WASHINGTON SCHOOL LAW UPDATE

PORTER FOSTER RORICK LLP

August 2021

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

PFR Announcements

Public Records Disclosure Training

November 9, 2021, 9 am to 3 pm
Two Union Square Conference Center, Seattle

Join Jay Schulkin and Elizabeth Robertson 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.

Washington Court of Appeals

Negligence

Huber v. Kent School District
No. 81631-4-I (7/19/21)

The Washington Court of Appeals held that the family of a high school student failed to establish a prima facie case of negligence against the Kent School District based on injuries their daughter sustained when she participated in a touch football game during a physical education class. A high school student broke her leg when another student collided with her during a touch football game in which both had participated. At the time, their PE teacher was standing in the doorway of the gymnasium between the group of students playing touch football on the field and another group of students playing basketball inside the gymnasium. The parents filed a negligence claim against the school district, arguing that the PE teacher had failed to directly supervise the football game and that this failure was the proximate cause of their daughter's injuries. The Court of Appeals affirmed summary judgment dismissal of the parents' claim because there was no evidence in the record indicating that the teacher's presence on the field would have prevented the student's injury. The court noted that the only evidence indicating that the teacher's failure to directly supervise the students resulted in the injury was "plainly speculative," and not sufficient to establish a prima facie claim of negligence.

PERC

Discrimination

Pierce County
Decision 13371 (7/1/2021)

A PERC Examiner dismissed a discrimination unfair labor practice complaint and held the complainant had not proved that the County's

nondiscriminatory reasoning was pretextual. The complaint was filed by a Pierce County detective after she was reassigned to a new position following protected union activity. The complainant had held the role of Asset Forfeiture Reviewer Detective since 2014. In 2018, some of the complainant's forfeiture duties were transferred to a different individual after concerns were raised over the complainant's "aggressive" approach. In response, the union threatened to file an unfair labor practice. The County restored the complainant's full job responsibilities. Then, in summer 2020, Pierce County brought in neutral investigators from Kitsap County to perform an internal affairs (IA) investigation into several employees in the complainant's unit. The complainant was accompanied by a union representative during their IA interview. The union later filed a grievance on the complainant's behalf related to the notification and interview process. Shortly afterwards, the County notified the complainant of her reassignment to a different detective role within the unit. The Examiner concluded the transfer was a deprivation of a right, benefit, or status and the timing of the transfer following the complainant's protected union activity was sufficient to establish a prima facie case of discrimination. The County provided two nondiscriminatory reasons for the transfer: (1) the complainant was not forthright in her responses to IA investigators and did not appear to follow procedure, and (2) there had been ongoing concerns with the complainant's approach to her position since at least 2018. The Examiner found the complainant was unable to prove the articulated nondiscriminatory reasons were pretextual because there was "sufficient ambiguity" in the complainant's IA interview responses, and there were documented issues with job performance prior to the protected activity. Additionally, the employer's reasoning was strengthened because it was a Kitsap County investigator (a disinterested third party) who initially identified the complainant's responses during the IA interview as problematic. The Examiner found the complainant's transfer was also in accord with past practice and the terms of the collective bargaining agreement. There was no evidence of union animus.

Interference

Grays Harbor Transportation Authority
Decision 13376 (7/15/21)

A PERC Examiner held that Grays Harbor Transportation Authority did not commit an interference unfair labor practice by denying an employee's request for union representation during a meeting to address several customer complaints against the employee. In March 2020, the employer's operations manager held a closed-door meeting with one of its bus drivers. The employer's new human resources specialist was also present. The bus driver feared that he was in trouble, and as a result, he asked for union representation at the meeting. This request was denied, and the employer told the bus driver that no discipline would result from the meeting. The employer then described four customer complaints that it had recently received about the bus driver. The employer asked the driver if he understood the employee policies, and there was conflicting testimony regarding whether the employer asked any questions about the specific incidents. Following the meeting, the driver was not disciplined for the complaints. The examiner determined that the employer had not committed an interference violation when it denied the driver's request for union representation because the meeting was not investigatory in nature. The examiner found that the meeting was not investigatory because it was not intended to be, nor did it become, an interview, and because the union did not prove that the employee was asked any questions about the complaints, a required element of an investigatory interview. And the driver was free to leave the meeting at any time. The examiner

determined that regardless of whether the driver subjectively believed he might face disciplinary action, the meeting was not an interview implicating an employee's Weingarten rights.

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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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