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No. 80720-5

FILED
FEB 11 2008
CLERK OF SUPREME COURT
STATE OF WASHINGTON

**SUPREME COURT
OF THE STATE OF WASHINGTON**

**KITSAP COUNTY DEPUTY
SHERIFF'S GUILD; and
DEPUTY BRIAN LAFRANCE
and JANE DOE LAFRANCE,
and the marital community
composed thereof,**

**Appellant/Cross-
Respondent,**

v.

**KITSAP COUNTY and
KITSAP COUNTY SHERIFF,**

**Respondent/Cross-
Appellant.**

**PETITIONER'S ANSWER TO AMICI CURIAE
MEMORANDA**

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2008 FEB 11 P 3:34

BY RONALD R. CARPENTER

CLERK

CLINE & ASSOCIATES

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ORIGINAL

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I. INTRODUCTION

Petitioner Kitsap County Deputy Sheriff's Guild urges this Court to review the decision of the Court of Appeals, Division II in which it adopted "public policy" as a reason to set aside an otherwise "final and binding" labor arbitration decision. No pleadings in opposition to the Petition have been yet filed by Kitsap County but two amici briefs have been filed *in support* of the Guild's Petition. The Guild briefly answers those Memoranda and brings additional relevant information to this Court's attention.

II. ARGUMENT

A. Amici Correctly indicate the Public Policy Exception should be Narrowly Construed.

As noted by the Guild in its Petition and by the Amici, the "public policy" exception to enforcement of labor arbitration decision is exceptionally narrow. Amici correctly indicate that the Court of Appeals vastly exceeded the accepted parameters of that exception.

The Guild had argued in its Petition that no Washington labor arbitration case had been set aside on grounds of public policy, although it did not dispute that, based on general contract law principles, public policy could theoretically exist as a basis to refuse to enforce such an award and noted that in at least one case, *IBEW Local 77 v. Grays Harbor*

PUD,¹ a Washington court had indicate that in dicta that public policy *could* be a reason for not enforcing an award. Amicus WACOPS more accurately indicates in its brief that there has also been one decision their research discovered, *Kennewick Education Association v. Kennewick School District*,² in which an appellate court *did* refuse to enforce an arbitrator's punitive damage remedy on grounds of public policy.

The *Kennewick* decision had not been cited by the Court of Appeals in this case or in any of the briefing below. Nor did the Guild's research for this Petition reveal it. The *Kennewick* decision also did not cite to the *Grays Harbor* case. The Guild apologizes to the Court for this research oversight. But the fundamental point of the Guild remains unaltered; the Guild has always acknowledged that public policy could be the basis for setting aside an Arbitration Award but only in an exceptionally unusual case.

The *Kennewick* case is such an unusual case because punitive damages were granted. The *Kennewick* case involved issues of payment for a breach of the overtime provisions of the labor contract. It continues to remain the Guild's contention that no Washington appeals court has overturned a case involving discipline on grounds of public policy.

¹ 40 Wn. App. 61, 696 P.2d 1264 (1985).

Because the type of public policy review involved in the *Kennewick* decision is quite different than the type involved in a discipline case with a “make whole” remedy, the Guild’s central point remains valid.

The standard of judicial review adopted in extrajurisdictional case law, as indicated by the amici, has been to *very narrowly* allow court review of binding arbitration awards. This standard permits such decisions to be overturned *only in the most unusual of circumstances*. The amici correctly note that those circumstances simply are not present here. The Court of Appeals incorrectly applied the case law and also incorrectly construed the record. Taken together, these errors call out for this Court to exercise its jurisdiction to accept Review.

B. Amici Correctly indicate the Court of Appeals Decision is already impacting the Real World Finality of Arbitration Awards.

The amici also raise concerns about the statewide impact of the Court of Appeals decision. WACOPS stresses the importance the finality of arbitration has to its members the negative impact including protracted litigation if arbitrator’s decisions become “freely appealable.”³ In the separate brief of Amici Okanogan County Deputy Sheriff’s Guild and Yakima Police Patrolman’s Association, the predicted impact is shown to

² 35 Wn. App. 280, 666 P.2d 928 (1983).

³ WACOPS Memorandum at 2.

have a real world basis in that both of these labor organization have been impacted by employer "appeals" of what they had believed to be final binding arbitration decisions.

And now even further evidence now exists that the concerns raised by the amici are well based. As indicated in the attacked Declaration of *another* Guild President, the impact of the *Kitsap* decision seems to be gaining momentum. Yakima County Law Enforcement Officers Guild President Eric Wolfe describes in his Declaration a third real world example of how employers are refusing to abide by what heretofore had been accepted as final and binding arbitration decisions. Although the examples cited by the other amici are definitely germane, the case raised by Guild President Wolfe may be the most distinctive example of an employer's abuse of the court review process.

As indicated by Wolfe, Yakima seeks to have a decision set aside on grounds of public policy where there is no apparent argument for such an exception *after the County had already engaged in a years-long refusal to arbitrate in the first instance*. This simply seems to be the case of an employer abusing the judicial system by invoking the ambiguities available to it by the *Kitsap* decision. In this instance Yakima County fired a deputy sheriff in 2003, then engaged in a protracted fight to keep

the case from the arbitrator until it was ultimately ordered by the Court of Appeals, Division III that it must arbitrate,⁴ then was found by the arbitrator in a strongly worded decision to no basis for the discharge and yet now takes the matter back to court relitigating the *already decided* arbitrability issue and presents a new challenge to the award *based on public policy*. All told, Wolfe predicts that *before the County finally has to reinstate the deputy, seven years will have passed and much of the Guild's resources will be drained*.

This is precisely the type of protraction that this Court sought to end in *Clark County PUD v. Wilkinson*.⁵ Labor organizations do not have endless resources, especially those small employee-organized independent groups funded primarily through deduction from their members' paychecks. Deep pocket public entities are using the ambiguities in the *Kitsap* decision to refuse to abide by their promise to make labor arbitration decisions "final and binding."

The three employer challenges presented since *Kitsap* are not likely to be the last. It is reasonable to predict that if this Petition is not granted, public employers are likely to be further emboldened in their

⁴ *Yakima County Law Enforcement Officers Guild v. Yakima County*, 133 Wn. App. 558 (2006).

⁵ 150 Wn.2d 237, 74 P.2d 248 (2003).

efforts to challenge labor arbitration decisions. Instead of waiting for more Superior Court challenges to enter the pipeline for more appellate court review at later time, this Court can stem this tide by addressing this issue now.

III. CONCLUSION

The Amici are correct that because of its statewide impact and future potential to wreck widespread havoc, this case warrants the Court's attention. The Guild understands this Court's time and resources are limited and that only a very small percentage of all Petitions for Review can be accepted. Intervention into this issue at this time will likely conserve judicial resources and the long run and prevent further destabilization of public sector collective bargaining relations.

DATED this 11th day of February, 2008, at Seattle, Washington.



James M. Cline, WSBA #16244
Rebecca Lederer, WSBA #38568
Attorney for Kitsap County Deputy
Sheriff's Guild

CERTIFICATE OF SERVICE

I, Debora G. Pettersen, Legal Assistant for James M. Cline, declare that I served the **PETITIONER'S ANSWER TO AMICI CURIAE MEMORANDUM** to which this Certificate of Service is attached in the following manner to each of the entities below listed:

Clerk, Supreme Court
415 12th Ave SW
PO Box 40929
Olympia, WA 98504-0929

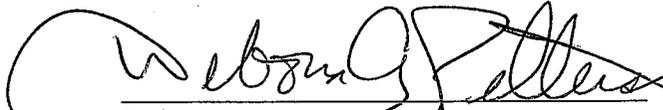
Via Facsimile
 Via U.S. Mail
 Via Legal Mssngr
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Jacquelyn Aufderheide
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M/A 35A
614 Division Street
Port Orchard, WA 98366-4691
Jaufderh@MAIL1.CO.KITSAP.WA.US

Via Facsimile
 Via U.S. Mail
 Via Legal Mssngr
 Email

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

DATED at Seattle, Washington, this 11th day of February, 2008.



Debora G. Pettersen

SUPREME COURT OF THE STATE OF WASHINGTON
NO. 80720-5

KITSAP COUNTY DEPUTY
SHERIFF'S
GUILD; and DEPUTY BRIAN
LAFRANCE
and JANE DOE LAFRANCE,
and the marital community
composed thereof,

Appellant/Cross-Respondent,

v.

KITSAP COUNTY and KITSAP
COUNTY SHERIFF,

Respondent/Cross-Appellant.

DECLARATION
OF ERIC WOLFE

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

2008 FEB 11 P 3:33

BY RONALD R. CARPENTER

CLERK

ERIC WOLFE declares, under penalty of perjury under the laws of the State of Washington, as follows:

- 1. Background.** I am the President of the Yakima County Law Enforcement Officers Guild. The Guild represents the Deputy Sheriffs and Sergeants in the Yakima County Sheriff's Office.
- 2. Guild's interest.** I understand that the Kitsap County Sheriff's Guild is involved in an appeal involving whether an arbitration decision should be set aside on grounds of "public policy." My Guild is interested in the outcome of this appeal because we have a case pending that might be affected. I will describe the history and details

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of our arbitration case because it might have a bearing on whether you accept the Kitsap Guild's appeal.

3. **A Seven Year Battle.** One of our Deputies, Jan Bartleson, was fired by the County in July 2003. Even though the Guild successfully arbitrated to have the County's discharge decision overturn, Ms. Bartleson is *still* not at work. The County refuses to abide by the arbitration decision and is challenging the decision on grounds of "public policy" among other grounds. We are anticipating, unfortunately, *another* two to three years of litigation (through Superior Court and we expect the Court of Appeals) before the County exhaust all its litigation. By then we are anticipating Ms. Bartleson would have been terminated for about 7 years and the County taxpayers will end up paying 7 years of back pay. The Guild strongly opposes such protracted litigation and cannot see how this is in the public interest. The details of this case are revealing as to how a public agency has attempted to drag out the resources of a public employees' labor organization.

4. **Termination after an EEOC complaint.** As indicated, Deputy Bartleson was discharged in July 2003. The discharge occurred a short time after she had filed a complaint with the EEOC claiming the County has violated her Family Medical Leave Act rights. Not long after Bartleson's EEOC complaint, the County commenced an internal

investigation against her. It never concluded the investigation but instead sent the materials to a local psychiatrist and asked him to conduct a "fitness for duty" examination. Without providing Deputy Bartleson any type of prediscipline hearing to rebut these charges, the County fired her.

5. **County refusal to arbitrate.** The Guild then promptly grieved the discharge. At first, the parties appeared to be heading to arbitration but then months after the grievance was filed the County refused to arbitrate. The Guild then had to sue Yakima County in court. The Guild won an order compelling arbitration on summary judgment in Benton County Superior Court. The County still refused to arbitrate and appealed the order to the Court of Appeals. The Court of Appeals rejected the County's appeal and ordered the County to arbitrate. The Decision is published: 133 Wn. App. 558 (2006).

6. **Order on attorney fees.** In the Court of Appeals the Guild had asked that the County also be required to pay the Guild's attorney fees for having to bring the lawsuit in the first place. The Court of Appeals ruled that this issue was to be decided by the arbitrator.

7. **Another County effort to stop the arbitration.** Finally by September 2007, we had our scheduled arbitration hearing. But even weeks before the hearing the County tried again to have the grievance dismissed claiming again that the issues were not subject to arbitration.

The Arbitrator rejected the County's arguments and directed that the hearing proceed.

8. **No tests ever performed.** At the hearing the evidence came out that the local psychiatrist never conducted *any* tests when he determined that Bartleson was not fit for duty. The Guild presented a clinical psychologist very experienced in law enforcement fitness examination who testified that she did perform tests and that Ms. Bartleson was fully fit and that that County had no competent basis to conclude otherwise. Also at the hearing the County's local psychiatrist admitted that he had no basis in any DSM-IV diagnosis for his conclusion but that he was relying on materials written by Dr. Freud in the 1890s.

9. **Strongly worded arbitration decision.** In December 2007 the arbitrator issued a very strongly worded opinion ordering that Bartleson be reinstated. He found numerous errors in the County's decision to fire her including the lack of due process and the failure of the local psychiatrist to conduct any types of tests. He found that the County's refusal to arbitrate lacked any basis and ordered them to pay the Guild's attorney fees for having to sue in court. He expressed great dismay at how the County had proceeded and ordered the Sheriff and several of his managers to attend on how to address issues of

employees having personal problems and training on how to conduct a proper internal investigation.

10. Another county court challenge. Our labor contract indicates that arbitration is final and binding. But instead of accepting the final and binding arbitration decision the County now has commenced a new round of litigation. It has filed an action in Yakima County Superior Court asking the decision to be set aside. A copy of County's lawsuit is attached as Exhibit A. Some of its grounds include arguments about whether the grievance was subject to arbitration *that had already by decided against it by both the Benton County Superior Court and the Court of Appeals.*

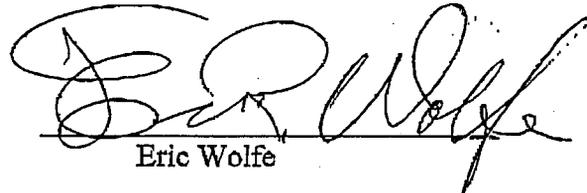
11. Public policy argument. Besides relitigating the arbitrability issue, the County seeks to have the Award set aside on several grounds including that it violates "public policy." I was present at the hearing and read the briefs filed by the attorneys. I also read the arbitrator's decision. His decision seems to me to be fairly well based on the evidence and arguments presented at the hearing. The County made extremely poor decisions during its process firing Deputy Bartleson and the arbitrator's decision seems very reasonable to me. I cannot comprehend how it can violate any public policy for the arbitrator to weigh the competing evidence and arguments and direct the Deputy be returned to work.

12. **County's actions drain Guild's resources.** The County's continued refusal to abide by our labor contract drains resources from our Guild treasury and that treasury is financed out of the pockets of my members. We are not going to allow the County to win this battle simply by wearing us down financially. But it is very frustrating for me and for my members to have to see us involved in years of litigation simply to get a single grievance resolved. The idea of our grievance procedure as written was that it would be speedy and final.

13. **Influence of Kitsap County case.** I do not know all the County's thinking as it refuses to abide by the arbitration decision and protracts this litigation. I am concerned that at least part of their motivation to challenge this in court again stems from the Court of Appeals ruling in Kitsap County. I don't know whether the County will drop its challenge simply because this Court accepts review of the Kitsap County decision but I do believe that clarifying what ability public employers have to refuse to live with arbitration decisions based on "public policy" arguments will help us not only in this litigation as it moves to a court hearing but perhaps in future cases as well. If the Court can issue clear guidelines as to when arbitration decisions can and cannot be challenged it would be helpful, I believe, not only for our labor organization but for other labor groups around the state.

14. Arbitrator notes how rare challenges have been. It is my understanding that despite the protracted litigation experienced in this case, in the past, most parties have accepted awards as final and binding. My concern is that the Kitsap case gives employers a green light to fight decision in court that it does not like. My impression that these types of challenges in the past have been rare is supported by a letter from our Arbitrator attached as Exhibit B. After the County served its papers on him he wrote back expressing confusion as to what he was supposed to do. He also indicates that in his 25 years of arbitration he had only had a couple decisions challenged previously in court. My concern is that if the issue in Kitsap County is not clarified that during the next 25 years we will have far, far more litigation between public employers and public employee unions as to whether employers will abide by arbitration decisions.

RESPECTFULLY SUBMITTED this 11 day of February,
2008, at ^{YAKIMA}~~Seattle~~, Washington.


Eric Wolfe

CERTIFICATE OF SERVICE

I, Debora G. Pettersen, Legal Assistant to James M. Cline, declares, under penalty of perjury, under the laws of the State of Washington, that I served the Declaration of Eric Wolfe to which this Certificate of Service is attached in the following manner to the entities below listed:

Clerk, Supreme Court
415 12th Ave SW
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[] Via Facsimile
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[] Via Legal Mssngr
[X] Email

I certify and acknowledge under the laws of the State of Washington that the foregoing is true.

DATED at Seattle, Washington, this 11th day of February, 2008.


Debora G. Pettersen

EXHIBIT A

FILED

JAN 25 2008

KIM M. EATON, YAKIMA COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF YAKIMA

YAKIMA COUNTY,)
)
 Plaintiff,)
)
 v.)
)
 JAMES A. LUNDBERG, Arbitrator,)
 YAKIMA COUNTY LAW)
 ENFORCEMENT OFFICERS GUILD)
 and JAN BARTLESON,)
)
 Defendants.)

NO: 08 2 00241 1
PETITION OR APPLICATION
FOR WRIT OF CERTIORARI/
REVIEW

TO Defendants above named.
AND: CLERK OF THE COURT

Plaintiff seeks review of the Opinion and Award dated December 23, 2007, of James A. Lundberg in his official capacity as the arbitrator of a dispute between Yakima County and the Yakima County Law Enforcement Officers Guild and Jan Bartleson.

Application is hereby made on behalf of Plaintiff for a writ of certiorari/review pursuant to RCW 7.16.040.

In the alternative, application is hereby made, on behalf of Plaintiff, for a writ of certiorari/review pursuant to Article IV, Section 6, of the Washington State Constitution.

In support of Plaintiff's application for a statutory and/or constitutional writ of certiorari, Plaintiff alleges as follows:

PETITION OR APPLICATION FOR
WRIT OF CERTORARI/REVIEW -1

MENKE JACKSON BEYER
ELOFSON EHLIS & HARPER, LLP
807 North 39th Avenue
Yakima, WA 98902
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3 The Opinion and Award of James A. Lundberg, in his capacity as arbitrator, was a
4 decision by an inferior tribunal exercising judicial functions, and, as arbitrator, he exceeded
5 the jurisdiction allocated to him by the collective bargaining agreement and issued a
6 decision which exceeded his jurisdiction, was arbitrary and capricious, was illegal, was an
7 error of law and which is contrary to public policy. While the Plaintiff asserts that all of the
8 Arbitrator's findings, conclusions, awards and orders are illegal, arbitrary and capricious and
9 against public policy, Plaintiff specifically alleges the following:

10 1) That the arbitrator's opinions that all of the issues presented in the
11 aforementioned arbitration are arbitrable and that the grievance herein was timely pursued
12 are on their face illegal, arbitrary and capricious, contrary to law and against public policy.

13 2) That the arbitrator committed errors of law and his opinion that the rulings of
14 a Superior Court were not entitled to res judicata or collateral estoppel effect is arbitrary and
15 capricious, illegal and against public policy.

16 3) That the arbitrator's findings that the termination of Jan Bartleson as unfit for
17 duty was not appropriate and that Yakima County did not have just cause to terminate Jan
18 Bartleson are illegal, arbitrary and capricious, contrary to the law and against public policy.

19 4) That the arbitrator's order to reinstate Jan Bartleson requires Yakima County
20 to reinstate as a deputy sheriff an individual that has been determined by a well qualified
21 medical examiner to be unfit for duty and such Order is on its face contrary to law, illegal,
22 arbitrary and capricious and against public policy. The Order of the arbitrator also requires
23 Yakima County to pay back wages to Jan Bartleson for a period of time during which there
24 is no evidence she was able to work as a deputy sheriff. The Order also ignores contractual
25 language specifying that relief under the circumstances of this case may be prospective only
26 from the date of the grievance and requires reinstatement of Jan Bartleson with retroactive
27 pay and benefits to the time of termination.

28 5) The arbitrator exceeded his authority, by adding terms to the collective
29 bargaining agreement, which were not agreed to by the parties. The arbitrator modified the
30 agreement by characterizing a finding of unfitness for duty as being a form of discipline and
finding that the discharge of Jan Bartleson was therefore disciplinary based. Not only is this

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3 finding not supported by the parties collective bargaining agreement, it is on its face
4 contrary to law, illegal, arbitrary and capricious and against public policy.

5 6) The arbitrator erred in substituting his uneducated non-medical opinions
6 concerning fitness for duty testing for the opinions of a well qualified medical expert
7 witness. In disregarding the expert opinions of a well qualified medical expert the arbitrator
8 acted contrary to law, illegally, arbitrarily and capriciously and in violation of public policy.

9 7) The arbitrator exceeded his jurisdiction, committed errors of law and his
10 decision was arbitrary and capricious and was an illegal use of his authority by imposing
11 certain requirements for conducting mental fitness for duty examinations. No such
12 requirements are found in the collective bargaining agreement between the parties.

13 8) The arbitrator erred and exceeded his authority in determining that Jan
14 Bartleson was entitled to due process in the form of grievance arbitration related to her non-
15 disciplinary termination due to her unfitness for duty. No such requirement is found in the
16 collective bargaining agreement nor is such a requirement supported by the law. The
17 arbitrator further erred by finding that Jan Bartleson was not accorded due process when
18 there is no such requirement related to discharges based on fitness for duty grounds and it
19 was her inability to meet with Sheriff's Department management that precluded any
20 meetings of any kind prior to her termination. The evidence established that even if she was
21 entitled to due process, Ms. Bartleson did begin the process of pursuing her due process
22 rights through an appeal to the Yakima County Civil Service Commission, however, she
23 abandoned that appeal just days before her hearing. The arbitrator's findings that Ms.
24 Bartleson and/or the Guild were denied due process are illegal, arbitrary and capricious and
25 against public policy.

26 9) The arbitrator erred and exceeded his authority in determining that Jan
27 Bartleson was entitled to progressive discipline and a procedural pre-termination hearing
28 related to her non-disciplinary termination due to her unfitness for duty. No such
29 requirement is found in the collective bargaining agreement between the parties nor is such a
30 requirement supported by the law. Such a finding is illegal, arbitrary and capricious and
against public policy.

PETITION OR APPLICATION FOR
WRIT OF CERTORARI/REVIEW -3

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3 10) That the arbitrator exceeded his authority in determining that the Guild is
4 entitled to attorney's fees relating to its civil lawsuit to compel arbitration of this matter.
5 Such award and order is not supported by the collective bargaining agreement or law and is
6 illegal, arbitrary and capricious, contrary to law and against public policy and is punitive in
7 nature.

8 11) That the arbitrator exceeded his authority in ordering the County to pay for
9 EAP counseling for Jan Bartleson beyond what the County has contracted to pay and in
10 ordering County employees Sergeant George Town, Sergeant Jeff Gillespie, Chief Ed
11 Campbell and Sheriff Kenneth Irwin to participate in counseling and continuing education
12 courses. Such orders are not supported by the collective bargaining agreement or law and
13 are illegal, arbitrary and capricious, contrary to law and against public policy and are
14 punitive in nature.

15 There is no plain or speedy and adequate remedy at law.

16 The application for a statutory writ of certiorari, or in the alternative a constitutional
17 writ of certiorari is based upon the Affidavit of Yakima County Sheriff Kenneth Irwin, the
18 Decision of arbitrator James A. Lundberg, the exhibits and testimony comprising before
19 him, and the records and files herein.

20 WHEREFORE, Plaintiff prays as follows:

21 1. That an Order to Show Cause be issued to James A. Lundberg, in his official
22 capacity as an arbitrator, the Yakima County Law Enforcement Officers Guild and Jan
23 Bartleson to show cause why this court should not issue a writ of certiorari/review as
24 requested by Plaintiff herein;

25 2. That a writ of certiorari/review be issued directing James A. Lundberg in his
26 capacity as arbitrator, to certify to the court a transcript of the record, proceedings, and
27 exhibits in the matter of In Re: the Arbitration between: Yakima County, Washington,
28 Sheriff's Office and Yakima County Law Enforcement Employees (sic) Guild, PERC File
29 No. 20549-P-06-759, so that the reasonableness and lawfulness of the arbitrator's Opinion
30 and Award may be inquired into and determined; and

31 3. That the arbitrator's decision be stayed pending review by this court; and

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PETITION OR APPLICATION FOR
WRIT OF CERTORARI/REVIEW -4

MENKE JACKSON BEYER
ELOFSON EHLIS & HARPER, LLP
807 North 39th Avenue
Yakima, WA 98902
Telephone (509)575-0313
Fax (509)575-0351

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2
3 4. That after review, the Opinion and Award of James A. Lundberg, as
4 arbitrator, be vacated or, in the alternative, that the Opinion and Award be modified as the
5 court deems just and appropriate in the circumstances.

6 DATED this 24th day of January, 2008.

7
8 MENKE JACKSON BEYER ELOFSON
9 EHLIS & HARPER, LLP
10 Attorneys for Plaintiff

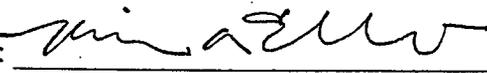
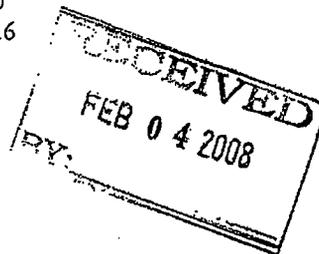
11 By: 
12 Kirk A. Ehlis (WSBA #22908)

EXHIBIT B

JAMES A. LUNDBERG
Arbitrator
2925 DEAN PARKWAY, SUITE 300
MINNEAPOLIS, MINNESOTA 55416

Fax (612) 928-9864
Phone (612) 925-0836



January 30, 2008

Kirk A. Ehlis
Menke, Jackson, Beyer, Eloffson et al
807 North 39th Avenue
Yakima, WA 98902

James M. Cline
Cline & Associates
1001 Fourth Avenue
Suite 2301
Seattle, WA 98154

Re: Yakima County vs. James A. Lundberg and Yakima County Law Enforcement
Officers Guild and Jan Bartleson
File 08- 2- 002411

Dear Mr. Ehlis and Mr. Cline:

I received service of a Summons, Petition for Certiorari and an Order to Show Cause in the above matter today.

The pleadings argue that I exceeded my authority and they indicate that you want the transcript and exhibits certified.

Over the past twenty five (25) years I have had a couple of opinions challenged on the basis of exceeding my authority. I have never been made a party to such a proceeding. Frankly, there is no reason for me to be a party or to appear in the matter. My decision was either within my authority or it was not. The court is perfectly capable of making that determination without my participant. Think of it this way – you did not make the lower court judge a party when you appealed that order. This situation is no different. Therefore, I simply am asking you to dismiss me as a party from the case as I am not a party to your conflict.

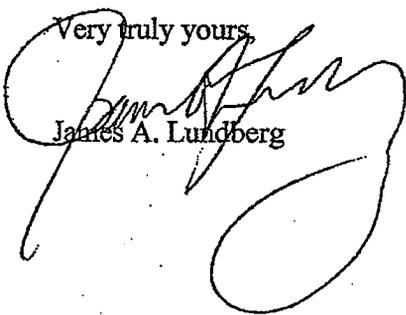
I am willing to cooperate in producing those records that are still in my possession. I recently disposed of the exhibits. I would have retained them had you made a request that I do so. I still have the transcript.

I assume that you have retained exhibits and I also assume that both sides can agree upon what exhibits were admitted into the record. I also assume that you can conveniently obtain a copy of the transcript from your court reporter. I will be pleased to assist you in providing an accurate record for review.

Since you folks have both access to the transcript and the exhibits, I suggest you enter into an agreement as to authenticity and I will be pleased to certify authenticity of that record.

I simply will not be appearing before the Court on March 14, 2008, as I am not opposing anything and I have no vested interest in your dispute.

Very truly yours,


James A. Lundberg