

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

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

Washington Court of Appeals

Wrongful Termination and CBAs

Rowland v. Seattle Public Schools

No. 74219-1 (4/23/18) (unpublished)

The Washington Court of Appeals upheld dismissal of a school district employee's wrongful termination claim because she failed to exhaust administrative remedies. The District terminated Rowland, a special education instructional assistant, after it investigated claims that she inappropriately supervised students. Rowland filed a grievance with her union, which denied her request to take the grievance to arbitration. Rowland sued the District for wrongful termination, alleging the District violated the collective bargaining agreement by terminating her without just cause. The court affirmed dismissal of her claims, holding that Rowland must sue the union before she could be allowed to circumvent the contractual arbitration provisions. In the absence of evidence showing bad faith, discrimination, or arbitrary conduct on the part of the union, its decision to forgo arbitration binds the employee and forecloses judicial action.

Wrongful Termination and Just Cause

Baker v. Pierce Cnty Pub. Transp. Benefit Area Corp.
No. 49720-4 (4/24/18) (unpublished)

The Washington Court of Appeals upheld dismissal of a transit employee's wrongful termination claim, concluding the County had just cause for termination because the employee altered the pay rates of other employees without authorization. Baker's duties included overseeing public transit officers, and he made an agreement with two officers to begin treating those officers as salaried, even though their contracts required hourly payment. After an investigation and audit, the County terminated Baker. Baker sued, alleging the County lacked just cause for the termination. The Court disagreed, concluding the County had just cause to terminate Baker because he violated County rules when he altered the transit officer contracts without authorization.

Wrongful Termination and Public Policy

Vargas v. City of Asotin

No. 35093-2 (4/24/18) (unpublished)

The Washington Court of Appeals upheld dismissal of a police officer's wrongful termination claim because there was no evidence his employer was aware of the complaints the officer alleged gave rise to his retaliatory termination. Officer Daniel Vargas claims his superior, the Chief of Police,

violated evidence collection laws and sold guns illegally on City property. Vargas allegedly reported this behavior to the FBI, the Bureau of Alcohol, Tobacco, and Firearms, and other City employees. The Chief instructed the Mayor to fire Vargas for insubordination, and she did. Vargas sued the City alleging wrongful termination in violation of public policy. He claimed his dismissal was retaliation for reporting the Chief's misconduct. But because Vargas could not prove that the Mayor was aware of Vargas' reports when he was fired, the court dismissed his wrongful termination claim.

PERC

Duty to Bargain in Good Faith

San Juan County

Decision 12850 (4/5/18)

PERC dismissed an employee's duty to bargain claims because individual employees do not have legal standing to pursue such claims. Paterson was a County employee in a bargaining unit represented by the Washington State Council of County and City Employees (Union). The County and the Union negotiated changes in the recognition clause of their collective bargaining agreement and Paterson contested those changes by filing an unfair labor practice complaint against the County alleging a failure to bargain in good faith. PERC dismissed the employee's complaint because individual employees within a bargaining unit are beneficiaries of the bargaining relationship but not parties to it. Employees cannot file refusal to bargain claims against their employer.

Contracting Out

Western Washington University

Decision 12825 (4/10/18)

PERC dismissed some, but not all, of a union's refusal to bargain allegations as untimely when it

failed to identify facts constituting contracting out within six months of the filing of the complaint. Public School Employees of Washington (PSE) filed a complaint against the University in January 2018 alleging that the University was intending to contract out the programming of a new security access system being installed at an athletic facility, rather than training PSE-represented employees to do this work. The complaint alleged that PSE had notice in the spring of 2017 that the University intended to contract out the work, and that PSE made a demand to bargain on March 27, 2017. The complaint did not, however, allege whether the employer ever hired an outside contractor to perform the work. Allegations of future skimming and/or contracting out, which have not yet occurred, are insufficient to state a cause of action for a unilateral change and, thus, the charges of refusal to bargain were dismissed.

Duty of Fair Representation

Federal Way School District (IUOE 286)

Decision 12853 (4/11/18)

PERC dismissed a ULP complaint filed by a school district employee against her union because it was untimely and failed to describe facts that could constitute a ULP. Gloria Butts was employed in a school district kitchen position represented by IUOE 286. In January 2018, Ms. Butts filed a ULP complaint alleging various facts occurring between 2007 and 2015, as well as an attempted termination of her employment in September 2016. When Ms. Butts requested assistance from her union for the termination, she was allegedly told her union representative was on vacation or sick. The complaint was unclear, however, when Ms. Butts contacted her union representative, and lacked facts alleging arbitrary, discriminatory, or bad faith conduct by the union. A ULP complaint must be filed within six months after the complainant first has notice of the violation and must also contain a clear and concise statement of the facts



constituting the alleged ULP, including times, dates, places, and participants in occurrences. The only dates identified by the complaint occurred more than six months before the complaint was filed and, thus, the complaint was dismissed.

Skimming; Duty to Provide Information

Island County

Decision 12858 (4/18/18)

PERC found an employer unlawfully skimmed bargaining unit work when it created and staffed control operator positions at the county jail for work that had previously been performed by uniformed personnel in a different bargaining unit. Responding to staffing shortages and an outside review of its operations, the jail administrator proposed a new non-uniformed position to operate the control room at the jail in July 2016. The union representing corrections officers demanded to bargain regarding this change although bargaining did not take place for several months due to changes in staff and union leadership. As the county's budgeting process for 2017 was coming to a close in November 2016, the jail administrator received budget authority for the positions and posted them. PERC held that the employer did not announce its decision to hire nonbargaining unit control operators as a *fait accompli* but did unlawfully skim bargaining unit work when it assigned the control room operator duties and responsibilities to nonbargaining unit control room operators without negotiating to agreement or impasse with the union. The union did not waive its right to negotiate the employer's decision to remove the control room duties and responsibilities from the bargaining unit by either inaction or by contract (a broad management rights clause). Finally, the employer refused to bargain by failing to provide relevant information requested by the union, but the union was not entitled to attorney fees because there was an insufficient history or pattern of bad faith conduct.

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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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