WASHINGTON SCHOOL LAW UPDATE

March 2021

PORTER FOSTER RORICK LLP

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

Washington Court of Appeals

Employment Discrimination

Yandl v. Highline School District
No. 80901-6-I (2/1/21) (unpublished)

The Washington State Court of Appeals held that the Highline School District did not unlawfully discriminate against an employee on the basis of a protected characteristic. The District hired Lee Yandl, a disabled military veteran, as a campus security officer on a limited-time contract. Yandl was terminated after responding to a potential fight between students in an inappropriate manner, but was later reinstated with backpay and assigned to another school for the rest of the school year. After completing his contract, he brought disparate treatment and hostile work environment claims against the District under the Washington Law Against Discrimination. Yandl alleged that his rescinded termination was disparate treatment, and that fellow staff members mistreated him by teasing him for wearing a camouflage military hat and laughing at him for experiencing an anxiety attack. The trial court granted summary judgment to the District on both claims. Yandl was a member of a protected class as a disabled military veteran, but the Court held that he did not demonstrate that he was treated less favorably than similarly situated employees when the District initially terminated him. The Court was not convinced by Yandl's comparison to a security employee who was suspended for leaving his security post in the middle of a weekend nighttime shift since that employee's misconduct did not involve students and Yandl's reinstatement with back pay could not be considered less favorable than this other employee's suspension without pay. The Court also held that Yandl did not establish a hostile work environment claim since he failed to demonstrate that the alleged mistreatment from other staff could be imputed to the District, and because such alleged mistreatment was not sufficiently pervasive to alter the conditions of employment.

PERC

Unilateral Implementation

Kitsap County
Decision 13306 (2/5/21)

A PERC Examiner held that Kitsap County did not commit a refusal to bargain unfair labor practice (ULP) by unilaterally implementing a rule for filling vacancies in its Sheriff's Department consistent with an amendment enacted by the legislature. As required by state law for sheriffs as it existed at the time, the Sheriff filled vacancies in

the bargaining unit by selecting a candidate from a list of the top three candidates for the position according to their civil service test scores prepared by the County's Civil Service Commission. In 2020, the legislature amended the civil service statute to require that "the commission shall certify the names of five persons highest eligible on the list," thereby requiring a "Rule of Five" rather than the existing "Rule of Three." As the Civil Service Commission prepared to amend its rules consistent with this Rule of Five, the Guild president sent the County a demand to bargain. The Guild and the County met but could not reconcile the Guild's contention that the change was a mandatory subject of bargaining with the County's assertion that the change was an illegal subject. The Guild then filed a ULP alleging the County had unlawfully unilaterally implemented the Rule of Five after the Civil Service Commission amended its rules consistent with the amended statute. The Examiner granted summary judgment for the County, holding that the County did not commit a refusal to bargain ULP. The Examiner held that the decision to implement the Rule of Five was an illegal subject that the County was not required to bargain because the plain language of the statute specifically required the County to implement a Rule of Five and allowed no discretion for county civil service commissions to provide any other number of qualified candidates for a vacancy.

Discrimination

Chelan County
Decision 13308 (2/11/21)

A PERC Examiner held that Chelan County committed a discrimination unfair labor practice (ULP) by suspending an employee for sending an email to her bargaining unit contesting a fellow member's candidacy to be union vice president. After Sergeant Adam Musgrove was nominated for election as vice president of the Deputy Sheriff's Association, Deputy Jennifer Tyler emailed union membership to contest Musgrove's candidacy based on Tyler's belief that Musgrove had harassed Tyler. Musgrove had previously filed a human resources complaint against Tyler and participated as a witness in two other investigations, none of which resulted in discipline for Tyler. Tyler believed that Musgrove's participation in these investigation processes constituted a form of workplace harassment, and that Musgrove could therefore not effectively represent her as union vice president. After Tyler sent this email to union membership, Musgrove filed a complaint with human resources alleging that Tyler's email was an attempt to bully Musgrove into withdrawing from contention for the vice president role. Based on the findings of an outside investigator, the County concluded that Tyler's email violated County policies on ethics, truthfulness, workplace harassment, and teamwork and cooperation, and suspended her for three days. The Examiner held that the County committed a discrimination ULP by suspending Tyler for participating in internal union politics since such activity is a component of public employees' right to organize and designate representatives for collective bargaining. The Examiner further determined that Tyler's email was not so unreasonable as to lose that statutory protection since she acted on her good faith belief that Musgrove's participation in the previous investigations were based on meritless claims and therefore constituted harassment toward her. The Examiner also rejected the County's assertion that it suspended Tyler for a legitimate, nondiscriminatory reason when the sole factual basis for the discipline was Tyler's protected email contesting Musgrove's candidacy.

Interference

Tukwila School District
Decision 13314 (2/26/21)

A PERC examiner held that the Tukwila School District did not commit an interference unfair labor practice (ULP) by restricting two members of the

Tukwila Education Association's executive board from attending staff meetings at a school where they were not employed. Staff at Cascade View Elementary requested to have a union representative present at a staff meeting discussion of the District's civility policy. Emma Wohl, a teacher at another school who also served on the union executive board, attended the meeting, but Cascade View's principal asked her to leave before the civility policy discussion based on the District's determination that it would be inappropriate for someone from outside of the building to participate in the planned small group discussions. Debbie Aldous, a teacher at another school who also served on the union executive board, asked Cascade View's principal if she could attend an upcoming online staff meeting per staff request. The principal did not respond to Aldous' email. Aldous obtained the meeting login information from another union member and attended part of the meeting during her regular work hours without her principal's permission. Aldous' principal then scheduled a meeting with Aldous to discuss her duties as a teacher and her attendance at the staff meeting during her work hours. During this meeting, Aldous told her principal that she had attended the Cascade View online meeting at the request of union members but refused to say who had shared the login information with her. Aldous was accompanied by a union representative, but the principal did not threaten discipline and the meeting resulted in no subsequent discipline or other communication to Aldous. The Examiner held that the District did not commit an interference ULP by restricting Wohl's and Aldous' access to the staff meetings since there was neither an explicit CBA provision allowing union representatives to access staff meetings nor a consistent history of union representative access to staff meetings outside a representative's own building. The Examiner also held that Aldous' meeting with her principal did not constitute interference because the principal was exhibiting normal concern about her activities during work hours and accepted Aldous' refusal to disclose who shared the login information without discipline, threatened discipline, or other follow up.

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