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**BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
STATE OF WASHINGTON**

WA INTERPRETERS,

NO. 133420-U-21

Petitioner,

v.

RESPONSE TO MOTION FOR
TEMPORARY RELIEF

WASHINGTON STATE OFFICE OF
FINANCIAL MANAGEMENT,

Respondent.

The Respondent, State of Washington, WASHINGTON STATE OFFICE OF FINANCIAL MANAGEMENT (OFM), by and through its attorneys, ROBERT W. FERGUSON, Attorney General, M. KATE GARCIA, Assistant Attorney General, and CHERYL L. WOLFE, Senior Counsel, hereby request an order denying the Motion for Temporary Relief filed in the above-entitled matter.

I. RELEVANT BACKGROUND

RCW 39.26.300 directs the Department of Labor & Industries (hereinafter department) to purchase in-person spoken language services directly through language access providers (hereinafter LAPs), through limited contracts with scheduling and coordinating delivery organizations, or both. Declaration of Karen Jost, ¶ 2. This law was passed during the 2018 legislative session and became effective on June 7, 2018. *Id.*

1 Prior to changes implemented under RCW 39.26.300, medical and vocational providers
2 (hereinafter providers) were responsible for arranging for a LAP when they identified a linguistic
3 barrier to care or consent for a client. Declaration of Karen Jost, ¶ 3. Providers used LAPs on
4 staff or they may have had relationships with LAPs or interpreter agencies in their community.
5 *Id.* Despite the requirement that providers arrange for a LAP, some LAPs work directly with
6 injured workers and crime victims and attend all of that individual's appointments without
7 invitation from the provider. *Id.* In some cases, LAPs took on advocacy and claim navigation
8 roles for the injured worker. *Id.* This relationship is inconsistent with the code of ethics for LAPs
9 found in WAC 388-03-050, which the department has adopted in its payment policy. *Id.*

10 Spoken language interpretation is delivered face-to-face, virtually via telehealth, or
11 telephonically, with face-to-face interpretation being the most common. Declaration of Karen
12 Jost, ¶ 4. Previously, face-to-face interpretation was provided when individual LAPs worked
13 directly with providers to schedule appointments or worked with an interpreter agency to
14 coordinate scheduling appointments. *Id.* Both individual LAPs and interpreter agencies received
15 provider numbers from the department to bill for their services. *Id.* When an interpreter agency
16 was involved, the agency billed the department and then the agency paid the LAP. *Id.* The agency
17 typically took a percentage of the fee paid to the LAP who provided the service. *Id.* Individual
18 LAPs submitted bills to and were paid directly by the department. *Id.*

19 Passage of Substitute Senate Bill (hereinafter SSB) 6245 in 2018 (codified as RCW
20 39.26.300) kicked off a significant change in the way in which the department would procure
21 language interpretation services. Declaration of Karen Jost, ¶ 5. The law required the department
22 to purchase in-person spoken language services directly through LAPs, through limited contracts
23 with scheduling and coordinating delivery organizations, or both. *Id.*

24 On July 23, 2019, the department issued a Request for Proposals to procure interpreter
25 scheduling services. Declaration of Karen Jost, ¶ 6. On or about June 11, 2020, the contract for

1 development of the interpreter scheduling system was awarded to interpretingWorks. *Id.*
2 Implementation of this scheduling system was designed to eliminate the previous option for
3 interpreter agencies to coordinate and receive payment for interpretation for non-urgent
4 appointments. Declaration of Karen Jost, ¶ 7. Urgent and emergency care appointments for
5 workers who require a LAP may still be scheduled through on-demand interpretation through
6 individual LAPs. *Id.*

7 The department created and published a payment policy for the interpreter scheduling
8 system on September 1, 2020, with an effective date of October 1, 2020. Declaration of Karen
9 Jost, ¶ 9. The payment policy specifies that providers must use the scheduling system for all
10 appointments, with the exception of emergency appointments. *Id.*

11 Updates on the implementation of the scheduling system were provided to stakeholders,
12 including LAPs, via a GovDelivery e-mail subscription service entitled *Interpreter Services at*
13 *L&I*, and the department website. Declaration of Karen Jost, ¶ 10. The GovDelivery messaging
14 system for interpreter services is a long-standing tool that the department has used to
15 communicate key information to LAPs and subscribers. Declaration of Karen Jost, ¶ 11. Prior to
16 the department's website upgrade in late 2019, sign-up information for the GovDelivery
17 messaging system was available on the interpreter services webpage. *Id.* In July 2020, the
18 department's interpreter services webpage was updated to show information about the coming
19 scheduling system, and included instructions to sign up for the GovDelivery messaging system
20 to receive updates. *Id.*

21 The department and interpretingWorks presented a series of introductory webinars in
22 September 2020 to teach providers and LAPs how to enroll in and use the interpretingWorks
23 scheduling system. Declaration of Karen Jost, ¶ 12. Multiple messages were sent between
24 September 3, 2020, and September 18, 2020, via GovDelivery, advertising webinars featuring
25 the interpretingWorks scheduling system. *Id.* Three instructive webinars were held for

1 interpreters. *Id.* Approximately 725 providers and LAPs attended these sessions. *Id.* The vendor
2 also created a YouTube video to walk providers and LAPs through the registration process in
3 case they could not attend the demonstration webinars. *Id.*

4 In September 2020, interpretingWorks began enrolling providers and LAPs into the
5 scheduling system. Declaration of Karen Jost, ¶ 13. A National Provider Identifier (NPI) is
6 needed to register for the electronic scheduling system. *Id.* A NPI number is a unique, 10-digit
7 numbers used for identifying specific individual. *Id.* To obtain a NPI number, a LAP may furnish
8 a copy of their Social Security Number or two of the following proofs of identity: valid passport,
9 birth certificate, a photocopy of a U.S. driver’s license, or State issued identification. WA
10 Interpreters Motion for Temporary Relief, Exh. 7. Prior to implementation of the scheduling
11 system, individual LAPs were required to submit a provider application, which includes a copy
12 of their credentials as an interpreter, and a taxpayer identification number, an employer
13 identification number, or a Social Security Number. Declaration of Karen Jost, ¶ 13.

14 On November 20, 2020, WA Interpreters filed its Representation Petition seeking to be
15 certified as the bargaining representative for LAPs defined under RCW 41.56.030(11)(a)(ii). As
16 of November 22, 2020, 40 percent of individual LAPs who billed the department for services in
17 2019 were enrolled in the scheduling system. Declaration of Karen Jost, ¶ 15.

18 The scheduling system for in-person scheduled appointments went live on April 12,
19 2021, via interpretingWorks. Declaration of Karen Jost, ¶¶ 19–20. If prior to April 12, 2021,
20 providers scheduled a LAP for appointments occurring between April 12, 2021, and May 14,
21 2021, the provider is not required to reschedule it in the interpretingWorks scheduling system.
22 Declaration of Karen Jost, ¶ 23.

23 II. LEGAL STANDARD

24 A complainant in an unfair labor practice proceeding may make a motion requesting the
25 commission seek appropriate temporary relief through the superior court. WAC 391-45-430. If

1 the commission determines the complaint alleging an unfair labor practice states a cause of
2 action, the complainant may file a motion for temporary relief together with affidavits as to the
3 risk of irreparable harm and the adequacy of legal remedies. WAC 391-45-430(3). PERC may
4 not seek temporary relief in superior court “unless it appears that one or more of the allegations
5 in the complaint of unfair labor practices is of such a nature that, if sustained, the complainant
6 would have no fair or adequate remedy and the complainant would suffer irreparable harm unless
7 the status quo be preserved pending the completion of administrative proceedings.” WAC 391-
8 45-430(5). If a determination is made temporary relief should be sought, “the executive director,
9 acting in the name and on behalf of the commission and with the assistance of the attorney
10 general, shall petition the superior court of the county in which the main office of the employer
11 is located or wherein the person who is alleged to be engaging in unfair labor practices resides
12 or transacts business for an injunction pendente lite.” WAC 391-45-430(5)(a).

13 **III. ARGUMENT**

14 **A. WA Interpreters Fails to Demonstrate a Risk of Irreparable Harm**

15 WA Interpreters does not present sufficient evidence to establish LAPs are at risk of
16 irreparable harm absent the temporary relief requested in its Motion for Temporary Relief. WAC
17 391-45-430 requires a complainant to file and serve affidavits in support of a Motion for
18 Temporary Relief. WAC 391-45-430. “The purpose of the affidavits required by WAC 316-45-
19 430 is to set forth the risk of irreparable harm to the petitioners and the risk of other adequate
20 legal remedies.” *Washington State Ferries (Marine Engineers Beneficial Association)*, MEC
21 Decision 102 (1993). “If the commission determines that temporary relief should be sought, the
22 executive director . . . with the assistance of the attorney general, shall petition the superior court
23 . . . for an injunction pendent lite.” WAC 391-45-430(5)(a). The executive director and its
24 assigned assistant attorney general “must be armed with factual statements describing a dire and
25 urgent situation with predictable results from which no relief can reasonably be expected” to

1 prevail in Superior Court. *Washington State Ferries (Marine Engineers Beneficial Association)*,
2 MEC Decision 102 (1993). This is an extraordinary remedy that should only be used “in a clear
3 and concise case.” *Pierce County*, Decision 13171 (PECB, 2020) (*citing Kucera v. State Dept.*
4 *of Transp.*, 140 Wn.2d 200, 209 (2000) (*citing* 42 Am.Jur.2d Injunctions § 2, at 728 (1969))).

5 In its Motion for Temporary Relief, WA Interpreters claims the implementation of the
6 online scheduling system through interpretingWorks on April 12, 2021, “is actively inflicting
7 irreparable harm and diminishing work opportunities of certain providers.” WA Interpreters
8 Motion for Temporary Relief, p. 4 ¶ 13. In support of its Motion for Temporary Relief, WA
9 Interpreters submits declarations on behalf of ten (10) LAPs: Juan Medina Bloise, Leena Lara,
10 Alexis Gonzalez, Anastacio Lepe, Veronica Mendez, Perpetuo Gallardo, Rosie Rivera, Karen
11 Avellaneda, Rose Elena Birrueta, and Daniel Luna Vasquez. *See* WA Interpreters Motion for
12 Temporary Relief, Exhs. 1, 11–19.

13 Juan Medina Bloise declares, “L&I’s decision to dramatically alter the means by which
14 providers acquire appointments through implementation of an online scheduling system is a
15 significant change to providers’ conditions of employment and is actively inflicting irreparable
16 harm on many providers by diminishing their work opportunities.” Motion for Temporary Relief,
17 Exhs. 1, ¶ 5. In support of this position, he further declares “[t]he registration/enrollment process
18 for interpretingWorks takes 2–3 business days to complete, time which providers are not paid
19 for and cannot recover and during which providers will be unable to accept new appointments.”
20 WA Interpreters Motion for Temporary Relief, Exh. 1 ¶ 12.

21 However, on July 22, 2020, an email message was sent via the GovDelivery messaging
22 system for interpreter services, informing recipients they could complete an online enrollment
23 form, and once submitted, an interpretingWorks’ staff member would reach out to complete the
24 enrollment process. Declaration of Karen Jost, Exh. 3. Beginning in September 2020, seven (7)
25 months before the new scheduling system launched on April 12, 2021, interpretingWorks staff

1 began enrolling LAPs in the system. Declaration of Karen Jost, ¶ 13. Multiple messages were
2 sent between September 3, 2020, and September 18, 2020, via the GovDelivery messaging
3 system, advertising webinars featuring the interpretingWorks scheduling system. Declaration of
4 Karen Jost, ¶ 12. These webinars were designed to teach providers and LAPs how to enroll in
5 and use the scheduling system. *Id.* Approximately 725 providers and LAPs attended these
6 sessions. *Id.* A YouTube video was also created by interpretingWorks to walk providers and
7 LAPs through the registration process in case they could not attend the demonstration webinars.
8 *Id.* As of November 20, 2020, the date WA Interpreters filed a Representation Petition with
9 PERC, approximately 40 percent of individual LAPs who billed the department for services in
10 2019 were enrolled in the scheduling system. Declaration of Karen Jost, ¶ 15.

11 None of the declarations submitted in support of the Motion for Temporary Relief state
12 there was a lack of notice or inability to register for interpretingWorks prior to the launch date,
13 limiting their ability to start accepting appointments when the scheduling system went live. *See*
14 WA Interpreters Motion for Temporary Relief, Exhs. 1, 11–19. Rather, three (3) of the
15 declarants, Juan Medina Bloise, Leena Lara, and Veronica Mendez, declare they have not signed
16 up to use the interpretingWorks system. WA Interpreters Motion for Temporary Relief, Exh. 1
17 ¶ 18; Exh. 11 ¶ 4; Exh. 14 ¶ 4. Juan Medina Bloise declares he has “refused to sign up to use the
18 interpretingWorks system.” WA Interpreters Motion for Temporary Relief, Exh. 1 ¶ 18. Leena
19 Lara and Veronica Mendez declare they “oppose L&I’s adoption and implementation of the
20 interpretingWorks online scheduling system” and “do not wish to use the interpretingWorks
21 online scheduling system.” WA Interpreters Motion for Temporary Relief, Exh. 11, ¶¶ 5–6, Exh.
22 14, ¶¶ 5–6.

23 LAPs who refuse to enroll in the interpretingWorks system are unable to accept
24 interpreting appointments through the scheduling system. *See* Declaration of Karen Jost, ¶¶ 9,
25 22. As a result, these declarants are self-imposing diminished work opportunities upon

1 themselves and fail to show that actually registering for and using the interpretingWorks online
2 scheduling system precludes them from obtaining new interpreting appointments, materially
3 changes the number of appointments they are able to accept, or materially changes the number
4 of hours they are able to work. Under prior and current department policy, LAPs are limited to
5 delivering 8 hours of service per day. Declaration of Karen Jost, ¶ 20. There are no additional
6 limitations on the number of appointments a LAP can work as a result of the electronic
7 scheduling system. *Id.*

8 Six (6) of the declarants, Alexis Gonzalez, Anastacio Lepe, Perpetuo Gallardo, Rosie
9 Rivera, Karen Avellaneda, and Rose Elena Birrueta, state they were denied the ability to work
10 several appointments scheduled prior to April 12, 2021. WA Interpreters Motion for Temporary
11 Relief, Exh. 12 ¶ 7; Exh. 13 ¶ 7; Exh. 15 ¶ 7; Exh. 16 ¶ 6; Exh. 17 ¶ 7. However, from their
12 declarations it appears specific providers with whom the declarants made appointments directly,
13 required the LAPs to reschedule through the electronic scheduling system. *Id.* None of these
14 declarants state they attempted signed up for appointments through interpretingWorks and were
15 denied appointments. *See id.* By not scheduling appointments through interpretingWorks, these
16 declarants chose to limit their work opportunities. As they each declare, they “do not wish to use
17 the interpretingWorks scheduling system.” WA Interpreters Motion for Temporary Relief, Exh.
18 12 ¶ 6; Exh. 13 ¶ 6; Exh. 15 ¶ 6; Exh. 16 ¶ 6; Exh. 17 ¶ 6.

19 The final declarant, Daniel Luna Vasquez, states he has not registered to use the
20 interpretingWorks system because he does not have a valid Social Security Number and cannot
21 obtain a National Provider Identifier (NPI) number, required to register for an interpretingWorks
22 account. WA Interpreters Motion for Temporary Relief, Exh. 19 ¶¶ 4–5.

23 A National Provider Identifier (NPI) is needed to register for the electronic scheduling
24 system. Declaration of Karen Jost, ¶ 13. A NPI number is a unique, 10-digit numbers used for
25 identifying specific individuals. *Id.* The National Provider Identifier Application/Update Form

1 submitted by WA Interpreters specifically sets forth alternative identifying information a LAP
2 can submit if they do not qualify for a Social Security Number. WA Interpreters Motion for
3 Temporary Relief, Exh. 7, p. 1. In such instances, a LAP may furnish a copy of two of the
4 following proofs of identity: valid passport, birth certificate, a photocopy of a U.S. driver's
5 license, or State issued identification. WA Interpreters Motion for Temporary Relief, Exh. 7.
6 Prior to implementation of the scheduling system, individual LAPs were required to submit a
7 provider application, which includes a copy of their credentials as an interpreter, and either a
8 taxpayer identification number, an employer identification number, or a Social Security Number.
9 Declaration of Karen Jost, ¶ 13.

10 Daniel Luna Vasquez does not declare he is unable to produce the alternate identifying
11 information that would allow him to obtain a NPI number and register for the interpretingWorks
12 online scheduling system. *See* WA Interpreters Motion for Temporary Relief, Exh. 19. Rather,
13 he declares that “[e]ven if I could register to use the interpretingWorks scheduling system, I
14 would not want to use it” *Id.* ¶ 6.

15 Similarly, Juan Medina Bloise declares he is personally aware of providers “who have
16 previously worked as language access providers without incident, but who are presently unable
17 to produce the proofs of identity necessary to obtain an NPI number. . . .” WA Interpreters
18 Motion for Temporary Relief, Exh. 1 ¶ 11. However, this statement fails to include any specific
19 details to support such a claim. It lacks information about how the declarant became aware of
20 such information, the number of LAPs impacted, the names of the LAPs impacted, and any steps
21 the impacted LAPs took to remedy the alleged issue.

22 Juan Medina Bloise also declares LAPs are no longer paid for “wait times,” which he
23 defines as “the time between the scheduled start time and the actual start time of an
24 appointment.” WA Interpreters Motion for Temporary Relief, Exh. 1, ¶ 16. In support of this he
25 claims to be “aware of providers who have accepted appointments through the interpretingWorks

1 system since April 12, 2021, and have not been permitted by certain medical/vocational
2 providers to sign in until the patient arrives” *Id.* This claim also fails to include any specific
3 details. It lacks information about how the declarant became aware of such information, the
4 number of LAPs impacted, and the names of the LAPs impacted. Based on his own statement,
5 it appears unidentified medical and vocational providers, not the interpretingWorks system or
6 the department, may be requiring unidentified LAPs to wait to sign in until the patient arrives.
7 *Id.* However, there has been no change to the department’s policy of paying for LAP wait time.
8 Declaration of Karen Jost, ¶ 22.

9 Similarly, Juan Medina Bloise declares unidentified providers are “expected to have a
10 smartphone . . . and [p]roviders without a smartphone . . . may be unable to work appointments
11 thorough the interpretingWorks system or at least experience heightened difficulty in doing so.”
12 WA Interpreters Motion for Temporary Relief, Exh. 1 ¶ 13. This claim also fails to include any
13 specific details. It lacks information about how the declarant became aware of such information,
14 the number of LAPs impacted, and the names of the LAPs impacted.

15 The interpretingWorks system is a web-based platform that works both on mobile and
16 stationary interfaces. Declaration of Karen Jost, ¶ 21. LAPs are not required to have a
17 smartphone. *Id.* For LAPs who do not have a smart phone or tablet to use for an individual
18 appointment, they may print out a work order and bring it to the appointment. *Id.* There is a
19 signature line for the provider to time stamp the work order and for the interpreter to check in
20 and later check out. *Id.* LAPs can email the work order to interpretingWorks. *Id.*

21 Finally, Juan Medina Bloise raises concerns about internet requirements. WA
22 Interpreters Motion for Temporary Relief, Exh. 1 ¶ 10. He claims LAPs are no longer able to
23 submit paper bills to the department and are now required to have regular internet access. *Id.*
24 However, LAPs may still submit a paper bill or enter their bill electronically using Provider
25 Express Billing. Declaration of Karen Jost, ¶ 22.

1 WA Interpreters fails to submit “factual statements describing a dire and urgent situation
2 with predictable results from which no relief can reasonably be expected.” Instead, it submits
3 declarations that ten (10) LAPs are unwilling to register for or use interpretingWorks, and as a
4 result are losing opportunities to accept new interpreting appointments. A Motion for Temporary
5 Relief seeks an extraordinary remedy that should not be granted to cure self-inflicted harm.

6 **B. WA Interpreters Fails to Demonstrate the Traditional Remedy of Backpay is**
7 **Inadequate if its Unfair Labor Practice Complaint is Granted**

8 The concept of backpay is a viable remedy if the commission grants the petition filed by
9 WA Interpreters. WA Interpreters fails to establish why this remedy or other remedies
10 traditionally issued in an unfair labor practice proceeding are inadequate. The only evidence
11 submitted by WA Interpreters that traditional remedies are inadequate comes from an opinion
12 contained in the Declaration of Juan Medina Bloise, which states:

13 I am unaware of any method that would allow for the retroactive calculation of
14 lost work/wages any particular provider experiences as a result of L&I’s
15 implementation of the online scheduling system. Providers do not worked fixed
schedules or hours; they work appointments on a case-by-case basis depending
on availability. . . .

16 WA Interpreters Motion for Temporary Relief, Exh. 1 ¶ 20.

17 Failure to work fixed hours has historically not precluded PERC from relying on the
18 traditional remedy of imposing backpay. In *Southwest Snohomish County Public Safety*
19 *Communications Agency*, Decision 11149 (PECB, 2011), PERC found the employer committed
20 an unfair labor practice when it unilaterally made changes to mandatory subjects of bargaining
21 without fulfilling its bargaining obligations; interfered with employee rights to union
22 representation; and discriminated against employees in retaliation for their union activities. *Id.*
23 PERC ordered the employer to restore the status quo ante by reinstating the working conditions
24 that existed prior to the unilateral changes; rescind discipline that had been imposed; and make
25 the employees whole through payment of backpay and benefit amounts the employees would

1 have earned in overtime while out on administrative leave. *Id.* In that case, the employees did
2 not have a set number of overtime hours they worked each month. *Id.* PERC ruled that,

3 In order to make [the employees] whole for the economic losses they suffered
4 as a result of being placed on paid administrative leave, my order requires that
5 the employer pay [them] for overtime they would have worked had they not
6 been on administrative leave, plus interest. The overtime wages will be
7 calculated based on [their] usual overtime wage rate, plus interest, for
8 the average number of overtime hours that the employer's other dispatch
9 supervisors worked [during the administrative leave dates].

7 *Id.*

8 Here, if PERC determines the department committed an Unfair Labor Practice, it could
9 award a payment loss remedy to the qualifying LAPs. The amount awarded to each LAP would
10 depend on facts as determined by the commission. However, as an example, the remedy could
11 be based upon the average payments each LAP earned for department interpreter appointments
12 over a certain period of time. As such, WA Interpreters fails to demonstrate a fair or adequate
13 remedy does not exist in this case.

14 **C. The Decision to Use an Electronic Scheduling System is Not Within the Scope of**
15 **Bargaining Between the Union and the State for Language Access Providers**

16 Rather than submit evidence demonstrating irreparable harm or the inadequacy of legal
17 remedies, all ten (10) of the declarations state they oppose implementation of interpretingWorks,
18 and want to elect a union to bargain with the state over implementation of a scheduling system.
19 *See* WA Interpreters Motion for Temporary Relief, Exh. 1 ¶ 17; Exh. 12 ¶ 5; Exh. 13 ¶ 5; Exh.
20 14 ¶ 5; Exh. 15 ¶ 5; Exh. 16 ¶ 7; Exh. 17 ¶ 5; Exh. 18 ¶ 5; Exh. 19 ¶ 7. However, bargaining the
21 decision to implement an online scheduling system is an illegal subject of bargaining.

22 “Illegal subjects of bargaining are those on which the parties may not agree because of
23 statutory or constitutional prohibitions.” *Washington State Ferries (Marine Engineers’*
24 *Beneficial Association)*, Decision 13318 (MRNE, 2021) (*citing Snohomish County (Snohomish*
25 *County Deputy Sheriff’s Association)*, Decision 8733-C (PECB, 2006)). RCW 39.26.300

1 requires the department to purchase language access services through contracts with scheduling
2 and coordinating delivery organizations. Based on this legislation, the department was legally
3 obligated to contract with a vendor for these services. As a result, whether the department uses
4 an electronic scheduling system is not a subject for bargaining. At most it is a topic for impact
5 bargaining.

6 In addition, RCW 41.56.510(2)(c) provides statutory limitations on the subjects of
7 bargaining between the governor and the exclusive bargaining representative for language access
8 providers. Specifically it states,

9 Notwithstanding the definition of “collective bargaining” in RCW
10 41.56.030(4), the scope of collective bargaining for language access providers
11 under this section is limited solely to: (i) Economic compensation, such as the
12 manner and rate of payments, including tiered payments; (ii) professional
13 development and training; (iii) labor-management committees; (iv) grievance
14 procedures; (v) health and welfare benefits; and (vi) [(vi)] other economic
15 matters. Retirement benefits are not subject to collective bargaining. By such
16 obligation neither party may be compelled to agree to a proposal or be required
17 to make a concession unless otherwise provided in this chapter.

18 RCW 41.56.510(2)(c).

19 As such, even if WA Interpreters prevails on its Representation Petition, appointment
20 scheduling systems is not within the scope of bargaining between the union and the state.

21 **D. Implementation of the Electronic Scheduling System is Protected Under the
22 Theory of Dynamic Status Quo**

23 Typically during the pendency of a representation petition, an employer is required to
24 maintain the status quo with respect to the wages, hours, and other terms and conditions of
25 employment of the employees affected. *Ben Franklin Transit*, Decision 13249 (PECB, 2020).
This is because modification of the status quo may improperly affect the laboratory conditions
necessary to the free exercise by employees of their right to vote. *Id.* However, the commission
has recognized “that occasionally the status quo ‘is not static and the employer needs to take

1 action to follow through with changes that were set in motion prior to the union filing a
2 representation petition.” *Id.* This is referred to as a *dynamic status quo. Id.*

3 “Changes that are part of the dynamic status quo are not seen as disruptive to laboratory
4 conditions in a representation proceeding, because the changes are already expected by
5 employees.” *Id.* An employer may implement changes after a representation is filed, when “the
6 changes are already expected by employees [and] the changes were set in motion and
7 communicated to employees prior to the filing of the representation petition.” *Id.* “What sets the
8 dynamic status quo in motion is the employer’s decision to which it is bound and at which point
9 it no longer has discretion, and therefore, its action or inaction is expected by the employees.”
10 *Id.*

11 The instant Motion for Temporary Relief interferes with the department’s obligation to
12 meet its 2018 legislative mandate, and is disturbing the dynamic status quo. RCW 39.26.300(3)
13 (Substitute Senate Bill (hereinafter SSB 6245)), required that, “No later than September 1,
14 2020... the department of labor and industries must purchase in-person spoken language
15 interpreter services directly from language access providers as defined in RCW 74.04.025, or
16 through limited contracts with scheduling and coordinating delivery organizations, or both.”
17 RCW 39.26.300(3). This legislation became effective on June 7, 2018. Declaration of Karen
18 Jost, ¶ 2.

19 According to Tammy Fellin, Legislative Liaison for the Department of Labor and
20 Industries, Juan Medina Bloise, President of WA Interpreters, and many other interpreters were
21 active during the legislative session in which SSB 6245 was enacted. Declaration of Tammy
22 Fellin, ¶ 3. Juan Medina Bloise “testified against SSB 6245 before the House & Labor Workplace
23 Standards committee, met with members of the legislature, and was “instrumental in securing
24 changes, such as allowing an owner of an agency to be defined as a language access provider.”
25 Declaration of Tammy Fellin, ¶ 3.

1 The following communications from the department and interpretingWorks to LAPs
2 demonstrate the changes to the appointment scheduling system were expected by LAPs, and set
3 in motion and communicated to LAPs prior to WA Interpreters filing its Representation Petition
4 on November 20, 2020:

- 5 • On July 24, 2019, an email message was sent via GovDelivery messaging system for
6 interpreter services informing recipients that the Request for Proposal was posted on
7 July 23, 2019. Declaration of Karen Jost, ¶ 11, Exh. 2.
- 8 • On July 22, 2020, an email message was sent via the GovDelivery messaging system
9 for interpreter services, informing recipients the interpreting scheduling system was
10 awarded to interpretingWorks, and they could complete an online pre-enrollment
11 form. *Id.*, Exh. 3.
- 12 • In September 2020, seven (7) months before the new scheduling system was launched
13 and approximately two (2) months before WA Interpreters filed its Representation
14 Petition, the department and interpretingWorks began enrolling LAPs in
15 interpretingWorks scheduling system. Declaration of Karen Jost, ¶ 13.
- 16 • Between September 3, 2020, and September 18, 2020, email messages were sent via
17 the GovDelivery messaging system, advertising webinars featuring the
18 interpretingWorks scheduling system. Declaration of Karen Jost, ¶ 12, Exh. 4.
19 Approximately 725 providers and LAPs attended the webinar sessions. Declaration
20 of Karen Jost, ¶ 12.
- 21 • On October 30, 2020, an email message was sent via the GovDelivery messaging
22 system titled, Update: New Spoken Language Interpreter Scheduling System.
23 Declaration of Karen Jost, ¶ 14, Exh 5.

1 As of November 20, 2020, the date WA Interpreters filed its Representation Petition,
2 approximately 40 percent of individual LAPs who billed the department for services in 2019
3 were enrolled in the scheduling system. Declaration of Karen Jost, ¶ 14.

4 Implementation of the electronic scheduling system is permitted under the concept of
5 dynamic status quo. The changes to the scheduling system were set in motion by the legislature
6 in 2018, and communicated to providers and interpreters at that time, two (2) years before the
7 Representation Petition was filed by WA Interpreters. That communication resulted in LAPs and
8 providers participating in the legislative process that resulted in the final law.

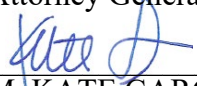
9 It is clear implementation of the electronic scheduling system was expected by LAPs
10 prior to and at the time the WA Interpreters filed its Representation Petition. Approximately 725
11 providers and LAPs attended the initial webinar sessions and 40 percent of individual LAPs who
12 billed for services in 2019 enrolled in interpretingWorks before the representation petition was
13 filed. As such, the decision to proceed with launching the new online scheduling system on April
14 12, 2021, was permitted during the pendency of a representation proceeding.


15 IV. CONCLUSION

16 For the reasons set forth above, Respondent respectfully requests the Motion for
17 Temporary Relief for the above-entitled matter be denied.

18 DATED this 27th day of April, 2021.

19 ROBERT W. FERGUSON
20 Attorney General

21 
22 M. KATE GARCIA
23 WSBA No. 48501
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25 
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Attorneys for Employer

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2 I certify that I served a copy of this document on all parties or their counsel of record on
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11 I certify under penalty of perjury under the laws of the state of Washington that the
12 foregoing is true and correct.

13 DATED this 27th day of April, 2021.

14 
15 _____
16 SCOTT L. KAPPES