

NO. 48881-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SEIU 775,
Appellant/Plaintiff,

v.

STATE OF WASHINGTON DEPARTMENT OF SOCIAL AND
HEALTH SERVICES, and THE EVERGREEN FREEDOM
FOUNDATION d/b/a FREEDOM FOUNDATION,
Appellees/Defendants,

**APPELLANT'S OPENING BRIEF
(CORRECTED)**

Dmitri Iglitzin, WSBA No. 17673
Jennifer L. Robbins, WSBA No. 40861
SCHWERIN CAMPBELL BARNARD IGLITZIN &
LAVITT, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ASSIGNMENTS OF ERROR AND ISSUES PRESENTED.....	3
III.	STATEMENT OF THE CASE.....	4
IV.	ARGUMENT.....	12
A.	Standard Of Review.....	12
B.	The Trial Court Erred By Denying SEIU 775’s Request For A Preliminary and Permanent Injunction Enjoining DSHS From Releasing The Times And Locations Of Contracting And/Or Safety And Orientation Appointments For IPs.	14
1.	SEIU Has A Clear Legal And Equitable Right To Injunctive Relief Because Disclosure Of The “Times And Locations” Information To The Foundation Would Constitute An Unfair Labor Practice Under The PECBA, And The PRA’s “Other Statute” Exemption Incorporates This Statutory Prohibition By Reference.....	16
a.	The PRA incorporates by reference other statutory limitations on the release of records.....	16
b.	The PECBA prohibits interference between employees and their collective bargaining representatives.....	19
c.	Interference activity prohibited by the PECBA is not restricted to the employer’s actions, and may be committed by a third party.....	21
d.	Facilitating a third party to disparage, undermine and discredit SEIU 775 during or relating to employer-provided meetings is a ULP.....	24
e.	DSHS would violate the PECBA through disclosure of the requested information because it would facilitate surveillance, discouraging and stifling union activity – all of which is unlawful interference.	27

f. Wash. State Patrol does not require affirmance.	29
2. The Records Specifically Pertain To SEIU 775.	32
3. SEIU 775 Would Be Substantially And Irreparably Harmed By Disclosure, And Disclosure Would Not Be In The Public Interest.....	32
V. CONCLUSION	33

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ameriquist Mortg. Co. v. Office of Att’y Gen.</i> , 170 Wn.2d 418, 241 P.3d 1245 (2010)	17
<i>Ameriquist Mortgage Co. v. Office of Att’y Gen. of Wash.</i> , 177 Wn.2d 467, 300 P.3d 799 (2013)	14
<i>Ameriquist Mortgage Co. v. State Att’y Gen.</i> , 148 Wn. App. 145, 199 P.3d 468 (2009), <i>aff’d on other</i> <i>grounds</i> 170 Wn.2d 418, 241 P.3d 1245 (2010).....	12, 13
<i>Blanchard v. Golden Age Brewing Co.</i> , 188 Wash. 396, 63 P.2d 397 (1936) . C.	14
<i>City of Bremerton</i> , Decision 2994, 1988 WL 524507 (PECB, 1988).....	19
<i>City of Longview</i> , Decision 4702, 1994 WL 900095 (PECB, 1994).....	27
<i>City of Tacoma</i> , Decision 6793-A, 2000 WL 194131 (PECB, 2000).....	19
<i>Fabric Services, Inc.</i> , 190 NLRB 540 (1971).....	22, 23
<i>Fisher Broadcasting-Seattle LLC v. City of Seattle</i> , 180 Wn.2d 515, 326 P.3d 688 (2014)	17
<i>Flexsteel Industries</i> , 311 NLRB 257 (1993).....	27
<i>Freedom Foundation v. Dep’t of Transp.</i> , 168 Wn. App. 278, 276 P.3d 341 (2012).....	17
<i>State ex rel. Graham v. Northshore Sch. Dist.</i> 417, 99 Wn.2d 232, 662 P.2d 38 (1983).....	20

<i>Grant County Public Hospital District 1</i> , Decision 8378-A, 2004 WL 2507347 (PECB, 2004).....	24, 25
<i>Hangartner v. City of Seattle</i> , 151 Wn.2d 439, 90 P.3d 26 (2004).....	17, 30
<i>Harris v. Quinn</i> , ___ U.S. ___, 134 S.Ct. 2618, 189 L.Ed.2d 620 (2014)	6, 8
<i>John Doe A. v. Wash. State Patrol</i> , 185 Wn.2d 363, --- P.3d ---- (2016).....	<i>passim</i>
<i>Kucera v. State, Dept. of Transp.</i> , 140 Wn.2d 200, 995 P.2d 63 (2000)	12
<i>Lewis County PUD</i> , Decision 7277-A, 2002 WL 65627 (PECB, 2002).....	20
<i>Maidsville Coal Co.</i> , 257 NLRB 1106 (1981), <i>enf. denied on other grounds</i> <i>by NLRB v. Maidsville Coal Co.</i> , 693 F.2d 1119 (4th Cir. 1983).....	22
<i>Nucleonics Alliance, Local 1-369 v. Wash. Public Power Supply System</i> , 101 Wn.2d 24, 677 P.2d 108 (1984)	21
<i>Nw. Gas Ass'n v. Wash. Utilities and Transp. Comm'n</i> , 141 Wn. App. 98, 168 P.3d 443 (2007), <i>rev. denied</i> 163 Wn.2d 1049, 187 P.3d 750 (2008)	12, 13
<i>P.S.K. Supermarkets, Inc.</i> , 349 NLRB 34 (2007).....	27
<i>Pasco Housing Authority</i> , <i>supra</i> , Decision 5927-A 1997, 1997 WL 810882 (PECB, 1997), <i>aff'd</i> , 98 Wn. App. 809, 991 P.2d 1177 (2000)	19, 25
<i>Pasco Police Officers' Ass'n v. City of Pasco</i> , 132 Wn.2d 450, 938 P.2d 827 (1997)	21
<i>Progressive Animal Welfare Soc'y v. Univ. of Wash.</i> , 125 Wn.2d 243, 884 P.2d 592 (1994)	17, 30

<i>SEIU Healthcare 775NW v. State, Dep’t of Soc. & Health Servs.</i> , 193 Wn. App. 377, --- P.3d ---- (2016).....	13, 14
<i>Snohomish County</i> , Decision 9291-A, 2007 WL 768751 (PECB, 2007).....	20
<i>Taylor Rose Mfg. Corp.</i> , 205 NLRB 262 (1973), <i>enforcement granted NLRB v. Taylor-Rose Mfg. Corp.</i> , 493 F.2d 1398 (2d Cir. 1974).....	20
<i>Tyler Pipe Indus. v. Dep’t of Revenue</i> , 96 Wn.2d 785, 638 P.2d 1213 (1982).....	13
<i>White v. Clark</i> , 188 Wn. App. 622, 354 P.3d 38 (2015), <i>rev. denied</i> , 185 Wn.2d 1009, 366 P.3d 1245 (2016).....	17, 18
<i>Yakima v. Fire Fighters</i> , 117 Wn.2d 655, 818 P.2d 1076 (1991).....	20

Statutes

National Labor Relations Act, 29 U.S.C. § 151 <i>et seq.</i>	20, 22, 23, 27
Public Employment Collective Bargaining Act, RCW 41.56 <i>et seq.</i>	<i>passim</i>
Public Records Act, RCW 42.56 <i>et seq.</i>	<i>passim</i>
RCW 4.24.550	31
RCW 5.60.060(2)(a)	30
RCW 29A	18
RCW 41.56.010	31, 33
RCW 41.56.026	5, 6
RCW 41.56.040	<i>passim</i>
RCW 41.56.140	<i>passim</i>

RCW 42.56.070(1).....	<i>passim</i>
RCW 42.56.540	13, 14, 15
RCW 42.56.550(3).....	12
RCW 74.39A.240.....	1, 4
RCW 74.39A.270.....	5
WAC 388-106-0010.....	4

I. INTRODUCTION

Appellant SEIU 775 (formerly SEIU Healthcare 775NW) is the collective bargaining representative of a statewide bargaining unit of Individual Providers (“IPs”) who provide personal care services to functionally disabled individuals throughout Washington State pursuant to Washington State’s Medicaid program.¹ In this Public Records Act (“PRA”) case,² SEIU 775 appeals the decision of Thurston County Superior Court Judge Mary Sue Wilson to deny SEIU 775 its request for a preliminary and permanent injunction to prohibit Respondent Washington State Department of Social and Health Services (“DSHS”) from providing to PRA requester and Respondent Freedom Foundation (“the Foundation”) the “times and locations” of certain contracting appointments and safety and orientation trainings that public employees working as IPs must attend.

It is undisputed that the Foundation seeks the “times and locations” information so that it can contact IPs on their way to and from, or during, the contracting appointments and safety and orientation trainings to encourage, assist and persuade the IPs to cease or withhold their membership in and financial support of their labor union, SEIU 775. As of the date of this brief, the Foundation is prohibited from using IP names

¹ The term “Individual Provider” is defined in RCW 74.39A.240(3).

² Washington’s Public Records Act is codified at Wash. Rev. Code Chapter 42.56.

and contact information to, among other things, contact IPs and encourage them to quit their union under the terms of a temporary restraining order (“TRO”) entered on June 2, 2016, in a separate proceeding. *See* Order Continuing Hearing on Preliminary Injunction, *SEIU 775 v. Evergreen Freedom Foundation*, King County Case No. 16-2-12945-5 SEA, dated June 15, 2016 (Hon. Patrick Oishi) (Appendix 001-002). However, that TRO, even if converted to a preliminary and/or permanent injunction, which is not guaranteed, would not bar contacts by the Foundation with IPs made using newly-obtained information that was acquired through the PRA request at issue in the instant appeal.

This case raises an issue of first impression, namely whether the PRA’s “other statute” exemption, RCW 42.56.070(1), prohibits a state agency from disclosing records requested by a PRA requestor, where such disclosure would constitute an unfair labor practice (“ULP”) by the state agency under the Public Employment Collective Bargaining Act (“PECBA”), RCW 41.56 *et seq.* SEIU 775 established in its motion for a preliminary injunction and the documents filed in support of that motion that it was likely to prevail on the merits of its case. The trial court therefore erred in denying SEIU 775 its requested preliminary injunction. SEIU 775 also established each of the elements of permanent injunctive relief, and the trial court therefore improperly denied SEIU 775 a

permanent injunction prohibiting DSHS from disclosing the requested records to the Foundation.

This Court should reverse the trial court's denial of preliminary and permanent injunctive relief and remand the case for entry of an order permanently enjoining DSHS from disclosing the requested information to the Foundation.

II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED

Assignments of Error

The superior court erred in:

- A. Denying SEIU 775's motion for a preliminary injunction;
- B. Denying SEIU 775's motion for a permanent injunction;

and

- C. Issuing an Order Denying Plaintiff's Motion for a Preliminary and Permanent Injunction, entered on March 25, 2016 (CP 382-384).

Issues Pertaining to the Assignments of Error

- 1. Did the trial court err in denying SEIU 775's motion for a preliminary injunction where SEIU 775 established a likelihood of ultimately prevailing on the merits of its claim that RCW 42.56.070(1) prohibits DSHS's disclosure of the requested records because disclosure

of the records to the Foundation by DSHS in these circumstances would constitute a ULP under the PECBA, RCW 41.56 *et seq.*?

2. Did the trial court err in denying SEIU 775's request for a permanent injunction where SEIU 775 established, based on undisputed facts, that disclosure of the records to the Foundation by DSHS in these circumstances would constitute a ULP under the PECBA, RCW 41.56 *et seq.*, that RCW 42.56.070(1) incorporates by reference the prohibition against DSHS's disclosure of the requested records arising from the PECBA, RCW 41.56.040 and RCW 41.56.140, and that all other elements for permanent injunctive relief are met?

III. STATEMENT OF THE CASE

SEIU 775 is a labor organization which represents more than 43,000 long-term care workers who either contract with the State of Washington, or who are employed by private home care agencies and nursing homes in Washington and Montana. CP 44. Approximately 34,000 of these long-term care workers are IPs as that term is defined in RCW 74.39A.240. *Id.* IPs provide "personal care services," as defined in WAC 388-106-0010, to functionally disabled individuals throughout the state under the Medicaid personal care, community options program entry system, chore services program, or respite care program. RCW

74.39A.240(3). Pursuant to the provisions of RCW 74.39A.270 and RCW 41.56.026, SEIU 775 is the exclusive bargaining representative of all IPs.

IPs must attend contracting appointments and safety and orientation trainings as part of their employment. CP 45. The collective bargaining agreement (“CBA”) between SEIU 775 and the State of Washington provides SEIU 775 with access to bargaining unit members at these two types of appointments. *Id.* These appointments generally take place at various DSHS facilities around the state, though DSHS representatives do not attend the portion of the appointments at which SEIU 775 speaks to the IPs. *Id.* The contracting appointments and safety and orientation trainings are not events open to the public, but are internal matters for the State and the IPs that are part of the operation of the homecare program. *Id.* There is no evidence that the State releases, or has ever released to the public the times, dates, and locations of other such internal meetings between the State and its employees. *Id.*

The Foundation is a Washington State organization aligned with anti-union interests that are ideologically opposed to the goals of SEIU 775, including SEIU 775’s mission to improve the wages, benefits and working conditions of employees throughout Washington State. The Foundation regularly publicizes its goal to “defund” and “bankrupt” public sector unions, including SEIU 775, and efforts it is taking to attempt to

accomplish that goal. CP 103-140. The Foundation advertises its mission to economically cripple unions like SEIU, and announces the details of steps it has taken or will take to “defund” and “bankrupt” public sector unions generally and SEIU specifically in order to raise funds from supporters and from the public. *Id.*; *see, e.g.*, CP 112-140 (calling public sector unions a “rampant disease” and SEIU 775 “deceptive,” “well-paid thugs,” along with other disparaging phrases).

Since the U.S. Supreme Court issued its decision in *Harris v. Quinn*, ___ U.S. ___, 134 S.Ct. 2618, 189 L.Ed.2d 620 (2014), the Foundation has sought to contact IPs working in Washington to encourage, assist, and incite them to drop their membership in and financial support of SEIU. CP 112-148, 159-162, 167-184, 187-189 (including fundraising letter from the Foundation’s CEO Tom McCabe boasting about the physical mailings, email blasts and robo-calls made to SEIU 925-represented child care providers whose information it did obtain to encourage the providers to withdraw membership in and economic support of the union and document referencing door-to-door “Opt-Out” project launched after *Harris v. Quinn*). The Foundation has attempted, through several PRA requests, to obtain the names and contact information of IPs represented by SEIU 775 in order to locate and contact them for these same purposes. CP 149-158 (Foundation fundraising letter

informing recipients that in the previous year the Foundation requested from DSHS the names of IPs so it could encourage them to opt out of paying union dues); CP 167-171 (information piece announcing the number of care providers who have opted out of dues payments as a result of the Foundation's "door to door" efforts and plans to reach home healthcare providers); CP 194-207 (discovery responses discussing intended use of list of IP names).

The Foundation's efforts to diminish the membership of public sector unions are not restricted to mailings or websites. The Foundation has implemented a door-to-door canvass and has gone directly to public-sector employees' workplaces to induce them to opt out of union membership and dues payments and to provide them a means for doing so. CP 141-145, 159-166, 187-189. For example, in December of 2015, the Foundation sent a "Santa Clause" to "greet government employees as they enter and exit their offices in Washington and Oregon" and to distribute packets of materials encouraging workers to opt out of union membership and to cease paying union dues and providing them a letter to use by which to do so. CP 163-166. The "Freedom Foundation Santa" also made an appearance to "deliver that message in the cafeteria of the Washington State Department of Natural Resources." *Id.*

The Foundation attempts to accomplish its goal to “defund” and “bankrupt” SEIU 775 in part by discrediting, disparaging and undermining the Union to encourage and assist IPs to forego their membership in and economic support for SEIU. *See, e.g.*, CP 103-140 (goal to “defund” and “bankrupt;” calling public sector unions a “rampant disease;” graphic of “SEIU member” holding a billy club over a kneeling stick person, about to strike them); CP 159-162 (Foundation web posting saying “Within 24 hours of obtaining the list of exploited workers who fall under Harris V. Quinn, we sent out a mailing and began automated calls...From TV ads to attending childcare provider early achiever trainings to handing out literature and speaking with providers...the Freedom Foundation will be ongoing and relentless in the year to come.”; referring to SEIU’s contacts and relationship with its represented workers as a “scheme,” “bullying,” “intimidation,” and “bribing”); CP 163-166 (Freedom Foundation Santa “has been visiting state workers this week to tell them how they can sever ties from the *naughty* public employees’ unions;” Santa’s message included “why they should opt out” of the union) (emphasis added).

The Foundation’s efforts to inform SEIU-represented workers about *Harris v. Quinn* are part and parcel of its attempts to diminish workers’ support of their union by discrediting, disparaging and undermining the Union. CP 163-166; *see also* CP 324-326 (Foundation

telling provider not to let SEIU “continue to trick and mislead you into their money making scheme” and stating that SEIU will “use scare tactics and deception” with providers who say they want to discontinue membership); CP 327-329 (misinformation about SEIU given during at-home visits by Freedom Foundation representatives).

In short, the Foundation’s mission to “bankrupt” and “defund” SEIU 775 explicitly relies on contacting members or potential members of the union directly wherever they may be—even at their places of employment—to discredit, disparage and undermine the Union and to encourage and assist IPs to forego their support for SEIU. CP 103-184.

In furtherance of the Foundation’s efforts to find IPs wherever they are, Maxford Nelsen, the Foundation’s Director of Labor Policy, submitted a PRA request dated January 12, 2016, to DSHS on behalf of the Foundation seeking in part “[t]he times and locations of all contracting appointments for individual providers held or to be held between November 1, 2015 and December 31, 2016,” as well as “[t]he times and locations of any state-sponsored or facilitated opportunities for individual providers to view the initial safety and orientation training videos ... held or to be held between November 1, 2015 and December 31, 2016.” CP 93-95. Based on the Foundation’s prior conduct and publicity surrounding its efforts to contact IPs to encourage and assist them to forego union

membership and to not financially support SEIU 775, it cannot be disputed that if DSHS provides the Foundation with the times and locations of the contracting appointments and/or trainings, the Foundation will attempt to attend those appointments or to contact IPs as they come or go from those appointments to disparage and discredit SEIU 775 and to encourage IPs to cease or withhold union membership and/or dues.

DSHS has identified the documents it intends to disclose to the Foundation in response to the relevant portions of its PRA request as “201601-PRR-360 MSD HQ 0001-0062.” CP 45. These documents consist of plans by various state agencies to implement Article 2.3 of the 2015-2017 CBA, along with correspondence and other documents that happen to contain, among nonresponsive information, the times and locations of contracting and/or orientation appointments for IPs. *Id.* SEIU 775 objected to the production of these records, and DSHS indicated it would provide the documents unless SEIU 775 obtained an injunction by March 18, 2016. CP 45.

On March 10, 2016, SEIU 775 filed suit in Thurston County Superior Court for declaratory and injunctive relief. CP 8-18. On March 11, 2016, SEIU 775 filed a motion for preliminary injunction, with a hearing date of March 18, 2016. CP 26-41. The hearing was later moved to March 25, 2016. *See* CP 367.

At the hearing, the Honorable Mary Sue Wilson advanced and consolidated the hearing on Plaintiff's motion for a preliminary injunction with a hearing on Plaintiff's request for permanent injunctive relief, under Civil Rule 65(a)(2). CP 386-388. The court then issued an order denying SEIU 775's request for a preliminary and permanent injunction. *Id.* Also on March 25, in order that the fruits of Plaintiff's appeal would not be completely destroyed, Judge Wilson entered an Order staying the court's order on preliminary and permanent injunctive relief and temporarily enjoining DSHS from disclosing the requested records for a period of 14 days to allow SEIU 775 to seek emergency injunctive relief from this Court pending appeal. CP 389.

SEIU 775 filed its motion seeking such relief from this Court on March 28, 2016. Appellant's Emergency Motion for Injunctive Relief Pending Appeal, filed March 28, 2016. On April 7, this Court granted SEIU 775's request and enjoined DSHS from providing the Foundation with the information it seeks, stating that

SEIU 775 has presented a debatable issue as to whether RCW 41.56.040 is an "other statute" that is incorporated into the PRA as an exemption to disclosure. Failure to enjoin disclosure by DSHS would destroy the fruits of SEIU 775's appeal. Balancing that harm against the harm to Freedom Foundation caused by a delay in disclosure, this court concludes that the equities tip toward SEIU 775, such that a stay is warranted.

Ruling by Commissioner Schmidt (Apr. 7, 2016). To date, the information has not been released.

IV. ARGUMENT

A. Standard Of Review

The standard of review is de novo. RCW 42.56.550(3) (judicial review of all agency actions taken or challenged under RCW 42.56.030 through 42.56.520 shall be de novo); *Ameriquist Mortgage Co. v. State Att’y Gen.*, 148 Wn. App. 145, 156, 199 P.3d 468 (2009), *aff’d on other grounds* 170 Wn.2d 418, 241 P.3d 1245 (2010); *Nw. Gas Ass’n v. Wash. Utilities and Transp. Comm’n*, 141 Wn. App. 98, 114-115, 168 P.3d 443 (2007), *rev. denied* 163 Wn.2d 1049, 187 P.3d 750 (2008). Whether the PECBA is an “other statute” for purposes of the PRA is a question of law that the court reviews de novo. *See John Doe A. v. Wash. State Patrol*, 185 Wn.2d 363, *2, --- P.3d ---- (2016) (“*Wash. State Patrol*”).

To obtain a *preliminary* injunction in a PRA case, SEIU 775 must show a likelihood of prevailing at a trial on the merits that: (1) it has a clear legal or equitable right; (2) that it has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to it. *Kucera v. State, Dept. of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000); *Nw. Gas*, 141 Wn. App. at 115-16, *Ameriquist Mortgage Co.*,

148 Wn. App. at 155, 157 (all relying on the test in *Tyler Pipe Indus. v. Dep't of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982)). These criteria are evaluated by balancing the relative interests of the parties, and if appropriate, the interests of the public. *Id.*

At a preliminary injunction hearing, the plaintiff need not prove and the trial court does not reach or resolve the merits of the issues underlying these above three requirements for injunctive relief. Rather, the trial court considers only the *likelihood* that the plaintiff will ultimately prevail at a trial on the merits by establishing that he has a clear legal or equitable right, that he reasonably fears will be invaded by the requested disclosure, resulting in substantial harm.

Nw. Gas Ass'n, 141 Wn. App. at 116 (emphasis in original) (internal citations omitted); *see also Ameriquest*, 148 Wn. App. at 155 (“a *likelihood* of prevailing at a trial on the merits” is the proper standard of proof at preliminary injunction stage) (emphasis in original).³

To obtain a *permanent* injunction under RCW 42.56.540, the party must prove the *Tyler Pipe* elements and “(1) that the record in question specifically pertains to that party, (2) that an exemption applies, and (3) that the disclosure would not be in the public interest and would substantially and irreparably harm that party or a vital government

³ *Accord SEIU Healthcare 775NW v. State, Dep't of Soc. & Health Servs.*, 193 Wn. App. 377, *5, --- P.3d --- (2016) (“In the context of RCW 42.56.540, a party seeking a TRO or preliminary injunction to prevent the disclosure of certain records must show a likelihood that an exemption applies and that the disclosure would clearly not be in the public interest and would substantially and irreparably damage any person or vital government functions.”).

function.” *Ameriquest Mortgage Co. v. Office of Att’y Gen. of Wash.*, 177 Wn.2d 467, 487, 300 P.3d 799 (2013).⁴

The trial court here expressly did not reach the questions of public interest or irreparable harm; it denied SEIU 775’s request for a preliminary and permanent injunction solely on the basis that it did not find the disclosure of the requested records would be a ULP under the PECBA and therefore, RCW 41.56 was not incorporated as an “other statute” prohibiting disclosure of the requested records pursuant to RCW 42.56.070(1). RP 38:19-24. However, as explained in detail below, SEIU 775 has established all of the elements of preliminary and permanent injunctive relief, including a clear legal or equitable right.

B. The Trial Court Erred By Denying SEIU 775’s Request For A Preliminary and Permanent Injunction Enjoining DSHS From Releasing The Times And Locations Of Contracting And/OR Safety And Orientation Appointments For IPs.

Because SEIU 775 established all of the elements of preliminary and permanent injunctive relief, the trial court’s denial of SEIU 775’s request for a preliminary and permanent injunction was reversible error. As explained below, this is so because:

⁴ For constitutional as well as statutory reasons, the requirements of RCW 42.56.540 apply only at the *permanent* injunction stage. *See, e.g., Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 415-16, 63 P.2d 397 (1936) (“The granting or withholding of an interlocutory injunction is addressed to the sound discretion of the court, to be exercised according to the circumstances of the particular case.”). *C.f. SEIU Healthcare 775NW*, 193 Wn. App. 377, *5 (applying RCW 42.56.540 at the TRO and preliminary injunction stage).

SEIU 775 has established a clear legal or equitable right. The PECBA makes it an unfair labor practice for employers or other persons to interfere with, restrain or coerce public employees in the exercise of their rights under the state collective bargaining statute; acts that undermine the union or stifle union activity constitute such a ULP. The “other statute” exemption incorporates by reference other statutory prohibitions against disclosure of records. RCW 42.56.070(1). Disclosure of the information sought by the Foundation by DSHS would under the circumstances constitute unlawful interference in violation the PECBA; disclosure is therefore prohibited and should be enjoined pursuant to RCW 42.56.070(1) and RCW 42.56.540.

Absent an injunction, DSHS will disclose the records; thus, SEIU 775 has a well-grounded fear of immediate invasion of that right.

The records specifically pertain to SEIU 775 because they are the times and locations of contracting appointments and safety and orientation trainings for IPs to which SEIU 775 has been guaranteed access under the CBA between SEIU 775 and the State of Washington.

SEIU 775 would be substantially and irreparably injured by the Foundation’s efforts with the apparent imprimatur of DSHS, to interfere with, restrain or coerce IPs regarding their union representation generally and their relationship with SEIU 775 in particular. SEIU 775 would also

be injured through the loss or diminishment of members and revenues if the Foundation obtains the information and uses it—through factual misrepresentation and harassment—to get IPs to drop their membership in and financial support of the Union. The harm to the Union and its relationship with its members shows that disclosure would not be in the public interest.

1. SEIU Has A Clear Legal And Equitable Right To Injunctive Relief Because Disclosure Of The “Times And Locations” Information To The Foundation Would Constitute An Unfair Labor Practice Under The PECBA, And The PRA’s “Other Statute” Exemption Incorporates This Statutory Prohibition By Reference.

Because DSHS’ disclosure of the “times and locations” information to the Foundation would, under these circumstances, constitute an unfair labor practice under the PECBA, and RCW 42.56.070(1) incorporates that statutory prohibition by reference, it was reversible error for the trial court to refuse to grant preliminary and permanent injunctive relief on the grounds that SEIU 775 did not establish a clear legal or equitable right.

a. The PRA incorporates by reference other statutory limitations on the release of records.

Disclosure of public records, while favored by the PRA, is *not* so favored as to allow or mandate state agencies to violate their obligations under other statutes. Instead, RCW 42.56.070(1) “incorporates into the

Act other statutes which exempt or prohibit disclosure of specific information or records,” *Progressive Animal Welfare Soc’y v. Univ. of Wash.*, 125 Wn.2d 243, 261, 884 P.2d 592 (1994) (“*PAWS II*”). Courts construing this section of the PRA consider interests protected by the legislature in other statutes. *See Wash. State Patrol*, 185 Wn.2d 363 at *6.

The “other statute” exemption avoids inconsistency and allows state statutes and federal regulations to supplement the PRA’s exemptions. *Ameriquist Mortg. Co. v. Office of Att’y Gen.*, 170 Wn.2d 418, 440, 241 P.3d 1245 (2010); *see also Fisher Broadcasting-Seattle LLC v. City of Seattle*, 180 Wn.2d 515, 525–28, 326 P.3d 688 (2014); *Hangartner v. City of Seattle*, 151 Wn.2d 439, 453, 90 P.3d 26 (2004); *PAWS II*, 125 Wn.2d at 262; *Freedom Foundation v. Dep’t of Transp.*, 168 Wn. App. 278, 289, 276 P.3d 341 (2012). Courts look to the other statutes to determine whether the statute *operates* as a prohibition against such disclosure. *See PAWS II*, 125 Wn.2d at 262 (Uniform Trade Secrets Act and anti-harassment statute); *Hangartner*, 151 Wn.2d at 453 (attorney-client privilege statute); *Ameriquist Mortg. Co.*, 170 Wn.2d at 440 (federal privacy laws).

White v. Clark supports this interpretation of the “other statute” provision. After stating that “[the] other statute” exemption applies only if

that statute explicitly identifies an exemption,” the Court of Appeals proceeded to find the “other statute” provision met by combining article VI, section 6 of the Washington Constitution, multiple sections of Title 29A RCW, and secretary of state regulations authorized by statute, which the Court held together operated to ensure ballot security and secrecy and therefore operated to prohibit disclosure of digital copies of election ballots. *White v. Clark*, 188 Wn. App. 622, 630-31, 354 P.3d 38 (2015), *rev. denied*, 185 Wn.2d 1009, 366 P.3d 1245 (2016).

The Washington Supreme Court decision *Wash. State Patrol*, which was issued after SEIU 775 filed its Notice of Appeal in this case, does not require a different conclusion. There, although the Court stated that an “other statute” must “expressly prohibit or exempt the release of records,” *Id.* at *3, the Court favorably discussed cases finding laws to be an “other statute” even where the statutory text did not itself prohibit disclosure of records. The Court suggested that where, as here, the “other statute’s” language is prohibitory and demonstrates “a legislative intent to protect a particular interest or value,” RCW 42.56.070(1) may incorporate it by reference. *Id.* at *6, *10. As explained in detail in § IV.B.1.f, *infra*, such interests or values—protecting the bargaining relationship as well as protecting state resources from misuse—exist in RCW 41.56.040 and RCW 41.56.140 and favor nondisclosure here.

Disclosure of the requested information here by DSHS to the Foundation would constitute unlawful interference in violation of the PECBA. The prohibition against DSHS's disclosure arising from RCW 41.56.040 and RCW 41.56.140 serves as an "other statute" within the meaning of RCW 42.56.070(1). Disclosure is therefore prohibited and should be enjoined.

b. The PECBA prohibits interference between employees and their collective bargaining representatives.

RCW 41.56.040 prohibits interference by an employer "or other person" with the right of employees to organize and bargain collectively through representatives of their own choosing. It is also a ULP for a public employer to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed under the PECBA. RCW 41.56.140(1). "An interference violation will be found when ***employees could reasonably perceive*** the employer's actions as a threat of reprisal or force or promise of benefit associated with the union activity of that employee or of other employees." *Pasco Housing Authority, supra*, Decision 5927-A 1997, 1997 WL 810882 (PECB, 1997), *aff'd*, 98 Wn. App. 809, 991 P.2d 1177 (2000) (emphasis in original). The interfering party's intentions when engaging in such actions are legally irrelevant. *City of Bremerton*, Decision 2994, 1988 WL 524507 (PECB, 1988); *City*

of Tacoma, Decision 6793-A, 2000 WL 194131 (PECB, 2000).⁵

A finding that interference has occurred is not based on the actual feelings of a particular employee, but on whether a typical employee in those circumstances could reasonably see the employer's actions as discouraging union activity. *Snohomish County*, Decision 9291-A, 2007 WL 768751 (PECB, 2007). "If the setting, the conditions, the methods, or other probative context can be appraised, in reasonable probability, as having the effect of restraining or coercing the employees in the exercise of such rights, then his activity on the part of the employer is violative of [Section 8(a)(1)] of the Act." *Taylor Rose Mfg. Corp.*, 205 NLRB 262, 265 (1973), *enforcement granted NLRB v. Taylor-Rose Mfg. Corp.*, 493 F.2d 1398 (2d Cir. 1974) (holding unlawful interrogations to ascertain which employees and how many had signed authorization cards, interrogations into why employees were supporting the Union, and keeping union activities of employees under surveillance and creating the impression of surveillance).⁶

⁵ The Public Employment Relations Commission and the state courts have concurrent jurisdiction over unfair labor practice complaints. *Yakima v. Fire Fighters*, 117 Wn.2d 655, 674-75, 818 P.2d 1076 (1991); *State ex rel. Graham v. Northshore Sch. Dist.* 417, 99 Wn.2d 232, 240, 662 P.2d 38 (1983).

⁶ RCW 41.56 is substantially similar to the National Labor Relations Act, 29 U.S.C. § 151 *et seq.* ("NLRA" or "Act"). See, e.g., *Lewis County PUD*, Decision 7277-A, 2002 WL 65627 (PECB, 2002). The "interference" prohibition in RCW 41.56.140(1) closely parallels the "interference" prohibition found in Section 8(a)(1) of the NLRA. Decisions of the National Labor Relations Board ("Board") and the federal courts under the Act are persuasive authority in construing this state's collective bargaining statutes in cases

Here, a typical IP attending contracting appointments or orientation meetings with her employer (and set up by her employer) could reasonably see DSHS's decision to enable—indeed, to effectively invite—the Foundation to attend these meetings to disparage and discredit SEIU 775 and to encourage and assist IPs to cease or refrain from union membership and dues payments as DSHS *itself* discouraging union activity. Inherent in the Foundation's efforts to get IPs to refrain from or cease union membership and dues payments is an inquiry into the IPs' union support or lack thereof. Also inherent in the organization's admitted intended conduct is interference with the IP's choice as to whether or not to be a union member or to financially support the union's efforts to improve IPs' wages, benefits and working conditions for IPs.

The PECBA prohibits such interference.

c. Interference activity prohibited by the PECBA is not restricted to the employer's actions, and may be committed by a third party.

The PECBA explicitly prohibits interference by third parties with employees' relationship with their union. RCW 41.56.040 provides:

No public employer, *or other person*, shall *directly or indirectly, interfere with*, restrain, coerce, or discriminate against *any public employee or group of public employees*

where local precedent is limited or lacking, and the statutes are similar. *See Nucleonics Alliance, Local 1-369 v. Wash. Public Power Supply System*, 101 Wn.2d 24, 33, 677 P.2d 108 (1984); *Pasco Police Officers' Ass'n v. City of Pasco*, 132 Wn.2d 450, 458-59, 938 P.2d 827 (1997).

in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in *the free exercise of any other right under this chapter*.

RCW 41.56.040 (emphasis added). This prohibition applies whether the employer itself interferes directly or whether it uses or facilitates a third party to interfere with employee representational rights. Both actions violate the PECBA or the Act. For example, in *Maidsville Coal Co.*, the employer was found to have violated the NLRA when it used a third party to threaten employees with reprisal if they continued to engage in activities on behalf of the union. *Maidsville Coal Co.*, 257 NLRB 1106, 1136 (1981), *enf. denied on other grounds by NLRB v. Maidsville Coal Co.*, 693 F.2d 1119 (4th Cir. 1983).

The unlawful conduct need not have been committed by the employee's employer for it to constitute an "interference" ULP. In *Fabric Services, Inc.*, 190 NLRB 540, 542 (1971), the employer owned the plant facility on which Southern Bell Telephone and Telegraph Company conducted its operations. *Id.* at 541. A Fabric Services personnel manager ordered a Southern Bell employee at this plant to remove Union supporting insignia on his pocket protector. *Id.* Fabric Services defended itself against the alleged ULP charge by relying entirely and solely on the grounds that it cannot be found to have violated Section 8(a)(1) because it

was not Smoak's employer. *Id.* The Board held that Fabric Services was liable because it was in a position of "sufficient control" to directly interfere with Smoak's ability to show such support while performing his work. *Id.* at 542. Thus, where conduct would be unlawful under the PECBA, an employer commits a ULP by accomplishing the same unlawful activity through a third party.

Interference with a public employee's right to be free of coercion or restraint in its bargaining relationship with its designated representative by *any* person is expressly prohibited by RCW 41.56.040. Additionally, here, the Foundation seeks the information about the "times and locations" of the contracting appointments and safety and orientation trainings to interfere with the protected relationship between IPs and their collective bargaining representative, SEIU 775, in a manner that is prohibited of DSHS by the PECBA. The PECBA prohibits DSHS from coming to the sites of the contracting appointments and/or safety and orientation meetings in order to disparage, discredit, ridicule, and/or undermine SEIU 775 and attempt to coerce employees to refrain from becoming or remaining a member of SEIU 775 and to refrain from financially supporting SEIU 775. Such behavior would indisputably be prohibited by RCW 41.56.140(1) if undertaken by an employer; it is likewise unlawful

when performed by an employer's proxy, or by any "other person," here, the Foundation.

Even if DSHS does not *mean* to interfere in the IPs' relationship with SEIU 775 by disclosing records to an entity bent on interfering with the relationship between employees and their bargaining representative, such intent is irrelevant; the effect is the same: to undermine the union's relationship with the workers it represents and to discourage union activity.

d. Facilitating a third party to disparage, undermine and discredit SEIU 775 during or relating to employer-provided meetings is a ULP.

Where a typical employee in the same circumstances could reasonably see the employer's actions as discouraging his or her union activities, communications constitute unlawful interference in violation of RCW 41.56.140(1). *Grant County Public Hospital District 1*, Decision 8378-A, 2004 WL 2507347 (PECB, 2004). "Even if non-coercive in tone, a communication may be unlawful if it has the effect of undermining a union." *Id.* "An employer's communication to employees could be an interference unfair labor practice under any one, any combination, or all, of the following criteria: 1) Is the communication, in tone, coercive as a whole? 2) Are the employer's comments substantially factual or materially misleading?...5) Does the communication disparage, discredit, ridicule, or undermine the

union? Are the statements argumentative?...” *Pasco Housing Authority*, *supra*, Decision 5927-A, 1997 WL 810882 (employer memo promoting decertification of union was unlawful); *Grant County Public Hospital District 1*, Decision 8378-A, 2004 WL 2507347 (PECB, 2004).

Any balancing of the employer’s rights of free speech and the rights of employees to be free from coercion, restraint, and interference ‘must take into account the economic dependence of the employees on their employers, and the necessary tendency of the former, because of that relationship, to pick up intended implications of the latter that might more readily be dismissed by a more disinterested ear’.

Grant County Public Hospital District 1, Decision 8378-A (quoting *Town of Granite Falls*, Decision 2692, 1987 WL 383191 (PECB, 1987)) (holding supervisor’s statements during a staff meeting to bargaining unit members constituted unlawful interference).

In light of the foregoing authority, it would be a ULP for DSHS to release the requested information to the Foundation to facilitate and enable the Foundation to disparage and undermine SEIU 775 at meetings between SEIU 775 and IPs because such an act would unlawfully interfere with employee rights under the PECBA. Pursuant to state law, IPs are “public employees” for purposes of collective bargaining, and SEIU 775 is officially recognized by the State as the chosen exclusive bargaining representative of all employees in the bargaining unit, regardless of

whether they choose to become Union members. As the exclusive bargaining representative, SEIU 775 has a duty to fairly represent all IPs in the unit in negotiating and administering collective bargaining agreements. CP 46. In order to perform these duties, SEIU 775 must communicate and confer with employees, who perform their work in individual residences throughout the State, rather than in common work locations. *Id.* The contracting appointments and orientation trainings are a place where SEIU 775 can communicate with IPs on such issues. CP 45-46.

Here, DSHS would be facilitating statements dissuading union participation at or around the time of contracting and orientation meetings early in the bargaining representative/employee relationship between IPs and SEIU 775. Based on the materials publicly available that reveal the tone, content and nature of the statements the Foundation makes about public sector unions and SEIU 775 in particular and in its efforts to encourage and assist SEIU-represented workers to not be union members or pay union dues, CP 96-189 and 324-326, it is obvious that the Foundation's communications, in tone, would clearly be perceived as coercive. DSHS's disclosure will enable the Foundation to disparage, discredit, ridicule, or undermine the union. In short, DSHS would participate in and commit an interference ULP by facilitating a third party

to accomplish what would be unlawful if done by the employer itself.

e. DSHS would violate the PECBA through disclosure of the requested information because it would facilitate surveillance, discouraging and stifling union activity – all of which is unlawful interference.

Surveillance is also a form of interference, but actual surveillance is not required—a violation will be found where an employer creates an *impression* of surveillance, even without actually engaging in such conduct. *City of Longview*, Decision 4702, 1994 WL 900095 (PECB, 1994).

In *City of Longview*, the employer was found to have violated the statute by inserting itself into a union meeting without being invited. *Id.* And as Board precedent makes clear, “[t]he idea behind finding ‘an impression of surveillance’ as a violation of Section 8(a)(1) of the Act is that employees should be free to participate in [union activities, such as] union organizing campaigns without the fear that members of management are peering over their shoulders, taking note of who is involved in union activities, and in what particular ways.” *Flexsteel Industries*, 311 NLRB 257, 257 (1993) (giving the impression that the degree of an employee’s union involvement is being monitored is unlawful); *see also P.S.K. Supermarkets, Inc.*, 349 NLRB 34, 35 (2007) (employer created impression of unlawful surveillance by, in part, telling

employees not to sign union cards and inferring it would know if employees did sign cards).

The contracting appointments and safety and orientation trainings generally take place at various DSHS facilities around the state, but DSHS representatives do not generally attend the portion of the appointments at which SEIU 775 speaks to the IPs. CP 45-46. Because the contracting appointments and safety and orientation trainings are internal matters for the State and the IPs that are part of the operation of the homecare program, enabling or facilitating the presence of an organization who will attend the meetings, or who will attempt to interfere with IPs on their way in and out of the meetings, to disparage the Union, to encourage and assist the IPs to withdraw membership in or not become a member, or to encourage and assist IPs to not financially support the Union by paying dues, would give the impression of surveillance or otherwise interfere with the IPs' rights under PECBA to organize and bargain collectively through representatives of their own choosing. The Foundation's attempts to convince IPs not to support the Union—facilitated by DSHS—would create the impression that DSHS was discouraging union activity, or worse, monitoring employees' support for the Union or lack thereof.

DSHS's disclosure thus would facilitate a third party to discourage and stifle union activity. This is a ULP. Disclosure should therefore be

permanently enjoined.

f. Wash. State Patrol does not require affirmance.

After SEIU 775 filed its Notice of Appeal in the instant case, the Washington State Supreme Court issued its decision in *Wash. State Patrol*. With a casual read, *Wash. State Patrol* appears to support the Foundation's position that the PECBA does not operate as a prohibition against disclosure of the requested records and is therefore not an "other statute" within the meaning of RCW 42.56.070(1). However, upon careful examination, it is consistent with the Court's analysis in *Wash. State Patrol* to determine that a) the PECBA operates as a prohibition against disclosure of records in response to a PRA request, where doing so would constitute a ULP, and b) RCW 42.56.070(1) therefore incorporates that statutory prohibition by reference.

The Court in *Wash. State Patrol* stated "The 'other statute' exemption 'applies only to those exemptions explicitly identified in other statutes; its language does not allow a court to imply exemptions but only allows specific exemptions to stand.'" 185 Wn.2d 363 at *3 (quoting *PAWS II*, 125 Wn.2d at 262).⁷ The Court went on to say:

if the exemption is not found within the PRA itself, we will find an 'other statute' exemption only when the legislature has made it explicitly clear that a specific record, or

⁷ The Court acknowledged that the "other statute" need not expressly address the PRA. *Id.*

portions of it, is exempt or otherwise prohibited from production in response to a public records request.

Id.

However, in applying that rule, the Court favorably discussed a number of cases in which statutes that *did not* expressly deal with confidentiality or records disclosure were held to be “other statutes” within the meaning of RCW 42.56.070(1). *Id.* at *4 (discussing *PAWS II* and *Hangartner*, among others). *PAWS II* relied on the part of the Uniform Trade Secrets Act (“UTSA”) providing that “affirmative acts to protect a trade secret may be compelled” to hold the UTSA barred disclosure of certain records. *PAWS II*, 125 Wn.2d at 262. The court also held that researchers may seek to enjoin the release of certain portions of public records if the nondisclosure of those portions is necessary to prevent harassment as defined under a state anti-harassment statute. *Id.* In *Hangartner*, the Court held the attorney-client privilege as codified at RCW 5.60.060(2)(a), which prohibits an attorney from being examined about attorney-client communications, is an “other statute” prohibiting disclosure. *Hangartner*, 151 Wn.2d at 453. Like those statutes, and others discussed in *Wash. State Patrol*, the PECBA is prohibitory in nature. RCW 41.56.040 (“No public employer, or other person, shall

directly or indirectly, interfere with, restrain, coerce, or discriminate...”).⁸ The statute at issue in *Wash. State Patrol* was, by contrast, a statute that *authorized* disclosure of information regarding registered sex offenders. 285 Wn.2d 363 at *1. The plaintiffs there argued that the statute, RCW 4.24.550, was the exclusive mechanism for public disclosure of sex offender registration records. *Id.* at *5. The Court held it was not, in part because, rather than being prohibitory, it was a statute “framed in terms of what an agency is permitted to, or must, do.” *Id.* at *6.

Additionally, the court noted that “when courts have found an ‘other statute’ exemption, they have also identified a legislative intent to protect a particular interest or value,” something that was lacking in the sex offender disclosure statute at issue there. *Id.* The Court should recognize the Washington State legislature’s intent to protect the interests and values outlined in RCW 41.56.040 and RCW 41.56.140, namely, the interests in protecting public employees’ right to be free from interference, coercion or restraint in the free exercise of their right to organize and engage in bargaining relationships with designated representatives. The legislature made these protected interests explicit in RCW 41.56.010, which reads:

⁸ See also RCW 41.56.140 (It “shall be” a ULP “[t]o interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter”).

The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

In light of the foregoing, the Court should conclude that although the PECBA is not itself an information non-disclosure or confidentiality statute, it is a statute that expressly prohibits ULPs, and disclosure of the records here would constitute a ULP; therefore the PECBA is an “other statute” incorporated by reference in RCW 42.56.070(1).

2. The Records Specifically Pertain To SEIU 775.

The records specifically pertain to SEIU 775 because they are the times and locations of contracting appointments and safety and orientation trainings for Individual Providers to which SEIU 775 has been guaranteed access under the collective bargaining agreement (“CBA”) between SEIU 775 and the State of Washington.

3. SEIU 775 Would Be Substantially And Irreparably Harmed By Disclosure, And Disclosure Would Not Be In The Public Interest.

SEIU 775 would be injured by the Foundation’s efforts, with the apparent imprimatur of DSHS, to interfere with, restrain or coerce IPs regarding their relationship with SEIU 775. In furtherance of the Washington state legislature’s intent “to promote the continued

improvement of the relationship between public employers and their employees” the legislature provided a “uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.” RCW 41.56.010. As explained above, recognizing that unions are harmed by a public employer’s interference with such rights, the PECBA makes it a ULP to “interfere with, restrain, or coerce public employees in the exercise of their rights” to organize and designate representatives of their own choosing for the purpose of collective bargaining. RCW 41.56.140, -.040.

SEIU 775 will also be injured through the loss of members and revenues if the Foundation obtains the requested information and successfully persuades IPs to withdraw membership in and financial support of SEIU 775.

For the foregoing reasons, disclosure of the requested records would not be in the public interest, and disclosure would substantially or irreparably harm SEIU 775.

V. CONCLUSION

The trial court’s denial of injunctive relief here was reversible error. For the reasons set forth above, the Court should reverse the trial

court's denial of preliminary and permanent injunctive relief and remand for entry of an order permanently enjoining DSHS from disclosing the requested information to the Foundation.

RESPECTFULLY SUBMITTED this 6th day of July, 2016.

By: 
Dmitri Iglitzin, WSBA No. 17673
Jennifer Robbins, WSBA No. 40861
Schwerin Campbell Barnard Iglitzin & Lavitt LLP
18 West Mercer Street, Ste. 400
Seattle, WA 98119-3971
Ph. (206) 257-6003
Fax (206) 257-6038
Iglitzin@workerlaw.com
Robbins@workerlaw.com

Counsel for SEIU 775

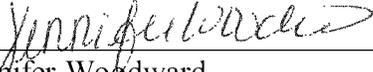
DECLARATION OF SERVICE

I, Jennifer Woodward, hereby declare under penalty of perjury under the laws of the State of Washington that on July 6, 2016, I caused the foregoing Appellant's Opening Brief (Corrected) to be filed with the Court of Appeals, Division II, and a true and correct copy of the same to be sent via email, per agreement of counsel, to the following:

Albert Wang
AlbertW@atg.wa.gov
Susan DanPullo
SusanDI@atg.wa.gov

James Abernathy
jabernathy@myfreedomfoundation.com
Stephanie Olson
solson@myfreedomfoundation.com

SIGNED this 6th day of July, 2016, at Seattle, WA.



Jennifer Woodward
Paralegal

SCHWERIN CAMPBELL BARNARD IGLITZIN LAVITT LLP

July 06, 2016 - 1:25 PM

Transmittal Letter

Document Uploaded: 2-488817-Amended Appellant's Brief.pdf

Case Name: SEIU 775 v. DSHS and Freedom Foundation

Court of Appeals Case Number: 48881-7

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Amended Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

This brief replaces Appellant's Opening Brief and corrects the Assignments of Error, as required by the Court's June 28 letter.

Sender Name: Rebecca Huvad - Email: woodward@workerlaw.com

A copy of this document has been emailed to the following addresses:

iglitzin@workerlaw.com
robbins@workerlaw.com