WASHINGTON SCHOOL LAW UPDATE

PORTER FOSTER RORICK LLP

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A brief summary of legal developments relevant to Washington public school districts from the previous calendar month.

Washington Court of Appeals

Public Records Act

Flinn v. Washington State Department of Corrections
No. 56986-8-II (7/5/23) (unpublished)

The Washington Court of Appeals held that the Department of Corrections (DOC) conducted an adequate search in response to an inmate's request for records related to his custody review hearing. The DOC uses a classification process to assign inmates to the least restrictive custody designation and to gradually increase reentry in the community. Classification counselors conduct classification reviews annually and in specific situations where other needs or changes in circumstances require an inmate classification change. Talon Cutler-Flinn is an inmate at the Washington State Penitentiary (WSP) who waived his right to be present at his classification hearing, but after it occurred, Flinn submitted a request under the Public Records Act (PRA) for all records used in his classification process. After receiving Flinn's request, the DOC public records officer asked staff at WSP to provide all records used in Flinn's classification hearing that were not already accessible in the DOC database. The public records officer also sent the request to Flinn's classification counselor because the counselor would be able to best identify records used in the classification action. The counselor spent approximately 15 minutes searching her e-mail and DOC database resources and did not locate any responsive records. The public records officer sent a follow-up email to the counselor asking her to verify there were no additional records beyond the notice of hearing and waiver, which were already in the DOC system. The public records officer sent this follow-up inquiry because in responding to similar requests in the past, the DOC had located at least 100 responsive records. Flinn's counselor confirmed that the only records related to Flinn's classification hearing were the notice of appearance and his appearance waiver. The DOC disclosed to Flinn a copy of the notice of hearing and waiver, which totaled five pages. Flinn filed a complaint in superior court alleging in part that the DOC violated the PRA by failing to conduct an adequate search for responsive records. The superior court dismissed Flinn's claims, finding that the DOC's search was adequate. The Court of Appeals affirmed, holding that the DOC's search as a whole—which included directing staff to search for responsive records, the public record officer's search of the DOC database, and the follow-up email sent to Flinn's counselor—was reasonably calculated to uncover all relevant records. The

Court rejected Flinn's argument that the search was inadequate because similar requests had generated more than 100 responsive records, reasoning that the records generated for other inmates' classification hearings was not indicative of the type of records used in Flinn's classification hearing. As a result, the Court affirmed dismissal of Flinn's PRA lawsuit.

PERC

Refusal to Bargain

Snohomish County
Decision 13480-A (6/28/23)

A PERC examiner held that Snohomish County did not commit a refusal to bargain unfair labor practice (ULP) by unilaterally reducing the frequency of labor management meetings and failing to provide an agenda to the union in advance of such meetings, finding that neither of these changes were mandatory subjects of bargaining. The Snohomish County Corrections Guild (Guild) is the bargaining representative for corrections deputies who work at the Snohomish County Jail. The collective bargaining agreement between the parties provides that representatives of the Guild and County will participate in labor management meetings to discuss issues of mutual interest or concern, including ways to address potential grievances. In 2019 and 2020, the parties met every week, and later in 2020, they began to schedule labor management meetings every other week. Deputies who attended labor management meetings on behalf of the Guild had to be relieved from their work duties, which generally resulted in other deputies working overtime to cover the shifts. The parties routinely did not have discussion items to fill the entire scheduled meeting time, and in July 2021, the County emailed the Guild notifying it that the meetings would be reduced to once per month going forward. The County also informed the Guild that if the Guild had any urgent matters to discuss, the County would schedule additional meetings as needed. The Guild objected to the change and demanded that the County keep the status quo of two labor management meetings per month. The Guild filed a complaint with PERC alleging eleven separate causes of action against the County, one of which was refusal to bargain based on changes to the labor management meetings. The Examiner dismissed the Guild's complaint in its entirety, holding that the frequency of labor management meetings was not closely tied to wages, hours, and working conditions, and was therefore not a mandatory subject of bargaining. The Examiner held that the frequency of such meetings was analogous to "ground rules" or other procedural aspects of the relationship between unions and employers, which PERC has consistently found to be nonmandatory subjects of bargaining. The Examiner further rejected the Guild's claim that the County was required to submit an agenda for the meetings in advance, reasoning that agendas were also not closely tied to wages, hours, and working conditions. Because a unilateral change must be to a mandatory subject of bargaining in order to be a ULP, the Examiner held that the County did not commit a ULP by changing the structure of its labor management meetings with the Guild.

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Update Editors

Liz Robertson
elizabeth@pfrwa.com

Jay Schulkin
jay@pfrwa.com

PORTER FOSTER RORICK LLP
601 Union Street | Suite 800
Seattle, Washington 98101
Tel (206) 622-0203 | Fax (206) 223-2003
www.pfrwa.com

Lance Andree	Josh Halladay	Liz Robertson
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