WASHINGTON SCHOOL LAW UPDATE

PORTER FOSTER RORICK LLP

June 2018

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

Washington Supreme Court

Public Records Act, Trade Secrets

Lyft, Inc. v. Seattle
No. 94026-6 (5/31/18)

The Washington Supreme Court held that a third party may enjoin disclosure of public records containing trade secrets only if the disclosure would clearly not be in the public interest. The City made an agreement with Lyft and Uber that required the companies to provide the City with quarterly reports containing ride-sharing data. Following a public records request for these reports, Lyft and Uber moved to enjoin disclosure, arguing the reports contained trade secrets. The trial court granted a partial injunction, applying the general standard for injunctive relief under CR 65, which requires a party to show a well-grounded fear of immediate invasion of a legal or equitable right, and that such invasion will result in substantial injury. The Supreme Court agreed that the data at issue constituted trade secrets but held that the trial court should have applied the standard for injunctive relief contained in the PRA rather than the standard in CR 65. Therefore, the court held that a third party may enjoin disclosure of public records containing trade secrets only if such disclosure would clearly not be in the public interest.

Washington Court of Appeals

Wrongful Termination

Scholz v. Washington State Patrol
No. 34919-5 (5/17/18)

In dismissing the appellant's wrongful termination claim, the Court of Appeals held that when determining whether an arbitration decision precludes consideration of an issue on appeal, courts must consider (1) whether the issue was within the scope of the reference to arbitration, (2) the differences between procedures in the arbitration and the court procedure, and (3) public policy considerations. Scholz claimed the Washington State Patrol (WSP) wrongfully terminated him on the basis of a disability. The WSP contended a prior arbitration concluded Scholz was dismissed for just cause, and thus collateral estoppel precluded consideration of the issue. Scholz argued that an arbitration decision is analogous to the decision of an administrative agency and should be analyzed as such. The Court agreed, holding that courts should analyze a collateral estoppel claim arising from an arbitration

as they would a decision from an administrative agency, thus requiring consideration of the three additional factors listed above. The court went on to conclude that the facts determined in the arbitration prevented Scholz from establishing his wrongful termination claim.

Truancy Orders

A.J.L. v. Everett School District
No. 77032-2 (5/14/18)

The Court upheld a truancy order where the District produced evidence of 28 unexcused absences and where the District had taken appropriate steps to address those absences. The District filed a truancy petition, and AJL did not appear at the hearing with the Superior Court Commissioner. The Commissioner found sufficient facts to enter an order to abate truancy. AJL appealed, arguing the order was not supported by the findings required by statute and that the order deprived him of due process. The court concluded sufficient findings supported the order because the District provided evidence that (1) AJL had 28 unexcused absences, (2) the District had taken appropriate steps to address those absences, and (3) court intervention and supervision was necessary to assist the District. Further, the court held the order did not deprive AJL of due process because he received notice and an opportunity to be heard and present evidence, and because the legislature has recognized the State's interest in regular school attendance.

OSPI Regulations

Defining Student Absences

Chapter 392-401 WAC

The Office of the Superintendent of Public Instruction (OSPI) adopted new regulations defining excused and unexcused absences for students. The regulations provide that a student is absent when the student is "not physically present at school" and "not participating" in one of the listed approved activities. Those listed activities include instruction, any instruction-related activity, or any other approved activity "that is regulated by an instructional/academic accountability system, such as participation in district sponsored sports." WAC 392-401-015(1)(b)(iii). The regulation further provides that a student is not absent if the student has been suspended or expelled, is receiving educational services required by law, or is enrolled in a qualifying course of study as defined by separate regulations. A full day absence occurs when a student is absent for 50% or more of a given day.

The new regulations also provide a list of reasons for which absences must be excused, including absences due to illness, a family emergency, a religious or cultural observance, a judicial proceeding, a post-secondary institution visit or scholarship interview, state-recognized search and rescue activities, homeless or foster/dependency status, a parent's deployment activities, student safety concerns, migrant status, or an approved activity. WAC 392-401-020(1) – (11). A principal or designee "has the authority to determine if an absence meets" the listed criteria for an approved absence, and districts may define additional criteria. WAC 392-401-020(12).

The new regulations are effective August 1, 2018.

PERC

Unfair Labor Practice, Discrimination

State – Individual Providers
Decision 12863 (5/2/18)

PERC dismissed an employee's allegations of discrimination because the complaint failed to state a claim that fit within PERC's jurisdiction. The employee allegedly entered into a contract with the

employer under which he would be paid to complete a 70-hour training course. The employee alleged that the employer canceled the contract and only paid him for half of the actual hours worked. The employee filed a complaint with PERC alleging that the employer committed an unfair labor practice by improperly withholding wages and violating the Washington Law Against Discrimination. PERC dismissed the complaint for failure to state a cause of action, explaining that it only hears discrimination complaints alleging that an employer discriminated against employees for participating in protected union activities; the complainant must allege a causal connection between the employee's exercise of a protected union activity and the employer's action. PERC does not have jurisdiction over general discrimination claims or over other employment laws such as wage and hour or whistleblower protection statutes. Here, the complaint failed to allege that the employer's action was motivated by union activity, and so did not state a claim within PERC's jurisdiction.

Unfair Labor Practice, Fair Representation

State – Individual Providers
Decision 12864 (5/2/18)

PERC dismissed an employee's allegations that the union breached its duty of fair representation. The employee filed a complaint against the union alleging that the union breached its duty of fair representation when it refused to file a grievance on the employee's behalf. The employee's complaint made only vague allegations, lacked dates, and did not identify the participants in the controversy. PERC dismissed the complaint for failure to state a cause of action because the complaint failed to allege that the union had aligned itself against the employee on an improper or invidious basis. To sustain a fair representation claim in a PERC action, an employee must establish that the union took some action aligning itself against bargaining unit employees on an improper or invidious basis such as union membership, race, sex, national origin, etc. An employee cannot sustain fair representation claims solely by claiming that the union failed to file a grievance on his or her behalf.

Unfair Labor Practice, Discrimination

Puyallup School District
Decision 12814-A (5/10/18)

PERC held that Puyallup School District violated RCW 41.56.123(1) and committed an unfair labor practice by failing to grant salary step increases after the CBA expired at the end of the 2015-2016 school year. The CBA between the District and the union expired on August 31, 2016. It called for employees to move a step on the salary schedule on September 1 each year. The District did not advance the employees on the salary schedule on September 1, 2016, the day after the CBA expired, although the District intended to provide employees retroactive pay after the new salary schedule was implemented. Under RCW 41.56.123(1), after a CBA expires, its terms and conditions remain in effect until the effective date of a subsequent agreement but not for more than one year. In this case, PERC rejected the District's arguments that there was a past practice of not granting salary step increases until the parties reached a successor agreement. PERC held that the most recent salary schedule remained in effect until the new CBA took effect, that the District was thus responsible for moving employees on the current schedule on September 1, 2016, the day after the CBA expired, and that the District committed an unfair labor practice by unilaterally changing wages without fulfilling its bargaining obligation.

Unfair Labor Practice, Refusal to Bargain

Kitsap County
Decision 12870 (5/21/18)

PERC held that an employer refused to bargain by unilaterally changing its medical insurance contributions after the CBA expired. Against a litigious historical backdrop, the parties' CBA called for employees to contribute a fixed dollar amount toward their medical insurance. Upon the expiration of the CBA, the employer unilaterally increased employees' medical contributions, consistent with an increase in insurance rates. An employer violates the duty to bargain if it unilaterally changes the terms and conditions of employment without giving the union notice of the change and providing an opportunity to bargain before making a final decision. The union must prove that there was an actual change to a status quo or a past practice that is a mandatory subject of bargaining. PERC held that the union met its burden here. First, PERC found that the relevant status quo or past practice was for the employer to pay the fixed dollar amounts specified in the expired CBA, and that the employer altered the status quo. Second, PERC found that insurance contribution rates are a mandatory subject of bargaining because they predominantly relate to wages. Finally, PERC determined that the employer had not afforded the union an opportunity to bargain because the employer provided notice only after a decision was made. Consequently, the employer was ordered to provide public notice of its violation and to compensate employees for any contribution amounts they overpaid.

Porter Foster Rorick LLP

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

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.

Update Editors

Jon Collins
jon@pfrwa.com

Leilani Fisher
leilani@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