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Supreme Court No. 100676-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON
(Court of Appeals No. 384471-1-III)

WASHINGTON STATE COUNCIL OF COUNTY & CITY
EMPLOYEES, AFSCME COUNCIL 2, and LOCAL 270,

Respondents,

v.

CITY OF SPOKANE, a Washington municipal corporation,

Appellant.

**APPELLANT'S RESPONSE TO THE
WASHINGTON STATE LABOR COUNCIL,
PROFESSIONAL AND TECHNICAL EMPLOYEES
LOCAL 17, WASHINGTON FEDERATION OF STATE
EMPLOYEES' AMICUS CURIAE BRIEF**

Jessica L. Goldman, WSBA #21856
Elizabeth R. Kennar, WSBA #25432
Jesse L. Taylor, WSBA #51603
SUMMIT LAW GROUP, PLLC
315 Fifth Avenue South, Suite 1000
Seattle, WA 98104-2682
(206) 676-7000
Attorneys for Appellant

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I. INTRODUCTION

The City of Spokane (“City”) submits this limited response addressing the attempted misdirection and misrepresentations made by the Washington State Labor Council, the Professional and Technical Employees Local 17, and the Washington Federation of State Employees (collectively “WSLC”) in their amicus brief. The City otherwise relies on its opening and reply briefs, which accurately set forth the legal analysis of the issues that are before the Court.

II. ARGUMENT

A. **WSLC Misrepresents the Facts.**

WSLC is not a party to the negotiations between the City and the Union. Nevertheless, WSLC repeatedly misrepresents the state of those negotiations in its amicus brief. *See* Amicus Curiae Brief at 3 (Section 40 “will also lead to absurd results, as it has already done here, where one party’s insistence on an unreasonable condition precedent to bargaining prevents the

parties from being able to meet and negotiate at all.”), 30 (“The case at hand involves exactly this type of absurd situation, where the parties have been unable to meet to bargain since Section 40 took effect on December 1, 2019.”).

Contrary to WSLC’s speculation, the parties **have** been meeting and negotiating a new contract. As the record reflects, the City agreed to “meet with Local 270 to bargain the successor agreement in **private**,” just as the Union demanded.¹ CP 68 (emphasis added). The Union neither disputes this fact nor alleges that the City committed any unfair labor practice. *See* Resp. Br. at 10; App. Br. at 4-6. The parade of horrors invented by WSLC—that Section 40 will result in bargaining being “forestalled indefinitely” or allow the City to “avoid[] ever even having to bargain at all”—have simply not come to

¹ WSLC would not have occasion to speculate about the bargaining process were the negotiations being conducted in a transparent manner, as proposed by the City.

pass. Indeed, the Union has not been injured in any fashion by Section 40. *See App. Br. at 18-22.*

B. The Court Should Decline to Render an Advisory Opinion Concerning *Lincoln County*.

Notwithstanding the undisputed fact that the City did **not** “refuse to bargain except in public,” WSLC spends a significant portion of its amicus brief attempting to convince this Court to provide an advisory opinion concerning another case: *Lincoln County v. PERC*, 15 Wn. App. 2d 143 (2020), *review denied* 197 Wn.2d 1003 (2021). The position advanced by WSLC, which the *Lincoln County* court rejected, is simple: when a public employer and a union cannot agree whether to negotiate in public or in private, only the employer should be considered to have committed an unfair labor practice.

The Court should decline to render an advisory opinion concerning a controversy that is not before it. The City did not “insist[] on bargaining publicly,” as in *Lincoln County*, and there is no allegation that either party committed an unfair labor

practice. Amicus Br. at 25. To the contrary, the City agreed to bargain in private, and negotiations have been proceeding behind closed doors ever since. WSLC's arguments concerning the status quo doctrine and *Lincoln County* have no relevance to the claims in this case.

III. CONCLUSION

The City and the Union have been bargaining in private, just as the Union demanded. The Court should reject WSLC's speculation to the contrary and decline to entertain irrelevant argument concerning the status quo doctrine and other issues that have no bearing on the claims at hand.

This document contains 584 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 6th day of May 2022.

Respectfully submitted,

SUMMIT LAW GROUP, PLLC

By: *s/ Jesse L. Taylor* _____

Jessica L. Goldman, WSBA #21856

jessicag@summitlaw.com

Elizabeth R. Kennar, WSBA #25432

bethk@summitlaw.com

Jesse L. Taylor, WSBA #51603

jesset@summitlaw.com

Attorneys for Appellant

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury, according to the laws of the State of Washington, that on this date she served a true and accurate copy of the foregoing Appellant's Response to the *Amicus Curiae* Briefs in the Court of Appeals, Division III, Cause No. 384771-III, *via electronic service* on the following:

Philip A. Talmadge
Talmadge/Fitzpatrick
2775 Harbor Avenue SW
Third Floor, Suite C
Seattle, WA 98126
phil@tal-fitzlaw.com
christine@tal-fitzlaw.com
Attorneys for Respondents

Suzanne M. Liabraaten
Attorney General's Office
P.O. Box 40145
Olympia, WA 98504-0145
suzanne.liabraaten@atg.wa.gov

Peter B. Gonick
Deputy Solicitor General
P.O. Box 40100
Olympia, WA 98504-0100
peter.gonick@atg.wa.gov
Attorneys for State of Washington

Danielle E. Franco-Malone
Barnard Iglitzin & Lavitt LLP
18 W. Mercer Street, Suite 400
Seattle, WA 98119
franco@workerlaw.com

*Attorneys for Washington State Labor Council, Professional
and Technical Employees Local 17, and the Washington
Federation of State Employees*

Steven J. Bladek
Snohomish County Prosecuting Attorney's Office
3000 Rockefeller Avenue, M/S #504
Everett, WA 98201
sbladek@co.snohomish.wa.us

Attorney for Snohomish County

DATED this 6th day of May, 2022.

s/ Karen M. Lang
Karen M. Lang, Legal Assistant
Summit Law Group, PLLC

SUMMIT LAW GROUP

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- peter.gonick@atg.wa.gov
- phil@tal-fitzlaw.com
- sbladek@co.snohomish.wa.us
- valenzuela@workerlaw.com

Comments:

APPELLANT'S RESPONSE TO THE WASHINGTON STATE LABOR COUNCIL, PROFESSIONAL AND TECHNICAL EMPLOYEES LOCAL 17, WASHINGTON FEDERATION OF STATE EMPLOYEES AMICUS CURIAE BRIEF

Sender Name: Karen Lang - Email: karenl@summitlaw.com

Filing on Behalf of: Jessica L. Goldman - Email: jessicag@summitlaw.com (Alternate Email: sharonh@summitlaw.com)

Address:
315 Fifth Avenue So.
Suite 1000
Seattle, WA, 98104
Phone: (206) 676-7000

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