WASHINGTON SCHOOL LAW UPDATE

July 2018

PORTER FOSTER RORICK LLP

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

United States Supreme Court

Union Dues for Nonmembers

Janus v. AFSCME
No. 16-1466 (6/27/18)

The U.S. Supreme Court held that public employers may not deduct union agency fees from nonconsenting employees. Under Illinois state law, public employees represented by a union are required to pay an "agency fee," even if they do not join the union. The fee funds the percentage of union dues attributable to the union's collective bargaining activities, but not its political activities. Mark Janus, a state employee, refused to join the union because he opposed many of its positions, including those taken in collective bargaining. Accordingly, Janus challenged the statute authorizing imposition of agency fees, arguing that such fees constitute coerced political speech that violate the First Amendment. The Court agreed, holding that the First Amendment prohibits states from requiring public employees to pay union agency fees without their consent.

Additional privileged advice regarding the legal implications of this decision and implementation issues for Washington public school districts is available to PFR clients by contacting any of our attorneys.

Ninth Circuit Court of Appeals

Employment Discrimination

Campbell v. State of Hawaii Dept. of Educ.
No. 15-15939 (6/11/18)

The Ninth Circuit dismissed a high school teacher's employment discrimination claim, holding that she could not establish that student harassment created a hostile work environment or that the Department of Education discriminated against her on the basis of her gender. Campbell, a white woman, made many complaints that her students harassed her on the basis of her race and gender. Campbell requested several transfers but was denied, and she eventually resigned after taking an unpaid leave of absence. She sued the Department under several employment discrimination theories, including that the Department created a hostile work environment and treated her differently than male employees when it failed to address the student harassment she experienced or grant her transfer request. The court dismissed her claims, concluding that the

Department promptly investigated and responded to all of Campbell's harassment complaints and that Campbell failed to show that she was treated differently than other employees in similar circumstances.

Washington Supreme Court

School Funding

McCleary v. State
No. 84362-7 (6/7/18)

The Washington Supreme Court issued an order terminating its retained jurisdiction in enforcing its decision in *McCleary v. State*, 173 Wn.2d 477 (2012), and lifting the contempt sanctions it imposed on the legislature. In 2012, the Court held that the legislature's failure to adequately fund public schools violated the state constitution. The Court retained jurisdiction following that decision to monitor the legislature's progress and eventually imposed $100,000 in contempt sanctions for each day of noncompliance. After the legislature enacted additional budgetary measures during the 2018 legislative session, the state requested that the Court find the legislature in compliance and lift the contempt sanctions. The Court issued an order finding that these measures comply with the Court's previous directives regarding education funding. It therefore lifted the contempt sanctions and terminated its retained jurisdiction in the case.

Washington Court of Appeals

Public Records Act, Union Communication

Freedom Foundation v. University of Washington
No. 76630-9 (6/11/18)

The Washington Court of Appeals held that public employee emails discussing union organizing activities are not "public records" under the Public Records Act. The Freedom Foundation submitted a request to the University of Washington seeking all records possessed by specific employees containing the terms "Freedom Foundation," "SEIU," "Union," and others. The Service Employees International Union (SEIU) sought and successfully obtained a preliminary injunction barring disclosure on grounds that the records were not "public records," and the Freedom Foundation appealed. The Court of Appeals affirmed, reasoning that because an employer may not interfere with employees' union organizing activities, emails discussing those activities are not within the scope of employment. Therefore, the Court held the emails are not public records.

Public Records Act, Penalties

Zink v. City of Mesa
No. 34599-8 (6/14/18)

The Washington Court of Appeals held that a trial court may alter the total amount of Public Records Act (PRA) penalties based on the size of the agency, its limited resources, and the potential burden on tax payers. After concluding the City committed several PRA violations, the trial court produced a preliminary penalty amount of $352,954—an amount exceeding the City's 2015 general fund and amounting to roughly $718 per resident. The City argued that amount would cripple the City due to its small size and available resources. The trial court agreed and reduced the penalty to a total of $200,746.47. Zink argued a trial court may not reduce the total award on this basis because it is contrary to the PRA's policy goal of deterrence. The Court of Appeals disagreed, holding the trial court had the discretion to determine an amount that would deter PRA violations but also accounts for the agency's size and available resources.

PERC

Unfair Labor Practice, Employer Interference

King County, Decision 12878 (6/13/18)

PERC dismissed an employee's claim of employer interference against King County because the complaint failed to state adequate supporting facts. To sustain a claim of employer interference, an employee must allege that the employer took action that the employee reasonably perceived as a threat of reprisal or force, or a promise of benefit, associated with protected union activity. The complainant here, David Kirk, was one of two candidates in an internal union runoff election between King County employees. During the election, Kirk's opponent allegedly circulated campaign materials featuring an endorsement letter written for him by another County employee. Kirk filed a PERC complaint alleging, among other claims, that the County interfered with his rights by providing the endorsement letter to his opponent. Yet the complaint failed to state whether Kirk perceived the County's action as a threat or promise associated with his exercise of union rights. PERC thus dismissed Kirk's interference claims because the complaint failed to factually describe how writing the endorsement letter might constitute union interference.

Unfair Labor Practice, Unilateral Change

Snohomish County, Decision 12826-A (6/15/18)

PERC reversed the Hearing Examiner and dismissed two claims that Snohomish County committed a ULP by unilaterally changing working conditions for correctional facility employees. First, PERC dismissed the union's claim that the County unilaterally changed its past practice regarding overtime staffing. Although the County did make a substantial change, it notified the union via email and sought the union's input prior to making the change. The union then filed its ULP complaint more than nine months after receiving email notice of the change. Because PERC rules require unilateral change claims to be filed within six months after the union first receives notice of the proposed change, PERC dismissed the claim as untimely. Second, PERC dismissed the union's claim that the County unilaterally changed its past practice of providing employees a hot breakfast (the County began providing employees a cold sack meal instead). Although a material change occurred, the employer had previously entered an MOU with the union authorizing the change. PERC held that by entering the MOU, the union had waived its right to dispute the change and could not sustain a ULP claim.

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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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