



Washington School Law Update

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

Washington Court of Appeals

Discrimination

Smith v. City of Seattle

No. 84351-6-I (12/4/23) (unpublished)

The Washington Court of Appeals reversed in part and affirmed in part dismissal of an employee's disparate treatment claim under the Washington Law Against Discrimination, holding that the employee established a prima facie case that he was denied a pay raise based on his race sufficient to survive summary judgment, but that the employee could not establish disparate treatment for discipline he had received. Robert Smith, a Black man, worked as a janitorial service manager for the City of Seattle. During his time as manager, Smith was disciplined several times, culminating in a 15-day suspension. Smith challenged his suspension and filed a lawsuit for damages, seeking compensation for economic losses and emotional distress. Shortly thereafter, in October 2021, Smith's supervisor recommended that Smith and a similarly situated white manager both receive a discretionary pay raise applying the factors of the City's discretionary pay raise program: whether a manager's job duties have expanded, they had progressed in their job's learning

curve, and their salary was internally aligned. The City denied Smith the raise in spite of the supervisor's recommendation, citing in part his recent serious discipline, but gave the white manager the recommended pay raise. Smith amended his pending lawsuit to add a claim for disparate treatment under the WLAD based on the City's refusal to give him a pay raise. The trial court dismissed Smith's lawsuit in its entirety on summary judgment. Smith appealed, and the Court of Appeals reversed in part and affirmed in part. The Court held that Smith had established a prima facie case of disparate treatment where the similarly situated white manager was provided the year-end raise while Smith was not. The Court then held that Smith presented sufficient evidence to create an issue of fact for a jury to decide whether the City's reasons for denying his pay raise were pretextual. The Court thus reversed the trial court decision as to that claim, remanding it for further proceedings. The Court affirmed dismissal of Smith's disparate treatment claim related to his discipline, given that his behavioral record was not similar to the record of the white manager Smith used as a comparator.

Childhood Sexual Abuse

M.R. v. Yakima Valley Community College

No. 56781-4-II (12/12/23) (unpublished)

The Washington Court of Appeals held that the more generous statute of limitations for filing a claim for

damages based on acts of childhood sexual abuse does not apply to acts committed after the plaintiff turned 18, even if those later acts were part of a common scheme or plan that began in childhood. MR participated in club basketball at the Yakima Valley Community College (YVCC) when she was 17 years old. During that time, the club director and assistant women’s basketball coach from YVCC made repeated comments regarding her body, and the assistant coach touched her stomach and pubic bone area without consent. Although MR felt uncomfortable at the time, she tolerated the remarks and touching because she was seeking a basketball scholarship for college. MR eventually received a basketball scholarship to YVCC, at which point she was 18 years old. During her time on the team, the assistant coach spent time alone with MR, gave her massages late at night, and engaged in other unwanted and inappropriate physical contact. MR eventually transferred to a different university, but after moving, visited the assistant coach and had sexual intercourse with him at least twice. More than 10 years later, MR learned that the FBI was investigating the director of the basketball club for sexual misconduct with a former player. Upon learning this, MR reconsidered her prior experiences with the coaching staff and realized that the assistant coach’s behavior toward her had been abusive and affected her emotionally and physically through her adulthood. In May 2019, MR sued YVCC, alleging claims for emotional distress, negligence, and discrimination based on the interactions she had with the assistant coach after she turned 18. She later amended her claims to include the touching incident that occurred when she was 17. YVCC moved to dismiss the claims that were based on conduct occurring after MR turned 18 because the complaint was filed outside of the statute of limitations governing adult sexual abuse claims. The trial court denied the motion, finding that the longer statute of limitations governing childhood sexual abuse claims applied because the incidents in adulthood were the culmination of a series of events by the same abuser and the inappropriate contact began when MR was 17. The Court of Appeals granted discretionary review and reversed, holding that the statute of limitations governing childhood sexual abuse claims, RCW 4.16.340, does not apply to acts occurring

after MR turned 18 years of age, even if the later abuse was a continuation of sexual abuse that began when MR was a minor. The Court held that the plain language of the statute only permits a plaintiff to recover damages for “acts” committed when the plaintiff was a minor, not acts committed when the plaintiff was an adult, even if those prior childhood contacts facilitated the later abuse. The Court noted that MR could still recover damages specific to the act committed before she was 18 and that the jury could consider the later abuse in assessing that claim, but that she could not recover independently for the incidents that occurred after she turned 18 years old, which were time-barred. As a result, the Court reversed the trial court and remanded for further proceedings.

PERC

Representation Petition

Benton County

Decision 13740 (12/5/23)

The Public Employment Relations Commission (PERC) dismissed a representation petition filed by the Benton County Sheriff’s Office Support Staff Guild (Guild), which sought to sever the Records Clerk employees in the County’s Corrections Department from an existing bargaining unit represented by Teamsters Local 839 (Teamsters), which also includes the County Sheriff’s Office Records Clerks. The County employs Record Clerks who are responsible for maintaining and updating paper and electronic files, lists, records, and logs. The Records Clerks work in either the Sheriff’s Office or the Corrections Department. Their general duties are largely the same, although there are some differences. For example, the Corrections Department Records Clerks are subject to policies more tailored toward corrections employees, such as involving perimeter security, and the Sheriff’s Office Records Clerks are subject to policies covering topics such as concealed pistol licensing. Teamsters represents a bargaining unit including both sets of Records Clerks, and the bargaining relationship dates to at least 1992. Teamsters appoints a Sheriff’s Office shop steward and Corrections Department shop steward to serve as representatives for those

employees, and it has pursued grievances and negotiated collective bargaining agreements on the employees' behalf. In October 2022, the Guild filed a petition to represent the Sheriff's Office Records Clerks, arguing that a separate bargaining unit comprised of only Sheriff's Office Records Clerks is more appropriate and that Teamsters had failed to adequately represent those employees, citing disagreement between the Sheriff's Office Records Clerks and Corrections Department Records Clerks on how negotiations should be handled. Following an evidentiary hearing, PERC dismissed the petition, holding that the Guild failed to demonstrate the existing bargaining unit was inappropriate and should be severed. PERC reasoned that the Teamsters had represented the petitioned-for employees for more than 30 years, and only "compelling" circumstances would justify severing the relationship. PERC determined that compelling circumstances were not present, and reiterated its longstanding position that severance is not an appropriate means to "create a more perfect" bargaining unit or to determine "the best community of interest" for a bargaining unit. Rather, severance is only appropriate when a community of interest no longer exists, or when the incumbent bargaining representative has inadequately represented the petitioned-for employees. Because the petitioned-for employees continued to share a community of interest with the existing bargaining unit, and because Teamsters had not inadequately represented the Sheriff's Office Records Clerks, PERC dismissed the petition.

Discrimination

Washington State Department of Children, Youth, and Families

Decision 13329-C (12/18/23)

The Public Employment Relations Commission (Commission) affirmed dismissal of a discrimination complaint filed by a former social service specialist employee who worked for the Washington State Department of Children, Youth, and Families (DCYF). Silvia Zarate was terminated from her position with DCYF following an investigation finding she had inappropriately used her credentials to access

confidential Child Protective Services (CPS) information unrelated to her job. At the time, Zarate was also a foster parent, and CPS had recently made a "founded finding" that she likely engaged in abuse or neglect in her role as a foster parent. Zarate challenged her termination by filing an unfair labor practice (ULP) complaint with PERC, alleging that her termination was motivated by union animus and the DCYF's proffered reasons for her termination were pretext. The underlying facts of the investigation and subsequent termination are more fully summarized in the discussion of the PERC Examiner's decision dismissing Zarate's complaint, which was published in the May 2023 edition of the Washington School Law Update. Zarate appealed, and the Commission affirmed the Examiner's ruling. The Commission held that Zarate did not meet her burden to show her termination was motivated by union animus, agreeing that DCYF proffered legitimate, nondiscriminatory reasons for the termination based on Zarate's unauthorized access to confidential files and the substantiated CPS finding. The Commission rejected Zarate's argument that the extensive back-and-forth among different management representatives about which reasons for termination would be included in Zarate's termination letter evidenced pretext, noting that the different drafts only showed that DCYF was initially unsure if they could rely on the CPS finding as a basis for termination. The Commission further held that even though the CPS finding against Zarate in her role as a foster parent was later reversed, that fact did not impact the outcome of the ULP complaint because the Commission based its decision on the facts that existed at the time of the termination and when Zarate filed her ULP complaint, both of which occurred before the reversal of the CPS finding.

PFR Announcements

2024 Bargaining Skills Workshops

January 22-23 and February 1-2

Two Union Square Conference Center, Seattle

Porter Foster Rorick is once again partnering with the Washington School Personnel Association (WSPA) to present our popular workshops on collective

bargaining skills. The workshops cover the legal rules for collective bargaining and the negotiating skills which help bargaining teams find agreements. This year we are offering the Bargaining Skills 101 curriculum on two dates: Monday, January 22, and Thursday, February 1. We are also offering a Bargaining Skills 201 curriculum on two dates: Tuesday, January 23, and Friday, February 2. The January dates are already full, but we still have room for participants on February 1 and 2. The workshops will be held at the Two Union Square Conference Center in downtown Seattle with each section limited to 40 participants to facilitate small group activities and lots of interactive dialogue. The cost is \$295 per day for WSPA members and \$395 per day for non-members, with a \$400 daily discount for districts who send a team of four or more. Lunch and refreshments are included. Register by sending an e-mail with your name, school district, and purchase order information to info@pfrwa.com.

2024 Public Records Disclosure Training

March 25, 9 am to 3:30 pm
Two Union Square Conference Center, Seattle

Join Liz Robertson and Olivia Hagel 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 workshops will be held at the Two Union Square Conference Center in downtown Seattle with each section limited to 40 participants to facilitate small group activities and lots of interactive dialogue. The cost is \$250 per person and includes lunch. Register by sending an e-mail with your name, school district, and purchase order information to info@pfrwa.com.

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