The Honorable James L. Robart

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF SEATTLE, Defendant.	**Case No. 12-CV-1282JLR** **MEMORANDUM AMICUS CURIAE OF THE SEATTLE POLICE OFFICERS' GUILD**

The Seattle Police Officers' Guild ("SPOG") respectfully submits the following memorandum in response to the Court's invitation, in its December 16, 2016 Order, to provide input on how the Court may "address or resolve any alleged conflict between the Consent Decree and the process for drafting accountability legislation, on the one hand, and SPMA's articulated view of the City's collective bargaining obligations, on the other hand."

The logical starting point for providing such input is the City of Seattle's ("City's") collective bargaining obligations under the Public Employees' Collective Bargaining Act ("PECBA"), which are codified in the Revised Code of Washington at 41.56. After discussing the City's collective bargaining obligations under the PECBA, SPOG will turn to how the City's collective bargaining obligations under the PECBA intersect with the process

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for drafting accountability legislation.

The City's Collective Bargaining Obligations

The Washington State Legislature ("Legislature") has enacted legislation granting public employees the right to organize and be represented by the labor organization of their choosing. *See* Wash. Rev. Code § 41.56.010; *Peninsula Sch. Dist. No. 401 v. Pub. Sch. Emps. of Peninsula*, 130 Wash. 2d 401, 407, 924 P.2d 13 (1996). To secure the right to organize and be represented by the labor organization of their choosing as well as "promote the continued improvement of the relationship between public employers and their employees," the Legislature enacted the PECBA. *Nucleonics Alliance, Local Union No 1-369 v. Wash. Pub. Power Supply Sys*, 101 Wash. 2d 24, 29, 677 P.2d 108 (1984); Wash. Rev. Code. § 41.56.010.

The PECBA sets forth the framework for collective bargaining and the rights and obligations of public employers and exclusive bargaining representatives. The Washington Supreme Court has stated that the provisions of the PECBA must be liberally construed to effect its purpose and to control when in conflict with any other "statute, ordinance, rule or regulation of any public employer." Wash. Rev. Code. § 41.56.905; *see Peninsula Sch. Dist. No. 401 v. Pub. Sch. Emps. of Peninsula*, 130 Wash. 2d 401, 407, 924 P.2d 13 (1996); *City of Pasco v. Pub. Emp't Relations Comm'n*, 119 Wash. 2d 504, 510-11, 833 P.2d 381 (1992).

The PECBA requires all public employers, including the City, to collectively bargain with the exclusive bargaining representative or representatives of its employees ("union" or "unions"). Wash. Rev. Code. §§ 41.56.030(4), 41.56.140(4). In the case of the over twelve hundred commissioned officers and sergeants employed by the City, in the Seattle Police Department, the exclusive bargaining representative is SPOG. Stuckey Declaration, ¶ 2-3.

The Legislature has also defined what the duty to collectively bargain requires. By

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statute, this duty to collectively bargain encompasses a duty to bargain in good faith. Wash. Rev. Code. § 41.56.030(4). The statutory obligation to bargain in good faith imposed upon public employers in the State of Washington, including the City, extends to changes in all matters that are mandatory subjects of bargaining or effect mandatory subjects of bargaining. *Snohomish County*, Decision 9770-A, 2008 WL 5369634, at *2, (PECB, 2008). By statute, changes to matters that are closely related to grievance procedures and personnel matters, such as wages, hours, and working conditions are mandatory subjects of bargaining. Wash. Rev. Code. § 41.56.030(4); *Cnty. of King v. Wash. State Pub. Emp't Relations Comm'n*, 94 Wash. App. 431, 437-38, 972 P.2d 130 (1999); *Pasco Police Officers' Ass'n v. City of Pasco*, 132 Wash. 2d 450, 460, 938 P.2d 827 (1997). Other examples of mandatory subjects of bargaining include employee performance standards, disciplinary procedures, and civilian oversight of potential disciplinary matters and the disciplinary process. *City of Bremerton*, Decision 5898-B, 1997 WL 584249, at *4–5, (PECB, 1997); *City of Spokane*, Decision 5054, 1995 WL 849648, at *4, (PECB, 1995).

The statutory obligation to bargain in good faith, under the PECBA, also prohibits public employers, such as the City, from unilaterally changing mandatory subjects of bargaining. *City of Tukwila*, Decision 10536-A, 2010 WL 2232650, at *2, (PECB, 2010), *aff'd*, Decision 10536-B, 2010 WL 3937144, at *2, (PECB, 2010). Under the PECBA, if a public employer, including the City, wants to make a change to a matter that is a mandatory subject of bargaining or effects a mandatory subject of bargaining, the public employer is required to first notify the applicable union(s) of the proposed change and, if requested, bargain with the union(s) before a change is made. *City of Yakima,* Decisions 11352 & 11353, 2012 WL 1494677, at *2, (PECB, 2012), *aff'd*, Decisions 11352-A & 11353-A, 2013

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WL 1963851, (PECB, 2013).

In the event a request to bargain is made by a union, the duty to bargain in good faith under the PECBA requires the public employer and union "to meet at reasonable times, to confer and negotiate in good faith." Wash. Rev. Code. § 41.56.030(4). Where the public employer and union are unable to come to an agreement during these face-to-face negotiations, either or both parties can submit the matter(s) in dispute to the Public Employment Relations Commission (PERC)[1] and the PERC will assign a mediator to assist the parties in attempting to resolve the matter(s) in dispute. Wash. Rev. Code. §§ 41.56.100(2), 41.56.440.

If an employer and a union that represents "uniformed personnel," such as police officers[2], are unable to reach an agreement through bargaining and mediation, the Legislature has provided for a final and binding, dispute settling. Specifically, in recognition that the "uninterrupted and dedicated service of [uniformed personnel] is vital to the welfare and public safety of the state of Washington . . . .", the Legislature provided for disputes between uniformed personnel and their employers to be resolved through interest arbitration. Wash. Rev. Code. § 41.56.430-470. *See Pasco Police Officers' Ass'n v. City of Pasco*, 132 Wash. 2d 450, 461, 938 P.2d 827 (1997); *City of Bellevue v. Int'l Ass'n of Fire Fighters, Local 1604*, 119 Wash. 2d 373, 379, 831 P.2d 738 (1992).

The Washington Legislature has also included a mechanism for ensuring that a public employer and union comply with their duty to bargain in good faith in the PECBA. The

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[1] The PERC is a state agency that the Legislature has charged with responsibility for administering the PECBA, including "to prevent any unfair labor practice and to issue appropriate remedial orders." Wash. Rev. Code § 41.56.160(1).

[2] Wash. Rev. Code . § 41.56.050.

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Legislature has made it an unfair labor practice for either a public employer or union to "refuse to engage in collective bargaining." Wash. Rev. Code. §§ 41.56.140(4), 41.56.150(4). Thus, a public employer of uniformed personnel commits an unfair labor practice if it changes a mandatory subject of bargaining without first providing notice and an opportunity to bargain to the union. Additionally, where the union has requested to bargain over a mandatory subject of bargaining, a public employer of uniformed personnel commits an unfair labor practice if it makes a change to the mandatory subject without getting the agreement of the union through bargaining or getting an interest arbitration decision mandating the change.

In the event the PERC determines that a public employer has committed an unfair labor practice and violated the PECBA by unilaterally implementing a change to a mandatory subject of bargaining, the PERC is empowered to remedy the unfair labor practice by ordering the public employer to cease and desist from implementing the change and restore the status quo ante until the public employer has satisfied its bargaining obligations. *City of Tukwila*, Decision 10536-A, 2010 WL 2232650, at *5-6, (PECB, 2010); *City of Tukwila*, Decision 10536-B, 2010 WL 3937144, at *2, (PECB, 2010).

The Interaction between the PECBA and the Process for Drafting Accountability Legislation

SPOG cannot and does not speak for the Seattle Police Management Association ("SPMA"). SPOG is not a party to the unfair labor practice filled by SPMA over the draft accountability legislation and cannot provide the Court with any insight into SPMA's view or position. However, SPOG can state that it is SPOG's understanding that the City has recognized its duty to bargain in good faith and purposefully structured the accountability legislation in a way that allows the City to comply with its obligations under the PECBA.

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The SPOG's understanding is based upon discussions with the City as well as from the draft accountability legislation itself. The City has told SPOG, on more than one occasion, that when it has a final version of the accountability legislation, the City will provide SPOG with the final version and bargain in good faith with SPOG over any provision(s) of the legislation that will change a mandatory subject of bargaining, before implementing such provision(s). Stuckey Dec., ¶ 5-6. The City has also informed SPOG that the City has included its commitment to comply with its bargaining obligations in its draft legislation itself. Specifically, the City has stated that the legislation contains a provision obligating the City to bargain in good faith over any provision(s) in the legislation that will change a mandatory subject of bargaining before implementing such provision(s). Stuckey Dec.,¶ 7. In this regard the legislation in Subchapter V Construction and Implementation, 3.29.400 Construction (B), states:

> "Any provision of this ordinance that requires collective bargaining shall not become effective until the City satisfies its collective bargaining obligations under the Public Employees' Collective Bargaining Act, chapter 41.56 RCW or the City and the affected police union(s) mutually agree that the provisions may be implemented." (Dkt. #320-1, pg. 52)

Because the City has recognized and committed to fulfill its obligations under the PECBA, SPOG has not alleged that there is any conflict between the City's obligation to bargain in good faith under the PECBA and the draft accountability legislation, at this time. The SPOG fully anticipates that the City will comply with the commitments made to SPOG.

In closing, SPOG would like it to be clear that SPOG is not opposed to reform. SPOG and the City have a history of negotiating changes to the accountability systems through collective bargaining negotiations under the PECBA. Those previous negotiations included an agreement between the City and SPOG to create a civilian Director position for the Office of

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Professional Accountability. Stuckey Dec.,¶ 8. We look forward to being a partner with the City in continued reforms. SPOG stands ready to negotiate in good faith with the City on any changes(s) to a mandatory subject of bargaining, once the City has completed a final version of the accountability proposal.

Respectfully submitted this 30th day of December, 2016.

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By: */s/ Hillary McClure*

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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Dated this 30th day of December, 2016.

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