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STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
Curtis Leonard, Charles Lind, Warren
Hopkins, and Amie Brandmire for and on
behalf of their Public School District Clients
for a Declaratory Order

PETITION

I. PETITION INFORMATION

1.1 Name and Mailing Address of the Petitioners

The following Petitioners are persons who conduct collective bargaining with and on behalf of multiple public school districts across the State of Washington:

Curtis Leonard
Patterson Buchanan Fobes & Leitch
2112 3rd Avenue, Suite 500
Seattle, WA 98121

Charles Lind
Patterson Buchanan Fobes & Leitch
2112 3rd Avenue, Suite 500
Seattle, WA 98121-2326

Warren Hopkins
Executive Director, Employee Relations
& Negotiations Network (ERNN)
1504 Farina Loop SE
Olympia, WA 98513

1 Amie Brandmire
2 Chief Human Resources Officer,
3 Puyallup School District
4 P.O. Box 370
5 Puyallup, WA 98371

6 **1.2 Additional Parties Potentially Impacted by Declaratory Order**

7 The Petitioners do not seek to have any third persons, associations, or organizations
8 “bound” by the declaratory order. The statutory clarification sought will “bind” public
9 school districts represented by Petitioners regarding the amount of salary increase that
10 can be provided to certificated instructional employees for the 2018-19 school year.
11 Petitioners further assert that clarification and guidance on the restrictions—if any—and
12 parameters of RCW 41.59.800(1) (a statute which is valid for a single school year and
13 expires August 2019) will assist both public school districts and the local affiliates of the
14 Washington Education Association (WEA) who are the recognized bargaining
15 representatives for certificated teachers in each respective school district with whom
16 public school districts bargain, regarding what legislative limitations or restrictions have
17 been imposed on school districts for the upcoming school year. Petitioners believe that
18 both local affiliates of the WEA and public school districts throughout the State of
19 Washington will benefit from the guidance that will come from a declaratory order.
20 There are more than two hundred local affiliates of the WEA throughout Washington
21 representing certificated instructional staff, and the Petitioners believe the most pragmatic
22 and reasonable point of contact for the local affiliates is through the WEA itself:

23 Local Affiliates of the Washington Education Association
24 c/o Washington Education Association
25 P.O. Box 9100
Federal Way, WA 98063-9100

1 **1.3 Statute from Which the Controversy Arises**

2 RCW 41.59.800(1) (as amended by Engrossed Second Substitute Senate Bill 6362). See
3 below.

4 **II. FACTS FOR THE COMMISSION'S CONSIDERATION IN ISSUING A**
5 **DECLARATORY ORDER IDENTIFYING UNCERTAINTY**
6 **NECESSITATING RESOLUTION**

7 2.1 Passed by the Washington Legislature in 2017,¹ RCW 41.59.800 originally read:

8 **RCW 41.59.800**

9 **School district collective bargaining agreements—Certificated**
10 **instructional staff—Restrictions during the 2018-19 school year.**
11 **(Expires August 31, 2019.)**

12 (1) A school district collective bargaining agreement that is executed or
13 modified after July 6, 2017, and that is in effect for the 2018-19 school
14 year may not provide school district certificated instructional staff with a
15 percentage increase to total salary for the 2018-19 school year, including
16 supplemental contracts, that exceeds the previous calendar year's annual
17 average consumer price index, using the official current base compiled by
18 the bureau of labor statistics, United States department of labor, for the
19 city of Seattle. However, if a district's average certificated instructional
20 staff salary is less than the average certificated instructional staff salary
21 allocated by the state for that year, the district may increase salaries not to
22 exceed the point where the district's average certificated instructional staff
23 salary equals the average certificated instructional staff salary allocated by
24 the state.

25 (2) This section expires August 31, 2019.

2.2 In 2018, the United States Bureau of Labor Statistics determined that the annual
average consumer price index for 2017 in the City of Seattle was 3.1%.

2.3 During the 2018 legislative session, the Legislature amended RCW 41.59.800 with
Engrossed Second Substitute Senate Bill (E2SSB) 6362, Section 208.² The law will
now read:

¹ Engrossed House Bill 2242, Laws of 2017, c. 13, § 702.

² Laws of 2018, c. 266, § 208.

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RCW 41.59.800

School district collective bargaining agreements—Certificated instructional staff—Restrictions during the 2018-19 school year. (Expires August 31, 2019.)

(1) A school district collective bargaining agreement for certificated instructional staff that is executed or modified after July 6, 2017, and that is in effect for the 2018-19 school year may not increase average total salary for the 2018-19 school year, including supplemental contracts, in excess of the following:

(a) Annual salary inflationary adjustments based on the rate of the yearly increase of the previous calendar year's annual average consumer price index, using the official current base compiled by the bureau of labor statistics, United States department of labor, for the city of Seattle;

(b) Annual experience and education salary step increases according to the salary schedule specified in the agreement;

(c) Salary changes for staffing increases due to enrollment growth or state-funded increases under RCW 28A.150.260;

(d) Salary changes to provide professional learning under RCW 28A.415.430.

(e) Increases related to bonuses for attaining certification from the national board for professional teaching standards;

(f) School districts with an average total certificated instructional staff salary less than the statewide average certificated instructional staff salary allocation used to distribute funds for basic education as estimated by the office of the superintendent of public instruction for the 2018-19 school may provide salary increases up to the statewide average allocation; or

(g) Salaries for new certificated instructional staff hired in the 2018-2019 school year.

(2) Changes to any terms of employment for nonrepresented employees must comply with the same requirements established by this section.

(3) This section expires August 31, 2019.

(language added by E2SSB 6362 underlined, with now-deleted language omitted).

1 2.4 Petitioners’ clients—school districts throughout the State of Washington—interpret
2 subsections (a) and (f) of the amended version of RCW 41.59.800 as continuing to
3 limit increases for certificated instructional staff during the 2018-19 school year as
4 originally intended when the law was created in 2017, which is why the statute
5 continues to be entitled, in part, “Restrictions during the 2018-19 school year.”

6 2.5 Petitioners’ clients further understand that the average consumer price index (3.1%)
7 limitation for increases to collective bargaining agreements for certificated
8 instructional staff during the 2018-19 school year has now been codified as
9 subsection (a), and limits the total average salary increases that can be paid to
10 certificated instructional staff for the 2018-19 school year.

11 2.6 Petitioners’ clients further understand that subsections (b) through (e) and (g) explain
12 that some increases for individual staff will be “exempted” from the rule of
13 subsection (a) and/or subsection (f); i.e., these are increases that will not be counted
14 against the average total salary increase restriction described above. For example, the
15 following situations are exempted from the 3.1% limitation to increases: the dynamic
16 status quo is preserved and employees may move from an old salary step to a new
17 salary step based on changes in experience or education level (subsection (b)); school
18 districts may increase the average total salary expended in order to hire new teachers
19 due to enrollment growth or state-funded increases (subsections (c) and (g)); school
20 districts may compensate certificated instructional staff for any days of additional
21 professional learning (subsection (d)); and school districts may still pay bonuses to
22 any teacher who attains a national board certification from the national board for
23 professional teaching standards (subsection (e)).

24 2.7 Subsection (f) is derived from the language of former RCW 41.59.800 and continues
25 to provide an alternative limitation to the CPI calculation for those school districts
whose average total salary is below the statewide average certificated instructional

1 staff salary allocation used to distribute basic education funds for the 2018-19 school
2 year. The language of subsection (f) has been modified slightly in 2018 to make it
3 more technically accurate.

4 2.8 During collective bargaining sessions in 2018, local affiliates of the WEA with whom
5 Petitioners engage in collective bargaining and who represent certificated
6 instructional staff have consistently and persistently maintained that E2SSB 6362,
7 Section 208 *removed* the CPI limitations on salary increases for the 2018-2019 school
8 year. This interpretation of amended RCW 41.59.800(1) appears to emanate from the
9 theory that subsection (b) allows a school district-employer and its local union
10 representing certificated instructional staff to not only *move* staff from a previous
11 salary step to a new salary step based on education and experience, but also
12 authorizes the creation of a new salary schedule³ that imbeds increases *unlimited* by
13 subsection (a) (or, in the alternative, subsection (f) for eligible school districts). Local
14 affiliates of the WEA have contended that allowing unrestricted increases under
15 subsection (b) regardless of subsection (a) or subsection (f) effectuates the
16 Legislature's intent to have increased state allocations from the 2018 legislative
17 session applied to teacher salaries.

18 2.9 Petitioners' client-school districts, however, believe that the language of RCW
19 41.59.800(1) as amended must be interpreted under the principles of statutory
20 construction recognized by the Commission, i.e., words used within a statute must
21 be given the full effect intended by the Legislature,⁴ and statutes must be interpreted
22 and construed so that all the language used is given effect and no portion is rendered
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24

25 ³ The state salary schedule was eliminated by EHB 2242 starting in the 2018-19 school year and Districts are required to establish new negotiated salary schedules.

⁴ *State – Transportation*, Decision 8317-B (PSRA, 2005).

1 meaningless or superfluous.⁵ These employers also believe that RCW 41.59.800 is
2 not ambiguous merely because different interpretations are conceivable.⁶

3 2.10 With these fundamental principles of statutory construction in mind, Petitioners'
4 client-school districts believe that the limits to salary increases contained in
5 subsection (a) (or in the alternative for eligible school districts, subsection (f)) must
6 be the starting rule and must be given full effect and meaning. The client-school
7 districts further believe that subsection (b) must be given its plain-reading
8 interpretation, i.e., it is an exception to the rule that allows individual teachers to
9 advance on salary schedule steps by reason of experience and education without such
10 salary steps movements detracting from the 3.1% increase permitted by subsection
11 (a).

12 2.11 However, subsection (b) says nothing about formulating *new* salary schedules so as
13 to imbed unlimited increases that would defy and contradict subsection (a).
14 Moreover, if subsection (b) is interpreted as the Legislature's intent to *remove*
15 limitations on salary increases for the 2018-2019 school year by simply allowing
16 such discretionary increases to be loaded into a newly-created salary schedule, this
17 would render the rule announced in subsection (a) (and subsection (f)) meaningless
18 and superfluous. In fact, client-school districts contend, the interpretation being
19 advanced by local WEA affiliates would render meaningless and superfluous the
20 *entirety* of Section 208, the purpose of which as written is to place restrictions on
21 salary increases for the 2018-19 school year. If the Legislature had actually intended
22 that there be no limitations or restrictions on salary increases for certificated
23 instructional staff in 2018-19, it would make little sense that they would have retained
24 and modified a statute entitled, "Restrictions during the 2018-19 school year."

25 ⁵ *Whatcom County v. City of Bellingham*, 128 Wn.2d 537 (1996).

⁶ *State – Transportation*, Decision 8317-B.

1 2.12 Petitioners likewise have reviewed the legislative history of E2SSB 6362 and are
2 confident that it supports the Petitioners' understanding and interpretation of state
3 law. The bill analyses and reports in the legislative record explained that salary
4 increases for 2018-19 would be limited to the CPI, subject to the several "exceptions"
5 that included salary step increases.⁷ During public hearings on the amendments
6 before the House Appropriations Committee, staff presented the bill as not allowing
7 salary increases above CPI and characterized the step increases as being based on the
8 prior year.⁸ WEA lobbyist Lorrell Noahr spoke to the House Appropriations
9 Committee, commenting on the CPI limitation contained in the bill:

10 Compensation increases are limited to inflation at three percent in this bill
11 for school year 18-19. This works against the goal of implementing
12 professional compensation next year and presents a significant math
13 challenge when beginning teacher salaries are increasing by eleven percent.
14 We recommend removing this provision from the bill. . . ."⁹

15 However, the Legislature did *not* remove the portion of the bill to which Ms. Noahr
16 was directing her comments and the compensation increase limitation about which
17 she expressed concerns remained as subsection (1)(a) of Section 208 in E2SSB when
18 the bill was passed into law.

19 2.13 Petitioners' client-school districts believe they are legally bound to follow the
20 restrictions imposed by RCW 41.59.800 while local bargaining affiliates of the WEA
21 believe that RCW 41.59.800 has been amended to eliminate any such restrictions.
22 This contrast between the interpretation of RCW 41.59.800 asserted by WEA local
23 affiliates and the interpretation as asserted by the Petitioners' client-school districts
24 creates an untenable obstacle to public collective bargaining involving public school
25 certificated employees. This difference of understanding will eventually affect

⁷ See Bill Analysis, House Appropriations Committee, (Feb.24, 2018) (referring to the "exceptions added to the
"temporary limits on salary increases" in EHB 2242); and House Bill Report, (March 8, 2018) (same).

⁸ See TVW, Video of 2/24/18, 10 a.m. House Appropriations Committee, online at
<https://www.tvw.org/watch/?eventID=2018021320>, at 3:44:20 (visited May 30, 2018).

⁹ *Id.*, at 3:58:11.

1 hundreds of bargaining tables and will impact the Commission as well, as numerous
2 local bargaining teams seek assistance with mediation or require hearing officers in
3 the coming months.

4 2.14 The Superintendent of Public Instruction has been asked to provide further guidance
5 on this disputed interpretation of RCW 41.59.800 and issued a communication
6 declining to do so. Instead, the Superintendent noted that chapter 41.59 RCW is a
7 statute within the purview and authority of the Commission, not his office. The
8 Superintendent also encouraged parties to decide the meaning of the law at the
9 bargaining table.

10 2.15 Although petitioners believe the interpretation of RCW 41.59.800(1) advocated on
11 behalf of their client-school districts is the appropriate interpretation of state law,
12 such clients are primarily interested in the Commission taking action to adopt *an*
13 interpretation and to issue much-needed clarification and/or guidance on this
14 fundamental question impacting collective bargaining for the 2018-19 school year.
15 Since a declaratory order has the same status as any other order entered in an
16 adjudicative proceeding conducted by the Commission,¹⁰ an order interpreting
17 amended RCW 41.59.800(1) consistent with the Petitioners' understanding would be
18 in the interest of all the parties engaged in collective bargaining. By providing
19 guidance regarding whether a statutory limitation for increases exists in the statute
20 as written, all parties would benefit and collective bargaining will move forward
21 more productively.

22 **III. ISSUE TO BE ADDRESSSED IN THE DECLARATORY ORDER**

23 3.1 Whether RCW 41.59.800(1)(a) limits increases generally to the total average
24 certificated instructional staff salaries consistent with the 3.1% CPI cap, or whether
25

¹⁰ WAC 391-08-520 (9).
PETITION FOR DECLARATORY ORDER - 9
Petition(2)

1 subsection (1)(b) of that law was intended by the Legislature to *remove* any
2 restrictions on increases to the average total salary for certificated instructional staff
3 in the 2018-19 school year otherwise required by subsection (1)(a), provided that
4 such increases are imbedded in a newly-developed salary schedule?

5 IV. RELIEF REQUESTED

6 4.1 Petitioners, on behalf of their client-school districts, request a **declaratory order**
7 pursuant to RCW 34.05.240 and WAC 391-08-520 that will provide the
8 interpretation and guidance requested above and explain the restrictions that the law
9 places on compensation increases available for the 2018-2019 school year;

10 4.2 This relief is requested because, based on the reasons and facts stated above, there is
11 uncertainty and ensuing controversy arising from differing interpretations of RCW
12 41.59.800(1) that necessitate resolution;

13 4.3 This relief is required because the uncertainty and resulting controversy will
14 adversely impact Petitioners' client-school districts, who are required to follow the
15 law and negotiate compensation for staff within any parameters or restrictions
16 established by the Legislature;


17 4.4 Such a declaratory order will not serve merely as an advisory opinion, but will instead
18 provide necessary clarification to all parties regarding the ability of school districts
19 to negotiate salary increases for 2018-19; will mitigate the likelihood of bargaining
20 to impasse during the coming months; and will assist all parties in avoiding positions
21 that may later be interpreted as unfair labor practices for refusal to bargain in good
22 faith; and

23 4.5 The benefits of having such a declaratory order from the Commission will far
24 outweigh any possible adverse effects of such an order.

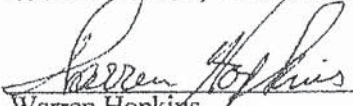
25 DATED this 28th day of June, 2018.

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PATTERSON BUCHANAN
FOBES & LEITCH, INC., P.S.

By: 
Curtis Leonard, WSBA 38976


Charles W. Lind, WSBA 19974


Warren Hopkins


Amie Brandmire

CERTIFICATE OF SERVICE

I, Christopher Moore, hereby declare that on this 29th day of June, 2018, I caused to be delivered via the method listed below the document to which this Certificate of Service is attached (plus any exhibits and/or attachments) to the following:

ATTORNEY NAME & ADDRESS	METHOD OF DELIVERY
Public Employment Relations Commission P.O. Box 40919 Olympia, WA 98504 filing@perc.wa.gov	■ Electronic Mail ABC Legal Messenger Service Regular U.S. Mail Other: _____
Washington Education Association 32032 Weyerhaeuser Way S Federal Way, WA 98001	Electronic Mail ■ ABC Legal Messenger Service Regular U.S. Mail Other: _____

I certify under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 29th day of June, 2018 at Seattle, Washington.

/s/Christopher Moore
Christopher Moore
Legal Assistant

From: [Christopher J. Moore](#)
To: [PERC, Filing \(PERC\)](#)
Cc: [Curtis M. Leonard](#); [Chuck W. Lind](#); [warren@ernn.com](#); [Brandmire, Amie H.](#)
Subject: In the Matter of the Petition of Curtis Leonard, Charles Lind, Warren Hopkins, and Amie Brandmire for and on behalf of their Public School District Clients for a Declaratory Order - Petition
Date: Friday, June 29, 2018 12:25:38 PM
Attachments: image001.png
707305.pdf

To the Public Employment Relations Commission,

Please see attached Petition for a Declaratory Order pursuant to RCW 34.05.240 and WAC 391.08.520 requesting an interpretation and clarification of RCW 41.59.800. This document is being submitted to correct a document labeled as case no. 128580-U-16. If you have any questions or need additional information, please feel free to contact Charles Lind at cwl@pattersonbuchanan.com and Chris Moore at cjm@pattersonbuchanan.com.

Thank you for your time and consideration,

Christopher J. Moore | Legal Assistant
DIRECT 206.462.6792 | TOLL FREE 800.722.3815
cjm@pattersonbuchanan.com

SEATTLE

2112 THIRD AVENUE, SUITE 500
SEATTLE, WA 98121
P 206.462.6700 | F 206.462.6701

PORTLAND

1001 SW FIFTH AVE., SUITE 1100
PORTLAND, OR 97204
P 503.200.5400 | F 503.200.5401



**Patterson Buchanan
Fobes & Leitch INC. P.S.**

www.pattersonbuchanan.com

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