WASHINGTON SCHOOL LAW UPDATE

PORTER FOSTER RORICK LLP

November 2022

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

Ninth Circuit Court of Appeals

Fair Labor Standards Act

Cadena v. Customer Connexx LLC
No. 21-16522 (10/24/22)

The Ninth Circuit Court of Appeals held that call center employees were entitled to be paid for the time they spent booting up their computers under the Fair Labor Standards Act (FLSA). Customer Connexx LLC ("Connexx") operates a call center for an appliance recycling center. Connexx staffs its call center with hourly agents who are responsible for providing customer service and scheduling functions over a computer program, operated only through their employer-provided computers. Employees are also required to record their actual hours worked each day by clocking in and out on a computer-based timekeeping program, which they must do before accessing other job-relevant programs on their computers. In order to utilize their computers, including the timekeeping program, the employees must awaken the computers, log in, and open the timekeeping system. The process of booting up their computer can take from one minute to 20 minutes, depending on the age of the computer. At the end of the day, the employees must log off their computers, which can take from less than a minute to 15 minutes. Connexx did not pay the employees for the time spent booting up their computers prior to clocking in or the time spent closing down their computers after clocking out of the timekeeping program. The employees filed a lawsuit alleging violations of the overtime provisions of the FLSA. The trial court dismissed the employees' claim on summary judgment, reasoning that the time spent booting up the computer was equivalent to waiting in line to clock in on a physical timeclock, which is non-compensable under the FLSA. The Ninth Circuit reversed, reasoning that such activities are compensable if they are an integral and indispensable part of the principal activities for which the workers are employed. Because the call center employees could not perform their key job duties of receiving customer calls and scheduling employees without first turning on their computers, the time spent booting up their computers was integral and indispensable to their jobs, and therefore compensable. Additionally, because the employees clocked in after booting up the computer, which was the first compensable activity of the day, the time they spent clocking in was also compensable. The Court therefore reversed dismissal of the employees' FLSA claims as to the time spent booting up their computer and clocking in, and remanded for the trial court to also determine whether the time spent shutting down the computers after clocking out was compensable.

Washington Court of Appeals

Breach of Contract

King County Public Hospital District #2 v. Washington State Nurses Association
No. 83750-8-I (10/17/22) (unpublished)

The Washington State Court of Appeals upheld dismissal of an employer's breach of contract claim against a public sector labor union, holding that unions are not responsible for monitoring individual member compliance with the terms of the applicable collective bargaining agreement (CBA). King County Public Hospital District #2 ("District") is a public hospital in King County whose nursing staff is represented by the Washington State Nurses Association (WSNA). In 2016, a former District nurse filed a class action lawsuit, alleging that the District had denied the nurses their statutorily guaranteed rest and meal breaks. That lawsuit was eventually reviewed by the Washington Supreme Court, at which point the WSNA filed an amicus brief in 2020 in support of the nurse, arguing that the language of the CBA between the parties did not deviate from the state regulations governing meal and rest periods. The District disagreed with the WSNA's interpretation, believing that the CBA language differed from state law because it required nurses to "record and attest" to any missed meal or rest breaks in order to receive compensation. After filing its amicus brief, the WSNA encouraged District nurses to report if they had missed their second meal period, so that they could receive compensation. In January 2021, the District filed a lawsuit against the WSNA, alleging that it had breached the CBA by not monitoring member compliance with the applicable meal and rest period language, and also by encouraging members to violate the agreement by reporting any missed second meal breaks. The District further alleged that the WSNA had committed an unfair labor practice (ULP) by encouraging nurses to abandon a "past practice" without bargaining. The trial court dismissed the District's claims as legally insufficient. The Court of Appeals affirmed, holding that a union's responsibility for its members is limited to speaking for the group faithfully, not monitoring individual member compliance with the terms of the CBA. The Court further rejected the District's ULP claim, holding that the WSNA did not unilaterally change a mandatory subject of bargaining by expressing its opinion on the meaning of the CBA provision.

Discrimination

Williams v. DSHS
No. 56240-5-II (10/25/22) (unpublished)

The Washington State Court of Appeals held that to establish a hiring discrimination claim under the Washington Law Against Discrimination (WLAD), employees must show that their employer knew about their qualifications at the time they were rejected for a particular job. For approximately 20 years, Frank Williams worked in nonsupervisory positions for Western State Hospital (WSH). In 2016, WSH announced that it would fill 28 open ward program administrator positions, which were supervisory positions. Williams applied for the position, and his cover letter stated that he had more than 25 years of supervisory skills and team building experience. However, Williams' resume did not contain detailed descriptions of his prior job responsibilities, nor did it demonstrate how his prior positions were supervisory. At the time he submitted his application, Williams was 73 years old. WSH received a total of 169 applications for the 28 open positions. Williams did not receive an interview for the position. WSH ultimately hired 25 people, six of whom were Black, three of whom were in their 50s, and two of whom were in their 60s. Williams filed a lawsuit, claiming that WSH had engaged in race and age discrimination in

violation of the WLAD when it did not interview him for the positions. The case went to trial before a jury, and after Williams presented his case, WSH moved for judgment as a matter of law, arguing that Williams had presented insufficient evidence for the jury to conclude that WSH had discriminated against him. The trial court agreed with WSH and dismissed the lawsuit, noting that the resumes of the successful applicants were highly detailed and demonstrated their skills and experience, while Williams' resume contained no explanation of his supervisory experience. The Washington Court of Appeals affirmed, reasoning that Washington courts generally look to federal case law when interpreting the WLAD, and federal courts focus on the actual knowledge of the employer when deciding employment discrimination actions. Applying this standard, the Court held that Williams was required to show that WSH knew of his supervisory qualifications at the time it rejected his application. Because Williams failed to present any evidence that WSH knew he possessed supervisory experience (or that he in fact had supervisory experience), the Court held that Williams failed to establish discrimination, and it affirmed dismissal of his lawsuit.

Public Records Act

Worthington v. Washington State Legislature
Nos. 56427-1-II; No. 56457-2-II (10/25/22) (unpublished)

The Washington State Court of Appeals held that various Washington legislators had conducted an adequate search for records under the Public Records Act (PRA), despite not finding one specific email chain the requestor sought. In August 2018, John Worthington sent a records request to various legislators, including the Washington State Legislature, the Washington State Senate, the Washington State House of Representatives, and the offices of individual legislators ("Legislative Defendants"). The request sought all communications between Joy Beckerman, a member of the public, and Senator Hasegawa, his aides, and other members of the House Rules Committee sent on February 26, 2016, at 5:34 pm. Following multiple requests for clarification, Worthington explained that he was looking for a particular email communication from Joy Beckerman to the House Rules Committee and to Senator Hasegawa, which he knew existed because he already had a copy of the email chain. At the time of Worthington's request, the PRA had not been interpreted to apply to the Legislative Defendants, but some of them nevertheless voluntarily searched their emails and personal devices for responsive records. In December 2019, the Washington Supreme Court held that state lawmakers are subject to the PRA, and beginning in January 2020, the Legislative Defendants asked various legislators and their aides to search for records responsive to Worthington's request. However, given the delay, many of the legislative aides no longer worked for the Legislative Defendants. Also, some of the state legislators no longer used the same cell phone that they had in 2016, making it impossible to search their former devices for responsive records. The Legislative Defendants searched through the emails, calendars, voicemails, and text messages on the current legislative cell phones for all legislators listed in Worthington's request. They also searched the emails, calendars, and voicemails retained for the legislative aides who had worked for the Legislative Defendants in 2016. However, this search did not locate a communication from February 26, 2016, at 5:34 pm. Worthington filed a lawsuit, claiming that the Legislative Defendants had violated the PRA by failing to conduct an adequate search, silently withholding records, and destroying records before his request was resolved. The trial court held a hearing on the merits, and ruled that the Legislative Defendants had conducted an adequate search. The Court of Appeals affirmed, reasoning that the public records officer had submitted a declaration that she

searched all emails, calendars, voicemails and text messages on legislative phones for all currently employer legislators listed in Worthington's request, as well as the communications to and from their legislative aides. The Court noted that Worthington failed to provide authority for the proposition that former employees are required to provide records for a public records request, and at any rate, some former employees' records had been searched. As a result, the Court held that the search was reasonably calculated to uncover all relevant documents despite not uncovering the specific email that Worthington sought. As a result, the Court affirmed dismissal of the PRA lawsuit.

Welcome New PFR Attorneys

The attorneys and staff of Porter Foster Rorick are pleased to announce two new additions to our team of attorneys providing responsive and practical legal advice to Washington public schools.

Megan L. Knottingham

Megan Knottingham advises and defends public school districts in all areas of school law.

Megan is a 2009 magna cum laude graduate of the University of Puget Sound, a 2010 graduate of the University of Puget Sound School of Education, and 2022 graduate of the University of Washington School of Law. During law school, Megan served as an Articles Editor for the Washington Law Review, worked as a Hazelton Fellow, clerked with the UW Division of the Washington State Attorney General's Office, and externed with both the Seattle Equal Employment Opportunity Office and the Honorable John C. Coughenour of the United States District Court for the Western District of Washington. Prior to attending law school, Megan taught elementary and middle school students for eight years in Somerville, Massachusetts, and Lakewood, Washington.

Nick M. Morton

Nick Morton advises and defends public school districts in all areas of school law with a particular emphasis on labor and employment issues.

Nick graduated from Pitzer College in Claremont, California, in 2015 and from the Boston University School of Law in 2020. During law school, Nick interned with the Harvard University Office of General Counsel, the United States Department of Labor Regional Solicitor's Office, and the labor and employment section of a private national law firm. Before law school, Nick taught English in Argentina on a Fulbright Scholarship and worked as a paralegal at an immigration law firm. Prior to joining PFR in 2022, Nick practiced labor and employment law with Sebris Busto James.

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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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