

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

January 2020

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

Ninth Circuit Court of Appeals

Agency Fees

Danielson v. Inslee
No. 18-36087 (12/26/19)

The Ninth Circuit Court of Appeals held that unions are not monetarily liable under 42 U.S.C. § 1983 for collecting agency fees from nonmembers before the Supreme Court's decision in *Janus v. American Federation of State, County & Municipal Employees (AFSCME)*, 138 S.Ct. 2448 (2018), which overturned precedent formerly allowing unions to collect agency fees from nonmembers to finance collective bargaining activities. In anticipation of *Janus*, several Washington State employees who worked in bargaining units represented by AFSCME but were nonmembers brought a class action against the union, the Governor, and the Director of the Washington Office of Financial Management alleging that the compulsory agency fees violated their rights under the First and Fourteenth Amendments. The employees sought declaratory and injunctive relief, as well as a refund of all fees they believed were

unlawfully collected from them. After *Janus*, the district court dismissed the claims against the Governor and Director as moot. The district court then granted the union's motion to dismiss the claims for declaratory and injunctive relief, as well as the claims for monetary relief because the union had relied in good faith on state law that was valid under previously-binding Supreme Court precedent. The Court of Appeals affirmed the district court, holding that a union defendant can invoke the affirmative defense of good faith to avoid retrospective monetary liability under § 1983 for agency fees collected pre-*Janus* since private parties who are sued under § 1983 may rely on judicial pronouncements of what the law is without facing potential liability for doing so.

PERC

Discrimination

Warden School District
Decision 13105 (12/5/19)

A PERC examiner concluded that the Warden School District did not commit either an interference unfair labor practice (ULP) by conducting a nondisciplinary meeting without a teacher's union representation present, or a discrimination ULP by issuing the teacher a verbal

directive at a subsequent meeting where union representation was present. A teacher told a student that she was wearing a “disgusting” shirt that was inappropriate for class, after which the student angrily stormed out of the classroom. The teacher then initiated discipline and wanted the student out of her class. The principal and the dean of students met with the teacher the next day to restore the relationship between the teacher and the student so the student could return to class. During that meeting, the principal responded to the teacher’s request for union representation by explaining that the meeting was not disciplinary. Several days later, the principal sent a letter to the teacher requesting a meeting to discuss the teacher’s previous use of the term “disgusting.” The teacher had union representation at this second meeting and received a verbal directive not to make inappropriate comments to students. The examiner held that the lack of union representation during the first meeting did not constitute interference since the meeting was not disciplinary but was instead meant to improve the relationship between the student and the teacher. The examiner also held that the verbal directive after the second meeting was not considered discipline under the CBA, and had no demonstrated nexus with any protected union activity.

PFR Announcements

2020 Bargaining Skills Workshop

January 31, 8 am to 4 pm – Tukwila, Washington

PFR is once again partnering with the Washington School Personnel Association to present a one-day workshop on collective bargaining skills. This year’s workshop will offer a single track focusing on basic skills for all successful bargainers, particularly those who may be sitting on a management bargaining team for the first time. The workshop will be held January 31 at the Doubletree Suites by Hilton in Tukwila. Agenda and registration is available at www.wspa.net.

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This information is intended for educational purposes only and not as legal advice regarding any specific set of facts. Feel free to contact any of the attorneys at Porter Foster Rorick with questions about these or other legal developments relevant to Washington public schools.

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