

ADVISORY OPINION

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REFERENCES: RCW 42.52.070, RCW 42.52.030,
RCW 42.52.010(6)

SUMMARY OF CHANGES: Updated format only.

Ferry Passes

QUESTIONS

1. May a manager, as part of the state's bargaining team, propose language during collective bargaining that may benefit himself or herself, his or her spouse, or child?
2. May a manager, who on an approved withdrawal from a union after accepting a management position, be a part of the state's bargaining team with that union when the manager may receive a benefit for himself or herself, his or her spouse, or child because the member has the right to voluntarily revert back to a represented position and receive benefits previously negotiated?

ANSWERS

1. A manager negotiating on the agency's CBA team, who had reversion rights to a union position, would not be using their position to give themselves, their spouses, or family members a special privilege if they proposed language during collective bargaining that would allow them to receive a ferry pass without actually reverting back to their prior union position. There is no special privilege they did not already have and that was not already part of the CBA. Retiring managers, on approved withdrawal from the union, have always had the right to a ferry pass by reverting back to the union, so they did not add a new benefit, but merely eliminated the "bumping back" process required to get the ferry pass. In essence, the managers were and are not receiving any new benefit; they were just making the process of conferring a current benefit more efficient.
2. A collective bargaining agreement is not considered "a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee." A CBA is a tentative agreement reached through a negotiation process made up of several individuals who have no authority to ultimately accept or reject it. In fact the CBA is not binding until the Legislature funds it and the Governor signs it. The collective bargaining

process has checks and balances in place to insure that one individual cannot influence the outcome.

ANALYSIS

The Department of Transportation (DOT), in conjunction with the Labor Relations Office, part of the Office of Financial Management, negotiates collective bargaining agreements (CBAs) with their collective bargaining units on a biennial basis. A collective bargaining agreement is an agreement negotiated between a labor union and an employer that sets forth the terms of employment for the employees who are members of that labor union. One of the benefits negotiated into the CBA for ferry workers is an annual ferry pass issued upon retirement to the ferry worker, their spouse and dependent family members (defined as children under the age of 19, or still attending school). These passes have been issued to ferry workers for a long time - even before the existence of the CBA, when agency policies included these passes.

In the course of a ferry worker's career with DOT, they can promote into a management position. These management positions are not part of the collective bargaining unit, but these new managers may continue their union membership on an "approved withdrawal." This means that they continue to pay union dues, but are not actual members of the collective bargaining unit.

Members who maintain their union membership when promoted to a management position may revert back to their union position prior to retirement to take advantage of the benefits in the CBA that pertained to their prior union position. To accomplish this, the manager "bumps" the person who filled his/her prior union position and that person bumps the person who filled his/her vacated job, and so on down the line. When the worker who reverted back to their prior union position retires, everyone goes back to the positions they held before the reversion.

The questions posed by DOT relate to language that was placed into the Ferry Agents, Supervisors, and Project Administrators Association (FASPAA) 2007-2009 collective bargaining agreement that allowed the managers who were on an approved withdrawal from the union and retiring from DOT to receive ferry passes without first reverting back to their prior union position. A manager who qualified for this provision was part of the agency's negotiating team, and DOT wanted to determine if the manager's presence on the negotiating team was a violation of the Ethics in Public Service Act ("the Act"), chapter 42.52, RCW.

This opinion answers the above questions with regards to ferry passes only. The first question relates to RCW 42.52.070, Special privileges, which states: Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

To determine whether the negotiating manager used their position on the negotiating team to negotiate a special privilege for themselves, we must first determine what a special privilege is. While the Act does not define the term, "special privileges," *Black's Law Dictionary*, sixth edition, defines "privilege" as a "particular advantage enjoyed by a person beyond the common advantages of other citizens . . . an exceptional or extraordinary power or exemption."

Ferry passes have been a negotiated benefit for union members since the management of the ferries became part of DOT. These passes were historically given to retiring workers even when the ferries were under private management. The negotiating manager was always eligible for the ferry pass if he/she opted to revert back to their prior union position just before retirement. The language that was added to the CBA merely removed the requirement to revert back; therefore there is no special privilege.

The second question relates to RCW 42.52.030, Financial interests in transactions, which states in pertinent part:

(1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

RCW 42.52.010(6) defines a contract as an agreement between two or more persons that creates an obligation to do or not to do a particular thing. The collective bargaining process occurs between two negotiating teams: one representing the agency and one representing the covered employees. The agency's negotiating teams consist of a negotiator from the Labor Relations Office (LRO), DOT Labor Relations managers, subject matter experts (ferry managers) and may include an AAG. The Union's negotiating team includes members from the union who benefit from the agreement and paid union representatives who do not benefit from the agreement. No one member of the team has the ability to agree to any of the proposals made; only the LRO negotiator has the ability to reject a proposal. For the agreement to be binding, it must be reviewed and funded by the Legislature and signed by the Governor.

In the last negotiation of the FASPAA agreement, a proposal was made by the state's negotiating team that instead of going through the bumping process to receive the ferry pass, the manager, if they were in an "approved withdrawal from the Union and continued to work for WSF in a management position" who retired from DOT could be issued a ferry pass. This proposal was agreed to by all parties.