

COURT OF APPEALS
DIVISION II

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No. 38341-1-II

STATE OF WASHINGTON

Pierce County Superior Court Cause No. 08-09832-5 BY _____

DEPUTY

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION II

ILWU LOCAL 23

Appellant/Plaintiff

v.

PORT OF TACOMA AND ILWU LOCAL 22

Appellee/Defendants

BRIEF OF APPELLANT/PLAINTIFF

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ORIGINAL

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INTRODUCTION

Plaintiff, a labor union, brought this case to enforce a labor arbitration award, alleging breach of the labor agreement. CP 1-3. The Defendant Port moved to dismiss on the grounds that a Public Employment Relations Commission (PERC) Order, CP 19-34, on its representation petition deprived the Court of jurisdiction. CP 4-11. On August 22, 2008, Honorable Kitty-Ann van Doorninck, of the Superior Court of Washington for Pierce County, granted the motion and dismissed Plaintiffs complaint for lack of subject matter jurisdiction under Civil Rule 12(b)(1). CP 74-76. Plaintiffs assert that the Superior Court has subject matter jurisdiction over the enforcement of arbitration awards issued under collective bargaining agreements and breach of contract actions generally. Plaintiffs assert that PERC has specifically rejected jurisdiction of the arbitrator's decision and breach of contract issues, and therefore neither PERC nor any other reviewing body outside of the Washington courts may address the issue. Plaintiffs request the Washington State Court of Appeals reverse the Superior Court's dismissal and remand for a determination of the present action.

ASSIGNMENT OF ERROR

The Trial Court erred in dismissing this case for lack of subject matter jurisdiction.

ISSUE

The sole issue is whether the Court has jurisdiction to confirm and enforce an arbitration award issued under a collective bargaining agreement where the Defendant had secured a unit clarification decision from the Public Employment Relations Commission of the bargaining unit of employees affected by both decisions.

STATEMENT OF THE CASE

This action is a contract dispute arising out of the Port of Tacoma's breach of the Pacific Coast Clerks' Contract Document of 2002-08 ("PCCCD"), an agreement between the International Longshore and Warehouse Union ("ILWU") Locals 23 et. al. and the Pacific Maritime Association, including the Port of Tacoma ("Port"). CP 38-43. The Union filed a grievance asserting the Port was violating the Technology Framework provision of the PCCD by failing to assign all Yard Planning, Rail Planning, and other "traditional marine clerk work" to ILWU Local 23 that was processed to arbitration.

The Arbitrator found that the Technology Framework required the Rail Planning work be assigned to Local 23 and issued an Award in favor of Local 23, finding that the Port had breached its agreement. CP 38-43. The award was limited to a contract interpretation of the PCCCD and required that all disputed work should be "assigned immediately to ILWU

Local 23 Marine Clerks.” CP 43. In awarding the work, the arbitrator specifically rejected the Port’s arguments that the work was already being performed and had historically been performed by Local 22, that a separate agreement superseded the PCCCD and allowed the Port to assign the work to non-bargaining unit personnel, and that the Arbitrator did not have authority to issue an award unless the Public Employment Relations Commission (“PERC”) instructed it. CP 41-42.

When the Port failed to implement the arbitrator’s decision, the arbitrator assessed a compensatory remedy starting April 18, 2008 and lasting until the arbitration was implemented. CP 44-46. The remedial award required the Port to pay one Marine Clerk Supervisor per shift for each shift until the arbitrator’s award is implemented. Id.

Despite the pending arbitration, the Port filed a “representation petition” with PERC. CP 19. PERC Decision addressed its jurisdiction and its unit clarification standard, asserting that the arbitration proceeding “has no bearing on this matter,” CP 31, and held that the rail car coordinator work “is appropriately within the existing bargaining unit of Port ... employees ... represented by ... Local 22,” and simultaneously dismissed the Port’s petition. CP 33.

ILWU Local 23 filed this complaint before the Superior Court to enforce the arbitrator’s decision regarding the Technology Framework

contract. CP 1-3. The Superior Court of Washington for Pierce County granted defendant Port's Motion to Dismiss under Civil Rule 12(b)(1). CP 74-76. This appeal followed. CP 70-71.

ARGUMENT

I. THE STANDARD OF REVIEW IS DE NOVO

This appeal involves the lower court's ruling regarding dismissal of a claim, with prejudice, pursuant to subsections (b)(1) of Rule 12 of the Washington Rules of Civil Procedure. Jurisdiction is a question of law the Washington State Court of Appeals reviews de novo. *City of Tacoma v. Mary Kay, Inc.*, 117 Wn. App. 111, 70 P.3d 144 (2003) (citing *Local Union I-369 Oil, Chem. & Atomic Workers Int'l Union v. Sandvik Special Metals Corp.*, 102 Wn. App. 764, 770, 10 P.3d 470 (2000), *rev. denied*, 143 Wn.2d 1006 (2001)).

II. THE SUPERIOR COURT HAS SUBJECT MATTER JURISDICTION OVER BREACH OF CONTRACT CLAIMS AND REVIEW OF ARBITRATION AWARDS

"The superior courts have broad and comprehensive original jurisdiction over all claims which are not within the exclusive jurisdiction of another court." *Orwick v. City of Seattle*, 103 Wash. 2d 249, 252, 692 P.2d 793 (1984) (citing Wash. Const. art. IV, § 6). This specific constitutional grant of jurisdiction requires exceptions to this broad jurisdiction to be read narrowly. *Id.*

Superior Court jurisdiction is not diminished when considering collective bargaining agreements with public entities. Washington courts have routinely asserted jurisdiction over such bargaining agreements. In *Minter v. Pierce Transit*, 68 Wn. App. 528, 843 P.2d 1128 (1993), *rev. denied*, 121 Wn.2d 1023 (1993) the court acknowledged the strong policy in favor of employment arbitration, but held that collective bargaining agreement had an election of remedies clause authorizing direct legal action. See, e.g., *Olympia Police Guild v. City of Olympia*, 60 Wn. App. 556, 805 P.2d 245 (1991) (compelling arbitration of a grievance about a disciplinary layoff); *Lew v. Seattle School District No. 1*, 47 Wn. App. 575, 736 P.2d 690 (1997) (dismissing an employee suit against a public employer for failure to allege his union breached its duty of fair representation). In *Local Union I-369 Oil, Chem. & Atomic Workers Int'l Union v. Sandvik Special Metals Corp.*, 102 Wn. App. 764, 770, 10 P.3d 470 (2000), *rev. denied*, 143 Wn.2d 1006 (2001) the Court held it had jurisdiction over an action to compel arbitration under a collective bargaining contract, rejecting the defense that it was preempted by federal law.

Additionally, Washington Superior Courts have specifically asserted jurisdiction to review challenges to labor arbitration awards involving public entities under the constitutional right of certiorari. *Clark*

County Pub. Util. Dist. No. 1 v. International B'hd of Electrical Workers, Local 125, 150 Wn.2d 237, 76 P.3d 248 (2003) (confirming an arbitration decision in favor of public employees); *See, also, Council of County & City Employees v. Spokane County*, 32 Wn. App. 422, 647 P.2d 1058, *review denied*, 98 W.2d 1002 (1982) (compelling arbitration of a grievance).

A writ of certiorari is the “proper procedural vehicle” to challenge an arbitrator’s decision, when that decision involves a public agency. *Clark County Pub. Util. Dist. No. 1 v. IBEW, Local 125*, 150 Wn.2d 237, 245, 76 P.3d 248 (2003). “Review of an arbitration decision under a constitutional writ of certiorari is limited to whether the arbitrator acted illegally by exceeding his or her authority under the contract.” *Id.* (quoting *Saldin Sec., Inc. v. Snohomish County*, 134 Wn.2d 288, 292, 949 P.2d 370 (1998) (“The fundamental purpose of the constitutional writ of certiorari is to enable a court of review to determine whether the proceedings below were within the lower tribunal's jurisdiction and authority.”)).

This is a breach of contract claim against the Port to enforce the PCCCD. As required by the collective bargaining agreement the claim was brought first before an arbitrator. The Washington Superior Court is the appropriate venue to enforce and confirm the award and has subject matter jurisdiction to review the arbitrator’s decision.

III. LABOR ARBITRATION DECISIONS MUST BE GRANTED DEFERENCE BY THE COURT

It is well settled law in Washington that, where a collective bargaining agreement establishes a grievance and arbitration procedure for redress of employee grievances, that employee must seek redress under those procedures before resorting to judicial remedies. *Moran v. Stowell*, 45 Wn. App. 70, 724 P.2d 396 (1986); *Smith v. General Elec. Co.*, 63 Wn.2d 624, 625-27, 388 P.2d 550 (1964); *Tombs v. Northwest Airlines, Inc.*, 83 Wn.2d 157, 162, 516 P.2d 1028 (1973); *Garton v. Northern Pac. Ry.*, 11 Wn. App. 486, 523 P.2d 964 (1974); *Clayton v. International Union, United Auto., Aerospace, & Agricultural Implement Workers*, 451 U.S. 679, 681, 101 S.Ct. 2088, 68 L.Ed.2d 538 (1981); *Vaca v. Sipes*, 386 U.S. 171, 184, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). The principle of exhaustion of arbitration remedies as a precondition to court action is based on a judicially recognized policy that favors the resolution of labor disputes through arbitration and limits judicial scrutiny of that arbitrator's decision. The appellate court, under the common law arbitration standard, has only a limited review of arbitration awards. "The doctrine of common law arbitration states that the arbitrator is the final judge of both the facts

and the law, and ‘no review will lie for a mistake in either.’” *Clark County Pub. Util. Dist. No. 1 v. IBEW, Local 125*, 150 Wn.2d 237, 245, 76 P.3d 248 (2003) (quoting *Carey v. Herrick*, 146 Wash. 283, 292, 263 P. 190 (1928)); *S. Cal. Gas Co. v. Util. Workers Union, Local 132*, 265 F.3d 787, 792 (9th Cir. 2001) (citing *Stead Motors v. Auto. Machinists Lodge*, 886 F.2d 1200, 1208 n. 8 (9th Cir. 1989) (en banc)):

In reviewing an arbitral award, “courts . . . do not sit to hear claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts.” *Id.* (citing *United States Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 38, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987)). If an “arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, the fact that ‘a court is convinced he committed serious error does not suffice to overturn his decision.’” *Eastern Associated Coal Corp. v. Mine Workers*, 531 U.S. 57, 62, 121 S.Ct. 462, 148 L.Ed.2d 354 (2000) (quoting *Misco*, 484 U.S. at 38). Only where the arbitrator ignores the contract's plain language, choosing instead to dispense his own brand of industrial justice, may we question his judgment. *Teamsters Local Union 58 v. BOC Gases*, 249 F.3d 1089, 1093 (9th Cir. 2001).

Where a collective bargaining agreement is in place, as long as the arbitration award “draws its essence” from that agreement it must be enforced. *Sunshine Mining Co. v. United Steelworkers of America*, 823 F.2d 1289, 1294 (9th Cir. 1987) (citing *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960); *Broadway Cab Cooperative, Inc. v. Teamsters &*

Chauffeurs Local Union No. 281, 710 F.2d 1379, 1382 (9th Cir. 1983)). “An award is said to ‘draw its essence’ from the contract if it is based on the contractual language and the parties’ conduct.” *Id.*, (citing *Howard P. Foley Co. v. International Brotherhood of Electrical Workers, Local 639*, 789 F.2d 1421, 1422-1423 (9th Cir. 1986)).

Including an arbitration clause in a collective bargaining agreement indicates that the parties have chosen to resolve disputes regarding that contract with an arbitrator. *W. R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 764, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983) (hereinafter “*W. R. Grace*”). Barring failure to meet the minimal “draw[ing] its essence” from the collective bargaining agreement standard, the reviewing court is “bound to enforce the award and is not entitled to review the merits of the contract dispute.” *Sunshine Mining Co. v. United Steelworkers of America*, 823 F.2d at 1294 (citing *W. R. Grace*, 461 U.S. at 764).

When the Port agreed to include an arbitration provision in the PCCCD contract, it agreed to abide by the arbitration process to resolve disputes arising from the collective bargaining agreement. The Port cannot now circumvent the contract by ignoring the arbitrator’s decision and seeking refuge at PERC, especially when the PERC decision does not even address the breach of contract claim brought before the arbitrator or claim to review the arbitrator’s decision. If the Port disagrees with the

arbitrator's decision because it believes the decision completely fails to "draw its essence" from the collective bargaining agreement or that it believes the arbitrator completely ignored the bargaining agreement and "dispensed his own brand of industrial justice," it must make that argument before the Superior Court, which has subject matter jurisdiction over arbitrator's decisions.

IV. THE PERC DECISION FAILS TO ADDRESS THE PORT'S BREACH OF CONTRACT, AND PERC DOES NOT HAVE JURISDICTION OVER CONTRACTS

"Absent a judicial determination ...[an employer] cannot alter the collective-bargaining agreement without the Union's consent." *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 589 n.3, 104 S.Ct. 2576, 81 L.Ed.2d 483 (1984) (quoting *W. R. Grace*, 461 U.S. at 771). This principle follows from basic contract law. Contract interpretation is the realm of the court; this holds true even when the contract in question involves a union or is a collective bargaining agreement. See, e.g., *Lucas v. Bechtel Corp.*, 800 F.2d 839, 849 (9th Cir. 1986) (the court may interpret a contract between a union and its members);

PERC, evidenced in its own decisions, does not have authority to engage in contract interpretation. "The Examiner does not assert jurisdiction over private contracts. Such interpretation must be sought

through any applicable contractual procedures (i.e., grievance arbitration) or through the courts.” *Washington Pub. Empl. Ass’n v. Washington State Patrol*, Decision 8786 (PSRA 2004) (citing *City of Kirkland*, Decision 5672 (PECB1996) (“[PERC] does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of [RCW 41.56.030(4)]”; *Seattle Community College*, Decision 8114 (CCOL 2003)).

Indeed, PERC has long denied that it has any jurisdiction over breach of contract actions involving unfair labor practices.

The Commission has long held agreements made by parties on ground rules to guide their negotiations become contracts, like any other agreement they reach in collective bargaining, and that any remedy for alleged violations of agreed-upon ground rules must be sought through any applicable contractual procedures (e.g., grievance arbitration) or through the courts. The Public Employment Relations Commission does not assert jurisdiction to remedy contract violations through the unfair labor practice provisions of the statute.

Seattle Community College, Decision 8114 (CCOL 2003). (quoting *City of Sumner*, Decision 6210 (PECB 1998).

PERC’s lack of jurisdiction in deciding contractual disputes in collective bargaining agreements and arbitration awards is a well-established principle. In *City of Walla Walla*, PERC Executive Director Marvin Schurke stated:

Our legislature has picked up on the endorsement of arbitration as a preferable procedure, and has not delegated to the Commission authority to determine violation of contract allegations as unfair labor practices under Chapter 41.56 RCW. The undersigned therefore concludes that the Public Employment Relations Commission lacks jurisdiction to hear and decide the instant matter and that these violation of contract allegations should be litigated, if at all, under the grievance and arbitration machinery provided in the collective bargaining agreement between the parties.

City of Walla Walla, Decision 104 (PECB 1976).

This position was affirmed in a later decision: “The commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of [RCW 41.56].”

University of Washington (SEIU Local 925), Decision 8760 (PSRA 2004).

PERC’s decision relating to this dispute did not address ILWU 23’s breach of contract issue or arbitrator’s award at all, and therefore cannot serve as a final determination or a reversal of the arbitrator’s decision. CP 33. And even if PERC’s decision in this case does address the breach of contract or arbitration dispute by inference or implication, it has no authority to make any determination on the issue by PERC’s own precedent. Absent exercise of jurisdiction by the Superior Court there is no venue to consider ILWU Local 23’s claim to enforce the arbitrator’s award. Case law squarely places the responsibility for adjudicating breaches of contract and arbitrator’s awards on the court.

V. W. R. GRACE CONTROLS BREACH OF CONTRACT CLAIMS FOR COLLECTIVE BARGAINING AGREEMENTS WHEN THOSE AGREEMENTS ARE CHALLENGED ON THE BASIS OF COMMISSION DECISIONS

Courts are not deprived of their jurisdiction over breach of contract claims stemming from collective bargaining agreements simply because another agency has become involved in matters related to those claims. *W. R. Grace*, a Supreme Court case with facts analogous to the facts in the instant case, provides the framework for courts to deal with breach of contract claims where competing public policy interests stem from the involvement of other commissions and agencies.

In *W. R. Grace*, the defendant corporation was bound by a valid collective bargaining agreement with its employees regarding seniority and promotion. *W. R. Grace*, 461 U.S. at 759-60. While the contract was in effect, *W. R. Grace & Co.* signed a consent decree with the Equal Employment Opportunity Commission (“EEOC”) to correct Title VII violations involving the hiring and promotion of women and minorities at its facilities. *Id.* Local 759 of the International Union of the United Rubber, Cork, Linoleum, & Plastic Workers of America did not participate in the consent decree, nor did it agree to modify its collective

bargaining agreement to allow for implementation of the consent decree. Id. As a result, the collective bargaining agreement and the consent decree created conflicting obligations. Id.

During a strike, women and minorities were hired as replacement workers by W. R. Grace. Id. at 760. When the strikers returned to work, the collective bargaining agreement required that they retain seniority and preference for promotion, while the EEOC consent decree required W. R. Grace to continue to employ and promote the new women and minority employees. Id. Additionally, W. R. Grace, relying on the consent decree laid off employees that, according to the collective bargaining agreement, would otherwise have retained their positions due to seniority. Id. at 761. As a result, the affected employees and Local 759 filed grievances and sought arbitration of the grievances. Id. at 759, 761.

W. R. Grace filed suit to avoid arbitration. Id. at 762. and secured a District Court order compelling the parties to comply with the consent decree. Two years later the Court of Appeals reversed, compelling arbitration. 565 F.2d 913, 916 (5th Cir. 1978). W.R. Grace instated the employees and arbitrated the back pay still in issue. At arbitration, W. R. Grace claimed that while it had violated the collective bargaining agreement, such a violation was excused because of its good faith reliance on the consent decree and the impossibility of following both the consent

decree and the arbitration agreement. Id. at 763-64. The arbitrator found that no good-faith exception clause existed in the collective bargaining agreement, that the company had acted on its own risk in breaching the agreement and refused to extinguish the company's liability for its breach. Id. W. R. Grace challenged the arbitrator's award in court. Id.

On appeal, the unanimous Supreme Court affirmed the arbitrator's decision. Under the well-established principles of arbitration discussed supra, the Court declined to second-guess the arbitrator's authority or decision. Id. at 764-65. Second, the Court addressed the Company's claim of a public policy exception to the arbitrator's award. Id. at 766. "[A] court may not enforce a collective-bargaining agreement that is contrary to public policy." Id. (citing *Hurd v. Hodge*, 334 U.S. 24, 34-35, 68 S.Ct. 847, 92 L.Ed. 1187 (1948)). A question of public policy exception to an arbitrator's award "is ultimately one for resolution by the courts." Id. (citing *International Brotherhood of Teamsters v. Washington Employers, Inc.*, 557 F.2d 1345, 1350 (9th Cir. 1977)). For a court to decline to enforce an arbitrator's award of a collective bargaining agreement on public policy grounds, the public policy must be "well defined and dominant" and "by reference to the laws and legal precedents and not from general considerations of supposed public interests." Id. at 766 (quoting *Muschany v. United States*, 324 U.S. 49, 66 65 S.Ct. 442, 89 L.Ed. 744

(1945)). the award does not draw its essence from the CBA, if the arbitrator exceeds the scope of the issues submitted, or if the award runs counter to public policy.

After eliminating the public policy argument, the *W. R. Grace* Court addressed the company's claim that it was subject to two competing requirements, one under its collective bargaining agreement and the other under the consent decree, and therefore should not be required to fulfill both obligations. 461 U.S. at 767. As a result of its reduction in force, "[W. R. Grace & Co.] was faced with a dilemma: it could follow the conciliation agreement as mandated by the District Court and face liability under the collective-bargaining agreement, or it could follow the bargaining agreement and risk both a contempt citation and Title VII liability." *Id.* The court was unmoved by the company's plight: "The Company committed itself voluntarily to two conflicting contractual obligations. By entering into the conflicting conciliation agreement [and then attempting to escape its contractual obligations], the Company attempted to shift the loss to its male employees, who shared no responsibility for the sex discrimination." *Id.* at 769, 770. The court declined to alleviate the company's liability at the expense of either affected group, stating emphatically that "[n]o public policy is violated by holding the Company to those obligations, which bar the Company's

attempted reallocation of the burden.” Id. at 770. To escape such liability, the company must have a judicial determination altering the collective bargaining agreement without the Union’s consent. Id. at 771. “[P]arties to a collective-bargaining agreement must have reasonable assurance that their contract will be honored.” Id. (citing *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 509 82 S.Ct. 519, 7 L.Ed.2d 483 (1962)).

The Court also rejected the company’s claim of impossibility:

Compensatory damages may be available to a plaintiff injured by a breach of contract even when specific performance of the contract would violate public policy. Restatement (Second) of Contracts § 365, Comment a (1981). This principle is particularly applicable here; since the employees’ Union had no responsibility for the events giving rise to the injunction, and entered into the collective-bargaining agreement ignorant of any illegality, the employees are not precluded from recovery for the breach. Id., § 180, Comment a.

Id. at 769 n. 13.

The impossibility defense is not a bar to a court considering an arbitrator’s award in circumstances like those found in the present action and in *W. R. Grace*. The Ninth Circuit has held that an express or implicit rejection by an arbitrator of an impossibility defense as unavailable under a collective bargaining agreement cannot be challenged in court. *Pullman Power Prods. Corp. v. Local 403, United Assn. of Journeymen & Apprentices of Plumbing & Pipefitting Indus.*, 856 F.2d 1211, 1212 (9th

Cir. 1987) (*citing W. R. Grace*, 461 U.S. 757); *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 108 S.Ct. 364, 98 L.Ed.2d 286 (1987).

Like the Union in *W. R. Grace*, Local 23 was party to a lawful collective bargaining agreement with the Port. The Port claims that it has conflicting obligations to Local 22 and Local 23, and that PERC decision deprives the superior court of jurisdiction to consider Local 23's claim of contract violation by the Port expressed in the arbitrator's decision. However, *W. R. Grace* teaches that a company is not relieved of its contractual obligations under a valid collective bargaining agreement simply because public policy mandates that a commission or agency enforce conflicting obligations to non-bargaining unit personnel. When the Port entered into the collective bargaining agreement with Local 23, it bore the risk of loss if it assigned the work to personnel outside that bargaining unit. The validity of the arbitrator's decision is a matter of determination for this court, not for PERC.

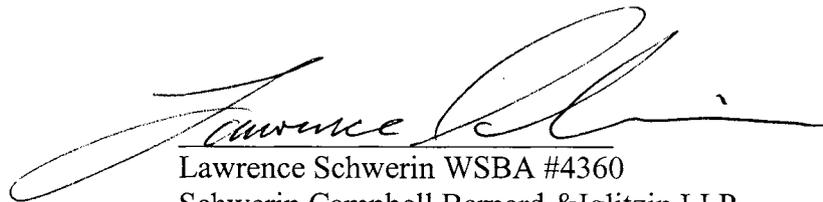
Application of the *W.R. Grace* analysis demonstrates that jurisdiction in superior court does not diminish or affect PERC's jurisdiction over public employment bargaining units. PERC does not have jurisdiction to adjudicate the contract dispute concerning the validity of the arbitrator's decision, nor does it profess to have such jurisdiction.

Adjudication of the contract claim does not undermine PERC's authority to make public employment bargaining unit determinations. Those determinations are not at issue in this case; the Port's breach of contract by failing to abide by the arbitrator's award are. Such issues are the traditional province of Washington courts, not PERC.

CONCLUSION

The validity of the arbitrator's decision and the breach of contract issue are a matter of determination for the courts, and the Superior Court has subject matter jurisdiction over these issues. The Superior Court's Order Granting Defendant's Motion to Dismiss was in error. The decision should be reversed and the case remanded for consideration of enforcement of the arbitrator's decision and the breach of contract.

Respectfully submitted this 17th day of December, 2008.



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CERTIFICATE OF SERVICE

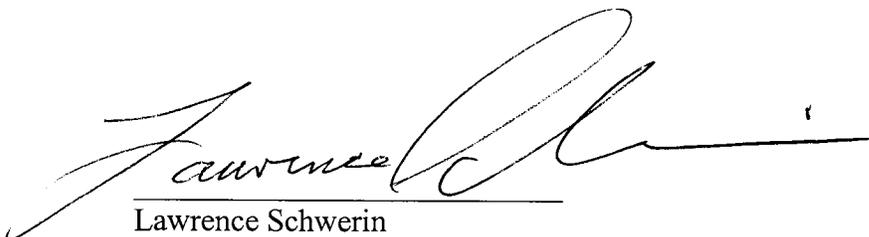
I certify that on the 17th day of December, 2008, I caused a copy of Plaintiff's Appellate Brief to be served on the following counsel of record by United States mail at the address indicated:

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BY _____
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Lawrence Schwerin