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*Sent via email to [Margaret.Mclean@atg.wa.gov](mailto:Margaret.Mclean@atg.wa.gov)*

November 18, 2024

Margaret McLean  
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1125 Washington St SE  
Olympia, WA 98504-0100

Re: Bargaining for WPEA-State and Community Colleges, 2025-2027  
Our File: 3275-163

Dear Margaret:

For the reasons set forth in this letter, Washington Public Employees Association (WPEA) once again requests that the State promptly return to the table to bargain successor contracts with WPEA for the July 1, 2025, through June 30, 2027, period. The State's positions regarding the effect of WPEA members' rejection of the State's last best and final proposed contracts have been counter-productive and now the State's position presents a complete barrier to obtaining a mutually agreeable 2025-2027 contract.

On September 27, 2024, in advance of WPEA members' ratification votes, the Director of the Office of Financial Management (OFM), Pat Sullivan wrote to WPEA purportedly with the purpose of determining whether WPEA could override the membership's decision on ratification. However, the letter included threats that, should the membership vote down the proposed contracts, the State would refuse to continue bargaining for a contract that would cover the first year following the expiration of the current contract, and instead would bargain only for a one-year contract commencing July 1, 2026. In addition, he reinforced that threat by informing WPEA that OFM would refuse to seek legislation to implement a contract that covered the July 1, 2025, to June 30, 2026, period.

Director Sullivan stated the following positions directly in his letter (these are direct quotes from the letter):

- If we do not meet this deadline (October 1, 2024), by law OFM cannot request funds in the Governor's budget to implement a two-year agreement.
- If an agreement is reached after October 1, 2024, OFM State Human Resources will submit the request for funds necessary to implement a one-year agreement to the director of the Office of Financial Management by October 1, 2025, and OFM will request the funds in the 2026 legislative session for the agreement to begin on July 1, 2026.

- OFM will not seek a modification of the law requiring us to submit all TAs for financial feasibility by October 1, 2024, in order for them to be considered and submitted to the 2025 Legislature for approval.

These threats to not bargain for or seek funding for a contract covering July 1, 2025, to June 30, 2026, appear to have been made in an attempt to influence the outcome of the ratification vote (or seek to have WPEA overrule its members' choice) and are premised on an inaccurate interpretation of chapter 41.80 RCW. Nothing in that statute or caselaw limits bargaining to a contract for the second year of the biennium, where there is no ratified agreement by October 1 prior to the legislative session. Further, nothing in caselaw or the statute excuses the State from submitting to the legislature language necessary to implement a proposed contract reached through good faith bargaining between the parties where an agreement has been reached after October 1.

On October 1, 2024, WPEA President Amanda Hacker responded to Director Sullivan's letter explaining that WPEA is its members and that as the representative of those members, President Hacker would never override the membership, which had voted down the proposed general government and higher education contracts by wide margins. President Hacker reminded Director Sullivan that the State has an obligation to bargain in good faith for a two-year contract and had so far failed to do so.

Following the exchange of letters described above, OFM Labor Relations and Compensation Policy Section Chief Gina Comeau exchanged a series of emails with President Hacker concerning the parties' respective interpretations of chapter 41.80 RCW as it applies to the parties' bargaining obligations after WPEA had voted to reject the general government and higher education 2025-2027 contract proposals. President Hacker stated that it is WPEA's position that the statute requires the parties to immediately continue bargaining in good faith for a contract spanning the entirety of the 2025-2027 term; Ms. Comeau, however, defaulted to the State's positions taken in Director Sullivan's September 27 letter. Those exchanges reflect OFM's adherence to its refusal to bargain for a contract except for the time period July 1, 2026, to June 30, 2027, and its refusal to set bargaining dates that could realistically result in a two year contract which could be submitted to the legislature during the upcoming session beginning January 13, 2025. In addition, OFM has now taken the position that any continued bargaining will be from scratch, and, seemingly, that it is conditioning future bargaining on WPEA's agreement to only bargain with the State over the 2026-2027 term. These positions are inconsistent with the State's obligations under RCW 41.80.

First, despite WPEA members' rejection of the tentative agreement (TA) and the union's request to return to the table, the State is required to continue bargaining with WPEA for a 2025 to 2027 contract. There is no provision in RCW 41.80 that excuses the State from continued bargaining for the *entirety* of this term.

The plain text of the statute evinces an intent for the parties to continue bargaining even if a full agreement is not reached by October 1. For example, RCW 41.80.010(3) declares that, if the legislature fails to approve a request for funds, the parties are required to either return to the bargaining table or conduct further negotiations through mediation if requested by one of the parties. Although the statute does not specifically cover the situation where OFM refuses to request funds to cover the financial provisions of a contract, the Public Employment Relations Commission, looking to NLRB authority, has previously ruled that the employer's good faith obligations required it to follow this same procedure, thus,

to request for the union to return to the table and to continue the collective bargaining process. *State – Office of the Governor (1199NW)*, Decision 10353 (2009).

The same reasoning applies here, where a contract has not been reached after the October 1 deadline because the union’s membership refused to ratify the tentative agreement. As WPEA has requested continued bargaining, the State is required to immediately return to the table to bargain a collective bargaining agreement of the same duration. *See, e.g. Dayton Electric Plate Inc.*, 308 NLRB 1056 (1992).

OFM apparently has incorrectly relied on RCW 41.80.010(3), to contend that the budget submission deadline of October 1 contained therein is the only mechanism by which the Governor may submit a proposed contract for the first year of the biennium to the Legislature. As explained below, that position is contrary to the plain language of the statute and to historical fact.

First, as to the plain statutory language, the parties can still fully fund both years of the contracts through this year’s biennial budget, even if the parties come to agreement on different financial terms that those contained in the rejected tentative agreements. RCW 41.80.010(3) provides that the Legislature shall consider a request for funds to implement a collective bargaining agreement where the request is transmitted to the legislature as part of the governor’s budget document submitted under RCW 43.88.030 and 43.88.060. RCW 43.88.060 provides additional dates for supplemental submission by the governor: December 20 in the year preceding the legislative session and, for a fiscal period other than the biennium, no less than 20 days prior to the first day of the legislative session. OFM’s refusal to continue bargaining commencing in October, to set bargaining dates in November, and to only schedule minimal hours of bargaining in December has made meeting that December 20 deadline nearly impossible. The State’s anticipatory refusal to utilize this statutory process for obtaining such legislation to implement a collective bargaining agreement not submitted to the OFM Director by October 1 and the State’s persistence in that refusal violate its duty to bargain in good faith.

RCW 41.80.010(7)-(8) also illustrate the factual past practice of the parties seeking a legislative amendment to ch. 41.80 RCW to permit submission of funding requests outside the October 1 process. Those provisions contain statutory amendments to permit funding requests for tentative agreements that were ratified after the October 1 and/or December 20 “deadlines” for the legislature’s consideration if the requests are sent before legislative action on that year’s budget bill. For example, during the 2021 legislative session, the legislature included in that year’s biennial budget an amendment to RCW 41.80.010 that permitted the legislature to vote to fund WPEA’s higher education and general government contracts in spite of the fact that the parties did not reach an agreement prior to October 1, 2021. WA LEGIS 334 (2021), 2021 Wash. Legis. Serv. Ch. 334 (S.S.B. 5092). The legislature voted to approve funding requests to fund both years of those contracts in the very same piece of legislation. *Id.* Nor was this an isolated incident. The legislature has made similar amendments in the past to fund collective bargaining agreements negotiated under ch. 41.80 RCW where the final agreements had not been certified by OFM prior to October 1, including, most recently, in 2019. APPROPRIATIONS, 2019 Wash. Legis. Serv. Ch. 415 (S.H.B. 1109).

Further, even if the State insists that the contracts can now only be funded through next year’s supplemental budget, the State’s position that it may only utilize the supplemental budget to fund the 2026-2027 term of the contract is flatly contradicted by its own previous practice of utilizing a

supplemental budget submission to the legislature to *fully fund* contracts which were not submitted through the October 1 submission process. For example, the legislature has approved requests for funds submitted outside the biennial budget approval process in 2010. That year a number of unions did not reach agreement with the state by October 1 and others did not reach agreement at all for the first fiscal year of the biennium. Yet, the State submitted legislation necessary to implement the agreements. *See* Section 924, ESB 10897 (2011) (allowing, for the 2011-13 biennium, the governor to request funds necessary to implement the agreements submitted to OFM after October 1 if determined to be fiscally feasible); Section 951, ESSB 6090 (2005) (funding agreements negotiated after October 1); *see also* RCW 41.80.030 (permitting the effective date of a contract finalized after the contract had expired to be backdated to the date after expiration).

Director Sullivan's letter does not deny that that these processes exist; instead he simply communicated the State's refusal to utilize them in this instance: "OFM will not seek a modification of the law requiring us to submit all TAs for financial feasibility by October 1, 2024, in order for them to be considered and submitted to the 2025 Legislature for approval."

Despite the statutory textual support for these alternate funding routes, and in complete contradiction to its past (apparently, according to OFM, now *ultra vires*) authority to continue to bargain after October 1 for a contract covering the first year of a legislative biennium, in an extraordinary misinterpretation of chapter 41.80 RCW, the State now contends that it somehow lacks authority to make or consider proposals for a contract covering July 1, 2025, through June 30, 2026. Section Chief Comeau stated via a November 16 email to President Hacker that OFM does "not have the authority to propose or agree to any compensation or fringe benefit proposals that require us to request funding for any economic proposals for fiscal year 2026 (which begins July 1, 2025). ... As the Governor's designee and under the current statute, we do not have the authority to bind the State in agreements for compensation and fringe benefits effective July 1, 2025."

Besides being inconsistent with the State's previous actions, this reading of RCW 41.80 is completely inconsistent with the duty to continue bargaining that emanates from the text of the entire chapter. The continued duty to bargain in good faith to reach an agreement is interwoven throughout the chapter. For example, even if the legislature fails to approve a request for funds, RCW 41.80.010(3) requires the parties to return to the bargaining table, including via mediation if one of the parties requests it. *See State – Office of the Governor (1199NW)*, Decision 10353; *Dayton*, 308 NLRB 1056. And RCW 41.80.030(3)(a) provides for retroactive application of the terms of a collective bargaining agreement executed after the termination of the previous collective bargaining agreement (also necessarily after the October 1 deadline) including retroactive benefits and wages. Finally, should the parties not be able to reach an agreement on a successor contract, RCW 41.80.090 provides impasse procedures contemplating a mediated settlement occurring after the October 1, deadline.

By this assertion of lack of authority to bargain for the first year of the biennium, OFM is abdicating its duty to bargain in good faith to reach an agreement. And importantly, OFM is usurping the legislature's power to approve (or reject) a negotiated agreement, even if the agreement is reached after October 1. It is ultimately the legislature – not OFM or the governor – that has the authority to decide whether to implement the agreement.

As should be clear from the above, OFM must return to the bargaining table immediately to negotiate a two-year contract. That bargaining must begin where the parties left off. Section Chief Comeau's ultimatum that, even for a one-year contract beginning July 1, 2025, the parties would be starting negotiations from scratch, is another threat to bargain in bad faith contrary to the statute and caselaw. Although RCW 41.80.010(3) does provide that the Legislature failing fund the contract may allow a party to reopen some or all of the tentative agreements, that circumstance is not the one in which the parties find themselves. The application of a financial test to the contract is for the legislative branch, not the executive, and here the executive branch has usurped the legislature's prerogative and cut the parties off from legislative scrutiny by its failure to timely continue to bargain for a two-year agreement.

If OFM seeks to start bargaining from scratch, WPEA is confident that PERC will find National Labor Relations Board caselaw persuasive and hold that OFM's negotiating conduct "has the inevitable and foreseeable effect of obstructing and impeding the collective-bargaining process," and as a result will find that OFM has vitiated its duty to bargain in good faith. *Id.*, slip op. at 11. 1. *Wisconsin Steel Indus., Inc.*, 318 NLRB 212, 212 (1995) (affirming ALJ's ruling that employer's "insistence on 'bargaining from scratch' after previously engaging in months of bargaining was "alone [enough to constitute] bad-faith bargaining" where employer lacked sufficient justification for doing so). *See also NLRB v. Alterman Transp. Lines, Inc.*, 587 F.2d 212, 226 (5th Cir. 1979) ("[T]here comes a point... when an employer's action in reopening tentative agreements gives rise to an inference that he harbors an intent to string out negotiations and avoid reaching an agreement.") (collecting cases).

As President Hacker's letter of October 1 describes, WPEA has long advised OFM that its members expected more from the State in a successor contract and has long advised that OFM is obligated to continue bargaining with the goal of reaching a mutually acceptable two-year agreement. OFM's recalcitrance during bargaining and its continued adamant refusal to bargain can be met only by seeking court intervention. Unless OFM agrees to immediately return to the table on an expedited schedule of bargaining sessions, WPEA will file an Unfair Labor Practice Complaint in Superior Court, seeking declaratory judgment and preliminary and permanent injunctive relief. That complaint will be filed Thursday, November 21, absent OFM's agreement to immediate and expedited bargaining for a two-year contract.

I look forward to your prompt response.

Sincerely,



Kathleen Phair Barnard  
*Counsel for WPEA*