No. 100676-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON STATE COUNCIL OF COUNTY
AND CITY EMPLOYEES, AFSCME COUNCIL 2,
AND LOCAL 270 THEREOF,

Respondent,

v.

CITY OF SPOKANE,
a Washington municipal corporation,

Appellant.

AMICUS CURIAE BRIEF OF LINCOLN COUNTY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES ..... PAGES

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

The Open Public Meetings Act, Chapter 42.30 RCW, *et seq* ("OPMA") and the Public Records Act, Chapter 42.56 RCW, *et seq* ("PRA") establish a policy of open government in Washington State. Few decisions are more important in a representative form of government than *how* money is spent. Transparency in such important decisions allows for necessary citizen oversight. Several Washington State jurisdictions have opened their labor negotiations to the public, promoting open government and accountability in financial matters. Lincoln County is one such jurisdiction.

The Lincoln County Commissioners, who engage in collective bargaining directly on behalf of the citizens of Lincoln County, made a pledge to the people of Lincoln County in 2016 to open collective bargaining meetings to public observation. The Commissioners did this as part of a campaign to raise taxes to fund public safety expenses. After the citizens approved the tax increase, the union representing county law enforcement

objected to transparent bargaining, ultimately resulting in *Lincoln County v. Public Employment Relations Commission*, 15 Wn. App. 2d 143, 475 P.3d 252 (2020), *review denied*, 197 Wn.2d 1003, 483 P.3d 774 (2021). In brief, Division III determined that bargaining in open session was a "permissive" subject of bargaining, so neither party could unilaterally decide the matter. Significantly, Division III rejected the union's facial argument that the OPMA *prohibited* open collective bargaining. Lincoln County and its unions have successfully bargained in public since—not only with the public safety union, but with all unions in Lincoln County.

This Court should affirm that local jurisdictions, such as Lincoln County and the City of Spokane, can open their bargaining meetings to public observation in Washington State.

II. ARGUMENT

In 1989 and again in 2017, the Court of Appeals and the Public Employment Relations Commission ("PERC") considered, and rejected, arguments that open bargaining

conflicts with the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, *et seq* ("PECBA"). A public employer's decision to open meetings with significant financial implications is a decision at the heart of a public employer's direction of government, intrinsically related to the employer's exercise of fundamental duties as keeper of the public funds and trust. As such, a public employer must be allowed to open these meetings. Lincoln County has successfully navigated this path, and can stand before this Court and demonstrate that opening collective bargaining was in the County's best interest.

The alternative position — "trust us" — is simply unacceptable in a representative democracy. This Court should make clear that, although individual opinions may vary, at the end of the day the PECBA neither mandates nor prohibits open or closed bargaining in Washington State. Open meetings remain a legitimate policy choice, regardless of how this Court classifies open bargaining within the PECBA.

A. Court of Appeals and PERC Precedent Find No Conflict Between Open Bargaining and the PECBA

Neither Washington State courts nor PERC precedent prevent open bargaining, specifically in light of the PECBA. The PECBA does not preempt open bargaining because the PECBA dictates only as to mandatory subjects of bargaining, "expressly refrains from mandating any result or procedure" for achieving agreement, and PERC intervenes "only when the conduct of a party indicates a refusal to bargain in good faith…." *Pasco Police Officers' Ass'n v. City of Pasco*, 132 Wn.2d 450, 460, 938 P.2d 827 (1997) (internal citations and quotations omitted).

Prior to *Lincoln County*, 15 Wn. App. 2d 143, both the Court of Appeals and PERC, in 1989, and January 2017 respectively, considered, and rejected, facial challenges arguing that open bargaining violates the PECBA. Each tribunal found no conflict.

1. The *Mason County* Decision and the Legislature's Response Granting Flexibility in Negotiations.

In *Mason Cty. v. Pub. Employment Relations Comm'n, Teamsters Union, Local No. 378*, 54 Wn. App. 36, 39, 771 P.2d 1185 (1989), Division II squarely rejected the argument that open meetings conflict with the PECBA.

In 1989, the OPMA *required* collective bargaining to be public. Mason County and a Teamsters union failed to meet the OPMA's requirements in negotiations, and one party to the negotiations argued the OPMA's mandate for open bargaining conflicted with the PECBA, and therefore there was no defect in negotiations. The Court of Appeals rejected this argument:

> [T]he Legislature intended collective bargaining… to be conducted in open public meetings….
>
> [T]he [Open Public Meetings] Act and the Public Employees' Collective Bargaining Act can be reconciled by conducting collective bargaining sessions at open meetings. ***There are no serious conflicts between the two acts.***

Mason Cty., 54 Wn. App. at 40 (emphasis provided).

The legislature's response to *Mason County* is illuminating. Instead of amending the PECBA to require or encourage open meetings, which it easily could have done, it *exempted* open meetings from the OPMA's mandate. *See* RCW 42.30.140. In other words, the legislature *reserved* discretion for local governments within a statutory scheme, and settled no policy on this point. Local legislation is all the stronger when the State reserves discretion for local government within a statutory scheme. *See*, *Edmonds Shopping Ctr. Associates v. City of Edmonds*, 117 Wn. App. 344, 354, 71 P.3d 233 (2003).

2. *Lincoln County*, Decision 12648 (PECB, 2017).

PERC too has rejected a facial challenge to open bargaining, in at least one other instance, in *Lincoln County*, Decision 12648 (PECB, 2017).[1] In this factually related, yet procedurally unrelated case to *Lincoln County*, 15 Wn. App. 2d

[1] *Lincoln County*, Decision 12648 (PECB, 2017), https://decisions.perc.wa.gov/waperc/decisions/en/item/214545/index.do?q=Lincoln+County+open+ (Last visited August 19, 2022).

143, the same union that would later walk out of negotiations in *Lincoln County* attempted to invalidate Lincoln County's transparency resolution by filing an unfair labor practice—*before* bargaining even began. Like the controversy here, the union argued that open meetings violated the PECBA, *per se*.

The PERC Hearing Examiner rejected the argument. There was no showing that "meetings open to the public constituted a change to a mandatory subject of bargaining," and while "the passage of [the transparency resolution] *could* frustrate the bargaining process," it had not done so, since no bargaining had taken place yet. *Lincoln County*, Decision 12648 at *7 (emphasis provided).

In other words, like the case at bar, the union made a facial challenge to transparency in the absence of any suggestion of bad faith negotiations, and PERC found, as it should have, no conflict with the PECBA, and no reason to intervene. Bad faith or refusal to bargain is the *sine qua non* of PECBA involvement, and always warrants PERC intervention. PERC has shown itself

willing to intervene in the appropriate case. *See, e.g.*, *Spokane County*, Decision 13510 (PECB, 2022).[2]

Both the Court of Appeals and PERC have recognized that open meetings do not conflict with the PECBA, and have repeatedly declined to legislate on this issue.

B. Opening Bargaining Meetings to the Public is an Employer Prerogative

No conflict exists between open bargaining and the PECBA. However, under the current state of the law, *neither* side can choose to open or close meetings. *Lincoln County*, 15 Wn. App. 2d 143. This Court should recognize that public employers enjoy the right to open meetings involving large sums of money to public observation, as an employer prerogative under the PECBA.

1. Bargaining Issues May Be "Mandatory" or "Permissive."

In labor law potential bargaining subjects are divided into

[2] *Spokane County*, Decision 13510 (PECB, 2022), https://decisions.perc.wa.gov/waperc/decisions/en/item/520945/index.do (Last visited August 19, 2022).

mandatory or permissive subjects. Mandatory subjects are those over which the parties *must* bargain, but do not have to reach agreement and can insist on their position to "impasse." Permissive subjects are those over which the parties *may* bargain, but the parties are not required to bargain. One party cannot refuse to bargain mandatory subjects by insisting the other party bargain over permissive subjects.

2. "Prerogatives" are Outside of Bargaining.

Some permissive subjects are classified as union and management prerogatives. The doctrine of prerogatives is ultimately the product of the PECBA's limited scope. The scope of mandatory bargaining "is limited to matters of direct concern" to the employees of the bargaining unit. *Int'l Ass'n of Fire Fighters, Local Union 1052 v. Pub. Employment Relations Comm'n*, 113 Wn.2d 197, 200, 778 P.2d 32 (1989) (citations omitted). That limit is found in employer and union prerogatives.

The United States Supreme Court articulated the prerogatives principle, in the National Labor Relations Act

("NLRA") context, in *First Nat. Maint. Corp. v. NLRB*, 452 U.S. 666, 101 S. Ct. 2573, 69 L. Ed. 2d 318 (1981). In that case, the employer terminated one contract of many, resulting in employees being discharged. This high-level decision was not subject to bargaining at all, because it involved the scope and direction of the enterprise. As the Court explained, in passing the NLRA Congress had "no expectation" that union representatives would become "equal partner[s] in the running of the business enterprise in which the union's members are employed." *Id*. at 676. The Court recognized an "undeniable limit to the subjects about which bargaining must take place," which includes "only issues that settle an aspect of the relationship between the employer and the employees." *Id*. (internal citations omitted). As the Court put it, decisions with only an "indirect and attenuated impact on the employment relationship," are not subjects about which management must bargain." *Id*.; *see also John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 549, 84 S. Ct. 909, 914, 11 L. Ed. 2d 898 (1964) (referring to the "rightful prerogative of

owners independently to rearrange their businesses and even eliminate themselves as employers….").

3. Subjects at the Core of Employer Control, or of a Public Policy-Laden Character, are Prerogatives.

To determine whether a subject is a public employer's prerogative, PERC and the courts consider (1) the extent to which managerial action impacts the wages, hours, or working conditions of employees, and (2) the extent to which the subject lies "at the core of entrepreneurial control," or is a "management prerogative." *Int'l Ass'n of Fire Fighters*, 113 Wn.2d at 203. Where a subject relates to both conditions of employment and is a management prerogative, "the focus of inquiry is to determine which of these characteristics predominates." *Id.* The question is also whether the subject is fundamental to the "running of the business enterprise" in which the employer is engaged. *See First Nat. Maint. Corp.*, 452 U.S., at 676. Generally, if a matter is a prerogative, the employer (or union, in the case of union prerogatives) may take unilateral action consistent with the same.

An example of a public employer's prerogative is the right to determine its budget. *See Spokane Education Association v. Barnes*, 83 Wn.2d 366, 376, 517 P.2d 1362 (1974); *see also Kitsap Cty. v. Kitsap Cty. Corr. Officers' Guild, Inc*., 193 Wn. App. 40, 53, 372 P.3d 769 (2016) ("[a] public employee organization does not have the right to negotiate with the employer 'upon the subject of budget allocations.").

But PERC recognizes the special posture of public employers. They are more than just businesses; they are directors of public *policy*: "public sector employers are not 'entrepreneurs' in the same sense as private sector employers." *Central Washington University*, Decision 12305-A at *11 (PSRA, 2016) (internal citations omitted).[3] As such, "entrepreneurial control" is not limited to financial decisions, but also considers "the right of a public sector employer, as an elected representative of the

[3]*Central Washington University*, Decision 12305-A (PSRA, 2016) https://decisions.perc.wa.gov/waperc/decisions/en/item/171385/index.do (Last visited August 19, 2022).

people, to control management and *direction* of government." *Id.* (emphasis provided). In other words, prerogatives may relate to measures of a moral, value-laden, or policy character.

A review of sister states' decisions bears this out. An employer enjoys a prerogative to combat racial profiling, for example. *Claremont Police Officers Ass'n v. City of Claremont*, 39 Cal. 4th 623, 639, 139 P.3d 532 (2006). An employer may introduce a requirement to polygraph officers to increase accountability, too. *Local 346, Int'l Bhd. of Police Officers v. Labor Relations Comm'n*, 391 Mass. 429, 430, 462 N.E.2d 96 (1984). And it is difficult to imagine a locus of more moral and political strife this century than COVID 19 and the government's response to it; but just this year, in the PERC decision *Othello School District*, Decision 13488 (EDUC, 2022)[4], PERC

[4] *Othello School District*, Decision 13488 (EDUC, 2022) https://decisions.perc.wa.gov/waperc/decisions/en/item/520919/index.do?q=Decision+13488+ (last visited August 16, 2022).

determined that school districts have the prerogative to return teachers to in-person instruction:

> [I]n balancing the extent to which the decision to resume in-person instruction impacts employees' terms and conditions of employment with the managerial right of the employer to control its instructional program, I find that the employer's interests predominate. The employer's educational program is an inherent management prerogative.

Id. at * 13.

Other examples of employment prerogatives range from routine to the more colorful. *See*, *e.g.*, *City of Cashmere*, Decision 13429 (PECB, 2021)[5] (Employer decision to implement facial recognition technology a permissive subject of bargaining that does not require the employer to bargain with the union, because the matter "tips more heavily toward the employer's interests.").

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[5] *City of Cashmere*, Decision 13429 (PECB, 2021) https://decisions.perc.wa.gov/waperc/decisions/en/item/515710/index.do?q=%22core+of+entrepreneurial+control%22 (last visited August 19, 2022).

4. Open (or Closed) Meetings Are a Public Employer's Managerial Prerogative.

Turning to this case, citizen oversight of their elected public officials is the *sine qua non* of a *democratic* political process. If the Vietnam War, Watergate, and the Civil Rights Movement taught us anything, it is that "trust us" is unacceptable. Accountability is key. This Court should recognize that opening meetings where large spending takes place—*i.e.,* collective bargaining—is a public employer's prerogative.

As to the first point: opening meetings has no impact on the wages, hours, or working conditions of employees. *See*, *e.g.*, *Lincoln County*, 15 Wn. App. 2d at 155 ("The County argues that public collective bargaining has no relationship to wages, hours, or working conditions. We agree.").

Government for the people by the people presupposes the people's oversight into how their monies are spent. The people task their representatives to *responsibly* allocate their money and labor in a prudent manner consistent with their goals and values. Thus, the practical reason for open meetings is simple: so that the

people can react to what they see by contacting their representatives and voicing their opinions, or at the ballot box. In other words, although individual voters may not themselves be negotiating, observing how elected officials or delegates exchange their hard-earned money for public services will affect the direction and management of government at the ballot box. In the instant appeal, the people of the City of Spokane have voted to give themselves oversight into *how* their monies—their sweat, blood, and labor—are being dealt with at the negotiating table. This is fundamental to their feedback and control of government.

As to the second point: opening meetings at which great sums of money are negotiated over and spent is a policy decision "at the core of entrepreneurial control" for a public employer, *Int'l Ass'n of Fire Fighters*, 113 Wn.2d at 203, tied deeply to the policy and direction of government, and intrinsic to the running of the "business enterprise" of local government, *First Nat. Maint. Corp.*, 452 U.S., at 676, which is heavily weighted

towards fostering the relationship between the citizens and the officials they elect.

Many elected representatives may wish to run their "business enterprise"—the local government—in a direction that is open and transparent. *First Nat. Maint. Corp.*, 452 U.S., at 676. There is no better way to do so than by opening the doors of their chambers during important decision-making, such as collective bargaining. In the same way that an open courtroom dispels the aura of secrecy and mystery that would otherwise accrue to a closed courtroom, elected officials may want to be open with their electorate as a part of how they manage their relationships with their local constituency.

Elected officials may wish to open their chambers and be transparent in the use of funds for other, unexpected reasons, too. Lincoln County's experience is a perfect example. Lincoln County opened its collective bargaining meetings to public observation because it had tried in the past, and failed, to gather enough support for a tax increase to fund public safety. The

Commissioners hoped that by opening their negotiations to public view they would encourage the citizens to support giving more of their hard-earned funds to support government works. The plan worked, and the citizens approved the tax increase after the Commissioners passed their transparency resolution. For Lincoln County, gaining public trust was essential to move government forward in a very specific direction: greater public safety spending. Thus, the decision to open collective bargaining was at the core of control and management for the Lincoln County Commissioners.

Finally, separate, and apart from the strictly pragmatic aspects of citizen oversight into spending, the decision to open collective bargaining directly relates to the "management and *direction* of government," *Central Washington University*, Decision 12305-A at *11 (internal citations omitted, emphasis provided). The decision for open meeting is high-level decision-making, controlling the direction and policy of government in

matters of a more moral, value, or policy-laden character. *See supra* sec. B.3 above.

Elected persons and delegates spend others money (the voters'). They do so only in trust. The people do not exist to support the public servants, and the public servants and their representatives have no basis to demand that bargaining be in private or behind closed doors. Openness is the overarching policy of this state:

> The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. **The people insist on remaining informed… so that they may retain control over the instruments they have created.**

RCW 41.30.010 (emphasis provided); *compare* RCW 42.56.030. If the people of the City of Spokane or the Commissioners of Lincoln County want to move local government in a direction of more openness, they are promoting one of the highest values of the democratic ideal.

This kind of high-level policy decision is not subject to union veto. "Trust Us" is inappropriate and insufficient. In Lincoln County, the Commissioners did not want the citizens to have to "trust us" with how they spent tax dollars on public safety. In the City of Spokane, an overwhelming majority of citizens have rejected "trust us."

This Court should recognize that public employers enjoy a prerogative to open meetings to the public. To the extent that this would be contrary to *Lincoln County*, 15 Wn. App. 2d 143, this Court should overrule *Lincoln County* in that part. Such a decision would in no way affect the duty of the parties to continue negotiating in good faith over mandatory subjects of bargaining, or limit PERC to intervene based on an allegation that a party was not negotiating in good faith.

C. This Court Should Articulate that the PECBA Neither Mandates nor Prohibits Open or Closed Meetings

Regardless of whether open meetings are an employer's prerogative or a simple permissive subject, this Court should take

this opportunity to articulate that the PECBA neither mandates nor prohibits either. The PECBA can countenance either one.

First, despite what some might suggest, it is in no way 'settled' whether open meetings or closed is the 'better' policy. A quick survey shows that many jurisdictions foreign and local employ open bargaining, in whole or in part, such as Alaska,[6] Idaho,[7] Oregon,[8] Florida,[9] Kansas,[10] Minnesota,[11] Montana,[12] Tennessee,[13] and Texas.[14] Locally, in addition to Spokane and Lincoln Counties, Ferry County has passed a resolution to

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[6] Alaska Stat. Ann. § 23.40.235.
[7] Idaho Code Ann. § 74-206A.
[8] Or. Rev. Stat. Ann. § 192.660(3).
[9] *City of Fort Myers v. News-Press Pub. Co.*, 514 So.2d 408, 412 (Fla. Dist. Ct. App. 1987) ("Our holding that all phases of the public employee collective bargaining process… must be held in the sunshine merely reiterates the strong public policy in Florida in place since the enactment of our Sunshine Law in 1967.")
[10] Kan. Stat. Ann. § 45-221(a)(15).
[11] Minn. Stat. Ann. § 13D.03.
[12] *See Great Falls Tribune Co. v. Great Falls Public Schools*, 255 Mont. 125, 841 P.2d 502 (1992).
[13] Tenn. Code Ann. § 8-44-201(a).
[14] Tex. Loc. Gov't Code Ann. § 146.013.

engage in open public bargaining,[15] as well as the Pullman School District.[16] As PERC noted in *Lincoln County (Teamsters Local 690)*, Decision 12844-A (PECB, 2018),[17] "open negotiations are becoming more common," and even "[a] quick internet search reveals that open bargaining appeals to some **unions** and employers." (emphasis provided). Either one is, in the final equation, a legitimate policy choice—at times adopted by public employers, and at times by unions. *See*, *e.g.*, Wisconsin Employment Labor Relations cases: *City of Lake Geneva* (12184-A and 12208-B) May 1974; *Walworth County* (12690 and 12691) May 1974.[18]

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[15] *Ferry County Resolution No. 2017-07 Collective Bargaining Transparency*, Ferry County Washington, Resolution 2017-07 Collective Bargaining Transparency.pdf (ferry-county.com) (Last visited August 19, 2022). **Appendix A**.

[16] *Transparent Negotiations*, Pullman Public Schools https://www.pullmanschools.org/district/transparent_negotiations (last visited August 15, 2022). **Appendix B**.

[17] *Lincoln County (Teamsters Local 690)*, Decision 12844-A (PECB, 2018) https://decisions.perc.wa.gov/waperc/decisions/en/item/343613/index.do (Last visited August 19, 2022).

[18] **Appendix C.**

If some tribunals have expressed disapproval of open meetings, this merely demonstrates the breadth of opinion on this issue. Significantly, if even some jurisdictions have opposed open bargaining in forceful terms, apparently none have gone so far as to *prohibit* it under labor law. And even if closed meetings were the 'traditional' and legacy form, this does not mean it is the better. We recognize many traditional practices as harmful, and many past beliefs as destructive. This Court should not condemn a minority decision simply because it is new in Washington.

Finally, this Court should consider Lincoln County's experience in this matter. The *Lincoln County* decision was decided in November 2020, closing on two years ago on the date this briefing is filed. In *Lincoln County,* Division III ruled that neither side could force the other to bargain in either open or closed meeting. At the time of this drafting, Lincoln County has successfully negotiated six (6) union contracts: four (4) with

AFSCME and two (2) with Teamsters Local 690—in open meeting. This is a good development.

This Court should recognize that opening collective bargaining sessions to the public is a legitimate (indeed, beneficial) policy choice, and specifically decline to set any policy preference or mandate in Washington State for or against it.

IV. CONCLUSION

This Court should find that open collective bargaining does not conflict with the PECBA, that opening bargaining to the public is public employer's prerogative, and that the PECBA neither mandates nor prohibits open meetings in Washington State.

This document contains 3,751 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 19th day of August, 2022.

FREEDOM FOUNDATION

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FERRY COUNTY
RESOLUTION NO. 2017-07
COLLECTIVE BARGAINING TRANSPARENCY

WHEREAS, A transparent government is the top priority for Ferry County; AND

WHEREAS, The Open Public Meetings Act was passed by citizen initiative in 1971, AND

WHEREAS, The legislative declaration of the Open Public Meetings Act (RCW 42.30.010) states in part:

> *The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created; AND*

WHEREAS, Collective Bargaining Agreements are among the most expensive contracts negotiated by Ferry County; AND

WHEREAS, Both taxpayers and employees deserve to know how they are being represented during collective bargaining negotiations; AND

WHEREAS, The impression of secret deal-making will be eliminated by making collective bargaining negotiations open to the public; AND

WHEREAS, Opening collective bargaining negotiations to the public does not mean that the public will participate in the negotiations; AND

WHEREAS, Collective bargaining is defined in statute (RCW 41.56.030) as:

> *...the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.: AND*

WHEREAS, Making collective bargaining contract negotiations transparent does not conflict with and is not preempted by state law; AND

WHEREAS, The Open Public Meeting Act (RCW 42.30.140) permits collective bargaining contract negotiations to be exempted from the open public meetings requirements, but this exemption does not compel such negotiations to be secret; AND

WHEREAS, The Open Public Meetings Act (RCW 42.30.140) does not prohibit governments from making these negotiations open to the public;

THEREFORE, BE IT RESOLVED,

From this day forward, Ferry County shall conduct all collective bargaining contract negotiations in a manner that is open to the public; AND

Ferry County shall provide public notice of all collective bargaining negotiations in accordance with the Open Public Meetings Act (RCW 42.30.060-42.30.080); AND

Public observance if collective bargaining contract negotiations will not preclude bargaining representatives from meeting separately and privately to discuss negotiating tactics, goals, and methods, AND

This resolution does not include meetings related to any activity conducted pursuant to the enforcement of a collective bargaining agreement (CBA) after the CBA is negotiated and executed, including but not limited to grievance proceedings; AND

That Ferry County send a copy of this resolution to the Ferry County manager, to all employees, to all union representatives, and all others deemed appropriate by the Ferry County Commissioners.

ADOPTED this 6th day of March, 2017.

BOARD OF FERRY COUNTY COMMISSIONERS
FERRY COUNTY, WASHINGTON

NATHAN DAVIS, Chairman

MIKE BLANKENSHIP, Vice Chairman

JOHNNA EXNER, Member

ATTEST:

AMANDA ROWTON, Clerk of the Board

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TRANSPARENT NEGOTIATIONS

Board Approved Resolution 16-17: 05: Transparent Government Negotiating Collective Bargaining Agreements in a Manner Open To The Public

Resolution 16-17:05 was approved by the Pullman Public Schools board of directors on January 25, 2017.

In an effort to improve transparency in the negotiating and collective bargaining process, Resolution 16-17:05 will allow the public to observe *but not participate* in collective bargaining negotiations.

Opening the door during bargaining ensures an open, transparent negotiating process. All parties will be further held accountable to our public. All staff and our community can observe that we strive for a positive and collaborative process of bargaining.

A little background: The resolution was first presented by board member Dean Kinzer at the board's December work session. It was further discussed by the board at the January 11, 2017 board meeting, approved at the January 25, 2017 board meeting.

What does this mean?

- Bargaining will become a fully transparent process to all staff and to our community.
- During bargaining meetings, the door will remain open and guests will be allowed to observe negotiations on the periphery of the room.
- Guests will NOT be allowed to participate in any manner or ask questions.
- Bargaining groups will still have the right to private meetings discussing responses to proposals, tactics, goals, and methods.

If you have questions about the resolution or what this means for you or your bargaining group, please let us know. We are looking forward to continued collaborative work with all of our bargaining groups!

Bob Maxwell
Superintendent
rmaxwell@psd267.org

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

LAKE GENEVA PROFESSIONAL POLICEMEN'S PROTECTIVE ASSOCIATION, Complainant, vs. CITY OF LAKE GENEVA, Respondent.	Case XIV No. 17178 MP-283 Decision No. 12184-B
CITY OF LAKE GENEVA, Complainant, vs. LAKE GENEVA PROFESSIONAL POLICEMEN'S PROTECTIVE ASSOCIATION, Respondent.	Case XV No. 17226 MP-285 Decision No. 12208-B

Appearances:

Schwartz, Schwartz, Roberts & Cairo, Attorneys at Law, by Mr. Mark Cross, for the Association.

Peck, Brigden, Petajan, Lindner, Honzik & Peck, S.C., Attorneys at Law, by Mr. Roger E. Walsh, For the City.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint having been filed with the Wisconsin Employment Relations Commission by Lake Geneva Professional Policemen's Protective Association, on September 14, 1973, alleging that certain prohibited practices have been committed by the City of Lake Geneva, under the Municipal Employment Relations Act; and said City having filed with said Commission a separate complaint, on October 5, 1973, alleging that said Association has committed certain prohibited practices under the same Act; and the Commission having appointed a member of its staff, to act as Examiner in the matters and subsequently said cases having been transferred to the Commission; and a consolidated hearing having been conducted in the matters on November 15, 1973, Commissioner Howard S. Bellman being present; and the Commission having considered the evidence and arguments of counsel and being fully advised in the premises makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That the City of Lake Geneva, referred to herein as the City, is a municipal employer, having offices at City Hall, Lake Geneva, Wisconsin, which operates, inter alia, a Police Department.

2. That Lake Geneva Professional Policemen's Protective Association, referred to herein as the Association, is a labor organization; and that at all times material herein the Association

has been the collective bargaining representative of certain employes of the City's Police Department.

3. That the City and the Association commenced to meet by their respective representatives for the purposes of negotiating a collective bargaining agreement covering said law enforcement personnel on September 11, 1973 at the Lake Geneva City Hall; that at said meeting the Association's representatives insisted that said meeting be open to the public, and asserted that, if said meeting was not open to the public, the Association would not engage in further collective bargaining with the City; and that the City refused to agree to said demand by the Association, and thereupon said meeting was adjourned.

4. That since said September 11, 1973 meeting, the City has specifically requested further meetings with the Association; that in reply to said requests, the Association has stated that it would not meet with the City unless such meetings were open to the public; that the City and the Association have not met for the purposes of collective bargaining since September 11, 1973 because of said dispute over opening meetings to the public.

5. By its aforesaid conduct, particularly its insistence upon public negotiations despite the City's refusal to engage in same, the Association caused an impasse in the negotiations between the parties.

Upon the basis of the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That the proposal by the Association that negotiations be conducted in public did not constitute a proposal regarding wages, hours and working conditions, and, therefore, the Association by its insistence upon such proposal, despite the City's refusal to accept it, to the point of impasse, has engaged in, and is engaging in, prohibited practices within the meaning of Section 111.70(3)(b)(3) of the Municipal Employment Relations Act.

2. That the City by its refusal to engage in public negotiations, has not, and is not, engaging in any prohibited practice within the meaning of Section 111.70(3)(a)(4) of the Municipal Employment Relations Act.

Upon the basis of the above Findings of Fact and Conclusions of Law, the Commission makes the following

ORDER

IT IS ORDERED that the complaint filed in the instant matter against the City of Lake Geneva be, and the same hereby is, dismissed.

IT IS FURTHER ORDERED that the Lake Geneva Professional Policeman's Protective Association, its officers and agents, shall immediately:

1. Cease and desist from refusing to bargain collectively by insisting that negotiations be conducted in public.

2. Upon request, bargain collectively with the City of Lake Geneva at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

CITY OF LAKE GENEVA, XIV, XV, Decision Nos. 12184-B and 12208-B

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The City filed an answer to the Association's complaint on October 5, 1973. No answer was filed by the Association to the City's complaint. At the hearing counsel for both parties entered a series of stipulations which are reflected by the Findings of Fact. These stipulations were accepted in substitution for the factual allegations of both complaints, the City's answer, and any answer that might have been interposed by the Association. Transcript was issued on November 19, 1973 and the post-hearing briefing period was closed on December 19, 1973. The City filed a brief, but the Association made neither written nor oral argument.

The legal contentions of the City are that the Association's insistence upon public negotiations constituted a violation of the Association's duty to bargain collectively, and thus a prohibited practice under Section 111.70(3)(b)(3) of the Municipal Employment Relations Act (MERA).

The Association contends that the City's refusal to engage in such negotiations constitutes a corresponding violation of Section 111.70(3)(a)(4) of MERA. In this regard, the Association also argues that the City's conduct also violates Section 66.77(3)(b), Wis. Stats. which makes an exception to a general requirement that governmental bodies conduct open meeting for meetings described as follows:

> "(b) Considering employment, dismissal, promotion, demotion, licensing or discipline of any public employe or person licensed by a state board or commission or the investigation of charges against such person, unless an open meeting is requested by the employe or person charged, investigated or otherwise under discussion;"

The Commission recognizes that it is conventional for the collective bargaining that is engaged by parties governed by MERA to proceed in private, nonpublic sessions; that there are sound reasons for such procedures, including the reason that public statements of position tend to reduce the possibilities for compromise; and that some municipal employers and labor organizations prefer to bargain publicly, but this preference reflects an exception to the general analysis.

The statutory definition of collective bargaining to which both of the instant parties are alleged to have failed to adhere and which appears in Section 111.70(1)(d) of MERA, states, in material part, as follows:

> " 'Collective bargaining' means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representatives of its employes, to meet and confer at reasonable times, in good faith, with respect to wages, hours and conditions of employment. . ."

It is our conclusion that although meeting publicly for collective bargaining is not prohibited, so that a request to do so is not a violation of the Act; such a request does not include in its terms those subject about which bargaining is mandatory, i.e., "wages, hours, and conditions of employment", and may not be maintained to the point of causing a deadlock in negotiations.

Therefore, the Association by insisting upon public negotiations so as to cause negotiations to cease, committed a prohibited practice as contended by the City. (See Mayor Samuel E. Zoll and the City of Salem, Mass. v. Local 1780, I.A.F.F., Mass. Labor Relations Commission, Case No. MUP-309; Pennsylvania Labor Relations Board v. Bethlehem Area School District, PLRB Case No. PERA - C - 2861-C.)

It follows that, inasmuch as the Association's demand for public negotiations was violatively maintained, the City's resistance to same was not a prohibited practice. Furthermore, it is clear from the decision of the Wisconsin Supreme Court in Milwaukee Board of School Directors v. WERC, (42 Wis. 2d 637, 1969) that nonpublic negotiations are not violative of the above-quoted open meetings statute.

Dated at Madison, Wisconsin this 9th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

WALWORTH COUNTY DEPUTY SHERIFFS' ASSOCIATION, Complainant, vs. WALWORTH COUNTY, Respondent.	Case XXI No. 17434 MP-303 Decision No. 12690
WALWORTH COUNTY, Complainant, vs. WALWORTH COUNTY DEPUTY SHERIFFS' ASSOCIATION, Respondent.	Case XXII No. 17487 MP-309 Decision No. 12691

Appearances:

Schwartz, Schwartz, Roberts & Cairo, Attorneys at Law, by Mr. Jay Schwartz, for the Association.

Peck, Brigden, Petajan, Lindner, Honzik & Peck, S.C., Attorneys at Law, by Mr. James F. Honzik, for the County.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Complaint having been filed with the Wisconsin Employment Relations Commission by Walworth County Deputy Sheriffs' Association, on December 5, 1973, alleging that certain prohibited practices have been committed by Walworth County, under the Municipal Employment Relations Act; and said County having filed with said Commission a separate complaint, on December 28, 1973, alleging that said Association has committed certain prohibited practices under the same Act; and a consolidated hearing having been conducted in the matters on January 21, 1974, Commissioner Howard S. Bellman being present; and the Commission having considered the evidence and arguments of counsel and being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. That Walworth County, referred to herein as the County, is a municipal employer, having offices at the County Courthouse, Elkhorn, Wisconsin, which operates, inter alia, a Sheriff's Department.

2. That Walworth County Deputy Sheriffs' Association, referred to herein as the Association, is a labor organization; and that at all times material herein the Association has been the collective bargaining representative of certain employes of the County's Sheriff's Department.

3. That on May 30, 1973 the Association transmitted to the County certain proposals for a new collective bargaining agreement covering said law enforcement personnel, to become effective on January 1, 1974; that pursuant to said proposals the Association and the County met for negotiations on October 4, 1973, at the Walworth County Courthouse; that at said meeting the Association took the position that such negotiations for a collective bargaining agreement must be open to the public, and that all future negotiation meetings should also be public; that the County replied to said position of the Association that it would agree that the October 4, 1973 meeting could be open to the public, but that it would not agree that all future meetings would be open to the public.

4. That by a letter to the Association dated October 11, 1973, the County requested further meetings for such negotiations, stating that such meetings should be "conducted in private and without the presence of the public or press;" that the Association replied by a letter to the County dated October 18, 1973, stating in substance that it desired to meet for negotiations publicly; that by a letter to the Commission dated October 25, 1973, the County requested the appointment of a mediator to the aforesaid negotiations; that by a letter dated November 15, 1973, to all parties, Marshall L. Gratz, a mediator on the Commission's staff, reported that the County was unwilling to engage in mediation in public, but insisted upon private negotiations, and requested that the Association inform Mediator Gratz of their willingness to meet for negotiations in private sessions; that subsequent to said letter of November 15, 1973, the Association did not indicate any willingness to meet in private sessions.

5. By its aforesaid conduct, particularly its insistence upon public negotiations despite the County's refusal to engage in same, the Association caused an impasse in the negotiations between the parties.

6. That also at the aforesaid meeting of October 4, 1973, the Association, by its representatives, stated to the representatives of the County that if the parties failed to achieve a collective bargaining agreement, the Association would engage in "job action and work stoppages," and that "the Association, through its political activity in the past, had defeated a former Personnel Committee member and that they would engage in the same activities in the future;" and that there had been no work stoppage or job action by the date of the hearing herein, nor had the parties' positions changed respecting public negotiations.

Upon the basis of the foregoing Findings of Fact, the Commission makes the following

CONCLUSIONS OF LAW

1. That the proposal by the Association that negotiations be conducted in public did not constitute a proposal regarding wages, hours, and working conditions, and therefore, the Association, by its insistence upon such proposal, despite the County's refusal to accept it, to the point of impasse, had engaged in, and is engaging in, prohibited practices within the meaning of Section 111.70(3)(b)(3) of the Municipal Employment Relations Act.

2. That the County, by its refusal to engage in public negotiations, has not, and is not, engaging in any prohibited practice within the meaning of Section 111.70(3)(a)(4) of the Municipal Employment Relations Act.

3. That the Association, by its aforesaid refusal to accept mediation statements that it might engage in "job action and work stoppages," and statements it would engage in certain political activities, has not, and is not, engaging in any prohibited practices within the meaning of the Municipal Employment Relations Act.

Upon the basis of the above Findings of Fact and Conclusions of Law, the Commission makes the following

ORDER

IT IS ORDERED that the complaint filed in the instant matter against Walworth County be and the same hereby is, dismissed.

IT IS FURTHER ORDERED that the Walworth County Deputy Sheriffs' Association, its officers and agents, shall immediately:

1. Cease and desist from refusing to bargain collectively by insisting that negotiations be conducted in public.

2. Upon request, bargain collectively with Walworth County at reasonable times, in good faith, with respect to wages, hours and conditions of employment with the intention of reaching an agreement.

Given under our hands and seal at the City of Madison, Wisconsin this 9th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney

Morris Slavney, Chairman

Howard S. Bellman

Howard S. Bellman, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The County filed an answer to the Association's complaint on December 27, 1973. No answer was filed by the Association to the County's complaint. Counsel for the Association did not appear at the hearing. However, he authorized counsel for the County to enter into the record certain stipulations of fact, which are reflected by the Findings of Fact herein. These stipulations are accepted in substitution for factual allegations of all complaints and answers. Oral argument was made for the County at the hearing. Neither party filed post-hearing briefs although a period for doing extended to approximately February 25, 1974.

At the hearing, counsel for the County indicated that he would rely in part on the arguments presented by another member of the same law firm in cases then pending before the Commission involving the City of Lake Geneva. It is noted that, in fact, the same counsel represent the law enforcement labor organizations and the municipal employers in the Lake Geneva cases and the instant cases, the decisions in which the Commission is issuing simultaneously on the date hereof, and that Lake Geneva is within Walworth County. On this basis, although the rationale of the Lake Geneva 1/ cases is applied herein, the instant memorandum does not reiterate said rationale regarding insistence upon public negotiations, and resistance to such insistence.

The instant cases include three elements not present in the Lake Geneva matters, however. They are contentions by the County that the Association has committed prohibited practices by refusing to participate in mediation, by threatening the County with job actions or a strike, and by threatening officials of the County with political activities against their continuation in office.

The Commission has ruled that refusing to engage in mediation does not constitute a prohibited practice. (Shorewood School District, Dec. No. 11410-C) The Commission's rule ERB 13.05(1) which provides that Commission-appointed mediators may, in the absence of mutual consent by the parties, conduct meetings "of an executive, private and non-public nature," does not require any party to accept mediation.

The Commission has also held that, although strikes are prohibited by the Act (Section 111.70(4)(l)), strikes do not constitute "prohibited practices." (Wauwatosa Board of Education, Dec. No. 8636, aff. Dane Co. Cir. Ct., 3/70.) It follows that a threat to engage in such conduct also is not a prohibited practice. (Brown County, Dec. No. 9537) Regarding the threat of "job action", the record does not sufficiently disclose the particular intention of ~~that term~~ to support any ruling.

The Association's allusion to political activities against officials of the County, in the absence of evidence to the contrary, is assumed to connote legal political activity. We do not believe the

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1/ Nos. 12184-B and 12208-B.

Act was intended to in any way inhibit such political activity by labor organizations, or references to such activities at the bargaining table.

Dated at Madison, Wisconsin this 9th day of May, 1974.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Morris Slavney
Morris Slavney, Chairman

Howard S. Bellman
Howard S. Bellman, Commissioner

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on August 19, 2022, I filed this document with the Supreme Court in the State of Washington via the Appellate Court E-filing System, which will transmit a true and correct copy to the following:

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Dated this 19th day of August, 2022 at Olympia, Washington.

s/Kirstie Elder
Kirstie Elder

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Filed with Court:	Supreme Court
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Superior Court Case Number:	21-2-01183-8

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