

NO. 91742-6

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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CITY OF SEATTLE, d/b/a HUMAN SERVICES DEPARTMENT,

Petitioner,

v.

GEORGIANA ARNOLD,

Respondent.

**FILED**  
AUG 12 2015

CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON **CRF**

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**AMICUS CURIAE MEMORANDUM OF THE  
ATTORNEY GENERAL OF WASHINGTON  
IN SUPPORT OF PETITION FOR REVIEW**

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## I. INTRODUCTION

The Court of Appeals decision in *Arnold v. City of Seattle*, 185 Wash. App. 653; 345 P.3d 1285 (2015), that attorney's fees are provided for under RCW 49.48.030 in public employee disciplinary appeals is against public policy and raises significant questions of public interest. Furthermore, the *Arnold* decision is in conflict with prior Courts of Appeals cases.

## II. ISSUES FOR REVIEW

1. Should the Supreme Court grant review of *Arnold v. City of Seattle* as the case presents a significant question of public interest.
2. Should the Supreme Court grant review when the Court of Appeals decisions in *Cohn* and *Trachtenberg* are in direct conflict with the Court of Appeals' decision in *Arnold v. City of Seattle*.

## III. ARGUMENT

### A. **The Court Should Grant Review Because This Case Presents a Significant Question of Public Interest**

The Court of Appeals opinion in this case raises a significant question concerning the recovery of attorney's fees in public employee disciplinary appeals where the board or commission responsible for hearing such appeals overturns or reduces imposed disciplinary action, resulting in the payment of back wages. Court awards of attorney's fees under RCW 49.48.030 in state civil service personnel appeal proceedings are inconsistent with the limited statutory authority granted to such a board or

commission. The state Personnel Resources Board (Board)<sup>1</sup> is currently the avenue through which state civil service employees who are not represented by a labor union can appeal employment-related discipline. RCW 41.06.170; *see also* WAC 357-52.

The general purpose of Chapter 41.06 RCW, the state civil service law, is to establish for the state a system of personnel administration based on merit principles and scientific methods governing all facets of state civil service, including the removal and discipline of civil service employees. RCW 41.06.010. The civil service system was originally enacted by a vote of the public through Initiative 207 in 1960. Initiative No. 207 (Codified 1961 ch. 1, § 1 as RCW 41.06.) The Initiative's stated purpose was for ". . .greater governmental fiscal responsibility through limitations on expenditures and taxation." *See* Initiative 207 at 1, <https://www.sos.wa.gov/elections/initiatives/text/i207.pdf> (Accessed July 24, 2015); 1961 Voters Pamphlet: Initiative 207 <https://www.sos.wa.gov/legacyproject/pdf/OH942.pdf> (Accessed July 24, 2015).

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<sup>1</sup> The Personnel Appeals Board (PAB) formerly handled disciplinary appeals of unrepresented state employees. Initiative No. 207, §17 (Codified 1961 ch. 1, § 17 as RCW 41.06.170). In 2002, the Legislature changed the board responsible for such appeals to the Personnel Resources Board. This was done as part of the Civil Service Reform Act. (Laws of 2002 ch. 354, § 213). The purpose of the Board remained the same as that of the PAB, and the statute still made reference to the 1960 Initiative No. 207, which was the basis for enacting the original civil service law. *See* RCW 41.06.010.

The Board's remedial authority in disciplinary appeals is statutorily limited to awards of back pay, sick leave, vacation accrual, retirement and OASDI credits. RCW 41.06.220. In 2002, the Legislature made clear that the decisions of the Board filed after June 30, 2005, are final and binding; there is no provision for appeal to superior court. RCW 41.06.170(2); 2002 ch. 354, § 213.

As a matter of policy, it is imprudent to permit employees to use RCW 49.48.030 to recover attorney's fees in state civil service disciplinary appeals remedies such as back pay are set forth in statute. See RCW 41.06.220. Allowing for attorney's fees in public employee disciplinary appeals defeats the settled expectations of the parties based on statutory authority and case law. See *Cohn v. Dep't of Corr.*, 78 Wn. App. 63, 895 P.2d 857 (1995); *Trachtenberg v. Dep't of Corr.*, 122 Wn. App. 491, 93 P.3d 217 (2004).

Further, if a state agency could incur significant attorney's fees, the effectiveness of civil service laws will be decreased because employers will be discouraged from taking necessary disciplinary actions. Creation of an additional basis for attorney's fees in civil service appeals changes the carefully crafted balancing of interests performed by the Legislature in authorizing the Board to hear disciplinary appeals for unrepresented state employees. Furthermore, discouraging of the use of state civil service

laws contravenes the public interest, as evidenced by the public initiative in 1960.

Review by this Court is necessary because the opinion by the Court of Appeals awarding Ms. Arnold attorney's fees has a chilling effect on employers taking disciplinary actions related to civil service employees. If an unrepresented state employee appeals a discipline as dictated by the civil service statutory scheme, the employer should have the ability to rely on such statutes to know what remedies may be afforded to the employee if the appeal is successful. An employer should not have to weigh the cost of a potential attorney's fee award in its decision to take action against an employee engaging in misconduct, when the statute does not allow for such fees. Allowing for attorney's fees in state civil service appeals creates a remedy not authorized by statute. *See* RCW 41.06.220.

In *Arnold*, the Court of Appeals held that authority for the award of fees is found in RCW 49.48.030, and that the Superior Court may exercise that authority in a separate suit brought by the employee solely for the purpose of vindicating the statutory right. *Arnold v. City of Seattle*, 185 Wash. App. 653, 665; 345 P.3d 1285 (2015). The Court of Appeals reached this result by interpreting RCW 49.48.030 so broadly as to allow a public sector employee to file a separate lawsuit for attorney fees, regardless of the type of proceeding below. *Id.* at 664. The court's

expanded interpretation of what constitutes a “judgment for wages owed” will have significant statewide impacts on discipline appeals by employees under civil service provisions.

RCW Chapter 41.06 does not include a provision that allows an employee to recover attorney fees, should private counsel be used during the civil service disciplinary appeal proceedings outlined in WAC 357-52. If this Court does not review the *Arnold* decision, lower courts could believe that RCW 49.48.030 extends to state civil service disciplinary appeals under RCW Chapter 41.06 when back wages are awarded.

Allowing attorney’s fees in these cases may cause confusion, since attorney’s fees have never been awarded in the past for state civil service disciplinary appeals. *See Cohn*, 78 Wn. App. at 68; *Trachtenberg*, 122 Wn. App. at 497. In fact, in *Fire Fighters* this Court left open the question presented in this case: whether attorney fees awards are appropriate under RCW 49.48.030 in the context of administrative proceedings. *Int’l Ass’n of Fire Fighters Local 46 v. City of Everett*, 146 Wn.2d 29, 42 P.3d 1265, 42 n.11 (2002).

The Court of Appeals, in awarding attorney’s fees for Ms. Arnold, erroneously relied on *McIntyre v. State*, 135 Wn. App. 594, 141 P.3d 75 (2006). Unlike Ms. Arnold, a civil service employee, McIntyre was a Washington State Patrol Officer, who was specifically excluded from the

civil service rules. RCW 41.06.070. Therefore, McIntyre's disciplinary appeal was provided for under State Patrol statutes RCW 43.43.070, .090, and .100. The State Patrol statute specifically provides for an appeal of the agency's final discipline order to superior court, not to an administrative body. RCW 43.43.100.

The Court of Appeals' broad interpretation of RCW 49.48.030, apparently allowing any public sector employee who is able to get his/her discipline reduced or reversed in a civil service disciplinary appeal at the administrative level to receive an award of attorney fees from the superior court, is contrary to public policy. Such broad interpretation could potentially cost state taxpayers an exorbitant amount to cover the attorney fees for a statute that the taxpayers requested in order to have a fair process for civil service employees. Allowing attorney's fees for public employee administrative appeals creates a large financial burden on the State and taxpayers.

For the reasons set forth above, the instant case presents a substantial question of public interest that warrants the attention and considered judgment of the state's highest Court.

**B. THE COURT OF APPEALS DECISIONS IN *COHN* AND *TRACHTENBERG* ARE IN DIRECT CONFLICT WITH THE COURT OF APPEALS' DECISIONS IN *ARNOLD*.**

This case is appropriate for review under RAP 13.4 (b) (2). The Court of Appeals' holding that *Cohn* and *Trachtenberg* are inapposite to the analysis of this case creates a conflict with current, settled case law. The conflict between divisions of the Court of Appeals is accurately summarized in the City of Seattle's Petition for Review. Petition for Review at 9-14. A consistent rule of law should be established by this Court to avoid further confusion on this issue.

**IV. CONCLUSION**

The Court should grant review of this case because the issues raised concerning the recovery of attorney's fees in civil service employee disciplinary appeals are of substantial public interest. Additionally, Supreme Court review of this case would resolve the conflict created between divisions of the Courts of Appeals. The issues presented by the *Arnold* case have statewide consequences, which could prove to be detrimental to the citizens of Washington State. Accordingly, this matter

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warrants consideration by this Court, and Amicus respectfully requests the

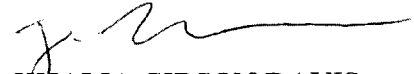
Court to grant review.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of July, 2015.

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Good afternoon,  
Attached for filing are a Motion of Attorney General of the State of Washington for Permission to File Amicus Curiae Memorandum in Support of Petition for Review and Amicus Curiae Memorandum of the Attorney General of Washington in Support of Petition for Review along with the certificate of service.

Please contact our office if there are any problems opening the attachments.

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Thank you,

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