

NO. 37897-3-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

WASHINGTON FEDERATION OF STATE EMPLOYEES,

Respondent,

v.

STATE OF WASHINGTON,
DEPARTMENT OF GENERAL ADMINISTRATION,

Appellant.

REPLY BRIEF OF APPELLANT

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FILED
COURT OF APPEALS
DIVISION II

PM 12-15-06

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I. ARGUMENT

Respondent Washington Federation of State Employees (Federation) agrees with nearly all the statement of facts in the opening brief of Appellant State of Washington, Department of General Administration (General Administration). The Federation also does not take issue with the detailed description of the operation of the competitive contracting process set out in General Administration's brief. Nor does the Federation argue that for employees, agencies and others involved in the process under RCW 41.06.142 do not need to know which employees the key statutory phrase "whose positions or work would be displaced," which General Administration's rules define, refers to.

Despite this, the Federation argues that General Administration's rules exceed the agency's rule-making authority, are inconsistent with the governing statute, and are arbitrary and capricious. The Federation supports its argument by an overly narrow, convoluted reading of RCW 41.06.142 and by invoking principles from areas of law that are irrelevant to the proper interpretation of the statute. The Court should reject the Federation's arguments.

A. The Department of General Administration Did Not Exceed Its Rule-Making Authority in Adopting the Rules on “Displaced Employees”

The Federation argues that in adopting WAC 236-51-006 and WAC 236-51-010(11), the Department of General Administration exceeded the rule-making authority granted to it in RCW 41.06.142. The Federation argues that RCW 41.06.142 gave General Administration limited rule-making authority to adopt rules relating to the details of the bidding process and that General Administration’s rules setting out to which employees the bidding process (and other portions of RCW 41.06.142) applies exceed that authority.

Contrary to the Federation’s argument, General Administration did have statutory authority to adopt the rules regarding displaced employees. That the Federation may not like the rules that General Administration adopted does not mean the rules exceeded the agency’s rule-making authority.

The Federation has the burden of showing that General Administration exceeded its rule-making authority in adopting WAC 236-51-006 and WAC 236-51-010(11). RCW 34.05.570(1)(a). The Federation points out that the court is not required to give deference to an agency’s view as to the extent of its rule-making authority. However, even where the challenge to the rule is that it exceeds the agency’s

authority, the “party attacking the validity of an administrative rule must show compelling reasons why the rule conflicts with the legislation’s intent and purpose.” *Pierce Cy. v. State*, 144 Wn. App. 783, 836, 185 P.3d 594 (2008). The Federation has failed to meet its burden here.

The Federation urges this court to accept its assertion that RCW 41.06.142 should be dissected into separate, independent, and discrete parts, rather than read as a whole. The Federation suggests that the placement of the grant of rule-making authority to General Administration in RCW 41.06.142(4)(d) is sufficiently compelling to show that General Administration exceeded its authority. The Federation also focuses on the subjects about which General Administration is directed to adopt rules in RCW 41.06.142(4)(d)(i), (ii), and (iii). The Federation argues from this that General Administration was limited to adopting rules relating to the mechanics of the bidding process and that defining which employees can offer alternatives to the agency’s proposal to contract and form employee business units to bid on and perform the contract is totally unrelated to the bidding process.

The Federation’s narrow reading of General Administration’s rule-making authority should be rejected. A statute is to be construed as a whole. As this Court has noted, the Court “should give effect to all statutory language; we consider statutory provisions in relation to each

other, harmonizing them to ensure proper construction.” *Nationscapital Mortgage Corp. v. State Dep’t of Financial Inst.*, 133 Wn. App. 723, 736, 127 P.3d 78 (2006). *Accord*, *Premera v. Kreidler*, 133 Wn. App. 23, 37, 131 P.3d 930 (2006); *Alpine Lakes Protection Soc’y v. WA State Dep’t of Ecol.*, 135 Wn. App. 376, 390, 144 P.3d 385 (2007), *review denied*, 162 Wn.2d 1014 (2008).

A review of all the provisions of RCW 41.06.142 reveals that, by the statute’s own language, the subsections of the statute are interrelated and are intended to be read as a whole. RCW 41.06.142(1)(b) provides that employees in the classified service “whose positions or work would be displaced” by a proposed contract must be provided an opportunity to offer alternatives and, if the alternatives are not accepted, an opportunity to compete for the contract “under competitive contracting procedures in subsection (4) of this section.” Thus, the statute ties the reference to employees “whose positions or work would be displaced” in subsection (1)(b) directly to subsection (4). Indeed, there is nothing in subsection (1) that provides any details about the employees’ opportunity to offer alternatives or to form employee business units to compete for the contract. One has to refer to subsection (4) for the details of the “competitive contracting procedures” that apply to the employees and

agencies. The Federation's suggestion that one can read RCW 41.06.142(1)(b) in isolation is incorrect.

Subsection (4) deals with how "[c]ompetitive contracting shall be implemented," and contains General Administration's grant of rule-making authority. RCW 41.06.142(4)(d). The statute recognizes that competitive contracting is a *process*. RCW 41.06.142(5)(c), a portion of the statute's definition section, reads:

"Competitive contracting" means the *process* by which classified employees of a department, agency, or institution of higher education compete with businesses, individuals, nonprofit organizations, or other entities for contracts authorized by subsection (1) of this section.

(Emphasis added.) In order to promote fair competition, the competitive contracting process includes a mandatory notice to classified employees whose positions or work may be displaced by the contract. RCW 41.06.142(4)(a). Only those employees who are displaced by the contract will receive this notice. Displaced employees are then given an opportunity to submit bids and participate in the bidding process.

Consistent with its grant of authority to ensure that bids are submitted and evaluated in a "fair and objective manner," General Administration adopted the rules defining displaced employees. These rules are also consistent with its authority to ensure that the bid

requirements, including determining who can compete, are applied equitably to all parties. RCW 41.06.142(4)(d).

The subsections of RCW 41.06.142(4) spell out some, but by no means all, of the details of the competitive contracting process. Instead, the Legislature directed General Administration to adopt rules to “establish procedures to ensure that bids are submitted in a fair and objective manner.” RCW 41.06.142(4)(d). Other provisions of the statute specified some of the parameters for this process, for example, the length of notice period that an agency must provide to “classified employees whose positions or work would be displaced by the contract.” RCW 41.06.142(4)(a).¹ However, the responsibility for integrating those aspects of RCW 41.06.142 that the Legislature did spell out and those many aspects of the statute that needed fleshing out into a cohesive process rested with General Administration through its rule-making authority.

As the rule-making record in this case demonstrates, one of the matters that needed fleshing out was the meaning of the phrase employees “whose positions or work would be displaced.” As various stakeholders in the rule-making process indicated, the meaning of this statutory language

¹ This language, found in the competitive contracting section, RCW 41.06.142(4)(a), is the same language used in RCW 41.06.142(1)(b). Once again, this illustrates that the various subsections of the statute are interrelated.

appeared unclear and it would be helpful to them for General Administration to provide guidance as to which circumstances this phrase applied. AR 2868, 2960. The Federation does not dispute that this statutory phrase is ambiguous or that employees and agencies need to know what it means in order to take advantage of their respective opportunities and responsibilities set out in RCW 41.06.142.

Determining what the phrase employees “whose positions or work would be displaced by the contract” in RCW 41.06.142(1)(b) and RCW 41.06.142(4)(a) meant was, thus, an essential part of developing rules for the competitive bidding process. The Federation repeatedly refers to this statute as involving which employees can offer alternatives to proposed contracting by the agency. However, this is incomplete and misleading. RCW 41.06.142(1)(b) provides to “[e]mployees in the classified service whose positions or work would be displaced by the contract” both “an opportunity to offer alternatives to purchasing services by contract” and if the alternatives are not accepted an opportunity to “compete for the contract under competitive bidding procedures in subsection (4) of this section.” The statute does not create any dichotomy between employees who must be given the opportunity to offer alternatives to contracting and employees who can form employee business units to bid on the contract—these are the same employees.

In its opening brief, General Administration described in detail the competitive contracting process for which it adopted rules under its authority in RCW 41.06.142(4)(d).² Brief of Appellant at 22-28. In its brief, the Federation has not taken issue with General Administration's description of the process. As General Administration's description shows, nearly every step of the process requires employees and agencies (and in some cases others such as administrative law judges and private employers who won the contract) to know which employees the statutory language "whose positions or work would be displaced" includes.³ An agency's rule-making authority includes that authority expressly granted or necessarily implied from the express grant of authority. *See, e.g., WA Public Ports Ass'n v. State Dep't of Revenue*, 148 Wn.2d 637, 646, 62 P.3d 462 (2003). At a minimum, the express grant of rule-making

² The Federation has not challenged in court any of General Administration's rules, other than the three involved in this case.

³ Even if one were to look at just the subjects on which the Legislature directed General Administration to adopt rules in RCW 41.06.142(4)(d)(i), (ii), and (iii), as the Federation suggests, it is necessary to give meaning to the statutory phrase employees "whose positions or work would be displaced" in order to adopt rules on those subjects. RCW 41.06.142(4)(d)(i) directs General Administration's rules to include "[p]rohibitions against participation in the bid process by employees who prepared the business unit's bid or who perform any of the services to be contracted." But one must know which employees are entitled to form an employee business unit and thus help prepare its bid in order to carry out this direction from the Legislature. RCW 41.06.142(4)(d)(iii) directs General Administration's rules to include "procedures that require the contracting agency to receive complaints regarding the bidding process and to consider them before awarding the contract." In order to carry out this direction, General Administration had to determine who was eligible to make a complaint, which it reasonably concluded included employees who were entitled to form employee business units. *See* WAC 236-51-500. But, again, one must know who these employees are in order to implement that statutorily required rule.

authority to General Administration in RCW 41.06.142(4)(b) gave the agency implied authority to adopt rules defining the key statutory phrase underlying the entire statutory scheme.

In sum, the language of RCW 41.06.142 itself makes it clear that all the subsections of the statute are interrelated and cannot be parsed into discrete components, as the Federation tries to do. Moreover, defining the statutory phrase employees “whose positions or work would be displaced” is integral to the competitive process for which General Administration was directed to adopt rules. The Federation’s argument that General Administration’s rules defining “displaced employee” exceeded the agency’s rule-making authority is without merit. General Administration did have authority to adopt WAC 236-51-006 and WAC 236-51-010(11).

B. General Administration’s Rules on Displaced Employees Are Consistent With the Language, Legislative History, and Policy of RCW 41.06.142

The Federation argues that General Administration’s rules on displaced employees, WAC 236-51-006 and WAC 236-51-010(11), should be invalidated as being inconsistent with RCW 41.06.142. The Federation argues that in adopting RCW 41.06.142 as part of the Personnel System Reform Act of 2002, the Legislature intended to retain the fundamental premise in prior law that contracting out of any duties

done by civil service employees was prohibited⁴ and was merely expanding the existing statutory exception to that principle. Neither the Federation's arguments nor its purported statutory history supports this view of the statute. Nor does this circuitous claim bolster its assertion that General Administration exceeded its authority in adopting these rules.

RCW 41.06.142 was adopted as part of the Personnel System Reform Act of 2002. RCW 41.06.142 says: "Any department, agency, or institution of higher education may purchase services" RCW 41.06.142(1). Thus, the intent and purpose of the statute is to allow agencies to purchase services, including civil service work, by contract. This is a departure from the prior law prohibiting the contracting out of civil service work. The statute goes on to state expressly that these purchased services may "includ[e] services that have been customarily and historically provided by employees in the classified service under this chapter." *Id.* With this, the Legislature made it clear that this authorization to purchase services by contract includes those services that were previously prohibited.

The statute goes on to state that this contracting can be done "if the following criteria are met." *Id.* Nothing in the statute describes any of

⁴ The Federation continues to argue that there was a de minimis exception to contracting out recognized by the courts. As discussed in General Administration's opening brief, no appellate decision exists in which the court has recognized such an exception. Brief of Appellant at 39 and 39 n.16.

these criteria as an “exception,” nor should they be viewed as exceptions to a basic prohibition against contracting for services. The State is unaware of any statutes in which the Legislature has given authority to agencies to contract for services or goods of any kind that do not contain criteria that must be met or procedures that must be followed as part of the statutory process. That does not, however, convert a basic statutory authorization to contract into a prohibition against contracting.

The Federation notes that the Legislature could change the prior law prohibiting most contracting out only by amending the civil service statutes. This is exactly what the Legislature did. The Federation argues that General Administration’s interpretation of the statute, as reflected in its rules on displaced employees, constitutes an implied repeal of prior case law, which it contends the Legislature did not intend. But the Legislature did intend to make a change from prior law, as reflected in its actions. The Legislature did not amend the prior section of the civil service law dealing with contracting, former RCW 41.06.380, to expand the exceptions in that statute. Rather, it enacted a totally new statute, based on a different premise from prior law, which must be implemented according to its own terms. Contrary to the Federation’s suggestion, in adopting RCW 41.06.142, the Legislature was intending a paradigm shift

from prior law. The Federation wants to read “reform” out of the Personnel System *Reform* Act of 2002.

The Federation argues that the language in RCW 41.06.142, employees “whose positions or work would be displaced,” must be read as including any situation in which any portion of an employee’s duties would be included in a proposed contract. This is incorrect. General Administration’s rules, implementing this language as applying to those situations in which the employee is laid off or in which the employee’s duties are so changed that the employee’s position is reclassified give application to both prongs of the statutory language. The courts will uphold an agency’s rules if they are “reasonably consistent” with the statute they are adopted to implement, which WAC 236-51-006 and WAC 236-51-010(11) are.⁵

The Federation also relies on some legislative history that it contends supports its reading of the statute. However, the legislative history is not illuminating. As the Superior Court here noted, “I didn’t

⁵ In support of its argument that in enacting RCW 41.06.142 the Legislature intended to continue the prior law prohibiting contracting for services, the Federation makes an attenuated argument equating “displaced,” used in RCW 41.06.142, with “supplanted,” which the Federation states was used in several cases under the prior law Brief of Respondent at 24-25. However, none of the cases cited by the Federation uses the term “supplanted” in connection with the prohibition against contracting out civil service work, as the Federation represents. The only one of the cited cases that uses “supplanted” is in a different context entirely. See *Western WA Univ. v. WA Fed’n of State Empl.*, 58 Wn. App. 433, 442, 793 P.2d 989 (1990). Moreover, the first-listed dictionary definition of “displace” is: “to *remove* from the usual or proper place.” *Webster’s Third New International Dictionary* 654 (2002) (emphasis added).

think that history was particularly helpful in trying to understand the intent of the Legislature as to the meaning of this particular part of the statute.”
RP 61-62.

The Federation notes that the bill reports on the Personnel System Reform Act of 2002 include references to *WA Fed'n of State Empl. v. Spokane Comm. Coll.*, 90 Wn.2d 698, 585 P.2d 474 (1978). Brief of Respondent at 27-28. *See* CP 36 (the bill report does not refer to the case by name or citation). This reference is in the background section of the bill report, describing the status of the law prior to the bill. Nothing in the bill report indicates that the bill is intended to continue the prior law.
CP 35-39.

The Federation tries to draw support from a difference in language between the final bill report for Section 8 of Substitute House Bill 1268 (2002), which was enacted and codified as RCW 41.06.142, and a bill report for Senate Bill 5577 (2002), which was not adopted. Brief of Respondent at 27-31. *See* CP 35-39, CP 40-45. This purported difference in language is not proof of anything. While the bill *reports* may be phrased slightly differently, the language of the sections of the *bills* they are describing is exactly the same. CP 53-56, CP 57-60. The House bill that was enacted and the Senate bill that was not were companion bills. The difference in language in the bill reports reflects merely a difference

in how legislative staffers wrote their reports, not any difference between the bill that was enacted and the bill that was not.

The Federation also relies on a passage in floor debate in which a state representative referred to contracting for services for a mailing project that might be delayed at the state printer. Brief of Respondent at 31. *See* Ex. A (tape of floor debate). Neither this representative's remarks nor any other legislative history produced by the Federation involves an express, considered debate over what the language in the bill about employees "whose positions or work would be displaced" means. Furthermore, as the Federation acknowledges, "statements and opinions by individual legislators generally are not considered by the courts in construing legislation" *Snow's Mobile Homes, Inc. v. Morgan*, 80 Wn.2d 283, 291, 494 P.2d 216 (1972).

Thus, the legislative history does not show that General Administration's rules exceeded its statutory authority or are inconsistent with RCW 41.06.142. Indeed, as noted by General Administration in its opening brief, the relevant fact regarding the Legislature is that in the four and one-half years since General Administration's rules went into effect, the Legislature has not taken any steps to repudiate the rules or change the statute in any way to contravene them. *See* Brief of Appellant at 32-33. The Federation has not responded to this argument.

The Federation argues that the reason for RCW 41.06.142 is for the state to obtain greater efficiency and that a reading of the statute that limits which employees can provide input to agencies about how to do the agencies' work more efficiently is inconsistent with the policy of the statute. However, efficiency is only one of several objectives of RCW 41.06.142. *See* RCW 41.06.142(1)(a)-(e). In any event, nothing in RCW 41.06.142 or General Administration's rules prevents any employee who has ideas on how agencies can improve efficiency from presenting those ideas.⁶

Furthermore, employees who are represented by a collective bargaining representative have avenues outside of RCW 41.06.142 and General Administration's rules to present ideas for greater efficiency through their union's dealings with agency management. A decision to contract for services through RCW 41.06.142 is a mandatory subject of collective bargaining, and a union can seek to have a provision in its collective bargaining agreement with management that imposes

⁶ The Federation argues that "in RCW 41.06.142(1)(b) employees retained the right to offer alternatives to their employers before the employer contracted for services." Brief of Respondent at 21. This argument is nonsensical. Under prior law, agencies were prohibited from contracting out civil service work. No need existed for employees to offer alternatives to contracting out; accordingly, no "right" to do so existed that needed to be retained. As discussed earlier, in enacting RCW 41.06.142 the Legislature was making a paradigm shift from agencies being prohibited from contracting for services to being authorized to do so. If the Federation has an issue with that fundamental shift, it needs to address those concerns to the Legislature.

obligations on the agency with respect to contracting for services. Nothing in RCW 41.06.142 or General Administration's rules, which apply to all civil service employees, not just those represented by unions, is intended to preclude such additional provisions or affect an agency's duties under the collective bargaining statutes.⁷

The Federation invokes the concept of "skimming" to support its position. Brief of Respondent at 22. However, that concept arises from labor law principles. RCW 41.06.142 and General Administration's rules, which cover all civil service employees, are not intended to affect any duties an agency may have under labor law principles with respect to employees who are represented by unions. Similar to their other circuitous assertions, the Court should reject the Federation's attempt to interpret RCW 41.06.142 by incorporating principles from an entirely separate body of law.

For these reasons, the Court should reject the Federation's arguments that General Administration's rules on displaced employees are inconsistent with language, history, or the goals of RCW 41.06.142.⁸

⁷ Civil service employees who are not represented by a union may exercise their right under RCW 41.80 to seek representation by a collective bargaining representative.

⁸ The Federation appears to suggest that under General Administration's rules an agency could reduce the *quantity* of an employee's work. Brief of Respondent at 14, 19.

Under the civil service rules, an employer may reduce the numbers of hours an employee is scheduled to work for a short period. WAC 357-46-064(2). After that

C. WAC 236-51-225 Is Within General Administration's Rule-Making Authority, Is Consistent With RCW 41.06.142, and Is Not Arbitrary and Capricious

WAC 236-51-225 provides:

An employee business unit awarded a contract by an agency shall not perform or bid on solicitations for services not contained in the contract unless their agency approves in writing.

This rule comes into play when employees "whose positions or work would be displaced" by a contract have formed an employee business unit and have been awarded the contract.⁹ The rule applies when members of the employee business unit seek to bid on or perform contracts other than the one they were awarded.

The Federation argues that this rule is outside General Administration's rule-making authority, is not consistent with RCW 41.06.142, and is arbitrary and capricious. None of the Federation's contentions is correct.

period, the agency would have to use the layoff procedures under the civil service rules if it wanted to continue to have the employee work reduced hours. Employees who would be laid off have the opportunity to offer alternatives and form an employee business unit to bid on the contract under General Administration's rules, WAC 236-51-006 and WAC 236-51-010(11). Any suggestion by the Federation that General Administration's rules would somehow permit an agency that had entered into a contract to simply reduce an employee's hours is incorrect.

⁹ Under General Administration's rules, WAC 236-51-006 and -010(11), employees who formed an employee business unit to bid on the contract and who were not awarded the contract would either have been laid off (and given whatever reduction-in-force options they were entitled to) or reallocated to a different civil service classification.

A fundamental problem with the Federation's arguments with respect to WAC 236-51-225 is the Federation's incorrect view that an employee business unit has some stand-alone status, unconnected to RCW 41.06.142. Brief of Respondent at 33.¹⁰ However, RCW 41.06.142 does not confer some independent status to employee business units or give them a roving commission to bid on solicitations by their own or other agencies. The statute allows civil service employees to form an employee business unit in order to give the employees an opportunity to bid on services that they have been providing and which their employing agency is proposing to have provided by contract.

While many of the terms of the employee business unit's relation with the employing agency will be governed by the terms of the contract between the employee business unit and the agency (*see generally* WAC 357-43), this does not mean that members of an employee business unit are totally outside the civil service law and rules or are no longer connected to their employing agency. If the employee business unit is successful in winning the contract, its members still retain their civil service positions. As provided in the rules adopted by the Department of Personnel: "Employee business unit members continue to be classified

¹⁰ In support of this assertion, the Federation cites to RCW 41.06.142(1)(c). This citation appears to be incorrect. RCW 41.06.142(1)(c) is the provision that requires a contractor who is not an employee business unit and which wins the contract to consider employment of civil service employees who are displaced by the contract.

employees.” WAC 357-43-020. *See also* WAC 357-43-003 (employee business unit members may continue to be governed by all the civil service rules).

Despite acknowledging that by its terms WAC 236-51-225 is related to the bidding process, the Federation argues that the rule exceeded General Administration’s rule-making authority. The Federation argues that there is no language in RCW 41.06.142 to support the requirement in WAC 236-51-225 that an employee business unit obtain permission of the agency for which it is performing a contract in order to bid on or perform other contracts.

WAC 236-51-225 does tie in directly to language in RCW 41.06.142 and to General Administration’s rule-making authority. RCW 41.06.142(4)(d) directed General Administration to “establish procedures to ensure that bids are submitted and evaluated in a fair and objective manner,” including “provisions to ensure no bidder receives an advantage over other bidders.” RCW 41.06.142(4)(d) requires that “[a]n employee business unit’s bid must include the fully allocated costs of the service, including the cost of employees’ salaries and benefits” and other costs. If an employee business unit that has been successful in winning a contract and is engaged in performing that contract is now representing that it has the time and resources to perform another contract, that raises a

question as to how this can be so and whether the employee business unit's bid on the new contract accurately reflects the employee business unit's true costs and, accordingly, whether the employee business unit would be competing fairly with other bidders. WAC 236-51-225 assures fairness in the bidding process by allowing the agency for which the employee business unit is currently performing work to consider the employee business unit's ability to devote the time and resources to perform the existing contract properly before the employee business unit diverts resources to another contract.¹¹

The Federation argues that WAC 236-51-225 is arbitrary and capricious in that the rule does not provide any standards for agencies to give their approval to an employee business unit's bidding on or performing another contract. While the rule does not expressly state a standard for the agency to make its approval decision, that standard is inherent in the purpose of the rule: To allow an agency to make sure that its existing contract with the employee business unit will be properly performed. The Federation implies that agencies may abuse their authority by withholding approval. However, the Federation is making a

¹¹ The Federation suggests that General Administration could not delegate that task to the agency with which the employee business unit has the contract. However, it is that agency, not General Administration, that would have the knowledge necessary to determine whether or not the employee business unit could perform more than one contract.

facial challenge to the rule, not an “as applied” challenge. As the Federation has noted, to date no employee business unit has ever been formed pursuant to RCW 41.06.142 and WAC 236-51. Brief of Respondent at 20 n.9. The Federation can seek administrative or judicial review of an agency’s denial of a request by an employee business unit to bid on another contract if and when such a denial occurs.

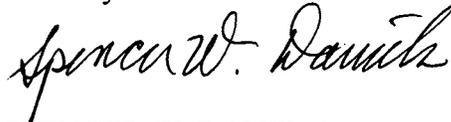
WAC 236-51-225 is within General Administration’s rule-making authority, is consistent with RCW 41.06.142, and is not arbitrary and capricious.

II. CONCLUSION

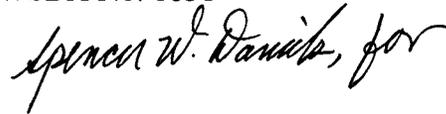
For the reasons set forth above and in the Department of General Administration's opening brief, the Court should reverse the trial court and should uphold the validity of WAC 236-51-006, WAC 236-51-010(11), and WAC 236-51-225.

RESPECTFULLY SUBMITTED this 15th day of December, 2008.

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STATE OF WASHINGTON
BY _____
DEPUTY

NO. 37897-3-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

WASHINGTON FEDERATION OF
STATE EMPLOYEES,

Respondent,

v.

STATE OF WASHINGTON,
DEPARTMENT OF GENERAL
ADMINISTRATION,

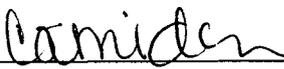
Appellant.

CERTIFICATE OF
SERVICE

I hereby certify that on December 15, 2008, I served a copy of the Reply Brief of Appellant, on all parties or their counsel of record via first class mail, postage prepaid, as follows:

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DATED this 15th day of December, 2008, at Olympia, WA.



COURTNEY AMIDON
Legal Assistant