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ATTORNEYS AT LAW

"SINCE 1974"

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Memorandum

TO: Greg Devereux, WFSE Executive Director
FROM: Ed Younglove
DATE: July 11, 2019
RE: Collective Bargaining Rights of Assistant Attorneys General in the AGO Torts Division

You have requested our analysis regarding the collective bargaining rights of assistant attorneys general in the Torts Division of the Office of the Attorney General in light of the recent enactment of amendments to the State Collective Bargaining Law, RCW ch. 41.80. Ch. 145 Laws 2019. It is our opinion while employees *assisting* assistant attorneys general who advise or represent the state in tort actions continue to be excluded from the right to bargain collectively under RCW 41.80.005(4), the assistant attorneys general in the torts division themselves, do have the right to organize now, and will have the right to bargain collectively when the legislation takes effect July 28, 2019.

When enacted, the grant of collective bargaining rights to state employees in RCW ch. 41.80 did not apply to assistant attorneys general. RCW 41.80.005(6) defined employees granted the right to organize and bargain collectively in RCW 41.80.050 as “an employee ... covered by chapter 41.06 RCW.” Because assistant attorneys general were specifically exempt from the State Civil Service Law by RCW 41.060.070(1)(j), they were not covered by RCW ch. 41.80.

Subsection (2)(a) of ch. 145 § 2 Laws 2019, amending RCW 41.80 effective July 28, 2019, specifically grants the right to bargain collectively to assistant attorneys general not specifically excluded in subsection (2)(b) thereof. Subsection (2)(b) excludes from the right to collectively bargain “[d]ivision chiefs, deputy attorneys general, the solicitor general, assistant attorneys general in the labor and personnel division, special assistant attorneys general, confidential employees as defined in RCW 41.80.005, and any assistant or deputy attorney general who reports directly to the attorney general.” AAGs in the Torts Division (advising and representing the state in tort actions) not in positions listed in subsection (2)(b) are not excluded from RCW 41.80 and have collective bargaining rights.

RCW 41.80.005(6) defining “employee” continues to exclude “confidential employees” defined in RCW 41.80.005(4) as including “employees who assist assistant attorneys general who advise and represent managers or confidential employees in personnel or labor relations matters, or who advise or represent the state in tort actions.” While it may be conceptually inconsistent that the assistants to AAGs in the torts division are excluded, the two statutes are clear and are not inconsistent with each other. Under the last antecedent rule of statutory construction, it is the “employees who assist assistant attorneys general” who are deemed “confidential employees,” not the AAGs themselves. *Boeing v. Dep’t of Licensing*, 103 Wn.2d 581, 587, 693 P.2d 104 (1985). This meaning is further clarified by the fact when this provision (RCW 41.80.005(6)) was promulgated all AAGs were excluded. *Supra*. Finally, where there is a perceived conflict in two statutes, they must be reconciled to give effect to each, *Anderson v. Dep’t of Corrections*, 159 Wn.2d 849, 861, 154 P.3d 220 (2007), leading to the same result.