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

**WASHINGTON PUBLIC EMPLOYEES
ASSOCIATION, UFCW LOCAL 365**

No.

Plaintiff,

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

v.

**STATE OF WASHINGTON, OFFICE OF
FINANCIAL MANAGEMENT, JAY
INSLEE, GOVERNOR, BELLEVUE
COLLEGE, BIG BEND COMMUNITY
COLLEGE, CASCADIA COLLEGE,
CLARK COLLEGE, COLUMBIA BASIN
COLLEGE, OLYMPIC COLLEGE,
PIERCE COLLEGE, SKAGIT VALLEY
COLLEGE, TACOMA COMMUNITY
COLLEGE, WALLA WALLA
COMMUNITY COLLEGE, AND
WENATCHEE VALLEY COLLEGE.**

Defendant.

COMES NOW the Plaintiff, Washington Public Employees Association, UFCW Local 365 (WPEA or Union) and for causes of action against the Defendants shows the Court as follows:

NATURE OF ACTION

1. WPEA brings this action for declaratory and injunctive relief against Defendants State of Washington (State), Office of Financial Management (OFM), and individual community

1 State of Washington at the Department of Agriculture, Washington Center for Deaf & Hard of
2 Hearing Youth, Department of Licensing, Liquor and Cannabis Board, Military Department,
3 Department of Natural Resources, Department of Revenue, Washington State School for the Blind,
4 and Washington State Patrol (together, State).

5 4. Plaintiff WPEA is also the exclusive certified collective bargaining representative
6 for employees in a number of classifications employed by the following community colleges in
7 the Washington State Community College Coalition: Bellevue College, Big Bend Community
8 College, Cascadia College, Clark College, Columbia Basin College, Edmonds College, Grays
9 Harbor College, Olympic College, Pierce College, Skagit Valley College, Tacoma Community
10 College, Walla Walla Community College, and Wenatchee Valley College (together, Community
11 Colleges). The Community Colleges negotiate one collective bargaining agreement, referred to as
12 the Higher Education CBA.

13 5. Plaintiff WPEA brings this lawsuit in its representational capacity on behalf of the
14 State and Community College employees it represents.

15 6. Defendant Jay Inslee is the Governor of the State of Washington and is named in
16 that capacity only.

17 7. Defendant State of Washington is the employer of the employees represented by
18 WPEA under RCW Ch. 41.80, specifically RCW 41.80.005(8).

19 8. Defendant Community Colleges are the employers of the employees represented
20 by WPEA under RCW Ch. 41.80, specifically RCW 41.80.005(10).

21 9. Defendant Office of Financial Management (OFM) is an agency of the State of
22 Washington and the designated bargaining representative for the Governor, State, and Community
23 Colleges pursuant to RCW 41.80.010(1) and (4)(a)(ii).

1 **JURISDICTION AND VENUE**

2 10. The Superior Court of Thurston County has jurisdiction in this matter pursuant to
3 RCW 2.80.020, RCW 7.24.010, RCW 7.24.190, and *State ex rel. Graham v. Northshore Sch. Dist.*,
4 99 Wn.2d 232, 662 P.2d 38 (1983). Venue in Thurston County is appropriate pursuant to RCW
5 4.92.010(5).

6 **FACTS**

7 **2024 Bargaining Between WPEA and State for General Government and Higher Education**
8 **Collective Bargaining Agreements**

9 11. WPEA and the State are parties to a collective bargaining agreement (CBA), in
10 effect from July 1, 2023, to June 30, 2025, negotiated under RCW 41.80.030. This “General
11 Government” CBA governs the wages, hours, and working conditions of State employees
12 represented by WPEA.

13 12. WPEA and the Community Colleges are parties to a collective bargaining
14 agreement (CBA), in effect from July 1, 2023, to June 30, 2025, negotiated under RCW 41.80.030.
15 This Higher Education CBA governs the wages, hours, and working conditions of State employees
16 represented by WPEA.

17 13. WPEA and the State began bargaining in May 2024 for a successor CBA to the
18 2023-2025 CBA currently in effect. The parties had eleven sessions of bargaining. On September
19 13, 2024, the State presented its last best and final offer on the entire CBA for General Government
20 employees. WPEA tentatively agreed to the State’s last best and final offer, so that it could present
21 the offer to its General Government members for a ratification vote.

22 14. WPEA and the Higher Education employers began bargaining in May 2024 for a
23 successor CBA to the 2023-2025 CBA currently in effect. The parties had eleven sessions of
24

1 bargaining. On September 12, the Higher Education employers presented their last best and final
2 offer on the entire CBA for Higher Education employees. WPEA tentatively agreed to the
3 Employer’s last best and final offer, so that it could present the offer to its Higher Education
4 members for a ratification vote.

5 15. Throughout negotiations for both CBAs, WPEA conveyed to OFM concerns that
6 members of both the General Government Community College groups would not find the
7 employers’ proposals worthy of ratification and that OFM should be concerned about that as well.

8 16. OFM Director Pat Sullivan sent a letter dated September 27, 2024, to WPEA
9 President Amanda Hacker regarding the “possibility that your membership could vote ‘no’ on
10 ratifying the tentative agreements” and “the legal framework we are working within.” This letter
11 is attached as Exhibit A to this Complaint. The purported purpose of the letter was to determine
12 whether WPEA could override its membership’s ratification decision. It included threats that,
13 should WPEA membership vote down the proposed contracts, the State would refuse to continue
14 bargaining for a contract that would cover the first year following the expiration of the current
15 contract and instead would bargain only for a one-year contract commencing July 1, 2026. In
16 addition, Sullivan reinforced that threat by informing WPEA that OFM would refuse to seek
17 legislation to implement a contract that covered the July 1, 2025, to June 30, 2026, period.

18 17. Sullivan’s September 27 letter, attached as Exhibit A to this complaint, states:

- 19 • Pursuant to chapter 41.80 RCW, the Legislature prescribes a biennial budget process with
20 bargaining and tentative agreement submittal by October 1, 2024, for items to be included
21 in the Governor’s 2025-27 budget.
 - 22 • If we do not meet this deadline, by law OFM cannot request funds in the Governor’s budget
23 to implement a two-year agreement.
- 24

- 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.

WPEA Members Reject TA and State and Community Colleges Refuse to Satisfy Their Bargaining Obligations

18. On September 30, 2024, WPEA-represented General Government and Community College employees voted against ratifying the 2025-2027 TAs.

19. On October 1, 2024, Hacker emailed Comeau to inform her that WPEA members voted to reject the State’s last, best and final offer for both the General Government and Higher Education CBAs. Hacker asked Comeau to provide dates for bargaining as soon as possible.

20. On October 1, Hacker also responded by letter, attached as Exhibit B to this Complaint, to Sullivan explaining that WPEA *is* its members and that as the representative of those members, Hacker would never override the membership, which had voted down the proposed General Government and Higher Education contracts by wide margins. Hacker reminded 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.

21. Comeau emailed Hacker on October 2 to let her know that “[w]e will be discussing next steps internally and we will get back to you.” By October 10, 2024, Hacker had not received a substantive response from Comeau and again emailed regarding setting bargaining dates.

1 22. On October 10, 2024, Comeau emailed Hacker that:

2 As I am sure you are aware, our statute provides that in the event that the parties do
3 not reach an agreement, the terms and conditions of our 2023-2025 collective
4 bargaining agreement will extend for a one-year period beginning on July 1, 2025.
5 Any economic proposals for a one-year contract beginning on July 1, 2026, would
6 need to be considered within the state’s established budgeting process that would
7 require us to rely on the June 2025 official revenue forecast, and culminating in an
8 October 1, 2025, deadline to submit a request for funds in the 2026 supplemental
9 budget. As such, we are proposing the following dates for bargaining to conclude
10 successfully for our October 1, 2025, deadline:

- 11 • WPEA HE: February-August 2025. (February 26th, March 26th, April 23rd, May 21st,
12 July 15th, July 17th, August 12th, August 27th)
- 13 • WPEA GG: February-August 2025 (February 12, March 19, April 16, May 22, July
14 10, July 30, August 28)

15 23. On October 10, Hacker asked Comeau via email if she could explain why OFM
16 was not ready to bargain before February 2025. On October 10, Comeau emailed Hacker that the
17 reason for the proposed dates beginning in February are that there would be no meaningful change
18 in the revenue circumstance and that, because economic and noneconomic proposals are
19 considered together, it would be frustrating to the parties to come together when there was no
20 meaningful change in circumstances. She also wrote that any agreement reached would be
21 submitted on October 1, 2025, for funding to take effect July 1, 2026.

22 24. On October 28, Hacker emailed Comeau that “returning to the table as soon as
23 possible is necessary” and proposed four-hour meetings each week until reaching agreement, with
24 an exchange of proposals outside those sessions. Hacker pointed out that there remained many
25 non-economic terms on which the parties could initially focus before turning to economics. Hacker
26 indicated WPEA was prepared to return the table now and invited OFM to accept that invitation
27 to reach an agreement soon.

28 25. On November 1, Comeau wrote to Hacker that:

1 RCW 41.80.010(3) requires us to submit for financial feasibility tentative
2 agreements reached by the parties by October 1, 2024. Because no agreement was
3 reached by October 1, 2024, RCW 41.80.010(6) provides that the current terms of
4 the 2023-2025 collective bargaining agreement remain in force until a subsequent
5 agreement is negotiated. As such, our perspective is that we will be negotiating a
6 one-year contract to go into effect on July 1, 2026.

7 We have considered your proposal related to the meeting length and frequency for
8 bargaining. We are happy to begin bargaining in December, but we do not believe
9 it is feasible to meet every week for four-hours per session due to the impact to our
10 business operations and absence of management and employees. As such our
11 counter proposal is as follows:

- 12 • One four-hour session in December
- 13 • One four-hour session in January
- 14 • One four-hour session in February (proposing February 12 for general
15 government and February 26 for higher education), and
- 16 • Then work together to find dates for commencing a reasonable schedule and
17 duration for the months following through September 2025.

18 The four-hour sessions we are proposing in December, January and late February
19 would preferably be from noon to 4 p.m. This proposed schedule will give us some
20 time to gather our management teams together and prepare for bargaining. This
21 gives the parties 11 months to come together and attempt to reach agreement on a
22 contract effective July 1, 2026, which we believe is more than reasonable and will
23 allow us to timely meet our October 1, 2025, deadline.

24 ...

25 Finally, as we move forward, I would like to understand where the Union believes
26 we are starting from with this bargain. What is WPEA's position on whether we
27 are opening a new bargain for a 1-year CBA beginning 7/1/2026, or starting from
28 our last TA's effective for a 1-year contract beginning 7/1/2026?

29 We look forward to hearing your thoughts on resuming bargaining in December
30 and on the question posed directly above. We continue to hope that the WPEA will
31 work with us to reach agreement on next steps as soon as possible.

32 26. On November 4, Hacker emailed Comeau that WPEA proposed eight bargaining
33 sessions (two four-hour sessions—one for each agreement being negotiated) every two weeks
34 since it appeared that OFM was concerned about weekly sessions. She also stated WPEA's
35 position that the parties are currently bargaining for the 2025-2027 biennium and that WPEA
36 would work to get legislative funding and approval of the agreement. Hacker emphasized WPEA's

1 position that the parties are legally obligated to return to the bargaining table as soon as possible
2 and asked Comeau to get back to her soon regarding WPEA's proposal on bargaining dates.

3 27. On November 6, Comeau emailed Hacker that the State would meet for two four
4 hour sessions once per month between 12-4 p.m. in December through February. Comeau provided
5 a schedule for bargaining each CBA and proposed waiting until February to find dates for
6 additional bargaining. Comeau continued:

7 In addition to agreeing on bargaining dates, we should also come to some mutual
8 understanding about what we are negotiating to be successful. OFM's position is
9 that the statute has set up a clear biennial bargaining process so that any master
10 agreements can be reviewed for financial feasibility by October 1 on even years,
11 while also providing time for the Governor and the legislature to act. This is the
12 basic bargaining scheme that has been in effect since the passage of the Civil
13 Service Reform Act in 2002. Therefore, I have concerns with your statement below
14 that WPEA's goal is to get a two-year agreement for the 2025-2027 biennium,
15 which includes getting an agreement on non-economic and economic matters. We
16 have already passed the deadline to do that. Please elaborate on what statutory
17 authority gives us the ability to bargain a two-year contract after the deadline has
18 passed.

19 Further, we do not have the authority to propose or agree to any compensation or
20 fringe benefit proposals that require us to request funding for any economic
21 proposals for fiscal year 2026 (which begins July 1, 2025), because the October 1,
22 2024 deadline has passed. I want to be clear that our authority to make any
23 economic proposals during this negotiation would extend only to those
24 compensation and fringe benefit proposals that would be effective July 1, 2026. 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. Also, it is OFM's position that any previously signed tentative agreements
are no longer binding upon the state because the union did not ratify the tentative
agreements. WPEA members voted to reject the state's last, best, and final offer
for both General Government and Higher Education agreements. Therefore, there
is no valid agreement between the parties, and we will be starting negotiations from
scratch.

At this juncture, OFM is authorized to negotiate a full one-year agreement,
including both non-economic and economic terms, which must be submitted to the
OFM director by October 1, 2025 for a financial feasibility determination and if
submitted and approved for funding by the legislature, will be effective July 1,
2026. We are ready to start bargaining for this one-year contract in December 2024
at the frequency and cadence proposed above.

1 28. On November 8, Hacker emailed Comeau to clarify OFM’s position, asking:

- 2 1. Is OFM refusing to bargain at all if WPEA does not agree that we are
3 bargaining for a one year contract for the term of July 1, 2026-June 30,
4 2027?
5 2. Is OFM refusing to bargain concerning economic provisions for fiscal
6 year 2026 (which begins on July 1 of 2025)?
7 3. Is OFM refusing to bargain for a two year contract, regardless of
8 whether economic terms remain identical to those we TA’ed in
9 September?

10 29. On November 12 Comeau responded, “I believe we have already addressed your
11 questions as well as our perspective through our previous email responses. I would like to be clear
12 that we are not refusing to bargain; we stand ready to meet our bargaining obligations.”

13 30. On November 14 Hacker again asked for a substantive response from Comeau. Her
14 email stated:

15 I understand that you don’t feel the need to respond to our questions beyond what
16 you have already said on the topic. WPEA will be formally responding on the
17 issues around the legality of what we intend to bargain, but I wanted to clarify one
18 point about the December bargaining dates that have been offered.

19 In your email from November 6th, you end the email with this statement: “Please
20 let me know if you are agreeable to beginning negotiations in December **for a 1-
21 year contract. If so**, we would propose the following specific dates...” I added
22 the emphasis there in the hopes that it would show where my confusion is. Are you
23 saying that OFM’s offer for bargaining dates in December is contingent on WPEA
24 agreeing with OFM that we are bargaining a one-year contract? I’m sure you can
understand why that would be a concern for us. At this time, we are holding your
proposed dates and would be willing to confirm them, if we understood what you
believe that confirmation includes.

31. On November 18, WPEA responded to the State’s request for legal authority
concerning its position that the State was violating its duty to bargain in good faith with WPEA
through a letter, attached as Exhibit C to this complaint, sent by WPEA counsel to the State and
Community Colleges’ counsel.

32. On November 19, Comeau emailed Hacker to thank her for the letter from counsel:

1 Thank you, Amanda for sending your formal response. I would like to reply to your
2 last question on November 14, we are not putting any pre-conditions on bargaining.
3 OFM stands ready to bargain. We are willing to return to the table and we are
4 willing to sit down and consider any proposals WPEA may have to share. Please
5 confirm that your team is ready to meet on the dates we are holding for December,
6 January, and February.

7
8 33. On November 20, Hacker agreed to bargain on those dates, but once again sought
9 clarification from Comeau concerning the State’s position with regard to the crucial bargaining
10 issues:

11 WPEA can confirm that WPEA is ready and available for bargaining on the dates
12 provided. However, there are a number of issues that need to be resolved.

13 First, your previous email stated that the parties should have an understanding of
14 what we are bargaining prior to meeting. You then went on to say that OFM does
15 not have the authority to bargain a two-year agreement. Has that changed?

16 Second, in our letter dated November 18, 2024, we requested an expedited schedule
17 for bargaining. The dates that have been provided are not responsive to that. Is
18 OFM willing to negotiate weekly on each contract until we get to an agreement?

19 Third, in your previous email, you stated that OFM was unwilling to request
20 funding this coming legislative session for a two-year agreement. Has that
21 changed?

22 Fourth, in your previous email, you stated that OFM believes that our TAs go away
23 and we are bargaining from scratch. Has that position changed?

24 I think it is imperative to assure that, when we meet for bargaining, that bargaining
will be productive. While we agree to meet on the dates provided, if we cannot
agree to an expedited schedule and if we cannot agree on the term of the contract
we are bargaining, the funding mechanisms for funding that agreement, the
authority OFM has or where we are starting from, we will still need a court to
resolve these disputes. WPEA would prefer to focus on reaching a two year
agreement that could be approved by the Legislature this session, rather than
bargain in the light of ambiguous commitments from OFM. Please clarify for us
where OFM is at on the four issues outlined above.

34. To date there has been no answer to Hacker’s questions.

1
2 **CAUSES OF ACTION AGAINST THE STATE AND COMMUNITY COLLEGE COALITION**
3 **FIRST CAUSE OF ACTION: VIOLATION OF RCW 41.80.110(1)(A) AND (B)**

4 35. WPEA incorporates by reference all preceding paragraphs of the Complaint as if
5 fully set forth herein.

6 36. The threats in Sullivan’s September 27, 2024, letter to not bargain for or seek
7 funding for a contract covering July 1, 2025, to June 30, 2026, were made in an attempt to influence
8 the outcome of the ratification vote, and failing that, to have WPEA overrule its members’ choice.
9 His actions are the actions of his principal, the State of Washington and the Community Colleges.
10 His actions constitute unlawful domination and/or interference with the administration of WPEA’s
11 internal union affairs.

12 **SECOND CAUSE OF ACTION: VIOLATION OF RCW 41.80.110(1)(E)**

13 37. WPEA incorporates by reference all preceding paragraphs of the Complaint as if
14 fully set forth herein.

15 38. Despite WPEA members’ rejection of the tentative agreement (TA), given WPEA’s
16 request to return to the table, the State and the Community Colleges are required to continue
17 bargaining with WPEA for a 2025 to 2027 contract. The Employers’ refusal to bargain for a
18 contract covering the first year of that period, violates their duty to bargain with WPEA in good
19 faith.

20 **THIRD CAUSE OF ACTION: VIOLATION OF RCW 41.80.110(1)(E)**

21 39. WPEA incorporates by reference all preceding paragraphs of the Complaint as if
22 fully set forth herein.

23 40. The State and Community Colleges have an obligation to engage in good faith
24 bargaining with WPEA over 2025-2027 successor collective bargaining agreements. This

1 obligation includes but is not limited to the duty to meet at reasonable times. The refusal of the
2 State and Community Colleges to meet to bargain from October through the present to timely
3 reach an agreement before the upcoming Legislative session violates the Employer’s duty to
4 bargain in good faith.

5 **FOURTH CAUSE OF ACTION: VIOLATION OF RCW 41.80.110(1)(E)**

6 41. WPEA incorporates by reference all preceding paragraphs of the Complaint as if
7 fully set forth herein.

8 42. The State and Community Colleges have an obligation to engage in good faith
9 bargaining with WPEA over 2025-2027 successor collective bargaining agreements. This
10 obligation includes the duty to not engage in regressive bargaining. The position of the State and
11 Community Colleges that bargaining, when it commences, will “be from scratch” violates the
12 Employer’s duty to bargain in good faith.

13 **FIFTH CAUSE OF ACTION: VIOLATION OF RCW 41.80.110(1)(E)**

14 43. WPEA incorporates by reference all preceding paragraphs of the Complaint as if
15 fully set forth herein.

16 44. The State and Higher Education employers have an obligation to engage in good
17 faith bargaining with WPEA over 2025-2027 successor collective bargaining agreements. This
18 obligation includes the duty to not engage in regressive bargaining. The threat made by the State
19 and Community Colleges that bargaining, when it commences, will “be from scratch” violates the
20 Employer’s duty to not threaten to discriminate against employees for their union activity of
21 participating in a ratification vote.

22 **SIXTH CAUSE OF ACTION: VIOLATION OF RCW 41.80.110(1)(A)**

23 45. WPEA incorporates by reference all preceding paragraphs of the Complaint as if
24 fully set forth herein.

1 46. The State and Community Colleges’ threat to refuse to submit to the legislature
2 language necessary to implement a proposed contract reached through good faith bargaining
3 between the parties is a threat of reprisal for WPEA’s members’ Union activity, constituting
4 unlawful interference. Should that threat be carried out, the failure to submit such language would
5 be a violation of the Employers’ duty to bargain in good faith, in violation of RCW
6 41.80.110(1)(e).

7 **SEVENTH CAUSE OF ACTION: VIOLATION OF RCW 41.80.110(1)(A)**

8 47. WPEA incorporates by reference all preceding paragraphs of the Complaint as if
9 fully set forth herein.

10 48. The State and Community Colleges’ threat to implement terms for the first year of
11 the 2025-2027 contract is a threat of reprisal for WPEA’s members’ Union activity, constituting
12 unlawful interference. Should that threat be carried out, the failure to submit such language would
13 be a violation of the Employers’ duty to bargain in good faith, in violation of RCW
14 41.80.110(1)(e).

15 **EIGHTH CAUSE OF ACTION: VIOLATION OF RCW 41.80.110(1)(E)**

16 49. WPEA incorporates by reference all preceding paragraphs of the Complaint as if
17 fully set forth herein.

18 50. The State and Community Colleges have an obligation to engage in good faith
19 bargaining with WPEA over 2025-2027 successor collective bargaining agreements. The State and
20 Community Colleges adopted, as part of an overall plan to frustrate agreement, and to penalize
21 employees for trying to exercise their statutory right to bargain collectively.

22 **NINTH CAUSE OF ACTION: VIOLATION OF RCW 41.80.110(1)(A)**

23 51. WPEA incorporates by reference all preceding paragraphs of the Complaint as if
24 fully set forth herein.

1 52. By each act of failing to bargain in good faith, the State and Community Colleges
2 have also interfered with employees' Union rights committed a derivative violation of RCW
3 41.80.110(1)(a).

4 **TENTH CAUSE OF ACTION—SEEKING INJUNCTIVE RELIEF**

5 53. WPEA re-alleges each and every fact set forth above.

6 54. RCW 7.40.020 provides this Court with power to grant a preliminary and
7 permanent injunction.

8 55. Unless the State and Community Colleges are preliminarily enjoined from refusing
9 to bargain in good faith and ordered to promptly engage good faith bargaining with WPEA for a
10 2025-2027 CBA pending final adjudication of these claims, the legal rights of WPEA and
11 employees represented by WPEA will be irreparably harmed and impaired, and they will be denied
12 any meaningful and effective remedy.

13 56. Unless the State and Community Colleges are preliminarily enjoined from refusing
14 to submit to the legislature language sufficient to implement any agreement reached between them
15 and WPEA, pending final adjudication of these claims, the legal rights of WPEA and employees
16 represented by WPEA will be irreparably harmed and impaired, and they will be denied any
17 meaningful and effective remedy.

18 57. Unless the State and Community Colleges are preliminarily enjoined from
19 resuming bargaining with the position that all previous TAs are to be disregarded and that resumed
20 bargaining is from scratch, pending final adjudication of these claims, the legal rights of WPEA
21 and employees represented by WPEA will be irreparably harmed and impaired, and they will be
22 denied any meaningful and effective remedy.

1 58. WPEA is without any plain, speedy, or adequate remedy at law on behalf of the
2 employees it represents, and unless the status quo is maintained, the employees it represents will
3 be deprived of any meaningful remedy and suffer irreparable harm.

4 59. WPEA is entitled as well to permanent injunctive relief requiring the State and
5 Community Colleges to bargain in good faith, without regressive bargaining by the Employers,
6 for a two-year contract, and requiring, should the parties reach agreement, to submit language to
7 implement that agreement to the legislature.

8 **ELEVENTH CAUSE OF ACTION – SEEKING DECLARATORY JUDGMENT**

9 60. WPEA re-alleges each and every fact set forth above.

10 61. RCW 7.24.010 empowers this Court to declare rights, status and other legal
11 relations whether or not further relief is or could be claimed.

12 62. WPEA requests that this Court declare the rights of WPEA and its members and
13 the legal obligations of the State and Community Colleges with regard to each violation of the
14 obligations under ch. 41.80 RCW alleged above.

15 **RELIEF REQUESTED**

16 Wherefore, WPEA requests that the Court grant the following relief:

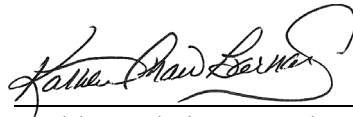
17 1. The Court grant injunctive relief immediately and on a permanent basis restraining
18 and enjoining Defendants, their officers, employees, agents, representatives, attorneys and others
19 acting in concert or participation with Defendants from further interference with employees’ rights
20 to engage in Union activity, from continuing to refuse to bargain, and requiring Defendants to
21 engage in good faith bargaining and to timely bargain with WPEA for 2025-2027 CBAs;

22 2. The Court issue a declaratory judgment finding Defendants committed unfair labor
23 practices in violation of RCW 41.80.110(1)(a), (b), and (e);

1 3. An award to WPEA for their reasonable costs and fees incurred herein because of
2 the flagrant pattern of repeated violations of RCW 41.80.010; and

3 4. Such other and further relief as the Court may deem appropriate.

4
5 RESPECTFULLY SUBMITTED this 21st day of November, 2024.

6 

7 _____
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EXHIBIT A



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

Insurance Building, PO Box 43113 • Olympia, Washington 98504-3113 • (360) 902-0555

September 27, 2024

Amanda Hacker, President
Washington Public Employees Association
140 Percival Street NW
Olympia, WA 98502

Dear Ms. Hacker:

It is my understanding that there is a possibility that your membership could vote “no” on ratifying the tentative agreements that were signed by the Washington Public Employees Association and the Office of Financial Management, based on your team’s recommendation. I also understand that our labor relations team has shared with you that we do not believe this reflects bargaining in good faith.

Given that the October 1 deadline is fast approaching, we would like the WPEA union to clarify for us the effect that a “no” vote on ratification would have on the tentative agreements. We know that unions have different practices around this, so we want to confirm whether the WPEA union would have the ability to move the tentative agreements forward on its own *even* if the membership votes “no.” Please let Gina Comeau, our Labor Relations and Compensation Policy Section Chief, know the union’s position on this as soon as possible, as our team is currently preparing the October 1 submittals.

I would like to reiterate the following information that Gina Comeau and our lead negotiators shared with WPEA:

- Pursuant to chapter 41.80 RCW, the Legislature prescribes a biennial budget process with bargaining and tentative agreement submittal by October 1, 2024, for items to be included in the Governor’s 2025-27 budget.
- If we do not meet this deadline, 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.

While we hope that the possibility of a “no” vote does not actually come to pass, we want to ensure that you are aware of the legal framework we are working within. In addition, we stand ready to continue in our good faith bargaining obligation if we do not have any WPEA agreements to submit on October 1, 2024.

Sincerely,

A handwritten signature in black ink that reads "Pat Sullivan". The signature is written in a cursive style with a long horizontal flourish at the end.

Pat Sullivan
Director

cc: Joby Shimomura, Chief of Staff, Office of the Governor
Kelly Wicker, Deputy Chief of Staff, Office of the Governor
Emily Beck, Deputy Director, OFM
Michaela Doelman, State Human Resources Officer, OFM
Kelly Woodward, Deputy State Human Resources Officer, OFM
Gina Comeau, Labor Relations and Compensation Policy Section Chief, OFM

EXHIBIT B

October 1st, 2024

Pat Sullivan, Director
Office of Financial Management
PO Box 43113
Olympia WA 98502

RE: Response to September 27th Letter

Dear Mr. Sullivan:

We are in receipt of your letter dated September 27th regarding ratification of the TA'ed agreements. I wanted to clarify some things that you stated in your letter, as well as let you know how I believe we got to where we are at today.

First and foremost, you opened your letter by stating "It is my understanding that there is a possibility that your membership could vote 'no' on ratifying the tentative agreements that were signed by the Washington Public Employees Association and the Office of Financial Management, based on your team's recommendation." I don't believe that accurately represents why WPEA members have voted no on these TA'ed agreements. Simply put, while the bargaining team makes a recommendation to membership, the bargaining team members each, individually, have one vote on the TA'ed agreements – the bargaining teams do not determine how membership votes. These TA's were not voted down because of the recommendation of the bargaining teams, they were voted down because they did not offer substantive gains that would justify ratification, especially when you factor in their almost two decades of sub-par contracts and salary increases.

As to your statement that you do not believe the teams' recommendation reflect good faith, I appreciate you sharing your perspective, but I disagree. WPEA's bargaining teams remained consistent throughout negotiations and did not commit to recommending ratification or

supporting the TA'ed agreement. In fact, they told both OFM Negotiators countless times over the last three months that they were deeply concerned about their ability to sell this contract to their members. Both teams discussed their concerns about the ability to ratify this agreement and shared that they felt like the Employer's team needed to be concerned about this as well – none of those discussions resulted in movement on OFM's side or any change to how non-economic issues were approached (which is to say that both tables continued to reject almost every proposal made by the Union's team, regardless of economic impact). WPEA's bargaining teams showed up every bargaining session prepared to reach an agreement and optimistic that we could get there – their hope and optimism was misplaced, unfortunately.

Thank you for outlining OFM's interpretation of RCW 41.80, and reiterating what Gina Comeau and I previously discussed. I would like to reiterate what I told Gina in that conversation, so that you are aware of how our members got here. **Both parties** are charged with bargaining a contract that their respective sides can support, not just the Union side.

One of the main factors that underlies WPEA members' concerns about the currently TA'ed agreement is the history of salary increases over the last 20+ years. If you compare the rate of inflation with the salary adjustments our membership has received in that time, you will clearly see that our members have lost 21.05% in purchasing power since 2000. This means that a member that was employed in the same position in 2000, effectively makes over 20% less today than they did when they accepted their position. As someone who has been working with WPEA since 2005, I have seen this downward trend and the impact that this has on our membership. This trend continues, biennium after biennium, for two decades, with absolutely no acknowledgment on OFM's side that this is an issue or concern – meanwhile, a large percentage of our membership is below poverty in Washington State and unable to meet their basic needs. These members are often forced to seek out help or services from the government to supplement these wages – which shifts the burden of a living wage away from OFM and to other funding sources that are coming from the taxpayer.

In at least the last three contract cycles, WPEA has been transparent with OFM that we are concerned about this trend and OFM's lack of acknowledgement or plan to fix it. The 2025-2027 CBA will be the parties' eleventh round of negotiations – I have been at the table for eight of those eleven rounds. My lived experience has been that, regardless of what WPEA members say to OFM, they continue to fall further and further behind. The only reason that the previous

ten contracts were ratified is due to the threat, which you outlined very clearly in your letter, of losing one year of the salary adjustments. For the last six years, we have consistently told OFM negotiators that this is unlikely to continue working and that, at some point, represented staff will not accept this. We are now at that point. If OFM did not see this coming, it was not due to WPEA's leadership not making it abundantly clear that we were headed toward this proverbial cliff.

With the hope of helping you understand why I believe our membership did not ratify the offered TAs, here are a list of the concerns that have been shared with OFM – none of these bulleted items are news to the Labor Relations Section at OFM and we have had exhaustive discussions at the table about these ongoing issues:

- Since the economic downturn in 2009, WPEA members have been required to do more with less, even as their wages plummeted due to contracts that did not even match, let alone exceed the rate of inflation. Our members continue to do the best they can to serve the citizens of Washington State, however, they are unable to do so if their basic needs are not met. During a session at the Higher Education bargaining table, I asked the lead negotiator for OFM if he understood that our members need to eat in order to show up to work – he scoffed at that statement. Trust me, the members who are food insecure and need to grapple with where their next meal comes from are not laughing.
- Prior to 2009, WPEA members had a 88/12 split on Healthcare premiums. When the ratified 2011-2013 was determined to be financially infeasible, we went back to the table and negotiated and ratified (at a higher percentage than the initial ratification) a contract that included a 3% salary reduction as well as a change to the split on Healthcare down to 85/15. At that time, we were told that this change was necessary and that, when the economy bounces back, we will go back to status quo of 88/12. That never happened, and today OFM calls the 85/15 split a “win” for our membership.
- WPEA Membership has seen the state through an unprecedented global pandemic. They accepted a 0% wage increase in 2021 to do their part to balance the state's budget. They continued to show up to work and put their lives on the line to serve the taxpayers in Washington State. The “thank you” that they received was a measly \$1,000

lump sum, that did not add to their base wages or make a dent in their lagging salaries, and amounted to a few hundred dollars, after taxes were paid.

- OFM Negotiators refuse to engage on issues that are non-economic and would improve working conditions or lives of classified employees, despite not adding to the cost of the contract. Both of our state bargaining teams prioritized non-economic issues and neither table was able to secure contract improvements that would help justify ratification. I personally attended bargaining sessions this year and asked both lead negotiators if they could identify any contract improvements, or language, that would help WPEA's team sell this to the membership for ratification – neither OFM Negotiator was able to articulate substantive improvements in the TA's.
- WPEA represents frontline firefighters at the Department of Natural Resources. The current contract includes a substantive take-away that was agreed to in the last round of bargaining. The Union, DNR and OFM agreed that the change in the language would not result in a harm to members – unfortunately, implementation of that language significantly cut the pay of our frontline firefighters over the last two years. When it became apparent that this was going to harm members, we approached DNR and OFM about rectifying the problem and returning to the previous contract language on the Rest and Recuperation (R&R) days. OFM and DNR agreed that it was a problem but argued that their “hands were tied” until the next round of negotiations. We are now through that “next round of negotiations” and, while the current TA rectifies some of the harm, it does not get us back to where we were in the 2021-2023 contract. WPEA's team has been abundantly clear for two years now: this is a problem because it does not incentivize participation in wildfire and harms those that have no other choice but to participate – if we do not correct this, the members will not accept that. Despite the two years of ongoing discussion about this, we were not able to get back to where we were in the previous agreement. It should come as no surprise to the DNR that this contract did not ratify because DNR firefighters have made their concerns on the R&R day very clear to their Employer and the Union.
- The harm to our DNR members doesn't stop with wildland firefighters, the state provided language in this year's last, best and final offer that included language that aimed to divide our members. OFM's proposal changed compensation for the Equipment

Technicians at DNR by taking away assignment pay for all hours worked and included a grandfather clause for current employees that had an expiration date of June 30, 2027. This proposal stated that anyone hired after October 1, 2024, would not receive the same assignment pay. The impacted members attended bargaining to explain the impacts of the proposed changes and made it abundantly clear that any take-aways would be unacceptable. Our members in this classification are not interested in accepting language that would protect their salary for the life of this agreement, but significantly harms their coworkers hired after October 1, 2024. Believe it or not, our members are dedicated to the taxpayers they serve, and they understand the impact this will have on their ability to recruit and retain qualified staff in the future – even a promise of current financial gains do not outweigh their concern about the damage to their coworkers and program that the proposed changes will bring about.

- WPEA members are fully aware of what other state employee groups get paid and can clearly see that they are not facing the same downward trend as classified staff. An example that we discussed with the Higher Education team is the August State Board Business Meeting Agenda includes a request for administrative increases equaling 6.5% in each year of the biennium – a total of 13% over the two years. This will mean that a College President making \$310,000 per year (Bellevue College) would get an increase of \$41,609.75. Meanwhile, OFM is suggesting that our membership should make a minimum of the first step in Range 34 – assuming that is \$18 per hour, that College President's **increase over the two years would be higher than what our full-time members make in a year of working for Bellevue College** – which will amount to approximately \$37,584.00. As you know, Faculty contracts are also more closely aligning with inflation.
- At our General Government table, we discussed the pay for the Deputy Supervisor at DNR, which is approximately \$249,000 per year. The total cost of the R&R day that was discussed in the fifth bullet was quoted by OFM as being line item \$110,000 to fund the additional R&R day for all WPEA members – which is less than half of what the highest paid employee at DNR receives. While you may not see this as a problem, our members see it as an inequity that is difficult to understand, especially when you consider that the R&R days are directed-rest provided to frontline firefighters to assure that they remain safe while putting their lives on the line to assure that the citizens in

Washington State still have homes, the trust still has timber to sell and the public still has recreational areas to enjoy.

- A substantial amount of our membership has job classifications that are woefully behind in the State Salary Survey. Here is a list of a few of the classifications that WPEA represents – meaning that these are the classifications that WPEA members, who vote on accepting or rejecting OFM's last, best and final offer, currently hold:
 - During bargaining in 2022, we prioritized getting a specific increase for our Forest Crew Supervisors (FCS) who were shown as being 65.1% behind at that time, according to the State Salary Survey. WPEA was able to secure an increase in the 2023-2025 agreement to give that classification a 3 range increase (which amounts to 7.5%). We told OFM that 7.5% would not make a substantive dent in the 65.1% difference. In the 2024 salary survey, this same classification is showing as being 53.3% behind and the current TAs do not include a targeted raise for that classification.
 - WPEA represents the Fire Investigators at DNR – these members investigate the cause and origin of wildfire, and their work is instrumental in recouping money lost through wildfire suppression efforts. In the last round of negotiations, for the current CBA, WPEA prioritized that classification for an increase. Because there were only three Investigators at DNR, OFM told us that all three of those positions would need to be vacated and rehired in a biennium before that classification would meet the criteria for an increase, according to their rules. These members are still employed and have not yet vacated their position, which is good for the taxpayers and Agency, but terrible for the individuals occupying those positions. WPEA was both shocked and disappointed that OFM asked us to convey that message to three Fire Investigators that were (and still are today) dedicated to their positions and the mission they serve for the public – investigating Wildfire cause and origin is a specific skill set that is extremely hard to find, but OFM told us that they were not legally allowed to consider any of that, they were just looking at the recruitment and retention numbers and, again, unless all three of these people vacated their position, or one position was filled multiple times in a biennium, there was nothing that could be done. At that time, I asked OFM's Negotiator if they understood how demoralizing that message was – we were told that OFM is simply following the law.

- Our largest classification at DNR is benchmarked to the Natural Resource Specialist (NRS) 2 position – we have approximately 300 people in that classification – and they are shown as being 32.7% behind.
- We also represent the Natural Resource Technician series – they are shown as being 45.4% behind.
- At Department of Revenue, WPEA represents both Audit and Compliance staff – these are the staff who are directly responsible for bringing tax dollars into the state and are considered revenue generating. Despite attempting to get increases for these classifications in the last two rounds of bargaining, so that the state can recruit and retain quality staff, we have been unsuccessful in doing so. Our Revenue Auditor positions are benchmarked to the Auditor 2 position in the Salary Survey – they are shown as being 52.8% behind.
- At Washington State Patrol, WPEA represents the Deputy State Fire Marshalls – they are shown as being 33.6% behind. In addition to being so far behind, their counterparts at WFSE make more than they do for no discernable reason.
- In our Higher Education contract, the Program Coordinator and Program Specialist classification is the largest job classification covered under that contract. Their series is benchmarked to the Program Specialist 2 classification – they are shown as being 35.7% behind.
- We have the Fiscal Technician classification in both our Higher Education and General Government contracts – they are shown as being 30.8% behind.

Please understand that this is the tip of the iceberg in terms of classification increases that need to be prioritized. OFM has refused to fund the State Salary Survey since the 2009-2011 biennium, which amounts to many of our members falling further and further behind every contract cycle.

- Our Department of Natural Resources bargaining unit is the largest covered under our General Government contract. Despite repeated requests, WPEA was not able to secure DNR-specific bargaining sessions until late August (my notes reflect that August 27th was the first DNR bargaining session that was not canceled or rescheduled to a later date). WPEA has repeatedly explained to OFM that the busiest time for DNR is between June – September due to the fire season. This makes member participation in negotiations extremely difficult for both the Union and Employer and impacts the amount

of time the parties can dedicate to individual DNR issues, specifically wildfire suppression issues, which is a very high priority for our members.

In addition to the above listed examples, WPEA membership has been concerned for some time about OFM's involvement in the bargaining process. For example, there were multiple circumstances this cycle where the Union and the Agency agreed on things and OFM refused to include those agreements in the final TA. An example of this is that DNR indicated throughout the last two years that they would be providing a decision package for increases to the Heavy Equipment Operator classification. DNR told WPEA members that they recognize that this classification has been overlooked for years and that it was a priority to secure a classification specific increase for them in this contract cycle. WPEA's understanding is that DNR did do what they told members that they would do – but OFM did not agree to the request and, therefore, while both the Union and Agency felt it was necessary, this classification was not included in the final TA provided by OFM.

In your September 27th letter, you asked the following question: "...we want to confirm whether the WPEA union would have the ability to move the tentative agreements forward on its own *even* if the membership votes 'no.'" On it's face, that question doesn't make sense – the WPEA union is the membership that voted no on the TA'ed agreement. Indicating that there is some separation between what the "WPEA union" would do and the will of its "membership" is a mistake. In my role as President of WPEA, I am a representative of the members' voice – I have no moral or ethical authority to override my members' decision. WPEA is a Local of the United Food and Commercial Workers – our Constitution is easily available by googling "UFCW Constitution" – Article 23 outlines my obligations to my membership. You can interpret Article 23 as you see fit. Regardless of what is written there, there will never be a day that I undermine the individuals who put me in this position and pay my salary. My members have done everything within their power to avoid getting to this point – they have accepted sub-par contracts from the state for twenty years, they have shown up to the table and pleaded with OFM to prioritize them, they have gotten angry and told OFM the impact their wages have on their quality of life and ability to support themselves and their family, they have cried and begged OFM to move on issues that were important to their respective membership – none of that has worked and they were met with indifference. Unfortunately, this is the position that the state has put them in, they had no other choice but to (after two decades of asking) use the next logical

step: voting down this agreement. My members have spoken, I suggest OFM start listening and take the action necessary to rectify these issues.

In solidarity,



Amanda Hacker

President

C: WPEA Executive Board

Steve Sloniker, Contract Administration Director

Julia Thurman-Lascrain, Membership and Mobilization Director

Joby Shimomura, Chief of Staff, Office of Governor

Kelly Wicker, Deputy Chief of Staff, Office of the Governor

Emily Beck, Deputy Director, OFM

Michaela Doleman, State Human Resources Officer, OFM

Kelly Woodward, Deputy State Human Resources Office, OFM

Gina Comeau, Labor Relations and Compensation Policy Section Chief, OFM

EXHIBIT C



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Sent via email to Margaret.Mclean@atg.wa.gov

November 18, 2024

Margaret McLean
Assistant Attorney General
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