

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

July 2019

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

United States Supreme Court

First Amendment

American Legion v. American Humanist Assn.
No. 17-1717 (6/20/19)

The Supreme Court held that a 32-foot tall World War I memorial in the shape of the Latin cross did not violate the Establishment Clause of the First Amendment. Following World War I, a group of citizens erected the Bladensburg Cross as a memorial to the area's fallen servicemembers. In 1961, the State of Maryland acquired the monument and the land on which it stands. In 2014, the plaintiffs challenged the constitutionality of maintaining the Bladensburg Cross on public land with public funds under the Establishment Clause. The court of appeals reversed the district court's initial dismissal of the challenge, and the Supreme Court reversed the court of appeals. The Supreme Court declined to apply the three-part *Lemon* test for discerning Establishment Clause violations, which requires courts to consider

whether the state act has a secular purpose, whether its primary effect neither advances nor inhibits religion, and whether the act fosters excessive government entanglement with religion. Instead, the Court noted that the Latin cross had taken on a secular meaning as a symbol of World War I, and applied a presumption that it is not a violation of the Establishment Clause to keep a long-standing monument in place when the monument's religious symbols have taken on a historical importance beyond the original religious symbolism.

OSPI Regulations

Shared Leave

Chapter 392-136A WAC; WSR 19-12-013

OSPI adopted permanent rules updating the shared leave regulations in Chapter 392-136A WAC. The new rules are consistent with the statutes governing shared leave, RCW 41.04.650 through RCW 41.04.665, and establish updated parameters and procedures for school district shared leave programs. The new rules went into effect on June 24, 2019.

PERC**Discrimination***Mill A School District*

Decision 13015 (6/3/19)

A PERC examiner concluded that the Mill A School District committed an unfair labor practice (ULP) by cutting the hours of the classified union president, who was also the District's system administrator and tech advisor. In 2016, the District cut classified staff hours, including a two-third cut to the union president's hours. In his capacity as president, he sent a letter to the school board requesting that the District reconsider the cuts. The union filed a ULP claim over these staffing cuts, the matter was settled and staff hours were restored. The union filed a second ULP claim the next year when the union president learned that he was the only classified staff member whose hours were cut. The District maintained that the hours were cut in response to its staffing needs. The PERC examiner determined that the reduction in hours was a response to the union president's protected activity because the superintendent made the cuts without researching the District's actual technological staffing needs, which had in fact increased, and that the District's stated reason for the cuts was a pretext. The examiner concluded that the District had committed a discrimination ULP, ordered the District to restore the union president's hours, and awarded back pay.

Discrimination*Seattle School District*

Decision 13018 (6/12/19)

A PERC Examiner held that the Seattle School District did not commit a discrimination unfair labor practice by choosing not to issue a trespass letter restricting a parent from school premises. A parent who frequently assisted his child in getting

breakfast at the school cafeteria had a series of altercations with the kitchen manager. Pursuant to this employee's right to a safe work environment, the District issued a trespass letter restricting the parent from the school cafeteria. After the parent was present in the cafeteria entryway while dropping his child at school, the employee requested that the District issue a second trespass letter restricting the parent from the whole school campus. The District determined that barring the parent from the entire premises would have been a disproportionate response that would have deprived the parent and child of their rights since the employee worked only in the cafeteria, the trespass letter barring the parent from the cafeteria was still in effect, and the District was able to clarify with the parent how he should conform his conduct to comply with that letter. PERC held in favor of the District because the decision whether to issue the second trespass letter was not an ascertainable employee right, benefit, or status, but was rather a matter of employer discretion requiring the District to balance the rights of employees, parents, and children.

Conditional Bargaining*Pierce County*

Decision 13023 (6/20/19)

A PERC examiner held that Pierce County did not breach its duty to bargain in good faith by conditioning retroactive pay on the union's ratification of a new contract by a certain specified date. Pierce County's contract with the Pierce County Prosecuting Attorneys' Association was set to expire December 31, 2017. During the early stages of negotiating a successor contract in October of 2017, the County proposed a wage increase with retroactive pay for January and February conditioned on union ratification of the contract by February 28, 2018. Bargaining continued through the end of 2017 and into early 2018 with the County and union exchanging proposals, including proposals on wages. The



County adjusted its conditional offer, offering to provide retroactive pay for January through March if the contract could be ratified by March 30. The union did not ratify by March 30, and instead filed a ULP claim. The examiner held that the County did not breach its duty to bargain in good faith by making the conditional offer. The County had continued to meet with the union and have full and frank discussions with the union throughout the bargain, and its offer of retroactive pay if the contract were ratified by a deadline was a lawful condition of the employer’s proposal on wages.

Porter Foster Rorick LLP

Student Discipline Trainings

Space remains for Porter Foster Rorick’s regional student discipline training hosted by the Ridgefield School District (August 9, 9:00 am to noon). Registration is \$175 per person. Reserve a space by sending an email with the names of attendees to info@pfrwa.com.

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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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