

# 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

### Refusal to Bargain

*Lincoln County v. Public Employment Relations Commission*

No. 37054-2-III (11/3/20)

The Washington State Court of Appeals held that Lincoln County and Teamsters Local 690 each committed an unfair labor practice (ULP) by refusing to bargain mandatory subjects unless the other party first agreed to public or private bargaining. The County passed a resolution requiring all collective bargaining to be done in public without notifying Teamsters, the bargaining representative of two County employee bargaining units. After the County denied Teamsters' request that the City rescind the resolution, the parties began bargaining a new collective bargaining agreement in public. Although Teamsters participated in the public bargaining, they stated that they disagreed with public bargaining and then passed their own resolution requiring bargaining to be done in private without notice to the County. The County and Teamsters then reconvened for collective bargaining but could not reach agreement on a public/private ground rule. Both

parties filed ULP complaints, and PERC concluded that both the County and Teamsters committed ULPs by refusing to bargain mandatory subjects unless they first agreed on a bargaining procedure, the latter of which is a permissive subject. PERC then ordered the parties to bargain in good faith over conducting bargaining publicly or privately, to then engage in mediation if they could not agree on a bargaining procedure, and to return to the status quo of bargaining in private if mediation failed. PERC's decision and remedy were upheld by the superior court on appeal by both parties. The Court of Appeals then affirmed the superior court's determination that both parties committed ULPs by insisting on their preferred bargaining procedure such that they were prevented from bargaining mandatory subjects. However, the Court also held that the remedy of returning to the status quo of private bargaining if the parties could not reach an agreement on the permissive subject of public or private bargaining was not appropriate since the status quo doctrine only applies to mandatory subjects. As a result, the Court remanded to PERC to reconsider the appropriate remedy.

### Refusal to Bargain

*Teamsters Local 839 v. Benton County*  
No. 36974-III (11/12/10)

The Washington State Court of Appeals held that recovery of wage overpayments from the future

paychecks or accrued leave of union members is a mandatory subject of bargaining. Benton County learned that 85 sheriff office employees represented by Teamsters Local 839 had been overpaid due to an accounting software error. The County Auditor advised the Sheriff of the County's intent to recover the overpayments by deducting five percent of employee wages as authorized by RCW 49.48.200 and RCW 49.48.210(10), the wage overpayment statutes. Without bargaining with Teamsters, the sheriff's office gave the employees options to choose to repay the overpayments through deductions of future paychecks or by cashing out accrued leave, and advised that the default five percent of disposable earnings would be withheld from future paychecks of employees who did not select one of the repayment options. Teamsters then sent the Sheriff a demand to bargain over how the overpayments would be repaid, but the County deducted the overpayments from employee wages without bargaining or reaching an agreement with Teamsters. Teamsters filed two ULP complaints. PERC determined that recovery of wages was a mandatory subject of bargaining and that the wage overpayment statutes did not preclude the County's bargaining obligation. PERC then concluded that the County committed a direct dealing ULP by presenting the repayment options directly to the employees without bargaining those options, and committed refusal to bargain ULPs by unilaterally implementing the overpayment deductions without bargaining how the repayments would occur. The superior court upheld PERC's decision on appeal by the County. The Court of Appeals then affirmed. The Court deferred to PERC's previous determinations that deductions from employees' future pay impacts wages and is therefore a mandatory subject of bargaining under the Public Employee Collective Bargaining Act (PECBA), Chapter 41.56 RCW. The Court also held that PECBA did not conflict with the wage recovery statutes, but that PECBA would control

the wage recovery statute if there were a conflict since the legislature has not expressly provided for the wage recovery statutes to preclude PECBA. Finally, the Court affirmed PERC's remedy, which required the County to repay the withheld wages plus interest, after which the County could bargain the recovery of the overpaid wages.

## PERC

### Direct Dealing

*City of Edmonds*

Decision 13255 (10/29/20)

A PERC examiner held that the City of Edmonds did not commit a direct dealing ULP by soliciting employee feedback on revised job descriptions before union review and bargaining over the effects of the new description were completed. The City drafted updated job descriptions for two vacant lead mechanic positions that would require the leads to hold a special operator's certification and be able to cover each other's duties. The City showed the draft job descriptions to two mechanics for feedback before meeting with the union's business agent, who noted that the changes to the lead positions would create significant impacts that needed to be bargained. While the union continued to review the revised job descriptions, the City distributed the draft job descriptions to mechanics during a meeting and announced via email that temporary lead mechanic assignments under the existing job descriptions would be available while the union and the City engaged in the process of finalizing the new job descriptions. The City also specified that the new lead positions would not be filled permanently until the revised descriptions were finalized by the union and the City. The examiner held there was no direct dealing with the mechanics because direct dealing does not apply to permissive subjects of bargaining, including employee job descriptions. The examiner also held that there was no direct dealing since the



mechanics did not provide substantive feedback on the draft job descriptions, the City did not change the draft job descriptions based on the mechanics' feedback, and the City acknowledged to the employees that the ongoing process of finalizing the revised job descriptions with the union would have to be completed before the positions were posted to be filled permanently.

### Interference

*Guild of Pacific Northwest Employees v. City of Bellingham*

Decision 13257 (11/05/20)

A PERC examiner held that the City of Bellingham committed an interference ULP by continuing to deduct and remit membership dues from employee payroll to a union that had been replaced as the exclusive bargaining representative. The Washington State Council of County and City Employees (WSCCCE) was the exclusive bargaining representative for all regular and nonuniformed City employees until the bargaining unit filed a change of representation petition with PERC. The bargaining unit then voted to have the Guild of Pacific Northwest Employees (Guild) certified as its exclusive bargaining representative. The Guild submitted the employees' membership authorization cards to the City months before PERC issued its decision certifying the Guild as the exclusive bargaining representative. However, because the certification decision was issued several days into the City's established pay period, the City deducted and remitted dues on behalf of WSCCCE for that entire pay period before beginning to deduct and remit dues to the Guild starting with the subsequent pay period. The examiner granted summary judgment in favor of the Guild, holding that the City committed an interference ULP by failing to remit dues to the Guild upon PERC certification since employers are required by RCW 41.45.110(1) and (2) to deduct and remit the authorized dues amount to the exclusive bargaining representative once

employees' individual authorization forms are submitted and a union is certified as the exclusive bargaining representative. The examiner also held that the City committed a ULP by remitting post-certification dues to WSCCCE since the terms and conditions of the collective bargaining agreement with WSCCCE—including requirements for deduction and remittance of dues—were void and had no legal effect once the Guild was certified and WSCCCE was thus no longer the exclusive bargaining representative.

### Interference

*Washington State Council of County and City Employees v. King County*

Decision 13254 (10/30/20)

A PERC examiner held that King County did not commit interference or domination ULPs when a superior court judge gave testimony against proposed legislation that would have included bailiffs within the definition of "public employees" under Chapter 41.56 RCW. In 2018, PERC denied a petition by the Washington State Council of County and City Employees (WSCCCE) to represent King County Superior Court judges' bailiffs on the grounds that each bailiff was a "personal assistant" to their judge and was therefore excluded from the definition of "public employees" with collective bargaining rights under Chapter 41.56 RCW. During subsequent sessions of the Washington State Legislature, WSCCCE supported proposed legislation that would no longer exclude bailiffs from collective bargaining rights. One King County judge testified against the proposed legislation before a Senate committee during the 2020 legislative session to offer his opinion that: "If these jobs are unionized, there would be an unintended consequence. Judges will not want to, or be able to, hire the person that represents them and we believe those jobs will, frankly, start going away or be greatly altered." The proposed legislation ultimately did not pass, so bailiffs' status under Chapter 41.56 RCW was not



changed. WSCCCE filed a ULP alleging that the judge's testimony constituted interference with employee rights and constituted unlawful control, dominance, or interference with WSCCCE. The examiner granted summary judgment in favor of the County and dismissed the ULPs, holding that the judge's testimony against the proposed legislation did not constitute either interference with the bailiffs' collective bargaining rights or control, domination, or interference with WSCCCE since the bailiffs were not public employees subject to the protections of Chapter 41.56 RCW.

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