

NO. 87424-7

SUPREME COURT OF THE STATE OF WASHINGTON

RECEIVED BY E-MAIL

WASHINGTON EDUCATION ASSOCIATION, et al.,
and all others similarly situated,

Respondents/Cross-Appellants,

v.

WASHINGTON STATE DEPARTMENT OF RETIREMENT SYSTEMS
and the STATE OF WASHINGTON,

Appellants/Cross-Respondents,

v.

CHERYL COSTELLO, STEPHAN GORE, RICHARD MORVAN,
JERALD NEWELL, DAVID RENO, and FINN LIVINGSTON,
on behalf of themselves and a class of persons similarly situated,

Respondents,

v.

WASHINGTON STATE DEPARTMENT OF RETIREMENT SYSTEMS
and the STATE OF WASHINGTON,

Appellants,

v.

WASHINGTON FEDERATION OF STATE EMPLOYEES,
PAULETTE THOMPSON, DANA HUFFORD and DON HEWITT,

Respondents/Cross-Appellants,

v.

WASHINGTON STATE DEPARTMENT OF RETIREMENT SYSTEMS
and the STATE OF WASHINGTON,

Appellants/Cross-Respondents.

BRIEF OF AMICUS CURIAE WASHINGTON STATE SCHOOL
DIRECTORS' ASSOCIATION

FILED
2013 OCT -2 P 3:47
RONALD R. CARPENTER
CLERK

ORIGINAL

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I. INTRODUCTION

If this Court strikes down the Legislature's repeal of gain-sharing and UCOLA, school districts will be required to shift significant portions of their current budgets to make additional payments into the Teachers' and School Employees' Retirement Systems. This would necessarily reduce funds available for other school district programs that serve Washington's students. The Legislature could not have been more clear; it did not intend to create an ongoing or perpetual contractual right to either gain-sharing or UCOLA. Thus, reviving gain-sharing and UCOLA would be contrary to the Legislature's plain intent to enact these pension enhancements with a safety valve allowing it to repeal them if their cost proved too expensive in an economic downturn.

II. IDENTITY AND INTEREST OF AMICUS

The Washington State School Directors' Association is a statewide association of all 1,477 school board members from Washington's 295 public school districts. The districts they lead serve more than one million students, have a combined annual budget of six billion dollars, and employ nearly 100,000 people.

The School Directors' Association was founded in 1922. Since 1947, the Association has been authorized by the Legislature to be a self-

governed state agency, managed by a board of directors elected by school board members from across the state. RCW 28A.345.010.

The School Directors' Association is a respected, trusted advocate for public education and student achievement. It promotes effective school district governance. The school board members that make up the Association are responsible for managing the finances and setting the budgets for Washington's school districts. In recent years they have been faced with tough choices, often having to decide which programs must be cut in an environment of severely restricted budgets. As a result, the School Directors' Association can provide a unique perspective regarding the financial impact that these cases may have on Washington's public schools.

As amicus, the School Directors' Association urges this Court to reverse the trial courts' rulings in both *Washington Education Association, et al. v. Washington Department of Retirement Systems*, No. 87424-7 (gain-sharing), and *Washington Education Association, et al. v. Washington Department of Retirement Systems*, No. 88546-0 (UCOLA). This Court should uphold the Legislature's repeal of gain-sharing and UCOLA and conclude that the Legislature can, and in these cases plainly did, enact pension enhancements while also expressly declining to make them ongoing, perpetual contractual rights. If this court instead strikes

down the Legislature's repeal of gain-sharing and UCOLA, Washington's school districts will suffer significant losses to their program budgets and Washington's students will lose access to important services.

III. AMICUS CURIAE'S STATEMENT OF THE CASE

A. The Teachers' Retirement System and the School Employees' Retirement System.

The Teachers' Retirement System (TRS) and School Employees' Retirement System (SERS) are the public retirement systems that serve school district employees across the state. Generally, certificated teachers are eligible for TRS membership, while "classified" school district staff (generally, noncertificated staff) are eligible for SERS.¹ School districts, as employers, make contributions to TRS and SERS according to rates set by the Pension Funding Council, subject to adjustment by the Legislature. RCW 41.32.035; RCW 41.45.060. TRS provides Plans 1, 2, and 3, while SERS offers only Plans 2 and 3. RCW 41.32; RCW 41.35.

TRS Plan 1 is available only to teachers who became members before October 1977. RCW 41.32.010(31). Plan 1 is a defined benefit plan, which means that upon retirement, the retired teacher receives a

¹ See RCW 41.32.010(49) (defining "teacher" to include "certificated" employees); RCW 41.32.032(1) (explaining that teachers "as defined under RCW 41.32.010" shall become members of the Teachers' Retirement System); RCW 41.35.005 (explaining that "classified" school employees become members of the School Employees Retirement System); RCW 41.35.010(7) (defining "classified" employees as school district employees not eligible for membership in TRS).

monthly retirement allowance defined by a statutory formula. *See* RCW 41.32.480; RCW 41.32.498. An eligible teacher contributes to the fund at a consistent rate of six percent of his or her salary. RCW 41.32.350. The school district also contributes the equivalent of a certain percentage of each Plan 1 teacher's salary, but the rate is adjusted to ensure that the plan is adequately funded. RCW 41.32.035. Because Plan 1 has significant unfunded liability and not enough working Plan 1 teachers to support the plan, school districts currently have to pay additional contributions to support Plan 1. Gain-sharing CP at 5892, ¶ 5.

TRS and SERS both have Plan 2 options for those who became plan members after October 1, 1977. RCW 41.32.010(32); RCW 41.35.010(24). Plan 2 is also a defined benefit plan, but the employee and school district contribution rates are both adjusted as needed to ensure that the plan is adequately funded. *See* RCW 41.32.760; RCW 41.32.035; RCW 41.35.430. Finally, TRS and SERS offer Plan 3, and some employees have been mandated into this mixed plan. RCW 41.32.831; RCW 41.35.600. It incorporates a defined benefit component, funded entirely by school district contributions, and a contribution account, funded entirely by employee contributions. *Id.*; *see also* Gain-sharing CP at 2391.

B. School District Contributions to TRS and SERS.

For the last two school years, school districts paid the equivalent of approximately eight percent of teacher salaries into TRS for all plans. Gain-sharing CP at 5914, 5917.² In September 2013, employer contribution rates jumped to 10.39 percent for all TRS plans.³ For a teacher salary of approximately \$50,703,⁴ the current annual contribution amount is therefore \$5,268.

For the last two school years, school district contribution rates for SERS members have been approximately 7.59 percent of member salaries. Gain-sharing CP at 5912.⁵ In September 2013, the rate increased to 9.82 percent.⁶

²See also, Washington Department of Retirement Systems, Retirement Contribution Rates, TRS Plan 1 and 2, School District and Educational Service District, available at: <http://www.drs.wa.gov/employer/EmployerHandbook/pdf/trs1.pdf>; <http://www.drs.wa.gov/employer/EmployerHandbook/pdf/trs2.pdf>. This Court can take judicial notice of updated school district contribution rates. See *State ex. rel. Humiston v. Meyers*, 61 Wn.2d 772, 779, 380 P.2d 735 (1963) (Courts may take judicial notice of facts “capable of immediate and accurate demonstration by resort to easily accessible sources.”)

³ Washington Department of Retirement Systems, Retirement Contribution Rates, TRS Plan 1 and 2, School District and Educational Service District, available at: <http://www.drs.wa.gov/employer/EmployerHandbook/pdf/trs1.pdf>; <http://www.drs.wa.gov/employer/EmployerHandbook/pdf/trs2.pdf>.

⁴ This is the average secondary teacher salary in Washington State in 2012-13, according to data compiled by The Spokesman-Review. Washington State School Salaries: 2012-2013, available at: <http://data.spokesman.com/salaries/schools/2013/>. The average elementary teacher salary was slightly less: \$49,991. *Id.*

⁵ See also Washington Department of Retirement Systems, Retirement Contribution Rates, SERS Plan 2, available at: <http://www.drs.wa.gov/employer/EmployerHandbook/pdf/sers2.pdf>.

⁶ Washington Department of Retirement Systems, Retirement Contribution Rates, SERS Plan 2, available at: <http://www.drs.wa.gov/employer/EmployerHandbook/pdf/sers2.pdf>.

Neither the TRS rate nor the SERS rate includes any amount to fund gain-sharing or UCOLA because both have been repealed. Thus, revival of gain-sharing and UCOLA would increase school districts' contribution rates for both TRS and SERS employees beyond the recently-increased, current rates.

IV. ARGUMENT

A. Reviving Gain-Sharing and UCOLA in Contravention of the Legislature's Plain Intent Would Cost Already Cash-Strapped School Districts Millions of Dollars and Would Require Significant Sacrifices of Student Programs.

Costs of Reviving Gain-Sharing: Gain-sharing was repealed in 2007. See RCW 41.40.183. The State Actuary has concluded that if gain-sharing were revived, it would require school districts to pay at least an additional 2.29 percent of total TRS employee salaries into the TRS pension system. Gain-sharing CP at 5892, ¶ 7; see also CP at 6060 (projecting slightly higher increases). Given recent rate history, this addition alone could raise the total school district contribution to the equivalent of over twelve percent of employee salaries.⁷

The budget impacts of a 2.29 percent increase would be daunting. For example, for a single fiscal year, the revival of gain-sharing would

⁷ See Washington Department of Retirement Systems, Retirement Contribution Rates, School Districts and Educational Service Districts, TRS Plan 1 and Plan 2, available at: <http://www.drs.wa.gov/employer/EmployerHandbook/pdf/trs1.pdf>; <http://www.drs.wa.gov/employer/EmployerHandbook/pdf/trs2.pdf> (10.39 percent plus 2.29 percent).

require the Seattle Public Schools to pay an *additional* \$5.1 million into TRS, and it would require the Spokane Public Schools to pay an additional \$2.9 million into TRS. Gain-sharing CP at 5892-93, ¶ 7.

When SERS is added, the impact is even more extraordinary. In the Seattle Public Schools, an additional payment of 2.29 percent of TRS (certificated) and SERS (noncertificated) salaries would equal over \$8.8 million (using 2012-13 school year salaries), which, for context, is more than the entire budget for vocational instruction district wide.⁸ In the Spokane Public Schools, the additional gain-sharing payment would equal almost \$4.5 million, which approaches the amount the district has budgeted for the Learning Assistance Program.⁹

The impact would be similarly severe for smaller and more rural school districts. For example, in the Blaine School District, the additional payment would amount to more than \$300,000. For context, this equals

⁸ See Seattle Public Schools, F-195 Budget at 4, available at: <http://www.k12.wa.us/safs/rep/fin/1213/17001195.pdf>. All of Washington's school district budgets are available online at <http://www.k12.wa.us/safs/Reports.asp>. School district budgets are reported to the Superintendent of Public Instruction using a common form statewide (Form F-195). Thus, this Court can take judicial notice of school district budgets adopted by school boards across the state. See *State ex. rel. Humiston*, 61 Wn.2d at 779. On each budget document, the total amounts budgeted for certificated salaries and classified salaries can be found at the bottom of page 1 of the General Fund Financial Summary.

⁹ See Spokane School District No. 81, F-195 Budget at 4, 11, available at <http://www.k12.wa.us/safs/rep/fin/1213/32081195.pdf>.

almost half of the Blaine School District's food services budget for a fiscal year, and it equals the entire budget for transportation equipment.¹⁰

In the Sunnyside School District, the additional contribution amount for gain-sharing would be approximately \$800,000.¹¹ It costs an average of almost \$60 to educate a child for one school day in the Sunnyside District.¹² The additional \$800,000 payment to the retirement systems would be the equivalent of more than 13,000 individual child instruction days. The \$800,000 approaches the entire district's extracurricular budget, and it is almost twice the district's school security budget.¹³

In the Montesano School District, the additional cost of gain-sharing would be more than \$150,000, which, for context, encompasses more than 85 percent of the district's budget for therapist salaries.¹⁴ And in the Granger School District, the additional cost would be more than

¹⁰ See Blaine School District No. 503, Budget and Excess Levy Summary at 2, 15, 35, available at <http://www.blaine.wednet.edu/bsd/Budget/13-14/2013-14%20Budget.pdf>.

¹¹ Sunnyside School District No. 201, F-195 Budget at 4, available at: <http://www.k12.wa.us/safs/rep/fin/1213/39201195.pdf>.

¹² Sunnyside School District Budget Information, 2013-2014, available at: http://www.sunnysideschools.org/files/_rcGQ3_/487ca615c54d1a723745a49013852ec4/Budget_brochure_13-14.pdf.

¹³ Sunnyside School District No. 201, F-195 Budget at 4, 88, available at: <http://www.k12.wa.us/safs/rep/fin/1213/39201195.pdf>; Sunnyside School District Budget Information, 2013-2014, available at: http://www.sunnysideschools.org/files/_rcGQ3_/487ca615c54d1a723745a49013852ec4/Budget_brochure_13-14.pdf.

¹⁴ Montesano School District No. 066, F-195 Budget at 4, 45, available at: <http://www.k12.wa.us/safs/rep/fin/1213/14066195.pdf>.

\$200,000, roughly half of the budget for vocational instruction.¹⁵ These significant impacts represent only the additional costs of gain-sharing and do not account for additional costs of UCOLA.

Costs of Reviving UCOLA: The State Actuary has also concluded that if UCOLA were revived, school districts would have to pay an *additional* 4.07 to 4.66 percent of salaries into TRS in future years. *See* UCOLA CP at 707, ¶ 33 (explaining that the reduction in contribution rates that resulted from UCOLA's repeal would be 4.07 to 4.66 percent of TRS salaries). This amount would be in addition to the 2.29 percent cost from gain-sharing. An additional four percent contribution for UCOLA could raise total school district contributions above 16 percent of TRS salaries, a contribution rate never before reached in the TRS plans.¹⁶

For SERS, the additional school district payment if UCOLA were revived will be the equivalent of approximately 1.77 percent of SERS salaries. *See* Office of the State Actuary, Report on Financial Condition and Economic Experience Study, August 30, 2013¹⁷ (reflecting an estimated 1.77 percent increase for SERS if UCOLA were revived); *see*

¹⁵ Granger School District No 204, F-195 Budget at 4, <http://www.k12.wa.us/safs/rep/fin/1213/39204195.pdf>.

¹⁶ *See* Washington Department of Retirement Systems, Retirement Contribution Rates, School Districts and Educational Service Districts, TRS Plan 1 and Plan 2, available at: <http://www.drs.wa.gov/employer/EmployerHandbook/pdf/trs1.pdf>; <http://www.drs.wa.gov/employer/EmployerHandbook/pdf/trs2.pdf>.

¹⁷ A copy of this report has been attached as an appendix to the Amicus Brief on behalf of the Legislature.

also UCOLA CP at 707, ¶ 33, 873 (estimating additional SERS contributions to be 1.42 to 2.28 percent).¹⁸

Payment of an additional four percent of TRS salaries and 1.77 percent of SERS salaries for UCOLA would amount to more than \$13 million per year for the Seattle Public Schools and over \$6.75 million per year from the Spokane Public Schools. *See* UCOLA CP at 707, ¶ 33.¹⁹ For context, this far exceeds the Seattle Public Schools' vocational instruction budget and it would be more than twice the Spokane Public Schools skills center instruction budget for the entire district.²⁰

For the Blaine School District, revival of UCOLA would require more than \$450,000 in additional contributions. This amount is almost 70 percent of the total amount the district has budgeted for vocational instruction, district wide.²¹ In the Sunnyside School District, the increased district contribution for UCOLA would equal \$1.1 million, approaching the utilities budget for the school district for the year, and more than 70

¹⁸ SERS increases would equal those for PERS.

¹⁹ *See also* Seattle Public Schools, F-195 Budget at 4, available at: <http://www.k12.wa.us/safs/rep/fin/1213/17001195.pdf>; Spokane School District No. 81, F-195 Budget at 4, available at: <http://www.k12.wa.us/safs/rep/fin/1213/32081195.pdf>

²⁰ *See* Seattle Public Schools, F-195 Budget at 4, available at: <http://www.k12.wa.us/safs/rep/fin/1213/17001195.pdf>; Spokane School District No. 81, F-195 Budget at 4, available at: <http://www.k12.wa.us/safs/rep/fin/1213/32081195.pdf>.

²¹ *See* Blaine School District No. 503, Budget and Excess Levy Summary at 2, 15, 35, available at <http://www.blaine.wednet.edu/bsd/Budget/13-14/2013-14%20Budget.pdf>.

percent of the district's health services budget.²² In Montesano, the UCOLA increase would equal about \$221,000, more than half the district wide food services budget and almost half the pupil transportation budget.²³ In the Granger School District, the increase would be approximately \$287,000, more than 90 percent of the pupil transportation budget.²⁴

If this Court were to revive gain-sharing and UCOLA, the costs of employee pensions would increase steeply—in the case of teachers by as much as the equivalent of 6.7 percent of TRS salaries.²⁵ The Legislature could be reasonably expected to increase, in the state budget, the per-teacher allocation of state general fund dollars that are distributed to school districts, in order to cover a portion of the required increased payments into TRS and SERS. Yet such state-funded increases, if they were to occur in the 2015-2017 biennium, would arise in an environment where pension contribution and school district funding requirements are both sharply increasing under already-existing law.

²² Sunnyside School District Budget Information, 2013-2014, available at: http://www.sunnysideschools.org/files/_reGQ3_/487ca615c54d1a723745a49013852ec4/Budget_brochure_13-14.pdf.

²³ Montesano School District No. 066, F-195 Budget at 4, 17, available at: <http://www.k12.wa.us/safs/rep/fin/1213/14066195.pdf>.

²⁴ Granger School District No 204, F-195 Budget at 4, 17, available at: <http://www.k12.wa.us/safs/rep/fin/1213/39204195.pdf>.

²⁵ Office of the State Actuary, Report on Financial Condition and Economic Experience Study, August 30, 2013 at 11.

Most importantly, the State's allocation would by no means cover the entire costs of these increases. For example, state-funded dollars would not be allocated to cover locally-funded employees or locally-funded portions of employee benefits. School districts would have to cover an estimated \$308 million *per biennium* statewide above any allocation from state funds. *See* Office of the State Actuary, Report on Financial Condition and Economic Experience Study, August 30, 2013 at 11. Thus, school districts would have to pay millions, some from state-funded dollars but also millions from local funding, to cover any pension contributions resulting from revival of gain-sharing and UCOLA. *See id.*

In sum, if this Court were to strike down the repeal of gain-sharing and UCOLA, school districts will, over time, pay the equivalent of an additional 2.29 percent of eligible employee salaries for gain-sharing, at least 4.06 percent of TRS employee salaries, and at least 1.77 percent of SERS employee salaries for UCOLA. This represents a significant and unexpected blow to school district budgets statewide and will approach or exceed the entire utility, food service, transportation, or school security budgets in some districts.

These additional costs would hit school districts at a time when their budgets have already been squeezed to the breaking point. For example, over the last four years, the Seattle Public Schools has had to cut

more than 20 percent of its budget, just over \$133 million.²⁶ And even in districts where modest revenue increases are expected this year, they follow years of sustained losses. This budget impact would be especially difficult to swallow because a large portion of school districts' budgets are already absorbed by expenditures that are required by federal or state law, often without adequate funding to support them, leaving very little discretionary spending.²⁷ Simply put, if this Court were to strike down the repeal of gain-sharing and UCOLA, the budget impacts would be devastating to school districts and district programs, and therefore Washington students.

B. Plaintiffs Seek an Unprecedented Holding That Would Have Serious Impacts on School Districts' Services to Students, Even Though Districts Reasonably Relied on the Legislature's Reservation of Rights.

The gain-sharing and UCOLA plaintiffs ask this court to

²⁶ See Seattle Public Schools 2013-2014 Superintendent's Recommended Budget, A Message from Assistant Superintendent for Business & Finance Duggan Harman, available at: http://www.seattleschools.org/modules/groups/homepagefiles/cms/1583136/File/Departmental%20Content/school%20board/12-13%20agendas/072413agenda/20130724_Budget_FY14_Revised.pdf see also Seattle Public Schools 2012-2013 Budget, A Message from Assistant Superintendent for Business & Finance Duggan Harman, available at: <http://www.seattleschools.org/modules/groups/homepagefiles/cms/1583136/File/Departmental%20Content/budget/recommended%20budgets/rbook2013.pdf>.

²⁷ For example, school districts by law must support costs for things like truancy actions; certain emergency preparedness and school safety requirements; various required educational programs and training for teachers and staff; and various reporting requirements. *E.g.*, RCW 28A.225.030, *et seq* (truancy actions); RCW 28A.230.070 (AIDS prevention education); Laws of 2013, ch. 233, § 1 (emergency response system using evolving technology); RCW 28A.210.110(3) (immunization reporting requirements).

contravene the Legislature's plain intent to enact both gain-sharing and UCOLA as pension enhancements that could be repealed. *See* Former RCW 41.31.030 (2006) (gain-sharing); RCW 41.32.489(6) (UCOLA). The Legislature did not promise either benefit would be provided in perpetuity, and in fact did just the opposite. *Id.* The Legislature expressly reserved the right to amend or repeal both gain-sharing and UCOLA, and it expressly declined to create a perpetual contractual right to either enhancement. *Id.*

In *Navlet v. Port of Seattle*, 164 Wn.2d 818, 849, 194 P.3d 221 (2008), this court explained that the Port of Seattle could have expressly established from the outset that there would be no perpetual right to receive the welfare benefits at issue in that case. *Id.* Had the Port clearly stated in the document that established the right to benefits—there the Collective Bargaining Agreement—that the welfare benefit would expire with the Agreement, the employees could not have reasonably expected to receive those benefits after the Agreement expired. *See id.* (“Without limiting the vested right to retirement welfare benefits in the CBA, the Port remains obligated to provide such benefits for the lives of the eligible retirees. . . .”). Thus, the *Navlet* Court reasoned that a limitation on a contract right is effective when it is contained in the instrument that creates the right.

Here, in the case of gain-sharing and UCOLA benefits, the Legislature plainly expressed its intent not to create an ongoing contractual right that could never be revoked in the statutes that created those benefits. *See* Former RCW 41.31.030 (2006); former RCW 41.31A. (2006); RCW 41.32.489(6). The Legislature made it clear that both gain-sharing and UCOLA could be repealed. There could be no reasonable expectation on the part of school district employees that these pension enhancements were promised in perpetuity.

The school districts would have relied on the Legislature's plain expression of its intent when evaluating both gain-sharing and UCOLA when they were proposed. Had the school districts believed that gain-sharing and UCOLA would be mandated in perpetuity, they would likely have opposed enactment, given the then-unknown nature of the long-term budget consequences for local governments.²⁸

In sum, if this Court were to strike down the Legislature's repeal of gain-sharing and UCOLA, school districts will be required to shift

²⁸ No opposition to gain-sharing or UCOLA enactment is recorded on the bill reports for either house. *See* House Bill Report, HB 2491, available at: <http://apps.leg.wa.gov/documents/billdocs/1997-98/Pdf/Bill%20Reports/House/2491.HBR.pdf>; Senate Bill Report, ESHB 2491, available at: <http://apps.leg.wa.gov/documents/billdocs/1997-98/Pdf/Bill%20Reports/Senate/2491-S.SBR.pdf>; Senate Bill Report, Senate Bill 5119, available at: <http://apps.leg.wa.gov/documents/billdocs/1995-96/Pdf/Bill%20Reports/Senate/5119.SBR.pdf>; House Bill Report, Substitute Senate Bill 5119, available at: <http://apps.leg.wa.gov/documents/billdocs/1995-96/Pdf/Bill%20Reports/House/5119-S.HBR.pdf>.

significant portions of their current budgets to make additional payments into TRS and SERS, negatively impacting Washington's public school students. Movement of these dollars will unexpectedly reduce funds available for other school district programs and will be a surprise for districts who relied on the Legislature's plain language.

C. A Holding That Contravenes the Legislature's Plain Intent Would Chill Enactment of Any Future Pension Enhancements.

School districts and local governments would likely perceive a holding that nullifies the Legislature's plain intent as a strong disincentive to support any future pension enhancements. Here, the Legislature recognized the uncertainty of whether government employers like school districts would be able to cover the costs of gain-sharing and UCOLA in perpetuity. In the case of gain-sharing, the future costs were unknown, and ultimately underestimated at the time of enactment. The Legislature reasonably reserved the ability to repeal the pension enhancements if they proved too expensive. Without the availability of this safety valve to provide relief in economic downturns, school districts will be extremely reluctant to support the enactment of any additional pension enhancements for fear that they could never be revisited. Thus, a ruling striking down the Legislature's repeal of gain-sharing and UCOLA would likely have a chilling effect on the enactment of future pension enhancements.

D. Any Application of Estoppel That Is Based on Statements Made in Department of Retirement Systems Materials Would Unfairly Penalize School Districts, Who Had No Influence or Control Over Such Statements.

The gain-sharing plaintiffs argue that even if the pension statutes expressly created no perpetual right to gain-sharing, literature distributed by the Department of Retirement Systems did create such a right. But a holding to this effect would unfairly penalize school districts by requiring them to pay millions of dollars as a result of statements they could not control.

In Washington, the terms of public employment are determined by statute, not by informational materials created by the Department of Retirement Systems, which does not have the authority to promise school district employees something that exceeds the Legislature's plain intent. *See Ass'n of Capitol Powerhouse Eng'rs v. Div. of Bldg. and Grounds*, 89 Wn.2d 177, 184, 570 P.2d 1042 (1977) (“[T]he terms and conditions of public employment . . . are basically controlled by statute.”); *State v. Nw. Magnesite Co.*, 28 Wn.2d 1, 26, 182 P.2d 643 (1947). Moreover, both equitable and promissory estoppel require consideration of whether their application is necessary to prevent a manifest injustice. *E.g., Campbell v. DSHS*, 150 Wn.2d 881, 902-03, 83 P.3d 999 (2004); *Jones v. Best*, 134 Wn.2d 232, 239, 950 P.2d 1 (1998). In this case, it would be a manifest

injustice against school districts, their taxpayers, and public school students to effectively require them to absorb millions of dollars in additional costs based only on language in informational materials over which they had no control. Indeed, the school districts were reasonable in their reliance on the statutory language that would allow the Legislature to repeal gain-sharing and UCOLA if they became too expensive. In contrast, it would be entirely unreasonable for employees to glean some ongoing perpetual right from Department of Retirement Systems literature, where doing so was flatly contrary to the Legislature's plain language.

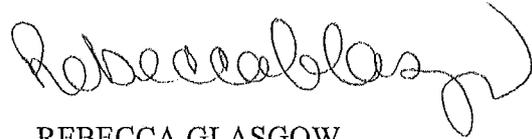
V. CONCLUSION

The School Directors' Association urges this Court to consider the real life impact of striking down the Legislature's repeal of gain-sharing and UCOLA. Reviving gain-sharing and UCOLA in spite of the Legislature's plain intent would cost already cash-strapped school districts millions of dollars and would require significant sacrifices of student programs. The Legislature could not have been more clear, and this Court should reverse the trial courts and uphold the Legislature's repeal of gain-sharing and UCOLA.

RESPECTFULLY SUBMITTED this 24th day of September,

2013.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in cursive script, appearing to read "Rebecca Glasgow".

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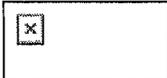
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Attached you will find the Motion of Washington State School Directors' Association To File Amicus Curiae Brief; Brief of Amicus Curiae Washington State School Directors' Association; and Certificate of Service in the above-captioned matter No. 87424-7.



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