



# WSLC

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# Legislative Update

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A weekly report from the Washington State Labor Council, AFL-CIO



# Future of collective bargaining at stake

## State employee unions' lawsuits aren't about "greed," they're about bargaining

"Everything we feared could go wrong, did. We are witnessing an unprecedented economic crisis, the likes of which arguably we have not seen since the Great Depression."

So said chief revenue forecaster Arun Raha, heaping more bad news on already bad news. A preliminary revenue forecast now puts the shortfall at \$8.3 billion, some \$2.5 billion worse than previously assumed in the unpopular all-cuts budget proposed by Gov. Chris "I-Hate-It-Too" Gregoire. Next week, the chairs of the House and Senate budget committees say they plan to outline budget proposals that assume no new revenues, as Rep. Kelli Linville (D-Bellingham) puts it, to see "what a budget made completely of cuts looks like."

It's in this bleak context, that *The Olympian* newspaper this week called some unions representing state employees "oblivious and greedy" for filing lawsuits against Gregoire for her refusal to fund their contracts' negotiated raises in her budget proposal.

These lawsuits are NOT about forcing the governor and state lawmakers to pay for raises in the context of layoffs and dramatic cuts in state services. That's completely absurd, and it's difficult to see good unions—both affiliated and not affiliated with the Washington State Labor Council—accused of greed in this context.

These lawsuits are about no less than the very future of collective bargaining for state employees. If a governor, any governor, can negotiate a contract over a period of months, have that contract ratified by state employees, and then unilaterally decide the state can no longer afford it a few weeks later, what's the point of bargaining in the first place?

Imagine a private-sector CEO doing the same thing: negotiating a labor contract and then just deciding to toss it when presenting the company's proposed budget to the Board of Directors. Obviously, it wouldn't be legal.

It shouldn't be legal in the public sector either. The law already has a mechanism for rejecting state employee contracts deemed unaffordable. It's called putting the contracts to a vote and having the Legislature reject them. Then, it's back to the bargaining table.

Yes, there is language that allows the governor's budget director to declare a contract no longer "financially feasible." That's what Gregoire's guy did the day before she announced her budget. The problem is, "feasible" is in the eye of the beholder. What's the point of even negotiating a contract with

the governor, if he or she can turn around a month later and unilaterally decide the deal is no longer feasible? If a higher revenue forecast comes in, can state employees toss the negotiated contract and get a bigger raise? When is a deal a deal?!

So now, state employees find themselves in the untenable position of contract limbo. The House and Senate are poised to propose budgets that may include wage freezes, across-the-board layoffs, or who-knows-what. And none of it is subject to collective bargaining.

These lawsuits are about preserving the integrity of the collective bargaining process, not about greed. Eventually, either the courts or the legislature are going to have to fix the process to ensure that both sides know the rules, and that state employees enjoy the same bargaining rights that all private sector and local government workers already have.

## Worker Privacy Act: This ain't California

This week, state Attorney General Rob McKenna's office issued an "informal opinion" that is flawed and incorrect in its analysis of the Worker Privacy Act, and appears driven by partisan ideological forces. In response, the Washington State Labor Council has offered its own legal analysis explaining why our state is well within its rights to create a minimum standard to protect workers' privacy. There are many distinguished labor law attorneys and experts who agree with our

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assessment that our state is not preempted by federal law as McKenna's office suggests. (For more details: [www.wslc.org/reports/2009/February/19.htm](http://www.wslc.org/reports/2009/February/19.htm))

Ultimately, it's a difference of legal opinion. One opinion sides with the privacy and free-speech rights of workers, and another opinion aims to protect employers' ability to force -- not communicate, but FORCE -- their opinions regarding matters of individual conscience upon their employees under threat of discipline or firing.

But one thing is absolutely clear: this ain't California.

The Worker Privacy Act is nothing like a California law that the U.S. Supreme Court rejected last year as being preempted by the National Labor Relations Act. McKenna and business lobbying groups continue to point to that case as evidence that the Worker Privacy Act runs afoul of federal law.

In 2008, California legislators passed a law that prohibited employers receiving state grants or funds of more than \$10,000 per year from using the funds "to assist, promote, or deter union organizing." The goal was to stop taxpayer money from being used by these employers to finance the hiring of union-busting consultants and attorneys.

In its June 2008 decision, *Chamber of Commerce v. Brown*, the U.S. Supreme Court ruled that was a no-no. The court decided that the statute interfered with free debate in labor disputes because its onerous enforcement scheme, punitive penalties and burdensome record-keeping requirements pressured employers to forgo their free speech rights.

The Worker Privacy Act does not prohibit employer speech and does not create any similar pressure on employers to forgo their free speech rights. It contains no ban on employer speech either directly through its provisions or indirectly through its enforcement scheme. It has no record-keeping requirements or punitive sanctions that chill employer speech.

Its narrowly drawn prohibition bars the discipline or firing of workers to force their attendance, participation and forced listening to matters of individual conscience unrelated to job performance. It is the act of firing or disciplining or threatening to do so—not employer speech—that is banned.

In its *Chamber v. Brown* decision, the Supremes were very careful to say that states cannot "directly regulate" or enact an "express prohibition" on employers' non-coercive speech. The Worker Privacy Act does neither. It neither denies employees' opportunities to listen freely nor employers' opportunities to speak freely. It does not intrude on a fair and free election process under the National Labor Relations Act and does not interfere with robust debate.

The shallow, flawed "informal opinion" issued this week by Rob McKenna's office citing *Brown* adds nothing to the debate except a new talking point for his allies among the business lobbying groups. He should be embarrassed.

## WSLC Legislative Conference this Thursday!

Leaders, staffers and rank-and-file members of WSLC-affiliated unions are invited to get a progress report on labor's legislative agenda at the Washington State Labor Council's 2009 Legislative Conference, from 8:30 a.m. to lunchtime this Thursday, Feb. 26 at the Olympia Red Lion Hotel. Gov. Chris Gregoire, along with various legislative leaders and state department heads, will address delegates at the conference. Participants will then be urged to go to the State Capitol to meet with their state legislators about the working families issues discussed at the conference.

**And don't forget our Legislative Reception from 6:30 to 8:30 p.m. the preceding evening, Wednesday, Feb. 25 at the hotel.** Many legislators and other state officials will be there. The conference fee, which includes materials, lunch and one admission to the reception, is \$50. Register at the door.

## On unemployment benefits, "Restore to 4!"

We're hearing that some in the business community are attempting to "draw a line in the sand" on unemployment benefits. The governor and legislature passed legislation temporarily boosting benefits as an economic stimulus, which business groups opposed despite the fact that those benefits will immediately be spent at businesses in local communities.

Now, business groups are saying "no way" to a permanent change to restore benefits to the 4.0-multiplier level, where they were for decades. (It means the weekly benefit was 4% of the average of your two highest-earning quarters.) In 2005, as part of an effort to gradually restore benefits that were dramatically cut two years earlier, the multiplier was cut to 3.85. For a worker earning \$30,000 a year (\$7,500 per quarter), the multiplier change cut weekly benefits from \$300 to \$288.75.

It may not seem like much, but since the multiplier was cut, **workers have lost \$68 million in U.I. benefits** they would've had if the multiplier had stayed at 4.0. That's almost as much as A-Rod himself made during that period, only the money would've been spent on Main Street, WA, and not on Dominican steroids.

Now that the legislature is considering a proposal to make permanent structural changes to the tax system that will significantly downsize the U.I. Trust Fund, it's the appropriate time to restore the multiplier to 4.0, permanently. This would raise benefits \$8 to \$19 per week, would cost \$20-30 million per year depending on unemployment levels, and would not be phased in until 2010, after the just-enacted temporary benefit boost has expired.

That's a reasonable, fair-minded change, not something worthy of drawings lines in the sand (with tassel-toed loafers).