

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Apr 18, 2019

SEAN F. MCAVOY, CLERK

SPOKANE VALLEY FIRE  
DEPARTMENT,

Plaintiff,

v.

INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS AFL-CIO  
LOCAL 3701,

Defendant.

No. 2:17-cv-00250-SMJ

**ORDER GRANTING  
DEFENDANT’S CONVERTED  
MOTION FOR SUMMARY  
JUDGMENT**

Plaintiff Spokane Valley Fire Department seeks a declaration that some of its employees—battalion chiefs and fire marshals who are members of Defendant International Association of Fire Fighters AFL-CIO Local 3701—are exempt from certain wage and hour provisions under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. § 213(a)(1). ECF No. 1. The Department seeks this relief under the Declaratory Judgment Act of 1934, 28 U.S.C. § 2201(a), alleging, “[a]n actual, ongoing controversy exists between the parties as to whether the FLSA’s ‘bona fide’ executive or administrator exemption applies to battalion chiefs and fire marshals.” *Id.* at 4.

Before the Court is Local 3701’s converted motion for summary judgment,

ORDER GRANTING DEFENDANT’S CONVERTED MOTION FOR

1 ECF No. 33. Local 3701 argues the Court lacks subject matter jurisdiction because  
2 no constitutionally required case or controversy exists. *Id.* First, Local 3701  
3 contends the Department lacks standing and its claim is not ripe because the  
4 Department faces no imminent injury from an FLSA action brought by Local 3701  
5 or its members. *Id.* Second, Local 3701 contends its legal interests are not adverse  
6 to the Department's because, without its members' written consent, Local 3701 is  
7 statutorily barred from bringing the type of FLSA action the Department fears. *Id.*

8 Because oral argument is unnecessary, the Court decides Local 3701's motion  
9 without it. *See* LCivR 7(i)(3)(B)(iii). Having reviewed the file in this matter, the  
10 Court grants Local 3701's motion and dismisses this case without prejudice.

### 11 **BACKGROUND<sup>1</sup>**

12 The parties have been negotiating a new collective bargaining agreement  
13 since October 2016. ECF No. 57-1 at 3. They have not reached a final agreement.  
14 *Id.* The Department alleges the FLSA's exemption for bona fide executive or  
15 administrative employees applies to battalion chiefs and fire marshals. ECF No. 1 at  
16

---

17 <sup>1</sup> The Department objects to numerous aspects of Local 3701's factual recitation,  
18 arguing all but two assertions are irrelevant, immaterial, speculative, or  
19 mischaracterizing. ECF No. 57 at 10–11. Having concluded the challenged  
20 evidence is admissible under Federal Rules of Evidence 401, 403, and 602, the  
Court overrules each of the Department's objections under Federal Rule of Civil  
Procedure 56(c)(2). Nonetheless, the Court will, as the applicable legal standard  
requires, view all evidence and draw all reasonable inferences in the manner most  
favorable to the Department.

1 4–5; ECF No. 57 at 2. In negotiations, Local 3701 has remained steadfast in its  
2 position to the contrary. ECF No. 36 at 2. Local 3701 first asserted this position on  
3 April 20, 2017 and has not changed it since. ECF No. 12-4 at 2; ECF No. 57-1 at 9.  
4 The Department offered a new collective bargaining agreement that the exemption  
5 would not affect, regardless of whether it applies. ECF No. 36 at 2. But Local 3701  
6 rejected the proposal because, it argues, doing so “would reduce its members’  
7 contractual entitlement to overtime below the amount required by the FLSA.” ECF  
8 No. 55 at 4. Local 3701 soon declared an impasse in negotiations and demanded  
9 mediation. ECF No. 36 at 2; ECF No. 57-1 at 4. The parties are currently in  
10 mediation and the next step may be interest arbitration. ECF No. 57-1 at 2–4.

11 The parties’ current collective bargaining agreement provides (1) the “normal  
12 working schedule for Fire Operations” consists of a maximum of 204 hours in a  
13 twenty-seven-day work period; (2) day officers work at least forty hours per week  
14 or a flexible schedule equivalent to at least eighty hours in a two-week period;  
15 (3) shift officers work one twenty-four-hour shift, starting and ending at 7:00 AM,  
16 followed by forty-eight hours off duty; (4) shift officers receive thirteen “Kelly  
17 days”<sup>2</sup> off in a calendar year, so as to reduce their annual work average to 50.02

---

18  
19 <sup>2</sup> A Kelly day is “a day off or vacation day taken at a scheduled interval in addition  
20 to normal time off or vacation.” Grant Barrett, *Kelly Day*, A WAY WITH WORDS  
(July 31, 2007), [https://www.waywordradio.org/kelly\\_day/](https://www.waywordradio.org/kelly_day/). Sources as early as  
1953 claim this term derives from former Chicago mayor Edward Joseph Kelly,  
who reportedly instituted a similar plan for firefighters in 1936. *Id.*

1 hours per week; and (5) “Officers will receive overtime at a rate of 1.50 times their  
2 hourly rate for working in 3701 response positions outside their regular shift.” ECF  
3 No. 33-1 at 30.

4 The Department declares that, until this dispute is resolved, it “will continue  
5 to operate under the current [collective bargaining agreement]” and “will not remit  
6 payment for overtime unless expressly provided for by the operative [agreement].”  
7 ECF No. 57-1 at 5. The Department posits that this could be problematic because  
8 “[t]here are provisions in the current [agreement] for which employees do not  
9 currently receive overtime payments (at 1.5x their regular rate of pay) for work  
10 beyond regular hours.” ECF No. 57 at 5 (citing ECF No. 33-1 at 17, 34).

11 Each of Local 3701’s members who are employed by the Department disavow  
12 having any FLSA overtime claim against it. *See id.* at 3–4; ECF No. 55-1 at 3; ECF  
13 No. 55-2 at 3; ECF No. 55-3 at 3; ECF No. 55-4 at 3; ECF No. 55-5 at 3; ECF No.  
14 55-6 at 3; ECF No. 55-7 at 3; ECF No. 55-8 at 3; ECF No. 55-9 at 3; ECF No. 55-  
15 10 at 3. Specifically, Local 3701’s members state they have not given their written  
16 consent to become plaintiffs in any FLSA lawsuit against the Department, they are  
17 not aware of any unpaid overtime owed to them by the Department that would entitle  
18 them to recovery under the FLSA, they have no intention of filing an FLSA lawsuit  
19 against the Department, they do not anticipate having an intention of filing an FLSA  
20 lawsuit against the Department in the future, they have never expressed an intention

1 of filing an FLSA lawsuit against the Department, and none of Local 3701's other  
2 members have expressed to them an intention to bring an FLSA lawsuit against the  
3 Department. ECF No. 33-1 at 3–4; ECF No. 55-1 at 3; ECF No. 55-2 at 3; ECF No.  
4 55-3 at 3; ECF No. 55-4 at 3; ECF No. 55-5 at 3; ECF No. 55-6 at 3; ECF No. 55-7  
5 at 3; ECF No. 55-8 at 3; ECF No. 55-9 at 3; ECF No. 55-10 at 3. Similarly, in  
6 negotiations with the Department, Local 3701 did not say its members intended to  
7 bring an FLSA lawsuit against the Department. ECF No. 33-1 at 3.

8 This “do[es] not provide the Department with any meaningful relief.” ECF  
9 No. 57-1 at 9. If the Department negotiates for anything less than time-and-a-half  
10 as overtime compensation, “Local 3701 would assert the Department is arguing  
11 during negotiations for an illegal provision” and “[t]his assertion could subject the  
12 Department to unfair labor practices claims.” *Id.* at 4. Additionally, the Department  
13 may be subject to investigation by federal and state administrative agencies. *Id.* at 2,  
14 5–6. Meanwhile, the Department's uncertainty affects its ability to conduct its  
15 business, namely in setting budgets and assessing levies. *Id.* at 7–8.

16 The Department filed this lawsuit on July 11, 2017. ECF No. 1. Local 3701  
17 moved for judgment on the pleadings on December 3, 2018. ECF No. 33. The  
18 Court's February 19, 2019 order, ECF No. 50, converted Local 3701's motion to  
19 one for summary judgment and directed the parties to present all pertinent materials.

20 //



1 litigants in the case before them’ or give ‘opinion[s] advising what the law would be  
2 upon a hypothetical state of facts.’” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013)  
3 (alteration in original) (quoting *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477  
4 (1990)). The party invoking a federal court’s jurisdiction bears the burden of  
5 establishing the case-or-controversy requirement is met. *See Lujan v. Defs. of*  
6 *Wildlife*, 504 U.S. 555, 560–61 (1992).

7         The Declaratory Judgment Act provides that “[i]n a case of actual controversy  
8 within its jurisdiction, . . . any court of the United States, upon the filing of an  
9 appropriate pleading, may declare the rights and other legal relations of any  
10 interested party seeking such declaration, whether or not further relief is or could be  
11 sought.” 28 U.S.C. § 2201(a). The Declaratory Judgment Act is “operative only in  
12 respect to controversies which are such in the constitutional sense.” *Textron*  
13 *Lycoming Reciprocating Engine Div., Avco Corp. v. United Auto., Aerospace, &*  
14 *Agric. Implement Workers of Am., Int’l Union*, 523 U.S. 653, 661 (1998) (quoting  
15 *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 239–40 (1937)). Indeed, “the phrase  
16 ‘case of actual controversy’ in the [Declaratory Judgment] Act refers to the type of  
17 ‘Cases’ and ‘Controversies’ that are justiciable under Article III.” *MedImmune, Inc.*  
18 *v. Genentech, Inc.*, 549 U.S. 118, 127 (2007).

19         To determine whether a declaratory judgment action presents a justiciable  
20 case or controversy, the Court considers “whether the facts alleged, under all the

1 circumstances, show that there is a substantial controversy, between parties having  
2 adverse legal interests, of sufficient immediacy and reality to warrant the issuance  
3 of a declaratory judgment.” *Id.* (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312  
4 U.S. 270, 273 (1941)); *see also Shell Gulf of Mex. Inc. v. Ctr. for Biological*  
5 *Diversity, Inc.*, 771 F.3d 632, 635 (9th Cir. 2014). This case involves two  
6 components of the case-or-controversy requirement: “standing, which concerns *who*  
7 may bring suit, and ripeness, which concerns *when* a litigant may bring suit.”<sup>3</sup>  
8 *Habeas Corpus Res. Ctr. v. U.S. Dep’t of Justice*, 816 F.3d 1241, 1247 (9th Cir.  
9 2016).

---

11 <sup>3</sup> “A proper ripeness inquiry contains a constitutional and a prudential component.”  
12 *Bishop Paiute Tribe v. Inyo County*, 863 F.3d 1144, 1153 (9th Cir. 2017). Here, the  
13 Court does not reach prudential ripeness because constitutional ripeness and  
14 standing are dispositive. “For a case to be ripe[ under Article III], it must present  
15 issues that are ‘definite and concrete, not hypothetical or abstract.’” *Id.* (quoting  
16 *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000)).  
17 “Constitutional ripeness is often treated under the rubric of standing because  
18 ‘ripeness coincides squarely with standing’s injury in fact prong.’” *Id.* (quoting  
19 *Thomas*, 220 F.3d at 1138). “For a plaintiff to meet the injury-in-fact prong of  
20 standing, the plaintiff must demonstrate ‘an invasion of a legally protected interest  
which is (a) concrete and particularized and (b) actual or imminent, not conjectural  
or hypothetical.’” *Id.* (quoting *Lujan*, 504 U.S. at 560). Additionally, the  
“irreducible constitutional minimum of standing” also requires causation and  
redressability. *Lujan*, 504 U.S. at 560–61. Causation means “there must be a causal  
connection between the injury and the conduct complained of—the injury has to be  
fairly traceable to the challenged action of the defendant, and not the result of the  
independent action of some third party not before the court.” *Id.* at 560 (internal  
quotation marks, brackets, and ellipses omitted). Redressability means “it must be  
likely, as opposed to merely speculative, that the injury will be redressed by a  
favorable decision.” *Id.* at 561 (internal quotation marks omitted).

1           Ultimately, “if ‘the declaratory judgment defendant could have brought a  
2 coercive action in federal court to enforce its rights, then [the court has] jurisdiction,’  
3 so long as that coercive action would ‘arise under’ federal law.” *Hornish v. King*  
4 *County*, 899 F.3d 680, 691 n.2 (9th Cir. 2018) (alteration in original) (quoting  
5 *Janakes v. U.S. Postal Serv.*, 768 F.2d 1091, 1093 (9th Cir. 1985)), *cert. denied sub*  
6 *nom. Kaseburg v. Port of Seattle*, No. 18-838, 2019 WL 1590251 (U.S. Apr. 15,  
7 2019); *see also id.* (“A person may seek declaratory relief in federal court if the one  
8 against whom he brings his action could have asserted his own rights there.” (quoting  
9 *Standard Ins. Co. v. Saklad*, 127 F.3d 1179, 1181 (9th Cir. 1997))). “In other words,  
10 in a sense [the court] can reposition the parties in a declaratory relief action by asking  
11 whether [it] would have jurisdiction had the declaratory relief defendant been a  
12 plaintiff seeking a federal remedy.” *Id.* (alterations in original) (quoting *Standard*,  
13 127 F.3d at 1181).

14           As the Court previously noted, “[t]he members of Local 3701 unquestionably  
15 could bring FLSA wage and hour claims against the Department either individually  
16 or collectively.” ECF No. 16 at 6 (citing 29 U.S.C. § 216(b)). But the Court did not  
17 decide the issues now presented, namely, whether those potential claims have  
18 accrued and, if so, whether they are certainly impending and pose an imminent  
19 threat, so as to establish standing and ripeness.

20           The Court begins its analysis by “first examin[ing] the underlying law”—“the

1 authority governing the asserted controversy between the parties.” *Shell*, 771 F.3d  
2 at 636. “Under the FLSA, an employer must pay its employees premium overtime  
3 compensation of one and one-half times the regular rate of payment for any hours  
4 worked in excess of forty in a seven-day work week.” *Flores v. City of San Gabriel*,  
5 824 F.3d 890, 895 (9th Cir. 2016) (citing 29 U.S.C. § 207(a)); *see also Garcia v.*  
6 *San Antonio Metro. Transit Auth.*, 469 U.S. 528, 531 (1985) (holding FLSA  
7 overtime requirements apply to state and local government functions). An employer  
8 who violates FLSA overtime requirements is liable for employees’ unpaid overtime  
9 compensation, an additional equal amount as liquidated damages, and reasonable  
10 attorney fees and costs. 29 U.S.C. § 216(b).

11 “Additionally, employees cannot waive the protections of the FLSA, nor may  
12 labor organizations negotiate provisions that waive employees’ statutory rights  
13 under the FLSA.” *Gordon v. City of Oakland*, 627 F.3d 1092, 1095 (9th Cir. 2010)  
14 (citation omitted) (citing *Brooklyn Sav. Bank v. O’Neil*, 324 U.S. 697, 707 (1945),  
15 and *Barrentine v. Ark.-Best Freight Sys., Inc.*, 450 U.S. 728, 740–41 (1981)).

16 However, in 29 U.S.C. § 207(k), “[t]he FLSA also provides ‘a limited  
17 exemption from the overtime limit to public employers of . . . firefighters.’” *Flores*,  
18 824 F.3d at 895 (quoting *Adair v. City of Kirkland*, 185 F.3d 1055, 1059 (9th Cir.  
19 1999)). “The partial overtime exemption in § 207(k) ‘increases the overtime limit  
20 slightly and it gives the employer greater flexibility to select the work period over

1 which the overtime limit will be calculated.” *Id.* (quoting *Adair*, 185 F.3d at 1060).  
2 “[U]nder § 207(k), an employer must compensate ‘fire protection’ employees with  
3 overtime payments only after the employee works more than 212 hours in a twenty-  
4 eight-day period.” *Haro v. City of Los Angeles*, 745 F.3d 1249, 1253 (9th Cir. 2014).  
5 Consistent with § 207(k)’s ratio of hours to days, “if the number of days in the work  
6 period is decreased to twenty-seven, the number of hours an employee must work  
7 before earning overtime is decreased to 204.” *Id.* (citing 29 C.F.R. § 553.230). Such  
8 firefighters would “receive[] overtime pay only if they work[] more than 204 hours  
9 in a twenty-seven-day work period.” *Id.*

10 The parties’ current collective bargaining agreement utilizes the § 207(k)  
11 exemption. ECF No. 33-1 at 30. Specifically, the agreement provides (1) the “normal  
12 working schedule for Fire Operations” consists of a maximum of 204 hours in a  
13 twenty-seven-day work period; (2) day officers work at least forty hours per week  
14 or a flexible schedule equivalent to at least eighty hours in a two-week period;  
15 (3) shift officers work one twenty-four-hour shift, starting and ending at 7:00 AM,  
16 followed by forty-eight hours off duty; (4) shift officers receive thirteen “Kelly days”  
17 off in a calendar year, so as to reduce their annual work average to 50.02 hours per  
18 week; and (5) “Officers will receive overtime at a rate of 1.50 times their hourly rate  
19 for working in 3701 response positions outside their regular shift.” *Id.*

20 Considering how this agreement implements the § 207(k) exemption, each of

1 Local 3701's members who are employed by the Department disavow having any  
2 FLSA overtime claim against it. *See id.* at 3–4; ECF No. 55-1 at 3; ECF No. 55-2 at  
3 3; ECF No. 55-3 at 3; ECF No. 55-4 at 3; ECF No. 55-5 at 3; ECF No. 55-6 at 3;  
4 ECF No. 55-7 at 3; ECF No. 55-8 at 3; ECF No. 55-9 at 3; ECF No. 55-10 at 3.  
5 Specifically, Local 3701's members state they have not given their written consent  
6 to become plaintiffs in any FLSA lawsuit against the Department, they are not aware  
7 of any unpaid overtime owed to them by the Department that would entitle them to  
8 recovery under the FLSA, they have no intention of filing an FLSA lawsuit against  
9 the Department, they do not anticipate having an intention of filing an FLSA lawsuit  
10 against the Department in the future, they have never expressed an intention of filing  
11 an FLSA lawsuit against the Department, and none of Local 3701's other members  
12 have expressed to them an intention to bring an FLSA lawsuit against the  
13 Department. ECF No. 33-1 at 3–4; ECF No. 55-1 at 3; ECF No. 55-2 at 3; ECF No.  
14 55-3 at 3; ECF No. 55-4 at 3; ECF No. 55-5 at 3; ECF No. 55-6 at 3; ECF No. 55-7  
15 at 3; ECF No. 55-8 at 3; ECF No. 55-9 at 3; ECF No. 55-10 at 3. Similarly, in  
16 negotiations with the Department, Local 3701 did not say its members intended to  
17 bring an FLSA lawsuit against the Department. ECF No. 33-1 at 3.

18 Thus, the parties' current collective bargaining agreement properly  
19 implements the § 207(k) exemption to the extent that it has not, to date, produced  
20

1 any known violations of FLSA overtime requirements.<sup>4</sup> But this “do[es] not provide  
2 the Department with any meaningful relief” because it is concerned with a different  
3 FLSA exemption for bona fide executive or administrative employees. ECF No. 57-  
4 1 at 9. The FLSA exempts

5 any employee employed in a bona fide executive, administrative, or  
6 professional capacity . . . (as such terms are defined and delimited from  
7 time to time by regulations of the Secretary[ of Labor], . . . except that  
8 an employee of a retail or service establishment shall not be excluded  
9 from the definition of employee employed in a bona fide executive or  
10 administrative capacity because of the number of hours in his  
11 workweek which he devotes to activities not directly or closely related  
12 to the performance of executive or administrative activities, if less than  
13 40 per centum of his hours worked in the workweek are devoted to such  
14 activities) . . . .

15 29 U.S.C. § 213(a)(1). A so-called “‘first responder’ regulation,” ECF No. 1 at 5,  
16 provides this exemption does not apply to firefighters under some circumstances,  
17 29 C.F.R. § 541.3(b)(1)–(3).

---

18 <sup>4</sup> The Department declares that, until this dispute is resolved, it “will continue to  
19 operate under the current [collective bargaining agreement]” and “will not remit  
20 payment for overtime unless expressly provided for by the operative [agreement].”  
ECF No. 57-1 at 5. The Department posits that this could be problematic because  
“[t]here are provisions in the current [agreement] for which employees do not  
currently receive overtime payments (at 1.5x their regular rate of pay) for work  
beyond regular hours.” ECF No. 57 at 5 (citing ECF No. 33-1 at 17, 34). The  
Department points to two sections it claims provide employees regular pay for court  
appearances and jury service, and straight-time overtime pay for filling a vacancy.  
*See* ECF No. 33-1 at 17, 34; ECF No. 35 at 15. But the Department presents no  
evidence showing its reading of these sections has ever deprived employees of  
overtime compensation owed to them under the FLSA. Thus, the Department fails  
to demonstrate any potential FLSA overtime claims have accrued or are certainly  
impending and pose an imminent threat, so as to establish standing and ripeness.

1           The Department alleges this exemption applies to battalion chiefs and fire  
2 marshals.<sup>5</sup> ECF No. 1 at 4–5; ECF No. 57 at 2. In negotiations, Local 3701 has  
3 remained steadfast in its position to the contrary. ECF No. 36 at 2. The Department  
4 offered a new collective bargaining agreement that the exemption would not affect,  
5 regardless of whether it applies. *Id.* But Local 3701 rejected the proposal because,  
6 it argues, doing so “would reduce its members’ contractual entitlement to overtime  
7 below the amount required by the FLSA.” ECF No. 55 at 4. Local 3701 soon  
8 declared an impasse in negotiations and demanded mediation. ECF No. 36 at 2;  
9 ECF No. 57-1 at 4.

10           The parties could still reach a final agreement despite their present impasse.  
11 ECF No. 58 at 11. The parties may succeed in mediation with the Washington State  
12 Public Employment Relations Commission. *See* Wash. Rev. Code (“RCW”)  
13 § 41.56.440. But if, after a reasonable period of mediation, the Commission finds

---

14  
15 <sup>5</sup> Indeed, the Department argues the parties’ current collective bargaining agreement  
16 incorporates this exemption where it provides, “[t]he Department recognizes [Local  
17 3701] as the exclusive bargaining agent for the *exempt* civil services positions listed  
18 below: Battalion Chief . . . Fire Marshal.” ECF No. 33-1 at 8 (emphasis added); *see*  
19 *also* ECF No. 57-1 at 5. Whether the Department’s position is correct, *see* ECF No.  
20 12-6 at 2, or this section references some supervisory designation under a state  
statute for purposes of collective bargaining authority, *see* ECF No. 12-1 at 2; ECF  
No. 12-7 at 2, or this section references the § 207(k) exemption, *see* ECF No. 33-1  
at 30, is immaterial because, again, the Department presents no evidence showing  
its reading of this section has ever deprived employees of overtime compensation  
owed to them under the FLSA. Thus, the Department fails to demonstrate any  
potential FLSA overtime claims have accrued or are certainly impending and pose  
an imminent threat, so as to establish standing and ripeness.

1 the parties remain at an impasse, then an “interest arbitration panel” would be  
2 created. RCW 41.56.450; *see also* ECF No. 57-1 at 2–3.

3 “Interest arbitration is a process whereby if the union and the employer  
4 cannot agree on a new contract during collective bargaining, an arbitration panel  
5 will be formed to resolve any disputes over the terms of the new contract.”  
6 *Snohomish Cty. Pub. Transp. Benefit Area v. State Pub. Emp’t Relations Comm’n*,  
7 294 P.3d 803, 806 (Wash. Ct. App. 2013). “Thus, when parties enter into interest  
8 arbitration, neither party is yet entitled to any specific right or remedy.” *Int’l Ass’n*  
9 *of Fire Fighters, Local 46 v. City of Everett*, 42 P.3d 1265, 1273 (Wash. 2002).

10 The party aggrieved by the arbitration panel’s decision may appeal it to the  
11 appropriate Washington state superior court. *See* RCW 41.56.450. But still, no  
12 claim arising under the FLSA would have yet accrued.<sup>6</sup> The Court agrees with Local  
13 3701 that its members “must then actually work additional time beyond the hourly

---

14  
15 <sup>6</sup> The Department argues “this matter is likely to be before the Court in the future”  
16 because the arbitration panel would be unable to determine employee classification.  
17 ECF No. 57 at 6. In support, the Department includes a declaration from its human  
18 resources director indicating, based on her training, that “this matter is likely to end  
19 up with the courts again.” ECF No. 57-1 at 3. But the Department presents no  
20 explanation for why the arbitration panel would be unable to determine employee  
classification. Even assuming the Department is correct on this point, it does not  
mean a federal cause of action would accrue. On the contrary, the contemplated  
recourse is through a state appeal. *See* RCW 41.56.450. Indeed, the Department’s  
human resources director anticipates this matter likely ending up with “the courts,”  
not specifically federal court. ECF No. 57-1 at 3. The Department takes too great  
of liberties with this statement in claiming the case will likely come back to *this*  
*Court*.

1 overtime threshold to be entitled to overtime pay and must then actually choose to  
2 file suit against the Department before their exempt or non-exempt status will be  
3 put at issue.” ECF No. 33 at 20.

4 The Court also agrees with Local 3701 that “[t]his eventuality is so distant  
5 and uncertain that this lawsuit falls well short of the immediacy and imminence  
6 required to confer subject matter jurisdiction over a suit for declaratory judgment.”

7 *Id.* “Although imminence is concededly a somewhat elastic concept, it cannot be  
8 stretched beyond its purpose, which is to ensure that the alleged injury is not too  
9 speculative for Article III purposes—that the injury is *certainly* impending.”

10 *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (quoting *Lujan*, 504 U.S.  
11 at 565 n.2). “Thus, [the Supreme Court has] repeatedly reiterated that ‘threatened  
12 injury must be *certainly impending* to constitute injury in fact,’ and that  
13 ‘[a]llegations of *possible* future injury’ are not sufficient.” *Id.* (alteration in original)  
14 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).

15 Here, the Department presents no evidence showing any potential FLSA  
16 overtime claims have accrued or are certainly impending and pose an imminent  
17 threat, so as to establish standing and ripeness. “It is axiomatic that differing views  
18 of the law are not enough to satisfy Article III.” *Shell*, 771 F.3d at 637. “The  
19 presence of a disagreement, however sharp and acrimonious it may be, is  
20 insufficient by itself to meet Art[icle] III’s requirements.” *Hollingsworth v. Perry*,

1 570 U.S. 693, 704 (2013) (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986)).

2 The Department offers two additional reasons why it believes it has shown  
3 enough to establish a genuine dispute of material fact. First, the Department  
4 expresses concern that if it negotiates for anything less than time-and-a-half as  
5 overtime compensation, “Local 3701 would assert the Department is arguing during  
6 negotiations for an illegal provision” and “[t]his assertion could subject the  
7 Department to unfair labor practices claims.” ECF No. 57-1 at 4. The Department  
8 notes Local 3701’s members have given no assurances regarding such claims,  
9 which cannot be waived regardless. *Id.* at 4–5.

10 The Department’s concern is rooted in Washington state law and, therefore,  
11 does not involve a potential “coercive action in federal court” that would ““arise  
12 under’ federal law.” *Hornish*, 899 F.3d at 691 n.2 (quoting *Janakes*, 768 F.2d at  
13 1093). Elsewhere in its discussion, the Department establishes that its references to  
14 unfair labor practice claims denote “unfair labor practice claims under the  
15 Washington State Public Employment Relations Commission.” ECF No. 57-1 at 2.  
16 The Department fails to identify a potential federal cause of action.

17 Second, the Department expresses concern that it may be subject to  
18 investigation by the U.S. Department of Labor or the Washington State Department  
19 of Labor and Industries. *Id.* at 2, 5–6. But no such investigation would arise unless  
20 the employer began violating FLSA overtime requirements by failing to pay the

1 employees what they are due. As discussed above, the parties’ current collective  
2 bargaining agreement properly implements the § 207(k) exemption to the extent  
3 that it has not, to date, produced any known violations of FLSA overtime  
4 requirements. As Local 3701 notes, “contractual overtime payments under the  
5 [agreement] may well exceed the FLSA’s minimum overtime payment  
6 requirements, regardless of how Local 3701 members are classified under the  
7 [agreement].” ECF No. 58 at 4 n.1. Thus, the Department fails to demonstrate how  
8 the status quo threatens a potential “coercive action in federal court” that would  
9 “‘arise under’ federal law.”<sup>7</sup> *Hornish*, 899 F.3d at 691 n.2 (quoting *Janakes*, 768  
10 F.2d at 1093).

11 The Court acknowledges how the Department’s uncertainty affects its ability  
12 to conduct its business, namely in setting budgets and assessing levies. ECF No. 57-

---

14 <sup>7</sup> The Court previously concluded that “the threatened action [the Department] seeks  
15 to avoid would necessarily present a federal question arising under the FLSA.” ECF  
16 No. 50 at 7–8. But the problem for the Department is that it fails to demonstrate any  
17 potential FLSA overtime claims have accrued or are certainly impending and pose  
18 an imminent threat, so as to establish standing and ripeness. By continuing to  
19 operate under the existing collective bargaining agreement, the Department is  
20 preserving an injury-free status quo. *See generally MedImmune*, 549 U.S. at 128  
n.8. (“The justiciability problem that arises, when the party seeking declaratory  
relief is himself preventing the complained-of injury from occurring, can be  
described in terms of standing (whether plaintiff is threatened with imminent injury  
in fact fairly traceable to the challenged action of the defendant), or in terms of  
ripeness (whether there is sufficient hardship to the parties in withholding court  
consideration until there is enforcement action).” (internal quotation marks,  
citations, brackets, and ellipses omitted)).

1 1 at 7–8. But as a tribunal with limited subject matter jurisdiction, the Court must  
2 not exceed its authority by rendering an advisory opinion.

3 Here, the facts alleged, under all the circumstances, do not reveal a  
4 “substantial controversy, between parties having adverse legal interests, of sufficient  
5 immediacy and reality to warrant the issuance of a declaratory judgment.”  
6 *MedImmune*, 549 U.S. at 127 (quoting *Md. Cas.*, 312 U.S. at 273). The injury to be  
7 averted by this declaratory judgment action is conjectural or hypothetical rather than  
8 concrete and particularized, and actual or imminent. Thus, this declaratory judgment  
9 action presents issues that are hypothetical or abstract rather than definite and  
10 concrete. The Department fails to show a genuine dispute of material fact as to these  
11 elements of standing and ripeness.

12 Viewing all evidence and drawing all reasonable inferences in the manner  
13 most favorable to the Department, no reasonable trier of fact could find in its favor  
14 on whether this declaratory judgment action presents a justiciable case or  
15 controversy. On the contrary, a reasonable trier of fact could only find in favor of  
16 Local 3701. Therefore, Local 3701 has met its initial burden in support of summary  
17 judgment. By contrast, the Department has failed to point to specific facts  
18 establishing a genuine dispute of material fact for trial. The Department has failed  
19 to introduce the significant probative evidence required to defeat summary  
20 judgment. And, to the extent the Department has identified genuine factual disputes,

1 they are not material because they do not affect the outcome of this litigation and do  
2 not require trial to resolve differing versions of the truth.

3 In sum, the record establishes that no genuine dispute exists as to any material  
4 fact and Local 3701 is entitled to judgment as a matter of law because the Court  
5 lacks subject matter jurisdiction over the Department's claim for relief. Considering  
6 this ruling, the Court does not reach the parties' remaining arguments.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 **1.** Defendant's converted motion for summary judgment, **ECF No. 33**, is  
9 **GRANTED.**
- 10 **2.** All claims are **DISMISSED WITHOUT PREJUDICE**, with all  
11 parties to bear their own attorney fees and costs.
- 12 **3.** All other pending motions are **DENIED AS MOOT.**
- 13 **4.** All hearings and deadlines are **STRICKEN.**
- 14 **5.** The Clerk's Office is directed to enter **JUDGMENT** of dismissal and  
15 **CLOSE** this file.

16 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and  
17 provide copies to all counsel.

18 **DATED** this 18th day of April 2019.

19   
20 SALVADOR MENDOZA, JR.  
United States District Judge