

# WASHINGTON SCHOOL LAW UPDATE



PORTER FOSTER RORICK  
LLP

December 2019

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

## Court of Appeals

### Public Records Act

*Shavlik v. Dawson Place*  
No. 79656-9-I (11/25/19)

The Washington Court of Appeals held that a nonprofit organization providing services to child abuse victims was not the functional equivalent of a public agency for Public Records Act (PRA) purposes. Two individuals filed a PRA request to obtain certain records from Dawson Place, a nonprofit organization that is landlord to private and public entities that work with victims of child abuse, provides forensic interviewers to interview child abuse victims, and coordinates information-sharing among entities assisting child abuse victims. Dawson Place responded that it was not subject to the PRA. The requestors sued, and the trial court granted summary judgment in favor of Dawson Place. The Court of Appeals affirmed the trial court, concluding that Dawson Place was not the functional equivalent of a public agency subject to the PRA after weighing the four factors outlined by the Court of Appeals in *Telford v. Thurston County Board of Commissioners* and later adopted by

the Washington Supreme Court. First, Dawson Place's functions were not nondelegable, inherently governmental functions. Second, less than 50% of its routine funding came from government sources, and all of that was from a fee-for-service exchange. Third, its operations were not under the day-to-day control of government. Fourth, it was incorporated by a private individual rather than by an act of government. Because each of the four *Telford* factors weighed against Dawson Place being the functional equivalent of a government agency, the Court held that it was not subject to the PRA.

## PERC

### Refusal to Bargain

*Snohomish County*  
Decision 13098 (11/15/19)

A PERC examiner concluded that Snohomish County committed unfair labor practices by unilaterally implementing a new policy manual for the County's corrections bureau deputies without bargaining several underlying policy changes, and by failing to properly respond to the union's requests for information. In 2011, the County decided to address confusion caused by the existence of multiple, competing versions of deputy workplace policies by acquiring generic

web-based policy manuals that would be modified with County-specific policies during a multiyear rewrite process. When the union requested copies of new policies and demanded bargaining over the decision and its effects in 2016, the County responded that bargaining would be premature since the new policies were still being developed. Despite the union's renewed request for information and demand to bargain, the County implemented the new policy manual in 2018 without providing the union a copy of the new policies and without providing the union notice and an opportunity to bargain. First, the examiner held that there was no duty to bargain the decision to implement a new policy manual. Second, upon conducting an item-by-item analysis of the duty to bargain for each component policy change, the examiner concluded that the County violated the duty to bargain decisions on mandatory subjects covered by the new policies, and violated the duty to bargain the effects of the policy changes on nonmandatory subjects. Finally, the examiner held that the County's failure to provide the union a copy of the final policies before they were implemented constituted a refusal to bargain.

### **Refusal to Bargain**

*North Thurston School District*  
Decision 13099 (11/18/19)

A PERC examiner concluded that the North Thurston School District did not commit either a unilateral change unfair labor practice by requiring office professionals to process additional maintenance work orders, or a refusal to bargain unfair labor practice by maintaining its bargaining position that existing work order language in updated office professional job descriptions covered expanded work order processing duties. At the start of the 2018-19 school year, the District required office professionals to enter maintenance work orders. Around this same time, the District and office professionals were negotiating a successor collective bargaining agreement and

were collaboratively updating office professional job descriptions to reflect the actual duties they performed. A dispute arose as to whether the existing work order language in the job descriptions authorized the District to assign the duty of entering additional work orders. The examiner dismissed the union's claim that the work order requirement was an unlawful unilateral change because the union could not show that the requirement affected a material and substantial impact on working conditions when office professionals had processed between 17 percent and 27 percent of work orders in the previous three years, and 19 percent after the alleged change. Next, the examiner dismissed the union's claim that the District refused to bargain over office professional workload and job descriptions, finding that the parties' inability to agree on the meaning of existing work order duties in the job descriptions did not amount to a refusal to bargain.

## **PFR Announcements**

### **2020 Bargaining Skills Workshop**

*January 31, 2020 – Tukwila, Washington*

PFR is once again partnering with the Washington School Personnel Association to present a one-day workshop on collective bargaining skills. This year's workshop will offer a single track focusing on basic skills for all successful bargainers, particularly those who may be sitting on a management bargaining team for the first time. The workshop will be held January 31 at the Doubletree Suites by Hilton in Tukwila. Agenda and registration will be available soon at [www.wspa.net](http://www.wspa.net).



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