

WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK
LLP

January 2018

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

PFR Announcements

21st Century Bargaining Skills Workshop

January 11, 9 am to 4 pm
Doubletree Suites by Hilton at Southcenter

PFR attorneys are partnering with the Washington School Personnel Association to present a one-day workshop on collective bargaining. The basic track provides a foundation for all school administrators who may be sitting on a management bargaining team for the first time. The advanced track focuses on expanding the skill of experienced bargainers.

Public Records Disclosure Training

May 7, 9 am to 3 pm
Two Union Square Conference Center, Seattle

Join Tim Reynolds and Jay Schulkin of Porter Foster Rorick for a full day of hands-on training in processing public records requests and avoiding mistakes that lead to legal liability. This workshop will satisfy the legally-mandated training for district officials and public records officers. Information regarding cost and registration will be forthcoming.

Ninth Circuit Court of Appeals

First Amendment

Frudden v. Pilling
No. 15-15448 (12/11/17)

The Ninth Circuit Court of Appeals held that a school uniform requirement which required students to wear shirts stating “Tomorrow’s Leaders” violated the First Amendment. Roy Gomm Elementary School adopted a school uniform policy requiring students to wear shirts with a logo consisting of the name of the school, a stylized picture of a gopher (the school mascot), and the motto “Tomorrow’s Leaders.” The Fruddens sued, alleging that the uniform requirement violated their children’s First Amendment rights. Bound by earlier Ninth Circuit precedent with which it expressly disagreed, the panel applied strict scrutiny to the uniform requirement. Under strict scrutiny, a speech limitation may be upheld only if it is narrowly tailored to serve a compelling interest. The Court first held that “there can hardly be interests more compelling than fostering student educational achievement.” However, the Court next held that requiring students to display the motto “Tomorrow’s Leaders” is not narrowly tailored to serve that compelling interest. The school had provided no specific explanation of how the motto

and student achievement are connected, and the Court observed that the relationship between the challenged motto and student achievement is somewhat attenuated. As a result, the Court held that the school uniform requirement violated the First Amendment.

Washington Court of Appeals

Public Records Act

Eggleston v. Asotin Cnty.

No. 34340-5-III (12/14/17) (unpublished)

The Court of Appeals held that a document prepared by a subcontractor for an agency's contractor was not a public record under the Public Records Act. The County selected TDH to provide engineering services for a bridge construction project. The contract between the County and TDH stated that all documents "prepared by . . . TDH" for the project are the property of the County. TDH subcontracted with an archaeologist to provide services on the project, and received from him by email a proposed Scope of Work document. Eggleston made a public records request to Asotin County for the proposed Scope of Work document that the archaeologist submitted to TDH. The County never produced the document to Eggleston. Eggleston sued, and the County prevailed on summary judgment with the trial court holding that the document was not a public record. The parties cross-appealed. The Court of Appeals reviewed whether the archaeologist's proposed Scope of Work was a public record—was it prepared, owned, used, or retained by the County? The Court held that the TDH/County contract, which made all documents "prepared by" TDH the property of the County, did not cause the document to be owned or retained by the County because the document was prepared by a subcontractor, not by TDH. The Court also held that there was no evidence that the County

ever "used" the Scope of Work in conjunction with the bridge project. As a result, the Court held that the Scope of Work was not a public record subject to disclosure, and affirmed.

PERC

Unfair Labor Practice; Timeliness of Complaint

Community Transit

Decision 12797 (11/27/17)

PERC dismissed allegations of refusal to bargain and interference with employee rights as untimely because the complaint was filed more than six months after the employer unequivocally announced its decision regarding the underlying dispute. The six-month statute of limitations for filing a ULP complaint begins running as soon as a potential complainant first has clear and unambiguous notice of the adverse action. It is strictly applied and is not tolled while parties are attempting to resolve the underlying dispute. In this case, the union grieved the employer's decision to begin enforcing a contractual 15-day limit on unpaid union business leave that it had previously not enforced. Upon discovering that an employee had taken more than 15 days of unpaid union leave, the employer immediately emailed the union president and clearly stated its intention to begin enforcing the contractual limitation. PERC held that the statute of limitations could not be tolled because the employer clearly stated its decision more than six months before the complaint was filed and never waived or changed course. Further, the statute of limitations was not tolled when the union objected to the employer's decision and engaged in settlement discussions with the employer over the course of a year.



Unfair Labor Practice; Failure to State a Claim

King County (King County Security Officers Guild)
Decision 125807 (12/18/17)

PERC dismissed a ULP complaint because it failed to meet the requirements of WAC 391-45-050. Under WAC 391-45-050, a ULP complaint must contain a clear and concise statement of the facts constituting the alleged unfair practice, including times, dates, places, and participants in the occurrences. In this case, an employee alleged that the union had interfered with his rights by failing to properly file a grievance on his behalf. PERC dismissed the complaint because it did not include times, dates, places, names of people involved, requested remedies, or an indication of which RCW sections were purportedly violated. The complaint was too vague and unclear to support a cause of action.

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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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