

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

November 2023

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

PERC

Discrimination

Franklin County

Decision 13726 (10/9/23)

A PERC Examiner held that Franklin County did not commit a discrimination unfair labor practice (ULP) when it demoted a sergeant and corporal in the County Sheriff's Office based on an internal investigation into false statements the employees made in a separate ULP complaint. The Sheriff's Office operates the Franklin County Jail in Pasco, Washington, which employs corrections officers and other law enforcement positions represented by Teamsters Local 839 ("Union"). McKenzie Burgess was hired as a Corrections Deputy in 2017, and she was promoted to corporal in 2019. Scott Cram was hired by the County in 2002, promoted to corporal, and then promoted to corrections sergeant in 2015. Both Burgess and Cram previously held leadership positions in the Union, including serving as shop steward, and they had previously participated in collective bargaining negotiations. The County and Union have a strained relationship, and the parties have litigated

multiple grievance arbitrations and ULPs beginning in October 2020. In October and December 2021, Burgess and Cram filed ULP complaints alleging that their supervisors had made unlawful statements discouraging union membership in three separate meetings. The complaints also alleged that the County had refused to bargain over overtime procedures and committed a direct dealing ULP by circumventing their designated bargaining representative in the discussions. One of the Jail Commanders reviewed the complaints, concluded that the factual allegations were false, and reported to the County Sheriff that the documents contained "lies." The County Sheriff instructed the commanders to initiate an internal investigation into the allegations contained in the ULP complaints, and as part of that investigation, the County directed Burgess and Cram to participate in investigatory interviews. Burgess and Cram were reluctant and uncooperative during the interview process, but eventually during her interview, Burgess admitted to several unrelated policy violations including watching an archived video on the Jail's computer system without permission and disobeying a directive to not conduct union business during her working hours. Cram was generally evasive and uncooperative during his investigatory interview, which resulted in the County repeating questions and directing him to cooperate. The investigation ultimately found that Burgess committed 23 policy

investigations, including violations of the truthfulness policy in the statements she made as part of the ULP complaint. The investigation concluded that Cram was dishonest numerous times during the investigation and attempted to hinder the investigation by lying and minimizing his involvement in the matters discussed. The County initially recommended termination of Burgess and Cram, but following their *Loudermill* meetings, it decided to instead demote them to corrections deputies as discipline. The Union filed a ULP challenging the demotions, arguing that the County's actions were in retaliation for their filing of the prior ULP complaints, a protected union activity. Following an evidentiary hearing, a PERC Examiner dismissed the complaint and held that the discipline was for a legitimate, nondiscriminatory purpose. The Examiner held that there is a distinction between disciplining an employee for the act of filing a ULP complaint, which is a protected union activity, and disciplining an employee for false statements made in that complaint, which is within an employer's investigative authority. The Examiner held that the evidence showed the employees were demoted not for engaging in protected union activity, but for committing a number of policy violations, including insubordination and failure to cooperate with the internal investigation. The Examiner further rejected the Union's claim that the investigations were biased, and that the investigator had "badgered" the employees, noting that repetitive questioning was within the realm of legitimate interviewing techniques. Because the employer established legitimate, nondiscriminatory reasons for the demotions, the Examiner dismissed the Union's complaint.

Representation Petition

City of Bellingham

Decision 13727 (10/11/23)

A PERC Examiner dismissed a petition to sever five dispatch supervisor positions from an existing

bargaining unit that also represents emergency dispatchers for the City of Bellingham. What-Comm 911 is an independent subdivision of the City's police department, which provides emergency call-receiving, dispatch, and administrative support to the City's first responders. What-Comm 911 is staffed by dispatcher and dispatch supervisor positions, all of which are represented by the What-Comm Dispatchers Guild (WDG). In November 2022, another labor union, the What-Comm Supervisory Guild (WSG) filed a petition to represent the dispatch supervisors and sever them from the existing WDG bargaining unit, arguing that the supervisors should not be included in the same bargaining unit as the dispatch employees that they supervise. The City supported WSG's petition to sever the existing bargaining unit. Following an evidentiary hearing, the Examiner dismissed the petition, finding that the dispatch supervisors did not meet the definition of "supervisor" within the meaning of state collective bargaining laws. The Examiner recognized that supervisors are generally not included in the same bargaining unit as employees that they supervise, and noted that the test of whether a disputed position is "supervisory" under state collective bargaining laws is whether the position has independent authority to act in the interest of the employer and make meaningful changes to the employment relationship, such as hiring, assigning, promoting, or disciplining those employees. The Examiner held that the petitioned-for dispatch supervisors did not meet that definition because the evidence showed that the authority to hire, terminate, or administer discipline beyond a verbal warning resided with the chief of police, not with the dispatch supervisors. The Examiner held that the dispatch supervisors' limited ability to participate in job interviews and recommend candidates for hiring did not make that role supervisory. Because the dispatch supervisors did not spend a majority of their time performing supervisory duties, nor did



they perform the preponderance of supervisory duties for the department, the Examiner held that there was no supervision-related conflict of interest and dismissed the WDG's petition to sever the existing bargaining unit.

PFR Announcements

2024 Bargaining Skills Workshops

Porter Foster Rorick is once again partnering with the Washington School Personnel Association (WSPA) to present our popular workshops on collective bargaining skills. The workshops include a primer on the legal rules for collective bargaining, but also focus on the negotiating skills which help bargaining teams find agreements. These skills are important for all members of a management bargaining team, and particularly as we head into another challenging year for collective bargaining in 2024. The courses are taught by PFR attorneys who regularly represent school districts at bargaining tables with certificated and classified employee unions in Washington State and who collectively have negotiated settlements for more than 800 open labor contracts over the past 30 years.

This year we are offering our classic Bargaining Skills 101 curriculum on two dates: Monday, January 22, and Thursday, February 1. We are also offering a Bargaining Skills 201 curriculum on two dates: Tuesday, January 23, and Friday, February 2. Attendees can choose to come to Bargaining Skills 101 or Bargaining Skills 201, or attendees can choose to come to both workshops on back-to-back days. The workshops will be held at the Two Union Square Conference Center in downtown Seattle with each section limited to 40 participants to facilitate small group activities and lots of Q&A. The cost is \$295 per day for WSPA members and \$395 per day for non-members, with a \$400 daily

discount for districts who send a team of four or more. Lunch and refreshments are included.

If you have any questions about the workshops, please feel free to call any of our attorneys or staff at (206) 622-0203 or reply to info@pfrwa.com.

Porter Foster Rorick LLP

WASHINGTON SCHOOL LAW UPDATE is published on or about the 5th of each month. To be added to or removed from our distribution list, simply send a request with a name, organization, and e-mail address to info@pfrwa.com.

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
Lynette Baisch
Chase Bonwell
Cliff Foster
Olivia Hagel
Josh Halladay

Parker Howell
Megan Knottingham
Rachel Miller
Buzz Porter
Liz Robertson
Mike Rorick

Jay Schulkin
Kimberly Shely
Sharan Singh
Greg Swanson
Christina Weidner
Lorraine Wilson



PORTER FOSTER RORICK
LLP