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DEC 17 2018

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 362337

IN THE COURT OF APPEALS, DIVISION THREE

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PALMER D. STRAND AND PATRICIA N. STRAND

Appellant



v.

Council 2-Washington State Council of County and City Employees,  
AFSCME, AFL-CIO and Local 1553 – Council 2 - Washington State  
Council of County and City Employees, AFSCME, AFL-CIO

Respondents

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BRIEF OF APPELLANT

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Appellant

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## I. INTRODUCTION

Review is requested under RAP 2.2(a)(1) Appellate review of Final Order and Judgment of the Spokane County Superior Court. Review is of Case 182002278, a determination under WAC 44-14-01001 of a functional equivalent agency that is subject to the Public Records Act, RCW 42.56 et seq.

Appellant, Palmer and Patricia (“Pat”) Strand, requested records of employment agreements<sup>1</sup> on the Spokane County Assessor’s (“Assessor”) employees and Respondent, Council 2 -Washington State Council of County and City Employees, AFSCME, AFL-CIO and Local 1553 - Council 2 - Washington State Council of County and City Employees, AFSCME, AFL-CIO (“Council 2”). Employment agreements (Supplemental Agreements) are contractually required to be negotiated by the Assessor and Council 2 in the public employee union contracts (Collective Bargaining Agreement; “CBA”) and the Spokane County Policy and Procedure Manual as authority for appraisers to deviate from authorized work hours and shifts.

This appeal is about the public’s right to know Spokane County’s

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Pagination: CP is clerks papers; RP is verbatim report of proceedings (hearing transcript)

<sup>1</sup> Public employees are contracted to work for Spokane County under public employee union contracts. Pat’s record request is for what she labeled “employee agreements” which would include “Supplemental agreements” (Brief of Appellant, CBA 12.2, page 4) to public employee union contracts.

CBA's have been violated from 2012 through 2016<sup>2</sup> on work hours and shifts by the **parties involved in the contracts** – Spokane County Agencies including the Assessor, Council 2, Council 2 Union Representatives/Appraisers and all other appraisers (public employees) in the Assessor's office. (emphasis added)

Compliance with CBA's is important because it is the contract. And, there is a balancing act of benefits of service versus costs of public employees. The parties involved in the CBA deliberately violate the contracts so the public is receiving reduced services at higher costs.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in entering the Order of April 20, 2018, denying Pat's Motion for the Court to Order Council 2 to Show Cause Why the Records Requested were not provided and dismissing the case with prejudice.

2. The trial court erred in entering the Order of July 10, 2018, denying Pat's Motion for Reconsideration of the April 20, 2018 Order.

3. The trial court erred in entering the Order of July 20, 2018, awarding Council 2 fees and costs.

### **Issues Pertaining to Assignments of Error**

Issue 1: Is dismissal without review appropriate in a Public Records Act case to determine if Council 2 is a functional equivalent agency subject to the Public Records Act about employment agreements<sup>1</sup> which are public records? Employment agreements are stipulated in CBA Article 12.2 for alternative work hours or shifts which the Assessor's appraisers have. Council 2 without question knows about the alternative work hours through their

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<sup>2</sup> 2012 through 2016 the dates records were produced by Spokane County Agencies in response to Pat's records request (CP 90 to 91)

Union Representatives, Ms. Vasquez<sup>3</sup> and Ms. McMillan<sup>4</sup>, who are among the appraisers with alternative work hours.

- Issue 2: Is Case 182002278 a frivolous action?
- Issue 3: If the parties involved in the CBA on employee work hours are violating the CBA how can the law protect them?
- Issue 4: What is an employment agreement?
- Issue 5: Are the four factors of WAC 44-14-01001 sufficient to account for the inter-twined relationship of the parties involved in public employee union contracts?
- Issue 6: Is it reasonable to treat employment agreements which are public records in the possession of Spokane County Agencies different than employment agreements in the possession of Council 2?
- Issue 7: Is Council 2 controlling of employment agreements?
- Issue 8: Is the public's interests in knowing public employees union contracts are being complied with greater than the interests of the parties involved in the contracts?
- Issue 9: What is the effect on public employees of not taking rest breaks and lunch breaks? What is the effect on public employees of working 8-to-12+ hours in a shift?
- Issue 10: What is the effect of *Janus v. American Federation of State, County, and Municipal Employees*, Council 31, No. 16-1466, 585 U.S. (2018) on employment agreements?

### III. STATEMENT OF THE CASE

#### A. CBA Articles – Basis of Records Request

- 7.1 Union Representatives . . . authorized to represent the Union in any matters outlined in this article. An "authorized representative" is one who is appointed or elected by their Local Union. (CP 47)
- 7.2 Types of Activities

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<sup>3</sup> Ms. Vasquez 1553 Union Shop Steward 2016-to Assessor response to query dated April 2018; Service Date with Assessor 03/01/2014; Residential Appraiser

<sup>4</sup> Ms. McMillan 1553 Union Sergeant-At-Arms and Negotiation Committee from 2016-to Assessor response to query dated April 2018; Service date with Assessor 03/01/2000; Commercial Appraiser

7.2.1 The Employer agrees that during working hours, on the Employer's premises and without loss of pay, authorized Union representatives shall be allowed to consult with the Employer, his/her representative(s), Local Union officers, other authorized Union representatives or members concerning contract questions and problem solving in an effort to resolve issues at the lowest possible level. (CP 47)

12.1 Regular Hours: (CP 49)

12.1.1 The regular hours of work each day shall be consecutive except for interruptions for lunch periods.

12.1.2 All employees' work schedules shall provide for a fifteen (15) minute rest period during each half shift.

12.1.3 The normal work week shall consist of five (5) consecutive days followed by two (2) days of rest. Seven and one-half (7-1/2) or eight (8) consecutive hours of work, except for interruptions for lunch periods, shall constitute a work day.

12.1.4 All employees shall be scheduled to work on a regular work shift, and each shift shall have regular starting and quitting times. Work schedules showing alternative shifts, work days and hours shall be posted on all department bulletin boards. Except for emergency situations, work schedules will not be changed without giving the Union and the employee ten (10) working days advance notice. When the Employer has a need to change work schedules within the department, the department shall notify the Union to negotiate the effects of the proposed schedule change.

12.2. **Alternative Work Hours or Shifts:** (CP 49) (emphasis added)

12.2.1 The Employer may establish a work week other than five (5) seven and one-half (7-1/2) or eight (8) hour days or shift work within a department. **The department shall notify the bargaining unit to negotiate the effects of the changes.** (emphasis added)

12.2.2 Alternative work hours or shifts other than five (5) seven and one-half or eight (8) hour days will be **negotiated in a Supplemental Agreement with the effected department/ bargaining unit.** (emphasis added)

**B. Spokane County Policies – Basis of Records Request**

No. 210 - Hours of Work and Pay Periods (CP 94)

A. Hours of Work

3. A normal working schedule for regular, full-time employees consists of 37.5 or 40 hours each workweek. Alternative work schedules may be established by the County to meet job assignments and provide necessary County services.
- B. Meal Periods and Rest Periods: Employees shall take one 15 minute break for every four hours worked. All breaks shall be arranged so that they do not interfere with County business or service to the public. Breaks should not be combined together or with meal periods. Meal periods shall be scheduled by the employee's Elected Official/Department Head or their designee. The scheduling of meal periods may vary depending on department workload. Meal periods are unpaid and are usually one hour in length.

No. 211 – Overtime: Non-Exempt Employees

- A. Overtime worked by non-exempt employees must be authorized in advance by the Elected Official or Department Head.
- C. Non-exempt Positions: Employees will be paid following these principal elements:
  1. All employees working either a thirty-seven and one-half (37.5) or forty (40) hour workweek schedule will be compensated at a straight time rate for hours worked up to and including forty (40) hours in a workweek.
  2. Hours worked in excess of forty (40) in a workweek will be compensated at 1.5 times the employee's regular rate of pay.

No. 212 – Time Sheet & Missed Breaks<sup>5</sup>

Responsibilities

Each non-exempt hourly employee is responsible to:

- Take rest and meal breaks according to this policy (or applicable labor contract).
- Whenever possible, receive advance authorization to miss a rest or meal break.
- Notify manager immediately if a meal or rest break is not received. A missed meal or rest break period must be noted on time record by the end of the shift.
- Maintain an accurate daily record on his or her time record of hours worked. All absences from work schedules should be

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<sup>5</sup> <http://www.spokanecounty.org/DocumentCenter/View/11929>

appropriately recorded and coded. Entries must be made daily on department timecards.

### **C. Public Records Requests**

#### Records Request of the Assessor

On December 29, 2016, Pat made a records request of the Assessor for records from 2012 to 2016 to create a complete picture of what appraisers do. (CP 90) Pat received a massive amount of records that included time sheets and payroll records that Pat analyzed. A snapshot of Pat's analysis of time sheets and payroll records are CP 98 to 103 on Appraisers, Megan Gray and Jay Sporn.

CP 98 to 99: Megan Gray's alternative work shifts start at 7 AM, include no rest or lunch breaks, works 8.5 hours by counting rest and lunch breaks as hours worked, days end at 4 PM.

CP 100: Jay Sporn's alternative work shifts start between 6:30 and 7AM, include no rest or lunch breaks, works 9-to-10+ hours daily by counting rest and lunch breaks as hours worked, days end at 4-to-5:30 PM.

CP 101 to 102 is check on timesheet computation of hours to hours paid.

CP 100 shows Appraiser Sporn's timesheet for a pay period from April 1<sup>st</sup> to 15<sup>th</sup>, 2016. It shows he allegedly worked 102.73 hours versus the standard of 81.25 hours. He worked 26.4% more hours than standard without taking a single rest break for the pay period.

- Monday the 4<sup>th</sup> he allegedly worked 10 hours and 24 minutes with a 29-minute lunch break (6:38 AM to 5:31 PM). But, “employee not found” at 5:31.
- Tuesday the 5<sup>th</sup> he allegedly worked 10 hours and 33 minutes with a 29-minute lunch break (6:36 AM to 5:38 PM).
- Wednesday the 6<sup>th</sup> he allegedly worked 9 hours and 31 minutes with a 35 minute lunch break (6:43 AM to 4:39 PM). But, “employee not found” at 4:39. Mr. Sporn also signed In twice without signing out.
- Thursday the 7<sup>th</sup> he allegedly worked 10 hours and 36 minutes with no lunch break (6:47 AM to 5:23 PM). Mr. Sporn was doing a Field Appraisal. There is no way to confirm this because there is no other record for Field Appraisal.
- Friday, April 9<sup>th</sup> he allegedly worked five hours and 15 minutes with no lunch break (6:55 AM to 12:10 PM).

Mr. Sporn’s payroll record show Pat’s computations of hours worked were paid per the “Payroll Hours By Funding” (CP 102).

Pat’s analysis showed the time sheets are not credible-accurate records of work hours and shifts because “employee not found”, multiple “In” without an “Out”, “No Info” for an entire day and the absence of rest and lunch breaks violates the CBA and County Policies.

After finding the issues with the time sheets Pat requested employment agreements from the Assessor; none were produced.

Pat’s analyzed: (1) all 2016 residential appraiser time sheets, (2) a statistical sample of 2012 through 2015 residential appraiser time sheets and (3) a statistical sample of 2012 through 2016 commercial appraiser

time sheets. Pat is a retired Certified Public Accountant (Colorado 11248)

– an auditor by trade.

#### Records Request of Council 2

On February 23, 2017, Pat requested employment agreements from Council 2. (CP 12):

All records of **employment agreements** for employees of the Spokane County **Assessor's office** from Jan/1/12 through the date the records are produced. An employment agreement would include:

- No.1 Labor contracts including - attachments, amendments, revisions, etc.
- No.2 Labor agreements
- No.3 Job descriptions - **the appraisers in the Assessor's office** have the title, Exceptional Hourly (NonExempt).  
(emphasis added)

The request was denied.

#### Records Request of Spokane County Commission

On March 27, 2017 Pat requested employment agreements from the Spokane County Commission. (CP 91) The Commission produced three<sup>6</sup>:

- (1) A Memorandum of Understanding on Laura Vazquez (Union Representative) to do mobile home evaluation for more pay, (2) a Memorandum of Understanding on Valerie McMillan (Union Representative) to train another appraiser at more pay and (3) a

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<sup>6</sup> The Memoranda are not in this record because the case was ended before filing of all evidence but the information is relevant to the dismissal and was not challenged

Memorandum of Understanding on hiring and promoting Courtney Morse as an office assistant. The Memoranda of Understanding show what employment agreements are; that the Assessor and Council 2 have used them; that of the three memorializing Assessor employees/appraisers two are for Union Representatives, Ms. Vazquez and McMillan; and that these Union Representatives know when they should be used.

**D. Case 182002278 Timeline**

On January 22, 2018,<sup>7</sup> Pat filed a Complaint alleging Council 2 was subject to the Public Records Act as a functional equivalent agency under WAC 44-14-01001. Pat requested this relief in the Complaint (CP 7):

- (2) To determine if Council 2 – WSCCCE has violated RCW 42.56.520 by failing to acknowledge Pat’s request and produce the requested records.
- (3) To order Council 2 – WSCCCE to show cause why it should not produce the requested records.
- (4) All other reliefs mandated by RCW 42.56.550 for violations.

On January 23, 2018, Pat filed a Declaration on the difficulty of serving Council 2. (CP 124 to 129)

On March 27, 2018, Council 2 filed a Motion and Memo and Declarations for Dismissal. The Memo alleged Council 2 was not subject WAC 44-14-01001. The Memo alleged Pat failed to state a claim for relief that can be granted . . . and her inability to prove Council 2 was

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<sup>7</sup> Case 182002278, Complaint CP 4-22

subject to the Public Records Act. (CP 138 line 25) The Declaration of Barbara Corcoran, Business Manager for Council 2, stated a contact by Pat about whether Council 2 was a 501(c)(3). The Declaration of Chris Dugovich, President of Council 2, stated he had never talked to Pat. The Declaration of Ed Stemler, General Counsel, for Council 2, stated he spoke to Pat and that Council 2 is not subject to public disclosure and this was a frivolous suit and he would pursue it as such. The Declaration of Gordon Smith, Council 2 Representative in Spokane, stated he spoke to Pat about her concerns with Assessor's office employees breaks

On March 30, 2018, Pat filed a Motion and Memo for the Court to Order Defendant to Show Cause Why Public Records Requested Not Provided. This addressed the Four-Factor test of WAC 44-14-01001 and the snapshot of the Assessor's time sheets and payroll records proving CBA Article 12.2 was being violated by the parties involved. The violation was the failure to negotiate Supplemental Agreements stipulated in CBA Article 12.2.

On April 13, 2018, Counsel for Council 2, Mr. Kuznetz filed a Declaration including Pat's e-mail to Council 2 on 501(c)(3) status. Council 2 also filed a Response to Show Cause Order that stated,

Plaintiffs further argue that because a public employee, shop steward, is appointed from the membership, that somehow Defendants are "embedded in public workplaces." Shop stewards are not performing

public duties. They are representing members' private and personal employment rights that have been negotiated by Defendants' members at the bargaining table. **The bargaining table isn't public.** (CP 167) (emphasis added)

Defendants have found no cases where a union was forced to disclose information on a public disclosure request. It is presumably because no has ever claimed that a union is a public agency or functional equivalent.

Plaintiffs' public disclosure requests to Defendants are frivolous. Their motion for show cause is frivolous. (CP 170)

On April 20, 2018, the trial court heard Pat's Motion for a Show Cause Order and Council 2's Motion to Dismiss and ruled.<sup>8</sup>

Pat's statements at the hearing

The CBA binds Council 2 to enforce the Articles. (RP 5, line 3)

The issue of alternative work hours and shifts violates the CBA. Council 2 is responsible for enforcing the CBA. (RP 5)

Pat's request for why Council 2 alleges it is not subject to the Public Records Act. (RP 5 line 25)

Union statements of being . . . formed to preserve the civil service system. . . . role is to preserve how public employees will be employed. (RP 11 line 3)

The records I'm asking for are uniquely public. (RP 11 line 11; RP 13 line 14)

The union has an embedded steward . . . Ms. McMillan and Ms. Vazquez . . . have intimate knowledge of appraisers work hours and shift and the approval process . . . that involves Council 2 (CP 13 line 2)

Mr. Kuznetz, for Council 2, statements at the hearing

Council 2 is not subject to the Public Records Act because it says it is not. (RP 7 line 11)

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<sup>8</sup> Transcript of April 20, 2018 hearing

The issue is not what the records are and what is going on between people in the assessor's office. (RP 14 line 6)

The information . . . is equally available through the county if it exists . . . The financial information relating to its – membership, things of that nature, has no bearing on what she now claims she want to seek. (RP 14 line 11)

The trial court's statements and ruling at the hearing

So just because there's state law that says that if you work 4 hours you get a 15-minute paid break, if you work over 5 hours you get a half -- at least a half an hour, those are state laws. The union then could negotiate for a paid break or an hour-long break or something like that. **Just because the union or the agency or the entity is performing in accordance with the law** doesn't turn them into a government agency. (emphasis added) (RP 18 line 15)

**There needs to be some proof by the plaintiff here that indeed this is a governmental agency** or some material fact that would defeat summary judgment or would warrant a show cause order. My ruling today is that the union is not a governmental agency and it's not performing the equivalent of a governmental agency. (emphasis added) (RP 19 line 12)

On April 20, 2018, the trial court used Council 2's proposed order.

On April 27, 2018, Mr. Kuznetz filed a Declaration of costs and fees at \$7,440 and a Cost Bill.

On April 30, 2018, Pat filed a Motion and Memo for Reconsideration arguing that her case was not frivolous on the merits of the case because Pat is correctly following the process for determining a functional equivalent agency.

On May 10, 2018, Council 2 Responded to Reconsideration stating,

Plaintiffs' Motion for Reconsideration . . . without merit. They have produced no evidence that would cloak defendants with any basis to claim

that the union is quasi-governmental and subject to a public records request. (CP 199)

On July 10, 2018, the trial court made a Judgment for Attorney's Fees and Costs to Council 2 stating, "Plaintiff's lawsuit and Motion to Show Cause was frivolous and advanced without reasonable cause" (CP 121) The trial court denied reconsideration.

#### IV. ARGUMENT

##### A. **Case 182002278 Is Not A Frivolous Lawsuit and Should Not Have Been Dismissed. There Is No Basis For Pat To Be Responsible For Council 2's Costs and Fees In Defending This Action.**

Frivolous litigation is the practice of starting or carrying on a lawsuit that, due to its lack of legal merit, has little to no chance of being won. Frivolous litigation is based on an absurd legal theory or extreme remedy. Merit is the inherent rights and wrongs of a legal case, absent emotional or technical bias. The evidence is evaluated on its merits.

Wikipedia, the free encyclopedia

*In re Disciplinary Proceeding Against Jones*, 182 Wn.2d 17, 338

P.3d 842 (2014) is about an attorney with a history of frivolous lawsuits. These are the **findings** of this court for a frivolous action

(emphasis added):

- a history of frivolous litigation,
- frivolous pleadings,
- purpose and intent are frivolous,
- no basis in law or fact for litigation,
- prior notice of frivolous litigation by sanctions or penalties,
- unable to make a good faith argument on the merits,
- frivolous pleadings to delay proceedings.

Pat's history includes multiple Public Record Act lawsuits. Pat has prevailed in every case including the one previously before Judge Moreno – this trial court judge.<sup>9</sup> Pat has never faced allegations of frivolous pleadings nor dishonest purpose or intent. There is law (WAC 44-14-01001) and fact as the basis of this lawsuit. Pat has never been sanctioned or penalized by a court for frivolous actions or wasting a court's time. Pat believes Council 2 is a functional equivalent agency and has employment agreements on the Assessor. Pat knows the employment agreements at issue are about the conduct of the work hours or shifts of appraisers in the Assessor's office that do not comply with the CBA and Spokane County policies. Pat is pro se, she knows in her learning cycle as a pro se she wasted the court's time! There was no wasted time in this case.

Council 2 presented no evidence of any of the above findings to support Case 182002278 as frivolous. Council 2's basis for this case being frivolous is: (1) Council 2 is the Defendant, (2) Council 2 cannot be sued, (3) Council 2 declares the facts of the case unsupported with evidence – they are not a functional equivalent agency because they say so

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<sup>9</sup> Pat's lawsuits under the Public Records Act ("PRA") in which she prevailed in the trial court each time.

- 1) 347222-III; Case 162010797 *Strand v. Spokane County and Spokane County Assessor* (PRA violations)
- 2) 341909-III; Case 142010791 *Strand v. Spokane County and Spokane County Assessor* (PRA violations)
- 3) Case 132001238 *Strand v. Spokane County and Spokane County Assessor* (PRA violations) before Judge Moreno

and (4) who is Pat to challenge what Council 2 says. Pat's Memo for reconsideration stated the basis for a frivolous lawsuit. The trial court did not consider these criteria in ruling on this case.

It is a chilling reflection on Council 2's litigation history that they are never sued because they cannot lose in court! This is clearly connected to the power of their membership numbers and purse in elections and lobbying.

The trial court made two statements as the basis for dismissal: (1) just because the union is complying with the law they are not a government agency and (2) the burden is on Pat to prove Council 2 is a government agency.<sup>10</sup> Regarding statement one. The evidence in this case shows Council 2 is not complying with the CBA; they are knowingly violating the law. The trial court erred in this statement. Regarding statement two. WAC 44-14-01001 does not say Pat has to prove Council 2 is a government agency. Council 2 is not and has never been a government agency; this is an untenable burden. Pat's burden is to present evidence that Council 2 is acting as a surrogate for a government function. Pat presented such evidence. The trial court abused its discretion in not weighing the implications of what Council 2 is doing in that respect.

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<sup>10</sup> RP 18 line 15 and RP 19 line 12 (SEE: Appellant Brief page 9, trial court's statements)

*Bldg. Indus. Ass'n of Wash. v. McCarthy*, 152 Wn. App. 720; 218 P.3d

196 (2009). Pat's case supports Mr. Kuznetz' April 13<sup>th</sup> statement.

“The *Telford* test is designed to prevent the government from operating in secrecy via a private surrogate.” . . . The overall purpose of the PRA is “nothing less than the preservation of the most central tenets of representative government, mainly, the sovereignty of the people and the accountability to the people of public officials and institutions.” (CP 165)

The PRA defines a “public record” as “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” This definition does not limit the term to documents prepared by government officials.

*Cedar Grove Composting, Inc. v. City of Marysville*, 188 Wn. App. 695, 354 P.3d 249 (2015) cites *In Concerned Ratepayers Ass'n v. Public Utility District No. 1 of Clark County*, our Supreme Court held that an agency “uses” information for purposes of the PRA when the information is “applied to a given purpose or instrumental to [a governmental] end or process” and where “a nexus exists between the information and an agency's decision-making process.”

Due process for review of a case for a functional equivalent agency has to go further than this trial court allowed. Evidence was not presented in this case because the trial court dismissed the case before the process of appellant, response and reply briefs. This case was dismissed without review. The trial showed contempt for judicial review of the Public Records Act.

## **B. There are Employment Agreements**

Employment agreements are somewhat defined in CBA 12 and Spokane County Policies. Employment agreements would reasonably include:

- job descriptions records that in Spokane County are labeled “Class Specification”. The Assessor’s Class Specifications include: appraiser supervisor, assistant appraiser supervisor, commercial appraiser , industrial appraiser, residential appraiser, property records technician, residential appraiser trainee and, segregation and mapping supervisor;
- description of time keeping system;
- time sheets that are the basis of the normal work shift;
- records of prior negotiations;
- telephone contact sheets;
- Supplemental Agreements, Memorandum of Understanding<sup>11</sup>, such records exist.

The Spokane County Office of Budget and Finance reported budget overtime expenditures by the Assessor’s office (\$500 in 2015; \$1,400 in 2016; \$11,000 in 2017 and \$13,000 in 2018<sup>12</sup>) to the Commissioners. This shows the Assessor, the Spokane County Commissioners, the Budget Office, the Auditor, etc. know there should be Supplemental Agreements for the appraisers’ overtime – alternative work hours or shifts.

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<sup>11</sup> Brief of Appellant, page 9

<sup>12</sup> Ms. Downs Paul, Sr. Budget and Management Analyst, Budget Office, 477-5789

All parties involved in the contract except Council 2 benefit by not having Supplemental Agreements; by violating CBA Article 12.2. The County Commission looks fiscally responsible by under-funding and under-staffing the Assessor's office. The Assessor appears benevolent by rewarding appraisers with counting lunch and rest breaks as work hours and giving them free reign to any work shift. Appraisers get time and a half for gaming their work shifts. Council 2's constituency, appraisers, get more money and no doubt like that they appear to control their jobs with the help of Council 2. And Council 2 has leverage with the agency that values real property.

The public loses with less service at higher cost.

### **C. The Four Factors and Council 2**

- (1) Whether the entity performs a government function;
- (2) The level of government funding;
- (3) The extent of government involvement or regulation; and
- (4) Whether the entity was created by the government.

These four questions are inadequate to account for the relationship between Council 2 and Spokane County. None of these questions addresses Council 2's role when it acts in concert with appraisers, the Assessor, the County Commissioner, etc. to hide work hours and shifts of appraisers annually? This looks like a sharing of authority and benefits.

The issue is complicated when there is no clear demarcation between Council 2 and the government agencies.

#### **D. *Janus v. AFSCME* has Changed Things**

The U. S. Supreme Court on June 27, 2018, ruled against AFSCME that the application of public sector union fees to non-members is a violation of the First Amendment. Justice Alito wrote for the Court, that agency-shop agreements violate "the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." Alito recognized that losing these fees would put a financial burden on the public sector unions, who would continue to have to represent nonmembers even without their agency fees, but stated that "we must weigh these disadvantages against the considerable windfall that unions have received."

Council 2 has lost the revenue from nonmembers. Council 2 has lost the ability to hold itself forward as speaking for nonmembers.

The Spokane County Commission voted Tuesday, November 11, 2018, to negotiate public employee union contracts publicly – the public and media can witness the collective bargaining process in real time.

Spokesman Review, *County, union talks will be open* (Dec 12, 2018)

Commissioner Al French said in an interview, "Salaries are our largest cost, and the citizens ought to know how we're negotiating contracts and how we're trying to represent the best interests of both the taxpayers and our employees."

Washington's Open Public Meetings Act carves out an exemption for collective bargaining sessions, though it does not require they be held behind closed doors. Union leaders say privacy enables them to have frank, honest dialogue during negotiations.

To make that point, Val Holstrom principal officer of Teamsters Local 690 in Lincoln County, described a hypothetical scenario in which corrections officers discover a safety violation in the county jail and demand it be fixed during contract negotiations.

"Do they really want that violation brought up in public?" Holstrom said, "they" being county officials. "Those are the kinds of things that get brought up in collective bargaining that may not be in the county's best interest."

Kerns and French said they had been considering the public bargaining policy for years and believed many members of the public would support it.

"It makes it so these types of negotiations can never again turn into a kind of 'He said, she said' – type situation because it's all done in the open." Kerns said. "It's not done behind closed doors."

The Spokane County Commission says the public interest in how public money is spent outweighs the interests of Council 2.

Mr. Holstrom's hypothetical in the article shows the problem.

Corrections officers are contractually obligated to report safety violations so they can be corrected because it puts them, the public and their charges at risk. But Council 2 treats the safety violation as a bargaining chip to be kept secret until it is worth cashing in. Council 2 has used the Assessor's violations of CBA 12.2 as bargaining chips for years. Last year the Assessor did not meet the annual deadline for physical inspections to send out Official Valuation Notices in June/July. The Notices went out in

November because the Assessor's office is not doing its job allegedly because it is under-funded and under-staffed. But, it is also not doing its job because that is the way things are done!

**V. CONCLUSION**

**A. The Trial Court Erred in Dismissing This Case Without a Proper Review. It Erred In Ruling The Case Was Frivolous. It Erred in Awarding Council 2 Attorneys Fees and Costs**

The trial court abused its discretion in this case to give more power to Council 2. This case for a determination of a functional equivalent agency under the Public Records Act was improperly dismissed by the trial court based on Declarations not evidence. The trial court ruled the case frivolous with no evidence of a frivolous case. The trial court levied fees and costs based on these abuses of discretion. Pat requests the Appellate Court reverse the trial court's rulings.

**B. Pat is Entitled to Attorneys Fees and Costs on Appeal**

Under RAP 18.1(a), Pat requests attorneys fees and costs on appeal per RCW 42.56.550(4).

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of December, 2018.

  
\_\_\_\_\_  
Palmer D. Strand, Appellant

  
\_\_\_\_\_  
Patricia N. Strand, Appellant

CERTIFICATE OF SERVICE

I certify that on December 17, 2018, I served a true and correct copy of  
Appellant's Palmer D. and Patricia N. Strand's, Appellant Brief to:

Council 2-Washington State Council of  
County and City Employees, AFSCME,  
AFL-CIO and Local 1553 – Council 2 -  
Washington State Council of County and  
City Employees, AFSCME, AFL-CIO

c/o

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Attn: Larry J. Kuznetz  
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Division III Court of Appeals  
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Spokane, WA. 99201

Hand Delivery

A handwritten signature in black ink, appearing to read 'P. N. Strand', written over a horizontal line.

Patricia N. Strand