

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

October 2018

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

PERC

Discrimination

King County

Decision 12582-D (9/7/18)

The Commission held that King County discriminated against an employee when it gave her a performance evaluation in which her protected union activity was a substantial negative factor. The employee challenged management at a work meeting. In her next evaluation, her supervisor expressly mentioned her behavior at the meeting in support of giving the employee “meets standard” ratings, in contrast to previous “exceeds standards” ratings. As allowed under the CBA, the employee appealed the evaluation. While the contents of the evaluation were on appeal, the ULP hearing occurred. The Commission held that the employee met her prima facie burden to establish that the lower evaluation ratings constituted interference. The Commission next held that the employer satisfied its burden to articulate a legitimate, nondiscriminatory reason for the evaluation ratings by offering other legitimate examples justifying the ratings. The burden then

shifted back to the employee to show that the evaluation ratings were substantially motivated by union animus. The Commission held that the employee’s protected union activity was a substantial factor in the evaluation because the employee’s behavior in the meeting influenced how the employer rated her, and that discrimination had thus occurred. Finally, the Commission held that no discrimination occurred with regard to the evaluation during appeal because unlike the initial evaluation, the evaluation produced as a result of the appeal had not yet been finalized. The latter evaluation could not constitute a deprivation of rights because it was not a final evaluation, and thus there was no discrimination with regard to the evaluation under appeal.

Question Concerning Representation

Shoreline School District

Decision 12914 (9/24/18)

The Executive Director found that a petitioned-for bargaining unit consisting of Head Start employees was appropriate and directed an election regarding the unit’s exclusive bargaining representative. Public School Employees of Washington filed a petition to represent the District’s classified Head Start employees. The District offered three distinct early learning programs, one of which was Head Start. Prior to the filing of the representation petition, the District’s Board of Directors

approved a plan to “blend” students in the three early learning programs into shared classrooms with shared programming. The District argued that the petitioned-for unit was inappropriate because the Head Start employees did not share a distinct community of interest from other employees who perform early childhood services, especially in light of the pending blending. The Executive Director concluded that questions concerning representation must be resolved based on the facts at the time the representation petition was filed, not taking into account future changes. The Executive Director also concluded that despite similar duties, skills, and working conditions to employees in other bargaining units, the proposed unit was appropriate because employees within the unit shared a sufficiently distinct community of interest. Recognizing that PERC need only determine whether a petitioned-for unit is an appropriate unit, not the most appropriate unit, the Executive Director concluded that the unit was sufficiently appropriate for recognition.

Washington School of Law. During law school, Tevon served as the Notes and Comments Editor of the Washington Law Review and won membership in Order of the Coif, a legal academic honors society. Tevon also interned with the Education Division of the Washington State Attorney General’s Office and Judge James L. Robart of the United States District Court for the Western District of Washington. Prior to law school, Tevon worked as a Mathematics Teacher for Birmingham City Schools in Alabama.



Kelly Holler

Kelly graduated summa cum laude from Virginia Tech in 2014 and with high honors from the University of Washington School of Law in 2017. During law school, Kelly served as the Chief Managing Editor of the Washington Law Review and won membership in Order of the Coif, a legal academic honors society. Prior to joining Porter Foster Rorick, Kelly clerked for the Honorable Jill Johanson at the Washington Court of Appeals, Division II. Prior to law school, Kelly served as a paraeducator in the Highline School District.

21st Century Bargaining Skills Workshop

January 11—Tukwila; January 25—Spokane

PFR is once again partnering with the Washington School Personnel Association to present a one-day workshop on collective bargaining. A basic track will provide a foundation for all school administrators sitting on a management bargaining team for the first time. An advanced track will focus

PFR Announcements

Welcome

The attorneys and staff of Porter Foster Rorick are pleased to welcome two new attorneys to our team:



Tevon Edwards

Tevon is a 2012 graduate of Reed College and a 2018 honors graduate of the University of



on expanding the skill of experienced bargainers. The workshop will be offered on both the east and west side of the state. Registration will be available later this fall at www.wspa.net.

Porter Foster Rorick LLP

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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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