateral change.
9. The Union respectfully requests that PERC order all other remedies which it deems just and appropriate.

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CERTIFICATE OF SERVICE

I certify that on the 18th day of September, 2023, a true copy of the WSU CASE/UAW Local 4121 Unfair Labor Practice Complaint and Statement of Facts was served electronically via email to the following:

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

DATED in Seattle, Washington this 18th day of September 2023.

By /s/ Amy Bowles
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