

# WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK  
LLP

April 2018

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

## PFR Announcements

### Public Records Disclosure Training

May 7, 9 am to 3 pm

Two Union Square Conference Center, Seattle

Join Tim Reynolds and Jay Schulkin for a full day of hands-on training in processing public records requests and avoiding mistakes that lead to liability. This workshop will satisfy the legally-mandated training for district officials and public records officers. The cost is \$150 per person and includes lunch. Register by sending an e-mail with the names of attendees to [info@pfrwa.com](mailto:info@pfrwa.com).

### McCleary Fix Pocket Guide

ESSB 6032; ESSB 6241; E2SSB 6362 (3/27/18)

The state legislature finished its 2018 session by amending portions of the school funding scheme and the related laws governing employee compensation. A pocket guide summarizing the changes is currently available on the PFR website under the “Resources” tab. The latest version reflects the governor’s March 27 veto of the delayed professional learning day funding. A Q&A document discussing the impact of these statutes

on collective bargaining will be available on our website later in April.

## PERC

### Duty to Bargain

*Benton County*

Decision 12790-A (3/06/18)

An employer who overpaid employees committed an unfair labor practice by refusing to bargain the process for recouping overpayments. The process for recouping overpayments from public employees is prescribed by the Overpayment of Wages statute, RCW 49.48.200. Because this law affords employers discretion in how overpayments are recovered, and because wages are a mandatory subject of bargaining, the union was entitled to bargain a plan for recovering the overpaid wages. PERC rejected the employer’s argument that the Overpayment of Wages statute abrogated the need for bargaining and granted summary judgment for the union.

### Interference; Discrimination; Duty to Bargain

*Seattle School District (IUOE Local 609)*

Decision 12842 (3/9/18)

PERC dismissed a union’s complaint alleging (1) interference with employee rights by the building principal making statements to a custodian that

could reasonably be perceived as a threat of reprisal associated with his union activity; (2) discrimination against the custodian by making complaints about his work performance and delaying processing of his discrimination complaint against the building principal; and (3) refusal to provide relevant information to the union. First, the union failed to establish that an employee in the custodian's position could reasonably perceive certain statements by the principal as a threat of reprisal, because the custodian understood the principal was not his supervisor and could not carry out the threats. Second, the union failed to establish that the custodian was deprived of any ascertainable right, benefit, or status in connection with participation in union activity, where he was not disciplined or negatively evaluated, and the employer investigated his complaint (even though the investigation was delayed). Third, the employer did not violate its duty to bargain by failing to provide information requested by the union, when the employer performed "good faith searches" on five dates that otherwise provided responsive documents.

### Timeliness of Complaint

*Community Transit*

Decision 12797-A (3/23/18)

PERC dismissed a union's complaint as untimely because it was not filed within six months after the dispute arose. The six-month statute of limitations begins to run at the earliest point in time that an unfair labor practice complaint could be filed. It is triggered when the opposing party first provides clear and unambiguous notice of specific facts giving rise to a dispute. In this case, the employer triggered the statute of limitations by clearly informing the union of its intent to enforce a CBA provision regarding unpaid leave days. The employer did not trigger a new statute of limitations by later reiterating its original position to the union.

## 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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