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NO. 92912-2

SUPREME COURT OF THE STATE OF WASHINGTON

MIRANDA THORPE,
Appellant,

v.

JAY INSLEE, in his official capacity as Governor of Washington,
STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND
HEALTH SERVICES (DSHS),
SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE
775NW (SEIU 775),
Respondents.

RESPONSE BRIEF OF GOVERNOR JAY INSLEE AND
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

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I. INTRODUCTION

This case presents a straightforward issue of law: does Article 4.1 of the collective bargaining agreement (CBA) between the State of Washington and SEIU 775 contain a union security provision, as that term is used in RCW 41.56.113(1)(b)(i) and RCW 41.56.122(1). The plain meaning of “union security” is expansive enough to encompass many different arrangements, as the expert administrative interpretation of the Public Employment Relations Commission (PERC) confirms. The superior court correctly held that the CBA fits within the universe of permissible union security provisions. This Court should reject Thorpe’s claims and affirm the superior court.

II. ISSUE PRESENTED FOR REVIEW

Does Article 4.1 of the 2015-17 CBA¹ contain a union security provision, as that term is used in RCW 41.56.113(1)(b)(i) and RCW 41.56.122(1).

III. STATEMENT OF THE CASE

Individual Providers (IPs), like Appellant Miranda Thorpe, are individuals who have contracted with the Department of Social and Health Services (DSHS) to provide personal care, respite care, and other social

¹ The language of Article 4.1 of the 2015-17 CBA is the same language that was instituted in the Memorandum of Understanding on September 26, 2014. Clerk’s Papers (CP) at 74, 95, 420-22.

services to persons who qualify to receive assistance from DSHS. RCW 74.39A.240(3). IPs are public employees “solely for the purposes of collective bargaining.” RCW 74.39A.270(1). SEIU 775 is the exclusive bargaining representative of all IPs in Washington.² *See In re: Service Empl. Int’l Union, Local 775*, Decision 8241 (PECB, 2003).

Where the CBA between the State and the bargaining representative “[i]ncludes a union security provision authorized in RCW 41.56.122,” the State is required to enforce the CBA by deducting union dues or fees from its payments to IPs. RCW 41.56.113(1)(b)(i); *see* CP at 46. RCW 41.56.122(1), in turn, allows a CBA to:

Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision: PROVIDED FURTHER, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member.

Pursuant to the authority provided by RCW 41.56.122(1), the State and SEIU 775 originally agreed on a union security provision of the “agency shop” variety: all IPs were required to pay union dues (or equivalent agency fees, for those not members of the union,) as a condition for receiving payments for services provided. CP at 46. In *Harris v. Quinn*, the U.S. Supreme Court held for the first time that these

² The IPs represented by SEIU are known collectively as the “bargaining unit.”

agency shop provisions were unconstitutional as applied to persons that were not full-fledged public employees, such as IPs. *Harris v. Quinn*, 134 S. Ct. 2618, 2644 189 L. Ed. 2d 620 (2014).

After the decision in *Harris v. Quinn*, the State and SEIU 775 amended the union security provision in their CBA to comply with IPs' constitutional right not to be assessed mandatory agency fees.³ CP at 46, 74, 95, 420-23. The amended CBA gave IPs the ability to opt out of paying union dues or fees. CP at 95, 400. However, members of the union could opt out only during a limited 'window' every year. *Id.*

On October 8, 2015, Thorpe filed a complaint in Thurston County Superior Court for damages, and declaratory and injunctive relief. CP at 6-16. In her complaint, Thorpe alleged that the amended CBA did not contain a union security provision, and thus the State was not authorized to deduct any union dues or agency fees from her pay under RCW 41.56.113(1)(b)(i). *Id.* Thorpe alleged that this omission left RCW 41.56.113(1)(a) (allowing the State to deduct union dues or agency fees with the written authorization of an IP) as the only permissible avenue for the State to deduct dues or fees. *Id.* The State understood Thorpe's

³ The Appellant adds facts to her opening brief that were not before the Superior Court; these facts are at the last sentence on page 6 through the first paragraph on page 8, inclusive, with corresponding footnotes. Appellant has not followed the proper procedure under Rules of Appellate Procedure 9.11 to request that additional evidence be admitted. Therefore, the additional information should be disregarded.

lawsuit as an opt-out, which as a non-member she was permitted to do at any time. As such, the State stopped deducting any agency fees from Thorpe's pay effective October 13, 2015. CP at 380-81.

Thorpe and SEIU 775 filed Motions for Summary Judgment. CP at 249-73. The State filed a Cross Motion for Summary Judgment. CP at *⁴. The parties also filed responses and replies to the motions. CP at 354-74, 331-42, CP at *⁵. After hearing oral argument, the court entered an Order granting SEIU 775's Motion for Summary Judgment and the State's Cross Motion for Summary Judgment and denying Thorpe's motion. CP at 344-46. The court interpreted RCW 41.56.122 "as the source of a union security provision that is authorized" and held that *any* union security provision that is "authorized under 122" "potentially comes in" for RCW 41.56.113(1)(b)(i)'s purposes. Verbatim Report of Proceedings (VRP) (Feb. 26, 2016) at 38. The court rejected Thorpe's argument that RCW 41.56.113(1)(b)(i) operates only where the CBA contains an agency shop arrangement. VRP at 39. Rather, the court held that even a "milder form" of union security could still "support[] the traditional goals of a union security provision" by "encourag[ing]

⁴ CP as designated by the State on August 10, 2016; Motion filed on January 29, 2016.

⁵ CP as designated by the State on August 10, 2016; State's Response filed on February 16, 2016 and Reply filed on February 22, 2016; SEIU 775's Response filed on February 16, 2016.

membership and predictability on the amount of dues and financing.” *Id.* at 40. Therefore, the court held that Article 4.1 of the CBA, read as a whole, comprised a union security provision of the “maintenance-of-membership” variety, combined with a form of agency shop. *Id.* at 40-41.

Thorpe appealed the Superior Court’s Order Granting Defendants’ Summary Judgement and requested Direct Review by this Court. CP at 347-49.

IV. ARGUMENT

In order for the State to make any deductions from IPs’ payments under RCW 41.56.113(1)(b)(i), two conditions must be met:

(1) A “union security provision” must exist in the applicable CBA; and

(2) That union security provision must be “authorized in RCW 41.56.122.”

Thorpe attempts to read a third condition into the statute—that an otherwise authorized union security provision is invalid if it does not impose a mandatory financial obligation on every IP in the bargaining unit. Br. of Appellant at 21-24. For reasons explained below, Thorpe’s reading improperly expands the statute and must be rejected. Because the only two conditions which actually appear in the statute are met, the State acted properly when it deducted agency fees from Thorpe’s payments.

A. Standard of Review

This Court reviews summary judgment orders de novo and performs the same inquiry as the trial court. *Elcon Const., Inc. v. E. Wash. Univ.*, 174 Wn.2d 157, 164-65, 273 P.3d 965 (2012). An order granting summary judgment is appropriate where there is “no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” *Id.* (quoting CR 56(c)). Where, as in this case, there is no dispute as to the material facts, summary judgment is appropriate.

Here, all parties’ arguments turn on the statutory construction of the phrase “union security provision” as it is used in RCW 41.56.113(1)(b)(i) and RCW 41.56.122(1). When summary judgment is based on an issue of statutory interpretation, appellate courts review de novo the trial court’s interpretation of the statute and its application to a particular set of facts. *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 453-54, 266 P.3d 881 (2011); *see also Davis v. Cox*, 183 Wn.2d 269, 280, 351 P.3d 862 (2015).

B. A “Union Security Provision” Exists Within the CBA

Statutory interpretation begins with the statute’s plain meaning. *Lake v. Woodcreek Homeowners Ass’n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010). Where a term is undefined in a statute, this Court will look to the dictionary as a matter of first resort before looking to other sources of

meaning, such as related statutes or legislative intent. *Cornu-Labat v. Hosp. Dist. No. 2*, 177 Wn.2d 221, 232, 298 P.3d 741 (2013); *Darkenwald v. State Emp't Sec. Dep't*, 183 Wn.2d 237, 244-45, 350 P.3d 647 (2015).

Here, the most basic prerequisite for deductions of union dues and agency fees is that a “union security provision” exists in the CBA. RCW 41.56.113(1)(b)(i). The term “union security provision” is not defined in the statute. But as a technical term of labor law, being used in the field of labor law, its meaning may be discerned by reference to a technical dictionary. *See Tingey v. Haisch*, 159 Wn.2d 652, 658, 152 P.3d 1020 (2007) (quoting *City of Spokane ex rel. Wastewater Mgmt. Dep't v. Dep't of Revenue*, 145 Wn.2d 445, 454, 38 P.3d 1010 (2002)).

A leading treatise on labor law states, “. . . ‘union security’ embraces a number of different kinds of arrangements designed to bolster the membership and finances of a union.” Robert A. Gorman and Matthew W. Finkin, *Basic Text on Labor Law, Unionization, and Collective Bargaining*, (2nd Ed. 2004) at 900, *see* Appendix A attached to State’s Respondent’s Brief. Stated differently, union security is defined by its *function*—to assist the union—rather than any particular form.

PERC’s expert interpretation of the term “union security” confirms this function-based understanding of union security. Generally, an agency’s definition of an undefined statutory term is given great weight

where that agency has the duty to administer the statute. *Phillips v. City of Seattle*, 111 Wn.2d 903, 908, 766 P.2d 1099 (1989). Here, PERC has the duty to administer RCW 41.56. *Piel v. City of Federal Way*, 177 Wn.2d 604, 633, 306 P.3d 879 (2013). As such, this Court has recognized that PERC's interpretation of collective bargaining statutes is "entitled to substantial weight and great deference." *City of Bellevue v. Intl. Ass'n of Fire Fighters*, 119 Wn.2d 373, 382, 831 P.2d 738 (1992).

PERC has recognized that union security provisions may be as restrictive as a "closed shop," where the employee must be a union member as a precondition of employment and is required to maintain the membership through the employment, or as permissive as "maintenance of membership," where individuals who are members of the union or who subsequently join the union must maintain their membership for the duration of the contract. *Pierce Cnty.*, Decision 1840-A at 7 (PECB, 1985), see Appendix B attached to State's Respondent's Brief. In between these extremes is the "agency shop," which requires all bargaining unit workers to pay union dues or agency fees to recompense the union for negotiations, contract administration, and related tasks that benefit all bargaining unit members. *Id.*

The CBA here does not contain a closed shop provision: no IP is required to join the union. CP at 95. But for those who do join the union,

the CBA requires that DSHS “honor the terms and conditions of each home worker’s signed membership card.” *Id.* These terms and conditions include accepting membership in SEIU 775, as well as authorizing deductions of “Union dues and other fees or assessments.” CP at 400. Notably, the membership card specifies that “[t]his authorization is irrevocable for a period of one year from the date of execution and from year to year thereafter” unless the member takes advantage of a yearly opt-out window. *Id.*

This language has the effect of a maintenance of membership provision. Individuals who are members of SEIU, or who subsequently join, are required to maintain their membership for at least one year, and potentially in perpetuity if they do not opt out. This alone puts Article 4.1 within the universe of union security provisions contemplated by RCW 41.56.122. *Pierce Cnty.*, Decision 1840-A, at 7 (defining maintenance of membership). But Article 4.1 goes further and includes agency shop elements. While no one is required to join or financially support SEIU, all bargaining unit workers, members of SEIU or not, will have payments to the union deducted until such time as they opt out.⁶ CP at 95. If a worker is a member of SEIU, then she is further restricted:

⁶ New IPs, by default, have 30 days to opt out of paying union fees. CP at 95. An IP who exercises her right to opt out within this initial window will receive a full refund with interest. *Id.*

she may opt out only during the yearly opt-out window. CP at 95, 400. If a worker is not a member, she may opt out at any time. CP at 95.

These provisions are clearly designed to bolster SEIU's membership and finances—indeed, it is difficult to imagine them having any other purpose. By requiring IPs to make an affirmative decision not to pay dues or fees to SEIU, Article 4.1B and Article 4.1C of the CBA will inevitably result in SEIU receiving more dues or fees than it would without the CBA's union security provision. Similarly, by limiting SEIU members' ability to exit the union, Article 4.1C will inevitably result in SEIU having higher membership than it would without the union security provision.

The provisions of Article 4.1 fit squarely within technical dictionary and administrative definitions of union security. The next question is whether the union security provision in the CBA is authorized under RCW 41.56.122.

C. The Union Security Provision is Authorized

The statutory scheme here begins with the general concept of “union security” and winnows it down with the requirement that any union security provision be “authorized in RCW 41.56.122.” RCW 41.56.113(1)(b)(i). RCW 41.56.122, in turn, makes two carve-outs from the scope of permissible union security provisions: first, “closed

shop” provisions are not authorized; and second, any union security provision must “safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member.”

The union security provision here falls within neither carve-out. No “closed shop” provision exists in the CBA; IPs are free to be financially support SEIU or not. The CBA’s union security provision also safeguards the right of nonassociation of *all* IPs by allowing them to opt out of SEIU membership and payments. CP at 95.

Because neither exception in the text of RCW 41.56.122(1) applies here, both conditions to the operation of RCW 41.56.113(1)(b)(i) are met. Accordingly, the only remaining question is whether there is some additional condition, arising *outside* the plain text of the statutes, which would prevent Article 4.1 from triggering the State’s duty under RCW 41.56.113(1)(b)(i).

D. RCW 41.56.113(1)(b)(i) Does Not Require the CBA To Impose a Mandatory Financial Obligation on All Bargaining Unit Members

Thorpe argues that it is not enough for the purposes of RCW 41.56.113(1)(b)(i) that a union security provision exist in the CBA and comply with RCW 41.56.122. In her view, the structure of the statute implicitly requires that any union security provision impose a mandatory

financial obligation on all IPs. Br. of Appellant at 17-24. This reading of the statute fails for three reasons: (1) it improperly adds new terms to an unambiguous statute; (2) it contravenes PERC's expert interpretation of the collective bargaining statutes; and (3) in the alternative, it ignores the doctrine of constitutional avoidance.

1. The plain text of the statute does not contain the condition Thorpe asserts.

RCW 41.56.113(1)(b)(i) states in relevant part:

(1) This subsection (1) applies only if the state makes the payments directly to a provider.

...
(b) If the governor and the exclusive bargaining representative of a bargaining unit of individual providers, family child care providers, adult family home providers, or language access providers enter into a collective bargaining agreement that:

(i) Includes a union security provision authorized in RCW 41.56.122, the state as payor, but not as the employer, shall, subject to (c) of this subsection, enforce the agreement by deducting from the payments to bargaining unit members the dues required for membership in the exclusive bargaining representative, or, for nonmembers thereof, a fee equivalent to the dues[.]

The Legislature articulated two requirements in RCW 41.56.113(1)(b)(i): (1) the CBA must contain "a union security provision"; and (2) the union security provision must be authorized in RCW 41.56.122. These specific requirements allow this Court to infer that the Legislature intentionally omitted any *other* requirements that must be

met before the deductions described in RCW 41.56.113(1)(b)(i) can take place. *See Ellensburg Cement Products, Inc. v. Kittitas Cty.*, 179 Wn.2d 737, 750, 317 P.3d 1037 (2014).

If the Legislature had intended for RCW 41.56.113(1)(b)(i) to require that the union security provision impose a mandatory financial obligation on all members of the bargaining unit, as Thorpe suggests, it could have added such a requirement as a third condition in the statute. The Legislature did not. Even if this Court believes this omission was in error, it should not rectify that error by adding new terms into the statute. *State of Washington v. Cooper*, 156 Wn.2d 475, 480, 128 P.3d 1234 (2006).

Thorpe further argues that “union security” for purposes of RCW 41.56.113(1)(b)(i) and RCW 41.56.122(1) must contemplate a financial obligation on all IPs, or the religious exception in RCW 41.56.122(1) would be surplusage. Br. of Appellant at 18-20. This argument would have merit only if *all* union security provisions provided a religious exception akin to the one described in RCW 41.56.122(1). It is precisely because there are many different types of union security provisions, as described above, that the religious exception is necessary. Stated differently, the religious exemption contained in RCW 41.56.122(1) does nothing more than provide a minimum standard

that all union security provisions recognized by the State must meet. The union security provision contained in the CBA exceeds this minimum level of protection by allowing IPs to opt out for any reason, not just religious ones.

Finally, Thorpe argues that this Court must read “union security provision” to mean “agency shop” based on *Local 2916, IAFF v. Public Employment Relations Commission*, 128 Wn.2d 375, 907 P.2d 1204 (as amended Jan. 26, 1996). In that case, this Court noted that under an “‘agency shop’ clause, or ‘union security provision,’” “employees in a bargaining unit are required to either join the union or pay to the union an ‘agency fee,’ which is equivalent to union dues.” *Id.* at 377 n.1. But that case did not purport to interpret the scope of RCW 41.56.122. The definition of a “union security provision” was not at issue in that case, nor did the parties brief it. *Local 2916, IAFF* was about the unrelated topic of PERC’s jurisdiction. *Id.* at 376. This Court’s cursory explanation of union security in *IAFF* should not bind it now.

The plain text of the statute does not contain the conditions Thorpe asserts. This Court should reject Thorpe’s invitation to rewrite the statute.

2. Thorpe's theory contravenes PERC's expert interpretation of the statute.

Thorpe's theory is at odds with not only the plain text of the statute, but also the expert interpretation of its administering agency, PERC. *Piel*, 177 Wn.2d at 633.; *Intl. Ass'n of Fire Fighters*, 119 Wn.2d 373, 382, 831 P.2d 738 (1992).

Thorpe asserts that the CBA does not provide union security because it allows bargaining unit workers to avoid agency fees by opting out. Br. of Appellant at 27-30. But PERC has specifically rejected the notion that RCW 41.56.122 demands "full union security." *Pierce Cnty.*, Decision 1840-A, at 8. Rather, PERC has made clear that RCW 41.56.122 "contemplates parties bargaining about the *various types* of union security clauses." *Id.* These union security clauses may demand payment from all or only some bargaining unit workers. In *Pierce County*, the CBA at issue included a provision requiring union membership for bargaining unit workers who were members of the union on the effective date of the CBA, and for new employees employed during the term of the CBA. *Id.* at 1. PERC found that this provision "impose[d] *no* obligation on employees who were not members on the contract's effective date," but that this fact did not remove the provision from the ambit of RCW 41.56.122(1). *Pierce Cnty.* at 8.

The fact that the current CBA does not demand anything from those who opt out is no more relevant than the fact that the CBA in *Pierce County* did not demand anything from those public employees who were not members of the union on the CBA's effective date. This Court should defer to PERC's interpretation of RCW 41.56.122(1) and reject Thorpe's argument.

3. **Even if the statute is ambiguous, the doctrine of constitutional avoidance precludes Thorpe's reading of RCW 41.56.113(1)(b)(i).**

Finally, if this Court believes that RCW 41.56.122(1) is susceptible to more than one interpretation, the Court should adopt the interpretation that avoids constitutional difficulties. Courts presume that the Legislature acts with the purpose to stay within constitutional limits when enacting legislation, including RCW 41.56.122. *Grant v. Spellman*, 99 Wn.2d 815, 818-19, 664 P.2d 1227 (1983) (plurality decision). Every presumption in interpreting a statute must be in favor of validity of the statute and a statute will not be declared unconstitutional unless it clearly appears to be. *Id.* at 819. "If, among alternative constructions, one or more would involve serious constitutional difficulties, the court, without doing violence to the legislative purpose, will reject those interpretations in favor of a construction which will sustain the constitutionality of the statute." *Id.* (citations omitted).

If this Court were to accept Thorpe's theory that "union security" necessarily entails a mandatory financial obligation on all bargaining unit members, with no opportunity to opt out, then all "union security" arrangements would be unconstitutional as applied to IPs. *See Harris v. Quinn* 134 S.Ct. 2644. The only constitutional reading of RCW 41.56.113(1)(b)(i) is one that recognizes IPs' constitutional right to opt out of union payments, but allows the State to deduct *voluntary* dues and fees. This is the reading that the State and SEIU have advanced.

V. CONCLUSION

The superior court correctly interpreted the law and recognized that RCW 41.56.113(1)(b)(i) operates whenever a union security provision is consistent with the limitations described in RCW 41.56.122. As Article 4.1 of the CBA contains a recognized form of union security, and does not run afoul of the reservations of RCW 41.56.122, it satisfies the sole condition for deductions to occur under RCW 41.56.113(1)(b)(i). The

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deductions from Thorpe's payments were lawful until she opted out, at which time the deductions stopped. Thorpe's claims are without merit and this Court should affirm the superior court.

RESPECTFULLY SUBMITTED this 10th day of August, 2016.

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APPENDIX TO RESPONSE BRIEF OF GOVERNOR JAY INSLEE
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Defendants JAY INSLEE and DEPARTMENT OF SOCIAL AND HEALTH SERVICES hereby submits the following authority in connection with its Response Brief:

Appendix A

Robert A. Gorman and Matthew W. Finkin, *Basic Text on Labor Law, Unionization, and Collective Bargaining*, (2nd Ed. 2004), pages 900-901.

Appendix B

Pierce Cnty., Decision 1840-A (PECB, 1985)

RESPECTFULLY SUBMITTED this 10th day of August, 2016.

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APPENDIX A

**BASIC TEXT
ON
LABOR LAW
UNIONIZATION
AND
COLLECTIVE BARGAINING**

Second Edition

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experience with the authorization ballot showed that the Board was flooded with such elections and the union prevailed in the overwhelming preponderance of cases. In 1951, Congress reversed the procedure. A union security agreement within the section 8(a)(3) proviso is automatically lawful, but it may be terminated by a vote of the unit employees under section 9(e) to "deauthorize" the union. A more important limitation on union security is found in section 14(b), enacted in 1947:

Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

The effect of this section is to retreat from the all-embracing federal principles which characterize the Labor Act and to permit the states to enact right-to-work laws to invalidate union security provisions that are otherwise lawful under the section 8(a)(3) proviso.

The term "union security" embraces a number of different kinds of arrangements designed to bolster the membership and finances of a union:

The *closed shop*—which might provide, "The employer hereby agrees to employ only members in good standing of the Union"—gives greatest power to the union, because it permits the union to determine the eligibility of job applicants (as well as retention of a job already held) by controlling admission to union membership and by expelling from membership persons who fail to comply with internal rules and regulations. The closed shop is illegal, since it discriminates in hire or tenure of employment so as to encourage union membership but is not sheltered by the proviso to section 8(a)(3).

The *union shop* does not condition initial employment on union membership but requires that employees join the union after a grace period on the job and remain union members during the term of the agreement. The proviso to section 8(a)(3) forbids a grace period shorter than 30 days. A union shop clause might provide:

Each employee covered by this agreement shall, as a condition of continued employment, become and remain a member of the Union on and after the thirtieth day following the beginning of his employment or following the effective date of this agreement, whichever is the later.

The *agency shop* requires that an employee, rather than assuming "full" union membership in good standing after thirty days, simply pay the union for services rendered by the union to employees within the bargaining unit as the employees' "agent" in negotiating and administering the labor contract. The Labor Act permits—and many agency shop agreements provide for—the exaction of a service fee which is equivalent in amount to the initiation fees and periodic dues which are paid by full union members. The rationale is that even nonmembers

the benefit of union representation and should not be permitted a "free ride." The statute does, however, entitle an employee to object to the payment of, and to secure a rebate of, a pro rata share of fees and dues that the union spends on activities other than collective bargaining and contract administration.³

The *maintenance of membership* clause, a yet more tepid form of union security, imposes no obligation to join a union but merely an obligation to remain a member once having voluntarily become one. Such a clause might provide:

All employees who are members of the Union in good standing, and those employees who may hereafter become members, shall, as a condition of employment, remain members of the Union in good standing during the term of the agreement.

A *dues checkoff* provision in itself requires no one to join a union or retain membership in a union, but simply provides that the employer shall deduct from the earnings of those union members who authorize it the periodic membership dues (just as it would for taxes, insurance premiums or charitable contributions) and shall pay that amount directly to the union. The checkoff is commonly utilized in conjunction with some more effective union security provision. It relieves the union of the burden in time and expense of collecting membership dues. Such a clause might provide:

Upon receipt, by the Company, of a signed authorization, the Company will deduct the Union initiation or reinstatement fees and monthly dues from the pay of each of its employees who have authorized or who may hereafter authorize such deductions. The sum so deducted shall be paid monthly to the appropriate financial officer of the Union, together with an itemized statement showing the source of each deduction.

The *hiring hall* is utilized in certain industries—most commonly, maritime, longshore and construction—where jobs tend to be unpredictable, of short duration, and not with any single employer. It amounts to a device for job security in industries in which seniority with any single employer cannot realistically determine job rights, and serves as a union-operated clearinghouse which matches employers seeking a transitory workforce and employees seeking work. The union and employer may agree that the union hall is to be the exclusive mode for job referrals or that the employer is free to hire through other sources. A typical hiring hall agreement might provide:

The Union shall establish and maintain open and non-discriminatory employment lists for employment of workmen covered by this agreement. The Employer shall notify the Union of all vacancies and shall call the Union for employees. The Union agrees to the best of its ability to supply to the Employer's competent help at all times.

³ See Chap. 28.7, *infra*.

APPENDIX B

PIERCE COUNTY, DECISION 1840-A, 1847-A, 1848-A, 1849-A,
1850-A, 1851-A, 1852-A, 1853-A, 1854-A (PECB, 1985)

Wesley Kephart, Larry Fejfar, Fred Stark, Rose Hasen, Sandi Garner,
Jean Knable, John Abbot, Robert Holifeld and Pamela Lauer v. Pierce
County and Teamsters Union, Local 461

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On September 20, 1983, nine employees of Pierce County jointly filed a complaint with the Public Employment Relations Commission (PERC) alleging that Pierce County (employer) and Teamsters, Local 461 (union) had each committed unfair labor practices. The 18 captioned cases were thereupon docketed. On February 15, 1984, in the preliminary ruling required by WAC 391-45-110, the Executive Director of PERC interpreted the complaints as objecting to: 1) the existence of the union security clause in the contract; 2) the employer's and the union's efforts to enforce the union security clause; and 3) a dispute between the employer and the union over reinitiation fees. It was concluded that, even if all the alleged facts were presumed to be true and provable, "the complaints as presently framed fall short of stating causes of action". The complainants were notified that they had 14 days to amend the complaints or the complaints would be dismissed as failing to state a cause of action. Within the required time, the complainants submitted a joint document as an amendment alleging discriminatory enforcement of the union security provision in the collective bargaining agreement. The amendments met the preliminary ruling criteria. A hearing was held on the amended complaints April 30, May 7 and June 1, 1984, before Examiner Katrina I. Boedecker. All parties submitted post-hearing briefs by September, 1984.

FACTS

The employer and the union have a collective bargaining agreement which has a duration of January 1, 1983 through December 31, 1985. The agreement contains the following provisions:

3.2.1 - Union Security All employees in the bargaining unit who are members of the Union on the effective date of this Agreement shall, as a condition of employment, remain members of the Union in good standing for the duration of this Agreement. All new employees employed during the life of this Agreement shall, as a condition of employment, within thirty (30) days after the commencement of employment or the effective date of this Agreement, whichever is later, become and remain members of the Union in good standing for the duration of this Agreement, except as provided in subsection 3.2.2 of this Article.

"Good standing", as used in this Article 3, shall mean that the employee has paid timely or offered to pay the uniform initiation fees and regular monthly dues uniformly required for membership in the Union.

The dismissal of any employee for failure to comply with the provisions of this Article 3 shall be on written notice from the Union to the Employer and employee, setting forth the reason for his

or her delinquent status and allowing thirty (30) calendar days from receipt of notice to bring his or her membership into good standing.

3.2.2 Those employees who, because of religious teachings of a church or religious body, may be excluded from the terms of subsection 3.2.1 of this Article; however, they shall pay an amount equal to the regular Union dues and initiation fee to a non-religious charity or other charitable organization mutually agreed upon by the public employee affected, and the bargaining representative to which Such public employee would otherwise pay dues and initiation fee. The public employee shall furnish proof to the Union each month that such payment has been made to the agreed upon charitable organization. (R.C.W. 41.56.122)

The complainants are employed at the Pierce County jail. Seven are corrections officers; one is an administrative assistant. 21 All are in the bargaining unit represented by the union. At the time of the hearing, John Newell was secretary-treasurer of the union, Fred Van Camp was president and Percie Muncy was the bookkeeper. Van Camp testified that the union needs dues for its financial life. He stated that getting notice to members about delinquent dues had been based on a haphazard system. He further elaborated that a member was usually a "member-in-goodstanding" until the member fell three months behind in dues payments. At that time the member lost his/her member-in-good-standing status and was assessed a reinitiation fee. However, the member would not have to pay dues for the three months he/she had become delinquent. None of the complainants knew of this "policy" prior to the hearing. The record establishes that some, but not all, members of the union who fell behind in dues payments were sometimes, but not always, sent a reminder which advised of the amount of dues owed. Some of these reminders were an all-in-one type of document which was a statement of the amount owed and an addressed return envelope. In this decision this all-in-one document will be called a "bill". Newell testified that issuance of such bills was not required by the executive board or the by-laws of the local. The union also sent individualized communications, hereinafter called "letters". The union mailed some members a form-letter-notice stating the total of dues owing; the amount of a reinitiation fee; the requirement of the union by-laws to pay dues by the last business day of each month; and that the union would make a request of the employer for termination of the member if the member did not pay or make other arrangements within 30 days. This form-letter notice will be referred to herein as a "delinquency-notice". Sometime during 1983, each of the complainants received, through registered mail, a delinquency-notice. Each delinquency-notice was calculated using differing time lines for informing the member that he or she was falling behind in dues payments.

Wesley Kephart had paid union dues through automatic payroll deductions until spring, 1981, at which time he canceled his payroll deduction authorization and went on a "self-pay" status. Kephart had sent a check for \$63 to the union on or about June 26, 1983, in response to a bill he had received from the union. His delinquency-notice was dated June 24, 1983, and arrived after he had mailed his dues payment. It detailed that he owed dues for April, May and June, totaling \$63 and a reinitiation fee of \$210. A few days

later, his check for \$63 was returned with a letter stating he was in arrears from December, 1982.

Sandra Garner stopped her payroll deduction for union dues effective May, 1983. She had never received any bills from the union, although she was aware of and had seen the bills that were sent to other union members. She asked her shop steward (Pamela Lauer) why no bill for dues had been sent. The steward told her the union would send one. Without ever receiving a bill, she received the delinquency-notice dated August 5, 1983, listing that she owed \$21 dues for the month of August and a \$210 reinitiation fee. Garner testified that at the time she received the notice, according to her records, she was exactly three months behind in dues payments - May, June and July. On August 16, 1983, she went to the union office to speak with Newell and Muncy. She questioned why she had never received a bill for dues. Newell answered that bills were just a courtesy which were sent out if Muncy had extra time. Even then, not everyone received a bill since one time Muncy might start at the beginning of the alphabet and the next time at the end of listing. Newell explained that everyone who was three months behind in dues payments received the same delinquency-notice that Garner had been mailed. Garner then attempted to pay the three months back dues (May through July). Newell refused the payment since it did not include the reinitiation fee.

Robert Holifield testified he had become delinquent in his dues payments starting May, 1983. His first and only notification of arrears was a delinquency notice dated August 5, 1983, requiring him to pay union dues of \$21 for August and a reinitiation fee of \$210. John Abbot had authorized a payroll deduction for his dues. At an unspecified time he stopped the authorization. Every two months thereafter, he received a bill from the union stating the amount of dues he owed. In January, 1983, he stopped paying dues altogether. The union sent him a delinquency-notice dated August 16, 1983, stating he was in arrears for July and August and also owed a \$210 reinitiation fee.

Fred Stark stopped his payroll deduction in April, 1983. Thereafter, he received two bills. Sometime in the autumn of 1983, he received the delinquency-notice from the union stating that he owed dues for the months May through September, 1983 and a reinitiation fee of \$210.

Rose Hansen had been a charter member of Local 461. She testified she was in arrears since April, 1983. The union had not sent her any bills. She received the delinquency-notice dated August 16, 1983, stating that she owed dues for July and August plus a reinitiation fee of \$210.

Jean Knable is an administrative assistant in the Pierce County jail. In early August, 1983, she received the delinquency-notice that she owed \$21 dues for August and a reinitiation fee of \$210. She had not previously received any bills. Knable testified, without being controverted, that the \$21 dues rate was erroneous and the correct rate for her dues was \$19. She attempted to pay the dues in person at the union office after she received the August notice. Muncy turned down the offered dues payment and refused to sign a statement witnessing that Knable had attempted payment.

Pamela Lauer testified that her first day of employment was March 21, 1980. She had been hired during a time when the union was striking this employer, a strike which lasted from March 4, 1980 through March 22, 1980. On her first day of work, Lauer was called to the office

of the sheriff's department payroll clerk, Colleen Regan. Regan handed Lauer a payroll deduction authorization card. Although disputed in the record, the testimony credibly establishes that Regan then told Lauer that she had to join the union and sign the card for union dues deductions. The date was left blank, presumably because of the strike situation. Sometime later, a date of "4-28-80" was filled in on the card by an unidentified person, other than Lauer. Lauer testified that she was a shop steward from approximately March 1 through September 1, 1983. She stopped her payroll authorization for dues deductions in April, 1983. Thereafter, she received a bill every two months, which she apparently did not pay. On or about September 2, 1983, Lauer received the delinquency-notice dated August 16, 1983, listing dues owed for July and August plus a reinitiation fee of \$210.

The complainants produced three other corrections officers, not among the listed complainants, who testified to their interaction with the union concerning dues. The first of those, Christy Grimm, stopped paying union dues sometime in 1981. At the time of the hearing she had received neither a bill nor the delinquency-notice from the union. The second of those, Robert Lashbrook, had continually been sent letters indicating the dues he owed every month or two months. As an example, the letter dated August 15, 1983 states, in its entirety:

Any member who is in arrears in dues for three (3) months shall stand automatically suspended from all rights and privileges of membership at the end of the third month.

If dues in the amount of \$63.00 have not been received on or before the last day of this month, we will notify your employer and ask that you be terminated until reinstatement and dues in the amount of \$231.00 have been received.

The third such employee, Eleanor Abbott became employed at the jail January 10, 1984. She was informed of the union security clause in the collective bargaining agreement during a preemployment interview. By the end of that month, she and her pastor drafted a letter to the union explaining her religious objections to paying union dues. Some five months later, at the time of the hearing, she had not received a response from the union.

In early August, 1983, jail superintendent James Caughlin and personnel department representative Dennis Marsh met with Kephart and advised him to pay his union dues. The union was notified, but refused to meet with Kephart. The following week, other complainants received the delinquency notice similar to the one Kephart had received in June. Another meeting was called by the county at which Caughlin and Marsh, together with the county's personnel director, Kay Adkins, talked with the complainants about why they were not paying union dues. On August 24, 1983, the same county representatives held another meeting inviting the complainants, Newell and Van Camp. The county made its position clear that the complainants did not have to pay reinitiation fees. Adkins testified that this was still the county's position at the hearing.//

On September 2, 1983, Caughlin met with the complainants. He told them that if each would offer to pay the back dues to the union in front of a witness and if the union refused the tender, that ended the employee's obligation. When Caughlin saw Kephart's returned check for \$63, Caughlin informed Kephart he did not have to make another effort to pay the dues. At the time of the hearing, Kephart

had not paid dues since December, 1982. Stark received the same response when he submitted a witnessed statement to Caughlin that Stark had attempted to pay the dues, but they were refused since there was no accompanying reinitiation fee. After this meeting, Holifield and John Abbott went to the union office to tender their dues and those of Hansen.

At a September union executive board meeting, Van Camp presented the county's position that the union did not have the right to reinitiation fees. Van Camp testified that the union chose to waive the reinitiation fees and substitute the claim for the first three-months' dues which the member owed. In mid-September, 1983, the union posted on the employees' bulletin board a three-point settlement offer from the union's executive board. First, it waived the reinitiation fees through the close of business September 30, 1983; second, it required all delinquent members to pay, by September 30, 1983, back dues for every month missed (detailing the months for each employee) along with an assessed late charge; and third, it required each employee to authorize payroll deductions for payment of union dues for the balance of the collective bargaining agreement. John Abbott informed Van Camp that the amount listed for him was incorrect and he was actually three more months in arrears than the notice detailed. Van Camp accepted dues from Abbott of only the amount on the settlement offer. Holifield, Stark, Knable, Lauer and Hansen paid the union the amount of back dues listed on the settlement notice. Knable paid her dues at a rate of \$16 per month which was listed on the notice. Some paid the late charges and/or authorized the payroll deductions; some did neither. Garner testified she went to the union office to again offer her dues payment. This time it was accepted. She testified she felt she had to authorize the payroll deduction. Van Camp testified it was "merely a settlement offer" since he felt he had no authority to demand the automatic payroll deductions. Although they paid the dues listed in the September settlement offer, neither John Abbott, Lauer nor Hansen authorized payroll deduction for dues payment. They continued to receive bills from the union when they fell behind in dues payments. Kephart did not take steps to take advantage of the settlement offer.

Newell testified that when he became secretary-treasurer of the union on December 1, 1983, he instituted a new policy. The union stipulated that, under the new procedures, if a member is working for an employer who has a payroll deduction mechanism for transmittal of union dues and that member stops the payroll deductions, the member does not get a bill when delinquent. That member would just receive the delinquency-notice after three months of non-payment of dues. Van Camp testified that under the new policy if a member lost good-standing status, that member was required to pay reinitiation fees and two-months back dues. Percie Muncy testified that she now sends a bill to a member who is not on payroll deduction when he or she becomes delinquent for a second month.

At the time of the hearing, Hansen had gone back to payment through payroll deduction. Abbott and Lauer had not, and they had again lost their member in-good-standing status. Lauer's testimony is somewhat indefinite but it does establish that she received another delinquency-notice during or about February, 1984, demanding back dues from December, 1983 and a reinitiation fee. Abbott, in response to receiving a union dues bill (not the delinquency-notice), twice attempted to pay the dues in person at the union office. He found the

door locked and lights off both times. On his third attempt the situation was the same, but he happened to run into Newell outside the office. Newell explained if Muncy was gone, the outer office would be shut but there was usually someone in an inner office who would respond to a "banging on the door". Newell accepted Abbott's payment. Later, Abbott received a letter from the union dated April 19, 1984:

In checking our records when we started to post your check dated April 4, 1984, we found that you had been suspended effective April 1, 1984. Suspended status is reached when you have gone three months and not paid dues. This means you are not a member in good standing. To regain your good standing, you must pay a reinitiation fee of \$220.00 dollars.

This letter will confirm that Automotive and Special Services and Public Employees Local Union No. 461 has accepted a payment in the amount of \$63.00 to be applied to your monthly dues obligation for the months of January, February and March 1984. This payment was applied in this manner specifically at your direction.

This letter is intended to inform you that even though our records will show that you have paid your dues for the months above indicated, as you have not paid the required reinitiation fee you have not reacquired status as a member in good standing and are still subject to the union security clause under which the Union may seek your termination from your employer.

There is no indication in the record why the reinitiation fee was listed as \$220 instead of \$210. At the time of the hearing, Abbott had not paid his reinitiation fee based on the county's position that such fees were not collectible.

The complainants established that the county gives notice in job announcements and during prehire "oral boards" of the union security obligation of employees working at the jail. Additionally, non-payment of union dues is not listed in the county civil service rules, which are applicable to the complainants, as grounds for termination.

Hansen testified Caughlin offered to give her the name of "a man" who could get rid of the union. She could not recall any further details.

POSITIONS OF THE PARTIES

The complainants argue that there has been discrimination in the enforcement of the union security clause. The union is alleged to have acted discriminatorily by billing some members for dues owed, by sending delinquency-notices requiring reinitiation fees to others and by letting still others not pay at all. The employer is alleged to have represented that the jail was a "closed shop" and to have misled employees into believing that union dues payment through payroll deduction was mandatory. Additionally, the complainants state that the employer compounded the employees' confusion by attempting to steer an employee to someone for advice about how to get out of the union. The complainants rely on the fact that they are civil service employees. As such, they argue that the civil service rules dictate the grounds for termination. Since non-payment of union dues is not

a reason listed in the civil service rules, the complainants argue that it should not be a basis for their discharge. The union urges that the complaints should fail, since the complainants did not prove intent or motive for discrimination by the union. The union views the complainants' case as showing only inadvertent failures to enforce the union security clause caused by inadequate information. The union contends that the conflict between the civil service rules and the union security clause of the contract should be deferred to arbitration as an issue of contract interpretation. The union claims that the jail has been mistakenly labeled a closed shop by the complainants themselves, not as a result of negotiations between the union and the employer. The union argues that the complainants failed to establish any basis for their assertion that their rights of non-association were infringed. The union claims that the existence of "a few free riders" does not prove discrimination in the enforcement of the union security clause. The union argues that an inadvertently, fortuitous failure to uniformly enforce a lawful union security clause is not an unfair labor practice. (The union argued at the hearing, although not in the brief, that the complaints should be dismissed as untimely. Since a ruling was made against the union at the hearing and the issue dropped in its brief presenting legal argument, this decision need not further address the matter).

The county defends itself by claiming that the union security clause is valid and that, since it is in a lawful collective bargaining agreement, the terms of the collective bargaining agreement prevail over the civil service rules. The county argues that it operated a union shop, not a closed shop. Finally, it contends that none of the employer's acts cited by the complainants rise to the level of unfair labor practices, since no one was actually discharged for non-payment of union dues.

DISCUSSION

Testimony shows confusion among the complainants regarding the definition of various terms of art in labor law. RCW 41.56.122 specifically allows a collective bargaining agreement to contain union security provisions and specifically does not authorize any closed shop provisions. Roberts' Dictionary of Industrial Relations, (Harold Roberts, Bureau of National Affairs, Inc., (Washington, D.C.: 1971)) offers the following definitions:

CLOSED SHOP A union security arrangement where the employer is required to hire only employees who are members of the union. Membership in the union is also a condition of continued employment. The closed shop is illegal under federal labor statutes.

UNION SHOP A form of union security which lets the employer hire whomever he pleases but requires all new employees to become members of the union within a specified period of time, usually 30 days. It also requires the individual to remain a member or to pay union dues for the duration of the collective bargaining agreement.

AGENCY SHOP A union security provision to eliminate "free riders." All employees in the bargaining unit are required to pay

dues or service charges to the collective bargaining agent. Non-union employees, however, are not required to join the union as a condition of employment. Payment of dues to defray the expenses of the bargaining agent in negotiations, contract administration, etc.

MAINTENANCE OF MEMBERSHIP ... was designed to protect the security of the union by providing that individuals who were members of the union or who subsequently joined the union would continue to maintain their membership for the duration of the contract.

As far as the complainants question as invalid the act of bargaining a union security provision into the collective bargaining agreement, they receive a negative answer. The union and the employer had the right under RCW 41.56.122 to bargain the inclusion of a form of union security into the contract.

Nor is the article subject to attack on the basis that it does not call for full union security. The contract imposes a "maintenance of membership" obligation coupled with "union shop" obligation on new hires, but appears to impose no obligation on employees who were not members on the contract's effective date, and so might be described as a "modified union shop" clause. RCW 41.56.122 authorizes a collective bargaining agreement to: "(1) contain union security provisions ... " The plural on "provisions" contemplates parties bargaining about the various types of union security clauses to determine one that both parties find is agreeable.

The allegations that the employer held itself out as running a "closed shop" fail due to the confused testimony from the complainants. The complainants did not establish that the employer's presentation in job vacancy announcements and "oral boards", of the existence at the jail of a modified union shop crossed beyond the employer's legal right to inform applicants of a working condition. It was not established that the employer illegally interrogated employees regarding their union sentiments.

One side issue raised by the modified union shop language in the collective bargaining agreement concerns the obligations of Lauer, who was hired during a contract hiatus. The collective bargaining agreement for March 22, 1980 through December 31, 1982 was not introduced into evidence, so reliance must be placed on witnesses' sworn testimony. It was indicated that a modified union shop clause existed in that contract, also. The modified union shop clause creates a pool of employees who are not obligated to ever join the union or meet the financial core membership requirements. That pool consists of employees who are not union members when the clause is first included in the collective bargaining agreement between the union and the employer and who continue to refrain from union membership. Between December 31, 1979 and on or about March 22, 1980, there was a hiatus in collective bargaining agreements between this union and this employer. Van Camp testified as to his opinion that the modified union shop provision could not be applied to an employee hired during the hiatus. He is correct. Union security provisions do not survive the expiration of the contract. Bethlehem Steel Co. (Shipbuilding Division), 133 NLRB 1347 (1961). Union security is not seen as a working condition operating between the employer and the employee. It is a condition of employment established between the union and the employer. If the union's contract with the employer

ends, so does that condition of employment. Bethlehem Steel, Co., supra. If the union had wanted to obligate all employees hired during the hiatus, it should have gained that right during bargaining. Since the successor contract was not signed until after Lauer was hired, she had no obligation to join the union when she was first hired. She testified credibly against the employer's witness, and she was supported by stipulated evidence, that she was told by the employer's agent on her first day of work that she had to join the union and begin her dues payments. 4/ Lauer's obligation to pay union dues and fees does not

4/ There is evidence that by the time of the hearing the employer had pronounced a clear policy in this area. In a July 20, 1983 memo from the sheriff, Lyle Smith to Adkins stated:

It is my feeling that the enforcement of rates charged by the Union is not a legitimate endeavor for our payroll clerk. I have no objection to providing space on bulletin boards for Union notices and to even providing the payroll authorization forms for completion by employees who may wish to exercise their privilege of having dues paid by deduction.

As you know, no obligation exists for an employee to pay their dues by deduction, and it should be the responsibility of the Union to seek out those they feel are not in compliance with current agreements.

I shall provide a copy of this letter and the attachment along with Form Z1973 (Payroll Authorization) to the Union stewards known to me for their handling.

The employer's previous behavior of soliciting the union dues deduction could be seen as an unlawful assistance to a union and as such an unfair labor practice violation of RCW 41.56.140(2). However, this violation was not alleged in the complaint nor was a motion made to have pleadings conferred to the proof at the hearing. Additionally, the act occurred beyond the six-month statute of limitations in RCW 41.56.160.

attach until there is evidence that she voluntarily joined the union or that she severed her employment and was rehired during the life of a valid union security clause. The record reflects that she became a shop steward during or about March, 1983. That is the first evidence presented of her voluntarily becoming a union member. Consequently her financial obligation to the union begins at that date. While equity might rule that any dues paid prior to that time should be credited to her account, such an order is beyond the authority granted in RCW 41.56.160. The statute would only grant remedial authority to act six months prior to the filing of the complaint. In this case, the complaint was filed September 20, 1983. Lauer voluntarily became a member of the union on or about March 1, 1983 - six months and 20 days prior to the complaint being filed.

The complainants argue that there are set policies for termination of civil service employees, such as themselves. The argument interprets the contract as deferring to the civil service rules involving matters of termination of employment and interprets the civil service rules as being silent as to the impact of non-payment of union dues. The issue of whether the discharge of an employee for non-payment of dues could be obtained **by** the union:

... is one of contract interpretation. After inserting the union security clause as Article V of their agreement, the parties proceeded to agree in Article XIII, Section 4, that nothing contained in that agreement should be construed either to limit or to expand the rights of any employee under civil service statutes or regulations... This Commission **will** not arrogate to itself the role of arbitrator *by* interpreting an ambiguity in the parties' contract.

The Commission reiterated this holding in Pierce County, Decision 1671-A (PECB, 1984). That case involved the same employer and union as the instant complaints but none of the six employees there involved is a present complainant. The six employees were alleged not to have been in compliance with the union security provisions of the contract. The union sent the employer a demand for their discharge. The employer refused to comply and in its defense relied on the ambiguity in the contract created by the conflict between the union security provision and a provision granting dominance to civil service rules. The Commission held that the case paralleled all the relevant aspects of Clallam County, supra, and refused to assert jurisdiction over a dispute which was primarily a breach of contract. The Commission based its holding on the legislative exhortation in RCW 41.58.020(4) that "final adjustment by a method agreed upon by the parties" is the desirable method for resolving collective bargaining disputes. This decision need not comment in the present cases on what is the controlling document in a question of removal from service, since the scope of the allegations concern merely the "threatened" termination of employment. It is the alleged threat to the jobs of the complainants' which is within the scope of this case:

RCW 41.56.150 states:

It shall be an unfair labor practice for a bargaining representative:

- (1) To interfere with, restrain,, or coerce public employees in the exercise of their rights guaranteed by this chapter;
- (2) To induce the public employer to commit an unfair labor practice.

RCW 41.56.140 states:

It shall be an unfair labor practice for a public employer:

- (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

The instant complainants invite an examination of the behavior of the union and the employer before any discharge was made. It is this behavior which will be analyzed below.

Enforcement of Union Security

A union seeking to enforce a union security clause against an employee has a fiduciary duty to treat that employee fairly. This fiduciary duty arises out of the comprehensive authority vested in the union as the exclusive bargaining representative of the employees. Such exclusivity leads inevitably to employee dependence on the labor organization, and that dependence places a duty on the union to deal fairly with the employees. See: NLRB v. International Woodworkers of America, 264 F.2d 649 (9th Cir., 1959), cert. den. 361 U.S. 816 (1959) and NLRB v. Hotel, Motel & Club Employees (Philadelphia Sheraton), 320 F.2d 254 (3rd Cir., 1963). Federal courts of appeal have ruled that, at a minimum, this fiduciary duty requires that the union inform the employee of his or her obligations in order that the employee may take whatever action is necessary to protect his job tenure. Philadelphia Sheraton, supra. The complainants have established that no set policy was used by the union for dealing with members who did not pay union dues under the modified union shop clause. Some who became delinquent were billed regularly, some were notified sporadically, one was never notified. The secretary-treasurer of the union testified that dues were not owed until the end of each month, but each notice sent in the beginning to mid-August claimed a delinquency of August dues also. Kephart was seven months delinquent when he got the delinquency-notice; Holifield five months; Garner three months. J. Abbott was seven months in arrears but the union counted only five months overdue. According to the union's own records, J. Abbott and Holifield were the same number of months delinquent but the union demanded reinstatement fees plus two months' back dues from Abbott, whereas it wanted reinstatement fees plus one month's back dues from Holifield. Knable was charged at an incorrect dues rate. The union's practice of such erratic procedures falls short of meeting its fiduciary duty.

Each complainant acknowledged his or her dues obligation during the hearing. The union had no obligation to bill them. If the union had never billed any employee, and had notified delinquent employees consistently after a constant period, then the union would have met its fiduciary duty. WAC 39195-010 details the obligations of an exclusive bargaining representative when enforcing a union security clause:

An exclusive bargaining representative which desires to enforce a union security provision contained in a collective bargaining agreement negotiated under the provisions of chapter 41.56 or 41.59 RCW shall provide each affected employee with a copy of the collective bargaining agreement containing the union security provision and shall specifically advise each employee of his or her obligation under that agreement, including informing the employee of the amount owed, the method used to compute that amount, when such payments are to be made, and the effects of a failure to pay.

The union here fell victim to its own erratic procedures. Courts have ruled that in establishing its internal regulations "it may be that

there is a limit of reasonableness beyond which a union may not go". NLRB v. International Union, United A., A., A., Imp Wkrs., 297 F.2d 272 (1st Cir., 1961) ; NLRB v. Auto Workers, 320 F.2d 12 (1st Cir. 1963). The union's threatened demands for employees' discharges based on unpredictable collection procedures have crossed the limit of reasonableness. Although the union secretary-treasurer testified he had instituted a new consistent policy as of December 1, 1983, the evidence supports a finding otherwise. The three union representatives who testified gave somewhat differing accounts as to what was the new policy. Although the attorney for the union offered a stipulation that the new policy meant that no bills were sent to employees of an employer with a payroll deduction mechanism, John Abbott later testified without being rebutted that he had received a bill for dues owed in early 1984.

There is evidence that the union had set a precedent of billing delinquent dues payers. The union's own shop steward, Lauer, relied on the billings she had seen to assure Garner that Garner, too, would receive a billing, impliedly before she received a termination notice. Lauer is a complainant in this case, but there is no evidence of why she would mischaracterize the union's procedures as she knew them at the time. The union must take responsibility for the representations of its shop stewards absent evidence of an adverse motive or unauthorized communication on a steward's part. The union presented no evidence that Lauer had gone against specific training given her by the union. If the union is satisfied to let its shop stewards learn of union procedures by what they witness at the workplace, then the union must accept the consequences. After questioning a union shop steward and receiving confirmation that a bill for overdue payments would be sent, and then receiving a delinquency-notice of possible termination, Garner could reasonably feel that she was being threatened and that her rights were interfered with, restrained or coerced.

The realities of the workplace are that the employees will talk among themselves about the differing demands, or lack thereof, made by the union for back dues. The variety of time lines and procedures the union used in collecting dues could only create confusion and uncertainty among the employees. Such confused practices did not clearly inform the employees of their obligations. The fact that the complainants knew of their dues obligations does not diminish the union's duty to treat the employees fairly.

Against this background, the delinquency-notices sent to the complainants in August, 1983, did not cure previous problems so as to meet the threshold of the fiduciary duty test. The notices were merely a reflection of the fluctuating enforcement standards the union used. Some demanded three months back dues, some up to five. The complainants established that the detailings of the amount of the delinquencies were not always accurate, even assuming the demand for reinitiation fees substituted for three months dues. These fluctuating enforcement procedures, which the union characterizes as inconsequential errors, do not adequately establish an employee's obligation when he or she falls into arrears.

The employer has contributed to the situation. A union has the right to reinstatement fees from employees who are no longer members in good standing. Boilermakers, Local 749, 192 NLRB 502 (1971). A reinstatement or reinitiation fee is merely a fee charged to a particular class of persons those who had previously joined, but are not currently members in good standing. Boilermakers, supra.

Under federal law, a union may refuse an employee's tender of back dues, if the employee fails to pay a reinstatement fee uniformly required by the union's by-laws following suspension from membership. General Longshore Workers, International Longshoremen's Association, Local 1418, AFL-CIO, 195 NLRB 8 (1972), Roche & Co., 231 NLRB 1082 (1977). The union testified that the reinitiation fees substituted for, and therefore waived, the first three months of dues averages - the same period of time it took for a person to forfeit membership in good standing with the union. In the instant case the employer was legally incorrect when its representatives told the complainants they did not have to pay the reinitiation fees and that the employee's obligation was ended if an offer of back dues payment was refused. The employer will be held responsible for the reasonable consequences of its dissemination of erroneous information.

The union argued that discrimination cannot be found against it since there is no evidence of intent. Without commenting on whether or not there is evidence of intent, this decision merely needs to reiterate that the fluctuating dues collection procedures had an impact on union members which interfered with, restrained or coerced public employees in the exercise of their rights guaranteed in the Public Employees Collective Bargaining Act, Chapter 41.56 RCW.

The employer's defense that it should not be found guilty of any unfair labor practice violations since it did not actually discharge anyone is not meritorious. RCW 41.56.140(1) establishes that it is unlawful for the employer to even threaten to take action which interferes with, restrains or coerces public employees in the exercise of their rights guaranteed under RCW 41.56 et seq. The employees were on notice from representatives of the employer that if they did not pay the back dues they would be terminated. This decision finds that the union could not seek the complainant's discharge when the union was haphazard in its dues enforcement procedures. Therefore, the employer was threatening to take action when it had no legal basis to do so. The employer defended orally that it had no knowledge of the selective sporadic enforcement of the union security clause. This is not true since the record established that employer representatives saw the delinquency notices the complainants received. The testimony Hansen gave regarding Caughlin's offer of the name of someone who could "get rid of the union" was too nebulous to sustain an unfair labor practice violation.

REMEDY

Unfair labor practice remedies should be remedial and not punitive in nature. RCW 41.56.160. For as far back as this order could reach, March 20, 1983, all the complainants were obligated to pay union dues under a valid, modified union shop clause and all of them knew they owed the union monthly dues. In varying ways and degrees, the complainants allowed themselves to fall into arrears. To deny the union these dues would be punitive.

The union's violations concerning delinquent dues collection procedures will be adequately remedied by ordering the union to show proof of a reasonable policy for dues collection and to maintain consistent enforcement thereof. Such an order to act affirmatively is necessary in this case. The union offered a stipulation at the administrative hearing that after Newell took office as the new secretary-treasurer, a new policy was established regarding dues

collection. However, three union representatives testified to **slightly** different versions of the new "policy". Complaint witnesses established that the policy, if accepted as the stipulation stated, was not followed. The union must be ordered to act affirmatively to end this confusion.

Once the union notifies the Commission of its established policy regarding collection of dues arrearages and assures the Commission that it has notified the complainants, other unit members and shop stewards of the established policy and that it will cease and desist from the haphazard enforcement of such policy, then the union may demand the complainants pay all back dues which are owed and not prohibited by this decision. In this instance, no late fees shall be assessed since the late fees are derivative of the haphazard enforcement procedures. The collection of such fees without adequate warning notice to the complainants would be punitive. Additionally, these fees could be seen as tending to chill the complainants' rights to file an unfair labor practice complaint. Any late fees which were paid by any complainant in response to the September, 1983 settlement offer shall be refunded without interest. WAC 391-45-410(3) only allows interest to be awarded on back pay calculations.

Neither the union's nor the employer's misconduct vitiates the employees' obligations to pay their union dues. This order is merely correcting the defective enforcement procedures. The union will be ordered to restore each complainant's member-in-good-standing status as of the date the employee offered to pay the back dues without the reinitiation fee. This status is to continue until a complainant has again lost his/her membership-in-goodstanding.

The employer continued through the hearing to assert two illegal positions which certain complainants relied on to their detriment. First, it said that once the union had rejected a member's back dues because the dues were not accompanied by a reinitiation fee, the member did not have to offer the dues again. Kephart relied on the employee's position when Caughlin "released" him from his back dues obligation after seeing Kephart's returned check for dues payment. The employer will be liable for the \$63 (April through June payments) it "waived" from being paid to the union by Kephart. In the September settlement offer, the union substituted the first three months of a member's delinquency for a reinitiation fee. Since the employer's position caused Kephart to ignore the union's settlement offer, the employer will be liable for the first three months listed for Kephart's delinquency (January through March). Also, the employer will be held liable for the months Kephart fell delinquent which were prior to the meeting where Caughlin told Kephart he need not make further attempts to pay back dues (July and August). At the time of the hearing, Kephart had not paid any dues since the meeting with Caughlin. This is an unreasonable interpretation of the employer's position. The employer, albeit mistakenly, only directed that Kephart did not have to offer back dues. The employer never took the position that Kephart did not owe preset dues. Therefore, Kephart should pay to the union any dues he owes from September, 1984, to the present date.

The second illegal position the employer continued to assert was that an employee who falls out of "member-in-good-standing" status need not pay reinitiation fees. This caused the complainants to believe they could not be terminated for such non-payment, but the union continued to threaten to request their discharge. Lauer and J.

Abbott relied upon the employer's position to their detriment when they received their delinquency-notices in early 1984. No one will be liable for J. Abbott's second dues-lapse-reinitiation-fee demanded April 19, 1984. The union clearly waived the right to demand the fee by accepting the payment at its union office where it could easily have checked dues records prior to receiving the money. The union did accept the payment without any notice to Abbott that he was being removed from membership-in-good-standing until two weeks after the payment was made. By its actions, the union also waived its right, as to that occasion, to remove

J. Abbott as a member-in-good-standing.

FINDINGS OF FACT

1. Pierce County is a public employer within the meaning of RCW 41.56.030(1).
2. Teamsters, Local 461, a bargaining representative within the meaning of RCW 41.56.030(3), represented an appropriate bargaining unit, within the meaning of RCW 41.56.060, of employees of Pierce County.
3. Complainants Wesley Kephart, Fred Stark, Rose Hansen, Sandi Garner, Jean Knable, John Abbott, Robert Holifield and Pamela Lauer are public employees within the meaning of RCW 41.56.030(2).
4. No sworn record was made on complainant Larry Fejfar's allegations.
5. The bargaining representative and the employer are parties to a collective bargaining agreement effective from January 1, 1983 through December 31, 1985 which has a union security clause. The complainants are covered by this agreement.
6. The employer routinely informs job applicants of the union security obligation in bargaining unit job postings and in "oral boards".
7. The union has had haphazard practices to deal with members who become delinquent in dues payments. The complainants were aware that the union had sometimes sent out bills previously to members who became delinquent. Such bills did not threaten discharge. The union did not give the shop stewards notice of any other policy or practice regarding collection of delinquent dues.
8. Pamela Lauer was hired March 21, 1980, during a hiatus between collective bargaining agreements. She became a shop steward for the union on or about March 1, 1983. Acting within her apparent authority as a union shop steward, Lauer told complainant Garner that the union would send a bill for delinquent dues.
9. At least by September 2, 1983, the union had notified each complainant that he/she owed back dues and a reinitiation fee. The formula used to calculate the time for issuing these delinquency-notices varied among the notices. All notices stated

the consequences of non-payment would be the union's request of the employer for the member's termination. Jean Knable's delinquency-notice incorrectly calculated her dues rate so as to overcharge her.

10. At least by September 5, 1983, the employer informed the complainants and the union that the employer would not discharge an employee for nonpayment of union reinitiation fees. The employer held this position through the administrative hearing on these complaints. The employer informed the complainants if each offered to pay the back dues and the union rejected them, the employer would not honor a union request for employee termination.
11. Until on or about September 12, 1983, the union rejected payment of back dues from any complainant who did not, at the same time, pay reinitiation fees.
12. On or about September 12, 1983 the union executive board approved a three point settlement offer: (1) waiver of reinitiation fees; (2) demand for each month of back dues owing with assessed late charge; and (3) requirement that each complainant authorize payroll deduction of union dues. The offer, valid through September 30, 1983, thereafter was posted on the employees' bulletin board. The offer incorrectly calculated the dues rate of Jean Knable so as to undercharge her.
13. All the complainants except Kephart paid the back dues listed in the settlement offer. Some paid late charges; some authorized payroll dues deductions; some did neither.
14. The complainants were all aware of their union dues obligation.
15. No complainant has been terminated for non-payment of union dues and/or fees.
16. Hansen testified nebulously to a conversation with an employer representative regarding ousting the union.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter through Chapter 41.56 RCW.
2. Complainant Larry Fejfar did not prove the allegations of his complaint. No violations of RCW 41.56.140 or RCW 41.56.150 are found as to him.
3. The union and the employer are parties to a collective bargaining agreement which contains a lawful union security provision in accordance with RCW 41.56.122.
4. The employer's action to inform applicants for jobs in the bargaining unit of their potential union security obligations did not violate RCW 41.56.140(1) or (2).

5. The union breached its fiduciary duty by its haphazard methods of sending bills and/or notices of dues arrears to the complainants in violation of RCW 41.56.150(1).
6. The union, by involving the employer in discussions where the employer announced potential terminations of employees who did not meet the requirements of the modified union security language where the union had used no consistent policy for requesting the terminations, violated RCW 41.56.150(2).
7. The employer, by announcing it would not discharge employees for nonpayment of reinstatement fees, which caused the complainants to rely on such information to their detriment, violated RCW 41.56.140(1).
8. The employer, by announcing it would discharge employees for non-payment of union dues when employer representatives were aware of the haphazard manner the union used to notify the employees of their obligation, violated RCW 41.56.140(1).
9. By actions in Findings of Fact 16, the complainants did not prove the employer did not violate RCW 41.56.140.

ORDER

The complaints of Larry Fejfar, Case No. 4856-U-83-828 and 4843-U-83-818 are dismissed due to lack of sworn evidence to support his allegations.

Upon the basis of the above findings of fact and conclusions of law, and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that TEAMSTERS LOCAL 461, its officers, agents, and successors shall immediately:

1. Cease and desist from:
 - a. Threatening to request the employer to discharge employees who are delinquent in union dues payments when the union has used a haphazard system to notify the employees of their obligations regarding payment of delinquent union dues;
 - b. Attempting to cause Pierce County to commit an unfair labor practice;
 - c. In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by RCW 41.56.122.
2. Take the following affirmative action to remedy the unfair labor practices and effectuate the policies of the Act:
 - a. Provide, in writing, to the complainants, all present bargaining unit shop stewards and the Commission,, the union's established, reasonable, consistent and constant policy of notifying employees who become delinquent in dues payments, of their obligations;

- b. Restore each complainant's member-in-good-standing status as of the date the employee offered to pay the back dues without the reinitiation fees. Continue each complainant in such status until he or she fails to deserve the status in a manner prescribed in the union's by-laws and not prohibited in this decision;
- c. Cancel and/or refund to the individual complainant any late charges that a complainant paid as a result of the September 12, 1983 settlement offer.
- d. Cancel the reinitiation fee assessed against J. Abbott on April 19, 1984, after the union accepted his tender of back dues April 1, 1984.
- e. Post, in conspicuous places on union bulletin boards on the employer's premises where union notices to all bargaining unit members are usually posted, copies of the notice attached hereto and marked "Appendix All. Mail a copy of signed Appendix A to each complainant. Such notices shall, after being duly signed by an authorized representative of the union, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the union to ensure that said notices are not removed, altered, defaced, or covered by other material.
- f. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

Upon the basis of the above findings of fact, conclusions of law and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that PIERCE COUNTY its officers and agents shall immediately:

1. Cease and desist from:

- a. Threatening to discharge employees who are delinquent in union dues payments when the union has, with the employer's knowledge, used a haphazard system to notify the employees of their obligations regarding payment of delinquent union dues;
- b. Promulgating and enforcing an illegal policy regarding payment of union reinitiation fees that employees relied upon to their detriment;
- c. In any like or related manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by RCW 41.56.122.

2. Take the following affirmative action to remedy the unfair labor practices and effectuate the policies of the Act:
 - a. Pay in a check made out to the union and Wesley Kephart the equivalent of the union dues Kephart owed from January through August, 1983, as calculated by the union and direct Kephart to forward the entire amount to the union in accordance with this decision.
 - b. Pay in a check made out to the union and to Pamela Lauer the amount of the reinitiation fee demanded of her by the union on or about February, 1984, and direct Pamela Lauer to forward the entire amount to the union in accordance with this decision.
 - c. Notify all bargaining unit members, by posting a notice on all employee bulletin boards where employer notices are usually posted, that the employer will discharge an employee who does not pay a reinitiation fee legitimately required by the union.
 - d. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix B". Such notices shall, after being duly signed by an authorized representative of Pierce County be and remain posted for sixty (60) days. Reasonable steps shall be taken by Pierce County to ensure that said notices are not removed, altered, defaced, or covered by other material.
 - e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 14th day of May, 1985.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

1. BOEDECKER, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

 PUBLIC EMPLOYMENT RELATIONS COMMISSION

...

APPENDIX A

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE PURPOSES OF THE PUBLIC EMPLOYEES COLLECTIVE BARGAINING ACT, RCW 41.56, TEAMSTERS LOCAL 461 ITS OFFICERS, AGENTS AND SUCCESSORS, NOTIFIES ITS BARGAINING UNIT THAT:

WE WILL NOT threaten to request the employer to discharge employees who are delinquent in union dues payments when we have used a haphazard system to notify the employees of their obligations regarding payment of delinquent union dues.

WE WILL NOT attempt to cause Pierce County to commit an unfair labor practice.

WE WILL provide in writing to Wesley Kephart, Fred Stark, Rose Hansen, Sandi Garner, Jean Knable, John Abbott, Robert Holifield and Pamela Lauer, all present shop stewards and the Public Employment Relations Commission, our established, reasonable consistent and constant policy of notifying employees who become delinquent in dues payments of their obligations.

WE WILL restore Wesley Kephart, Fred Stark, Rose Hansen, Sandi Garner, Jean Knable, John Abbott, Robert Holifield and Pamela Lauer to member-in-goodstanding status as of the date each named employee offered to pay his or her back dues without the reinitiation fees. We will continue each named employee in such status until he or she fails to deserve the status in accordance with our by-laws and in a manner not prohibited by the Public Employment Relations Commission.

WE WILL cancel and/or refund any late charges paid by Wesley Kephart, Fred Stark, Rose Hansen, Sandi Garner, Jean Knable, John Abbott, Robert Holifield and Pamela Lauer, as a result of a September 12, 1983 settlement offer.

WE WILL cancel the reinitiation fee assessed against John Abbott April 19, 1984 after we accepted his payment of back dues April 1, 1984.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed in the Public Employees Collective Bargaining Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE PURPOSES OF THE PUBLIC EMPLOYEES

COLLECTIVE BARGAINING ACT, RCW 41.56, PIERCE COUNTY
NOTIFIES ITS EMPLOYEES THAT:

WE WILL NOT threaten to discharge employees who are delinquent in union dues Payments when the union has used a haphazard system, with our knowledge, to notify the employees of their obligations regarding payment of delinquent union dues.

WE WILL NOT promulgate and enforce an illegal policy regarding non-payment of union reinitiation fees and cause our employees to rely upon it to their detriment.

WE WILL pay to Wesley Kephart the equivalent of eight-month's dues as calculated by the union and direct Kephart to forward the entire amount to the union.

WE WILL pay to Pamela Lauer the amount of the reinitiation fee demanded of her

by the union on or about February, 1984, and direct Pamela Lauer to forward the entire amount to the union.

WE WILL NOT in any like or related manner, interfere with, restrain or coerce employees in the exercise of rights guaranteed by the Public Employees Collective Bargaining Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by RCW 41.56.122.

DATED

THIS IS AN OFFICIAL NOTICE AND MOST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of

posting and must not be altered, defaced, or covered by other material. Any questions concerning this notice or compliance with its provisions may be

directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.

Aug 10, 2016, 2:58 pm

RECEIVED ELECTRONICALLY

NO. 92912-2

SUPREME COURT OF THE STATE OF WASHINGTON

MIRANDA THORPE,

Appellant,

v.

GOVERNOR JAY INSLEE, in His
Official Capacity as Governor of the
State of Washington; WASHINGTON
STATE DEPARTMENT OF SOCIAL
AND HEALTH SERVICES ("DSHS"),
SERVICE EMPLOYEES
INTERNATIONAL UNION
HEALTHCARE 775NW ("SEIU 775"),
a labor organization,

Respondents.

CERTIFICATE OF
SERVICE

I, Lori Sandlin, hereby declare under penalty of perjury under the laws of the State of Washington that on August 10, 2016, I caused the foregoing Response Brief of Governor Jay Inslee and Department of Social and Health Services and Appendix to Response Brief to be filed with the Washington State Supreme Court, via email to supreme@courts.wa.gov and per E-Service Agreement of counsel, to the following:

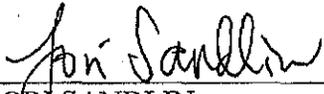
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SIGNED this 10th day of August, 2016 at Olympia, WA.



LORI SANDLIN
Legal Assistant

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Sent: Wednesday, August 10, 2016 2:55 PM

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jfrancisco@frankfreed.com

Subject: Thorpe v. Inslee, et al., Case No. 92912-2

Good afternoon,

Attached for filing today is the Response Brief of Governor Jay Inslee and Department of Social and Health Services along with an Appendix to the Response Brief.

Thank you,

Lori Sandlin

Legal Assistant

Labor and Personnel Division
Attorney Generals' Office
360-664-4196