Before the Dispute Resolution Neutral Pursuant to the
Prince William County Public Schools Collective Bargaining Resolution

PRINCE WILLIAM COUNTY, VIRGINIA PUBLIC SCHOOLS	ULP Charge No. 2023-01 Alleged Failure to Negotiate in Good Faith
and	
PRINCE WILLIAM EDUCATION ASSOCIATION	Decision of the Dispute Resolution Neutral

BEFORE: Keith D. Greenberg, Esq., Dispute Resolution Neutral

APPEARANCES:

For the Prince William County Public Schools:

J. Eric Paltell, Esq.
Amy E. Smith, Esq.
Ramana Briggs, Esq.
(Isler Dare, PC)

Wade T. Anderson, Esq., Division Counsel

For the Prince William Education Association:

Jeffrey W. Burritt, Esq.
(National Education Association)

Broderick C. Dunn, Esq.
(Cook Craig & Francuzenko PLLC)

BACKGROUND

This matter arises under the Prince William County Public Schools Collective Bargaining Resolution (the "Collective Bargaining Resolution" or "Resolution") and concerns a dispute between the Prince William County Public Schools ("PWCS," the "School Board," or the "Employer") and the Prince William Education Association ("PWEA" or the "Union") over whether, during the Parties' negotiations for an initial term collective bargaining agreement for the Licensed Personnel Bargaining Unit and the Support Personnel Bargaining Unit, as defined

under the Resolution, PWCS committed Unfair Labor Practices ("ULPs") under the Collective Bargaining Resolution by refusing to negotiate in good faith with the Union over wages as well as over certain terms and conditions of employment.

Following secret ballot representation elections held in early 2023 for the Licensed Personnel Bargaining Unit and the Support Personnel Bargaining Unit, as defined by the Collective Bargaining Resolution, the Union was certified as the Exclusive Representative under the Collective Bargaining Resolution for both Bargaining Units; as a result, the Union represents a total of approximately 11,500 PWCS employees.

This is the first ULP Charge filed under the Collective Bargaining Resolution. The ULP Charge was filed by the Union on October 9, 2023; PWCS submitted an answer on October 19, 2023. A hearing was held in this matter on December 14, 2023. A transcript was prepared of the hearing and was agreed to be the official record of the proceedings. The Parties submitted opening briefs on February 9, 2024 and submitted reply briefs on February 23, 2024.

Relevant Statutory Provisions

Section 40.1-57.2, Collective bargaining, of the Code of Virginia states in relevant part that:

> A. No state, county, city, town, or like governmental officer, agent, or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service unless, in the case of a county, city, or town, such authority is provided for or permitted by a local ordinance or by a resolution. Any such ordinance or resolution shall provide for procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit. As used in this section, "county, city, or town" includes any local school board, and "public officers or employees" includes employees of a local school board.
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> B. No ordinance or resolution adopted pursuant to subsection A shall include provisions that restrict the governing body's authority to establish the budget or appropriate funds.
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> C. For any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining, such governing body shall, within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body. Nothing in this subsection shall require any governing body to adopt an ordinance or resolution authorizing collective bargaining.
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> D. Notwithstanding the provisions of subsection A regarding a local ordinance or resolution granting or permitting collective bargaining, no officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia or any employee of such officer is vested with or possesses any

> authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents, with respect to any matter relating to them or their employment or service.

Va. Code Ann. § 40.1-57.2 (2023).

Relevant Provisions of the Collective Bargaining Resolution

Section 2, Definitions, of the Collective Bargaining Resolution states in relevant part that:

> "Collective Bargaining" means the performance by an Exclusive Representative and the School Board of their mutual obligations to meet at reasonable times and to negotiate in good faith with respect to wages, certain benefits, and Terms and Conditions of Employment (as defined herein), or the negotiation of an agreement with respect to wages, certain benefits, and Terms and Conditions of Employment or any questions arising under an agreement, and the execution of agreements incorporating the terms agreed upon by both parties. In the performance of this obligation, neither party shall be compelled to agree to a proposal or be required to make a concession to the other. Any agreement reached by collective bargaining shall be subject to approval, budgeting, and annual appropriation of funds to the School Board by the Prince William County Board of Supervisors.
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> "Dispute Resolution Neutral" or "Neutral" means an experienced labor relations professional selected in accordance with Section 7 of this Resolution.
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> "Employer" means the Prince William County School Board or Prince William County Public Schools.
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> "Exclusive Representative" means a Labor Organization that has been selected by employees and recognized by the School Board as representing the employees in a Bargaining Unit as defined in Section 6 of this Resolution.
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> "Impasse" means failure of the School Board and an Exclusive Representative to achieve agreement in the course of collective bargaining.
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> "Labor Organization" means any organization that has as one of its primary purposes representing employees in collective bargaining.
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> "Lockout" means any action taken by the School Board to interrupt or prevent the continuity of work usually performed by Bargaining Unit employees for the purpose of and with the intent to either coercing employees into relinquishing rights guaranteed by this Resolution or of bringing economic pressure on employees for the purpose of securing the agreement of their Exclusive Representative to certain collective bargaining terms.
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> "Mediation" means assistance by an impartial third party to reconcile a dispute arising out of collective bargaining through interpretation, suggestion, and advice.
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> "School Board" or "Board" means the Prince William County School Board or its designated agents.

> "Strike" means an employee of the School Board who, in concert with two or more other School Board employees, for the purpose of obstructing, impeding, or suspending any activity or operation of their employing agency or any other governmental agency, willfully refuses to perform the duties of their employment.
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> "Terms and Conditions of Employment" means all wages, benefits, and other matters relating to the employment of employees in a Bargaining Unit, excluding those subjects and rights set forth in Section 5 (School Board Rights).

Section 4, Exclusive Representative Rights, of the Collective Bargaining Resolution states that:

> An Exclusive Representative recognized by the School Board as representing the employees in a Bargaining Unit shall have the following rights:
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> A. To speak on behalf of, and represent the interests of, all members of a Bargaining Unit without discrimination and without regard to Labor Organization membership.
> B. To hold individual or group meetings with members of the Bargaining Unit, provided that:
> i. A written request for the use of school premises is submitted to the principal at least 24 hours in advance of the meeting;
> ii. The request is approved;
> iii. The meeting is not held during an employee's working time; and
> iv. The Exclusive Representative agrees to pay any customary charges that may be assessed for custodial services and utilities.
> C. To use School Board email systems to communicate with Bargaining Unit members, subject to the terms of any Board policies or regulations pertaining to the use of computer or network systems and acceptable use. Records in the Board email system may be subject to the Virginia Freedom of Information Act and, as such, employee communications on such systems are not considered private.
> D. To receive from the School Board on a quarterly basis a list of all employees in the Bargaining Unit, including name, job title, department, and work email address.
> E. To receive regular and periodic dues payments deducted from an employee's pay by the School Board pursuant to the employee's written and signed authorization. Such authorization must be consistent with Section 10.B. of this Resolution.

Section 5, School Board Rights, of the Collective Bargaining Resolution states that:

> A. This Resolution shall not be deemed in any way to limit or diminish the authority of the School Board to fully manage and direct the operations and activities of the school division as authorized and permitted by law. Thus, the Board retains exclusive rights, which shall be considered prohibited subjects of bargaining, including the below-enumerated rights:
> 1. to hire, promote, transfer, assign, retain, supervise, evaluate, schedule, and classify all employees, to establish criteria for all such actions, and to make the ultimate decision as to which Employees such actions will apply;
> 2. to determine the job qualifications and descriptions for each School Board employee position, the manner in which services are to be provided, determine the number of positions or full-time-equivalents ("FTE"), and increase or decrease staffing levels, including the right to lay off employees due to lack of work, changed working conditions/requirements, enrollment, budget limitations, or for other reasons in the School Board's sole discretion and not prohibited by law;
> 3. to determine matters of inherent managerial policy, which include, but are not limited to, areas of discretion or policy such as the functions and programs of the School Board,

determination of curriculum, standards of service, its budget, utilization of technology, and organizational structure;

4. to suspend, demote, terminate the employment of, or take disciplinary action against, employees, subject to any right an employee may have to grieve such action pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education;
5. to determine the nature and scope of the work performed by School Board employees;
6. to contract and/or subcontract School Board services;
7. to establish, maintain, modify, and eliminate the qualifications of employees for hiring, appointment and promotions, including, but not limited to, the right to require background checks, mandatory drug tests, physical ability and/or agility tests; and fitness for duty evaluations;
8. to establish, maintain, modify, and eliminate work rules, policies, procedures and standards of conduct; and
9. to establish, maintain, modify, and eliminate workplace health and safety rules, in accordance with all federal, state, and local laws, ordinances, codes, requirements, policies, and regulations.

B. The School Board shall not be required to engage in collective bargaining with an Exclusive Representative concerning any benefits provided or administered solely by the Commonwealth of Virginia through the Virginia Retirement System or any other benefits established and administered in accordance with the Code of Virginia over which the School Board does not have sole control.

C. In accordance with Virginia Code § 40.1-57.2 (B), nothing in this Resolution or any collective bargaining agreement shall be deemed to restrict the School Board's authority to establish the budget or appropriate funds. All financial commitments on behalf of the School Board in any collective bargaining agreement shall at all times be subject to, and conditioned upon, the School Board's exercise of its unfettered discretion to determine the budget and to fund such commitments. If a collective bargaining agreement is approved that extends for more than one fiscal year, each fiscal year's financial commitments shall be subject to, and contingent upon the School Board's receipt of appropriations from the Prince William County Board of Supervisors which, in the School Board's sole judgment, are sufficient to fund its commitments for that fiscal year.

D Notwithstanding the provisions of any collective bargaining agreement, the School Board retains the right to temporarily suspend one or more provisions of such agreement for reasons including, but not limited to, a terrorist attack, pandemic, natural disaster, or other operational or declared emergency. The Board shall send written notice of the suspension to the designated point of contact of any Exclusive Representative at least 24 hours in advance of the effective date of any suspension, or as soon thereafter as is practical. The Superintendent or the Superintendent's designee(s) shall meet with the Exclusive Representative when it is reasonably practicable to do so after the suspension to solicit and receive feedback from the Exclusive Representative.

Section 7, Appointment of Dispute Resolution Neutral, of the Collective Bargaining Resolution states in relevant part that:

A. Whenever a situation or dispute arises for which this Resolution authorizes the appointment of a neutral person, the parties to the dispute shall promptly select an experienced labor relations professional to administer the proceeding. This person shall be referred to as the Dispute Resolution Neutral.

. . . .

D. The Dispute Resolution Neutral shall be compensated at a daily rate to be determined by the parties to the dispute at the time of their appointment. The Neutral's fee shall be shared equally by all parties to the dispute.

Section 9, Collective Bargaining, of the Collective Bargaining Resolution states:

A. The School Board and an Exclusive Representative shall have a duty to bargain in good faith for the purpose of entering into a collective bargaining agreement.
B. The School Board and the Exclusive Representative shall each be represented by a Collective Bargaining Team. All collective bargaining shall occur only between the parties' respective Collective Bargaining Teams. The School Board and the Exclusive Representative shall each retain the discretion to determine the composition of their Collective Bargaining Team, provided that the criteria set forth in the definition of Collective Bargaining Team in this Resolution are satisfied.
C. The School Board or the Exclusive Representative may initiate a request to engage in collective bargaining by submitting a written request to the other party.
D. The parties shall meet at reasonable times.
E. Employee members of an Exclusive Representative's Collective Bargaining Team in collective bargaining negotiations will be compensated only if the negotiations take place during hours that the employee is scheduled to work. Employee members planning to participate directly as members of an Exclusive Representative's Collective Bargaining Team during scheduled work hours must obtain pre-approval for the hours not worked in accordance with the applicable School Board leave policy. The School Board will not unreasonably deny such pre-approval. An employee member of an Exclusive Representative's Collective Bargaining Team will not be compensated for hours bargaining when those hours do not overlap with hours that the employee is regularly scheduled to work.
F. Negotiations for a collective bargaining agreement may not begin until on or after April 1st of any year when an agreement is sought to be effective at the beginning of the next fiscal year. Any tentative collective bargaining agreement that requires an appropriation of funds from the Board of County Supervisors in the next budget cycle must be received by School Board by December 1st of the year preceding the commencement of the upcoming fiscal year. For example, negotiations for an agreement scheduled to take effect July 1, 2024 (Fiscal Year 2025) may not begin until on or after April 1, 2023, and a tentative collective bargaining agreement must be received by the School Board by December 1, 2023.
G. The School Board and the Exclusive Representative shall be required to engage in collective bargaining over wages, certain benefits, and Terms and Conditions of Employment. The subjects set forth in School Board Rights, Sections A and B, shall be considered prohibited subjects of Collective Bargaining.
H. A collective bargaining agreement is not valid if it extends for less than one year or for more than four years, but agreement extensions may be shorter while the parties continue to negotiate.
I. A collective bargaining agreement may include a grievance procedure for the interpretation of contract terms and the resolution of disputes arising under the agreement. If a collective bargaining agreement includes such a procedure, it shall be the exclusive method for the resolution of disputes arising out of an alleged violation or interpretation of a provision(s) of the agreement, unless such matters are grievable pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education. If such matters are grievable pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education, an employee who elects to file a grievance under the statute or state regulations may not file a grievance under a collective bargaining agreement.
J. If the School Board fails to receive, or to continue to receive, funds from the Prince William County Board of Supervisors which, in its sole discretion, are sufficient to meet its obligations under an existing collective bargaining agreement, the parties will reopen negotiations over wages and other economic provisions in the agreement, leaving all non-economic provisions intact until a new agreement can be reached.

Section 11, Impasse Resolution, of the Collective Bargaining Resolution states:

A. If the Exclusive Representative and the School Board are unable to reach an agreement on or before October 1st of the year preceding the commencement of the upcoming fiscal year, either party may declare an Impasse.

B. After an Impasse has been declared, either party may seek Mediation through the Federal Mediation and Conciliation Service. A party seeking Mediation shall provide written notice to the other parties and the Federal Mediation and Conciliation Service at least 15 days before the anticipated first Mediation meeting.
C. The parties shall share the costs of the services of the mediator equally.
D. Costs incurred by a party to prepare, appear, or secure representation, expert witnesses, or evidence of any kind shall be borne exclusively by that party.
E. The parties shall engage in Mediation for a period of at least 30 days unless the parties mutually agree in writing to the termination or extension of the Mediation or reach an agreement.
F. The contents of a Mediation proceeding under this Section may not be disclosed by the parties or the mediator unless otherwise required by law.
G. The Mediation process is advisory only, and the mediator shall have no authority to bind either party.
H. If the parties mutually agree to some matters through collective bargaining and/or mediation, those matters may be implemented, subject to School Board approval.
I. After the declaration of an Impasse, in those matters for which there is no mutual agreement, the School Board shall retain the exclusive authority to determine those matters, including, but not limited to, the continued implementation of the terms of any prior collective bargaining agreement covering those matters.

Section 13, Strikes and Lockouts, of the Collective Bargaining Resolution states in relevant part that:

A. No employee or Labor Organization may engage in any Strike in violation of Virginia Code § 40.1-55, nor may the School Board engage in a Lockout.

Section 14, Unfair Labor Practices, of the Collective Bargaining Resolution states in relevant part that:

A. School Board Unfair Labor Practices. It shall be an unfair labor practice for the School Board to engage in the following conduct:
    1. Interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under this Resolution;
    2. Dominate or interfere with any Labor Organization or contribute financial support to it;
    3. Discriminate in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any Labor Organization;
    4. Discharge or otherwise discriminate against an employee because of their exercise of rights under this Resolution, including for giving information or testimony in related processes; or
    5. Fail or refuse to negotiate in good faith with an Exclusive Representative.

. . . .

C. Procedure
    1. In the event that a claim is made that an unfair labor practice has been committed by either the School Board or a Labor Organization, the complaining party shall serve the other party with a verified complaint setting forth a detailed written statement of the alleged unfair labor practice no later than 30 days after the occurrence of the alleged unfair labor practice. The responding party shall have the right to serve a written answer to the complaint within 10 days after service of the complaint. The complaint and answer shall be served by email and regular mail.
    2. The parties shall submit the unfair labor practice to a Dispute Resolution Neutral selected in accordance with the requirements of Section 7 of this Resolution. The costs associated with the Neutral shall be shared equally by the parties.

3. The Dispute Resolution Neutral shall have the following authority with respect to the investigation and adjudication of unfair labor practice charges and determination of remedies for unfair labor practices:
   a. After reviewing the complaint and any answer thereto, the Dispute Resolution Neutral may issue an order dismissing the complaint or schedule an evidentiary hearing at a designated time and place within Prince William County.
   b. If a hearing is ordered, the Dispute Resolution Neutral may issue subpoenas, administer oaths, and take testimony and other evidence.
4. The Dispute Resolution Neutral shall issue written findings and conclusions. It the Dispute Resolution Neutral finds that a party has violated one or more of the provisions of this Section, they may issue an order directing the party to cease and desist engaging in the violation and may order such other reasonable affirmative relief as is necessary to remedy the violation. If the party filing an unfair labor practice charge is an Employee, "affirmative relief" shall include the recovery from the non-prevailing party of reasonable attorney's fees and costs incurred by the employee, including reimbursement of the Employee's share of the cost of Dispute Resolution Neutral's fee.
5. If a Labor Organization or Exclusive Representative is found to have violated Section 8.B.6, the Charging Party shall be entitled to recover reasonable attorney's fees and costs incurred by the School Board, including reimbursement of the School Board's share of the cost of Dispute Resolution Neutral's fee.
6. Any party aggrieved by a decision of a Dispute Resolution Neutral issued pursuant to Section C.4 may, within 21 days from the date such decision is issued, appeal to the Prince William County Circuit Court to obtain judicial review pursuant to the Uniform Arbitration Act, Virginia Code §§ 8.01-581.01 *et. seq.*

(Spelling and emphasis as in original.)

Section 15, Conflicts; Governing Law, of the Collective Bargaining Resolution states in relevant part that:

A. In the event of a conflict between this Resolution and any state, local, or federal law or regulation, state, local, or federal law or regulation shall prevail.
B. The policies and procedures, administrative directives, and workplace practices of the School Board and its departments, agencies, offices, and divisions shall govern employee relations unless there is a direct conflict with a collective bargaining agreement approved by the School Board. Where a direct conflict exists, the collective bargaining agreement shall govern.
C. Any collective bargaining agreement approved by the School Board pursuant to this Resolution shall be governed and interpreted in accordance with the Constitution and laws of the Commonwealth of Virginia and this Resolution.
D. In the event of a conflict between a collective bargaining agreement and this Resolution, this Resolution, as may be amended, shall govern.

Section 16, Computation of Time, of the Collective Bargaining Resolution states in relevant part that:

A. In general. In computing a period of time described in this Resolution, the day of the event or action after which the designated period of time begins to run shall not be included.
B. Last day. The last day of the period of time computed under subsection A of this section shall be included unless it is a Saturday, Sunday, or School Board holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, or School Board holiday.

(Emphasis as in original.)

Evidence Regarding PWCS and the Development of the Collective Bargaining Resolution

Dr. LaTanya McDade, Superintendent of the Prince William County Public Schools, testified that she had served in that role for nearly two and a half years. She noted that PWCS is operated on a day-to-day basis by its administration, also referred to as the "School Division," which she leads. PWCS is governed by its School Board.

The School Board maintains School Board Policy No. 102, Formulation and Adoption of Policies and Regulations, which states in relevant part that:

> The Prince William County School Board is responsible by law for the development, review, revision, and adoption of Division-wide policies to guide the operation of the Prince William County Public Schools. The Prince William County School Board believes that public awareness of the policymaking process is highly desirable and that consideration should be given to the views of teachers, parents, and other concerned citizens in the development and implementation of School Division policies.
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> I. **Formulation and Adoption of Policies.**
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> Division-wide policies may be proposed, or deletions or modifications to existing policies may be proposed, by members of the School Board or the Division Superintendent (Superintendent). They may also be proposed by the Division Counsel (where the adoption, deletion, or revision of a policy is required by law or other legal justification, or as requested by the School Board). Policies and amendments thereto shall be adopted by the Prince William County School Board in open session. Each proposal shall be accompanied by a completed Policy/Regulation Justification Form. Upon request, staff shall make existing policies available to Board members in Microsoft Word track changes format to facilitate markup of changes.
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> Adoption, deletion, or changes to a policy shall occur only after the proposal has been placed on the agenda, discussed at two separate meetings (readings) of the School Board, and adopted by majority vote at the second meeting. In the event that no concerns are raised at the first meeting/reading to a proposed policy or proposed revision or deletion of a policy, the policy matter may be placed on the consent agenda for the second reading.
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> A policy proposal may be amended at the second meeting or reading of the policy, only if such proposed amendment has been previously submitted in writing to the Superintendent, Division Counsel, and the other members of the School Board. However, by a two-thirds majority vote of those School Board members present and voting, the School Board may waive that filing requirement or may waive the second reading and may adopt a proposed policy at the first meeting.
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> II. **Regulations Implementing School Board Policies.**
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> The Superintendent shall advise the School Board regarding the development and adoption of written policies and shall issue administrative regulations to implement all policies of the School Board, with the exception of the 100 Series. New and modified administrative regulations shall be provided to the School Board for information and published on the PWCS website for at least thirty days before the regulation goes into effect.
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> III. **Review of Policies and Regulations.**
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> With the exception of the policies in the 100 Series of the Policy Manual "School Board Governance and Operations," the Division Superintendent and/or his/her designees shall

> review all written policies and regulations on whatever periodic schedule the Superintendent deems appropriate, but at least every five years, as required by law. Non-substantive editorial revisions, such as changes to the date a policy is last reviewed; to the title of persons, policies, or regulations referred to in a policy; to the employee responsible for the review and monitoring of a policy; or to legal authorities cited under a policy that are certified as non-substantive by Division Counsel, may be made by the Superintendent and are excepted from the procedures established in this policy, but shall be presented to the School Board for information as soon as practicable.
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> Such written policies and regulations shall govern the conduct and affairs of the Prince William County Public Schools and shall be binding upon the members of the educational community and employees of the School Division. Policies shall be binding upon the School Board and its members. However, in special or emergency circumstances where a waiver is in the best interest of the school division, the School Board has the authority to waive its written policies by a two-thirds majority vote, and the Superintendent has the authority to waive written regulations. . . .

Superintendent McDade explained that, as Superintendent, she is empowered to propose the creation of new School Board Policies and the modification or elimination of existing School Board Policies, subject to a vote of the School Board. She noted that she is authorized to issue administrative regulations, referred to as "Division Regulations," to implement School Board-approved Policies, which are provided to the School Board and posted on PWCS's public website. She described Division Regulations as the mechanisms for executing School Board-approved policies. Superintendent McDade opined that Section 5.A.8 of the Collective Bargaining Resolution, which references the School Board's exclusive right "to establish, maintain, modify, and eliminate work rules, policies, procedures and standards of conduct," refers to School Board Policies as well as Division Regulations and work rules.

Superintendent McDade testified that, prior to beginning her service with PWCS, she had served in a number of roles with the Chicago Public Schools ("CPS"), most recently as Chief Education Officer. She stated that she had had substantial experience with collective bargaining in her roles with CPS, and recounted that the legislation authorizing public sector collective bargaining in Virginia had been enacted at about the same time that she was beginning her service with PWCS.

Superintendent McDade recounted that she had been involved in the drafting of PWCS's Collective Bargaining Resolution. She noted that, unlike CPS, where there was a long history of public sector collective bargaining, there was no existing labor relations infrastructure available to PWCS as it implemented collective bargaining for its eligible employees. She explained that she had sought for the Collective Bargaining Resolution to have a sufficiently narrow scope as to be, in her view, "manageable." She recounted that she had emphasized to members of the school

board that a Collective Bargaining Resolution should not require PWCS to relinquish administrative rights and should permit PWCS to manage policies and regulations to support operational requirements for the School Division.

Superintendent McDade testified that PWCS's budgetary process for a fiscal year begins in or about the prior August; that the Superintendent's proposed budget is presented for public review by February; and, by March, the School Board votes on whether to adopt the proposed budget. She noted that, usually by early April, the School Board's budget is sent to the Prince William County Board of Supervisors for final approval. Superintendent McDade noted that the School Board lacks the ability to raise revenue on its own; she explained that the School Board has a revenue sharing agreement with the Board of County Supervisors, which provides the bulk of the funding for PWCS. She acknowledged that PWCS also receives some federal and state funding. She noted that, in order to incorporate any fiscal impacts from collective bargaining into PWCS's budget prior to approval by the School Board, collective bargaining should be completed by mid-January.

Evidence Regarding the Parties' Negotiations through August 15, 2023

Maggie Hansford, the Union's President, stated that she had served in that role for approximately four years as of the date of her testimony in this matter. Ms. Hansford testified that the Parties began negotiations in the second week of April 2023. The record reflects that Ms. Hansford served as the Union's Chief Negotiator, while J. Eric Paltell, Esq., PWCS's outside labor counsel, served as Chief Negotiator for PWCS.

Ms. Hansford recounted that, during the Parties' first few bargaining sessions, the Parties attempted to negotiate ground rules for bargaining. Mr. Paltell testified that the Parties were ultimately unable to reach agreement on ground rules despite two months spent attempting to do so, and instead developed a "Best Practices" document. Mr. Paltell testified that he has practiced labor and employment law for over 35 years and has represented employers in public sector bargaining for approximately 20 years, and that the Parties' inability in this case to come to an agreement on ground rules was unique in his experience in collective bargaining.

The "Best Practices" document – fully titled as "AGREED UPON BEST PRACTICES FOR COLLECTIVE BARGAINING BETWEEN THE PRINCE WILLIAM COUNTY SCHOOL BOARD AND PRINCE WILLIAM EDUCATION ASSOCIATION" – stated in relevant part that:

I. CHIEF NEGOTIATORS

On this 23rd day of May 2023, the Chief Negotiators, J Eric Paltell, Esq. and Maggie Hansford, agree to the following:

A. School Board. The Prince William County School Board ("School Board"), acting through the Superintendent, will be represented during negotiations by its Chief Negotiator, Eric Paltell, Esq.

B. Union. The Prince William Education Association ("Union") has identified its Chief Negotiator as Maggie Hansford, Union President. The School Board and the Union may be referred to jointly as the "Parties"

C. Authority. The Chief Negotiator for the Union named in Paragraph I(B) above has authority to negotiate and reach a tentative agreement on behalf of the Union subject to ratification by Union members. The Chief Negotiator for the School Board has authority to negotiate and reach a tentative agreement on behalf of the School Board subject to approval by the School Board pursuant to Prince William County Public Schools Collective Bargaining Resolution ("Resolution"). Any agreement reached is subject to the Resolution in effect on the date an agreement is executed. All tentative agreements are subject to a final agreement approved by the Parties.

II. ATTENDANCE OF OTHER INDIVIDUALS AT NEGOTIATIONS

A. Negotiations Team

1. Collective Bargaining Team. Each negotiations team shall consist of up to ten (10) representatives. This shall be referred to as the Collective Bargaining Team ('Team"). Each Party may replace members of their Team in accordance with Section 2 of the Resolution.

B. Note-Takers and Specialists

1. Specialists. During negotiations, each Team may bring in Specialists to make presentations to the Collective Bargaining Teams on subjects that may require specialized expertise, such as employee benefits, compensation, or the budget. Only two (2) Specialists for each Team may attend the negotiations at any one time.
2. Note-Takers. Each Team shall be entitled to have two (2) note-takers attend negotiations, in addition to the members of the Team in attendance at each session. Note takers must be designated in advance at least two (2) business days in advance of a scheduled session. A designated note taker shall be granted leave time for participation in collective bargaining negotiations on behalf of the Union during time that they would otherwise be scheduled to work.

C. Disclosures

Employee Lists. In accordance with Section 4(C) of the Resolution, the School Board shall provide the Union with a list of all Employees in the Bargaining Unit (as defined in Section 2 of the Resolution), including name, job title, department, and work email address, on or before the following dates of each calendar year: October 1, December 1, February 1, and May 1.

III. NEGOTIATING SESSIONS

A. Joint-Bargaining. The Parties agree to meet for joint-bargaining sessions with the two Bargaining Units, the Licensed Personnel Bargaining Unit and the Support Personnel Bargaining Unit, as defined in Section 6(A) of the Resolution.

B. Frequency and Duration. The Parties generally agree to meet for negotiations at least three (3) times per month on the second, third, and fourth Tuesday of each month, for up to four (4) hours, from 2:00pm up to 6:00pm, except as otherwise agreed to by both Parties. Notwithstanding the foregoing, the Parties agree that circumstances may arise that make it necessary to alter the schedule to meet more or less frequently, or for periods of more or less than four (4) hours.

C. Postponements. The Parties agree that requests for postponement of a negotiation session(s) shall be in writing at least twenty-four (24) hours in advance, barring emergencies. If the Parties postpone negotiations, every effort shall be made to reschedule during the same week.

D. Location, Administrative Needs, and Costs. Negotiations will be conducted in person at the Kelly Leadership Center or another PWCS facility, unless the Parties mutually agree on an alternate location. The School Board will ensure that the Parties have access to a caucus room and a printer during negotiations. Each Party is responsible for the supportive costs associated with their clerical or administrative needs. Any joint expense incurred for mediation or arbitration will be borne equally by the Parties.

E. Agendas. The Parties agree that they will generally exchange agenda items to be discussed at negotiations in advance of the scheduled negotiations.

F. Attendance Records. The Parties agree that all persons attending or participating in each negotiation session shall sign their first and last name to a sign-in sheet. Copies of the sign-in sheet will be given to each Party.

IV. EXCHANGE OF PROPOSALS

A. Timing. The Union shall begin to transmit proposals to the School Board in writing on about May 15, 2023. The School Board shall begin to transmit proposals to the Union in writing on or about June 6, 2023. No additional new proposals with respect to subjects not previously the subject of a proposal(s) by either Party may be presented by either Party after August 15, 2023, unless the Parties mutually agree in writing otherwise.

B. Amendments. Necessary technical and conforming amendments and edits consistent with the Parties' agreement shall be made upon completion of these negotiations.

V. NEGOTIATION PROCEDURE

A. Proposals. During the negotiations, discussion on any specific proposal, or portion thereof, may be deferred until a later date. If attempts at an agreement on a proposal are unsuccessful, the proposal will be tabled and revisited at a later time. When an agreement is reached on a specific proposal, including any changes, it shall be initialed as tentatively agreed and dated by the Chief Negotiators on each Team. The agreements shall be subsequently memorialized (finalized) as agreed. A tentative agreement on any one item is contingent upon agreement on the entire collective bargaining agreement. Further, no item will be settled in its entirety until the Parties agree to the exact language to be incorporated in the contract. Once all proposals have been considered during negotiations and have either been agreed to, tabled, or dropped, a final attempt will be made to reach agreement on all tabled items. If such final efforts are not successful, the remaining items not agreed to will be at an impasse.

B. Caucuses. Either negotiator may call a caucus of their Team at any time during the sessions. If a negotiator anticipates that the caucus session will last longer than twenty (20) minutes, the negotiator calling the caucus must so notify the other Team.

C. Conduct During Negotiations.

1. Professional Conduct and Decorum. The Parties agree that all members of the Teams, as well as all other persons attending any bargaining session, shall conduct themselves in a professional and courteous matter when attending a negotiating session.
2. Electronic Recording. The Parties agree that the use of audio, video, or other verbatim recording devices at any of the negotiation sessions shall not be permitted by any Team member, Note-taker, Specialist, or other person attending negotiations without the knowledge and consent of all other parties.

VI. INTENT

A. Ratification; Approval. It is the mutual desire of the Parties that negotiations proceed in an expedited yet orderly manner, with the objective that a good faith effort will be made to reach agreement in concert with the provisions of the Resolution. Once a tentative agreement is reached on all provisions of a proposed contract, the members of the Union's Team will work diligently to secure ratification from the Union membership. Members of the School Board's Team will work diligently to gain the required approvals pursuant to Section 12 of the Resolution.

B. The Parties agree that these Best Practices are effective as of May 23, 2023, and will remain in effect through December 1, 2023.

Mr. Paltell testified that the Best Practices had been jointly developed by PWCS and the Union, and that the Parties had reached agreement as to the terms of the Best Practices on or about May 23, 2023. He recounted that Ms. Hansford had, on that date, orally acknowledged her substantive agreement to the Best Practices but had refused to sign any acknowledgement of same. Ms. Hansford testified, however, that the Union had declined to agree to abide by the "Best Practices" document.

Ms. Hansford stated that the Parties began to negotiate contract articles in or about May 2023.

Ms. Hansford testified that, prior to the summer break of mid-June 2023 to August 2023, the Parties had reached tentative agreement on a recognition and definitions contract article; on a contract article addressing the status and administration of the collective bargaining agreement; and on portions of a contract article addressing the Parties' respective rights and responsibilities. She noted that it had been the Union's intention to provide a comprehensive proposal for a full collective bargaining agreement after the summer break. Ms. Hansford acknowledged that, prior to the summer break, PWCS had submitted proposals for contract articles addressing the contractual grievance procedure, a savings clause for the agreement, and the duration of the agreement. She further acknowledged that the Union had made no contract proposals before summer break on the matters that it later addressed in its proposed Articles IV, VI, VII, or VIII.

In a letter to Ms. Hansford, dated July 13, 2023, Mr. Paltell wrote:

I am writing to follow up on the status of the collective bargaining negotiations between the Prince William Education Association ("PWEA") and the Prince William County School Board ("Board" or "PWCS"), as well as PWCS's request that PWEA share with our Team its proposals in advance of our next bargaining session to continue moving the bargaining process forward.

As you know, the schedule originally proposed by PWCS included bargaining sessions throughout the summer (the 2nd, 3rd, and 4th Tuesday of each month). There were six dates on the calendar between June 20th and August 8th. On April 25th, PWEA requested that these six dates be removed from the calendar because PWEA did not want to bargain in the summer unless the members of the bargaining team would be paid for attending. PWCS refused to compensate the PWEA Team to negotiate their own contract. PWEA then asked that we add additional dates to the calendar in late May and early June, and PWCS agreed to add four new dates in a two-week period: May 24, 30, and 31, and June 6th. PWEA subsequently asked that the May 30th date be rescheduled to a later date. Then, near the end of our scheduled sessions, PWEA asked that we meet over the summer, which PWCS refused, given that Team members had already rearranged schedules to accommodate PWEA's earlier request *not* to meet over the summer.

The parties do not presently have any bargaining sessions scheduled until August 15, 2023, when we are scheduled to resume meeting once per week. Most of the eight sessions we have had since April 12, 2023, have been about four hours in duration. Over the course of those eight sessions, the PWEA has presented the Board with four of what we understand to be a total of twelve articles you intend to propose (Articles I, II, III and V). The articles you have presented to date have addressed subjects such as PWEA access to PWCS facilities, remittance of union dues to PWEA, paid leave for 150 PWEA members to attend the annual VEA conference, the number of copies of the CBA that will be printed, and whether to allow the three PWEA officers who have been granted release time to work for PWEA to retain PWCS seniority and benefits. As of this date, PWEA has yet to make any substantive proposals regarding items such as employee wages or benefits.

When we last met on June 13, 2023, the PWCS Bargaining Team asked that PWEA provide us with electronic copies of at least four of the remaining eight articles prior to our next bargaining session. As I explained to you in an email I sent the preceding day, providing our Team with proposals in advance of meeting in person would allow us to review and provide substantive feedback to PWEA prior to the next meeting. The current practice where PWEA insists on presenting us with proposed articles in person requires our Team to take extended breaks from joint negotiations to review and discuss the proposals. This is very inefficient and does not maximize the productive use of both sides' time. When we concluded our meeting on June 13, 2023, you would not commit to sending us proposals in advance of the next meeting, and, with the exception of a June 21, 2023 email you sent to me regarding PWEA's updated by-laws, we have not heard from you since that last session.

As we have discussed, it is common for the parties in collective bargaining negotiations to exchange proposals and counterproposals between in-person bargaining sessions. Indeed, I mentioned in one of our early sessions that these "between session" exchanges are where much of the work on an agreement gets done. PWEA's failure to share proposals between meetings runs contrary to my 30+ years of experience in public sector negotiations, including my work with the police and fire unions in Prince William County. PWEA's current process of refusing to share proposals in advance has hindered our progress and slowed the pace of negotiations.

In an effort to continue moving the bargaining process forward, I am reiterating PWCS's request that PWEA share with our Team its proposals in advance of our next bargaining session. Our next session is scheduled for August 15, 2023, at 2:00 p.m., and we would greatly appreciate receiving the proposals at least two weeks in advance of that meeting. Moreover, as you know, Section IV.D. of the Best Practices for Collective Bargaining that both parties agreed to on May

> 23, 2023, requires that all new proposals be submitted to the other side no later than August 15, 2023.
>
> Additionally, if PWEA will not agree to provide its proposals prior to meeting in person, our Team would like to suggest that you consider an approach that has been taken in the cities of Falls Church and Charlottesville. In those jurisdictions, the local VEA Chapter and the School Division have agreed to limit the scope of bargaining for the first collective bargaining agreement. Specifically, these jurisdictions limit bargaining to four topics during the initial contract negotiations. By only providing us individual sections to review in-person, with little time to digest and respond, we believe that limiting the number of topics would be much more manageable and significantly increase our chances of getting through your proposals and reaching a collective bargaining agreement that can be built upon in future negotiations. Please let me know if PWEA is receptive to either of these options.
>
> We look forward to hearing from you shortly.

(Emphasis as in original.)

Ms. Hansford stated that, on August 15, 2023, the Union submitted a comprehensive proposal for a full collective bargaining agreement to PWCS, including its initial economic proposal. The Union's comprehensive proposal included a wage proposal that included an overall increase to the existing salary scales for the 2023-2024 school year of 17 percent, as well as the assignment of each bargaining unit employee to the step on their appropriate salary scale corresponding with their years of service with PWCS. The record reflects that PWCS's negotiating team estimated that the Union's initial wage proposal would require over $364 million in additional funding above current wage costs.

Evidence Regarding PWCS's Economic Proposals

Mr. Paltell recounted that PWCS had begun preparing its wage proposal shortly after Labor Day 2023. He explained that PWCS had received the Union's first economic proposal on August 15, 2023, and had prepared its counterproposal thereafter. He noted that it was his practice, as a negotiator on behalf of management, to wait for a union to make an initial proposal on economics before presenting management's economic proposal.

Mr. Paltell explained that, at the time that PWCS had prepared its wage proposal, PWCS had not yet known with certainty what amount of funding would be provided from Prince William County, from the Commonwealth of Virginia, and from the federal government to PWCS for the upcoming fiscal year. He noted that PWCS's negotiating team had reviewed historical operating expenses and revenues to forecast available funding for its Fiscal Year 2025, which were estimated at $80 million in additional revenue. Mr. Paltell noted that, although this

data had not been shared in its entirety with the Union, the Parties had had discussions, in mediation, about some of PWCS's historical revenues.

Ms. Hansford testified that Dr. Donna Eagle, the School Board's Chief Human Resources Officer, had made a PowerPoint presentation on behalf of PWCS to the Union on September 12, 2023 in response to the Union's wage proposal. The record reflects that the PowerPoint presentation primarily addressed the estimated costs of the Union's wage proposal rather than the specifics of any PWCS counterproposal on wages. Ms. Hansford stated that, before the conclusion of the September 12, 2023 meeting with the Union at which Dr. Eagle's presentation had been made, PWCS had published the same PowerPoint slide deck from the meeting on its public website, including its estimates of the costs associated with the Union's wage proposal.

Ms. Hansford stated that, at the September 12, 2023 meeting, she had requested that PWCS provide its wage counterproposal in a form that began from the baseline of the Union's initial wage proposal – i.e., with PWCS striking language from the Union's proposal with which PWCS did not agree and adding language to reflect PWCS's counterproposal. She recounted that PWCS's negotiating team had initially asserted that the PowerPoint slide deck from the September 12, 2023 meeting was, in fact, PWCS's wage counterproposal but had subsequently agreed to provide a wage counterproposal in the format requested by the Union.

Ms. Hansford testified that the Parties had next met on September 19, 2023. She stated that PWCS had provided the Union with a second PowerPoint slide deck and presentation; this presentation focused on PWCS's own wage counterproposal. The proposal consisted of the following:

> **Proposal Details**
>
> **Salary Scale Adjustment and Enhancement Summary**
>
> - For FY25, PWCS will provide an average 6% salary increase.
>
> - The total estimated cost of this initiative is approximately $63.2 million ($47.5 million for teachers and $15.7 million for classified staff) over and above the cost of the 2% in January 2024.
>
> - This includes scale enhancements across all scales and allows for placement (step) improvement in the teacher scale for selected staff.
>
> **1. FY25 Teacher Scale Proposal**
>
> - The scales will be increased by approximately 2.1%.
>
> - A step movement for all (except those placed at the top).

- Provide a targeted "lift" equivalent to an additional step for staff with 12-18 years of experience as of June 30, 2024.
    - *Reason: This targeted range is an area of the scale for most in need of placement improvement based on comparison with peer school divisions.*
- The range of increases over January 2024 is approximately 5.2% to 9% and top step increase hovers around 2.2%. (Note: actual % increases vary based on degree supplement)
- Provides an overall average salary increase of 6%.

2. FY25 Classified Scale Proposal

- Improve the Grade 1, Step 1 wage by 3.2%.
- Equalize the differential between the grades.
- Increase step increment to 3%.
- Set scale to 30 steps.
- A step movement for all (except those placed at the top two steps).
- The range of increases over January 2024 is approximately 3.2% to 9.2% (except for those at the top step).
- Provide an overall average salary increase of 6%.

3. NBCT Application Reimbursement

- PWCS will cover the cost of the NBCT application fees up to $2,500.

4. Stipends and Supplements

- PWCS has currently contracted with an external vendor to conduct a stipend/supplement study. Once completed and reviewed, the following will be considered:
    - Annual stipends for certifications for Occupational Therapists (OT), *Physical* Therapists (PT), Speech-Language Pathologists (SLP), Nurses, and Psychologists.
    - Extra-curricular and supplemental assignments.
    - Annual stipend for Special Education (SPED) and English Language Learner (ELL) Department Chairs.
    - Annual stipend for staff responsible for writing and coordinating Individualized Education Programs (IEPs).

(Emphasis as in original.)

Mr. Paltell explained that PWCS's initial wage proposal had approximately $63 million in associated cost. He recounted that, in addition to the wage proposal that PWCS had made in

bargaining, the Virginia General Assembly had passed – and the Governor had signed – a two percent wage increase for teachers in the Commonwealth of Virginia, at a cost of $23 million to PWCS above and beyond additional state revenues that would be provided to fund the two percent increase.

Ms. Hansford averred that, in connection with that discussion, Wade Anderson, PWCS Division Counsel, had stated that on September 19, 2023 that PWCS's wage counterproposal that had been presented on that date represented PWCS's "first, best, and final offer" on wages.

Ms. Hansford recounted that she had again asked PWCS's negotiating team for a counterproposal set forth from the baseline of the Union's initial wage proposal. She recalled that PWCS's team had initially resisted, but subsequently agreed to provide a wage counterproposal in the format requested by the Union. The record reflects that, on September 25, 2023, PWCS presented the Union with PWCS's counterproposal on salary, stipends, and benefits in the form of proposed contract language.

Ms. Hansford noted that, through this point in bargaining, the Union had not changed its wage proposal from what had been submitted to PWCS in the Union's comprehensive August 15, 2023 proposal.

Bargaining notes from members of the Union's negotiating team reflect that, at a negotiating session on September 26, 2023, Mr. Anderson had indicated that PWCS was willing to negotiate anything outside of the pay scale, but that PWCS's pay scale proposal was its "last, best, and final" offer on that matter. Mr. Paltell testified that he did not recall communicating to the Union that PWCS would not provide substantive counters on wages, but acknowledged that it was possible that he had said so but was unable to remember doing so.

Mr. Paltell recounted that PWCS had decided to make what it viewed as a strong initial offer on wages in September 2023 because of the limited time remaining before the Collective Bargaining Resolution's impasse deadline. He noted an additional concern based upon the failure of the Parties to have agreed to a confidential negotiations process; he stated that, on several occasions, previous proposals made by PWCS had been quickly publicized by the Union on social media and in other forums, and PWCS expected that the same would occur with PWCS's wage proposal. He explained that PWCS's negotiating team had been concerned that a less generous initial offer from PWCS followed by incremental movement would have impaired

PWCS's efforts to recruit and retain employees by creating a public perception that PWCS was proposing to undercompensate its employees.

On October 9, 2023, the Union filed this ULP Charge. The ULP Charge contains, in substance, two counts. In Count I, the Union alleged that PWCS had refused to bargain in good faith over wages. Specifically, the Union alleged that:

> 14. The Board's duty to bargain with PWEA in good faith includes the duty to bargain over wages. Ex. A, Section 9.G.
> 15. The Board has made a single "first and last best offer," making it clear that it will not bargain over its proposal or otherwise discuss revisions to its wage proposal.
> 16. By making a take-it-or-leave-it wage proposal, and remaining steadfast to that position, the Board has failed and refused to negotiate with PWEA in good faith, in violation of Section 14.5. of the Resolution. . . .

In Count II, the Union alleged that PWCS had refused to bargain in good faith over benefits and terms and conditions of employment. Specifically, the Union alleged that:

> 18. The Board's duty to bargain with PWEA in good faith includes the duty to bargain over "certain benefits, and Terms and Conditions of Employment." Ex. A, Section 9.G.
> 19. While the Board has the right "to fully manage and direct the operations and activities of the school division," such that it retains certain exclusive rights that are prohibited subjects of bargaining, Ex. A, Section 5.A., here the Board has refused to bargain over the most basic benefits and terms and conditions, which do not fall within the prohibited subjects set forth in the Resolution.
> 20. By misclassifying PWEA's bargaining proposals as prohibited subjects of bargaining, the Board has failed and refused to negotiate with PWEA in good faith, in violation of Section 14.5. of the Resolution. . . .

In its Answer, PWCS denied any alleged violations of the Collective Bargaining Resolution and set forth the following "Affirmative and Other Defenses":

> 1. Respondent did not take any action in violation of the Resolution, including by refusing to bargain collectively with Complainant regarding any of the proposals identified in the Complaint, and it has acted at all times in good faith in accordance with the Resolution.
> 2. Respondent did not violate the Resolution because this Complaint was not timely filed within the thirty-day deadline set forth in Section 14(C)(1) of the Resolution.
> 3. Complainant is barred from litigating the Complaint by the doctrine of laches as a result of Complainant's failure to file the Complaint within the thirty-day deadline set forth in Section 14(C)(1) of the Resolution.
> 4. Complainant's claims may be barred, in whole or part, under the doctrine of unclean hands due to Complainant's refusal to bargain in good faith with Respondent by, among other things, refusing to collectively bargain over the summer unless its team members were compensated for their time, and failing to provide a majority of its proposals, including its wage proposal, until August 15, 2023, less than two months before the October 1st impasse deadline.
> 5. Any relief sought should be denied as inconsistent with the Resolution and unwarranted under the circumstances.
> 6. Respondent reserves the right to assert additional defenses during the course of this proceeding as circumstances may warrant. . . .

The Parties continued to bargain after the filing of the ULP Charge.

The Parties' Continued Negotiations After the Filing of this ULP Charge

Mr. Paltell averred that, notwithstanding what he viewed as a strong initial wage proposal from PWCS, PWCS had subsequently offered a number of enhancements to its initial wage proposal. These included a proposal to increase compensation for employees performing duties during summer school, at an approximate additional cost of $500,000; a proposal to increase compensation for employees working on an Extended School Year calendar, at an estimated cost of $50,000; a proposal to increase the compensation provided to teachers who are assigned to teach an additional class, at an estimated cost of $2.1 million; a proposal to create a new short-term disability program at a cost of approximately $200,000; a proposal to maintain the existing cost-sharing arrangements for employee health insurance for the life of the collective bargaining agreement, at an unknown cost; and a proposal to increase the tuition subsidy provided to PWCS employees who lived outside of Prince William County but wished to send their children to attend PWCS schools, at a cost of approximately $51,000.

Brian Beallor, a Collective Bargaining Specialist employed by the National Education Association ("NEA"), testified that he had been assigned by the NEA to support the Union in its term bargaining with PWCS. He explained that his involvement had begun in mid-August 2023 and had continued through December 1, 2023. Mr. Beallor recounted that PWCS's negotiating team had described its September 2023 wage proposal as PWCS's last, best, and final offer in the area of wages and salary schedule. Mr. Beallor acknowledged that the fact that a party in bargaining refused to modify its proposal was not, *per se*, indicative of bad faith bargaining.

Mr. Paltell recalled that PWCS had also noted, in its September 19, 2023 proposal, that it planned to propose – at a later date – increases to the supplements and stipends paid to employees who performed certain functions outside of their day-to-day duties. He noted that PWCS had commissioned a student in July 2023 on how to revise its stipends and supplements; he stated that the results of that study had not been received by September 19, 2023. He testified that, in or about late October or early November 2023, PWCS had received the results of the study on stipends and supplements. The record reflects that, in an email dated November 10, 2023, PWCS presented its proposal on stipends and supplements to the Union. Mr. Paltell estimated the value of that proposal at $692,000.

Ms. Hansford testified that, as the Parties entered early October 2023, their bargaining sessions had become more infrequent. She stated that the Union had requested additional dates

for negotiating sessions, but that PWCS had refused to meet during much of October. She acknowledged that the Parties had met for bargaining several times in November.

Mr. Paltell recounted that, on November 30, 2023, PWCS had enhanced its stipends and supplements proposal by increasing the value of certain existing supplements and by making stipends and supplements available to middle school teachers. He estimated that these changes had increased the value of PWCS's stipends and supplements proposal by approximately $450,000. He testified that, on December 1, 2023, at the Union's request, PWCS had made certain elementary school music duties eligible for stipends and/or supplements.

Ms. Hansford recounted that, on November 20, 2023, PWCS had provided an updated proposal on wages that reflected an increase in the across-the-board cost of living adjustment ("COLA") from 2.1% to 2.2%, as well as increased stipend amounts for certain employees. Mr. Paltell testified that this increase represented additional value of approximately $1 million.

Mr. Beallor noted that, on or about November 20, 2023, PWCS had proposed an increase in its proposed COLA for teachers from 2.1% to 2.2%. He characterized such movement as not substantial, particularly given the size of the Prince William County Public Schools. Mr. Beallor stated that such "insubstantial" movement is unusual even after a first proposal has been presented as a last, best, and final offer.

Mr. Paltell recounted that, in the last days of the Parties' negotiations before the December 1st deadline set forth in the Collective Bargaining Resolution, the Parties had had productive conversations regarding the Union's interest in obtaining a movement of two steps on the salary scale for all employees, and PWCS's interest in increasing compensation for mid-career teachers – i.e., those with twelve to nineteen years of service – to close a gap in compensation for those teachers with their peers in other Virginia jurisdictions.

Ms. Hansford testified that PWCS made no further changes to its position on wages until December 1, 2023, when PWCS offered the Union three options for the allocation of resources to wages. Mr. Paltell stated that these options had been: 1) to maintain PWCS's then-current wage proposal, with a 2.2% COLA, movement of one step on the salary scale for most employees, and movement of two steps on the salary scale for employees with twelve to eighteen years of service; 2) to provide a 2.1% COLA, movement of one step on the salary scale for most employees, and movement of two steps on the salary scale for employees with twelve to nineteen years of service; or 3) a 2.0% COLA, movement of one step on the salary scale for most

employees, and a ratification bonus of between $750 and $1,000 paid to teachers with 19 or more years of service.

Ms. Hansford explained that, on December 1, 2023, the Union had offered a counterproposal providing various alternative options that the Union believed to be cost-neutral compared to PWCS's December 1, 2023 wage proposal options; she noted that PWCS had not accepted any of the Union's counterproposal options. Calculations of the estimated costs of the proposed options was not provided in these proceedings.

The Parties did not reach agreement on the issue of wages by the Collective Bargaining Resolution's impasse deadline of December 1st.

Evidence Regarding PWCS's Assertions Regarding Alleged Prohibited Subjects of Bargaining

The record reflects that, in a bargaining session on May 31, 2023, PWCS asserted that certain Union proposals regarding a proposed right to meet with the Superintendent, contained in the Union's proposed Article 3 addressing the respective rights and responsibilities of the Parties, involved prohibited subjects of bargaining.

The record reflects that, in a bargaining session on June 6, 2023, PWCS asserted that certain Union proposals regarding Union access to PWCS facilities, contained in the Union's proposed Article 3 addressing the respective rights and responsibilities of the Parties, involved prohibited subjects of bargaining.

The record reflects that, in a bargaining session on August 22, 2023, PWCS asserted that certain Union proposals regarding a right of consultation, contained in the Union's proposed Article 3 addressing the respective rights and responsibilities of the Parties, involved prohibited subjects of bargaining.

On September 7, 2023, Mr. Paltell sent Ms. Hansford, among others, an email stating in relevant part that:

> Attached please find a list of those portions of the PWEA's August 15, 2023 proposal that we believe are prohibited subjects of bargaining under Section 5.A. of the Resolution. Because these proposals are, in our opinion, prohibited subjects of bargaining, the Board will not be making counterproposals on these sections.

Attached to Mr. Paltell's email was a spreadsheet which indicated the following:

List of Prohibited Subjects in PWEA August 15th Proposals*

September 7, 2023

Proposal	Resolution Section(s)	Reason	Explanatory Notes/References
3.5.A Right of Consultation	5.A.3, 8	Functions and programs of Board; Policies and procedures	This limits the Board's exclusive right to establish and modify programs, fiscal changes, policy and procedures. 5.A.8 gives the Board the exclusive right to establish "work rules, policies [and] procedures" and makes them prohibited subjects of bargaining. 5.A.3 give the Board the exclusive right to determine curriculum and establish its budget.
4.1.A Discrimination	5.A.8	Policies and procedures	**R507-1 COMPLAINT PROCEDURES FOR CLAIMS OF DISCRIMINATION AND HARASSMENT IN EMPLOYMENT**
4.1.B Retaliation	5.A.4, 8	Discipline; Policies and procedures	**R507-1 COMPLAINT PROCEDURES FOR CLAIMS OF DISCRIMINATION AND HARASSMENT IN EMPLOYMENT**
4.1.C Rights as Private Citizens	5.A.4, 8	Discipline; Policies and procedures	**R273.01 POLITICAL ACTIVITIES**
4.1.D Safety, Health and Security	5.A.8, 9	Policies and procedures; Health and safety	**R401.01 SAFETY AND SECURITY GENERAL GOALS/SECURITY OF BUILDINGS AND GROUNDS**
4.1.E Assault, Harassment and Hostile Work Environment	5.A.8, 9	Policies and procedures; Health and Safety	**R507-1 COMPLAINT PROCEDURES FOR CLAIMS OF DISCRIMINATION AND HARASSMENT IN EMPLOYMENT**
			R561-5 COMPLAINTS AGAINST SCHOOL OFFICIALS AND EMPLOYEES OTHER THAN DISCRIMINATION AND/OR GRIEVANCES
4.1.F Employee Complaint Procedures for Discrimination	5.A.8	Policies and procedures	**R507-1 COMPLAINT PROCEDURES FOR CLAIMS OF DISCRIMINATION AND HARASSMENT IN EMPLOYMENT**
4.1.G Parents & Public	5.A.8, 9	Health and safety; Policies and procedures	**R777-1 THREAT ASSESSMENTS**
4.1.1 Legal Redress	5.A.8	Policies and procedures	**R543-2 CIVIL LEAVE**
			R594 LEGAL ACTIONS INVOLVING EMPLOYEES
4.1.J Video Technology	5.A.3, 8, 9	Utilization of technology; Health & Safety; Policy & procedures	**R401.01-3 SECURITY VIDEO SURVEILLANCE SYSTEMS**
4.2 Just Cause	5.A.4, 8	Discipline; Policies and procedures	**R572-1 DISCIPLINARY ACTION**
			R506-3 EMPLOYEE RIGHTS
4.3 Central Office Human Resources File	5.A.8	Policies and procedures	**R505-1 EMPLOYEE'S CENTRAL OFFICE HUMAN RESOURCES FILE (PERSONNEL FILE)**

4.4 Review of Active Personnel Files	5.A.8	Policies and procedures	**R505-3 REVIEW OF ACTIVE AND INACTIVE PERSONNEL FILES**
4.5.A Insurance Coverage/Protection	5.A.8	Policies and procedures	**R390; 390-1 DIVISION INSURANCE COVERAGE**
4.5.B Employee Safety Within the Worksite	5.A.8, 9	Policies and procedures; Health and safety	**R503-1 STANDARDS OF PROFESSIONAL CONDUCT FOR ALL EMPLOYEES**
4.7.B Certificated Personnel Contracts	5.A.1, 7, 8	Hiring; Policies and procedures	**R521-1 CERTIFICATED PERSONNEL - CONTINUING CONTRACTS** **VA CODE § 22.1-303** Virginia Administrative Code - Title 8. Education - Agency 20. State Board of Education - Chapter 441. Regulations Governing the Employment of Professional Personnel
4.7.C Classified Personnel Contracts	5.A.1, 4, 8	Evaluation; Discipline; Policies and procedures	**R524-4 CLASSIFIED PERSONNEL - GUIDELINES FOR DETERMINING GRADES AND SALARIES**
4.7.D Probationary Period Support Personnel	5.A.1, 7, 8	Hiring; Policies and procedures	**R522 PROBATIONARY PERIODS**
4.7. E Release from Contract	5.A.1, 4, 8	Retention; Discipline; Policies and procedures	**R555-2 RESIGNATION**
4.7.F Length of Contract	5.A.1, 2, 5, 8	Schedule; Manner in which services are provided; Nature and scope of work performed; Policies and procedures	**R261.03-1 LENGTH OF SCHOOL TERM** **VA. CODE §22.1 302** Virginia Administrative Code - Title 8. Education - Agency 20. State Board of Education - Chapter 441. Regulations Governing the Employment of Professional Personnel
4.7.G Other Contracts	5.A.2, 5, 8	Manner in which services are provided; Nature and scope of work performed; Policies and procedures	**R511-9 CRITERIA AND PROCEDURES FOR THE SELECTION OF SUPPLEMENTAL CONTRACT COACHES AND EXTRA-CURRICULAR SPONSORS**
4.7.H K-5 Split Classes	5.A.1, 2, 5, 8	Assignment of duties; Manner in which services are provided; Nature and scope of work performed; Policies and Procedures	**R 511-3 CERTIFICATED PERSONNEL - ASSIGNMENTS, TRANSFERS, PROMOTIONS, AND REASSIGNMENTS**
4.7.I Compensation and Assistance	5.A.1, 2, 5	Assignment of duties; Manner in which services are provided; Nature and scope of work performed	

4.7.J Change in Curriculum Responsibilities	5.A.2, 3, 5, 8	Manner in which services are provided; determination of curriculum; Nature and scope of work performed; Policies and procedures	**P600 INSTRUCTIONAL PROGRAM R601-1 DIVISION STRATEGIC PLAN; INSTRUCTIONAL PROGRAM GOALS**
4.8 Vacancies & Voluntary Transfers	5.A.1, 7, 8	Hiring; Transfers	**R511-3 CERTIFICATED PERSONNEL - ASSIGNMENTS, TRANSFERS, PROMOTIONS, AND REASSIGNMENTS**
			R511-12 TRANSFERS, PROMOTIONS, AND REASSIGNMENT OF CLASSIFIED EMPLOYEES
4.9 Involuntary Transfer	5.A.1, 2, 5, 8	Transfers; Assignment of duties; Manner in which services are provided; Nature and scope of work performed; Policies and procedures	**R511-3 CERTIFICATED PERSONNEL - ASSIGNMENTS, TRANSFERS, PROMOTIONS, AND REASSIGNMENTS**
			R511-12 TRANSFERS, PROMOTIONS, AND REASSIGNMENT OF CLASSIFIED EMPLOYEES
6.1 Work Week	5.A.1, 8	Schedule; Policies and procedures	**R563-1 CLASSIFIED PERSONNEL - WORKWEEK**
			R561-2 CERTIFICATED PERSONNEL - RESPONSIBILITIES, DUTIES, AND WORKDAY
6.2 A Work Day/Classified Employees	5.A.1, 5, 8	Schedule; Nature and scope of work performed; Policies and procedures	**R563-1 CLASSIFIED PERSONNEL - WORKWEEK**
			R562 DUTY FREE TIME
6.2.B Work Day/Certified Employees	5.A.1, 5, 8	Schedule; Nature and scope of work performed; Policies and procedures	**R561-2 CERTIFICATED PERSONNEL - RESPONSIBILITIES, DUTIES, AND WORKDAY**
			R562 DUTY FREE TIME
			R562.01-1 CERTIFICATED PERSONNEL - PLANNING TIME
			R382.01-1 EMPLOYEE REIMBURSEMENT
6.3 Workload	5.A.1, 2, 5, 8	Assignment of duties; Manner in which services are provided; Staffing; Nature and scope of work performed; Policies and procedures	**R561-2 CERTIFICATED PERSONNEL - RESPONSIBILITIES, DUTIES, AND WORKDAY**
**6.4 (Inclement Weather)	5.A.1, 8	Schedule; Policies and Procedures	**R261.03-1 LENGTH OF SCHOOL TERM**

6.4 Class Size and Caseload Levels	5.A.1, 2, 5, 8	Assignment of duties; Manner in which services are provided; Staffing; Nature and scope of work performed; Policies and procedures	**R561-2 CERTIFICATED PERSONNEL - RESPONSIBILITIES, DUTIES, AND WORKDAY**
7.1 Annual Leave	5.A.8	Policies and procedures	**R542-1 ANNUAL LEAVE**
7.2 Sick Leave	5.A.8	Policies and procedures	**R542-2 SICK LEAVE** Virginia Administrative Code - Title 8. Education - Agency 20. State Board of Education - Chapter 460. Regulations Governing Sick Leave Plan for Teachers
7.3 Personal Leave	5.A.8	Policies and procedures	**R542-5 PERSONAL LEAVE**
7.4 Bereavement Leave	5.A.8	Policies and procedures	**R542-2 SICK LEAVE (§III.B.4)**
7.5 Temporary Leave	5.A.8	Policies and procedures	**R542-3 TEMPORARY LEAVE**
7.4 Closure Leave	5.A.8	Policies and procedures	**R542-10 CLOSURE LEAVE**
7.6 Liberal Leave	5.A.8	Policies and procedures	**R542-9 LIBERAL LEAVE**
7.7 Civil Leave	5.A.8	Policies and procedures	**R542-4 CIVIL LEAVE**
7.8 Family Friendly Leave	5.A.8	Policies and procedures	**R542-4 FAMILY FRIENDLY LEAVE**
7.9 Family Medical Leave	5.A.8	Policies and procedures	**R544-2 FAMILY MEDICAL LEAVE**
7.10 Leave Without Pay	5.A.8	Policies and procedures	**R544-1 LEAVE WITHOUT PAY**
7.11 Maternity/Parental Leave	5.A.8	Policies and procedures	**R542-2 SICK LEAVE (§III.B.2)**
7.12 Military Leave	5.4.8	Policies and procedures	**R542-7 MILITARY LEAVE**
7.13 Professional Leave	5.A.8	Policies and procedures	**R542-6 PROFESSIONAL LEAVE**
7.14 Workers Compensation & Injury Leave	5.4.8, 9	Policies and procedures; Health and safety rules	**R532-1 WORKERS' COMPENSATION AND INJURY LEAVE BENEFITS**
8.1.D Certificated Advancement	5.A.8	Policies and procedures	**R524-3 CERTIFICATED EMPLOYEES - COMPENSATION - UPGRADING OF CONTRACTS**

8.3.B.1 Supplemental Contracts for Curricular Leaders	5.A.1, 2, 5, 8	Assignment of duties; Manner in which services are provided; Nature and scope of work performed; Policies and Procedures	**R511-9 CRITERIA AND PROCEDURES FOR THE SELECTION OF SUPPLEMENTAL CONTRACT COACHES AND EXTRA-CURRICULAR SPONSORS**
8.3.F Program Specialists	5.A.1	Schedule	
8.3.G	5.A.3, 8	Inherent managerial policy; determination of curriculum; Policies and Procedures	**P600 INSTRUCTIONAL PROGRAM R601-1 DIVISION STRATEGIC PLAN; INSTRUCTIONAL PROGRAM GOALS**
8.6 Tuition Reimbursement	5.A.8	Policies and procedures	**R533-1 CERTIFICATED AND CLASSIFIED PERSONNEL TUITION REIMBURSEMENT**

* The Board reserves the right to amend or revise this list upon further review and analysis of PWEA's proposals, including any revisions thereto.

**There are two Sections 6.4

(Spelling and emphasis as in original.)

Ms. Hansford replied to Mr. Paltell's email later that day. In her testimony, she recounted that the Union team had been confused by Mr. Paltell's response because the spreadsheet did not address all of the issues raised in the Union's proposals in the cited articles.

It was undisputed that the ULP Charge here, filed on October 9, 2023, was filed within 30 days of September 7, 2023, based on the provisions of the Collective Bargaining Resolution governing computation of time, found at Section 16.

It was also undisputed that the Parties had reached tentative agreement on all matters other than as to wages and as to those proposals that remain in dispute in this ULP proceeding.

CONTENTIONS OF THE UNION

PWCS failed to comply with its duty, established under the Collective Bargaining Resolution, to bargain in good faith with the Union over wages, benefits, and terms and conditions of employment. Although neither Party was under the obligation to agree to the other's proposals or to make concessions with respect to its own proposals, PWCS failed to bargain over many PWEA proposals concerning employee benefits and terms and conditions of employment, and refused to engage in any meaningful bargaining with the Union over wages.

When the School Board enacted its Collective Bargaining Resolution, it indicated its intention that the Parties engage in good-faith collective bargaining as commonly understood in the United States of America, which is generally recognized as including the obligation to bargain over wages, over benefits within the control of the employer, and over terms and conditions of employment not within the scope of certain enumerated rights retained by the employer with respect to its operations. The Union's attempt to bargain over matters related to wages, benefits, and terms and conditions of employment are not reflective of any external interference by the Union into the School Board's constitutional authority to manage its schools; it is, rather, the Union's exercise of its rights under the Collective Bargaining Resolution, as the duly certified exclusive representative of the Licensed Personnel Bargaining Unit and the Support Personnel Bargaining Unit, to bargain over those matters authorized by the School Board in the Resolution. The Union does not dispute that PWCS retains certain exclusive management rights, and the Union does not seek to divest PWCS of its retained managerial authority. The Union simply seeks to engage in collective bargaining as permitted by Va. Code § 40.1-57.2 and as enacted by the School Board in the Resolution.

With respect to wages, PWCS presented its initial wage proposal as a take-it-or-leave-it offer and did not modify that proposal until the Parties reached the end of their negotiations; even then, PWCS did not meaningfully change its wage proposal. When considered in the context of PWCS's refusal to bargain over numerous Union proposals, it is clear that PWCS had no serious intent to bargain and reach an agreement with the Union over wages; that is, PWCS failed to negotiate in good faith over wages. Although, under the Collective Bargaining Resolution, neither Party can be compelled to agree to a proposal or be required to make a concession to the other, the Parties must nevertheless bargain in good faith for the purpose of entering into a collective bargaining agreement. The concepts are drawn directly from Sections 8(a)(5) and 8(d) of the National Labor Relations Act ("NLRA"). The Dispute Resolution Neutral should, therefore, look to precedent under the NLRA for guidance in interpreting the Collective Bargaining Resolution.

Under the NLRA, parties must have the "serious intent to adjust differences and to reach an acceptable common ground." *NLRB v. Ins. Agents' Int'l Union*, 361 U.S. 477, 485 (1960) (internal citations omitted.). In determining whether a party has failed to bargain in good faith, the Dispute Resolution Neutral should look – as the National Labor Relations Board ("NLRB")

does – at the totality of the party's conduct, both at and away from the bargaining table, including the party's justifications for its proposals and its willingness to make concessions, as well as the existence of any contemporaneous unfair labor practices and actions by a party to delay negotiations. *See*, *e.g.*, *Pub. Serv. Co. of Oklahoma*, 334 NLRB 487, 487-88 (2001) ("In determining whether a party has violated its statutory duty to bargain in good faith, the Board examines the totality of the party's conduct, both at and away from the bargaining table. From the context of an employer's total conduct, it must be decided whether the employer is engaging in hard but lawful bargaining to achieve a contract that it considers desirable or is unlawfully endeavoring to frustrate the possibility of arriving at any agreement. Although the Board does not evaluate whether particular proposals are acceptable or unacceptable, the Board will examine proposals when appropriate and consider whether, on the basis of objective factors, bargaining demands constitute evidence of bad-faith bargaining. An inference of bad-faith bargaining is appropriate when the employer's proposals, taken as a whole, would leave the union and the employees it represents with substantially fewer rights and less protection than provided by law without a contract." (internal citations omitted.)).

Here, despite the Parties' progress in negotiations from April through June 2023, PWCS no longer appeared willing to negotiate with the Union once the Union provided proposals, in August 2023, that addressed wages. From the moment that PWCS made its initial wage proposal in late September 2023, PWCS was clear that it would not move from its initial proposal on employee salary scales. The Union nevertheless attempted to continue to negotiate over wages and salary scales, making additional proposals, including concessionary movement, in September, October, and November 2023. PWCS, however, made no substantive movement until November 20, when it proposed a minimal increase to the salary scale of 2.2 percent instead of the 2.1 percent increase to the scale that it had previously proposed; and again, on December 1, 2023, when it offered the Union a choice between several options at the very end of the Parties' negotiations.

These minor changes by PWCS should not be sufficient to rehabilitate PWCS's refusal to engage in any meaningful negotiations over its first, best, and final wage offer. Nor should PWCS's engagement with the Union over other economic proposals be viewed as sufficient to overlook PWCS's failure to bargain with the Union in good faith over wages. *See*, *e.g.*, *NLRB v. Katz,* 369 U.S. 736, 743 (1962) ("A refusal to negotiate in fact as to any subject which is within

§ 8 (d), and about which the union seeks to negotiate, violates § 8 (a)(5) though the employer has every desire to reach agreement with the union upon an over-all collective agreement and earnestly and in all good faith bargains to that end.").

PWCS also engaged in delay tactics with respect to wages. The Parties began bargaining in April 2023. PWCS made no proposal on wages until September 2023. Nothing prevented PWCS from making a proposal on wages before the Union's comprehensive proposal was made on August 15, 2023. Moreover, PWCS did not commission its study on stipends and supplements until July 2023, declined to bargain over stipends and supplements while the study results were pending, and did not make an offer to the Union on stipends and supplements until November 2023, mere weeks before the end of bargaining. PWCS's actions were inconsistent with the Parties' Best Practices document. Its delays were entirely within its control and, particularly when viewed in contrast to the Union's ongoing efforts to bargain over wages and the Union's submission of a comprehensive proposal by August 15, 2023, further indicates an intent by PWCS to run out the clock on wages and related economic matters rather than bargaining with the intention of reaching agreement on those matters.

In addition, PWCS's unlawful refusal to bargain in good faith over numerous proposals by the Union concerning certain benefits and terms and conditions of employment, as discussed below, further demonstrate PWCS's bad faith in these negotiations.

The Dispute Resolution Neutral should note that the ULP Charge in this matter was timely filed. PWCS's claim that it put the Union on notice in May and June 2023 that PWCS could not bargain over topics within the scope of its exclusive management rights should be rejected. That statement, while potentially applicable to proposals already made by the Union at that time, did not put the Union on notice of PWCS's position on the negotiability of future bargaining proposals that might be submitted by the Union. It could not have put the Union on notice of PWCS's position on the negotiability of the proposals subsequently first made by the Union in its August 15, 2023 comprehensive proposal. It was not until PWCS sent the Union the September 7, 2023 list of proposals claimed by PWCS to be nonnegotiable that the Union was first on notice of those assertions. Upon receipt of that list, the Union timely filed this ULP Charge on October 9, 2023 and has excluded from the challenged proposal here those actually discussed by the Parties in May and June 2023.

The Dispute Resolution Neutral should note that the Collective Bargaining Resolution's exclusion of certain benefits from bargaining is limited. The Resolution, in Section 2, defines "Terms and Conditions of Employment" as "all wages, benefits, and other matters relating to the employment of employees in a Bargaining Unit, excluding those subjects and rights set forth in Section 5." In Section 5 of the Resolution, only certain benefits are excluded from bargaining, namely "any benefits provided or administered solely by the Commonwealth of Virginia through the Virginia Retirement System or any other benefits established and administered in accordance with the Code of Virginia over which the School Board does not have sole control." Subject to other exclusions set forth in the Collective Bargaining Resolution, PWCS necessarily remains obligated to bargain over all benefits other than those excluded in the above-quoted provision.

The Dispute Resolution Neutral should reject PWCS's claim that it put the Union on notice of PWCS's assertions of nonnegotiability by a mere statement that some Union proposals touched on prohibited subjects of bargaining under the Resolution. The alleged "notice" here did no more than repeat the words of the Collective Bargaining Resolution itself and suggest that PWCS might characterize bargaining proposals as concerning prohibited subjects of bargaining. It provided few specifics and cannot be found to constitute sufficient notice of PWCS's position on this issue.

Rather than engage with the Union over the terms and conditions of employment for bargaining unit employees as required by the Collective Bargaining Resolution, PWCS claimed that it retained unilateral control over issues clearly affecting the terms and conditions of employment of those employees. PWCS is incorrect in its assertions. The Collective Bargaining Resolution imposes a broad duty to bargain, subject only to those exclusions set forth in the Resolution. Because the Collective Bargaining Resolution draws on the NLRA for its structure, including the rights it provides and the obligations that it imposes on the Parties, the Dispute Resolution Neutral should look to precedent under the NLRA in construing the Collective Bargaining Resolution. Notably, the NLRB has held that wages, hours, and leave are "among the most important elements" of a collective bargaining agreement. *Singer Mfg. Co.*, 24 NLRB 444, 467 (1940). The NLRB has further noted that a collective bargaining process should recognize the equal status, dignity, and responsibility of an employer and its employees as contractually-bound parties to the collective bargaining agreement. *Id*. The NLRB has further distinguished between those matters that are plainly germane to the workplace, which are subject

to bargaining, and those matters relating to managerial decisions and entrepreneurial control, which are not bargainable. *Ford Motor Co. v. NLRB*, 441 U.S. 488, 498 (1979) (quoting *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203, 222, 223 (1964) (Stewart, J., concurring)).

The Collective Bargaining Resolution should be interpreted in a manner consistent with this approach. The Resolution establishes the managerial authority of the School Board, enumerating its exclusive rights with specificity, as well as the obligation of the School Board to engage in collective bargaining. It should be evident that the disputed Union proposals here are within the scope of terms and conditions of employment that appropriately should be bargainable and do not implicate PWCS's core managerial rights or touch on prohibited subjects of bargaining.

The Union's contentions with respect to specific proposals asserted by PWCS to infringe on prohibited subjects of bargaining are addressed on a proposal-by-proposal basis below.

More generally, though, one of PWCS's primary justifications for refusing to bargain over many of the disputed proposals is a claim that many of the relevant proposals each limit PWCS's exclusive right under Section 5.A.8 of the Collective Bargaining Resolution "to establish, maintain, modify, and eliminate work rules, policies, procedures and standards." The Dispute Resolution Neutral should note that the Union's proposals do not limit or diminish the School Board's authority to manage and direct the operations of the School Division through the School Board's establishment of policies.

The School Board retains the right, under the Collective Bargaining Resolution, to establish policies pursuant to its exclusive right to fully manage and direct the operations and activities of the School Division. It should be obligated, however, to bargain over benefits in terms and conditions of employment, including those addressed in School Board Policies, as well as over the effects of its exercise of its reserved management rights.

PWCS's claim that all issues addressed in School Board Policies and Division Regulations are prohibited subjects of bargaining is inconsistent with the Collective Bargaining Resolution. Section 15.B contemplates circumstances under which the terms of a collective bargaining agreement may conflict with School Board Policies or administrative regulations, directives, and practices; under Section 15.B, a collective bargaining agreement will control to the extent that the collective bargaining agreement directly conflicts with such issuances. If, as

PWCS suggests, issues addressed by School Board Policies are prohibited subjects of bargaining, Section 15.B would be meaningless, as there could never be a conflict between School Board Policies and a collective bargaining agreement.

PWCS's own actions during bargaining with the Union reflect PWCS's understanding that issues addressed in Division Regulations are not prohibited subjects of bargaining under the Collective Bargaining Resolution. For example, in Article 3.2 of the Parties' tentative collective bargaining agreement, the Parties agreed to language regarding the Union's ability to hold individual and group meetings with members; that language directly conflicts with Division Regulation 593-1. PWCS knowingly agreed to this language despite the conflict with the Division Regulation. PWCS was similarly willing to bargain over the entitlement of employees to have Union representation during disciplinary meetings, a matter addressed by Division Regulation 506-3.V. As evidenced in these and other examples, through its willingness to bargain over these issues, PWCS has made clear that it is not prohibited from bargaining over subjects addressed in Division Regulations. Its position in these examples is inconsistent with its selective invocation of Section 5.A.8 of the Collective Bargaining Resolution when it sought not to bargain over various other matters. This inconsistency is also indicative of PWCS's failure to bargain in good faith.

Notably, the Parties were able to reach agreement over contract language addressing the rights of the Union to meet with bargaining unit employees at school facilities despite PWCS's initial assertion, in the spring of 2023, that it was a prohibited subject of bargaining. This further suggests that PWCS's assertions of nonnegotiability are nothing more than an improper bargaining tactic.

Similarly, the Parties have reached tentative agreement as to Article 2.1 of their first collective bargaining agreement; that Article states that:

> This agreement shall supersede any written rules, regulations, policies, or resolutions of the Division which are contrary to its expressed terms. The policies and procedures, administrative directives, and workplace practices of the Board and its departments, agencies, offices, and divisions shall govern employee relations unless there is a direct conflict with this Agreement approved by the Board. Where a direct conflict exists, this Agreement shall govern.

If issues set forth in Division Regulations or Board Policies are truly prohibited subjects of bargaining under the Collective Bargaining Resolution, as PWCS asserts, this contract language would also be rendered meaningless.

Instead, the Union maintains that these provisions can be harmonized by an interpretation of the Collective Bargaining Resolution which recognizes that benefits and terms and conditions of employment are within the duty to bargain, while reserved managerial decisions are not. Through that lens, School Board Policies that address the School Board's exercise of managerial authority are not subject to bargaining, while those Policies that concern wages, non-excluded benefits, and other matters related to the employment of employees in a bargaining unit would be mandatory subjects of bargaining. The Dispute Resolution Neutral should adopt the Union's proposed interpretation of the Collective Bargaining Resolution and reject PWCS's attempt to ignore the language of the Resolution in order to dramatically widen the scope of the School Board's exclusive authority.

The Dispute Resolution Neutral should find that PWCS has an obligation to bargain over the effects of its exercise of exclusive management rights to the extent that they touch on matters related to wages, hours, and terms and conditions of employment, even if such matters are otherwise within the scope of School Board Policies or Division Regulations. This obligation has long been recognized by the NLRB, *First Nat'l Maint. Corp. v. NLRB*, 452 U.S. 666, 681-82 (1981), and given the School Board's decision to draw on the NLRA in its formulation of the Collective Bargaining Resolution, the Resolution should be read to encompass the duty to engage in effects bargaining.

Even if, however, the Dispute Resolution Neutral were inclined to find that matters addressed by School Board Policies are prohibited subjects of bargaining under Section 5.A.8 of the Collective Bargaining Resolution, the Dispute Resolution Neutral should note a significant distinction between School Board Policies and Division Regulations. As set forth in the School Board's Policy 102, the School Board adopts, modifies, and deletes School Board Policies, which must be approved by the School Board in a majority vote taken in open session; the Superintendent issues administrative Division Regulations to implement School Board Policies, and need only provide proposed regulations to the School Board and publish the proposed Division Regulations on PWCS's public website for 30 days before such regulations become effective.

The relevant language of the Collective Bargaining Resolution is clear and unambiguous in reflecting that the School Board retained exclusive authority over its policies. However, because the School Board does not exercise authority to issue Division Regulations, it did not

retain such authority as an exclusive management right under the Resolution. Said differently, because Division Regulations are not the product of School Board action, they are not included in the scope of the School Board's exclusive rights as defined in Section 5.A.8 of the Resolution. Had the School Board sought to define the prohibited subjects of bargaining under the Resolution as including the Division Regulations, it could have done so. It did not, and the Dispute Resolution Neutral should, in interpreting the Resolution, assume that the School Board intentionally declined to so define the prohibited subjects of bargaining. *See*, *e.g.*, *Chenevert v. Commonwealth*, 72 Va. App. 47, 57, 840 S.E.2d 590, 595 (2020) ("Where bound by the plain meaning of the language used, we are not permitted 'to add or to subtract the words used in the statute.' This canon flows from the principle that '[w]e must . . . assume . . . the legislature chose, with care, the words it used when it enacted the relevant statute.'" (internal citations omitted)). Superintendent McDade's testimony that Section 5.A.8 of the Resolution includes matters addressed in Division Regulations should, therefore, be disregarded.

For all of these reasons, the Union's ULP Charge should be sustained in its entirety. The Dispute Resolution Neutral should find that PWCS has violated the Collective Bargaining Resolution by failing and refusing to negotiate over non-wage proposals by misclassifying them as prohibited subjects of bargaining; find that PWCS has failed and refused to negotiate in good faith over wages; order PWCS to cease and desist from engaging in these unfair labor practices; affirmatively order PWCS to resume negotiations with the Union within a reasonable period of time over the bargaining proposals that PWCS mischaracterized as prohibited subjects of bargaining, and over wages; and grant such other relief as the Dispute Resolution Neutral deems proper.

CONTENTIONS OF THE EMPLOYER

PWCS did not refuse or fail to bargain in good faith during its negotiations with the Union for a first term collective bargaining agreement. Neither PWCS's bargaining position on economic items nor its assertion that numerous Union proposals concerned prohibited subjects of bargaining under the Collective Bargaining Resolution violated the Resolution.

In determining whether there has been a failure to negotiate in good faith, the Collective Bargaining Resolution, at Section 2, does not require a party to agree to a proposal or to make a concession to the other in order to bargain in good faith. This is consistent with longstanding

precedent under the National Labor Relations Act concerning the duty to bargain in good faith. *See*, *e.g.*, *NLRB v. Am. Nat'l Insurance Co.*, 343 U.S. 395, 404 (1952). In determining whether a party has failed to engage in good faith bargaining, the Dispute Resolution Neutral should consider the totality of the circumstances, including the conduct of the Parties as a whole. *See*, *e.g.*, *NLRB. v. Hi-Tech Cable Corp.*, 128 F.3d 271 (1997) ("In other words, adamant insistence on a genuinely and sincerely held bargaining position does not constitute bad faith. Ultimately, our assignment is to examine the totality of the employer's conduct, both at and away from the bargaining table, to determine whether the employer has bargained in good faith." (footnotes omitted)); *NLRB. v. Laney & Duke Storage Warehouse Co.*, 424 F.2d 109, 111 (5th Cir. 1970) ("The determination of good faith bargaining is to be made by drawing inferences from the conduct of the parties as a whole." (internal citations omitted.)).

With respect to Count I of the Union's ULP Charge, the record in this case, viewed as a whole, does not support a finding that PWCS failed to bargain in good faith with respect to wages. PWCS's proposals for salary scale and step increases were made in the context of a broader compensation plan; PWCS remained willing to negotiate over other aspects of compensation; and, despite its initial disinclination to modify its wage proposal, before the conclusion of bargaining, PWCS did in fact modify its wage proposal.

The record makes clear that the revenues available to PWCS are limited to funding provided by Prince William County as well as supplemental funding from the Commonwealth of Virginia and the federal government. PWCS's estimate that it would receive approximately $80 million in additional revenue for FY 2025, as well as the 2% salary increase authorized by the Virginia General Assembly (costed at $23 million), informed its approach to presenting its initial wage proposal – valued at $63.22 million and in addition to the General Assembly's 2 percent increase – during bargaining. The Union's initial wage proposal, by contrast, carried an estimated additional cost of over $364 million, far in excess of available additional revenues.

PWCS had commissioned a study of compensation practices in comparable jurisdictions in July 2023; that study was not ready in September 2023 when PWCS presented its initial wage proposal. As soon as the study results were available, PWCS integrated that information in supplementing its overall compensation proposal.

Significantly, PWCS made substantial movement in several areas after presenting its initial compensation proposal during bargaining. These included proposals for extra pay for

bargaining unit employees who teach additional class sections; increased pay for teaching during summer school; a new short-term disability insurance benefit; maintaining the status quo on health insurance cost sharing; and enhancing stipends and supplements paid for performing certain extracurricular duties. These proposals ultimately increased the estimated value of PWCS's compensation proposals by approximately $1.2 million. PWCS also proposed to increase the COLA applied to the salary scale from a 2.1 percent increase to a 2.2 percent increase, further increasing the value of the proposal by $1 million.

By contrast, the Union did not modify its August 15, 2023 wage proposal until November 21, 2023. At that point, the Union proposed, for the first time, that all bargaining unit employees receive a two-step increase on the new salary scale. As the Parties approached the December 1st impasse deadline, although PWCS was unable to agree to this proposal, PWCS offered enhanced proposals on stipends and supplements and offered to reallocate the value contained in its proposal in any of several options based on the Union's priorities. PWCS's final set of proposals were intended to fairly compensate bargaining unit employees while addressing areas of the pay scale where PWCS employees were not competitive with their peers in comparator jurisdictions and were also structured to address certain disparities between the Classified Personnel pay scale and the Licensed Personnel pay scale.

Even if PWCS had presented part of its initial wage proposal as its "first, best, and final offer," such labeling would not change the fact that the initial proposal was not, in fact, its final offer. The record is clear that PWCS subsequently modified its compensation proposals and did so in a manner intended to reach agreement. *Cf. Texas Foundries v. NLRB*, 211 F.2d 791 (5th Cir. 1954) (finding that "[n]ot capitulation, but bona fide effort is the criterion" relevant to a determination of good faith bargaining). The Collective Bargaining Resolution, at Section 2, explicitly establishes that a party's refusal to agree to a particular proposal or to make particular concessions does not constitute bargaining in bad faith. It has been long recognized that "the employer may have either good or bad reasons, or no reason at all, for insistence on the inclusion or exclusion of a proposed contract term. If the insistence is genuinely and sincerely held, if it is not mere window dressing, it may be maintained forever though it produce a stalemate*." NLRB v. Herman Sausage Co.*, 275 F.2d 229, 231 (5th Cir. 1960). Here, PWCS believed that its proposal was appropriate and would provide a fair and equitable approach to compensation internally and compared to the peers of PWCS's bargaining unit employees in sister

jurisdictions. Even if the Union had a different view of the proposal, that difference of views does not establish that PWCS bargained in bad faith.

In addition, the context of the negotiations further militates against a finding that PWCS failed to bargain in good faith over wages. PWCS had a reasonable concern that, given the Union's ongoing approach of publicizing PWCS's bargaining proposals during the course of negotiations, it was likely that PWCS's wage proposal would quickly become public. Rather than beginning with a less generous offer to leave room for later movement – which could be viewed as disrespectful by PWCS employees if publicized and unnecessarily harm employee morale – PWCS elected to open with a more generous offer that left little room for further movement. PWCS also considered that, by mid-September, there was limited time remaining before the Parties would reach impasse and believed that beginning with a more generous offer would allow the Parties to reach agreement, if possible, more quickly.

Count II of the Union's ULP Charge should be time-barred because the Union failed to file the ULP Charge within 30 days of the alleged occurrence, as required by Section 14(C)(1) of the Collective Bargaining Resolution. As early as May 31, 2023, PWCS reminded the Union that PWCS retains exclusive rights under the Collective Bargaining Resolution that are prohibited subjects of bargaining. PWCS again asserted – on June 6, 2023, and on August 22, 2023 – that certain of the Union's proposals implicated prohibited subjects of bargaining. The Union was on clear notice of PWCS's view that it could not bargain over any topics within the scope of exclusive management rights as defined by the Collective Bargaining Resolution. After the Union's comprehensive August 15, 2023 proposal again implicated prohibited subjects of bargaining, PWCS provided the Union with the September 7, 2023 list identifying the specific proposals that PWCS believed affected prohibited subjects of bargaining under the Resolution.

The scope of the duty imposed under the Collective Bargaining Resolution to bargain over certain benefits should be construed narrowly. PWCS has demonstrated by its conduct that it understood that obligation to involve a duty to bargain over traditional health and welfare benefits, such as health insurance, dental insurance, vision insurance, disability insurance, and life insurance. Had Superintendent McDade testified on this matter, PWCS represents that her testimony would have reflected same.

The exclusive management rights identified in the Collective Bargaining Resolution are consistent with longstanding provisions of Virginia law. Article VIII, Section 7 of the Virginia

Constitution vests the supervision of schools in each school division in a school board, and Virginia courts have recognized the plenary authority of a school board to supervise its school system. Given these fundamental powers, Virginia courts have held that "no statutory enactment can permissibly take away from a local school board its fundamental power to supervise its school system." *Fairfax Cnty. Sch. Bd. v. S.C. by Cole*, 297 Va. 363, 375 (2019) (citation omitted). The School Board is responsible for managing its official business, including by "adopting and applying local policies, rules, and regulations for the supervision" of its schools. *See Underwood v. Henry Cnty. Sch. Bd.*, 245 Va. 127, 131–32 (1993). Contrary to any assertion by the Union to the contrary, the establishment of regulations by the School Board to supervise its schools is clearly within the School Board's authority. All regulations developed by the Superintendent must nevertheless be presented to the School Board and to the public before they become effective; the School Board retains the right to reject any regulation before it takes effect. The Union has provided no reason why such regulations should be treated differently under the Collective Bargaining Resolution than other policy documents.

Nothing in Virginia law requires PWCS to authorize collective bargaining or defines the scope of negotiable topics in collective bargaining. Instead, under Va. Code Ann. § 40.1-57.2, the scope of bargaining is defined by the relevant collective bargaining ordinance or collective bargaining resolution. The Collective Bargaining Resolution passed by the School Board, therefore, appropriately recognized numerous exclusive management rights that the School Board defined as prohibited subjects of bargaining, including ones that might, under other public sector collective bargaining statutes, be subject to bargaining. These include the School Board's right to establish regulations and policies concerning employee discipline, scheduling, safety, and leave. Superintendent McDade's testimony made clear that the intent of PWCS in establishing collective bargaining rights under the Collective Bargaining Resolution was to encompass both School Board Policies and administrative regulations as prohibited subjects of bargaining. Consistent with her testimony, while the Collective Bargaining Resolution permits bargaining over certain terms and conditions of employment, the Resolution expressly precludes bargaining over certain matters, including some benefits, pursuant to Section 5 of the Resolution. These prohibited subjects include the School Board's authority to establish criteria for and make decisions regarding certain matters that affect employees. Her testimony, if presented, would

also have indicated that the scope of negotiable benefits was intended to be limited to health and welfare benefits.

The fact that PWCS has been willing to negotiate over PWEA proposals that are addressed by School Division regulations should not be construed as a waiver of its right not to negotiate over other prohibited subjects of bargaining. In general, a waiver of a statutorily protected right – like PWCS's right, under the Collective Bargaining Resolution, not to negotiate proposals within the scope of prohibited subjects of bargaining – should be clear and unmistakable. *See Metro. Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983) ("[W]e will not infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is 'explicitly stated.' More succinctly, the waiver must be clear and unmistakable."). The specific proposals by reference to which the Union asserts that PWCS has waived its statutory rights should not be found to establish any waiver of PWCS's rights. Many concern the Union's exercise of rights as Exclusive Representative under the Collective Bargaining Resolution; the existing regulations predate the Collective Bargaining Resolution and modification of those regulations through bargaining is appropriate. Others concern matters related to wages, such as the deduction of union dues from employee pay and the mechanism for such matters, that are contemplated by the Collective Bargaining Resolution.

There is no obligation, under Virginia law or under PWCS's Collective Bargaining Resolution, to engage in effects bargaining over the exercise of management rights in areas defined by the Resolution as nonnegotiable or prohibited subjects of bargaining. While there may be a duty to engage in such negotiations under the NLRA or under other public sector collective bargaining statutes, this Collective Bargaining Resolution does not so provide. For example, the Collective Bargaining Ordinance enacted by Fairfax County, Virginia provides in relevant part that:

> (a) . . . . Thus, unless the County elects to bargain regarding the following matters, the County retains exclusive rights:
>
> (1) To determine the type and scope of work to be performed by County employees and the manner in which services are to be provided;
>
> (2) To direct the work of employees;
>
> (3) To relieve employees from duties by layoff or other reduction-in-force due to lack of work, budget limitations, changed working conditions/requirements or for other reasons in the County's reasonable business judgment and not prohibited by law, except that the implementation procedures to be followed, notice, and alternatives to layoff shall be negotiable;
>
> (4) To contract for, expand, reduce, sell, transfer, convey, or eliminate particular operations or services of general government, as well as any department, office, or part thereof; except that the alternatives to contracting and impact on employees shall be negotiable; and

> (5) To establish and change standards of behavior or performance, job qualifications, and job descriptions, except that the impact of any changes on employees and performance evaluation procedures will be negotiable.
>
> (b) The County retains the right to take whatever actions may be necessary to carry out the County's mission during emergencies. If a collective bargaining agreement includes procedures for how the County and its employees will respond to a specific type of emergency situation, then the terms of such agreement shall govern the response to that specific emergency. Otherwise, the County shall meet with the exclusive bargaining representative at the earliest practical time following actions taken in response to an emergency to discuss the effects of such emergency actions on bargaining unit employees as they pertain to matters within the scope of bargaining under this Article and to bargain in good faith over any supplemental collective bargaining agreements that are proposed to address the effects of such emergency actions.

Section 3-10-4, Fairfax County, Virginia, Code of Ordinances. Arlington County, Virginia's Collective Bargaining Ordinance also contains language authorizing impact bargaining; it states in relevant part that:

> Good faith bargaining shall not include submission of or a response to a proposal that either violates the rights of employees as set forth in this Section, or impairs, restricts, or delegates the authority of the county as set forth in subsection D provided, however, that the County Manager shall, upon request, negotiate regarding proposals addressing the impact of county decisions that substantially impact the general working conditions of two or more employees made pursuant to authorities in subsection D and the procedures the county shall follow as it implements such decisions, and such negotiations shall be governed by N(2)(c). During the term of unexpired collective bargaining agreement, the County shall have the right to implement a proposed change upon agreement with the exclusive representative or at impasse.

Section 6-30(L)(3), Arlington County, Virginia, Code of Ordinances. This Collective Bargaining Resolution defines the scope of bargaining substantially differently than those other statutes.

PWCS's contentions regarding the negotiability of specific proposals are addressed on a proposal-by-proposal basis below. The Dispute Resolution Neutral should note, however, that the mere fact that PWCS identified numerous Union proposals as nonnegotiable should not support a finding of bad faith bargaining, particularly given the factual background here of the limited scope of bargaining permitted by the Collective Bargaining Resolution; and the Parties' extensive efforts, over numerous bargaining and mediation sessions, to try to reach agreement.

In addressing the negotiability of individual proposals, the Dispute Resolution Neutral should weigh the degree to which an issue affects terms and conditions of employment against the need for the public employer to act unilaterally to uphold significant policy decisions entrusted by law to the public employer. *See*, *e.g.*, *In re Town of East Haven and East Haven Police Union Local #1662, Council 15, AFSCME, AFL-CIO*, Case No. MPP-2818; Decision No. 1279, 1975 CT SBLR LEXIS 10, *14 (Connecticut State Board of Labor Relations) (January 27,

1975) ("[T]here is an area of overlap between what have traditionally been thought managerial functions and what concerns conditions of employment for the employees. In drawing the line within that area between those items that must be bargained over and those which the employer may act on without bargaining a balance must be struck. And in striking it the tribunal should consider, we believe, the directness and the depth of the item's impingement on conditions of employment, on the one hand, and, on the other hand, the extent of the employer's need for unilateral action without negotiation in order to serve or preserve an important policy decision committed by law to the employer's discretion." (footnote omitted.)).

The Dispute Resolution Neutral should also note that many of the areas identified by the Collective Bargaining Resolution as prohibited subjects of bargaining correspond with matters that have been confirmed by reviewing courts as outside the duty to bargain. *See*, *e.g.*, *Sch. Dist. v. Sch. Dist.*, 188 Neb. 772, 784 (1972) ("While there are many nebulous areas that may overlap working conditions, boards should not be required to enter negotiations on matters which are predominately matters of educational policy, management prerogatives, or statutory duties of the board of education."); *City of Mount Vernon v. Cuevas*, 733 N.Y.S.2d 793, 795 (2001) (finding that, where certain disciplinary procedures were specifically protected from repeal or modification by statute, there was no obligation to bargain over those procedures). The Dispute Resolution Neutral should interpret PWCS's Collective Bargaining Resolution consistent with its terms and uphold the legitimate reservation of exclusive management rights set forth therein.

For all of these reasons, the ULP Charge should be dismissed in its entirety.

DISCUSSION AND OPINION

After careful consideration of the entire record, I find that PWCS did not violate the Collective Bargaining Resolution by failing to negotiate in good faith over wages. Count I of the ULP Charge is, therefore, dismissed. I further find, as set forth in the findings below, that PWCS violated the Collective Bargaining Resolution when it failed to negotiate in good faith over certain Union proposals that it asserted would infringe on prohibited subjects of bargaining, but did not violate the Collective Bargaining Resolution when it refused to bargain over other proposals. Count II of the ULP Charge is, therefore, sustained in part and dismissed in part. A summary of the principal reasons for these holdings follows.

Public sector collective bargaining in the Commonwealth of Virginia is markedly different from many other jurisdictions that have authorized localities to engage in collective bargaining with their employees. In contrast to the approaches taken in states with comprehensive statutes governing public sector collective bargaining, the General Assembly, in Section 40.1-57.2 of the Code of Virginia, imposed no obligation on any jurisdiction within the Commonwealth to engage in collective bargaining – it is strictly opt-in, on a jurisdiction-by-jurisdiction (i.e., county, city, town, and/or school board) basis. For those jurisdictions that authorize public sector collective bargaining, the General Assembly required only that any collective bargaining "ordinance or resolution shall provide for procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit," Va. Code Ann. § 40.1-57.2, and noted certain limitations regarding bargaining over the development of budgets and appropriation of funds.

The Commonwealth, therefore, created a markedly different system of collective bargaining than the comprehensive statutes enacted in other states (which typically create a Public Employment Relations Board or equivalent quasi-judicial body for enforcement of the applicable statute), such as New York's Taylor Law (N.Y. Civ. Serv. Law § 200 *et seq.*), New Jersey's Employer-Employee Relations Act (N.J. Stat. § 34:13A-1 *et seq.*), or Maryland's Public Employee Relations Act (Md. Code Ann., State Gov't § 22-101 *et seq.*); than the Federal Service Labor Management Relations Statute, 5 U.S.C § 7101 *et seq.*, applicable to many federal employees and administered by the Federal Labor Relations Authority; or than the NLRA, 29 U.S.C. § 151 *et seq.*, which applies mainly in the private sector and is administered by the NLRB. These statutes each typically define, among other things, the duty to bargain; the rights of employers, employees, and labor unions; and, in the public and federal sector collective bargaining statutes, the scope of management rights. Section 40.1-57.2 of the Code of Virginia defines none of these matters.

Subject to the limited requirements of Section 40.1-57.2 and any other applicable requirements under state and federal law, the School Board drafted its Collective Bargaining Resolution on an otherwise clean slate, as did other counties, cities, towns, and school boards within the Commonwealth that chose to authorize public sector collective bargaining. The School Board could choose to authorize collective bargaining over a broad scope of matters – or

a narrow scope, particularly given that there was no requirement that the School Board authorize collective bargaining at all.

Here, the School Board developed a comprehensive Collective Bargaining Resolution. As relevant to the dispute here, the Collective Bargaining Resolution imposes a duty to bargain in good faith, but also robustly defines the scope of reserved and exclusive management rights retained by the School Board. The Resolution reserves to management a number of rights typically retained exclusively by management, such as the right to hire, promote, transfer, assign, retain, supervise, evaluate, schedule, and classify all employees; and the right to determine job qualifications and descriptions, the number of positions, staffing levels, and other related matters. The Collective Bargaining Resolution also, however, reserves to management the exclusive right "to establish, maintain, modify, and eliminate work rules, policies, procedures and standards of conduct"; and the exclusive right "to suspend, demote, terminate the employment of, or take disciplinary action against, employees, subject to any right an employee may have to grieve such action pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education," without any exception for the negotiation of disciplinary procedures. The Resolution does not recognize the "dichotomy between employment matters that must be bargained, and managerial decisions that are left to the exclusive authority of the employer" asserted by the Union in its brief. Rather than imposing a broad duty to bargain, as the Union argues, the Resolution imposes a duty to bargain over "wages, certain benefits, and Terms and Conditions of Employment" – as defined in the Resolution and except as excluded in Section 5.A of the Resolution.

The School Board, in enacting the Collective Bargaining Resolution, established something other than the broad duty to bargain applicable under the NLRA and under various other public sector collective bargaining laws.

In contrast to other collective bargaining resolutions and ordinances enacted by Virginia jurisdictions, PWCS's Collective Bargaining Resolution provides no blanket mandate or exceptions for impact and implementation bargaining, or effects bargaining, following the exercise of an exclusive management right. *Cf.*, *e.g.*, Section 3-10-4, County's Rights and Authority, Fairfax County Code of Ordinances (October 19, 2021) ("Thus, unless the County elects to bargain regarding the following matters, the County retains exclusive rights . . . . to establish and change standards of behavior or performance, job qualifications, and job

descriptions, *except that the impact of any changes on employees and performance evaluation procedures will be negotiable*. (emphasis added)). As determined on a case-by-case basis, there nevertheless may be an obligation to bargain over the effects or impact of the exercise of exclusive management rights that affect wages, certain benefits, and "Terms and Conditions of Employment."

This is the starting point for the analysis in this case, which concerns allegations by the Union that PWCS has failed to bargain in good faith over wages and over numerous Union proposals, which PWCS has characterized as involving prohibited subjects of bargaining under the Collective Bargaining Resolution. Put another way, the School Board has enacted a limited version of collective bargaining when compared to what has developed in the private sector under the NLRA and what exists under many other public sector collective bargaining statutes, including those enacted in other Virginia jurisdictions. This version of collective bargaining is nevertheless one that, under Virginia law, the School Board was entitled to enact, particularly given the fact that it was under no statutory obligation to authorize collective bargaining at all.

The development of a public sector collective bargaining statute, like the School Board's Collective Bargaining Resolution, is an inherently political process shaped by the public, by interested parties, and, ultimately, by the School Board itself. The role of the Dispute Resolution Neutral under the Resolution is to enforce the Resolution as enacted – even if the Resolution defines the scope of collective bargaining differently than many other similar collective bargaining statutes.

I am, therefore, constrained to apply the Collective Bargaining Resolution that the School Board has passed. In those areas or aspects where the scope of collective bargaining under the Collective Bargaining Resolution mirrors that under other public sector collective bargaining statutes or under the NLRA, precedent developed under those statutes may be considered with respect to the interpretation and application of the Resolution. Where the Collective Bargaining Resolution deviates from collective bargaining as developed under those other statutes, such precedent is necessarily less persuasive.

The Parties agree, as do I, that the determination of whether a party has met its obligation under the Collective Bargaining Resolution to negotiate in good faith is based on the conduct of the Parties as a whole. Put another way, it is based on an analysis of the totality of the

circumstances involved, consistent with longstanding precedent under the NLRA and many state and local bargaining laws.

There are several relevant facts that provide context here. This is the Parties' first set of negotiations for a term collective bargaining agreement under the Collective Bargaining Resolution. As noted above, the expansive delineation of the rights that are reserved exclusively to management in the Collective Bargaining Resolution results in a significantly more curtailed scope of bargaining than is found under the NLRA or under some other public sector collective bargaining statutes. Unlike other public sector collective bargaining statutes, the Collective Bargaining Resolution provides no formal process for adjudicating the negotiability or bargainability of bargaining proposals other than through the filing of a ULP charge and an allegation of bad faith bargaining. This is also the first opportunity for the Parties to apply the scope of bargaining defined in the Collective Bargaining Ordinance. There was no showing that PWCS's assertions of nonnegotiability were truly frivolous; to the contrary, as discussed below, many of PWCS's assertions of nonnegotiability were sustained in whole or in part. These facts color the totality of the circumstances in this case.

Lastly, I note that, as the party alleging that unfair labor practices have been committed, the Union bears the burden of proof in this matter.

The Evidentiary Record Does Not Support a Finding that PWCS Failed to Bargain with the Union in Good Faith Over Wages

After careful consideration of the entire record, I am unpersuaded that PWCS failed to bargain in good faith with the union over wages in violation of the Collective Bargaining Resolution.

The Collective Bargaining Resolution specifies at Section 2 that, in meeting the obligation to negotiate in good faith for purposes of collective bargaining, the parties are "to meet at reasonable times" to negotiate, but that "neither party shall be compelled to agree to a proposal or be required to make a concession to the other." Reference to precedent under the NLRA is persuasive in determining the scope of the duty to negotiate in good faith, particularly given the substantial similarities between the Resolution's definition of "collective bargaining" and Section 8(d) of the NLRA, Obligation to bargain collectively, which states in relevant part that:

> For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the

> negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession . . . .

29 U.S.C. 158(d). Under the NLRA,

> It is true that an employer does violate Section 8(a)(5) where it enters into bargaining negotiations with a desire not to reach an agreement with the union, or has taken unilateral action with respect to a term or condition of employment, or has adamantly demanded the inclusion of illegal 6 or nonmandatory clauses in the collective-bargaining contract. But, having refrained from any of the foregoing conduct, an employer may still have failed to discharge its statutory obligation to bargain in good faith. As the Supreme Court has said:
>
> > . . . the Board is authorized to order the cessation of behavior which is in effect a refusal to negotiate, or which directly obstructs or inhibits the actual process of discussion, or which reflects a cast of mind against reaching agreement.
>
> Thus, a party who enters into bargaining negotiations with a "take-it-or-leave-it" attitude violates its duty to bargain although it goes through the forms of bargaining, does not insist on any illegal or nonmandatory bargaining proposals, and wants to sign an agreement. For good-faith bargaining means more than "going through the motions of negotiating." ". . . the essential thing is rather the serious intent to adjust differences and to reach an acceptable common ground . . . ."

Gen. Elec. Co., 150 NLRB 192, 193-194 (1964) (Footnotes omitted.) I am persuaded that a similar analysis is appropriate under the Resolution. In view of the totality of the circumstances present here, however, a number of factors militate against a finding that PWCS failed to negotiate in good faith over wages.

The preponderance of the record evidence reflects that PWCS's refusal to make significant changes in its wage and salary scale proposal was motivated by bona fide budgetary constraints. The record reflects that the School Board has no independent revenue generating or tax levying authority; it is dependent on revenue collected and shared by Prince William County, Virginia, as well as on limited funding provided by the state and federal governments. The evidentiary record indicates that, as a practical matter, PWCS was limited in its ability to propose wage increases by the revenues available to the School Board. The record evidence indicates that the value of PWCS's initial proposal on wages – when added to the locally-funded component of the wage increase approved by the General Assembly – approached the limits of the approximately $80 million in additional revenues that PWCS estimated that it would receive for the upcoming fiscal year; PWCS's estimate of those revenues was not challenged in these proceedings. PWCS was shown to have been willing to commit the overwhelming majority of its estimated additional revenues for FY 2025 to fund an increase in wages for bargaining unit employees.

PWCS's characterization of its initial wage proposal as representing its "final" proposal on salary scale must be viewed in the context of the Parties' negotiations overall. It was undisputed that the Parties failed to reach agreement on the extent to which, if at all, their ongoing negotiations would remain confidential. It was also undisputed that, prior to PWCS's presentation of its initial wage proposal, the Union had previously made public other proposals made by PWCS in bargaining.

The evidentiary record, therefore, suggests that PWCS had reason to believe that its initial wage proposal would likely be made public by the union shortly after the proposal was received by the union. This supports the assertion by Mr. Paltell that PWCS had a legitimate concern that, if it were to offer a less generous initial wage proposal that would likely be made public, employee morale could be harmed if bargaining unit employees were to view the initial proposal as a reflection of PWCS's valuation of its employees, rather than as an initial proposal likely to be enhanced over the course of bargaining. The potential impact on employee morale arising from the likely publication of PWCS's wage proposal by the Union is relevant in considering whether, in the totality of the circumstances, PWCS's decision to make a more generous initial wage proposal with less room for subsequent movement reflected a failure to negotiate in good faith.

This record fails to support the Union's assertion that PWCS's wage proposals should not be analyzed in the context of its other proposals affecting employee compensation. Such proposals all typically have a budgetary impact, and all typically affect the amounts that at least some employees receive in their paychecks. Similarly, PWCS's subsequent enhancements of its wage proposal, and its overall compensation proposals, as the Parties approached the December 1st deadline for completion of bargaining are also relevant in considering the totality of the circumstances here. The record evidence reflects that PWCS enhanced its proposed COLA from 2.1 percent to 2.2 percent, and made a number of other enhancements to its compensation proposals in an attempt to reach agreement with the Union on a term collective bargaining agreement. PWCS was also shown to have offered the Union several options for reallocation of value in PWCS's economic proposals to attempt to focus that value in areas that might better address the priorities of both PWCS and the Union. The fact that PWCS was unwilling to agree to any of a set of alternatives proposed by the Union and characterized as cost-neutral was not shown to provide evidence of a failure to negotiate in good faith given both the limited time

remaining before the end of bargaining at the time that the proposal was made, as well as the record evidence regarding PWCS's view that bargaining unit employees with 12 to 19 years of service trailed peers in comparator jurisdictions.

Nor was the Union's claim of delay shown, on this record, to demonstrate a failure to negotiate in good faith by PWCS. PWCS did not make its first wage counterproposal until late September 2023, and its proposal on stipends and supplements was made later still. The Union, however, refused to participate in bargaining sessions over the summer despite PWCS's request that the Union do so. It is also not unusual for parties to begin bargaining over non-economic issues before engaging in bargaining over economic proposals, as occurred here. The Union's claim that PWCS failed to abide by the Best Practices document is unpersuasive given the record evidence that the Union did not believe that the Best Practices document was agreed to by the Parties.

While PWCS certainly could have provided its own full set of proposals and counterproposals on compensation at an earlier point in the Parties' negotiations, when the record evidence is viewed as a whole – including the Union's own lack of urgency over a period of nearly two months during bargaining – I am unpersuaded that the timing of PWCS's economic proposals, on this record, supports a finding that PWCS failed to negotiate in good faith over wages and/or compensation in the course of the Parties' term negotiations in 2023.

For all of these reasons, I find that PWCS did not fail to negotiate in good faith over wages in the course of the Parties' term negotiations in 2023.

PWCS's Refusal to Negotiate Over Proposals Asserted by PWCS to Concern Prohibited Subjects of Bargaining

In addressing the Parties' disputes over the negotiability of individual proposals, I make the following general findings.

The Union's claim that the Collective Bargaining Resolution does not provide PWCS with the exclusive right to establish, maintain, modify, and eliminate Division Regulations is rejected. Section 5.A of the Resolution provides that "[t]his Resolution shall not be deemed in any way to limit or diminish the authority of the School Board to fully manage and direct the operations and activities of the school division as authorized and permitted by law"; that Section proceeds to note that "the Board retains exclusive rights, which shall be considered prohibited subjects of bargaining, including" those enumerated in Section 5.A.1 through 5.A.9 of the Resolution. Section 5.A.8 of the Resolution reflects that the School Board retains the right "to

establish, maintain, modify, and eliminate work rules, policies, procedures and standards of conduct."

Pursuant to School Board Policy No. 211,

> The Division Superintendent shall be the chief executive officer of the Prince William County Public Schools and shall have, at the direction of the Prince William County School Board, general supervision of schools and personnel of the Prince William County Public Schools. The Division Superintendent shall be responsible for the management of the Prince William County Public Schools and shall be accountable to the Prince William County School Board.
>
> . . . .
>
> The Superintendent is charged with the responsibility for the administration of the Prince William County Public Schools. The Superintendent shall administer the school system in accordance with the laws of the Commonwealth of Virginia, the regulations of the State Board of Education, and those policies adopted by the Prince William County School Board.
>
> The Superintendent shall be responsible for all administrative functions of the Prince William County Public Schools, including the management and supervision of all personnel, and the selection, supervision, promotion, assignment, reassignment, transfer, and discipline of such personnel, subject to all applicable state laws and regulations, and pursuant to School Board Policy 511, "Staff Selections and Assignments," Policy 555, "Separation," Policy 572, "Disciplinary Action," Policy 554, "Lay-off and Recall," and all other applicable School Board policies and regulations.

Contrary to the Union's assertion, the relevant School Board Policy reflects that the authority exercised by the Superintendent to issue Division Regulations is exercised as a delegation of authority granted by the School Board – which the School Board may reserve as a management right under the Collective Bargaining Resolution – or under state law or regulations of the State Board of Education, which supersede PWCS's Collective Bargaining Resolution. No basis was shown under the Collective Bargaining Resolution to treat differently under Section 5.A.8 those Division Regulations that "establish, maintain, modify, and eliminate work rules, policies, procedures and standards of conduct" from School Board Policies that do the same. If anything, the retained exclusive right to "establish, maintain, modify, and eliminate work rules, policies, procedures and standards of conduct" indicates that Division Regulations – which frequently address work rules and procedures – are included within the scope of prohibited subjects of bargaining under the Collective Bargaining Resolution.

There remains a tension, however, between the obligation to engage in collective bargaining under the Collective Bargaining Resolution and the exclusive management rights defined in the Resolution. For example, an existing School Board Policy concerning salary scales could conflict with the obligation under the Resolution to bargain over wages.

In harmonizing conflicts between the obligation to engage in collective bargaining and PWCS's retained and exclusive management rights, I find that, where the core subjects of bargaining under the Resolution are in tension with PWCS's reserved and exclusive management rights, in order to properly respect the intent of the School Board in its enactment of the Resolution, a fact-specific balancing of interests is appropriate. This balancing should provide appropriate deference to the broad scope of exclusive management rights defined in the Resolution, as well as recognition of the obligation imposed on PWCS by the Collective Bargaining Resolution to engage in collective bargaining. Particularly where a proposal strongly impacts the traditional subjects of bargaining of wages and benefits that are specifically identified in the Resolution, a greater showing that a mere assertion of PWCS's right "to establish, maintain, modify, and eliminate work rules, policies, procedures and standards of conduct" may be needed to support a finding that PWCS need not bargain over those core specified areas. Where a proposal affects significant policy decisions implicating PWCS's retained exclusive management rights, the greater the impact on core subjects of bargaining would need to be shown by the Union.

The Union's claim that PWCS has fully waived its rights under the Collective Bargaining Resolution to assert that Division Regulations are prohibited subjects of bargaining is not wholly persuasive. The record does reflect that PWCS agreed, during the Parties' term bargaining, to contract language concerning the Union's right to meet with members on school premises, despite PWCS's existing Division Regulation No. 593-1 addressing the same issue; it was also shown to have agreed to contract language regarding the right of a bargaining unit employee to have a Union representative present during any meeting which the employee may reasonably expect to lead to disciplinary action, despite PWCS's existing Division Regulation No. 506-3.V, which only permits a "silent witness" to accompany an employee at a disciplinary conference.

The record supports a finding that PWCS may elect to bargain over a subject matter identified as a prohibited subject of bargaining and reach agreement with the Union on contract language concerning that subject matter. This conforms with the recognition in Section 15.B of the Collective Bargaining Resolution[1] that, where a direct conflict exists between a collective bargaining agreement and PWCS "policies and procedures, administrative directives, and

[1] As the Union has noted, the Parties have agreed to language, in Article 2.1 of their tentative collective bargaining agreement, that is substantially similar to that in Section 15.B of the Collective Bargaining Resolution.

workplace practices," the collective bargaining agreement shall govern. If PWCS reaches agreement with the Union on contract language that could otherwise be asserted to infringe on exclusive management rights and be characterized as a prohibited subject of bargaining under the Collective Bargaining Resolution, then the agreed-upon language, as reflected in the Parties' collective bargaining agreement, will govern over conflicting School Board Policy, Division Regulations, or other procedures, directives, or practices notwithstanding the language of the Resolution. If PWCS were not able to elect to bargain on these subjects, Section 15.B of the Collective Bargaining Resolution would have little significance given the broad scope of exclusive management rights retained under the Resolution.

There was no showing, however, that PWCS's willingness to reach agreement with the Union in certain limited areas that implicated its exclusive management rights as defined in the Collective Bargaining Resolution operated as a general waiver of either PWCS's exclusive management rights generally or PWCS's ability to assert that other matters are prohibited subjects of bargaining because they infringe on the exclusive management rights as defined in the Resolution.

I am persuaded that the Union's claims regarding the negotiability of these proposals were timely filed. The Union was first put on clear notice of PWCS's position that these proposals concerned prohibited subjects of bargaining – and the bases for that conclusion – in PWCS's September 7, 2023 list. The record reflects that PWCS communicated to the Union, during negotiations, that certain proposals in a proposed Union article (Article 3) concerning the respective rights and responsibilities of the Parties concerned prohibited subjects of bargaining under the Collective Bargaining Resolution; none of those earlier-referenced proposals remain in dispute in this case. The record does not support a finding that general assertions by PWCS's negotiators that PWCS would not bargain over prohibited subjects was sufficient to place the Union on clear notice of PWCS's position on particular proposals, particularly given that, as discussed above, PWCS demonstrated that it was willing to bargain over certain Union proposals that would appear to fall within the scope of exclusive management rights as defined by the Collective Bargaining Resolution. For these reasons, I reject PWCS's assertion that the Union failed to timely file this ULP Charge as to PWCS's refusal to bargain over the proposals addressed below.

Rulings on the Negotiability of Proposals Asserted by PWCS to Concern Prohibited Subjects of Bargaining

The finding that a proposal is negotiable is not a finding that the proposal is appropriate to adopt; it is merely a determination that the proposal is within the duty to bargain as established under the Collective Bargaining Resolution.

For proposals as to which PWCS refused to bargain but which are found to be negotiable and, therefore, not addressing matters within PWCS's exclusive management rights under the Collective Bargaining Resolution, in whole or in part, PWCS is found to have violated its duty under the Resolution to negotiate in good faith and will be directed to negotiate in good faith with the Union as to those proposals to the extent that they are found to be negotiable. Jurisdiction is retained to address any matters to remedy that the Parties are unable to resolve on remand.

Proposed Article 4.1(C) – Rights as Private Citizens

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

> Employees shall retain their rights as private citizens including the exercise of all political rights, without reprisal.
>
> 1. Employees shall not be compelled nor coerced by supervisors to speak, or not speak, to the School Board on issues relating to the Prince William County Public Schools, nor suffer any reprisal for failing to speak out, or for speaking in favor of or against an such issue, in their role as private citizens.

The Union maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation. It asserts, moreover, that the relevant School Board Policy prohibits political activity during the school day or at school-sponsored events and protects students against compelled political activity, but does not address the rights of bargaining unit employees to engage in or refrain from engaging in political activities. The Union further asserts that, to the extent that PWCS claims that this proposal infringes on PWCS's right to take disciplinary action against employees, the Dispute Resolution Neutral should reject such claim, particularly as PWCS has agreed to not engage in reprisal against employees for participating in grievances.

PWCS contends that it maintains an existing School Board Policy, No. 273.01, Political Activities, that addresses this topic and limits the rights of employees to engage in political activities in the workplace and at Board-sponsored events. School Board Policy No. 273.01 states in relevant part that:

> Political interests of any individual or group may not be promoted during the school day or at school-sponsored activities, including athletic events; however, school facilities may be used as polling places for elections. Students in Prince William County Public Schools shall not be required to convey or deliver any materials that (i) advocate the election or defeat of any candidate for elective office, (ii) advocate the passage or defeat of any referendum question, or (iii) advocate the passage or defeat of any matter pending before a local school board, local governing body, the General Assembly of Virginia, or the Congress of the United States. Regulation 925-1, "Distribution of Materials and Communications in the Schools by Outside Sources," implements this policy.

PWCS asserts, therefore, that this proposal is properly nonnegotiable under Section 5.A.8 of the Collective Bargaining Resolution. PWCS further asserts that this proposal implicates issues of managerial prerogatives and statutory duties that should be found nonnegotiable. In its submissions, PWCS made no assertion that the Union's proposal was nonnegotiable pursuant to Section 5.A.4 of the Resolution as infringing on PWCS's right to suspend, demote, terminate the employment of, or take disciplinary action against, employees.

Ruling

After careful consideration of the entire record, I find that the Union's proposal is negotiable. The School Board Policy referenced by PWCS as the basis for its assertion of nonnegotiability imposes a prohibition on the promotion of political interests by any individual or group during the school day or at school-sponsored activities, and protects students from compelled political speech. The Union's proposal, by contrast, seeks to address the rights of bargaining unit employees as private citizens to engage in, or refrain from, political speech. The record failed to demonstrate that PWCS has sought to address the subject matter raised by the Union in its proposal in the cited School Board Policy.

Neither Party, in its contentions has referenced the extensive body of case law that has developed in connection with the First Amendment rights of public employees, and it is unnecessary at this juncture to do so here. Nor did either of the Parties address, with respect to this proposal, existing Division Regulation No. 506-3, which states, among other things, that "[e]mployees shall retain their rights as private citizens, including the exercise of all political rights, without reprisal"; and that "[e]mployees shall not be compelled nor coerced by supervisors to speak out to the School Board on issues relating to the Prince William County

Public Schools, nor suffer any reprisal for failing to speak out, or for speaking in favor of or against any such issue, in their role as private citizens." It is sufficient to note that this proposal was not shown to be nonnegotiable on the bases asserted by PWCS here.

For these reasons, the proposal is found to be negotiable under the Collective Bargaining Resolution.

Proposed Article 4.1(I) – Legal Redress

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

> Employees may seek legal redress for violations of the law committed by students, parents/guardians, or members of the public against the employees, when such violations occur during the course of the employee's duties. The Division will cooperate with law enforcement and prosecutors to the fullest extent allowed by law. Employees who are required to appear in court related to violations of law committed by students shall not be required to use accrued or personal leave.

The Union maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation.

PWCS asserts that the Union's proposal is nonnegotiable pursuant to Section 5.A.8 of the Collective Bargaining Resolution. PWCS contends that it maintains two School Board Policies that address the issues raised in the Union's proposal. School Board Policy No. 594, Legal Actions Involving Employees, addresses, among other things, the School Division's cooperation with police or governmental investigations of criminal allegations against employees arising out of any act committed in the discharge of one's duties; personnel actions that may be taken with respect to employees who are the subject of certain criminal charges; the extent of the School Division's obligation to cover the legal fees of employees in connection with certain criminal and civil matters; and the leave to be granted to employees whose presence is required in court by subpoena or summons, or in connection with jury duty. Division Regulation No. 542-4, Civil Leave, addresses, among other things, leave to be provided to employees who are required to appear in court for jury duty or for job-related legal proceedings, and precludes the grant of civil leave for employees to attend personal legal proceedings in which they are a party. It maintains that the Union's proposal would overturn PWCS's policy decision, made to avoid entanglements in individual legal disputes that could require the expenditure of additional PWCS resources and

result in situations that could jeopardize PWCS's relationships with students, parents/guardians, and the public.

Ruling

After careful consideration of the entire record, I find that the Union's proposal is negotiable in part and nonnegotiable in part.

Those portions of the proposal addressing leave usage concern a traditional fringe benefit – leave from work. Even assuming, without deciding, that the "certain benefits" included in the Resolution's definition of collective bargaining are limited to health and welfare benefits, as PWCS has asserted, I find that the proposal at issue, to the extent that it concerns leave, would fall within the scope of health and welfare benefits within the scope of collective bargaining under the Resolution. I am unpersuaded that the limited basis articulated for PWCS's refusal to bargain on the leave provisions of the proposal – the fact that Division Regulation No. 542-4 already addresses the leave available to employees in connection with legal proceedings – is sufficient, given the obligation to negotiate over certain benefits, including leave, to establish that PWCS may lawfully refuse to negotiate over the leave provisions of the proposal.

I find that the remainder of the proposal is nonnegotiable. The remaining provisions would require PWCS to take certain action in the event that an employee seeks legal redress against students, parents/guardians, or members of the public in connection with matters occurring during the course of the employee's duties. PWCS maintains School Board Policy No. 594, which specifically addresses legal actions involving employees. Although School Board Policy No. 594 does not address legal redress sought by employees, the cited School Board Policy is sufficiently related and the proposal raises sufficient policy implications that, on this record, I am persuaded that the proposal would infringe upon PWCS's right, under Section 5.A.8, to establish, maintain, modify, and eliminate work rules, policies, procedures, and standards of conduct.

I note that neither Party raised the potential intersection of this proposal with workers' compensation coverage and related issues; those issues need not be addressed, therefore, at this juncture.

For these reasons, the proposal is negotiable in part and nonnegotiable in part under the Collective Bargaining Resolution to the extent consistent with the foregoing.

Proposed Article 4.1.J.3-5 – Video Surveillance

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

> 3. Video and/or electronic monitoring systems will not be used to monitor or observe employee behavior, or to evaluate employee work performance. Any use of the Division's video and/or electronic recording systems in employee discipline matters will occur as a means to verify information obtained during an investigation process in compliance with the terms and conditions of the collective bargaining agreement. Appropriate use of the Division's video and/or electronic recording system records includes compliance with the just cause and progressive discipline provisions of Section 4.2. If video and/or electronic monitoring system records are used in connection with an investigation of employee conduct, the Division will provide PWEA video footage, when it is determined that the video will be used as evidence and furnish a copy of the video recording or electronic monitoring system records used before a meeting with the employee is held.
>
> 4. Viewing of video records is coordinated through the Risk Management and Security Services (for school video) and the Director of the Office of Transportation Services (for bus video).
>
> 5. Records from the Division's video and/or electronic recording systems are public records, accordingly complete confidentiality of these records cannot be assured. Because such records may contain sensitive information, the Division will comply with its policy and state law regarding any public records requests. The release of video and electronic recordings will be pursuant to the rules, regulations, and procedures of the Virginia Public Records Act.

The Union contends that its proposal does not interfere with PWCS's determination of whether video or electronic monitoring systems are needed, what type of equipment is to be used, or where equipment is to be installed. It asserts that the proposal does no more than seek to provide safeguards to limit when and how bargaining unit employees are surveilled and to ensure that protections are in place in the event that video recordings are used during an investigation into employee conduct. The Union further argues that the proposal does not infringe on PWCS's exclusive right, under Section 5.A.3 of the Collective Bargaining Resolution, to determine matters related to utilization of technology; or on PWCS's exclusive right, under Section 5.A.9 of the Resolution to establish, maintain, modify, and eliminate workplace health and safety rules. The Union's proposal would not preclude PWCS from using video surveillance footage in employee disciplinary proceedings; instead, the Union seeks merely to bargain over the effects of PWCS's use of technology. The Union also maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation.

PWCS contends that this proposal is nonnegotiable pursuant to Sections 5.A.3, 5.A.8, and 5.A.9 of the Collective Bargaining Resolution. It asserts that the proposal would restrict PWCS's use of technology in violation of Section 5.A.3 of the Resolution. It argues that PWCS has established Division Regulation No. 401.01-3, Security Video Surveillance Systems, which establishes the use of video surveillance systems for, among other things, the safety of students and employees; it asserts that Division Regulation No. 401.01-3 also provides PWCS with discretion over who can access the video footage taken by such systems. PWCS argues, therefore, that this proposal would also limit PWCS's exclusive authority to establish, maintain, modify, and eliminate workplace health and safety rules – including as established in "local regulations" – pursuant to Section 5.A.9 of the Resolution and would infringe on PWCS's rights under Section 5.A.8 of the Resolution given the existing Division Regulation addressing this issue. PWCS also notes that the use of video surveillance systems is one that has been found, in similar contexts, to implicate the nonnegotiable management right to evaluate employees. *See*, *e.g.*, *Overseas Educ. Ass'n, Inc. v. FLRA*, 872 F.2d 1032 (1988) (finding that, under Federal Service Labor Management Relations Statute, union proposal to prevent agency's monitoring of employee performance by clandestine surveillance and limit agency to use of direct observation by supervisors to be nonnegotiable because of infringement on agency's right to determine the most appropriate methods for evaluating employees).

Ruling

After careful consideration of the entire record, I find that the Union's proposal is negotiable in part and nonnegotiable in part. To the extent that the proposal addresses the use of video surveillance and electronic monitoring systems by PWCS, the process by which the records generated by such systems are maintained, and the limitations on access to such records, I find that the proposal infringes on PWCS's exclusive right under Section 5.A.3 of the Resolution to determine its use of technology, and its right to establish and maintain workplace health and safety rules under Section 5.A.9 of the Resolution as well as under Section 5.A.8 of the Resolution, particularly given the existing Division Regulation on this subject. As discussed below, the Union's proposals regarding progressive discipline and just cause for discipline are nonnegotiable; the corresponding references in this proposal are, therefore, also nonnegotiable.

Those portions of the proposal that address the provision of such recordings to the Union where the recordings are to be used in support of disciplinary action against a bargaining unit

employee were shown to be within the duty to bargain under the Resolution; no basis was demonstrated to find that that portion of the proposal infringed on PWCS's exclusive management rights.

For these reasons, the proposal is negotiable in part and nonnegotiable in part under the Collective Bargaining Resolution to the extent consistent with the foregoing.

Proposed Article 4.2 – Just Cause

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

A. No Employees shall be disciplined or reprimanded without just and sufficient cause. No Employee shall be subject to discrimination, intimidation, retaliation, or harassment due to their dissent and/or differences with the administration. If an Employee objects to any disciplinary action, they may use the grievance procedure. The specific grounds forming the basis for disciplinary action will be made available to the employee in writing.

B. Any disciplinary action affecting an employee shall be appropriate to the behavior which precipitated the action as well as any previous disciplinary action on file for the employee. The Division shall follow a policy of progressive discipline, which shall be as follows:

    1. Written record of verbal warning
    2. Letter of Concern or Warning
    3. Letter of Reprimand
    4. One-day suspension without pay
    5. Three-day suspension without pay
    6. Last Chance Agreement
    7. Dismissal for Just Cause only

C. Prior to a meeting held to discuss allegations that may warrant disciplinary action and/or when another supervisor is present, the Employee shall be informed of the purpose, and that the Employee has the right to have a representative present at the meeting.

D. Any complaint not called to the attention of the employee may not be used as the basis for disciplinary action or adverse evaluation against the employee. Any written record made of a complaint against an employee must be called to the attention of the employee within ten (10) working days of the time the record was made.

The Union contends that its proposal does not seek to limit or diminish the authority of the School Board to decide whether to discipline employees – a right reserved to management under Section 5.A.4 of the Collective Bargaining Resolution; rather, the Union asserts that it merely seeks to bargain over the due process afforded to employees when facing disciplinary action. The Union notes that, similar to the circumstances in *Russell Cnty. Sch. Bd. v. Anderson*, 238 Va. 372 (1989), the ultimate authority to take disciplinary action would remain with the School Board even if disciplinary decisions were subject to non-binding arbitration. The Union

also maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation.

PWCS contends that this proposal is nonnegotiable pursuant to Sections 5.A.4, and 5.A.8 of the Collective Bargaining Resolution. It asserts that the proposal conflicts with the School Board's sole authority "to suspend, demote, terminate the employment of, or take disciplinary action against employees," as provided in Section 5.A.4 and as required under Virginia law. *Russell Cnty. Sch. Bd. v. Anderson*, 238 Va. 372, 382 (1989) (citing Va. Code Ann. § 22.1-313, which states that "[t]he school board shall retain its exclusive final authority over matters concerning employment and supervision of its personnel, including dismissals and suspensions."). To the extent that the Union's proposal would restrict the School Board's authority to issue disciplinary action, the proposal is clearly nonnegotiable. *Cf. Sch. Bd. v. Parham*, 218 Va. 950, 959 (1978) (finding that school board's delegation of authority to binding arbitration was "unlawful delegation of power, violative of § 7 of Article VIII of the [Virginia] Constitution."). PWCS further contends that the proposal would infringe on its right "to establish, maintain, modify, and eliminate work rules, policies, procedures and standards of conduct," as provided in Section 5.A.8. Specifically, PWCS notes that it has established Division Regulation No. 572-1, Disciplinary Action, which states in relevant part that:

> An employee shall be disciplined for failure to abide by the terms of his or her contract; for violation of Prince William County School Board policies and regulations, applicable school laws, Virginia Department of Education regulations, school, or department rules; for incompetence, immorality, or disability as shown by competent medical evidence when in compliance with federal law; for conviction of a felony or a crime of moral turpitude; or for other just cause. . . .

PWCS further notes that it has established Division Regulation No. 506-3, Employee Rights, which states in relevant part that:

> Upon request, the employee has the right to be informed of the proposed nature of any conference to be held between the employee and supervisor. When such a conference concerns any formal disciplinary matter, including a letter of reprimand, recommendation for dismissal, or suspension, or when another supervisor is present at such conference, the employee shall have the right to have present during the conference a silent witness of the employee's choice other than an attorney. Prior to the start of such conference where a silent witness is present, the attached agreement must be signed (Attachment I).

PWCS asserts that the Union's proposal would impermissibly infringe on its right to maintain or modify these Division Regulations.

Ruling

After careful consideration of the entire record, I find that the Union's proposal is nonnegotiable. The proposal would establish a contractual standard of "just and sufficient cause" for any disciplinary action or reprimand issued to a bargaining unit employee. Although such provisions are common in collective bargaining agreements, here, the Collective Bargaining Resolution, at Section 5.A.4, expressly reserves to management the right "to suspend, demote, terminate the employment of, or take disciplinary action against, employees, subject to any right an employee may have to grieve such action pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education." Moreover, PWCS maintains Division Regulation No. 572-1, which addresses the just cause standard to be applied to employee discipline; the Union's proposal would restrict PWCS's right, pursuant to Section 5.A.8 of the Resolution, to establish, maintain, modify, and eliminate this Division Regulation. The proposed requirement that the grounds for disciplinary action be made in writing is also addressed by Division Regulation No. 572-1.

Because Section 5.A.4 of the Resolution reserves to management the right to take disciplinary action subject only to the right of an employee to grieve such action pursuant to the Code of Virginia or regulations issued by the Virginia Board of Education, I am unpersuaded that the portions of the proposal permitting an employee to challenge disciplinary action through the negotiated grievance procedure are negotiable under the Resolution.

I find that the portions of the proposal concerning progressive discipline would require PWCS to follow the described progression in taking disciplinary action and would, therefore, impermissibly infringe on PWCS's reserved rights under Section 5.A.4. Similarly, the proposed language regarding notice of charges and timeliness of complaints are found to impermissibly infringe on the Collective Bargaining Resolution's broad reservation of management rights pursuant to Section 5.A.4 and 5.A.8.

For these reasons, the proposal is nonnegotiable under the Collective Bargaining Resolution.

Proposed Article 4.5.A – Insurance Coverage/Protection

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

A. Insurance Coverage/Protection
   1. The Board will name Employees as an additional insured on the Division's liability and errors and omissions insurance programs. The scope of protection will not exceed the coverage purchased for the Division; provided such insurance includes malpractice protection for school nurses, psychologists, speech-language pathologists, physical and occupational therapists; and provided further that the Division agrees to defend, indemnify, and hold the employee harmless against any and all claims, suits, orders, or judgments brought or issued against the employee as a result of any action taken or not taken by the employee in the course of performing their job.
   2. The Division agrees to select an insurance carrier who also agrees to defend, indemnify, and hold the Employee harmless against any and all claims, suits, orders, or judgments brought or issued against the employee as a result of any action taken or not taken by the Employee in the course of performing their job, excluding gross and/or willful negligence.
   3. The Board will provide Employees' reimbursement to pay for loss or damage to personal property of Employees when engaged in the maintenance of order and discipline and the protection of school personnel and students and the property thereof.

(Spelling as in original.)

The Union maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation.

PWCS asserts that the Union's proposal is nonnegotiable pursuant to Section 5.A.8 of the Collective Bargaining Resolution. PWCS contends that this proposal would require PWCS to modify its existing School Board Policy No. 30, Division Insurance Coverage, and Division Regulation No. 390-1, Division Insurance Coverage / Student Management System, which define the coverage provided for negligent and intentional acts committed within the scope of employees' duties and establish reporting procedures for incidents that may be covered by insurance.

Ruling

After careful consideration of the entire record, I find that the Union's proposal is nonnegotiable. The record reflects that PWCS's existing School Board Policy No. 30 and Division Regulation No. 390-1 address this area, and that the Union's proposal would infringe on PWCS's right, pursuant to Section 5.A.8 of the Resolution, to establish, maintain, modify, and eliminate that School Board Policy and Division Regulation. I am unpersuaded, on balance, that this proposal sufficiently implicates core subjects of bargaining so as to warrant a finding to the contrary.

For these reasons, the proposal is nonnegotiable under the Collective Bargaining Resolution.

Proposed Article 4.7.I – Compensation and Assistance

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

1. If an Employee is required to change work locations within their worksite, that is not the result of a change in assignment which occurs during the school year (including pre-service days), the Employee will at their discretion, either receive two (2) days per diem compensation or be relieved of regular duties for two (2) working days to complete the change.

2. Whenever a work location move occurs, the Division will provide boxes and needed moving supplies and will move all materials.

The Union contends that this proposal concerns compensation, which clearly falls within the duty to bargain under the Resolution, as well as the need to provide supplies to carry out a change in work location, which is a term and condition of employment that does not limit or diminish PWCS's managerial authority. Contrary to PWCS's assertions, this proposal does no more than seek to bargain over the effects of PWCS's decision to require a bargaining unit employee to change work locations under certain circumstances.

PWCS contends that the proposal is nonnegotiable pursuant to Sections 5.A.1, 5.A.2, and 5.A.5 of the Collective Bargaining Resolution. PWCS asserts that the proposal encroaches upon PWCS's exclusive rights under the Resolution, including its right to transfer, assign, and schedule employees, to change working conditions/requirements, and to determine the nature and scope of the work performed by PWCS employees.

Ruling

After careful consideration of the entire record, I find that this proposal is negotiable in part and nonnegotiable in part.

Article 4.7.I.1 conflicts with Section 5.A.1 of the Collective Bargaining Resolution, as it would provide affected employees with the discretion to determine that they be relieved of duties for two working days; it infringes, therefore, on PWCS's retained management right to take or refrain from taking action regarding the assignment and scheduling of employees. Article 4.7.I.1 is, therefore, nonnegotiable under the Collective Bargaining Resolution.

I am persuaded that Article 4.7.I.2 is negotiable. Any obligation by the Division to provide supplies and assistance to an affected employee would be triggered only by a decision within management's control and discretion and was not shown to infringe on any retained

exclusive management right. Although PWCS asserts that the proposal conflicts with Section 5.A.2 of the Resolution because it requires a change in working conditions, Section 5.A.2 only addresses working conditions in the context of staffing levels and layoffs; it contains no general reservation of management rights with respect to working conditions. Nor was the proposal shown to infringe on Section 5.A.5 of the Resolution, which reserves to management the right to determine the nature and scope of the work performed by employees.

For these reasons, the proposal is negotiable in part and nonnegotiable in part under the Collective Bargaining Resolution to the extent consistent with the foregoing.

Proposed Article 4.7.J.3 – Change in Curriculum Responsibilities

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

> J. Change in Curriculum Responsibilities
>
> A change in an employee's curricular responsibilities initiated by the Division may include, but are not limited to:
>
> 1. Change in content or grade level with work experience in that content or grade level within the preceding four (4) years.
>
> 2. Change in special education programs (Example: reassignment from a Teacher of Students with Autism to the Learning Disabilities Program).
>
> 3. Employees who assume a change in curriculum responsibilities may, select up to two (2) of the following Division paid options, including but not limited to:
>   a. One day (7.5 hours) per diem time for preparation of instructional material
>   b. Participation in a Division-sponsored training workshop
>   c. Seven (7) hours of Professional Development, approved by the Employee's supervisor/principal which directly relates to the new change
>   d. Other options, as mutually agreed upon with the employee's supervisor

(Spelling as in original.)

The Union contends that this proposal is an attempt to bargain over the effects of a decision made by PWCS regarding the work assigned to bargaining unit employees and does not infringe on PWCS's managerial authority to assign employees, to establish criteria for assignments, to determine the manner in which services are to be provided, and to determine the nature and scope of work performed by PWCS employees. The Union maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation. Moreover, the Union argues that, contrary to

PWCS's assertions, this proposal does not require a change to an existing Division Regulation. The School Board Policy and Division Regulation cited by PWCS in asserting nonnegotiability – No. 600 and No. 601-1, respectively – concern the organization and implementation of PWCS's instructional program, as well as the monitoring and revision of and reporting on that program. There was no showing that the Union's proposal would affect the cited School Board Policy or Division Regulation. The Union notes that PWCS did not assert, in its September 7, 2023 document setting forth its view of Union proposals that constituted prohibited subjects of bargaining, that this proposal infringed on PWCS's rights under Section 5.A.1; even if this post hoc rationalization is considered, it should be clear that, for the reasons set forth above, this argument is without merit.

PWCS contends that the proposal is nonnegotiable pursuant to Sections 5.A.1, 5.A.2, 5.A.5, and 5.A.8 of the Collective Bargaining Resolution. PWCS asserts that the proposal infringes on PWCS's exclusive rights under the Resolution, including its right to assign employees, to establish criteria for employee assignments, to determine the manner in which services are to be provided, and to determine the nature and scope of the work performed by PWCS employees. PWCS claims that this proposal conflicts with Section 5.A.8 of the Resolution because it would require PWCS to revise its existing School Board Policy No. 600, Instructional Programs, and Division Regulation No. 601-1, Division Strategic Plan; Instruction Program Goals, which outline PWCS's goals and procedures for the implementation of curriculum programs. PWCS notes that this proposal would also require PWCS to budget additional funds each time that it changes an employee's curricular responsibilities; as a result, this proposal is also inconsistent with Section 5.A.3 of the Resolution.

Ruling

After careful consideration of the entire record, I find that this proposal is negotiable. The proposal affects terms and conditions of employment for bargaining unit employees. There was no showing that the proposal infringes on any of PWCS's exclusive management rights. The proposal does not conflict with Section 5.A.1 of the Collective Bargaining Resolution, as it does not require the School Board, the Superintendent, or management to take or refrain from taking any action regarding the transfer, assignment, or scheduling of employees. The proposal leaves to management's discretion whether an employee will be affected by a change in

curriculum responsibilities that would trigger an obligation to provide the affected employee with the options set forth in the proposal.

There was no showing that this proposal infringes on PWCS's rights pursuant to Section 5.A.8 of the Resolution. Nothing in School Board Policy No. 600 or Division Regulation No. 600-1 were shown to address or touch on the subject matter of this proposal – i.e., addressing the effects on bargaining unit employees in the event of a change in curriculum duties. Nor was the proposal shown to infringe on PWCS's rights under Section 5.A.3 of the Resolution simply because it could result in PWCS expending additional funds. The obligation to expend funds under this proposal would remain contingent on a decision by management.

Nor was the proposal shown to infringe on Section 5.A.5 of the Resolution, which reserves to management the right to determine the nature and scope of the work performed by employees. Any changes to the nature or scope of work performed by bargaining unit employees would remain within PWCS's retained management authority.

The claim that a proposal is not negotiable under the Collective Bargaining Resolution merely because it could result in the expenditure of funds is rejected.

For all of these reasons, the proposal is negotiable under the Collective Bargaining Resolution.

Proposed Article 6.2.A – Work Day: Classified Employees

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

1. Length of Work Day

   The workday for full-time teaching assistants, educational sign language interpreters, and certified occupational therapy/licensed physical therapy assistants is 6.5 hours per day excluding lunch.

   The workday for all other full-time classified employees is 7.5 hours per day excluding lunch.

2. Duty-Free Lunch

   The lunch period shall be duty free and therefore, not compensated. However, employees that are required by their supervisor to work through their lunch period shall be compensated. Employees may leave the job site during this time with the approval of their immediate supervisor. Normally, non-exempt employees shall have a thirty-minute break for lunch. Classified employees who do not otherwise indicate on their time record shall be assumed to have taken their lunch break.

The Union contends that the proposal does not diminish PWCS's managerial authority under Section 5.A.1 and 5.A.5 of the Collective Bargaining Resolution, as PWCS remains free to determine the days and times when employees will work, the hours that employees will work, and the work to which employees will be assigned. The Union seeks only to bargain over the effects of those decisions by management to ensure that bargaining unit employees will have some opportunity to eat during the workday or, if they are not able to eat, to receive appropriate compensation for the loss of their meal period. The Union maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation. The Union notes that PWCS did not assert, in its September 7, 2023 document setting forth its view of Union proposals that constituted prohibited subjects of bargaining, that this proposal infringed on PWCS's rights under Section 5.A.2; even if this post hoc rationalization is considered, it should be clear that, for the reasons set forth above, this argument is without merit.

PWCS contends that the proposal is nonnegotiable pursuant to Sections 5.A.1, 5.A.5, and 5.A.8 of the Collective Bargaining Resolution. The proposal seeks to dictate the length of employees' workdays and would infringe on PWCS's exclusive right to assign and schedule all employees and to establish criteria for all such actions pursuant to Section 5.A.1. PWCS asserts that the proposal is nonnegotiable pursuant to Section 5.A.8 of the Resolution because the proposal addresses matters already governed by existing Division Regulations concerning duty-free lunch, planning time, and the length of the workday. These matters are addressed in Division Regulation No. 563-1, Classified Personnel – Workweek; School Board Policy No. 562, Duty-Free Time; and Division Regulation No. 382.01-1, Employee Reimbursement. The proposal would preclude PWCS from modifying or eliminating these work rules in violation of Section 5.A.8.

Ruling

After careful consideration of the entire record, I find that the Union's proposal is nonnegotiable. The record reflects that PWCS's existing Division Regulation No. 561-2, School Board Policy No. 562, and Division Regulation No. 562.01-1 address the matters at issue in this proposal, and that the Union's proposal would infringe on PWCS's right, pursuant to Section 5.A.8 of the Resolution, to establish, maintain, modify, and eliminate that School Board Policy

and those Division Regulations. I am unpersuaded, on balance, that this proposal sufficiently implicates core subjects of bargaining so as to warrant a finding to the contrary. Moreover, the proposal, in part, would infringe on PWCS's retained exclusive right to assign and schedule employees and to determine the nature and scope of their work.

For these reasons, the proposal is nonnegotiable under the Collective Bargaining Resolution.

Proposed Article 6.2.B – Work Day: Certified Employees

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

1. Length of Work Day

   The classroom teaching assignment, planning period, and lunch period of full-time certificated employees shall not exceed seven continuous hours.

   a. Unit members performing instructional or co-curricular work beyond the regular workday or work year shall be paid their pro rata hourly wage rate for all such work performed.

2. Duty-Free Lunch

   A duty-free meal time shall be provided for all Employees. Separate dining areas for Employees shall be provided in each building. Such duty-free time shall be inclusive of travel time to and from lunch and shall not relieve teachers of their normal supervisory duties during this transit time, provided that this time does not exceed five minutes. Employees may leave the campus during their duty-free time but may be required to check out.

   Employees shall not be required to perform job duties during the non-transit portion of their lunch time, but employees who volunteer to work during their lunch break shall be compensated for 30 minutes at their hourly rate.

3. Planning Time

   a. Planning time for all teachers is essential to an effective instructional program. Therefore, under normal circumstances, time allocated for this purpose will be used for instructional planning.

   b. Within the regular school day, except in cases of emergency, each full-time elementary teacher will be provided of 45 minutes of regularly scheduled unencumbered planning time. Planning time will be provided by relieving teachers of responsibility for students. If schools are closed to students when planning time is scheduled, there will be no make-up of lost planning time.

   c. Each full-time secondary teacher will be provided 250 minutes of planning time a week over a two-week period, divided into no more than five (5), nor less than two (2) periods. In cases of sudden and unforeseen occurrences or weeks during which there is less than a full week of instruction, planning time will be shortened on a pro rata basis.

d. All allotted planning time on both elementary and secondary levels will be duty-free and will not be used for general faculty meetings, professional development, or (except in cases of sudden and unforeseen occurrences) substituting for other regularly assigned teachers. In the event that an employee is required to perform any duties other than instructional planning during their allotted planning time, the employee shall be compensated at their hourly rate. In the event that an employee volunteers to complete required professional development during their allotted planning time, the employee shall be compensated at their hourly rate.

e. For purposes of planning time, sixth grade teachers housed in the middle schools will be provided planning time according to paragraph c, above.

4. Staff Meetings, CLT Meetings and Team Meetings

All building faculty meetings shall be conducted at a time contiguous with the teachers' workday, except in emergencies and unusual situations where the needs of the school require that such meetings be held at other times.

If a required meeting is scheduled during an employee's duty-free planning time, the employee shall be compensated at their hourly rate for their attendance.

If a required meeting is scheduled beyond the seven-hour work day, employees shall be compensated at their hourly rate for their attendance.

The Union contends that the proposal does not diminish PWCS's managerial authority under Section 5.A.1 and 5.A.5 of the Collective Bargaining Resolution, as PWCS remains free to determine the days and times when employees will work, the hours that employees will work, and the work to which employees will be assigned. The Union seeks only to bargain over the effects of those decisions by management to ensure that bargaining unit employees will have some opportunity to engage in planning work and to eat during the workday or, if they are not able to eat, to receive appropriate compensation for the loss of their meal period. The Union maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation. The Union notes that PWCS did not assert, in its September 7, 2023 document setting forth its view of Union proposals that constituted prohibited subjects of bargaining, that this proposal infringed on PWCS's rights under Section 5.A.2; even if this post hoc rationalization is considered, it should be clear that, for the reasons set forth above, this argument is without merit.

PWCS contends that the proposal is nonnegotiable pursuant to Sections 5.A.1, 5.A.5, and 5.A.8 of the Collective Bargaining Resolution. It argues that the proposal seeks to dictate the length of employees' workdays and would infringe on PWCS's exclusive right to assign and schedule all employees and to establish criteria for all such actions pursuant to Section 5.A.1, as

well as PWCS's right to determine the nature and scope of the work performed by its employees. PWCS asserts that the proposal is nonnegotiable pursuant to Section 5.A.8 of the Resolution because the proposal addresses matters already governed by existing Division Regulations concerning duty-free lunch, planning time, and the length of the workday. These matters are addressed in Division Regulation No. 561-2, Certificated Personnel - Responsibilities, Duties, and Workday; School Board Policy No. 562, Duty-Free Time; Division Regulation No. 562.01-1, Certificated Personnel Planning Time; and Division Regulation No. 382.01-1, Employee Reimbursement. The proposal would preclude PWCS from modifying or eliminating these work rules in violation of Section 5.A.8.

Ruling

After careful consideration of the entire record, I find that the Union's proposal is nonnegotiable. The record reflects that PWCS's existing Division Regulation No. 561-2, School Board Policy No. 562, and Division Regulation No. 562.01-1 address the matters at issue in this proposal, and that the Union's proposal would infringe on PWCS's right, pursuant to Section 5.A.8 of the Resolution, to establish, maintain, modify, and eliminate that School Board Policy and those Division Regulations. I am unpersuaded, on balance, that this proposal sufficiently implicates core subjects of bargaining so as to warrant a finding to the contrary. Moreover, the proposal, in part, would infringe on PWCS's retained exclusive right to assign and schedule employees and to determine the nature and scope of their work.

For these reasons, the proposal is nonnegotiable under the Collective Bargaining Resolution.

Proposed Article 6.3 – Workload (subsection B.1. withdrawn)

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

> Workload is defined as duties defined in job description and roles and responsibilities. The District will make a good faith effort to equalize the workloads within all employees and work groups. When workload is extended outside of contract hours, Employees shall be compensated two times their per diem hourly rate.
>
> A. Other Duties as Assigned
>
> Other duties necessary to the best interest of the schools may be required beyond the seven-hour work day such as bus duty, attendance at meetings and conferences, supervision of student activities, and other similar duties. Employees shall be compensated for the performance of such duties at their hourly rate.

> Employees called upon to substitute for or assume the work duties of any employee(s) shall be paid twice their pro rata hourly rates for each hour or any part thereof for such work performed. For purposes of this agreement, any part of an hour equals an hour.
>
> 1. Certified Employees: extending certified employees workload is defined where an employee is assigned other duties impacting planning (Section 6.2(B)(3)) and/or duties beyond the contract day (e.g., bus duty, car duty, sporting events, testing).
>
> 2. Classified Employees: When duties exceed roles and responsibilities for one employee, due to vacancies and/or staff shortages (e.g., additional bus routes, daily staffing/substitutes, sporting events).
>
> B. Class Coverage
>
> . . . .
>
> 2. Secondary employees assigned to cover classes will receive notice of the assignment 24 hours in advance, except in cases of emergency, and payment shall be made at each employee's per diem, at an hourly rate of one day of the employee's base contract divided by 7 hours, for each period covered. For the purpose of computing compensation, covering a class for 25 minutes or more shall be considered as covering the class for a full period. For the purpose of computing compensation, class periods of 50 to 60 minutes shall be considered as 1.0 hours in length. For purpose of computing compensation, class periods of 80 to 100 minutes shall be considered as 2.9 hours in length. An emergency for the purpose of this section will be defined as a situation in which the absent employee has provided less than 24 hours' advance notice to the substitute office and the school, and in such situations the employee assigned to cover the class will be given notice as much in advance as possible.
>
> 3. When an elementary classroom does not have an assigned substitute (guest teacher), an elementary principal (or designee) may assign elementary classroom teachers or specialists to cover a classroom on a rotating basis created and posted at each building. Elementary class coverage will be reimbursed at per diem for any missed planning period. Class coverage will be documented on an extra pay time sheet. This documentation will reflect the time worked beyond the contracted day to complete regularly assigned duties equal to the amount of time spent covering a classroom. Occasionally, employees on special assignment may also be assigned to provide elementary classroom coverage and will be compensated as stated above.
>
> 4. In the event that students are reassigned to other certificated elementary classrooms, the receiving staff members will be reimbursed according to the percentage of the students added to their classroom. (Example: A second grade classroom does not have a substitute and that classroom is divided between the remaining two second grade classrooms. Each receiving employee would get half of $222 if the students remained with them for the full day). Specialists providing services for these larger classes will receive class coverage pay when they are in overload.

The Union contends that this proposal does not impact PWCS's reserved rights under Sections 5.A.1, 5.A.2, or 5.A.5 of the Collective Bargaining Resolution. It argues that its proposals are limited to addressing the compensation to be provided when management exercises its right to assign bargaining unit employees to perform certain duties. The Union maintains

that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation.

PWCS contends that the proposal is nonnegotiable pursuant to Sections 5.A.1, 5.A.2, 5.A.5, and 5.A.8 of the Collective Bargaining Resolution. It maintains that this proposal would modify existing Division Regulation No. 561-2, Certificated Personnel-Responsibilities, Duties, and Workday, concerning workloads and classroom levels and coverage in violation of Section 5.A.8 of the Collective Bargaining Resolution. PWCS asserts that the proposal would also interfere with its exclusive management rights under the Resolution, including the right to transfer, assign, supervise, and schedule employees, and to establish criteria for all such actions, pursuant to Section 5.A.1 of the Resolution; to determine the job qualifications of employees, the manner in which services are to be provided, and staffing levels, pursuant to Section 5.A.2 of the Resolution; and to determine the nature and scope of the work performed by employees, pursuant to Section 5.A.5 of the Resolution. In particular, PWCS argues that the proposal would prohibit management from assigning bargaining unit employees to additional work duties without providing those employees with additional compensation.

Ruling

After careful consideration of the entire record, I find that this proposal is negotiable in part and nonnegotiable in part.

The second sentence of the first paragraph of Article 6.3 impermissibly infringes on Sections 5.A.1 and 5.A.5 of the Collective Bargaining Resolution by obligating PWCS to attempt to equalize workload so as to restrict PWCS's retained management rights to assign and schedule employees as well as determining the nature and scope of the work to be performed by employees.

The remainder of the proposal consists of provisions concerning compensation of bargaining unit employees. There was no showing that the compensation provisions infringe on any of PWCS's exclusive management rights. There was no showing of additional conflict with Section 5.A.1 of the Collective Bargaining Resolution, as the compensation provisions do not require the School Board, the Superintendent, or management to take or refrain from taking any action regarding the transfer, assignment, or scheduling of employees. The compensation

provisions leave to management's discretion whether an employee will be assigned to perform duties that will trigger an obligation to provide additional compensation.

There was no showing that the compensation provisions infringe on PWCS's rights pursuant to Section 5.A.8 of the Resolution. Nothing in Division Regulation No. 561-2 was shown to address or touch on the subject matter of the compensation provisions– i.e., compensation to be provided to bargaining unit employees in the event that they perform certain duties. Nor were the compensation provisions shown to infringe on PWCS's rights under Section 5.A.3 of the Resolution simply because it could result in PWCS expending additional funds. The obligation to expend funds under the compensation provisions would remain contingent on a decision by management. Moreover, the claim that a proposal is not negotiable under the Collective Bargaining Resolution merely because it could result in the expenditure of funds is rejected.

Nor were the compensation provisions shown to infringe on Section 5.A.5 of the Resolution, which reserves to management the right to determine the nature and scope of the work performed by employees. Any changes to the nature or scope of work performed by bargaining unit employees would remain subject to PWCS's retained management authority.

For all of these reasons, the proposal is negotiable in part and nonnegotiable in part under the Collective Bargaining Resolution.

Proposed Article 6.4 – Class Size and Caseload Levels

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

> A. The District and Association recognize the value of lower class size in meeting student growth goals. The District will attempt to keep the class size as low as possible. The parties agree, acknowledge, and accept that the uncertain nature of school funding; the under-funding of the basic education and other state programs; and unfunded compensation for certificated personnel may result in the future in a reduction of instructional positions and that the result of such a possible reduction may well result in increased class size averages.
>
> . . . .
>
> 2. Class Size Compensation
> a. The Employee shall be eligible for overload relief in the event that any Employee's class size is in overload.
> b. Employee shall be compensated within thirty (30) days of the overload.
>
> B. The District and Association recognize the value of lower caseload levels in meeting student growth goals. The District will attempt to keep individual caseload levels as low as possible.

> The parties agree, acknowledge, and accept that the uncertain nature of school funding; the under-funding of the basic education and other state programs; and unfunded compensation for certificated personnel may result in the future in a reduction of instructional positions and that the result of such a possible reduction may well result in increased caseloads.
>
> . . . .
>
> 2. Caseload Compensation
>   a. The Employee shall be eligible for overload relief in the event that any Employee's caseload level is in overload.
>   b. Employee shall be compensated within thirty (30) days of the overload.

The Union contends that this proposal does not impact PWCS's reserved rights under Sections 5.A.1, 5.A.2, or 5.A.5 of the Collective Bargaining Resolution. It argues that its proposals are limited to recognizing the value of lower class sizes, acknowledging that average class sizes and caseloads may nevertheless increase; and addressing that bargaining unit employees will be entitled to overload relief in the event that their class size or caseload is in overload. The Union maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation. The Union argues that this proposal merely seeks to engage in effects bargaining, in which PWCS should be required to engage.

PWCS contends that the proposal is nonnegotiable pursuant to Sections 5.A.2, 5.A.5, and 5.A.8 of the Collective Bargaining Resolution. It maintains that this proposal would modify existing Division Regulation No. 561-2, Certificated Personnel-Responsibilities, Duties, and Workday, concerning workloads and classroom levels and coverage in violation of Section 5.A.8 of the Collective Bargaining Resolution. PWCS asserts that the proposal would also interfere with its exclusive management rights under the Resolution, including the right to determine the job qualifications of employees, the manner in which services are to be provided, and staffing levels, pursuant to Section 5.A.2 of the Resolution; and to determine the nature and scope of the work performed by employees, pursuant to Section 5.A.5 of the Resolution.

Ruling

After careful consideration of the entire record, I find that this proposal is nonnegotiable. The portions of the proposal that purport to address policy and funding matters connected with class size and caseload levels – Sections 6.4.A and 6.4.B – implicate matters within PWCS's exclusive management rights, pursuant to Sections 5.A.2 and 5.A.5 of the Collective Bargaining

Resolution, to determine the manner in which services are to be provided, to determine staffing levels, and to determine the nature and scope of work performed by employees. The remainder of the proposal is insufficiently clear in defining or explaining "overload relief," either directly or by reference to another document or resource, to permit a determination as to whether and how the proposal concerns matters related to compensation for bargaining unit employees. The Union, therefore, has failed to meet its burden to demonstrate that the proposal is negotiable.

For all of these reasons, the proposal is nonnegotiable under the Collective Bargaining Resolution.

Proposed Article 7 – Leave Proposals

(7.1 – Annual Leave; 7.2 – Sick Leave; 7.3 – Personal Leave; 7.4 – Bereavement Leave; 7.5 – Temporary Leave; 7.4 – Closure Leave [Two sections were labeled as "7.4"]; 7.6 – Liberal Leave; 7.7 – Civil Leave; 7.8 – Family Friendly Leave; 7.9 – Family Medical Leave; 7.10 – Leave Without Pay; 7.11 – Maternity-Parental Leave; 7.12 – Military Leave; and 7.13 – Professional Leave)

Contentions of the Parties:

These proposals concern various types of leave available to bargaining unit employees, including the amount of leave in each category that is available to employees and the processes for accumulating and using such leave. The Union asserts that these proposals are negotiable, as they are within the traditional scope of benefits and terms and conditions of employment. The Union maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render these proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation.

PWCS contends that the proposal is nonnegotiable pursuant to Sections 5.A.1 and 5.A.8 of the Collective Bargaining Resolution. It notes that all of these proposals address categories of leave already governed by PWCS's existing Division Regulations. Specifically, PWCS asserts that:

• Proposal 7.1 (Annual Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-1, Annual Leave;

• Proposal 7.2 (Sick Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-2, Sick Leave;

• Proposal 7.3 (Personal Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-5, Personal Leave;

• Proposal 7.4 (Bereavement Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-2, Sick Leave, at Section III.B.4;

• Proposal 7.5 (Temporary Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-3, Temporary Leave;

• Proposal 7.4 (Closure Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-10, Closure Leave;

• Proposal 7.6 (Liberal Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-9, Liberal Leave;

• Proposal 7.7 (Civil Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-4, Civil Leave;

• Proposal 7.8 (Family Friendly Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-4, Family Friendly Leave;

• Proposal 7.9 (Family Medical Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 544-2, Family Medical Leave;

• Proposal 7.10 (Leave Without Pay) seeks to modify and/or maintain PWCS's Division Regulation No. 544-1, Leave Without Pay;

• Proposal 7.11 (Maternity/Parental Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-2, Maternity/Parental Leave;

• Proposal 7.12 (Military Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-7, Military Leave; and

• Proposal 7.13 (Professional Leave) seeks to modify and/or maintain PWCS's Division Regulation No. 542-6, Professional Leave.

PWCS maintains that these proposals would modify or preclude the modification of these existing Division Regulations in violation of Section 5.A.8 of the Resolution. PWCS further asserts that these proposals would infringe on its right, pursuant to Section 5.A.1 of the Resolution, to manage employee scheduling by obligating PWCS to provide greater leave benefits than it already provides to its employees.

Ruling

After careful consideration of the entire record, I find that the Union's proposals are negotiable.

As noted above, leave from work is a traditional fringe benefit that – even under the narrower interpretation proposed by PWCS of the scope of benefits subject to collective bargaining under the Collective Bargaining Resolution – is within the obligation to engage in collective bargaining imposed by the Resolution.

I am unpersuaded that the limited basis articulated for PWCS's refusal to bargain over these proposals – the fact that the cited Division Regulations already addresses the leave available to bargaining unit employees – is sufficient, given the obligation to negotiate over certain benefits, including leave, to establish that PWCS may lawfully refuse to negotiate over these leave proposals. The fact that PWCS has Division Regulations concerning leave that pre-date collective bargaining was not shown to provide sufficient basis, standing alone, to support a finding that PWCS need not bargain over leave. PWCS had an existing School Board Policy – No. 524, Compensation – that addressed the salary scale for employees, including those within these bargaining units. One would not expect PWCS to assert that, based on the existence of that School Board Policy and despite the obligation set forth in the Collective Bargaining Resolution, PWCS need not negotiate over wages; in fact, the record reflects no such assertion by PWCS. On this record, there is no reason demonstrated for why these leave proposals, which address a basic fringe benefit afforded to employees, should be viewed any differently. There was also no showing that the proposal would infringe on PWCS's right to fully manage and direct its operations and activities or as to how the proposal would impact PWCS's ability to regulate how its employees perform their work.

For these reasons, the proposals are negotiable under the Collective Bargaining Resolution.

Proposed Article 8.1.D – Certificated Advancement

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

1. Salary upgrades for college credits and degrees earned from an accredited* college or university are available for employees on the teacher salary scale that require Virginia Department of Education (VDOE) or respective State Board licensure. Employees applying for a salary upgrade must submit to the Office of Certification a salary upgrade form and an official or unofficial transcript of the course(s) work completed and/or degree awarded. Upgrade requests and documents shall be processed twice a year.
    a. When documentation is received by September 30 the upgrade shall become effective the first semester of the contract year.

b. When documentation is received by January 31 the upgrade shall become effective February 1 of the second semester of the contract year.
c. No retroactive payment shall be made for upgrade information received in the Office of Certification after the specified deadline.

2. Salary upgrades shall be available at the following increments:

Bachelor's degree plus 15 semester hour credits (BA+15)	Bachelor's degree, plus 15 graduate or undergraduate semester credit hours and a current, valid Virginia teaching or State Board license (The 15 credit hours do not include courses that were used to meet the requirements of the bachelor's degree).
Master's degree (MA)	Conferral of master's degree and a current, valid Virginia teaching or State Board license.
Master's degree plus 30 semester hour credits (MA+30)	Conferral of master's degree, plus 30 graduate or undergraduate semester credit hours and a current, valid Virginia teaching or State Board license. (The 30 credit hours do not include courses used to meet the requirements of the bachelor's or master's degree).
Doctoral degree (includes Juris Doctorate)	Conferral of doctoral degree and a current, valid Virginia teaching or State Board license.

To qualify for salary upgrades the following criteria must be met:

a. Course work reflecting semester credits or degrees earned must be from an accredited* institution.

b. Undergraduate or graduate hours used for receipt of the BA+15 or MA+30 supplement must have been earned after the degree was awarded or be supported by evidence that the courses were not used to meet the requirements of the bachelor's or master's degree.

3. New or current employees on the teacher scale eligible to receive salary upgrades resulting from degrees and course work completed pursuant to this regulation shall remain on the same step and grade. The new salary resulting from the upgrade shall be computed and prorated in accordance with Section I of this regulation.

The Associate Superintendent for Human Resources (or designee) is responsible for implementing and monitoring this regulation.

* The term "accredited," as used herein, refers to a four-year institution of higher learning approved by the Virginia State Board of Education or, in the case of out-of-state institutions, by their own state boards of education and by recognized regional and national accrediting agencies. International school credits must be approved by the Virginia Board of Education.

(Spelling as in original.)

The Union contends that this proposal is negotiable, as it concerns compensation for eligible bargaining unit employees. The Union maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render this proposal

nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation.

PWCS asserts that the proposal is nonnegotiable pursuant to Section 5.A.8 of the Resolution because the proposal addresses matters already governed by PWCS's Division Regulation No. 524-3, Certificated Employees - Compensation - Upgrading of Contracts, concerning salary upgrades for certificated employees who earn additional college credits and degrees. The proposal would preclude PWCS from modifying or eliminating these work rules in violation of Section 5.A.8.

Ruling

After careful consideration of the entire record, I find that the Union's proposal is negotiable. This proposal falls squarely within the ambit of wages and, therefore, the duty to engage in collective bargaining as imposed by the Collective Bargaining Resolution. The proposal addresses the means by which eligible certificated bargaining unit employees may qualify for salary upgrades that result in increases to their annual compensation.

I am unpersuaded that the limited basis articulated for PWCS's refusal to bargain over this proposal – the fact that Division Regulation No. 524-3 already addresses process by which eligible employees may qualify for salary upgrades – is sufficient, given the obligation to negotiate over wages to establish that PWCS may lawfully refuse to negotiate over this proposal. As noted above, the fact that PWCS has a Division Regulation concerning salary upgrades which pre-dates collective bargaining was not shown to provide sufficient basis, standing alone, to support a finding that PWCS need not bargain over this wage proposal. On this record, there was no showing that the proposal would infringe on PWCS's right to fully manage and direct its operations and activities or as to how the proposal would impact PWCS's ability to regulate how its employees perform their work.

For these reasons, the proposal is negotiable under the Collective Bargaining Resolution.

Proposed Article 8.6 – Tuition Reimbursement

Contentions of the Parties:

The Union asserts that the following proposed language is negotiable under the Collective Bargaining Resolution:

A. Per the provisions of this Agreement, tuition financial assistance is available for professional growth and development.
    1. Licensed Personnel: to meet certification and license renewal requirements, and to increase instructional knowledge and skills.

2. Support Personnel: to obtain a teaching endorsement in Virginia.

B. Full and part-time employees are eligible for tuition reimbursement if they meet the following classification.
   1. Fully certified teachers and teachers who hold a three-year provisional license who are seeking tuition assistance to become fully certified in core teaching academic subject areas.
   2. Classified employees who are currently enrolled in a state approved teacher education program and/or those employed as a Teacher Assistant's. Course work taken must be applicable to obtaining a teaching endorsement in Virginia.

C. Tuition Reimbursement Program Provisions
   1. Tuition reimbursements are contingent upon the availability of funds each fiscal year (July 1 through June 30).
   2. Fully certified and provisionally licensed teachers are offered a one (1) time only tuition reimbursement for those teachers required to take the PRAXIS II, VRA, or VCLA exam in core academic course subject area.
   3. Licensed Personnel
      a. Reimbursement shall not exceed the amount approved in the fiscal year operating budget or the tuition course cost, whichever is less. (Approved amount can be found on the PWCS website at benefits.pwcs.edu.)
      b. Reimbursement shall be for graduate courses taken from an accredited college or university. Fully certified teachers shall be reimbursed for undergraduate courses taken for license renewal. Teachers required to teach a non-core subject course with a state endorsement mandate shall be reimbursed for undergraduate courses if they are the only approved courses needed to complete the endorsement.
      c. Reimbursement shall include the cost of tuition, textbooks, and/or other required course fees.
      d. Course work must be directly related to the teacher's instructional work assignment
      e. Department of Human Resources/Office of Benefits & Retirement Services must approve the course work in advance or at the time of registration.
   4. Provisionally Licensed Teachers
      a. Reimbursement funds may be available through the Department of Student Learning & Professional Development's portion Federal Grant funding program.
      b. The amount of reimbursement under the Federal Grant shall be determined each fiscal year.
      c. Department of Human Resources/Office of Benefits & Retirement Services must approve the course work in advance or at the time of course registration.
   5. Support Personnel
      a. Reimbursement shall not exceed the amount approved in the fiscal year operating budget or the tuition cost, whichever, is less. (Approved amount can be found on the PWCS website at benefits.pwcs.edu.)
      b. Reimbursement shall be for courses taken from an accredited college or university.
      c. Reimbursement shall include the cost of tuition, textbooks, and/or other required course fees.
      d. Department of Human Resources/Office of Benefits & Retirement Services must approve the course work in advance or at the time of registration.

D. Approval Guidelines and Payment Procedures
   1. Approval Guidelines
      a. Requests for tuition reimbursement shall be approved in advance or at the time of course registration.
      b. Teachers who are fully certified must complete and sign the Tuition Reimbursement Request Form, attach a course description along with proof of payment, and submit the form with documents to the Department of Human Resources/Office of Benefits & Retirement Services for review and approval for tuition reimbursement.
      c. Teachers who are provisionally licensed must complete the Provisionally Licensed Teachers Tuition Reimbursement Request Form and attach a course description along with proof of payment. The form with attached documents must be submitted

to the Department of Human Resources/Office of Benefits & Retirement Services for approval.

d. Classified employees must complete the Classified Tuition Reimbursement Request Form, attach a copy of the course description, and provide proof of payment. Classified staff, with the exception of teacher assistants, must also provide a copy of the letter certifying college acceptance into a state approved teacher education program.
e. Acceptable proof of payment documents include an official stamped/signed university receipt, a canceled check (front and back), or a credit card receipt with the teacher's name and university identified.
f. All requests for tuition reimbursement approval shall be processed in the order received on a first come, first serve basis. Payment is paid in the same Fiscal Year the course is approved.

2. Payment Procedures
   a. Tuition refund payments will be initiated after the approved course for tuition reimbursement has been satisfactorily completed with a grade of "B" or better (or "Pass" if a Pass/Fail course) as verified by an official transcript and/or official grade report
   b. To initiate payment, the employee must complete the Tuition Reimbursement Payment Form and attach a photocopy of the official academic transcript and/or official grade report and submit to the Department of Human Resources/Office of Benefits & Retirement Services. Request for reimbursement must be received within forty-five (45) days of the course completion.
   c. Approved reimbursements shall be processed by the Department of Human Resources/Office of Benefits & Retirement Services.
   d. Reimbursements shall be paid to the employees in the semi-monthly paycheck.

E. Conditions
   1. Reimbursements shall not be made for any courses wherein tuition reimbursement has been received under any scholarship, fellowship, or other subsidized program.
   2. Tuition reimbursement shall not be approved for courses taken in another line of business or trade.
   3. Employees on an approved leave of absence are not eligible for tuition reimbursement.
   4. Employees who have received payments through the tuition reimbursement program must return to regular employment with PWCS and remain employed for one (1) full year (twelve (12) months) after the date payment has been issued or pay back to the School Division 100 percent of the tuition reimbursement.
   5. The Division Superintendent or the Associate Superintendent for Human Resources (or designee) may make an exception to this regulation when there is a specific program or Divisionwide need as well as on a case-by-case basis.

(Spelling as in original.)

The Union contends that this proposal is negotiable, as it concerns compensation for eligible bargaining unit employees. The Union maintains that, as set forth in its generalized Contentions, Section 5.A.8 of the Collective Bargaining Resolution does not render this proposal nonnegotiable merely because PWCS has addressed the subject matter in a School Board Policy or Division Regulation.

PWCS contends that the Union's proposal is nonnegotiable pursuant to Section 5.A.8 of the Collective Bargaining Resolution. PWCS contends that this proposal largely mirrors its Division Regulation No. 533-1, Certificated & Classified Personnel - Tuition Reimbursement,

which establishes reimbursement conditions, approval guidelines, and payment procedures for different employee categories. PWCS argues that, because this proposal would supplant its existing work rules and would restrict its ability to modify its work rules, policies, and procedures, the Union's proposal concerns a prohibited subject of bargaining and is nonnegotiable.

Ruling

After careful consideration of the entire record, I find that the Union's proposal is negotiable.

I am persuaded that the subject matter of the proposal – tuition reimbursement – is squarely within the ambit of the traditional fringe benefits that would fall within the scope of the "certain benefits" included in the Collective Bargaining Resolution's definition of collective bargaining, even if "certain benefits" were limited to health and welfare benefits, as PWCS has asserted. There was no showing as to how the proposal would impact PWCS's ability to regulate how its employees perform their work or that the proposal would infringe on PWCS's right to fully manage and direct its operations and activities.

The limited basis articulated for PWCS's refusal to bargain over this proposal – the fact that Division Regulation No. 533-1 already addresses tuition reimbursement for employees – is not sufficient, given the obligation under the Resolution to negotiate over certain benefits, including leave, to establish that PWCS may lawfully refuse to negotiate over the leave provisions of this proposal.

For these reasons, the proposal is negotiable under the Collective Bargaining Resolution.

AWARD

The Prince William County Public Schools did not violate the Collective Bargaining Resolution by failing to negotiate in good faith with the Prince William Education Association over wages during the Parties' 2023 term bargaining.

Count I of the ULP Charge is dismissed.

The Prince William County Public Schools violated the Collective Bargaining Resolution by failing to negotiate with the Prince William Education Association over the following proposals:

Proposed Article 4.1(C) – Rights as Private Citizens; Proposed Article 4.7.J.3 – Change in Curriculum Responsibilities; Proposed Article 7 – Leave Proposals *(7.1 – Annual Leave; 7.2 – Sick Leave; 7.3 – Personal Leave; 7.4 – Bereavement Leave; 7.5 – Temporary Leave; 7.4 – Closure Leave [Two sections were labeled as "7.4"]; 7.6 – Liberal Leave; 7.7 – Civil Leave; 7.8 – Family Friendly Leave; 7.9 – Family Medical Leave; 7.10 – Leave Without Pay; 7.11 – Maternity-Parental Leave; 7.12 – Military Leave; and 7.13 – Professional Leave)*; **Proposed Article 8.1.D – Certificated Advancement;** and **Proposed Article 8.6 – Tuition Reimbursement** are each negotiable under the Collective Bargaining Resolution.

Proposed Article 4.1(I) – Legal Redress; Proposed Article 4.1.J.3-5 – Video Surveillance; and **Proposed Article 4.7.I – Compensation and Assistance;** and **Proposed Article 6.3 – Workload (subsection B.1. withdrawn)** are each negotiable in part under the Collective Bargaining Resolution, to the extent consistent with the foregoing.

For proposals found to be negotiable in whole or in part, the Prince William County Public Schools is found to have violated its duty under the Resolution to negotiate in good faith and will be directed to negotiate in good faith with the Prince William Education Association as to those proposals to the extent that they are found to be negotiable.

Proposed Article 4.2 – Just Cause; Proposed Article 4.5.A – Insurance Coverage/Protection; Proposed Article 6.2.A – Work Day: Classified Employees; **Proposed Article 6.2.B – Work Day: Certified Employees**; and **Proposed Article 6.4 – Class Size and Caseload Levels** are nonnegotiable under the Collective Bargaining Resolution, and the Prince William County Public Schools did not violate the Collective Bargaining Resolution by refusing to negotiate over these proposals.

Count II of the ULP Charge is, therefore, sustained in part and dismissed in part to the extent consistent with the foregoing.

Jurisdiction is retained to address any matters to remedy that the Parties are unable to resolve on remand.

March 18, 2024

Keith D. Greenberg, Esq.
Dispute Resolution Neutral