WASHINGTON SCHOOL LAW UPDATE

PORTER FOSTER RORICK LLP

November 2019

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

Washington Supreme Court

Public Records Act

Gipson v. Snohomish County
No. 96164-6 (10/10/19)

The Washington Supreme Court held that a PRA exemption that applies when a records request is received continues to be applicable to all installments of records provided in response to that request, even where the exemption expires after the request is made. A Snohomish County employee under investigation for sexual harassment requested certain records from the County. The County responded to the request in five installments. Because the investigation was ongoing at the time of the request, the County withheld records that were exempt under RCW 42.56.250(6), the exemption for records related to an active discrimination investigation, from each installment. The investigation was completed shortly before the County produced the second installment. The employee sued, arguing that the exemption was not applicable to the installments that were provided after the investigation had closed. The County argued that requiring agencies to reassess whether an initially applicable exemption still applied to subsequent installments of the same request would violate the Court of Appeals' bright-line rule in *Sargent I* that the PRA does not permit standing records requests. The trial court granted summary judgment in favor of the County, and the Court of Appeals affirmed. The Supreme Court affirmed, holding that an agency satisfies the PRA when it applies an exemption that is applicable at the time of the request and clearly notifies the requester of the exemption, thus allowing the requester to submit a "refresher request" after the exemption expires.

Collateral Estoppel

Weaver v. City of Everett
No. 96189-1 (10/17/19)

The Washington Supreme Court held that when an employee's initial claim for temporary disability benefits was denied because the employee's health issue did not qualify as an occupational disease, collateral estoppel and res judicata did not preclude a subsequent claim for permanent disability benefits filed after the employee became permanently unable to work due to an advancement of that health issue. A City of Everett firefighter applied for temporary disability benefits to recover $10,000 in wages lost while he was being treated for melanoma. The City denied the claim after determining that his melanoma was not an

occupational disease. The firefighter's melanoma returned several years later and caused a tumor that left him permanently unable to work. The firefighter then filed a $2 million permanent disability benefits claim, which the City denied based on its previous determination in the temporary disability proceeding. The Supreme Court held that collateral estoppel did not apply because it would work an injustice since the firefighter lacked sufficient motivation to fully litigate the occupational disease issue in the temporary benefits proceeding because of the disparity between the $10,000 he sought in temporary benefits and the $2 million he sought in permanent benefits. The Court also held that res judicata did not apply since the permanent disability claim did not exist at the time of his temporary disability claim and could not have been the subject matter of his temporary disability claim.

Public Records Act

Wash. Pub. Emps. Ass'n v. Wash. State Ctr. for Childhood Deafness & Hearing Loss
No. 95262-1 (10/24/19)

The Washington Supreme Court held that disclosure of state employees' birth dates associated with their names is not exempt under either the exemptions found in the PRA or Article I, Section 7 of the Washington Constitution. The Freedom Foundation requested certain records from several state agencies that contained the full names, birth dates, and work email addresses of state employees. The agencies intended to release the records after determining that they were disclosable, but several unions filed actions to enjoin release of the records on the basis that various PRA exemptions applied. The superior court denied a permanent injunction after determining that there were no applicable PRA exemptions. The unions successfully argued before the Court of Appeals that the privacy protections in Article I, Section 7 of the Washington Constitution protected the records from disclosure. The Supreme Court reversed, holding that employee birth date information is not exempt from disclosure under any PRA exemption, and that release of such information does not violate Article I, Section 7's privacy protections since birth dates are a matter of public record and their disclosure can serve the public's interest in transparency and oversight.

Public Records Act

SEIU v. Evergreen Freedom Foundation
No. 96578-I (10/31/19)

The Washington Supreme Court held that a Public Records Act (PRA) exemption enacted after a records request was filed but before the requested records were released barred an agency from releasing the records. In 2016, the Freedom Foundation requested the names, work mailing addresses, and work email addresses of family childcare providers from the Department of Early Learning. Washington voters approved Initiative 1501 several days later, prohibiting public agencies from disclosing personal information of vulnerable individuals and their at-home caregivers. SEIU filed a complaint on behalf of the at-home caregivers for declaratory and injunctive relief to prevent the release of the records. A day after I-1501 took effect, the trial court denied injunctive relief but delayed the Department from releasing the records to allow SEIU to appeal the ruling. The Court of Appeals held that no PRA exemption applied because the preliminary injunction was governed by the law in effect at the time the records request was filed, and that filing a PRA request creates a vested right that cannot be retroactively infringed. The Supreme Court reversed, holding that I-1501 regulates the release of records, and its protections are activated by a public agency's obligation to release records under the PRA rather than by the filing of a PRA request. The Court also held that a PRA request does not create a constitutionally-vested right and is therefore not entitled to protection against changes in law.

Court of Appeals

Mandatory Subjects of Bargaining

City of Everett v. PERC & IAFF, Local 46
No. 77831-5-I (10/28/19)

The Court of Appeals affirmed a PERC ruling that shift staffing is a mandatory subject of bargaining when it directly relates to employee workload and safety. During negotiations for a successor CBA between the City of Everett and the International Association of Fire Fighters, Local 46, the union proposed an amendment to increase the number of fire fighters assigned to each 24-hour shift to address workload and safety concerns. The City rejected the proposed amendment and the union insisted on he proposed amendment to impasse. The City filed an unfair labor practice claim, arguing that shift staffing is never a mandatory subject of bargaining as a matter of law. PERC applied the balancing test set forth by the Washington Supreme Court in *IAFF, Local Union 1052 v. PERC* to determine that the proposal was a mandatory subject because the employee interest in the relationship that shift staffing has on workload and safety outweighed the City's managerial prerogative to determine staffing levels. The Court of Appeals affirmed, holding that PERC correctly applied the *Local Union 1052* balancing test and properly concluded that shift staffing was a mandatory subject based on the direct relationship that shift staffing has on firefighter workload and safety.

PERC

Duty to Bargain; PFML

Whatcom County
Decision 13082 (10/15/19)

A PERC examiner held that Whatcom County did not commit an unfair labor practice by initiating employee payroll deductions for Paid Family and Medical Leave (PFML) premiums. Under the PFML statute, leave benefits are funded by monthly premiums apportioned between employers and employees. The statute authorizes employers to deduct up to 100% of the family leave premium and up to 45% of the medical leave premium from employee payroll, but employers can elect to pay all or any portion of the employee share. The current CBA between the County and the Deputy Sheriff's Guild was silent on the premium issue. The County and the Guild held discussions after the County informed the Guild in November 2018 that the employee share of premiums would be deducted from payroll starting January 1, 2019. The County wanted Guild members to pay the statutory maximum employee share of the premiums and the Guild wanted the County to pay the premiums in full. They could not reach an agreement by the time the County began deducting the employee portion of premiums in January 2019. The examiner granted summary judgment in favor of the County, holding that the County did not unilaterally implement the statutorily prescribed payroll deductions because the PFML statute formed the status quo and the County and the Guild did not agree to a different apportionment of the premiums.

Duty to Bargain; PFML

University of Washington
Decision 13083 (10/15/19)

A PERC examiner held that the University of Washington breached its duty of good faith bargaining by refusing to pay the employee portion of PFML premiums after mistakenly drafting such a provision in the tentative agreement between the UW and Teamsters Local 117. During negotiations for a successor CBA, the UW proposed sharing the cost of PFML premium payments with the union according to the statutorily prescribed employer and employee portions and the union proposed having the UW pay the premiums in full. The

union ultimately agreed to the statutory employer-employee premium apportionment several days before a statutory bargaining deadline of October 1, 2018. The UW bargaining team then mistakenly drafted a proposal to have the UW pay the full premiums into the tentative agreement. The union noticed this error but took no action to correct it. The UW did not notice the error until the union was already voting to ratify the tentative agreement. The union ratified, and negotiations over the PFML premium provision continued after ratification, but the UW and the union could not reach an agreement regarding the premiums by the time the contract was finalized. Subsequently, the UW did not pay the employee share of the premium. The examiner held that the UW's failure to honor the PFML provision contained in the CBA was not justified by the UW's mistakes regardless of the union's willingness to continue negotiations or the looming October 1 deadline, and constituted a breach of the UW's duty to bargain in good faith. The examiner also held that the union did not commit a ULP by failing to correct the UW's mistake in the tentative agreement.

PFR Announcements

2020 Bargaining Skills Workshop

January 31, 2020 – 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 will be available soon 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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