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Division III
State of Washington
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No. 36974-9-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

BENTON COUNTY,

Appellant

v.

TEAMSTERS LOCAL 839,

Respondent

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR BENTON COUNTY

NO. 18-2-00861-9

REPLY BRIEF OF APPELLANT

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I. ARGUMENT IN REPLY TO UNION RESPONSE BRIEF

A. PERC'S interpretation of chapter 49.48 RCW is not entitled to any deference.

Public Employment Relations Commission (PERC) conclusions of law are reviewed *de novo*, during which the Court may substitute its interpretation of the law for that of PERC. While a reviewing court may give PERC's interpretation of the *collective bargaining* statutes in chapter 41.56 RCW great weight and substantial deference, *see, e.g., City of Vancouver v. State Pub. Emp't Relations Comm'n*, 180 Wn. App. 333, 347, 325 P.3d 213 (2014), this case is governed by more specific and more recently enacted legislation in Title 49 RCW (Labor Regulations), i.e., RCW 49.48.200 and .210, specifically addressing Wages – Payment – Collection. The uncontested facts clearly establish Benton County (County) recouped undisputed debt owed by certain employees due to erroneous, unearned overpayments in multiple pay periods pursuant to the express statutory process in RCW 49.48.200 and .210. Br. of Respondent at 21; CP 453.

Respondent Teamsters Local 839 (Teamsters or Union), acknowledges that deference to PERC is limited to its interpretation of *collective bargaining* statutes. Br. of Respondent at 9. However, PERC's interpretation of RCW 49.48.200 and .210 is *not* entitled to substantial weight and great deference, as these statutes were expressly enacted in

direct response to the Washington Supreme Court's decision in *State v. Adams*, 107 Wn.2d 611, 732 P.2d 149 (1987), and are *not collective bargaining statutes*. Rather, chapter 49.48 RCW sets forth an *entirely separate title* pertaining to *labor regulations*, including recovery of erroneous overpayments of wages to employees in pay periods greater than the amounts *earned*, by statutory deductions from subsequent wage payments. See RCW 49.48.200, RCW 49.48.210.

In short, chapter 49.48 RCW is not a collective bargaining statute, PERC's interpretation of these statutes and chapter 41.56 RCW was not correct, and PERC is not entitled to any weight or deference.

B. The Union's statutory interpretation of chapter 49.48 RCW is illogical and inconsistent with the goals of statutory construction.

"In interpreting a statute, [the] *primary objective is to ascertain and give effect to the intent of the legislature.*" *Thorpe v. Inslee*, 188 Wn.2d 282, 289, 393 P.3d 1231 (2017) (emphasis added). However, the Union's incoherent and illogical arguments regarding RCW 49.48.200 and .210 and their relationship with chapter 41.56 RCW eviscerates the very purpose of the former and negates the *clear* intent of the Legislature in enacting RCW 49.48.200 and .210.

1. The Union's position is inconsistent and incoherent.

The Union's response is so inconsistent, one cannot deduce whether

the Union believes chapter 41.56 RCW and RCW 49.48.200 (and .210) are consistent, or whether the Union is inconsistent and actually believes chapter 41.56 RCW trumps the two statutory recoupment provisions in chapter 49.48 RCW, i.e., RCW 49.48.200 and .210. The Union argues “RCW 49.48.200, 49.48.210, and 41.56 can easily be read to work together without conflict.” Br. of Respondent at 15. And at the same time, the Union also argues “Undisputed That RCW 41.56 Trumps Repayment Statute.” Br. of Respondent at 26.

Additionally, the Union’s interpretation of RCW 49.48.210(10) and its applicability is inconsistent and illogical. The Union states at one point: “RCW 49.48.210(10) serves an important role in resolving disputes with the amount of the overpayments with unionized employees—but that is not an issue in this case.” Br. of Respondent at 15.

Yet, the Union subsequently tells the Court “[t]hat is why RCW 49.48.210(1) is not relevant for this case; RCW 49.48.210(10) *is*.” Br. of Respondent at 17. Which is it – is RCW 49.48.210(10) applicable to the facts in the case at bar - or is it not relevant?

Not only is the Union’s interpretation of RCW 49.48.200 and .210 largely incoherent, but it is also unsupported by the language of those statutory provisions and the legislative history of the Legislature’s enactments of RCW 49.48.200 and .210. The Union tries to persuade the

Court that only subsection (10) of RCW 49.48.210 applies to union employees, while the other nine subsections (1) – (9) apply to non-union employees. That argument is indefensible.

When first adopted in 2003, RCW 49.48.210, subsection (10) *did not even exist*, yet the 2003 legislation clearly was passed and intended to apply to *all* state employees – *both union and non-union*. CP 851-58, 877-78. Subsections (1) through (9) of RCW 49.48.210 applied to *both union and non-union employees*. In fact, this legislation was passed in direct response to the Washington Supreme Court’s decision in *Adams*, which involved only union employees. *Adams*, 107 Wn.2d at 613.

In 2004, the Legislature amended RCW 49.48.210: subsection (1) of was amended and subsection (10) added, no doubt because while chapter 41.56 RCW generally *did not* apply in recoupment situations, union members retained the right to utilize collective bargaining agreement grievance procedures if they *disputed* the *existence* or the *amount* of the debt. CP 874-78. That is all that subsection (10) of RCW 49.48.210 does—it makes clear that collective bargaining agreement grievance procedures must be followed if an employee does not believe they owe an employer the amount alleged. No legislative amendments were adopted that would make the other subsections in RCW 49.48.210 *not* applicable to union employees.

In those instances when the Union states that RCW 49.48.210(10) does not apply to this case, it is correct only with respect to the last sentence pertaining to *disputed* debts. The Union concedes that there are no disputed debts in this case! Br. of Respondent at 15, 21. Therefore, collective bargaining agreement grievance procedures are not available, as the Union and the County both agree as to the *existence* and the *amount* of the debt owed to the County, given the fact that certain employees received erroneous overpayments in excess of wages earned for hours worked. However, this does not mean, as the Union weakly argues, that subsections (6) and (9) of RCW 49.48.210 do not apply to union employees.

Further evidence of legislative intent is that absent the employee's agreement to payroll deductions in excess of the amount specified in RCW 49.48.200(1), each deduction shall not exceed five percent of the employee's disposable earnings in a pay period other than the final pay period. If the chapter 41.56 RCW applies and the County and the Union must bargain to agreement or impasse, leading to interest arbitration, why would the Legislature have placed a statutory five percent cap on payroll deductions without an employee's agreement to an amount in excess of the five percent? Neither a union nor employees subject to the recoupment of overpayments of wages needs the protection if chapter 41.56 RCW "trumps" RCW 49.48.200 and .210 and a repayment plan is a mandatory subject of

bargaining for union employees as argued by the Union. Br. of Respondent at 2.

2. The Union's interpretation also fails to logically explain the language of RCW 49.48.210(10).

The Union's explanation of RCW 49.48.210(10) also fails to explain the need for sub-section (10), particularly the last sentence of the sub-section. If, as the Union argues, chapter 41.56 RCW applies in all cases of statutory recoupment from union employees, why did the Legislature feel the need to add language in 2004 that stated that if a union employee disputes the *occurrence* or the *amount* of the debt, then the grievance procedures of the collective bargaining agreement would apply? CP 874-78. The use of the grievance procedures to challenge the *occurrence* or the *amount* of the erroneous overpayments would have already applied.

The logical reason for this new provision (RCW 49.48.210(10)) back in 2004, is that because the Legislature did not believe or intend that chapter 41.56 RCW applied with respect to the recoupment authority it had granted public employers to recover debts resulting from the erroneous overpayment of wages. Instead, the Legislature intended to grant union members the ability to utilize collective bargaining agreement grievance procedures only in limited situations where the employees dispute the *occurrence* or the *amount* of the debt owed the public employer due to

erroneous overpayments.

The County's interpretation harmonizes chapter 41.56 RCW and chapter 49.48 RCW and gives effect to every word and sentence; the interpretation offered by the Union clearly does not.

C. The Union inexplicably argues the Washington Supreme Court's decision in *Adams* has no relevance to the proper interpretation of RCW 49.48.200 and .210.

Amazingly, the Union ridiculously argues that *State v. Adams* is not relevant to the interpretation of chapter 41.56 RCW and RCW 49.48.200 and .210. Br. of Respondent at 19-20. It is undisputed the Legislature's passage of RCW 49.48.200 and .210 (and amendments) in 2003 and 2004, was in *direct* response to the Washington Supreme Court concerns discussed in *State v. Adams* regarding a lack of procedural safeguards to protect due process rights of union employees when the public employer sought recoupment of erroneous overpayments. *Adams*, 107 Wn.2d at 615; CP 854-58, 874-78. Obviously, that the *Adams* case created the purpose for these pieces of legislation (RCW 49.48.200 and .210) is very informative when interpreting and applying that legislation, i.e., RCW 49.48.200 and .210.

The Washington Supreme Court in *Adams* did *not* indicate or even imply that *any* collective bargaining was required by chapter 41.56 RCW in connection with the State's lawsuit seeking a declaration that it could recoup

debts from union employees. The Supreme Court did not predicate the State employer's ability to recoup funds erroneously given to employees through overpayments or its ability to sue union employees for such overpayments, on collectively bargaining with the defendant union. The Supreme Court simply held recoupment required a statutory process to protect employees' due process rights. *Adams*, 107 Wn.2d at 615, 617, 619. Without these statutory procedures, the Washington Supreme Court ruled "that . . . the State may collect the overpayments only by bringing a civil action." *Id.* at 615.

State v. Adams is still good law, and the Washington Supreme Court's discussion of issues related to public employers recouping public funds erroneously overpaid to union employees remains relevant today with its ruling, as well as other guidance in that case addressing still pertinent issues. The Legislature was very clear that its enactments (RCW 49.48.200 and .210) following *State v. Adams* were the direct result of the Washington Supreme Court's ruling therein. CP 854-58, 860-62, 874-78, 880. And perhaps most importantly, despite ample opportunity, the Supreme Court in *Adams* gave absolutely *no* indication that chapter 41.56 RCW had *any* application with respect to a public employer's remedy for the recovery of debts owed to it by their employees.

In the case at bar, the County diligently followed the statutory process adopted by the Legislature in *direct* response to *Adams* so as to afford union employees their due process rights. Affected Corrections Officers were specifically made aware, *inter alia*, of the alleged debts and their statutory rights. These employees were also provided statutory notice of the opportunity to dispute that they owed the County funds, although they did not dispute those debts by challenging the issue through their collective bargaining agreement grievance procedures as permitted by RCW 49.48.210(10). CP 322-27.

Consequently, there was no possibility of the recoupment process in the case at bar resulting in Union employees being paid less wages than they were owed, or at a date later than they were owed. Instead, the case at bar was simply a creditor/debtor situation that the County was directed by the Legislature to remedy through the recoupment process via RCW 49.48.200 and .210, as the direct result of the Supreme Court's ruling and guidance in *Adams*.

D. The Union's argument that chapter 41.56 RCW applies to the statutory recoupment of funds via chapter 49.48 RCW to satisfy an admitted debt is not supported by the facts or the law.

1. The County did not reduce the wages paid affected Corrections Officers.

The parties agree that under chapter 41.56 RCW, unions and employers must bargain over wages, hours, and other terms and conditions of employment. The Union herein simplistically and erroneously asserts that the Union sought to “bargain about the repayment of wages.” Br. of Respondent at 26. That declaration is simply not true!

The Union admits that there is no dispute as to the *existence* or the *amount* of the debt owed the County by its members. Br. of Respondent at 15, 21. By definition, that means that the Union members were paid the *full* amount of wages, *plus* amounts *not earned* or owed to the them, i.e., erroneous overpayments. Only some portion of those excess funds that were erroneously paid the employees would be recouped each paycheck from their wages pursuant to the statutory process, and when the debt was paid in full, the employees would have still been paid their full wages earned/owed, albeit in a timeframe *earlier* than that to which they were actually entitled.

The case at bar is not a situation where the employees were *ever paid less* than that to which they were entitled, or even paid at a later date than that to which they were entitled. This recoupment process simply involved a creditor/debtor situation where the creditor County used a statutorily authorized process for public employers to recoup an admitted debt due to erroneous overpayments from their employees. Consequently,

the County's actions did *not* impair employees' wages, and chapter 41.56 RCW does *not* by its terms require bargaining in the case at bar.

2. The Union has cited no authority indicating chapter 41.56 RCW applies.

The Union boldly proclaims, "there is undisputed precedent that the deduction of wages to collect overpayments is a mandatory subject of bargaining, as a PERC Hearing Examiner and the Commission have already ruled in *Tacoma Police Union Local 6 v. City of Tacoma*." Br. of Respondent at 20. The Union inaccurately opines "[t]he *facts and decision* from *Tacoma Police . . . are on all fours with the present case*." Br. of Respondent at 21 (emphasis added).

The Union is simply incorrect in its unsupported assertion that *City of Tacoma*, Decision 11097-A (PECB, 2012), is relevant, let alone controlling. In fact, *neither* the Hearing Examiner nor PERC even *referenced* the *City of Tacoma* decision in their respective opinions, let alone cited the case as authority for the proposition that PERC previously ruled the statutory recovery of undisputed debt due to erroneous overpayments for hours not worked from subsequent wage payments is a mandatory subject of bargaining, as claimed by the Union. CP 59-80, 87-90.

Additionally, *City of Tacoma* facts differ significantly and fundamentally, from the facts in this case. Given the Union's fatally flawed reliance on *City of Tacoma* for sole support of its position, a review of its actual facts is in order.

In *City of Tacoma*, some police employees attended and participated in an annual charity basketball game with firefighters, *while on duty*, commencing in 2005. In 2008 and 2009, police employees who were on-duty during game time were placed on "special duty" and paid wages for the day of their participation in the charity basketball game. Thus, employer Tacoma had historically treated police employees as *on duty* and paid their *wages* when they participated in the annual charity basketball game and *agreed and intentionally paid* these employees their actual wages for "work" performed.

After this practice occurred for a number of years, employer Tacoma sent notice to the union that it was unilaterally changing the *past* practice of *intentionally* paying police employees their wages for their time spent participating in the annual charity basketball game in future years. In June 2009, the Tacoma police chief issued a memo to police employees, advising that employees participating in future charity basketball games must be off duty for the event.

More importantly, employer Tacoma sought repayment of these prior wages *intentionally* paid to police employees for participating in the annual charity basketball game in past years. In March 2010, the police chief sent a memo to a number of police employees, seeking reimbursement for prior wages earned and paid to police employees for time spent previously participating in the annual charity basketball games in 2008 and 2009.

City of Tacoma clearly does *not* state employer Tacoma pursued recovery of debt owed for the *erroneous* mis-delivery of public funds for hours not worked through deductions from subsequent wage payments pursuant to express statutory authority in chapter 49.48 RCW, as in the case at bar. Chapter 49.48 RCW is not even referenced in *City of Tacoma*, let alone identified by employer Tacoma as the basis for seeking repayment by police employees for hours actually worked, and wages earned, by participating in the charity basketball game.

Not only does *City of Tacoma* not address recoupment of the *erroneous* mis-delivery of public funds through admitted overpayments of wages not earned, as in the case at bar, the decision does not even address overpayments. In the present case, there is no dispute that affected Corrections Officers were only in receipt of public funds erroneously mis-delivered in a number of their monthly paychecks. CP 453. In the case at

bar, there very clearly is *no* issue pertaining to “wages” earned for actual *hours worked*, as in *City of Tacoma*.

City of Tacoma litigation addressed chapter 41.56 RCW, *not* chapter 49.48 RCW as in the case at bar, as the union therein challenged employer Tacoma unilaterally attempting to change the undisputed past practice of paying police employees their wages for their time participating in the annual charity basketball game. Employer Tacoma also attempted to obtain repayment of wages earned and *intentionally* paid to police employees for participating in the annual charity basketball in past years, i.e., 2008 and 2009.

The issue in the instant case is limited to *undisputed debt* due the County from the *erroneous* overpayments of public funds to affected Corrections Officers for hours not worked. The subject overpayments may be recovered by deductions from subsequent wage payments, or civil action, as expressly provided in RCW 49.48.200 and .210. *City of Tacoma* cited by the Union is clearly inapposite to the case at bar, both in terms of the facts and the legal issues. *City of Tacoma* does *not* pertain to the *erroneous* overpayment of wages for hours *not* worked, facts not disputed in the instant case, nor does *City of Tacoma* even reference chapter 49.48 RCW. *City of Tacoma* is neither instructive nor persuasive, let alone controlling as mystifyingly represented by the Union.

The Union attempts in vain to locate *any* cases supporting its position, footnoting two other cases with facts also inapposite to the case at bar. The Union cites *University of Washington*, Decision 10771 (PECB, 2010), which does not even remotely support its position or its claim herein, arguing that “[t]he *overpayment of employee-paid premiums* and any refunds resulting from overpayments is *arguably* a mandatory subject of bargaining.”¹ Br. of Respondent at 26, n.63 (emphasis added). By burying this quote in a footnote, the Union tacitly acknowledges that the issue in *University of Washington* was limited to the return of money from an insurance carrier to employees who had financially contributed towards their insurance premiums, as opposed to the case at bar, wherein the Union concedes the subject erroneous overpayments belong to the County. Br. of Respondent at 15, 21. The Union also submits *Spokane County*, Decision 8154 (PECB, 2003), as authority for its stated position, which was cited by *University of Washington*. Br. of Respondent at 26, n.63. *Spokane County*

¹ *University of Washington* dealt with premium overpayments made to the employer’s former health insurance carrier. *Some of the premium overpayments included premiums paid by bargaining unit members.* This case clearly has no application to the issues in the case at bar, when the parties herein concur: affected Corrections Officers received erroneous overpayments for a number of months for hours not worked; the amounts of the overpayments is undisputed; and, that the overpayments must be repaid to the County. Additionally, the *University of Washington* decision is a preliminary ruling, wherein the PERC ULP Manager as the decision-maker acknowledged that “[a] preliminary ruling is not intended to establish new legal precedent or create new policy.” *University of Washington*, Decision 10771 (PECB, 2010) at 2.

somewhat parallels the *University of Washington* case factually,² and also is inapposite to the case at bar.

Just like *University of Washington*, *Spokane County* also has no application to the case at bar, as the Union and the County agree: Corrections Officers received erroneous overpayments for a number of months for hours not worked; the amount of the overpayments is undisputed; and, the overpayments must be repaid to the County. Both *University of Washington* and *Spokane County* involve situations wherein union employees had financially contributed to insurance premiums and the respective unions wanted to negotiate with the employers how refunds from the insurance carriers would be returned and distributed amongst the employer and the individual contributing employees. Both *University of Washington* and *Spokane County* involve situations wherein disputes then arose over the return of a portion of employees' money, and how to apportion the refunds between the employer and the employees—there is no question that is not the situation in the case at bar, wherein it is

² In *Spokane County*, the employer county and the union negotiated for employer payment of a basic term life insurance policy for employees, through diversion of a portion of employee wages. Supplemental life insurance was also available at the individual employee's sole option and expense. The insurance company came to a position to deliver a cash payout for the policies and, the union demanded to negotiate the distribution of payout checks for the basic life insurance policy, as well as the supplemental life insurance policy, to which employees had contributed.

undisputed certain County employees erroneously received overpayments and are required to return the public funds to the County.

E. PERC's remedy is arbitrary and capricious and does not do substantial justice.

PERC's remedy of ordering the County to return statutorily recouped public funds to employees, including interest, must primarily be vacated because PERC, as described above and in County briefing, erroneously concluded that chapter 41.56 RCW applied to the RCW 49.48.200 and .210 recoupment process, and the County violated chapter 41.56 RCW.

However, if the Court affirms PERC's legal interpretation of applicable statutes to the case at bar, specifically relating to the application of chapter 41.56 RCW to statutory recoupment of undisputed debt pursuant to RCW 49.48.200 and .210 due to erroneous overpayments, it should nonetheless vacate PERC's remedy to the extent it does not serve substantial justice and is arbitrary and capricious. An administrative agency acts in an arbitrary or capricious manner if it takes "willful and unreasonable action, without consideration of facts or circumstances." *Terhar v. Dep't of Licensing*, 54 Wn. App. 28, 34, 771 P.2d 1180, *rev. den.*, 113 Wn.2d 1008 (1989); *Sullivan v. Dep't of Transp.*, 71 Wn. App. 317, 321, 858 P.2d 283 (1993).

The Union argues that the County must return not only the public funds that the Union acknowledges belong to the County, but also interest³ on those funds, because the County's alleged failure to negotiate a repayment plan was "flagrant" in this case. Br. of Respondent at 12. The Union further cites WAC 391-45-410(3) for the proposition that the County must pay the same interest rate applicable to civil judgments. *Id.* However, WAC 391-45-410 addresses reinstatement to employment with a back-pay remedy, which is not even remotely applicable to the undisputed facts in this case.

The parties' briefing, at the very least, establishes a good faith difference of opinion as to whether chapter 41.56 RCW imposes a duty on the County to bargain based on the facts before the Court. The County certainly did not "flagrantly violate" any law! The County believes it followed the law by expressly adhering to RCW 49.48.200 and .210 procedures to the letter, a position which does not appear to be contested by the Union. And neither the Washington Supreme Court in *Adams* nor the express language of RCW 49.48.200 and .210 provide *any* indication that

³ The Union fails to specify an interest rate, merely citing to WAC 391-45-410(3). Br. of Respondent at 12, 14. If the Court determines interest is owed, it appears the applicable interest rate would be two percentage points above the prime rate, pursuant to RCW 4.56.110(3). *See, e.g., State Commc'n Access Project v. Regal Cinemas, Inc.*, 173 Wn. App. 174, 293 P.3d 413, *rev. den.*, 178 Wn.2d 1010, 308 P.3d 643 (2013), wherein the court determined the appropriate interest rate on the judgment for violations of the Washington Law Against Discrimination Act (chapter 49.60 RCW) was essentially a case arising in tort, was two percentage points above the prime rate pursuant to RCW 4.56.110(3).

collective bargaining under chapter 41.56 RCW was required to recover public funds admittedly owed to a public employer due to erroneous overpayments.

Not only that, but the circumstances of this case make PERC's order that the County return public funds, with interest, to employees that admittedly do not now, nor have they ever had, any right, title, interest and/or right of possession or control in the erroneously misdelivered public funds, completely illogical. The Hearing Examiner recognized that this case was an "unusual situation," and that an "order different from the regular status quo remedy" may be dictated. CP 59-80.

The Union deflects attention from the real issues with its attempts to construct a non-issue, arguing that the County should "not benefit financially . . . from its willful violation of state labor laws." Br. of Respondent at 12. Clearly the County did not, and could not have, *benefitted financially* from following the statutory process to recoup erroneous overpayments to Corrections Officers for hours not worked. In actuality, the only parties that have financially benefitted from overpayments in this situation are affected Corrections Officers that received their wages earlier than they were entitled to receive them, in multiple pay periods. Br. of Respondent at 21; CP 453.

The Union does not dispute the *occurrence* or the *amounts* of the erroneous overpayments, conceding the overpayments must be returned to the County. Br. of Respondent at 15, 21. The County does not benefit financially from the return of public funds erroneously misdelivered to affected Corrections Officers as overpayments in multiple pay periods for hours not worked. CP 453. The County in fact lost money for the time period commencing with the erroneous delivery of overpayments, to the lawful recoupment of public funds pursuant to express statutory authority in RCW 49.48.200 and .210, including the loss of use of the money, and applicable interest accrual.

At the absolute minimum, the Court should recognize that the County did not *flagrantly* violate the law and that under these extenuating circumstances, that portion of PERC's order requiring the repayment of the public funds to the employees should at least be vacated.⁴

II. CONCLUSION

This case is neither about "wages" nor does it involve a labor dispute triggering chapter 41.56 RCW collective bargaining obligations. All

⁴ Should the Court order repayment of funds recouped by the County, interest should not be ordered because the employees already received a windfall resulting from the earlier than required payment of wages. And certainly, any interest that is ordered should be at the rate of two points above the prime rate as the County discussed in fn. 3, *supra*, and not 12% because this case involves a debtor/credit situation, not a case arising in tort, nor from a reinstatement to employment with a back-pay remedy, pursuant to WAC 391-45-410, as asserted by the Union.

affected Corrections Officers admittedly received erroneous overpayments of public funds for hours not worked. RCW 49.48.200 (and .210) was expressly enacted by the Legislature following the Washington Supreme Court *Adams* decision, to create a mechanism for government to recover undisputed debt owed by public employees to their employers. For reasons discussed herein and in County briefing, chapter 41.56 RCW is clearly not applicable to the case at bar, as this statutory chapter is limited to addressing *collective bargaining*, including terms and conditions of employment, wages and benefits.

PERC's ruling that chapter 41.56 RCW generally applies even to public employers recouping admitted debts is clear legal error. The Legislature only granted union employees the limited ability to utilize the collective bargaining agreement grievance procedures when the debt is in dispute (occurrence or amount)—not an issue in the case at bar. This is understandable, because if the debt is not in dispute, an employee's full wages undeniably *were* paid, albeit *earlier* than an employee was entitled to them. Procedural safeguards for a non-union employee's challenge to the *occurrence* or the *amounts* of overpayments are set forth in RCW 49.48.210(5).

There is a very clear and direct line running straight from the Washington Supreme Court's concerns, analysis, and ruling in *State v.*

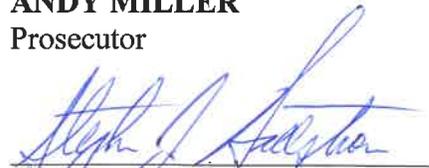
Adams, 107 Wn.2d 611, 732 P.2d 149 (1987) and the legislative response. The Legislature's enactment of RCW 49.48.200 (and .210) including amendments, in 2003 and 2004, was indisputably in *direct* response to the Washington Supreme Court's ruling in *Adams*.

PERC's remedy must be overturned regardless, as arbitrary and capricious. Not only does chapter 41.56 RCW *not* apply to the recoupment of admitted and undisputed debts as in the case at bar, but the County had no reason to believe it did. It is clearly arbitrary and capricious to impose the draconian measure of requiring that Benton County temporarily give admittedly owed public funds back to employees, with interest, only to then seek recoupment once again through interest arbitration, as emphasized in Union briefing.

Benton County respectfully requests for all of the reasons in its briefing, that the Court render a decision finding PERC incorrectly found ULP violations and dismiss the Union ULP complaints with prejudice.

RESPECTFULLY SUBMITTED this 13th day of March, 2020.

ANDY MILLER
Prosecutor



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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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Signed at Kennewick, Washington on March 13, 2020.


Demetra Murphy
Appellate Secretary

BENTON COUNTY PROSECUTOR'S OFFICE

March 13, 2020 - 4:18 PM

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Filed with Court: Court of Appeals Division III
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