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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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ROBERT PIEL and JACQUELINE PIEL, husband and wife,

Plaintiffs/Appellants,

vs.

CITY OF FEDERAL WAY, a municipality organized pursuant to  
the laws of the State of Washington,

Defendant/Respondent.

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BRIEF OF AMICUS CURIAE  
WASHINGTON STATE ASSOCIATION FOR JUSTICE FOUNDATION

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## I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation organized under Washington law, and a supporting organization to Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. WSAJ Foundation, which operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of plaintiffs under the civil justice system, including an interest in the tort of wrongful discharge in violation of public policy.

## II. INTRODUCTION AND STATEMENT OF THE CASE

This review arises out of a claim of wrongful discharge in violation of public policy by Robert Piel (Piel) against his former employer, the City of Federal Way (the City). The issues before the Court center upon whether Piel presented a question of fact in response to a summary judgment motion regarding the “jeopardy element” of his wrongful discharge claim. The underlying facts are drawn from the briefing of the parties. See Piel Br. at 1, 3-33 & Appendix<sup>1</sup>; City Br. at 1-2, 3-13, 17.

For purposes of this amicus curiae brief, the following facts are relevant: Piel is a former City police officer, and in this action he asserts a claim against the City for wrongful discharge in violation of public policy

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<sup>1</sup> The Appendix to Piel’s opening brief reproduces the opinion and order of the superior court, which is apparently contained in the record at CP 767-74.

based upon a series of retaliatory acts that he claims are traceable to his involvement in attempting to unionize lieutenants in the City's police department and other conduct protected under Ch. 41.56 RCW (or "Ch. 41.56"), relating to collective bargaining by public employees. The City moved for summary judgment, contending that Piel was dismissed for legitimate reasons and not in violation of public policy, and that, in any event, Piel could not satisfy the "jeopardy element" of his wrongful discharge claim because Ch. 41.56 provides an adequate alternative means for vindicating the public policy expressed in that chapter.

The superior court granted the City's motion for summary judgment and dismissed Piel's wrongful discharge claim. The court concluded that the administrative remedies available to Piel under Ch. 41.56 are adequate to protect public policy, and that as a matter of law Piel cannot satisfy the jeopardy element of his claim against the City.<sup>2</sup> Piel appealed to this Court, which granted direct review.

### III. ISSUES PRESENTED

- 1) Under the "jeopardy element" of the tort of wrongful discharge in violation of public policy, are the remedies available under Ch. 41.56 RCW adequate to vindicate the public policy expressed in that chapter?
- 2) To what extent, if any, is this Court's decision in Smith v. Bates Tech. Coll., 139 Wn.2d 793, 991 P.2d 1135 (2000), impacted by the Court's later opinions in Korslund v. Dyne Corp. Tri-Cities Servs., Inc., 156 Wn.2d 168, 125 P.3d 119 (2005), and Cudney v. AlSCO, Inc., 172 Wn.2d 524, 259 P.3d 244 (2011)?

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<sup>2</sup> In its ruling on the jeopardy element, it is unclear whether the superior court considered remedies available under the applicable collective bargaining agreement or the City's civil service laws in addition to the administrative remedies provided by Ch. 41.56. See Piel Br. at 1, 32 & Appendix (CP 771); City Br. at 13, 16-17.

#### IV. SUMMARY OF ARGUMENT

For purposes of analyzing the jeopardy element of wrongful discharge in violation of public policy, it is necessary to have a clear understanding of the public policy that is ostensibly jeopardized. In this case, the jeopardy element should be deemed satisfied because the public policy underlying Ch. 41.56 RCW, regarding collective bargaining by public employees, encompasses the right to the full panoply of remedies for the affected employee, to the same extent that it encompasses the rights to organize and be free from retaliation. Specifically, in RCW 41.56.905, the Legislature expressly declares that the provisions of Ch. 41.56 “are intended to be *additional* to other remedies.” (Emphasis added.) The Court should defer to this legislative declaration regarding the role of Ch. 41.56 remedies in vindicating the policies expressed in the chapter, and, as a consequence, should conclude that the jeopardy element is satisfied as a matter of law in this particular context. Otherwise, rigid application of the jeopardy element would conflict with the Legislature’s stated intent.

While the Court’s decisions in Smith, Korslund and Cudney do not appear to be conflicting, under the above jeopardy analysis it is not necessary to reach the question of whether any conflict does, in fact, exist.

#### V. ARGUMENT

Piel and the City disagree whether the summary judgment record before the Court presents genuine issues of material fact requiring trial.

Compare Piel Reply Br. at 3, 5, 15-16 with City Br. at 1, 20-23. This brief focuses on the legal issues involved and assumes that the record, considered in the light most favorable to Piel, reflects issues of fact regarding whether Piel's discharge was in retaliation for organizing activities and/or other conduct protected by Ch. 41.56 RCW.

**A. Overview Of The Jeopardy Element Of The Tort Of Wrongful Discharge In Violation Of Public Policy, And Its Relationship To The Clarity Element.**

The tort of wrongful discharge in violation of public policy has four elements:

Specifically, the plaintiff must show: (1) "the existence of a clear public policy (the *clarity* element)"; (2) "that discouraging the conduct in which [he] engaged would jeopardize the public policy (the *jeopardy* element)"; (3) "that the public-policy-linked conduct caused the dismissal (the *causation* element)"; and, finally, (4) that "[t]he defendant [has not] offer[ed] an overriding justification for the dismissal (the *absence of justification* element)."

Cudney, 172 Wn. 2d at 529 (quoting Gardner v. Loomis Armored, Inc., 128 Wn. 2d 931, 941, 913 P.2d 377 (1996), in turn quoting Henry H. Perritt Jr., Workplace Torts: Rights and Liabilities §§ 3.7, 3.14, 3.19 & 3.21 (1991)). The superior court summary judgment opinion and the briefing of the parties focus on the jeopardy element of the tort.

Nonetheless, it is not possible to consider the jeopardy element in isolation from the clarity element, i.e., the public policy that is ostensibly jeopardized. Historically, the jeopardy and the clarity elements were not analyzed separately. See Cudney at 530. When wrongful discharge in violation of public policy was first recognized in Washington, in

Thompson v. St. Regis Paper Co., 102 Wn.2d 219, 685 P.2d 1081 (1984), the Court “treated the two elements together.” Cudney at 530; accord Gardner, 128 Wn. 2d at 941 (stating “prior decisions have lumped the clarity and jeopardy elements together”).

Gardner introduced an analytical distinction between the jeopardy and clarity elements for the sake of “a more consistent analysis,” but continued to define the jeopardy element with reference to the public policy relied upon to satisfy the clarity element. 128 Wn.2d at 941; accord Cudney at 529 (quoting Gardner). Following Gardner, the analysis of the jeopardy element has tended to focus on the adequacy of alternate means available to vindicate the public policy in question, retaining the link with the public policy at issue. See Gardner at 945 (requiring “a plaintiff to ‘argue that other means for promoting the policy . . . are inadequate’”; quoting Perritt, supra § 3.14; ellipses in original); see also Hubbard v. Spokane County, 146 Wn. 2d 699, 713, 50 P.3d 602 (2002) (quoting from and relying on Gardner); Korslund, 156 Wn. 2d at 182 (quoting from and relying on Gardner and Hubbard).<sup>3</sup>

In sum, it is not possible to determine whether a given public policy is jeopardized by an employer’s conduct, or whether alternate means are adequate to vindicate the public policy, without a clear

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<sup>3</sup> In Danny v. Laidlaw Transit Servs., Inc., 165 Wn. 2d 200, 222, 193 P.3d 128 (2008), the 2-Justice lead opinion altered the phrasing of the jeopardy element, stating that the conduct of the plaintiff-employee in taking leave from employment to address domestic violence must be the “*only available adequate means*” to vindicate public policy, without eliminating the link between the jeopardy element and the public policy in question. (Emphasis in original); see also Cudney at 530 (quoting the Danny phrasing alongside the Gardner-Hubbard-Korslund phrasing).

understanding of exactly what the public policy entails. With a proper understanding of the jeopardy element and its relationship to the clarity element, the question becomes what precisely is the public policy embodied in Ch. 41.56.

**B. When A Wrongful Discharge Claim Is Based Upon The Public Policy Embodied In Ch. 41.56 RCW, The Jeopardy Element Should Be Deemed Satisfied As A Matter Of Law Because Under RCW 41.56.905 The Provisions Of The Chapter “Are Intended To Be Additional To Other Remedies.”**

The public policy on which Piel relies for his wrongful discharge claim is embodied in Ch. 41.56 RCW. See Piel Br. at 41. The purpose and intent of the chapter includes “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; accord WAC 391-08-003.<sup>4</sup> Among other things, the chapter establishes a clear public policy protecting employees’ rights to engage in organizing activity, pursue grievances, and file unfair labor practice charges. See RCW 41.56.040 (providing right to organize); RCW 41.56.125 (regarding appointment of arbitrator for certain grievances involving interpretation and application of collective bargaining agreement); RCW 41.56.140 (specifying unfair labor practices); RCW 41.56.160 (providing right to file complaint for unfair labor practices); see also Smith, 139 Wn. 2d at 807 (recognizing “a public

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<sup>4</sup> The Public Employment Relations Commission (PERC) is the administrative body with responsibility for implementing Ch. 41.56, and has authority to adopt regulations thereunder. See RCW 41.56.090.

employee's pursuit of a grievance is a protected legal right" under RCW 41.56.140).<sup>5</sup>

Under Ch. 41.56, employees and their representatives have the right to file a complaint with PERC for unfair labor practices. See RCW 41.56.160(1); WAC 391-45-010. PERC has authority "to prevent any unfair labor practice and to issue appropriate remedial orders," including the issuance of orders requiring "such affirmative action as will effectuate the purposes and policy of [Ch. 41.56], such as the payment of damages and the reinstatement of employees." RCW 41.56.160(1)-(2); see also WAC 391-45-410 (regarding back pay orders).

In Smith, the Court held that the statutory remedies available under Ch. 41.56 need not be exhausted before pursuing a claim for wrongful discharge in violation of public policy. See 139 Wn.2d at 808-11. However, the Court did not examine what the Legislature specifically declares regarding the relationship between Ch. 41.56 remedies and other remedies available to vindicate the policy expressed in the chapter, nor how this relationship might impact analysis of the jeopardy element.

Notably, the Legislature has declared in RCW 41.56.905 that "[t]he provisions of [Ch. 41.56] are intended to be *additional* to other remedies and shall be liberally construed to accomplish their purpose." (Brackets & emphasis added.)<sup>6</sup> Unquestionably, this declaration of

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<sup>5</sup> The full text of the current versions of RCW 41.56.010, .040, .125, .140 and .160 are reproduced in the Appendix to this brief.

<sup>6</sup> The full text of the current version of RCW 41.56.905 is reproduced in the Appendix to this brief. Although the parties refer generally to the public policy embodied in Ch. 41.56,

legislative intent indicates that the remedies available under Ch. 41.56 are not exclusive, but it does more. It provides that Ch. 41.56 remedies are intended to supplement other remedies, which should include those available at common law. Cf. Westmark Dev. Corp. v. City of Burien, 140 Wn. App. 540, 548-49, 166 P.3d 813 (2007) (holding RCW 64.40.040 remedy nonexclusive, and that the “in addition to any other remedies” language of the statute includes common law tort claims). The ordinary meaning of the term “remedies” includes “legal means to recover a right or to prevent or obtain redress for a wrong.” Merriam-Webster Online, s.v. “remedy” (viewed Aug. 13, 2012; available at [www.m-w.com](http://www.m-w.com)); see also In re Estate of Blessing, 174 Wn. 2d 228, 231, 273 P.3d 975 (2012) (stating undefined statutory terms should be given their ordinary meaning as discerned from the dictionary). This interpretation is reinforced by the liberal construction required by the statute. See RCW 41.56.905.

RCW 41.56.905 should not be dismissed as a mere nonexclusivity provision. For purposes of the jeopardy element analysis in this case, the statute reflects a legislative hierarchy of remedies, with those available under Ch. 41.56 designated as serving a secondary and supporting role to other remedies available to vindicate the public policy embodied in the

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neither party specifically cites RCW 41.56.905. The Court is not confined to the issues framed or theories advanced by the parties if the parties overlook an applicable legislative enactment. See Ellis v. City of Seattle, 142 Wn.2d 450, 459-60 n.3, 13 P.3d 1065 (2000) (considering local fire code in connection with wrongful discharge claim, even though not cited in the superior court, stating that “any court is entitled to consult the law in its review of an issue, whether or not a party has cited that law”); see also Maynard Inv. Co. v. McCann, 77 Wn.2d 616, 623, 465 P.2d 657 (1970) (addressing compliance with provision of mandatory statute even though not raised below); Harris v. Department of Labor & Indus., 120 Wn.2d 461, 467-68, 843 P.2d 1056 (1993) (addressing issue first raised by amicus curiae where necessary to reach a proper decision).

chapter. This is implicit in the undefined term “additional,” which means “existing by way of addition,” and the related term “addition,” which means “anything added.” Merriam-Webster Online, s.v. “addition” & “additional” (viewed Aug. 13, 2012); cf. Greenwood v. Department of Motor Vehicles, 13 Wn. App. 624, 627-28, 536 P.2d 644 (1975) (holding term “additional” as used in implied consent statute, RCW 46.20.308(1), “clearly implies that something extra may be added to something in existence”; relying on Merriam-Webster Third Int’l Dictionary (1969)). This interpretation is also consistent with the statutorily mandated liberal construction. See RCW 41.56.905.

The language of RCW 41.56.905 should be viewed as preserving other remedies outside of Ch. 41.56 in order to ensure that the policies embodied in the chapter are vindicated. In this sense, the clear public policy underlying Ch. 41.56 exalts the right to the full panoply of remedies available to the affected employee, no less than it protects the rights to organize and be free from retaliation.<sup>7</sup>

Where the legislatively expressed public policy in question prescribes an expansive approach to remedies, as it does in Ch. 41.56, the

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<sup>7</sup> RCW 41.56.905 was enacted after much of what is now Ch. 41.56 was already in force. See Laws of 1973, ch. 131, § 10. The statute was originally part of an amendatory act that prohibited strikes by “uniformed personnel,” and provided for “effective and adequate alternative means of settling disputes” between these employees and their public employers. Laws of 1973, ch. 131, § 1 (codified as RCW 41.56.430). As originally enacted, the text of RCW 41.56.905 was limited in scope to uniformed personnel, i.e., “[t]he provisions of this 1973 amendatory act relating to uniformed personnel are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose.” Laws of 1973, ch. 131, § 10. However, the statute was subsequently amended to delete the reference to the 1973 amendatory act and uniformed personnel, and made applicable to Ch. 41.56 generally (even though the heading retains the reference to uniformed personnel). See Laws of 1983, ch. 287, § 5.

nature of the public policy should influence the jeopardy element analysis. The Court should hesitate in rotely applying the analysis outlined in Korslund and Cudney, and ask whether the fact that the remedies available under Ch. 41.56 are intended to be “additional” should preclude the Court from considering whether they are “adequate,” and possibly foreclosing a wrongful discharge claim by the affected employee.<sup>8</sup>

The City will likely argue that this result is at odds with the strict jeopardy/adequacy analysis required by Korslund, 156 Wn. 2d at 181-83, and Cudney, 172 Wn. 2d at 530. However, this argument should be rejected because it fails to account for the nature of the particular public policy at issue in this case.

In addition, this type of argument fails to account for the careful balancing required in defining and maintaining the roles of the Court and Legislature in establishing and recognizing public policy, and determining the consequences of any public policy pronouncement. See Robert F. Brachtenbach, Public Policy in Judicial Decisions, 21 Gonz. L. Rev. 1, 1 (1985/86) (noting courts are constrained “by legislative determinations of public policy”); id. at 3 (stating “[t]he general interests of society and welfare of the community, as founded in legislative enactments or their reasonable interpretation, administrative declaration, and judicial determinations *in the absence of legislative statement*, are the underpinnings of public policy doctrine”; emphasis added).

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<sup>8</sup> WSAJ Foundation does not address whether a strict jeopardy/adequacy analysis based on Korslund or Cudney would foreclose Piel’s wrongful discharge claim in this case.

The Court has emphasized the importance of legislative declarations of public policy in connection with this type of wrongful discharge claim. See Sedlacek v. Hillis, 145 Wn. 2d 379, 390, 36 P.3d 1014 (2001) (stating “the Legislature is the fundamental source for the definition of this state’s public policy”); see also Thompson, 102 Wn. 2d at 232 (stating “[i]n determining whether a clear mandate of public policy is violated, courts should inquire whether the employer’s conduct contravenes the letter or purpose of a constitutional, statutory, or regulatory provision or scheme”; internal quotation omitted); Dicomes v. State, 113 Wn. 2d 612, 620, 782 P.2d 1002 (1989) (emphasizing that, in finding a violation of public policy, courts may look to either the letter or the purpose of a statute).

Accordingly, the Court must ask whether a strict jeopardy/adequacy analysis would disserve the public policy embodied in Ch. 41.56. This is a subtle inquiry, based on the separation of powers doctrine. As the Court recently explained in a different context:

The legislature’s role is to set policy and to draft and enact laws. “[T]he drafting of a statute is a legislative, not a judicial, function.” Sedlacek v. Hillis, 145 Wn.2d 379, 390, 36 P.3d 1014 (2001) (quoting State v. Jackson, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999) (quoting State v. Enloe, 47 Wn.App. 165, 170, 734 P.2d 520 (1987))). Both the legislature and the judiciary intrude upon the other’s authority cautiously so as not to violate the doctrine of separation of powers.

¶ 17 The separate branches must remain partially intertwined to maintain an effective system of checks and balances. Carrick [v. Locke], 125 Wn.2d [129,] 135[, 882 P.2d 173 (1994)]. The art of good government requires cooperation and flexibility among the branches. Each must

act with a spirit of interdependence. *In re Juvenile Dir.*, 87 Wn.2d [232,] 243[, 552 P.2d 163 (1976)]. Washington State has enjoyed a rich history of cooperation and harmony among its three branches of government. Each branch has given deference to the others and all three have acted interdependently in exercising authority.

Hale v. Wellpinit Sch. Dist. No. 49, 165 Wn. 2d 494, 506-07, 198 P.3d 1021 (2009) (brackets added in second paragraph).

Here, the Court should hold that the jeopardy element of Piel's wrongful discharge claim is satisfied as a matter of law<sup>9</sup> in order to honor the public policy reflected in Ch. 41.56, including RCW 41.56.905.<sup>10</sup> A rigid application of the jeopardy element resulting in denial of a wrongful discharge claim, based on the Court's perception of the adequacy of the remedies provided by Ch. 41.56, would be inconsistent with the Legislature's designation of these remedies as "additional." While the Legislature cannot dictate the parameters of the common law tort for wrongful discharge in violation of public policy, the Court should conform

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<sup>9</sup> The parties in this case have treated the jeopardy analysis as a question of law, and there do not appear to be any issues of fact regarding the remedies available under Ch. 41.56, even though "the jeopardy element . . . generally involves a question of fact." Cudney at 536 n.4 (quoting Korslund at 182); see also Brundridge v. Fluor Fed. Servs., Inc., 164 Wn. 2d 432, 443 n.3, 191 P.3d 879 (2008) (stating alternate means of vindicating public policy in Korslund were adequate as a matter of law in the absence of factual dispute, but noting that exact same means may not be adequate upon factual showing to the contrary).

<sup>10</sup> The City also seems to suggest that remedies available under the collective bargaining agreement (CBA) and civil service commission rules may be adequate to vindicate the public policy embodied in Ch. 41.56. See City Br. at 17. The superior court opinion does not address the CBA or civil service remedies, and it is not apparent from the briefing whether these remedies are part of the record or whether this issue is preserved for review. See Piel Br. Appendix (CP 767-71).

In any event, CBA and civil service remedies focus on the interests of the particular employee rather than vindicating public policy. See Smith, 139 Wn.2d at 805 (stating "while the contractual remedies available to certain employees redress violations of the underlying employment contract, these remedies do not protect an employee who is fired not only 'for cause' but also in violation of public policy"). As the Court has observed, the proper jeopardy element focus is on vindication of the public policy rather than the remedies available to the particular employee. See e.g. Cudney at 538.

its jeopardy analysis to the legislative declaration of public policy promoting a broad remedial scheme for conduct protected by Ch. 41.56.<sup>11</sup>

**C. While *Smith*, *Korslund* And *Cudney* Do Not Appear To Conflict Because They Address Different Issues, This Question Need Not Be Reached Because The Jeopardy Element Should Be Deemed Met As A Matter Of Law In This Case.**

Piel argues that the superior court's summary judgment order creates a conflict between this Court's decision in Smith on the one hand, and its decision in Korslund (and presumably Cudney) on the other. See Piel Stmt. of Grounds for Direct Rev. at 1-2. Although he argues that no actual conflict exists, Piel contends that Smith is controlling and establishes that the jeopardy element of his wrongful discharge claim is met. See Piel Br. at 33-41; Piel Reply Br. at 7-8. The City agrees that no conflict exists, but argues that Korslund (and presumably Cudney) is controlling and establishes that the jeopardy element is *not* met based on the adequacy of Ch. 41.56 remedies. See City Br. at 14-19.

In Smith, the Court held that wrongful discharge in violation of public policy is available to employees otherwise subject to termination only for cause, and that unionized public sector employees are not required to exhaust remedies available from PERC or under their CBA

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<sup>11</sup> To be clear, this argument does not rely upon or implicate the rules of statutory construction that would be concerned with whether a common law claim for wrongful discharge in violation of public policy existed when RCW 41.56.905 was enacted or amended. See e.g. In re King County for Foreclosure of Liens for Delinquent Real Prop. Taxes for Years 1985 Through 1988, 117 Wn. 2d 77, 86, 811 P.2d 945 (1991) (stating "[t]he Legislature is presumed to know existing case law in areas in which it is legislating," and the Court "may, therefore, look to the common law to ascertain the proper scope of this statute"). Instead, the argument is grounded in the particular public policy expressed in Ch. 41.56, and whether the Court should conform its jeopardy analysis to such policy.

before bringing suit. See 139 Wn.2d at 808 (stating “we hold Smith may bring an action in tort for wrongful discharge in violation of her protected legal right to file grievances,” notwithstanding her for-cause employment status); id. at 811 (stating “we hold Smith should not have been required to exhaust her contractual or administrative remedies before suing in superior court”). Smith does not appear to engage in the jeopardy analysis adopted in Gardner and developed in Hubbard, Korslund and Cudney, supra. Nor does Smith appear to conflict with such analysis, except to note the shortcomings of remedies available through PERC and the CBA in the course of extending wrongful discharge to for-cause employees without requiring exhaustion of administrative remedies. See 139 Wn. 2d at 805-06 (discussing additional and distinct remedies available in tort); id. at 810 (discussing limited jurisdiction of PERC and lack of tort damages).

On the other hand, nothing in the jeopardy analysis of Hubbard, Korslund and Cudney, supra, addresses the holdings in Smith. But cf. Korslund, 156 Wn.2d at 178 (citing Smith with approval for the proposition that wrongful discharge “is also available to employees who are dischargeable only for cause (and who may be covered by a collective bargaining agreement)”). In any event, under the jeopardy analysis proposed in § B, supra, the Court does not need to resolve the question of whether there is a conflict between Smith and these other cases.

VI. CONCLUSION

The Court should adopt the arguments advanced in this brief and resolve this appeal accordingly.

DATED this 14<sup>th</sup> day of August, 2012.

  
GEORGE M. AHREND

  
FOR BRYAN D. HARNETIAUX,  
WITH AUTHORITY

On Behalf of WSAJ Foundation

# Appendix

### **RCW 41.56.010. Declaration of purpose**

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.

[1967 ex.s. c 108 § 1.]

### **RCW 41.56.040. Right of employees to organize and designate representatives without interference**

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 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.

[1967 ex.s. c 108 § 4.]

### **RCW 41.56.125. Arbitrators--Selection--Additional method**

In addition to any other method for selecting arbitrators, the parties may request the public employment relations commission to, and the commission shall, appoint a qualified person who may be an employee of the commission to act as an arbitrator to assist in the resolution of a labor dispute between such public employer and such bargaining representative arising from the application of the matters contained in a collective bargaining agreement. The arbitrator shall conduct such arbitration of such dispute in a manner as provided for in the collective bargaining agreement: PROVIDED, That the commission shall not collect any fees or charges from such public employer or such bargaining representative for services performed by the commission under the provisions of this chapter: PROVIDED FURTHER, That the provisions of chapter 49.08 RCW shall have no application to this chapter.

[1975 1st ex.s. 296 § 23; 1973 c 59 § 3.]

**RCW 41.56.140. Unfair labor practices for public employer  
enumerated**

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

- (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
- (2) To control, dominate, or interfere with a bargaining representative;
- (3) To discriminate against a public employee who has filed an unfair labor practice charge;
- (4) To refuse to engage in collective bargaining with the certified exclusive bargaining representative.

[2011 c 222 § 2, eff. July 22, 2011; 1969 ex.s. c 215 § 1.]

**RCW 41.56.160. Commission to prevent unfair labor practices and  
issue remedial orders and cease and desist orders**

- (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.
- (2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.
- (3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief.

[1994 c 58 § 1; 1983 c 58 § 1; 1975 1st ex.s. c 296 § 24; 1969 ex.s. c 215 § 3.]

**RCW 41.56.905. Uniformed personnel--Provisions additional--Liberal construction**

The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control.

[1983 c 287 § 5; 1973 c 131 § 10.]

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**To:** George Ahrend  
**Cc:** Bryan P Harnetiaux; Kenneth W. Masters; John Chun; [ottok@summitlaw.com](mailto:ottok@summitlaw.com); Stewart A. Estes  
**Subject:** RE: Piel v. Federal Way (S.C. #83882-8)

Rec'd 8/14/12

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-----Original Message-----

From: George Ahrend [<mailto:gahrend@ahrendalbrecht.com>]  
Sent: Tuesday, August 14, 2012 4:01 PM  
To: OFFICE RECEPTIONIST, CLERK  
Cc: Bryan P Harnetiaux; Kenneth W. Masters; John Chun; [ottok@summitlaw.com](mailto:ottok@summitlaw.com); Stewart A. Estes  
Subject: Piel v. Federal Way (S.C. #83882-8)

Dear Mr. Carpenter:

On behalf of the Washington State Association for Justice Foundation, a proposed amicus curiae brief is attached to this email and submitted for filing in the above-referenced case. A letter application on behalf of the Foundation to appear as amicus curiae was submitted by email yesterday. Counsel for the parties are being served simultaneously by copy of this email, by prior agreement.

Respectfully submitted,

--  
George Ahrend  
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