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NO. 100236-0

SUPREME COURT OF THE STATE OF WASHINGTON

AMERICAN FEDERATION OF TEACHERS, LOCAL 1950,

Petitioner,

v.

STATE OF WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION, a Washington State Agency, and SHORELINE COMMUNITY COLLEGE,

Respondents.

SHORELINE COMMUNITY COLLEGE'S ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

JOHN D. CLARK
Assistant Attorney General
WSBA No. 28537
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
John.Clark@atg.wa.gov
(206) 389-2051
OID 91035

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I. INTRODUCTION

The Washington Public Employment Relations Commission (Commission) has authority to resolve unfair labor practice (ULP) complaints. However, the Commission does not assert jurisdiction over contract disputes or issues that require interpretation of a collective bargaining agreement (CBA). Instead, the Commission's statutory authority in RCW 41.58.020(4) directs it to defer to arbitration "disputes arising over the application or interpretation of an existing collective bargaining agreement." The Commission retains jurisdiction to later decide any remaining ULP issue if necessary.

Petitioner American Federation of Teachers, Local 1950, (Union) disagreed with how Shoreline Community College (College) calculated the first payment of a newly bargained salary increase in a CBA. The Union also disagreed with how the College responded to Union's request for the individual salary increase calculations. Both of those issues are covered by provisions in the CBA. Instead of filing a grievance, the Union

attempted to force the Commission to resolve the issues solely under the Commission's ULP process. The Commission and Court of Appeals correctly held that the College proved the affirmative defense of waiver by contract, and the Union's disagreements should be deferred to arbitration.

The Union's petition seeks a ruling that will drastically restrict the Commission's broad authority to identify and defer contract disputes to arbitration. This would violate RCW 41.58.020(4), reduce the benefits of collective bargaining, harm labor relations, and is not an issue of substantial public interest. This Court should deny review.

II. RESTATEMENT OF THE ISSUES

Does the Commission have authority and broad discretion under RCW 41.58.020(4) and WAC 391-45-110(3) to identify issues in ULP allegations that require interpretation of a CBA, and then defer those contract interpretation issues to arbitration?

III. COUNTERSTATEMENT OF THE CASE

A. Union Disagreed with College's Payment of the Newly Bargained Salary Increase in the CBA

On May 24, 2017, the College and Union bargained a successor CBA that included several categories of faculty salary increases. AR 227, 290, 1293-95. The Union also sent College a request for information that asked for individual salary increase calculations. *See* AR 446-48, 1461-62. The College's creation of the individual calculations required significant work over the summer quarter to prepare up to five separate calculations for over 500 faculty. AR 503-06, 1488-90.

As the College was nearing completion of the calculations at the end of August, College's human resources director offered the Union two options by email to make sure it had sufficient time to review the calculations prior to implementing the salary increases:

> 1) Process the retro-pay on the 9/10/17 paycheck, noting we can make adjustments after the fact should your review find edits needed

> 2) Wait until you have completed the full data review and delay retro-payments to the 10/10/17 paycheck
>
> Either one works for me, just let me know your preference.

AR 468.

The Union president responded in two emails, insisting she wanted the salary increases paid on September 10 instead of taking additional time to review the calculations. AR 468. The College provided Union the calculations the next day on August 25, 2017, and paid the salary increases on September 10, 2017. *See* AR 471-72.

B. The ULP Procedural History and Decision to Defer the Contract Dispute Issues to Arbitration

The Union disagreed with the salary increase payments and filed a ULP Complaint with the Commission on October 23, 2017. AR 1757-67. The Commission's ULP case manager issued a preliminary ruling that allowed three ULP causes of action to proceed:

> Employer refusal to bargain in violation of RCW 28B.52.073(1)(e) [and, if so, derivative

> interference in violation of RCW 28B.52.073(1)(a)], within six months of the date the complaint was filed, by:
>
> > (1) Breaching its good faith bargaining obligations and refusing to bargain with the union over the decision of using a new methodology of calculating increased compensation and the total amount of increased compensation owed to the bargaining unit employees.
> >
> > (2) Unilaterally changing the amount of agreed upon increased compensation and the methodology to calculate the increased compensation owed to the bargaining unit employees, without providing the union an opportunity for bargaining.
> >
> > (3) Refusing to provide relevant information requested by the union concerning data related to the compensation implementation.

AR 39-40, 1652-53.

The Union's ULP Complaint was silent on identifying the relevant CBA provisions or grievance status of the dispute. The College filed a motion asking the Commission to require Union to disclose those details and decide if deferral to arbitration was necessary. AR 1626-38.

The Commission's examiner denied the College's motion and request to defer the issues to arbitration. AR 1616. The College then asserted waiver by contract as an affirmative defense for all the ULP allegations. AR 1604-05.

At the ULP hearing, both parties agreed the new compensation provision in the CBA was the salary increase that is the subject of the ULP matter. AR 293, 862-63, 871, 1184-86, 1392, 1525. When asked if the Union is alleging that College incorrectly paid the compensation under that CBA provision, the Union president answered "correct." AR 882. The Union also agreed that filing a grievance is an option for this dispute, but a grievance was not filed. AR 882, 884, 1197.

With regard to the Union's request for information, it is undisputed that the CBA contains a provision in Article III, Section F, titled "Information," that requires "[u]pon request, the Employer shall make available to the Federation information need to assist the Federation in performing its representative responsibilities. Such information shall be in the same form as is

available to the general public or for internal College use." AR 238.

The CBA requires mandatory grievance and arbitration for claims "arising out of the interpretation or the application of or any alleged violation by the Employer of the terms of this Agreement." AR 276-77.

The Commission examiner issued an initial decision that found the College committed the three ULPs in the preliminary ruling. AR 127-70. However, the examiner's decision did not mention or analyze the issues of waiver by contract or deferral to arbitration. AR 127-70.

The College appealed the initial decision, and on January 16, 2020, the Commission issued a detailed final decision that fully vacated the examiner's order, found the affirmative defense of waiver by contract, and deferred Union's ULP complaint to arbitration:

> The parties had a collective bargaining agreement in place when the union filed its unfair labor practice complaint. That agreement contained

> provisions addressing employee wages and union requests for information. The entirety of the unfair labor practice complaint, including the allegations that the employer bargained in bad faith, unilaterally altered the approach to calculating the retroactive pay owed to the bargaining unit as agreed, and withheld information, all in violation of RCW 28B.52.073(l)(e) and RCW 28B.52.073(1)(a), are deferred to arbitration under the parties' collective bargaining agreement.

AR 38-54.

The Union petitioned for judicial review under RCW 34.05.570(3). *See* AR 7-11. On direct review the court of appeals issued a published opinion holding "[b]ecause the Commission has broad authority to determine when deferral to arbitration is appropriate, and a substantial question of contract interpretation exists that could influence or control the outcome of the statutory ULP claims, we affirm." *Am. Fed'n of Tchrs., Loc. 1950 v. Pub. Emp. Rels. Comm'n*, 493 P.3d 1212, 1214 (2021).

IV. WHY REVIEW SHOULD BE DENIED

A. Union's Desire to Reduce the Commission's Authority to Defer Contract Issues to Arbitration is Not an Issue of Substantial Public Interest

The Commission's statutes, rules, and precedents establish a strong preference for it to defer to arbitration any disputes that could require interpretation of a CBA. The Commission's authority is limited to that which the Legislature has granted. *See Local 2916, IAFF v. Pub. Emp't Relations Comm'n*, 128 Wn.2d 375, 379, 907 P.2d 1204 (1995). The Commission "may" adjudicate any unfair labor practice alleged by a college or faculty union. RCW 28B.52.065. The types of ULP claims a party can allege are listed in RCW 28B.52.073.

Although the Commission may adjudicate ULP claims, the Commission's primary grant of power in RCW 41.58.020(4) requires that "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." The Union

places a very low importance on this requirement. Pet. for Rev. at 5 n.2.

However, the Commission places great importance on complying with RCW 41.58.020(4). "It has been the practice of the Commission to 'defer' to contractually created or adopted dispute resolution processes where it appears that issues disputed in an unfair labor practice case are susceptible to resolution through the contract procedures." *Manson Sch. Dist.*, Decision 3813 (PECB, 1991) (citing *Stevens Cnty.*, Decision 2602 (PECB, 1987)). The Commission does not assert jurisdiction through the ULP provisions of the statute to remedy violations of collective bargaining agreements. *City of Tukwila*, Decision 380 (PECB, 1991) (citing *City of Walla Walla*, Decision 104 (PECB, 1976)). "A pivotal concern of the Commission should be to maintain the sanctity of contracts freely negotiated and agreed upon by parties." *Whatcom Cnty. Deputy Sheriff's Guild v. Whatcom Cnty.*, Decision 8512 (PECB, 2005).

If a ULP allegation involves issues already bargained in a

CBA, the Commission recognizes the affirmative defense of waiver by contract. *Lakewood Sch. Dist.*, Decision 755-A (PECB, 1980); WAC 391-45-270(1)(b). Once a CBA is signed, the parties will have met their obligation to bargain matters set forth in the contract, relieving the parties of their obligation to bargain for the life of the agreement. *City of Kelso*, Decision 10233-A (PECB, 2010). Therefore, no ULP will be found if a party makes changes in a manner consistent with the contract. *Id.*

The Commission's rule in WAC 391-45-110 addresses processing ULP complaints and making a determination on deferring contract issues to arbitration. WAC 391-45-110(2) requires a Commission staff member to review ULP complaints and issue a preliminary ruling:

> (2) If one or more allegations state a cause of action for unfair labor practice proceedings before the commission, a preliminary ruling summarizing the allegation(s) shall be issued and served on all parties.

The rule then allows deferral of some or all of the ULP causes of action in the preliminary ruling under the following language:

> (3) The agency may defer the processing of **allegations which state a cause of action under subsection (2) of this section**, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.

WAC 391-45-110(3) (emphasis added). This key provision of the deferral rule expressly authorizes the Commission to defer processing of any or all of the "*allegations* which state a cause of action" in the preliminary ruling "under subsection (2) of this section." Emphasis added. Subsection (3) of the rule also sets forth the following three standards for helping to determine if deferral is appropriate:

> (a) Deferral to arbitration may be ordered where:
>
> > (i) Employer conduct alleged to constitute an unlawful unilateral change of employee wages, hours or working conditions is arguably protected or prohibited by a collective bargaining agreement in effect between the parties at the time of the alleged unilateral change;
> >
> > (ii) The parties' collective bargaining agreement provides for final and binding arbitration of grievances concerning its interpretation or application; and

> (iii) There are no procedural impediments to a determination on the merits of the contractual issue through proceedings under the contractual dispute resolution procedure.

WAC 391-45-110(3)(a).

The Commission's final decision methodically applied the evidence to all of the standards in WAC 391-45-110(3) and held:

> We conclude that the parties had a collective bargaining agreement that governed the issues raised by the union's unfair labor practice complaint. Commission precedent, RCW 41.58.020(4), and WAC 391-45-110(3) direct the agency, in appropriate cases, to defer unfair labor practice complaints to arbitration. The gravamen of the union's complaint is that the employer unilaterally changed compensation without notice and failed to provide information required under chapter 28B.52 RCW. The alleged refusal to bargain arises from the same set of facts as the unilateral change. In both matters the employer asserts colorable contractual justification for its actions. Accordingly, we reverse the Examiner's decision and conclude that the matter should be deferred to arbitration.

AR 42-50.

The court of appeals held that Commission decisions "are accorded extraordinary judicial deference, especially in the

matter of remedies," and affirmed the Commission's decision. *Am. Fed'n of Tchrs., Loc. 1950*, 493 P.3d at 1217.

1. Union's Narrow Interpretation of Commission's Deferral Rules Disregards the Rule's Plain Language and Violates RCW 41.58.020(4)

The Commission has broad authority under WAC 391-45-110(3) to defer making any ULP determination so that an issue of contract interpretation can be decided in arbitration. The Union's petition seeks to reduce the Commission's authority to do that. Throughout this lengthy ULP process, Union has not attributed any meaning to the first sentence in WAC 391-45-110(3) that says:

> (3) The agency may defer the processing of allegations which state a cause of action under subsection (2) of this section, pending the outcome of related contractual dispute resolution procedures, but shall retain jurisdiction over those allegations.

The phrase "allegations which state a cause of action under subsection (2) of this section" refers to all the ULP allegations in the preliminary ruling. The Commission's final order correctly applied WAC 391-45-110(3) and held "[a]n expansive

interpretation of that rule is appropriate given the broad scope of its first sentence and the legislative preference for arbitration expressed in RCW 41.58.020(4).” AR 47.

The final order held “[t]he Commission is not limited by how the parties characterize the allegations in their unfair labor practice complaints.” AR 47. This statement makes sense because, otherwise, a party filing a ULP complaint could strategically try to prevent deferral to arbitration by drafting their ULP complaint to conceal an underlying contract issue in dispute. This is what the Union attempted in this case.

The court of appeals applied rules of construction for interpreting agency rules and explained:

> Under the plain language of WAC 391-45-110(3), the Commission may “retain jurisdiction” over but “defer”[1] alleged ULP violations “pending the outcome of related contractual dispute resolution procedures” in arbitration. This broad language is not limited to unilateral change allegations, and reflects the Commission’s policy to encourage arbitration if “a substantial question of contract interpretation exists which could influence or control the

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[1] The decision says “defer” means “delay” in this part of the rule. *Am. Fed’n of Tchrs., Loc. 1950*, 493 P.3d at 1218, n.7.

> outcome of the [ULP] case." Restricting arbitration to only questions of whether an employer unilaterally changed a term of the CBA goes against the plain language of WAC 391-45-110(3), and deviates from the legislature's intent to promote resolution of contractual disputes through the method agreed on by the parties as well as the Commission's policy to defer contractual disputes to arbitration.

Am. Fed'n of Tchrs., Loc. 1950, 493 P.3d at 1218 (internal citation omitted).

Thus, the Union's argument that WAC 391-45-110(3)(a) prohibits the Commission from identifying contract issues to defer to arbitration violates legislative intent, Commission policy, and the plain language of the deferral rule.

The Union's effort to disregard plain language in the deferral rule is also at odds with the Commission's regulation for interpreting its own rules:

> The policy of the state being primarily to promote peace in labor relations, these rules and all other rules adopted by the agency shall be liberally construed to effectuate the purposes and provisions of the statutes administered by the agency, and nothing in any rule shall be construed to prevent the commission and its authorized agents from using their best efforts to adjust any labor dispute.

WAC 391-08-003.

2. The Decision to Defer Issues to Arbitration does not Require an Arbitrator to Decide any Statutory ULP claims

The Union's petition incorrectly suggests that the Commission's decision to defer the ULP complaint to arbitration will cause an arbitrator to decide whether the College committed statutory ULP violations. The decision does no such thing. Such arbitration will only address whether the College complied with the CBA provisions for the salary increase and the response to the information request. An arbitrator will not be asked to decide whether the College failed to bargain or committed a statutory ULP. After an arbitrator determines contract issues, the Commission still has jurisdiction over any ULP issues.

The Union's argument that the Commission "abandoned its duty to adjudicate"[2] Union's statutory ULP claims overlooks the fact that the Commission conducted a four-day ULP hearing,

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[2] *See* Pet. for Rev. at 13.

reviewed a substantial evidentiary record, and issued a detailed decision on all three ULP charges. Upholding the waiver by contract defense and deferring the contract interpretation issues to arbitration *was* an adjudication of the ULP charges. The College prevailed by proving the affirmative defense of waiver by contract.

The Union also argues that deferring both the "refusal to bargain" and the "unilateral change" ULP compensation claims left the refusal to bargain claim "summarily passed over." Pet. For Rev. at 13. The Commission's decision explains why this is not the case:

> Both take aim at the same employer actions; e.g., the methodology the employer used to calculate and implement the increased compensation agreed to by the parties in the agreement. Both charges depend for their resolution on interpretation of the [CBA], a task assigned by the parties to an arbitrator. However sliced, they amount to the same allegation: that the employer, without notice, altered the contractually agreed method for calculating employee retroactive pay after the agreement was put into effect and thereby breached its duty to "bargain collectively with the representatives of its employees."

AR 47. Although the Union disagrees with the outcome, the Commission's analysis was heavily supported by Union's own hearing testimony that verified this was a contract dispute:

- The Union president testified that she is not alleging the total amount of funding "still needs to be bargained" and she does not "believe there is a methodology that still has to be bargained." AR 867-68.

- The Union president testified, "[W]e are not saying that what the contract says is not accurate. It was the way it was applied." AR 855.

- The Union president testified "It is the union's position that they should have been paid correctly in the first place . . . ." AR 842.

- When asked "You are alleging that the college incorrectly paid the compensation in section B-1-A of both Article 1 and Article 2 of the Appendix A, right?" the Union president answered "Correct." AR 882.

Similarly, with regard to the ULP claim involving the request for salary calculations, it is undisputed the CBA requires:

> Upon request, the Employer shall make available to the Federation information needed to assist the Federation in performing its representative responsibilities. **Such information shall be in the same form as is available to the general public or for internal College use**.

AR 48 (emphasis added).

On August 24, 2017, while the College was still preparing the salary calculations, the Union president emailed College saying Union wants to review the unfinished calculations "concurrently" with the College. AR 468. The Union president testified Union wanted "the calculations before the college has determined the calculations were complete and correct," but College instead finished the calculations and provided them the next day. AR 471-72, 821. College believes the CBA did not require College to give Union unfinished calculations, since that would not be the *same form* that College uses the calculations for *internal College* use, and the College had provided finished calculations for prior salary increases. *See* AR 66-67. The CBA language supports College's position, and this was a proper issue for arbitration.

The Commission here correctly found "[t]he employer satisfied the union's information request on August 25, 2017,

nearly two months before the unfair labor practice complaint was filed" and "the union sought only prospective 'cease and desist' relief." AR 48. The Commission held "[t]he parties' inclusion of a provision obligating the employer to supply the union with information furnishes a clear contractual basis for deferral." AR 48

The manner in which employers respond to union requests for information is not a sacred activity that can never by waived by contract or can only be reviewed as a ULP violation. The Commission said "[i]t is certainly within an arbitrator's capability to determine whether the employer breached its contractual duty to supply information needed by the union in fulfillment of its duty of representation." AR 48.

The Court of Appeals agreed the "decision was reasonable because the College asserted a colorable waiver-by-contract

defense that may control resolution of the Union's statutory claims." *Am. Fed'n of Tchrs., Loc. 1950*, 493 P.3d at 1220.[3]

Therefore, the Union's assertion that "the Commission summarily passed over the related statutory failure to bargain over the calculations of the payments and the failure to provide information concerning the calculations" does not merit review. *See* Pet. For Rev. at 13.

3. Commission is not Prohibited from Bifurcating ULP Claims

The Union argues that even when there is a unilateral change claim that is deferrable, the Commission does not have discretion to defer any claims whatsoever if there are other ULP claims. *See* Pet. For Rev. at 14. A restrictive unwritten policy like that would eviscerate the Commission's authority to defer claims to arbitration, violate the legislative preference for arbitration in

[3] *See also DaimlerChrysler Corp. v. N.L.R.B.*, 288 F.3d 434, 443 (D.C. Cir. 2002) (the standard for whether ULP dispute over information request can be deferred to arbitration is a "clear and unmistakable waiver" in the CBA).

RCW 41.58.020(4) and violate the first sentence in WAC 391-45-110(3) that allows deferral of any ULP claim in the preliminary ruling.

No Commission decision has held that the Commission cannot find waiver by contract applies to any or all of the alleged ULP allegations after hearing all the evidence in a ULP hearing. In this case, the Commission's decision is based on the unchallenged facts in the final decision. All three of the ULP allegations here were framed as a "refusal to bargain in violation of RCW 28B.52.073(1)(e)." AR 39-40, 1767. The Union's ULP complaint also alleged the College's conduct for all three allegations was "abandoning the parties' agreed-upon application of the language in the CBA." *See* AR 1767. Such language alleging contract violations was sufficient to show a unilateral change was being alleged, and the Commission said "[t]his alone could have alerted the agency of the need to consider deferral." AR 40 n.10.

The salary increase provision and information request provision in the CBA here relieved the parties from a duty to bargain those issues because they had already been bargained and agreed to. *See City of Kelso*, Decision 10233-A (PECB, 2010). The Commission was well within its authority to recognize the affirmative defense of waiver by contract for those ULP allegations that involve issues bargained in the CBA. *See Lakewood Sch. Dist.*, Decision 755-A (PECB, 1980); WAC 391-45-270(1)(b).

For more than four decades, the Commission has been following the policy that it "lacks jurisdiction to hear and decide" contract disputes, and "these violation of contract allegations should be litigated, if at all, under the grievance and arbitration machinery provided in the [CBA]." *See IAFF, Local 404 v. City of Walla Walla*, Decision 104 (PECB, 1976).

For example, when a union filed a ULP complaint alleging employee interference in violation of RCW 41.59.140(1)(a) and refusal to bargain in violation of RCW 41.59.140(1)(e), the full

Commission panel treated the deferral issue similar to the present case. *See Wash. Educ. Ass'n v. Finley Sch. Dist.*, Decision 7806 (PECB, 2002). The Commission explained:

> As a discretionary (rather than mandatory) policy, deferral is ordered where it can be anticipated that the delay in processing of an unfair labor practice case will yield an answer to the question that is of interest to the Commission in resolving the unfair labor practice case.

Id. The Commission in *Finley* found each of the prongs in WAC 391-45-110(3)(a) were satisfied and explained that "[d]eferral to arbitration implements a legislative preference that is stated in RCW 41.58.020(4)." *Id.* The final decision here applied this same reasoning and held the "Commission does not exercise its jurisdiction and does not enforce collective bargaining agreements through the unfair labor practice proceedings." AR 44.

Thus, the Commission did not create a new deferral standard or stray from the rules of the road, and there is no

substantial public interest in restricting the longstanding deferral standard.

4. The Decision does not "Abdicate" the Commission's ULP Authority or Responsibilities

A Commission decision to defer ULP claims to arbitration to resolve a necessary contract issue does not abdicate any of the Commission's duties to process a ULP complaint. *See City of Tukwila*, Decision 380 (PECB, 1991) (Commission's deferral policy is not a surrender of jurisdiction over ULP allegations, but, rather, is an exercise of discretion in harmony with the preference for grievance arbitration).

If any ULP allegation is deferred for arbitration, the first sentence in WAC 391-45-110(3) confirms that the Commission "shall retain jurisdiction over those allegations." Additionally, WAC 391-45-110(3)(b) says, "[p]rocessing of the unfair labor practice allegation under this chapter shall be resumed following issuance of an arbitration award or resolution of the grievance."

The Commission's final order correctly stated, "[T]he Commission retains authority to 'administer the collective bargaining laws' if the arbitrator reaches a result that is repugnant to the purposes and policies of chapter 28B.52 RCW." AR 49.

The decision in this case did not cause the Commission to lose any jurisdiction or authority over deciding ULP claims.

5. The Union's Desired Outcome Would Result in Both Parties Having No Meaningful Remedy for this Dispute

Although the Union does not want the compensation dispute or the information request dispute to be decided by an arbitrator, their petition to this Court is silent on how their desired outcome will result in any resolution of those disputes. Their request for relief in their petition for judicial review of the final decision under RCW 34.05.570 asked the Commission to "reinstate the findings of fact and conclusions of law" in the examiner's initial order. AR 10. However, the Commission's final decision vacated the examiner's entire decision, including all of its findings. AR 50. In judicial review cases, the Court

reviews the findings and conclusions of the final decision-maker; not the vacated findings of the initial decision-maker. *See Hardee v. DSHS*, 172 Wn.2d 1, 18-20, 256 P.3d 339 (2011).

The Union's petition for judicial review did not challenge any findings of fact in the final decision, which made those findings verities in this appeal. *See* AR 7-11. *See Tapper v. State Emp't Sec. Dep't*, 122 Wn.2d 397, 402, 407, 858 P.2d 494 (1993) (if petitioner fails to assign error to findings of agency, those findings are deemed verities on appeal) (citations omitted). The Union's petition does not demonstrate how the court of appeals decision erred under the undisputed facts of the final decision and the standards of review for this administrative judicial review case.[4]

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[4] *See City of Fed. Way v. Pub. Emp't Relations Comm'n*, 93 Wn. App. 509, 511, 970 P.2d 752 (1998) (A party alleging a final agency order is arbitrary and capricious must show the action is one that is willful and unreasoning, without consideration, and in disregard of facts and circumstances).

Granting the Union's requested remedy of reinstating the examiner's erroneous initial order would result in the College's correctly asserted waiver by contract defense being disregarded; the initial order was silent on the issue. *See* AR 127-70. In addition, the examiner's refusal to analyze waiver by contract resulted in an initial order that provided no resolution to the underlying compensation dispute.[5] AR 154-55, 168-69.

Similarly, regarding the information request, the initial order directed the College to provide the Union the requested compensation calculations, which was meaningless relief. *See* AR 168. The Union never requested that relief, and its ULP complaint (and the Commission's final decision) confirms the

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[5] Instead of providing a resolution to the actual compensation dispute, the initial order only directed the College to "cease and desist" from "refusing to bargain in good faith" or "making unilateral changes to mandatory subjects of bargaining" in the future. *See* AR 169.

College already provided the calculations two months before the ULP complaint was filed.[6] AR 48, 1761-62, 1767.

The Union has not filed a grievance. The College believes Union wants to avoid grievance and arbitration of the compensation dispute because the Union's desired interpretation of the CBA salary provision will result in significantly reducing a large number of part-time faculty salaries. The Union treasurer reluctantly testified the Union's salary interpretation results in part-time faculty receiving a total of about $100,000 per year less than under College's interpretation. AR 1176, 1178-79. The Union's requested ULP relief asked the Commission not to reduce any salaries regardless of the correct method under the CBA, which is a remedy an arbitrator is unlikely to grant. *See* AR 1767.

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[6] The College provided the calculations a year and a half before the initial order was issued on February 8, 2019. *See* AR 169.

Court approval of such a strategy for avoiding arbitration of a CBA dispute is harmful to labor relations and not an issue of substantial public interest.

V. CONCLUSION

The Union's petition raises no issues of substantial public interest. Based on the unchallenged facts of this case, the Commission correctly determined that an arbitrator should decide whether the College's salary payment and information request response complied with the terms of the CBA. The Commission's longstanding authority and discretion to identify and defer contract issues to arbitration should not be reduced. The Court should deny this petition.

This document contains 4,914 words, excluding the parts of the document exempted from the word count by RAP 18.17.

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RESPECTFULLY SUBMITTED this 22nd day of October 2021.

ROBERT W. FERGUSON
Attorney General

s/ John D. Clark
JOHN D. CLARK
Assistant Attorney General
WSBA No. 28537
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
John.Clark@atg.wa.gov
(206) 389-2051

PROOF OF SERVICE

I certify that on this date, I electronically filed this document with the Clerk of the Court using the Washington State Appellate Courts' e-file portal, which will send notification of such filing to all counsel of record at the following:

Dmitri Iglitzin
iglitzin@workerlaw.com

Sarah Derry
derry@workerlaw.com

Kathleen Phair Barnard
barnard@workerlaw.com

Mark S. Lyon
MarkL1@atg.wa.gov

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

Dated this 22nd day of October 2021 at Tacoma, Washington.

s/ Jennifer Swearingen
JENNIFER SWEARINGEN
Legal Assistant
Jennifer.Swearingen@atg.wa.gov
(206) 442-4481

ATTORNEY GENERAL'S OFFICE-EDUCATION DIVISION

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