

THE HONORABLE BRUCE W. HILYER

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

SERVICE EMPLOYEES
INTERNATIONAL UNION 775,
WASHINGTON PUBLIC EMPLOYEES
ASSOCIATION/UFCW Local 365,
SERVICE EMPLOYEES
INTERNATIONAL UNION Local 925,
SERVICE EMPLOYEES
INTERNATIONAL UNION DISTRICT
1199NW, INLANDBOATMEN'S UNION
OF THE PACIFIC/ILWU, UNITED FOOD
AND COMMERCIAL WORKERS Local
21, WASHINGTON STATE NURSES
ASSOCIATION, INTERNATIONAL
FEDERATION OF PROFESSIONAL &
TECHNICAL ENGINEERS Local 17,

Plaintiffs,

v.

STATE OF WASHINGTON, OFFICE OF
FINANCIAL MANAGEMENT, and STEVE
MCLAIN, Director of Labor Relations, in
his official capacity,

Defendant.

No. 07-2-05431-6 SEA

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

**Noted For Hearing:
Friday, March 9, 2007
9:30 AM**

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1 **INTRODUCTION**

2 In response to a Public Records Act (PRA) request by the Evergreen Freedom
3 Foundation (“Evergreen”), the State of Washington, specifically the labor relations
4 division of the Office of Financial Management (OFM), announced its intention to
5 disclose on February 12, 2007, copies of all collective bargaining proposals in its
6 possession in electronic format. OFM also announced its intention to disclose copies of
7 all notes of its bargaining team members after the Legislature approved the final tentative
8 agreements that the Governor’s office had negotiated with the State’s employees’ labor
9 unions.
10

11 Plaintiffs, a coalition of eight labor unions representing tens of thousands of state
12 employees, filed suit on February 8, 2007 seeking to enjoin the announced disclosure.¹
13 Upon presentation of the complaint, the State agreed to postpone the previously
14 announced disclosure pending action by this Court.
15

16 The State’s planned disclosure of collective bargaining proposals, and, eventually,
17 the notes of its bargaining team members would permanently and irreparably harm the
18 collective bargaining process. The specter of disclosure and attendant media and public
19 scrutiny would undermine the parties’ ability to engage in substantive, creative, and
20 candid negotiations. Confidentiality is critical to successful negotiations; its elimination
21 imperils the process. Disclosure would unnecessarily politicize the atmosphere, chill the
22 participation of rank and file members, and undermine collective bargaining – running
23 afoul of the various state collective bargaining statutes applicable to state employees.
24

25 _____
26 ¹ On February 20, 2007, Plaintiffs filed an amended complaint.
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION - 1
CASE NO. 07-2-05431-6 SEA

1 caseworkers, liquor control staff, counselors, sailors, ticket takers, office and clerical
2 workers, and many others.

3 Service Employees International Union (SEIU) 775 represents 29,000 long-term
4 care workers in Washington, including 23,000 individual home care workers for whom
5 the State is the employer for collective bargaining purposes. Declaration of David Rolf
6 ¶ 1, 3.
7

8 Washington Public Employees Association, United Food and Commercial
9 Workers Local 365 (WPEA) represents 4,200 employees of the General Service
10 classified staff of Washington, including 25 bargaining units in 10 government state
11 agencies. Declaration of Leslie Liddle ¶ 3.
12

13 Services Employees International Union (SEIU) Local 925 represents 22,000
14 public sector and non-profit workers, including 10,000 child care workers for whom the
15 State is the employer for collective bargaining purposes. Declaration of Kim Cook ¶ 1-2.
16

17 Service Employees International Union (SEIU) District 1199NW represents more
18 than 18,000 health care workers, including 2,400 employed by the State. Declaration of
19 Diane Sosne ¶ 1.
20

21 The Inlandboatmen's Union of the Pacific/ILWU (IBU) represents 800 employees
22 of the Washington State Ferries, an agency of the Washington Department of
23 Transportation. Declaration of Jay Ubelhart ¶ 1.
24

25 United Food and Commercial Workers (UFCW) Local 21 represents more than
26 30,000 workers, including approximately 650 employees of the State Liquor Control
Board. Declaration of David Fleishman ¶ 3.

1 The Washington State Nurses Association (WSNA) represents 13,000 registered
2 nurses, including approximately 1,300 employed by the University of Washington and
3 200 employed by state veteran's facilities.

4 The International Federation of Professional and Technical Engineers
5 (IFPTE) Local 17 represents more than 8,000 public sector workers, including 500
6 workers employed by the Washington State Patrol and 300 employed by the Washington
7 State Department of Licensing.

8
9 **B. State Employee Collective Bargaining**

10 The Washington State Legislature has recognized the right of state employees to
11 form unions and bargain collectively regarding their wages, hours, and working
12 conditions. The employees represented by the Plaintiff unions derive their right to
13 organize and collectively bargain principally from three statutes, the Public Employees'
14 Collective Bargaining Act, RCW 41.56, the Marine Employees Public Employment
15 Relations Act, RCW 47.64, and the Personnel System Reform Act, RCW 41.80.

16
17 RCW 41.80 prescribes the process by which State negotiators collectively bargain
18 agreements (CBA) with the unions representing state employees.² Ultimately, RCW
19 41.80 grants the power to the Legislature to decide whether to adopt a collective
20 bargaining agreement (CBA) negotiated between a union and the Governor's office and
21

22
23 ² While the marine employees represented by Plaintiff IBU are not covered by RCW 41.80, the deadlines
24 and process for submission of their CBAs to the legislature is identical to RCW 41.80. See RCW
25 47.64.170. The same is true for the home care workers, represented by Plaintiff SEIU 775, who derive
26 their right to unionize via RCW 41.56 via RCW 74.39A.270(2). RCW 74.39A.300 prescribes a procedure
for submitting the home care workers' CBA to the legislature which is identical to RCW 41.80. Likewise,
the collective bargaining process for the family child care providers, who are represented by SEIU Local
925 and who derive their right to unionize from RCW 41.56, is governed by RCW 41.56.028(6), which
provides for an identical process to RCW 41.80.

1 to provide the funds necessary for its implementation. RCW 41.80.010(3). Prior to
2 presentation to the Legislature, the CBA must be submitted to the director of the Office
3 of Financial Management (OFM), who must certify that the CBA is “financially feasible”
4 for the State. *Id.* This submission must occur by October 1 prior to the legislative
5 session at which the CBA will be considered. *Id.* A CBA cannot be considered by the
6 legislature unless it has been submitted and certified within the prescribed time period.
7

8 The timeline imposed by the collective bargaining statutes demands that the
9 Governor and the unions engage in expeditious and efficient negotiations in order to meet
10 the statutory deadline. There is no opportunity for extensions if the parties are unable to
11 reach agreement by the October 1 deadline, making mutual trust and open and honest
12 communication at the bargaining table critical for the timely success of the negotiations.
13 Sosne Dec. ¶ 8; Rolf Dec. ¶ 8. The parties avoid politicizing, and thereby elongating, the
14 bargaining process by establishing ground rules for negotiations which include an
15 agreement to treat the details of the negotiations as confidential. Fleishman Dec. ¶ 5;
16 Rolf Dec. ¶ 8; Sosne Dec. ¶ 6; Cook Dec. ¶ 8; Liddle Dec. ¶ 12.
17

18 After the parties have reached a tentative agreement, the CBAs become open for
19 legislative and public review. The CBAs become part of the budget, and are thereby
20 available for scrutiny through the normal legislative process. The labor relations division
21 of the OFM also makes the tentative agreements available on its website at
22 www.ofm.wa.gov/labor/agreements for review by all. Declaration of Robert Lavitt ¶ 6.
23 There is ample time, both before and during the legislative session, for concerned citizens
24
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1 and interest groups to review the tentative CBAs and decide to lobby for or against the
2 implementation of a particular CBA.

3 As described in much greater detail below, the disclosure of the requested
4 information undermines the ability of the unions to effectively represent their members in
5 the collective bargaining process. Fleishman Dec. ¶ 5-6; Rolf Dec. ¶ 10, 13; Cook Dec. ¶
6 7. Furthermore, disclosure frustrates the ability of the State and the unions to engage in
7 collective bargaining. Fleishman Dec. ¶ 5-6; Rolf Dec. ¶ 8, 10; Sosne Dec. ¶ 5, 8, 11;
8 Liddle Dec. ¶ 12, 14-15; Cook Dec. ¶ 8. As Kim Cook, President of Plaintiff SEIU
9 Local 925, explained:
10

11 In fact, it is routine in public sector bargaining for us to agree that neither
12 the union nor the employer will release information on our bargaining
13 sessions to the public – precisely because we know if anyone at the
14 bargaining table begins posturing for members of the public, who would
15 take our words and ideas out of context, we might never be able to explore
16 options, compromises, and paths to resolution.

17 Cook Dec. ¶ 8.

18 Moreover, the threatened release of the information will chill the participation of
19 rank-and-file workers who do not wish to have their statements, as recorded in the State's
20 bargaining notes, made public to the media. Fleishman Dec. ¶ 6; Rolf Dec. ¶ 13; Cook
21 Dec. ¶ 9; Liddle Dec. ¶ 13; Ubelhart Dec. ¶ 10. The reluctance of union members to
22 participate in the bargaining process will damage the unions' abilities to effectively
23 represent their membership. Cook Dec. ¶ 9; Fleishman Dec. ¶ 7.
24
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1 **C. Evergreen's Disclosure Request**

2 On November 30, 2006, the Evergreen Freedom Foundation (Evergreen)
3 requested that the OFM produce the following information pursuant to the Public
4 Records Act (PRA):

- 5 1. A copy of all bargaining notes made by negotiators and bargaining
6 team members regarding the 2007-2009 collective bargaining
7 agreements; and
8 2. A copy of all proposals made by the state and made by the unions
9 during negotiations of the 2007-2009 collective bargaining
10 agreements.

11 Lavitt Dec. ¶ 2-3.

12 The request sought this information in relation to 15 labor unions named in the
13 letter, as well as general categories of workers. *Id.* For the Washington State Ferry
14 System, the letter sought the above information for collective bargaining agreements
15 from the period 2001 to 2009. *Id.*

16 Through the director of the Washington State Labor Relations Office, Steve
17 McLain, the OFM indicated that it planned to release all electronic proposals made by the
18 unions and the respective state agencies on February 12, 2007. Lavitt Dec. ¶ 2. The
19 same e-mail communication from Mr. McLain indicated that the bargaining notes would
20 be made available after, and if, the Legislature implements the collective bargaining
21 agreements. *Id.* The State subsequently agreed to postpone release of the requested
22 information until this Court ruled on Plaintiffs' Motion for a Preliminary Injunction.

23 Lavitt Dec. ¶ 5.

1 **STATEMENT OF THE ISSUE**

2 Should the Court issue a preliminary injunction restraining the Defendant from
3 releasing the proposals and bargaining notes related to the 2007-2009 collective
4 bargaining agreements, and related to the 2001-2009 negotiations for the IBU, between
5 the State and the Plaintiff unions?
6

7 **EVIDENCE RELIED UPON**

8 This motion is based upon the Declarations of David Rolf, President of SEIU 775,
9 Leslie Liddle, Executive Director of WPEA, Kim Cook, President of SEIU Local 925,
10 Diane Sosne, President of SEIU District 1199NW, David Fleishman, Director of
11 Negotiations for UFCW 21, T.J. Janssen, member of SEIU 775, Jay Ubelhart, member of
12 IBU, Declaration of Patti J. Pollardo, member of WPEA, Declaration of William R.
13 Johnson, member of WPEA, Declaration of Kent Standord, member of WPEA, and
14 Robert Lavitt, counsel for Plaintiffs, and attached exhibits.
15

16 **LEGAL AUTHORITY**

17
18 **I. THE COURT SHOULD ISSUE A PRELIMINARY INJUNCTION TO**
19 **PREVENT THE STATE FROM RELEASING NOTES AND PROPOSALS**
20 **FROM COLLECTIVE BARGAINING SESSIONS WITH PLAINTIFFS.**

21 This Court may issue an injunction and a preliminary injunction, including a
22 temporary restraining order, on no or short notice. RCW 7.40.010. Granting of
23 preliminary injunctions is discretionary with the trial court. *Washington Federation of*
24 *State Employees, Council 28, AFL-CIO v. State of Washington*, 99 Wn.2d 878, 887, 665
25 P.2d 1337 (1983); *Alderwood Associates v. Washington Environmental Council*, 96
26

