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SUPREME COURT  
STATE OF WASHINGTON  
Apr 19, 2013, 3:55 pm  
BY RONALD R. CARPENTER  
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SUPREME COURT No. 88546-0

SUPREME COURT  
OF THE STATE OF WASHINGTON

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WASHINGTON DEPARTMENT OF RETIREMENT SYSTEMS and  
THE STATE OF WASHINGTON,

Petitioners,

vs.

WASHINGTON EDUCATION ASSOCIATION, *et al.*,

Respondents.

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**PETITIONERS' MOTION FOR DISCRETIONARY REVIEW**

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Timothy G. Leyh, WSBA #14853  
Randall T. Thomsen, WSBA #25310  
Katherine S. Kennedy, WSBA #15117  
Calfo Harrigan Leyh & Eakes, LLP  
999 Third Avenue, Suite 4400  
Seattle, WA 98104  
(206) 623-1700

Anne E. Hall, WSBA #27837  
Sarah E. Blocki, WSBA #25273  
Washington State Attorney General  
7141 Cleanwater Drive SW  
Olympia, WA 98504-0108  
(360) 586-3636

ORIGINAL

## I. INTRODUCTION

Plaintiffs in this case—public employees, retirees, and unions—claim a permanent contractual right to billions of dollars in extra pension benefits based on a statute that explicitly said that it created no such right. The superior court ruled for plaintiffs, holding that a pension enhancement created by the Legislature becomes a permanent constitutional entitlement, despite statutory language to the contrary. This ruling invades the fundamental authority of the Legislature, would have crippling financial impacts on the State, and is contrary to prior decisions of this Court. It must be reversed.

In 1995, the Legislature enacted a “uniform cost of living adjustment” (“UCOLA”) for members of PERS Plan 1 and TRS Plan 1 (“Plans 1”).<sup>1</sup> This new pension enhancement expressly stated:

The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this [benefit] not granted prior to that time.

Laws of 1995, ch. 345 §§ 2(6), 5(6) (codified at RCW 41.32.489(6) and 41.40.197(5)). In 2011, in the midst of an unprecedented financial crisis and uncertain about the continued financial sustainability of the Plans 1,

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<sup>1</sup> PERS is the acronym for the Washington Public Employees’ Retirement System. TRS is the acronym for the Washington Teachers’ Retirement System.

the Legislature exercised its reserved right and repealed future UCOLA increases. No retiree's pension payments were reduced; the Legislature simply declined to continue granting *future* increases, pursuant to its original statutory intent.

Notwithstanding the Legislature's express reservation of the right to repeal and its disclaimer of any contractual rights, the Thurston County Superior Court ruled that the Legislature's repeal of the UCOLA violated the Contracts Clause of the Washington Constitution ("the Order").<sup>2</sup> The superior court thus effectively rewrote the UCOLA statute, giving Respondents a contractual entitlement to perpetual, guaranteed annual cost-of-living increases — much more than the Legislature had granted.

In doing so, however, the superior court recognized substantial grounds for differences of opinion regarding its decision. In light of these grounds, as well as its determination that immediate review of its Order would materially advance the ultimate termination of the litigation, the superior court certified its Order under RAP 2.3(b)(4).<sup>3</sup>

This case warrants discretionary review by this Court based on the superior court's certification and the fundamental policy issues presented.

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<sup>2</sup> "Order Granting Plfs.' Mot. for S.J. on Contract Impairment Claim & Granting in Part & Denying in Part Defs.' Mot. to Dismiss Certain Class Allegations" (Appendix A).

<sup>3</sup> "Order Granting Defs.' Mot. for Certification" (Appendix C).

## II. NATURE OF THE CASE AND DECISION

### A. The Enactment and Repeal of the UCOLA.

The Legislature has established by statute several pension plans for employees of state agencies and other governmental entities, including local governments and school districts. This appeal involves two pension plans, PERS Plan 1 and TRS Plan 1 (“Plans 1”). Plans 1 members are school teachers and administrators and other public employees who were first employed in eligible positions before October 1, 1977.<sup>4</sup>

Upon retirement, Plans 1 members receive a “defined benefit,” *i.e.*, a monthly retirement allowance, calculated according to formulas set forth by statute. RCW 41.32.497, .498; RCW 41.40.185, .190. These defined retirement benefits are funded by contributions from public employers and employees plus investment earnings. The employee contribution rate is fixed by statute, so any shortfalls must be funded by increased employer contributions (and ultimately taxpayers).

Neither of the Plans 1 originally included any cost-of-living adjustment. On several occasions from the 1970’s to the early 1990’s, the Legislature made one-time, ad hoc increases to pension benefits by statute.

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<sup>4</sup> On October 1, 1977, Plans 1 were closed to new members. Anyone enrolled in PERS on or after October 1, 1977, is a member of PERS Plan 2 or Plan 3. Anyone enrolled in TRS on or after October 1, 1977, is a member of TRS Plan 2 or Plan 3.

In 1995, the Legislature decided to replace these occasional ad hoc adjustments with an “annual increase amount,” referred to as the “UCOLA.” *See* Laws of 1995, ch. 345 §§ 2, 5 (codified at RCW 41.32.489 and 41.40.197).

The Legislature originally set the UCOLA annual increase at 59 cents, to increase by three percent each year until repealed. The annual increase amount was multiplied by years of service to arrive at the adjustment to the monthly pension amount. As of 2011, the UCOLA was \$1.94 per year of service. Beneficiaries became eligible for the adjustment after receiving a retirement allowance for at least one year and attaining the age of 66 by July 1 in the year in which the UCOLA was given. For example, if a beneficiary had received a retirement allowance for at least one year, attained the age of 66 by July 1, 2011, and had 30 years of creditable service, his/her monthly retirement allowance would have been increased beginning July 2011 by the years of creditable service multiplied by \$1.94 (30 years x \$1.94 = \$58.20).

To make it clear that the UCOLA grant was non-contractual and not permanent, the Legislature included language in the UCOLA statute expressly disclaiming any contract entitlement to the annual increases and reserving the right to terminate the UCOLA at any future time:

The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time.

Laws of 1995, ch. 345 §§ 2(6), 5(6) (codified at RCW 41.32.489(6) and 41.40.197(5)). Between 1995 and June 30, 2011, eligible Plans 1 beneficiaries received the UCOLA provided by the 1995 Act.

The Great Recession, however, threatened the ability of the State and other public employers to continue to fund the Plans 1. As of 2009, the funded status of PERS Plan 1 was only 70%, and 75% for TRS Plan 1, and the State Actuary's office projected a drop in funded status to below 60%.<sup>5</sup> When a plan's funded status drops below 60%, its continued viability is considered at risk.

The continued existence of the UCOLAs also endangered the ability of Plans 1 to pay future pension benefits. In response, and after an extensive deliberative process, the Legislature passed House Bill 2021 ("HB 2021"). *See* Laws of 2011, ch. 362. The Legislature explained that the extraordinary economic crisis necessitated the bill's adoption:

The legislature now finds that changing economic conditions have also made necessary the amendatory provisions contained in this act. Due to the current

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<sup>5</sup> According to an Actuarial Valuation Report, the amount of "Unfunded Actuarial Accrued Liabilities ("UAAL") for PERS Plan 1 prior to the UCOLA repeal was in excess of \$4.2 billion, and the amount for TRS Plan 1 was nearly \$2.7 billion.

extraordinary economic recession and due to the financial demands of other core responsibilities of government, it is not feasible for public employers of this state to fund the annual increase amount and continue to ensure the fiscal integrity of these pension funds.

Laws of 2011, ch. 362, § 1. HB 2021 provided that, as of June 30, 2011, no further UCOLA increases would occur for Plans 1 beneficiaries, with certain limited exceptions.

However, HB 2021 made clear that Plans 1 members would continue to receive any UCOLA enhancements that they had received as of the time of repeal. *See* Laws of 2011, ch. 362, §§ 3, 6 (“This subsection shall not reduce retirement allowances below the amounts in effect on the effective date of this section.”).

The UCOLA repeal substantially decreased the financial impact of Plans 1 on the State and local governments. By repealing the UCOLA, HB 2021 reduced the expenses of the State and of other government employers for the 2011-13 biennium by \$500 million and over \$370 million, respectively, freeing up funds for other vital public services and programs. Over the next 25 years, the UCOLA repeal will reduce State expenses by \$4.3 billion and those of other governmental employers by \$3.3 billion – a total reduction of \$7.6 billion. The UCOLA repeal also substantially improved the financial integrity and flexibility of the Plans 1

by decreasing their unfunded liability by approximately 50%, greatly increasing the ability of Plans 1 to pay core benefits going forward.

If the UCOLA were reinstated, it would have a crippling effect on the budgets of the State and local governments. In the absence of increased or new sources of revenue, any increase in funding resulting from the UCOLA's restoration would require reducing or eliminating funding in areas such as education, healthcare, children's services, the courts, and/or higher education.

**B. Procedural Background.**

Three unions and several individuals<sup>6</sup> filed class actions in the Thurston County Superior Court challenging the repeal statute, HB 2021. The unions and employees asked the superior court to invalidate those provisions of HB 2021 that repealed the UCOLA, relying on this Court's decision in *Bakenhus v. City of Seattle*, 48 Wn.2d 695, 296 P.2d 536 (1956), and its progeny. The superior court consolidated the actions and certified a class.

Respondents filed a motion for summary judgment asking the

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<sup>6</sup> Respondents are the Washington Education Association, Stacia Bilsland and Kathleen Raney, on their own behalf and on behalf of all others similarly situated; the Washington Federation of State Employees, Paulette Thompson, Bob Keller, and all others similarly situated; and the Retired Public Employees Council of Washington and Howard N. Jorgenson, on his own behalf and on behalf of all similarly situated individuals.

superior court to find that HB 2021's elimination of the UCOLA violated Article 1, § 23, of the Washington State Constitution. In turn, the State filed a motion that sought (among other things) to dismiss those Plan 1 members who were retired and performed no services for the State and other public employers after the UCOLA enactment.

By letter opinion on November 9, 2012, the superior court granted in part Respondents' motion for summary judgment. It also granted the State's motion to dismiss certain Plan 1 members and beneficiaries from the class. On February 19, 2012, the superior court reduced its letter opinion to an "Order Granting Plaintiffs' Motion for Summary Judgment on Contract Impairment Claim" ("the Order")<sup>7</sup>. The State of Washington and the Washington Department of Retirement Systems ("the State") filed a timely notice of discretionary appeal of the Order and directed their notice of discretionary review to this Court. On April 5, 2013, the superior court certified its Order under RAP 2.3(b)(4).

### III. ARGUMENT

This Court should accept discretionary review of this case. Under RAP 2.3(b)(4), the Supreme Court may accept discretionary review in those instances where

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<sup>7</sup> See Appendix A.

[t]he superior court has certified . . . that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

The superior court certified its Order under RAP 2.3(b)(4) after a hearing in which the court applied the standards called for under the rule.

A. **The Superior Court's Order Involves a Controlling Question of Law as to Which There is a Substantial Ground for Difference of Opinion.**

Whether the Legislature can grant a pension enhancement on a temporary, non-contractual basis, and later terminate it based on a reservation of rights, is a controlling, unsettled question of law. If this Court upholds the Legislature's right to impose limits on a benefit that it grants, Respondents have no legal basis on which to challenge the Legislature's exercise of that reservation.

There is a substantial ground for a difference of opinion on the Legislature's authority to limit the grant of retirement benefits.<sup>8</sup> The superior court based its Order largely on three cases, *Bakenhus v. Seattle*, 48 Wn.2d 696, 296 P.2d 536 (1956), *Jacoby v. Grays Harbor Chair &*

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<sup>8</sup> During oral argument on the motions for summary judgment, the superior court acknowledged the significance of the issue of legislative power. In responding to Respondents' argument that the Legislature could not condition any pension benefit it provided, the trial judge noted that Respondents' position "seems like a tough position, because you're telling the Legislature that they either have to provide nothing or they have to provide a defined [permanent] benefit . . ." Verbatim Report of Proceedings (9/7/12) at 59 (Appendix B).

*Mfg. Co.*, 77 Wn.2d 91, 468 P.2d 666 (1970), and *Navlet v. Port of Seattle*, 164 Wn.2d 818, 194 P.3d 221 (2008). The court, however, acknowledged substantial grounds for differences of opinion about whether these cases apply to the circumstances at bar, and whether this Court would distinguish the UCOLA from the “core retirement rights at issue in *Jacoby* and *Navlet*.” The court also commented about “the uncertainty of appellate rulings in this case.”<sup>9</sup>

Substantial grounds for differences of opinion exist primarily because of the uncertainty about whether *Bakenhus* applies to the repeal of the UCOLA. *Bakenhus* did not address whether the Legislature could properly terminate a pension enhancement that was explicitly non-contractual when granted.<sup>10</sup> In *Bakenhus*, the Court held that a City could not reduce pension benefits by changing a particular pension regime, where the employee had accepted a job to which that regime applied, and had worked as consideration for it. This case, in contrast to *Bakenhus*, does not involve a reduction in benefits to which employees could claim a contractual entitlement, but only the repeal of future increases that were non-contractual in the first instance. Because the UCOLA statute limited

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<sup>9</sup> Appendix A (Order) at 12, 13.

<sup>10</sup> *Bakenhus* also did not involve the situation where an employer provided a benefit decades after closing the pension plans to new members, and after the employees began working for the employer.

the grant of annual increases by expressly making them non-contractual and temporary, Respondents cannot conceivably establish a perpetual, guaranteed right to annual increases. The superior court, in essence, rewrote the UCOLA statute and granted Respondents significantly more than the Legislature gave them: the contractual right to annual pension increases that could never be revoked.<sup>11</sup>

Whether the *Bakenhus* line of cases applies in the current circumstances is an issue of first impression in Washington. In similar cases involving questions of first impression relating to pension benefits, this Court has accepted discretionary review. *See, e.g., Dolan v. King County*, 172 Wn.2d 299, 310, 258 P.3d 20 (2011).

Substantial grounds for differences of opinion also exist regarding the applicability of *Navlet v. Port of Seattle*, 164 Wn.2d 818, which both parties relied on below in making diametrically-opposed arguments about whether a legislative reservation of rights is valid and effective.<sup>12</sup> In

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<sup>11</sup> Other issues on which there are substantial grounds for differences of opinion, but which were not addressed by the superior court, include: whether a legislature, by enacting pension benefits, will bind future legislatures despite a statutory provision to the contrary; whether a cost-of-living adjustment is a “substantial benefit” that the legislature may never modify; whether the UCOLA was a gratuity/gift, and whether the post-*Bakenhus* amendment of Art. II, § 25 of the Washington Constitution to permit non-contractual legislative changes to pensions precludes the application of *Bakenhus* here; and whether the UCOLA repeal impaired a contract or was reasonably necessary to serve a legitimate government purpose.

<sup>12</sup> Respondents also relied upon *Jacoby v. Grays Harbor*, 77 Wn.2d 911. But that case

*Navlet*, this Court stated that the Port of Seattle could not divest employees of benefits based on a disclaimer in a “Summary Plan Description” and a “Welfare Trust Agreement,” but indicated that the disclaimer would have been effective had the Port included the disclaimer in the “Collective Bargaining Agreement” establishing the benefit. *Id.* at 849 (“If the Port wanted to limit its obligation to provide welfare benefits, then it could have insisted on limiting the right to retirement welfare benefits in the CBA itself.”). In this case, the reservation of rights and disclaimer of contract rights were included in the enactment creating the benefit.

**B. Immediate Review of the Superior Court’s Order Will Materially Advance the Ultimate Termination of this Litigation.**

Immediate review of the superior court’s Order will materially advance the ultimate termination of this litigation because it will allow this Court to resolve the controlling legal question of whether the Legislature has the power to declare supplemental pension benefits non-contractual and subject them to a reservation-of-rights clause. Immediate review will also allow the Court to treat this UCOLA appeal as a “companion” to the

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did not decide the effect of a reservation-of-rights clause on a statutory public pension provision. Whether *Jacoby* applies is an issue on which the parties disagree. The superior court expressed skepticism about whether it applied in this case. Appendix A (Order) at 12.

“gain-sharing” appeal now pending at the Supreme Court, which presents many virtually identical legal issues. See *Washington Educ. Ass’n, et al. v. State of Washington & Washington State Dep’t. of Ret. Sys.*, Supreme Court Case No. 87424-7 (“*WEA v. DRS*”).<sup>13</sup>

The Legislature enacted gain-sharing with a statutory reservation of rights virtually identical to the reservation in the UCOLA statutes. Compare RCW 41.31.030 and RCW 41.31A.020(4) with RCW 41.32.489(6) and RCW 41.40.197(5). The Legislature repealed the gain-sharing benefit pursuant to its reserved authority, and various plaintiffs, including many of the Respondents in this case, challenged the constitutionality of that action. The King County Superior Court held that the Legislature’s repeal of gain-sharing was unconstitutional. All parties sought direct review by the Supreme Court, which is currently pending.

Both this case and *WEA v. DRS* involve the Legislature’s grant of non-contractual pension benefits that were ultimately repealed based on unprecedented financial pressures on the State and other government employers. Although the cases differ in several respects, the decision in one appeal may nonetheless affect the other. By granting discretionary review, the Court will be able to fully apprise itself of the context of both

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<sup>13</sup> Along with this Motion for Discretionary Review, the State has moved this Court to treat this case as a “companion” case with *WEA v. DRS*.

cases, including the circumstances in which the Legislature incorporated the reservation-of-rights language, and the circumstances under which both provisions were repealed.<sup>14</sup> The Court's consideration of the cases together is particularly important because the outcome of *WEA v. DRS* may affect this case, and the financial consequences of reinstating the UCOLA benefit are larger than the financial consequences of reinstating the gain-sharing benefit.

Accepting review of this case and allowing it to proceed as a companion to the *WEA v. DRS* appeal also will materially advance the ultimate termination of both cases because of the efficiencies of considering similar cases contemporaneously. "The advantages to the appellate court in having cases with similar issues argued in near proximity are obvious." 1 WASHINGTON APPELLATE PRACTICE DESKBOOK § 7.3(3), at 7-8 (2<sup>nd</sup> ed. 1998). Accepting discretionary and direct review would save time and expense and, most importantly, allow for a fair review of both cases.

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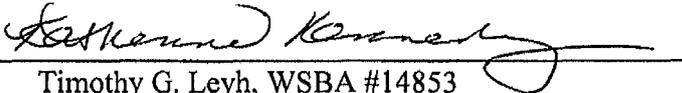
<sup>14</sup> If the Court did not accept discretionary review or deferred the decision whether to grant discretionary review in this case to the Court of Appeals, the cases could not be considered together. The appeal in the gain-sharing case is from an appeal of a final judgment and, because it originated from a different superior court, would be reviewed by a different appellate division than the division that would review this case.

**IV. CONCLUSION**

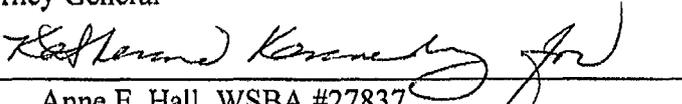
For the reasons set forth above, the State respectfully requests that this Court grant discretionary review of this appeal.

Respectfully submitted this 19<sup>th</sup> day of April, 2013.

CALFO HARRIGAN LEYH & EAKES LLP

By   
Timothy G. Leyh, WSBA #14853  
Randall Thomsen, WSBA #25310  
Katherine Kennedy, WSBA #15117  
Special Assistant Attorneys General

ROBERT FERGUSON  
Attorney General

By   
Anne E. Hall, WSBA #27837  
Senior Counsel, Assistant Attorney General

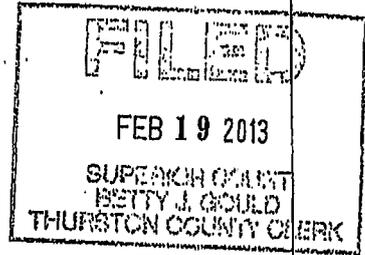
Sarah E. Blocki, WSBA #25273  
Assistant Attorney General

Attorneys for Petitioners Washington Department  
of Retirement Systems and State of Washington

# Appendix A

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EXPEDITE (if filing within 5 court days of hearing)  
 No hearing is set.  
 Hearing is set:  
 Date: \_\_\_\_\_  
 Time: \_\_\_\_\_  
 Judge/Calendar: Hon. Chris Wickham

IN THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

WASHINGTON EDUCATION ASSOCIATION;  
STACIA BILSLAND; KATHLEEN RANEY; and  
all others similarly situated,

Plaintiffs;

v.

WASHINGTON DEPARTMENT OF  
RETIREMENT SYSTEMS; and STATE OF  
WASHINGTON,

Defendants.

WASHINGTON FEDERATION OF STATE  
EMPLOYEES; PAULETTE THOMPSON; BOB  
KELLER; and all others similarly situated,

Plaintiffs,

v.

WASHINGTON DEPARTMENT OF  
RETIREMENT SYSTEMS; and STATE OF  
WASHINGTON,

Defendants.

RETIRED PUBLIC EMPLOYEES COUNCIL OF  
WASHINGTON, and HOWARD N. JORGENSEN,  
on his own behalf and on behalf of all similarly  
situated individuals,

Plaintiffs,

vs.

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

Defendants.

CONSOLIDATED

NO. 11-2-02213-4 (Master)  
11-2-02195-2  
11-2-02657-1

[PROPOSED]  
STIPULATED ORDER

(1) GRANTING PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT ON CONTRACT  
IMPAIRMENT CLAIM

AND

(2) GRANTING IN PART AND  
DENYING IN PART  
DEFENDANTS' MOTION TO  
DISMISS CERTAIN CLASS  
ALLEGATIONS

[PROPOSED] STIPULATED ORDER - 1

SIRIANNI YOUTZ  
SPOONEMORE HAMBURGER  
999 THIRD AVENUE, SUITE 3650  
SEATTLE, WASHINGTON 98104  
TEL. (206) 223-0303 FAX (206) 223-0246

1 This matter came before the Court on Plaintiffs' Consolidated Motion for Partial  
2 Summary Judgment on Contract Impairment Claim and on Defendants' Motion to Dismiss  
3 Certain Class Allegations. Plaintiffs and the Plaintiff Class are represented by Donald Clocksin  
4 (LAW OFFICES OF DON CLOCK SIN), Harriet Strasberg (LAW OFFICES OF HARRIET STRASBERG),  
5 Edward Earl Younglove III (YOUNGLOVE & COKER, PLLC), and Richard E. Spoonemore and  
6 Eleanor Hamburger (SIRIANNI YOUTZ SPOONEMORE HAMBURGER). Defendants are represented  
7 by Timothy G. Leyh and Randall Thomsen, CALFO HARRIGAN LEYH & BAKES LLP and Anne  
8 Hall and Sara Blockl, Assistant Attorneys General for the State of Washington.

9 In their Motion, Plaintiffs sought summary judgment that the repeal of the vested  
10 Uniform Cost of Living Adjustment (UCOLA) by SHB 2021 was an unconstitutional  
11 impairment of contracts under *Bakenhus v. Seattle*, 48 Wn.2d 695, 701-02, 296 P.2d 536 (1956)  
12 and related cases, and that Defendants may not avoid the *Bakenhus* requirements by purporting  
13 to reserve the right to repeal vested benefits like the UCOLA.

14 Defendants in their motion sought dismissal of all Plan 1 members who  
15 performed no service between 1995 and 2011, and Plan 1 retirees whose retirement allowance  
16 had been set by the statutory provisions for a minimum monthly allowance. Additionally,  
17 Defendants moved to dismiss all of the Class's estoppel claims.

18 The Court heard oral argument on September 7, 2012, and has reviewed and  
19 considered the pleadings and record herein, including:

- 20 1. Plaintiffs' Consolidated Motion for Summary Judgment on Contract  
21 Impairment Claim;
- 22 2. Declaration of Harriet Strasberg and all attached exhibits;
- 23 3. Defendants' Opposition to Plaintiffs' Consolidated Motion for Summary  
24 Judgment on Contract Impairment Claim;
- 25 4. Declaration of Randall Thomsen in support of Defendants' Opposition to  
26 Plaintiffs' Consolidated Motion for Summary Judgment on Contract  
Impairment Claim and all attached exhibits;

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5. Declaration of David Nelsen and all attached exhibits;
6. Declaration of Steven R. Hill;
7. Declaration of Matthew M. Smith and all attached exhibits;
8. Declaration of Marty Brown and all attached exhibits;
9. Plaintiffs' Reply in Support of Consolidated Motion for Summary Judgment on Contract Impairment Claim;
10. Defendants' Motion to Dismiss Certain Class Allegations;
11. Plaintiffs' Opposition to Defendants' CR 12 (b)(6) Motion To Dismiss;
12. Declaration of Edward E. Younglove, III and all attached exhibits;
13. Defendants' Reply in Support of their Motion to Dismiss Certain Class Allegations; and
14. Declaration of Randall Thomsen in Support of Defendants' Motion to Dismiss Certain Class Allegations and all attached exhibits;
15. Supplemental Declaration of Randall Thomsen in Support of Defendants' Opposition to Plaintiffs' Consolidated Motion and Defendants' Motion to Dismiss Certain Class Allegations, with attached exhibits thereto.

Based upon the foregoing, the Court hereby GRANTS Plaintiffs' Motion for Summary Judgment on Contract Impairment Claim and GRANTS IN PART AND DENIES IN PART Defendants' Motion to Dismiss Certain Class Allegations, as set forth *below*, and in the Court's Letter Opinion dated November 9, 2012, which is incorporated herein as *Exhibit A* to this Order.

**A. Plaintiffs' Motion for Summary Judgment on Contract Impairment Claim.**

As a matter of law, the Court concludes that plaintiffs are entitled to a declaration that the repeal of the vested UCOLA benefit contained in SHB 2021 (2011) is an unconstitutional impairment of contract, and is void and unenforceable. Under the *Bakenhus* doctrine, our Supreme Court has held that modifications to vested pension benefits after

1 employment has started impairs the employment contract. In two later cases, *Jacoby v. Grays*  
2 *Harbor Chair & Manufacturing Co.*, 77 Wn.2d 911 (1970) and *Navlet v. Port of Seattle*, 164  
3 Wn.2d 818 (2008), our Supreme Court rejected employers' attempts to reserve the right to  
4 unilaterally withdraw vested retirement benefits.

5 The Court therefore concludes that the statutory repeal of the UCOLA is an  
6 unconstitutional impairment of contract, violates existing law, and is facially invalid, void and  
7 unenforceable.

8 **B. Defendants' Motion to Dismiss Certain Class Allegations**

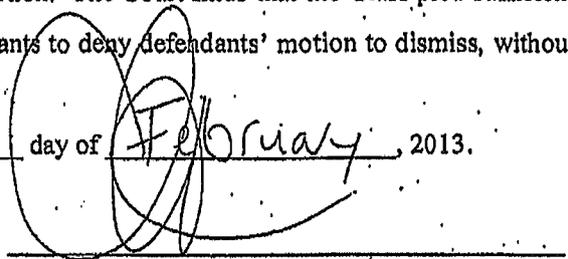
9 On June 4, 2012, this Court entered an Order Granting Plaintiffs' Motion for  
10 Class Certification. That Order defined the class as follows:

11 All individuals who are active, retired, or terminated members  
12 of PERS 1 and TRS 1 who, as of July 1, 2011: (a) have not yet  
13 reached age 66 or who have not yet retired or (b) are retired and  
14 are receiving the Uniform COLA or (c) would have been eligible  
15 to receive Uniform COLA payments in 2011 but who have not  
16 received Uniform COLA payments and/or will not receive such  
17 payments in the future under the terms of SHB 2021; but excluding  
18 individuals receiving the basic or alternative minimum benefit.

19 Order dated June 4, 2012 p. 4. As a matter of law, the Court grants Defendants' motion that  
20 seeks to dismiss (1) Plan 1 members from the Class who performed no service between 1995  
21 and 2011, and (2) Plan I beneficiaries whose retirement allowance has already been set by the  
22 statutory provisions for a minimum monthly allowance.

23 Defendants also moved to dismiss the Class's estoppel claims as too  
24 individualized to be determined in a class action. The Court finds that the Class pled sufficient  
25 allegations of common treatment by defendants to deny defendants' motion to dismiss, without  
26 prejudice.

It is so ORDERED this 19 day of February, 2013.



Hon. Chris Wickham  
Superior Court Judge

1 Presented by:

2 LAW OFFICES OF HARRIET STRASBERG

3 Eleanor Hamburger For  
4 Harriet Strasberg (WSBA #15890)  
203 Fourth Avenue E., Suite 520, Olympia, WA 98501  
5 (360) 754-0304; hstrasberg@comcast.net  
Co-counsel for WEA, Bilisland and Raney

6 LAW OFFICES OF DON CLOCKSIN

7 Eleanor Hamburger For  
8 Donald E. Clocksin (WSBA #4370)  
203 Fourth Avenue E., Suite 405, Olympia, WA 98501  
9 Tel.(360) 352-4115; clocksinlaw@qwestoffice.net  
10 Co-counsel for WEA, Bilisland and Raney

11 YOUNGLOVE & COKER, P.L.L.C.

12 Eleanor Hamburger For  
13 Edward Earl Younglove III (WSBA #5873)  
1800 Cooper Point Road SW, Bldg. 16, Olympia, WA 98507  
14 Tel. 360.357.7791; edy@ylclaw.com  
Attorney for WFSE, Thompson and Keller

15 SIRIANNI YOUTZ SPOONEMORE HAMBURGER

16 Eleanor Hamburger  
17 Richard E. Spoonemore (WSBA #21833)  
Eleanor Hamburger (WSBA #26478)  
18 999 Third Avenue, Suite 3650, Seattle, WA 98104  
19 (206) 223-0303; rspoonemore@sylaw.com; ehamburger@sylaw.com  
Attorneys for RPEC and Jorgenson

20  
21 Approved for entry, notice of presentation waived:

22 CALFO HARRIGAN-LEYH & EAKES LLP

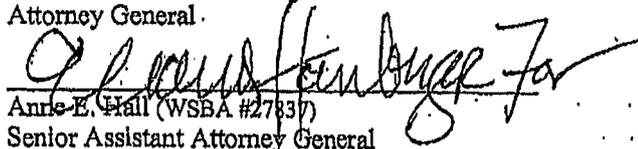
23 Eleanor Hamburger For  
24 Timothy G. Leyh (WSBA #14853)  
Randall Thomsen (WSBA #25310)  
25 999 Third Avenue, Suite 4400, Seattle, WA 98104  
(206) 623-1700; timl@calfoharrigan.com; randallt@calfoharrigan.com  
26 Special Assistant Attorneys General for Washington  
Department of Retirement Systems and the State of Washington

[PROPOSED] STIPULATED ORDER - 5

SIRIANNI YOUTZ  
SPOONEMORE HAMBURGER  
999 THIRD AVENUE, SUITE 3650  
SEATTLE, WASHINGTON 98104  
TEL: (206) 223-0303 FAX (206) 223-0246

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ROBERT McKENNA  
Attorney General



Anne E. Hall (WSBA #27837)  
Senior Assistant Attorney General  
Sarah E. Blocki (WSBA #25273)  
Assistant Attorney General

7141 Cleanwater Drive SW, Olympia, WA 98504-0108  
(360) 586-3636; anneh@atg.wa.gov; sarahb@atg.wa.gov

[PROPOSED] STIPULATED ORDER - 6

SIRIANNI YOUTZ  
SPOONMORE HAMBURGER  
999 THIRD AVENUE, SUITE 3650  
SEATTLE, WASHINGTON 98104  
TEL. (206) 223-0303 FAX (206) 223-0246

CERTIFICATE OF SERVICE

I certify, under penalty of perjury and in accordance with the laws of the State of Washington, that on February 15, 2013, I caused a copy of the foregoing document to be served on counsel/parties of record as shown below:

Co-counsel for WEA, Bilsland and Jenson

Donald E. Clocksin  
LAW OFFICES OF DON CLOCKSIN  
203 Fourth Avenue E., Suite 405  
Olympia, WA 98501  
Tel. 360.352.4115;  
[clocksinlaw@qwestoffice.net](mailto:clocksinlaw@qwestoffice.net)  
 By Email

Co-counsel for WEA, Bilsland and Jenson

Harriet K. Strasberg  
LAW OFFICE OF HARRIET STRASBERG  
203 Fourth Avenue E., Suite S20  
Olympia, WA 98501  
Tel. 360.754.0304; [hstrasberg@comcast.net](mailto:hstrasberg@comcast.net)  
 By Email

Counsel for WFSE, Thompson and Keller

Edward Earl Younglove III  
YOUNGLOVE & COKER, PLLC  
1800 Cooper Point Road SW, Bldg. 16  
Olympia, WA 98507  
Tel. 360.357.7791; [edy@yvcslaw.com](mailto:edy@yvcslaw.com)  
 By Email

Counsel for Washington Department of Retirement Systems and State of Washington

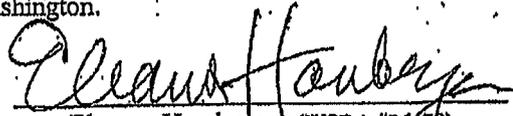
Timothy G. Leyh / Randall T. Thomsen  
CALFO HARRIGAN LEYH & EAKES LLP  
999 Third Avenue, Suite 4400  
Seattle, WA 98104  
Tel. 206.623.1700  
[timl@calfoharrigan.com](mailto:timl@calfoharrigan.com);  
[randallt@calfoharrigan.com](mailto:randallt@calfoharrigan.com);  
[susiec@calfoharrigan.com](mailto:susiec@calfoharrigan.com);  
[lindab@calfoharrigan.com](mailto:lindab@calfoharrigan.com)

By U.S. Postal Service  
 By Email

Courtesy Copy

Anne Hall / Sarah Blocki  
OFFICE OF THE ATTORNEY GENERAL  
7141 Cleanwater Drive SW  
P.O. Box 40108  
Olympia, WA 98504  
Hall 360.586.9037; Blocki 360.586.3233  
[anneh@atg.wa.gov](mailto:anneh@atg.wa.gov); [sarahb@atg.wa.gov](mailto:sarahb@atg.wa.gov)  
 By Email

DATED: February 15, 2013, at Seattle, Washington.

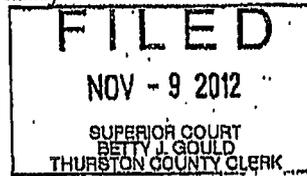
  
Eleanor Hamburger (WSBA #26478)

# EXHIBIT A

[PROPOSED] STIPULATED ORDER - 8

Superior Court of the State of Washington  
For Thurston County

Paula Casey, Judge  
Department No. 1  
Thomas McPhee, Judge  
Department No. 2  
Christine A. Pomeroy, Judge  
Department No. 3  
Gary R. Tabor, Judge  
Department No. 4



Chris Wickham, Judge  
Department No. 5  
Anne Hirsch, Judge  
Department No. 6  
Carol Murphy, Judge  
Department No. 7  
Lisa L. Sutton, Judge  
Department No. 8

2000 Lakeridge Drive SW • Building No. Two • Olympia WA 98502  
Telephone (360) 786-5560 • Fax (360) 754-4060

November 9, 2012

Donald E. Clocksin  
Harriet Kay Strasberg  
Attorneys at Law  
203 4<sup>th</sup> Ave E Ste 405  
Olympia WA 98501-1189

Timothy Leyh  
Randall Thor Thomsen  
Eleanor Hamburger  
Richard E. Spoonemore  
Attorneys at Law  
999 3<sup>rd</sup> Ave Ste 3650  
Seattle WA 98104-4038

Edward Earl Younglove III  
Attorney at Law  
PO Box 7846  
Olympia WA 98507-7846

Richard S. Ross  
Attorney at Law  
1610 Columbia St  
Vancouver WA 98660-2938

Anne Hall  
Assistant Attorneys General  
PO Box 40108  
Olympia WA 98504-0108

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Younglove & Coker

[PROPOSED] STIPULATED ORDER - 8

Marti Maxwell, Administrator • (360) 786-5560 • TDD (360) 754-2933 or (800) 737-7894 • [accessibilitysuperiorcourt@co.thurston.wa.us](mailto:accessibilitysuperiorcourt@co.thurston.wa.us)  
It is the policy of the Superior Court to ensure that persons with disabilities have equal and full access to the judicial system.

All Counsel  
November 9, 2012  
Page 2

**LETTER OPINION**

Re: *Washington Education Assn et al v State Retirement Systems et al*  
Thurston County Superior Court No.11-2-02213-4

Dear Counsel:

On September 7, 2012, this Court heard Plaintiff's Motion for Summary Judgment on its claim that the repeal of the UCOLA by SHB 2021 violates Article I, Section 23 of the Constitution of the State of Washington. The Court also heard Defendants' Motion to Dismiss Certain Class Allegations. The decision on both motions follows.

**Plaintiffs' Motion for Summary Judgment on Contract Impairment Claim**

Before 1995, members of PERS 1 and TRS 1 were entitled to several different cost-of-living adjustment benefits (COLAs) to their pension benefits. These various benefits are described in Declaration of Harriet Strasberg. In 1995, the Legislature adopted SSB 5119 in an effort to simplify the benefit calculation and administration. The bill repealed the existing benefits and replaced them with a common, uniform COLA, known generally as the "UCOLA." The legislation contained the following provision:

The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time.

RCW 41.40.197(5) and RCW 41.32.489(6). In 2011, the Legislature amended these statutes again and repealed the UCOLA for all active and retired members. It did not offer a benefit in exchange for terminating the UCOLA.

Plaintiffs moved for summary judgment on the ground that the UCOLA is a vested contractual benefit and the State cannot repeal that benefit without offering an offsetting benefit. The plaintiffs argue that the 2011 action -- the

repeal itself – has no offsetting benefit, and therefore the action was unlawful.

The leading case is *Bakenhus v. Seattle*, 48 Wn.2d 696 (1956). In that case, our Supreme Court held that a cap on pension benefits adopted after employment started impaired the employment contract and was void.

The State argues that the *Bakenhus* doctrine does not apply because *Bakenhus* was premised on a state constitutional prohibition on government gratuities that was amended in 1958. See Washington Constitution, Art. 2 § 25 (amended in 1958). However, the *Bakenhus* doctrine is clearly effective law that our Supreme Court has applied well after the constitutional amendment to which the State refers. See, e.g., *McAllister v. City of Bellevue Firemen's Pension Bd.*, 166 Wn.2d 623 (2009).

Two cases are dispositive to this Court, *Jacoby* and *Navlet*.<sup>1</sup> In each of those cases, our Supreme Court rejected employers' attempts to reserve the right to unilaterally withdraw vested retirement benefits.

In *Jacoby*, the Court held that an employer could not unilaterally defund a pension for existing employees, regardless of its attempt to reserve that right at the onset of employment. The Court held, "[c]learly .. an employer cannot offer a retirement system as an inducement to employment and ... withdraw or terminate the program after an employee has complied with all the conditions entitling him to retirement rights thereunder." 77 Wash.2d at 916.

In *Navlet*, the Court also held that an employer could not reserve the right to unilaterally terminate vested retirement benefits. In that case, the Court expanded the doctrine by applying it to peripheral retirement benefits – specifically, health insurance and welfare benefits. The Court held that "this court's treatment of pension benefits . . . appl[ies] to all employee benefits."<sup>2</sup>

---

<sup>1</sup> *Jacoby v. Grays Harbor Chair & Manufacturing Co.*, 77 Wn.2d 911 (1970); *Navlet v. Port of Seattle*, 164 Wn.2d 818 (2008).

<sup>2</sup> 164 Wn.2d at 838 (quoting *Vizcaino v. Microsoft Corp.*, in which 120 F.3d 1006, 1014 (9<sup>th</sup> Cir. 1997) (applying this Washington State law to employee stock purchase plan)).

This Court must follow the binding precedent of *Jacoby* and *Navlet*. Under that precedent, the State is prohibited from reserving the right to unilaterally terminate the UCOLA. The UCOLA was vested because employees began work based, partially, on the promise of a UCOLA.<sup>3</sup> Further, the parties agree that the State did not offer any off-setting benefit when it terminated the UCOLA. The State's actions therefore violated existing law and summary judgment to the employees is warranted as a matter of law.

This Court is aware that our Supreme Court may ultimately abandon a black letter approach to the prohibition on reservations of rights. The high court may distinguish COLAs from the core retirement rights at issue in *Jacoby* and *Navlet*. COLAs are generally implemented to create flexibility during economic shifts, and this state has weathered a major economic shift that required such flexibility. This Court also notes that *Navlet* was a five-four decision and, although decided only four years ago, there has been a major change in the Supreme Court bench. This Court's duty, however, is to follow binding precedent and *Jacoby* and *Navlet* require summary judgment in the employees' favor.

#### **Defendants' Motion to Dismiss Certain Class Allegations**

On June 4, 2012, this Court entered an Order Granting Plaintiffs' Motion for Class Certification. That order defined the class as follows:

All individuals who are active, retired, or terminated members of PERS 1 and TRS 1 who, as of July 1, 2011: (a) have not yet reached age 66 or who have not yet retired or (b) are retired and are receiving the Uniform COLA or (c) would have been eligible to receive Uniform COLA payments in 2011 but who have not received Uniform COLA payments and/or will not receive such payments in the future under the terms of SHB 2021; but excluding individuals receiving the basic or alternative minimum benefit.

---

<sup>3</sup> See *Washington Federation of State Employees v. State*, 98 Wn.2d 677, 683 (1983); see also *Wilder v. Wilder*, 85 Wn.2d 364, 367 (1975) (holding that pension rights vest regardless of whether it is certain that the benefits will be paid).

All Counsel  
November 9, 2012  
Page 5

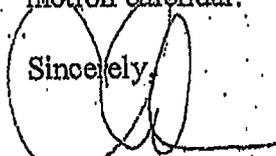
Defendant has moved to dismiss certain Plan 1 members from the class and from this action: (1) Plan 1 members who performed no service between 1995 and 2011 and (2) Plan 1 retirees whose retirement allowance has already been set by the statutory provisions for a minimum monthly allowance (which are unaffected by the repeal.)

As to group (1), the Court is prepared to dismiss those class members. If the Supreme Court ultimately rules that the UCOLA was legally repealed, those class members may have a claim to reinstatement of the various benefits in place at the time of passage of SSB 5119. They have no standing, however, to repeal the passage of an act that did not take effect until after their employment was completed. Similarly, group (2) shall also be dismissed on the grounds that the repeal did not affect their benefits.

Defendant has also moved to dismiss the estoppel claims on the grounds that this claim is too individualized to be covered by a class action. This issue is apparently moot, but this Court will issue a ruling because of the uncertainty of appellate rulings in this case. Because this motion is made under Civil Rule 12(b)(6), the Court must consider Plaintiffs' allegations as true. There are sufficient allegations of common treatment to deny a motion to dismiss, without prejudice.

The Court will enter an order consistent with this ruling ex parte with all parties' counsel's signatures or on notice to all parties on a Friday civil motion calendar.

Sincerely,



Chris Wickham  
Judge

c Clerk, for filing

# Appendix B

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF THURSTON

---

WASHINGTON EDUCATION ASSOCIATION, ET AL.,	)	CONSOLIDATED
	)	THURSTON COUNTY
Plaintiffs,	)	CAUSE NOS.
	)	11-2-02213-4
vs.	)	11-2-02195-2
	)	11-2-02657-1
WASHINGTON DEPARTMENT OF RETIREMENT SYSTEMS and THE STATE OF WASHINGTON,	)	MOTION FOR
	)	SUMMARY JUDGMENT
Defendants.	)	MOTION TO DISMISS
	)	CERTIFIED COPY

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VERBATIM REPORT OF PROCEEDINGS

---

BE IT REMEMBERED that on September 7, 2012,  
the above-entitled matter came on for hearing before the  
Honorable CHRIS WICKHAM, Judge of Thurston County  
Superior Court.

---

Reported by: Sonya Wilcox, Official Reporter,  
CCR#2112  
2000 Lakeridge Drive SW, FJC  
Olympia, WA 98502  
(360)709-3212  
wilcoxs@co.thurston.wa.us

APPEARANCES

For the Plaintiffs  
WEA, Bilsland and Jenson: HARRIET STRASBERG  
Attorney at Law  
3136 Maringo SE  
Olympia, Washington 98501

DONALD CLOCKSIN  
Law Offices of Donald  
Clocksin  
203 Fourth Avenue East  
Suite 405  
Olympia, Washington 98501

For the Plaintiffs  
WFSE, Thompson and Keller: ED YOUNGLOVE  
Younglove & Coker  
PO Box 7846  
Olympia, Washington 98507

For the Plaintiffs  
RPEC of Washington and  
Howard Jorgenson: RICK SPOONEMORE  
ELEANOR HAMBURGER  
Sirianne Youtz Spoonemore  
999 Third Avenue Suite 3650  
Seattle, Washington 98104

For the Defendants  
Washington Department of  
Retirement Systems and  
State of Washington: TIMOTHY G. LEYH  
RANDALL T. THOMSEN  
Calfo Harrigan Leyh & Eakes  
999 Third Avenue  
Seattle, Washington 98104

Also Present: ANN HALL  
SARAH BLOCKI  
Office of the Attorney General  
7141 Cleanwater Drive SW  
P.O. Box 40108  
Olympia, WA 98504-0108

1        *Bakenhus* that an employer -- as you pointed out, your  
2 Honor, I mean how could you say to someone, I'm going  
3 to replace the benefit you have with a better one,  
4 but it's got a reservation of rights in it, and then  
5 the next year just take it away, and the employee has  
6 got nothing, because here, the State didn't even try  
7 and give the employees a comparable benefit, not that  
8 I think it would have made any difference, but they  
9 didn't even try to put back the COLAs that had been  
10 replaced by the UCOLA. There was absolutely no  
11 comparable benefit, and under *Bakenhus*, that's fatal.  
12 This was a clear impairment of the employees' pension  
13 contract, which included the UCOLA. Thank you, your  
14 Honor.

15                THE COURT: Let me ask you a couple questions.

16                MR. YOUNGLOVE: Certainly.

17                THE COURT: So are you asking me to rule that  
18 there can never be a reservation of rights on a  
19 pension benefit, unless when it's exercised there is  
20 a comparable benefit provided?

21                MR. YOUNGLOVE: Yes.

22                THE COURT: That's the sole issue you're  
23 asking me to find?

24                MR. YOUNGLOVE: I think there are, first of  
25 all, that that's true, that a reservation of rights

1 is inconsistent with the concept of a pension and a  
2 reservation of rights in pension legislation is  
3 ineffective.

4 THE COURT: So let me just ask you a question.  
5 So I start work tomorrow, and the Legislature has  
6 just come up with a new pension system that I'm going  
7 to qualify for, and it says, yes, you have a pension  
8 benefit, but we may take it away from you, we're not  
9 sure. Can they do that?

10 MR. YOUNGLOVE: I don't think so.

11 THE COURT: I've gone to work knowing this was  
12 the condition of my employment, that this is what  
13 pension I might or might not get. Can't they do  
14 that?

15 MR. YOUNGLOVE: I don't think so. I mean,  
16 first of all, it's contrary to *Bakenhus's* indication  
17 that it's not the employee's expectations that define  
18 the benefit, but the problem is that it's  
19 inconsistent with the idea of deferred compensation.  
20 Then what have you earned the days that you worked?

21 THE COURT: Well, the Legislature can provide  
22 nothing. They don't have to provide a pension.

23 MR. YOUNGLOVE: That's true.

24 THE COURT: So why can't they provide  
25 something more than nothing, which is that right for

1 now but maybe not forever?

2 MR. YOUNGLOVE: Well, it isn't -- for the  
3 person who doesn't get it, if they do take it away,  
4 it isn't anything. In fact, it could be the worst.  
5 My expectation is I'm going to get a pension, I  
6 worked 30 years, and then I don't get one. I'm in  
7 maybe a worse position than I was when you did make  
8 that promise.

9 THE COURT: How is that worse than providing  
10 nothing from day one?

11 MR. YOUNGLOVE: Because you did provide  
12 something.

13 THE COURT: You provided a possibility of  
14 something, but the employee went into that job with  
15 eyes open knowing that their pension was only a  
16 possibility.

17 MR. YOUNGLOVE: Well --

18 THE COURT: Are you arguing that the  
19 Legislature can't do that?

20 MR. YOUNGLOVE: I am arguing that the  
21 Legislature cannot reserve the right to repeal a  
22 pension benefit.

23 THE COURT: Even prospectively for employees?

24 MR. YOUNGLOVE: You mean prospectively?

25 THE COURT: Employees who have never worked

1 under a different pension regime.

2 MR. YOUNGLOVE: Well, *The Federation* lump sum  
3 cash out case is instructive there. I mean the Court  
4 went to some lengths to describe how the Legislature  
5 created Plan 2 to do that. They created Plan 2 and  
6 put in there, you cannot cash out your annual leave,  
7 and the Court said, that's fine, we made it real  
8 clear upfront you can't do that, but for people in  
9 Plan 1, they have that expectation; you can't take  
10 that away, but you can take it away for new  
11 employees, sure, absolutely.

12 THE COURT: So if I started before 1995, and I  
13 know your class is before 1977 and so on and so  
14 forth, but let's just assume I start before 1995 and  
15 I never had a COLA benefit in my retirement plan, I  
16 didn't have one of these plans cover me, let's just  
17 assume I'm in that group, are you still saying that  
18 the Legislature's reservation of rights for a COLA  
19 that didn't exist when I started working cannot be  
20 exercised?

21 MR. YOUNGLOVE: I'm not sure I'm following  
22 that, and I'm maybe having the problem with that  
23 whole concept of, you know, you are in the plan, but  
24 you don't have a COLA. I mean --

25 THE COURT: So --

1 MR. YOUNGLOVE: You may never become eligible  
2 for it, but you have the potential of becoming  
3 eligible for it.

4 THE COURT: The way I understand it, there  
5 were a number of different COLA benefits available  
6 for different groups prior to 1995.

7 MR. YOUNGLOVE: I'm not sure about the  
8 different groups. There were a number of different  
9 COLAs available. I think a couple of them were only  
10 available for some groups, but others it depended on  
11 the circumstances. If your pension fell down by  
12 40 percent, you were entitled to a COLA. Now, if it  
13 didn't, you never got that benefit, but there are  
14 certainly people who may have experienced that, if  
15 the UCOLA hadn't replaced it. That benefit is gone.

16 THE COURT: So don't I have to decide whether  
17 or not the entire package in 1995 was a comparable  
18 benefit, the definition of the COLA and the  
19 reservation of rights?

20 MR. YOUNGLOVE: I think you have to decide if  
21 the UCOLA was a comparable benefit or better.

22 THE COURT: With the reservation of rights,  
23 how can I separate that out?

24 MR. YOUNGLOVE: Because the reservation of  
25 rights in pension legislative is ineffective.

1 THE COURT: As to individuals who already have  
2 a COLA, because it may result in a COLA that doesn't  
3 result in a comparable benefit, correct?

4 MR. YOUNGLOVE: No, I think it's ineffective  
5 as to everyone, because I think it's inconsistent  
6 with the idea -- pensions shouldn't be a gamble. The  
7 employee shouldn't go to work and have to guess  
8 whether the employer is going to allow the pension to  
9 continue in effect. That's totally inconsistent with  
10 the whole idea of pensions to reward employees for  
11 long working with the employer. That's what the  
12 Courts have said in all these cases; it's  
13 inconsistent.

14 THE COURT: I agree with you it's bad policy,  
15 but I go back to my earlier point, if I haven't  
16 started working yet and the Legislature decides,  
17 okay, we are not sure if we can give you a COLA, we  
18 would like to, and so we are going to grant you this,  
19 but we may have to take it away, can't they do that?

20 MR. YOUNGLOVE: I would say -- I don't think  
21 that's even a pension. I mean, I'm sorry. I'm just  
22 having difficulty, because it's not a pension.

23 THE COURT: It may not be a pension, because I  
24 may never see anything, but is there something  
25 illegal about that reservation?

1 MR. YOUNGLOVE: If it's in pension  
2 legislation, I think it is.

3 THE COURT: Even though I have gone into my  
4 job with the understanding that this was the  
5 condition of employment?

6 MR. YOUNGLOVE: Yes.

7 THE COURT: That seems like a tough position,  
8 because you're telling the Legislature that they  
9 either have to provide nothing or they have to  
10 provide a defined benefit.

11 MR. YOUNGLOVE: No, I think what we are saying  
12 to the Legislature is that you cannot play games  
13 with a pension. You can't say to the employee, I may  
14 give you this pension, if I decide to leave it in  
15 place until the time when you retire, but I may not.  
16 That's the problem with it. That's what I think you  
17 can't do. I don't think you have to grant a pension  
18 in the first place.

19 THE COURT: If I'm not ready to go that far  
20 today, would you agree that there may need to be a  
21 trial in this case to see how this plays out for  
22 different--

23 MR. YOUNGLOVE: No. Well, I think --

24 THE COURT: -- classes?

25 MR. YOUNGLOVE: I think it's still a legal

# Appendix C

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EXPEDITE (if filing within 6 court days of hearing)  
 No hearing is set.  
 Hearing is set:  
Date: May 17, 2012  
Time: 1:30 p.m.  
Judge/Calendar: Hon. Chris Wickham

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DANIELSON, HARRIS &  
LEVY & TOLLEFSON

FILED  
JUN - 4 2012  
SUPERIOR COURT  
BETTY J. GOULD  
THURSTON COUNTY CLERK

IN THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

WASHINGTON EDUCATION ASSOCIATION;  
STACIA BILSLAND and KATHLEEN RANEY;  
on their own behalf and on behalf of all others  
similarly situated,  
  
Plaintiffs,

v.  
WASHINGTON DEPARTMENT OF  
RETIREMENT SYSTEMS; and STATE OF  
WASHINGTON,  
  
Defendants.

WASHINGTON FEDERATION OF STATE  
EMPLOYEES; PAULETTE THOMPSON; BOB  
KELLER; and all others similarly situated,  
  
Plaintiffs,

v.  
WASHINGTON DEPARTMENT OF  
RETIREMENT SYSTEMS; and STATE OF  
WASHINGTON,  
  
Defendants.

RETIRED PUBLIC EMPLOYEES COUNCIL OF  
WASHINGTON, and HOWARD N.  
JORGENSEN, on his own behalf and on behalf  
of all similarly situated individuals,  
  
Plaintiffs,

vs.  
WASHINGTON DEPARTMENT OF  
RETIREMENT SYSTEMS, and THE STATE OF  
WASHINGTON,  
  
Defendants.

CONSOLIDATED  
NO. 11-2-02213-4 (Master)  
11-2-02195-2  
11-2-02657-1

ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
CLASS CERTIFICATION

ORDER GRANTING PLAINTIFFS'  
MOTION FOR CLASS CERTIFICATION

SIRIANNI YOUTZ SPOONEMORE  
999 THIRD AVENUE, SUITE 3650  
SEATTLE, WASHINGTON 98104  
TEL (206) 223-0303 FAX (206) 223-0246

COPY

1           THIS MATTER came before the Court upon Plaintiffs' Motion for Class  
2 Certification. Plaintiffs are represented by Donald Clocksin (LAW OFFICES OF DON  
3 CLOCKSIN), Harriet Strasberg (LAW OFFICES OF HARRIET STRASBERG), Edward Earl  
4 Younglove III (YOUNGLOVE & COKER, PLLC), and Richard E. Spoonemore and Eleanor  
5 Hamburger (SIRIANNI YOUTZ SPOONEMORE). Defendants are represented by Timothy G.  
6 Leyh and Randall Thomsen, DANIELSON HARRIGAN LEYH & TOLLEFSON LLP, and Anne  
7 Hall and Sarah Blocki, ATTORNEY GENERAL OF WASHINGTON..

8           The Court heard oral argument on May 17, 2012, and has reviewed and  
9 considered the pleadings and record herein, including:

- 10           • Plaintiffs' Motion for Class Certification;
- 11           • The Declarations of Harriet Strasberg, Edward Earl Younglove III,  
12 Don Clocksin, Richard E. Spoonemore, Eleanor Hamburger,  
13 Howard N. Jorgenson, Paulette Thompson, Bob Keller, Kathleen  
Raney, Stacia Bilsland in support of class certification;
- 14           • Defendants' Opposition to Plaintiffs' Motion for Class Certification;
- 15           • The Declaration of David Nelsen in Support of Defendants'  
16 Opposition to Plaintiffs' Motion for Class Certification; and
- 17           • Plaintiffs' Reply in Support Motion for Class Certification.

18           Based upon the foregoing, the Court hereby finds that all of the  
19 requirements of CR 23 are met and GRANTS Plaintiffs' Motion for Class Certification,  
20 as set forth in Section B, *below*. The Court further appoints class counsel and a class  
21 representative, as set forth in Section C, *below*.

22           **A. Class Certification Under CR 23(a)**

23           With respect to CR 23(a)(1), the Court finds that the class of  
24 approximately 100,000 individuals is so numerous that joinder is impracticable.

25           The commonality requirement under CR 23(a)(2) is also met, as there are  
26 common questions of law and fact that affect all members of the class. In this case, the

1 answer to a single overarching question will affect every proposed class member: Was  
2 the elimination of the UCOLA in SHB 2021 legal?

3 The claims of the proposed representative plaintiffs are sufficiently  
4 typical to those of the class as required by CR 23(a)(3). See Decl. of Howard N.  
5 Jorgenson, ¶ 2; Decl. of Kathleen Raney, ¶ 2; Decl. of Stacia Bilsland, ¶ 2; Decl. of  
6 Paulette Thompson, ¶ 2; Decl. of Bob Keller, ¶ 2. In pursuing their claims, the plaintiffs  
7 will necessarily advance the interests of the entire class.

8 The Court also finds that the named plaintiffs are adequate class  
9 representatives who have chosen counsel experienced in class actions of this nature.  
10 There are no conflicts between the named plaintiffs and the class members. The named  
11 plaintiffs and their attorneys meet the requirement of adequate representation under  
12 CR 23(a)(4).

13 **B. Class Certification under CR 23(b)(3)**

14 The Court finds that certification is appropriate under CR 23(b)(3)  
15 because common questions of law or fact predominate over the questions affecting  
16 individual class members. Resolving this dispute within the context of a class action is  
17 superior and more efficient than other methods of adjudications, and class-wide  
18 resolution would promote uniformity. The plaintiffs have raised a common issue —  
19 *Was the elimination of the UCOLA in SHB 2021 legal?* — which is central to the claims of  
20 all class members. This common issue is the central or overriding question in the  
21 litigation, and there is an essential common link among class members and the  
22 defendants. There is, in short, a common nucleus of operative facts relevant to the  
23 dispute, and those common questions represent a significant aspect of the case that can  
24 be resolved for all members of the class in a single adjudication. Certification under  
25 CR 23(b)(3) is also appropriate in this case.

26 As a result, the Court ORDERS that a class, defined as follows, be  
certified under CR 23(b)(3):

1 All individuals who are active, retired, or terminated  
2 members of PERS 1 and TRS 1 who, as of July 1, 2011;  
3 (a) have not yet reached age 66 or who have not yet retired  
4 or (b) are retired and are receiving the Uniform COLA or  
5 (c) would have been eligible to receive Uniform COLA  
6 payments in 2011 but who have not received Uniform COLA  
7 payments and/or will not receive such payments in the  
8 future under the terms of SHB 2021; but excluding  
9 individuals receiving the basic or alternative minimum  
10 benefit.

11 **C. Appointment of Class Counsel and Class Representatives**

12 The Court APPOINTS Donald Clocksin (LAW OFFICES OF DON CLOCKSIN),  
13 Harriet Strasberg (LAW OFFICES OF HARRIET STRASBERG), Edward Earl Younglove III  
14 (YOUNGLOVE & COKER, PLLC), and Richard E. Spoonemore and Eleanor Hamburger  
15 (SIRIANNI YOUTZ SPOONEMORE) as class counsel, and names plaintiffs Stacia Bilsland,  
16 Kathleen Raney, Paulette Thompson, Bob Keller and Howard N. Jorgenson as the class  
17 representatives.

18 **D. Notice**

19 By June 25, 2012, class counsel shall propose to the Court a form of notice  
20 and notice plan for review and approval.

21 It is so ORDERED this 4 day of June, 2012.

22 **CHRIS WICKHAM**

23 

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Hon. Chris Wickham  
24 Superior Court Judge

25 Presented by:

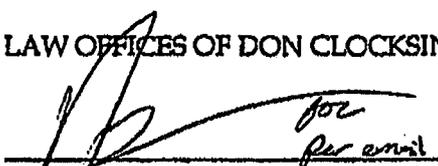
26 **LAW OFFICES OF HARRIET STRASBERG**

*for per email hstrasberg*  
Harriet Strasberg, WSBA #15890  
203 Fourth Avenue E., Suite 520, Olympia, WA 98501  
360.754.0304; hstrasberg@comcast.net  
Co-counsel for WEA, Bilsland and Raney

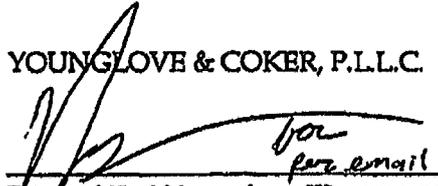
**ORDER GRANTING PLAINTIFFS'  
MOTION FOR CLASS CERTIFICATION**

**SIRIANNI YOUTZ SPOONEMORE**  
999 THIRD AVENUE, SUITE 3650  
SEATTLE, WASHINGTON 98104  
TEL. (206) 223-0303 FAX (206) 223-0246

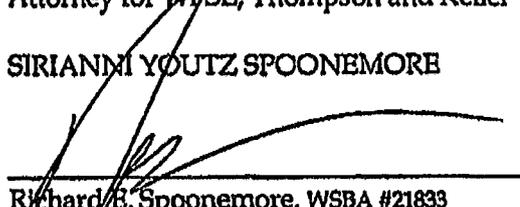
1 LAW OFFICES OF DON CLOCKSIN

2   
3 *for*  
*per email authorization*  
4 Donald E. Clocksin, WSBA #4370  
5 263 Fourth Avenue E., Suite 405, Olympia, WA 98501  
6 Tel. 360.352.4115; clocksinlaw@gwestoffice.net  
7 Co-counsel for WEA, Bilsland and Raney

8 YOUNGLOVE & COKER, P.L.L.C.

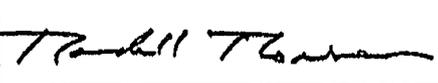
9   
10 *for*  
*per email authorization*  
11 Edward Earl Younglove III, WSBA #5873  
12 1800 Cooper Point Road SW, Bldg. 16, Olympia, WA 98507  
13 Tel. 360.357.7791; edy@ylclaw.com  
14 Attorney for WISE, Thompson and Keller

15 SIRIANNI YOUTZ SPOONEMORE

16   
17 Richard E. Spoonemore, WSBA #21833  
18 Eleanor Hamburger, WSBA #26478  
19 999 Third Avenue, Suite 3650, Seattle, WA 98104  
20 206.223.0303; r Spoonemore@sylaw.com; ehamburger@sylaw.com  
21 Attorneys for RPEC and Jorgenson

22 Approved for entry, form approved, notice of presentation waived:

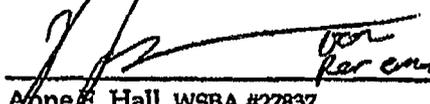
23 DANIELSON HARRIGAN LEYH & TOLLEFSON LLP

24   
25 Timothy G. Leyh, WSBA #14853  
26 Randall Thomsen, WSBA #25310  
27 999 Third Avenue, Suite 4400, Seattle, WA 98104  
28 206.623.1700; timl@dhlt.com; randallt@dhlt.com  
29 Special Assistant Attorneys General for Washington  
30 Department of Retirement Systems and the State of Washington

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SIRIANNI YOUTZ SPOONEMORE  
999 THIRD AVENUE, SUITE 3650  
SEATTLE, WASHINGTON 98104  
TEL. (206) 223-0303 FAX (206) 223-0246

1 ROBERT McFENNA  
Attorney General

2   
3 *for*  
*Per email reference*  
4 Anne E. Hall, WSBA #27837  
Senior Assistant Attorney General  
5 Sarah E. Blocki, WSBA #25273  
Assistant Attorney General  
6 7141 Cleanwater Drive SW, Olympia, WA 98504-0108  
360.586.3636; anneh@atg.wa.gov; sarahb@atg.wa.gov

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SIRIANNI YOUTZ SPOONEMORE  
999 THIRD AVENUE, SUITE 3650  
SEATTLE, WASHINGTON 98104  
TEL. (206) 223-0303 FAX (206) 223-0246

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**To:** Susie Clifford  
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**Subject:** RE: Case No. 88546-0; WDRS, et al. v. WEA, et al.

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**Subject:** Case No. 88546-0; WDRS, et al. v. WEA, et al.

*Washington Department of Retirement Systems, et al. v. Washington Education Association, et al.*  
Washington Supreme Court No.: 88546-0

Dear Clerk of the Court:

Attached for filing please find the following documents in regard to the above referenced action:

1. Petitioners' Motion for Discretionary Review;
2. Petitioners' Statement of Grounds for Direct Review
3. Petitioners' Motion for "Companion" Treatment, and;
4. Certificate of Service.

Thank you  
Susie Clifford  
Legal Assistant to Randall Thomsen  
Calfo Harrigan Leyh & Eakes LLP  
999 Third Avenue, Suite 4400  
Seattle, WA 98104  
Telephone: (206) 623-1700  
Fax: (206) 623-8717

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