PORTER FOSTER RORICK LLP

August 2024

Washington School Law Update

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

United States Supreme Court

Agency Deference

Loper Bright Enterprises v. Raimondo
No. 22-451 (6/28/24)

The U.S. Supreme Court overruled 40 years of precedent and held that federal agencies are no longer entitled to deference when they interpret ambiguous statutes that they administer. In 1984, the Court issued a landmark decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.,* which required courts to defer to permissible agency interpretations of the statutes those agencies administer, even if a reviewing court would interpret the statute differently. Commonly referred to as "Chevron deference," this doctrine created a two-part framework for courts to use when interpreting statutes administered by federal agencies. The first step asks whether Congress has directly spoken to the question at issue, and if the answer is no, then in the second step, the court must defer to the agency's interpretation of the ambiguous statute so long as that interpretation is "based on a permissible construction of the statute." The Court overruled this two-part framework in *Loper Bright*, holding that it was inconsistent with the Administrative Procedure Act (APA), a federal law that governs the process by which federal agencies develop and issue regulations. The *Loper Bright* case involved two consolidated challenges to rules promulgated by the National Marine Fisheries Services (NMFS), a federal agency responsible for the management and conservation of marine resources along the U.S. coast. The rule required commercial fishermen to carry "one or more observers" aboard their vessels for the purposes of data collection and to bear the costs associated with any required observers. The fishermen challenged the agency rule, arguing that the administering statute—the Magnuson-Stevens Fishery Conservation and Management Act (MSA)—did not authorize the agency to require them to pay for observers required by a fishery management plan. In both cases, the district courts and appellate courts dismissed the challenge, holding that the court needed to defer to the agency's interpretation of its authority under the MSA under *Chevron*. The petitioners in both cases appealed and the U.S. Supreme Court granted review, consolidating the cases so they could be decided together. The U.S. Supreme Court held that the deference afforded to agencies under *Chevron* is inconsistent with the APA, which it held incorporates the "traditional understanding" of the role of the judiciary, and which requires courts to exercise independent judgment when determining the meaning of statutes. The Court held that the holding in *Chevron* was fundamentally "misguided" and that the *Chevron*

court "gravely erred" because federal agencies do not possess any "special competence" in resolving statutory ambiguities, and that such role should be left to the judiciary. The Court rejected the argument underlying *Chevron* that agencies are better suited to interpret ambiguity that implicates a technical matter, noting that a reviewing court has the benefit of reviewing materials from the parties and other friends of the court who are "steeped in the subject matter" and may share their perspectives. The Court held that when interpreting statutes, the courts may consider an agency's interpretation, but that the ultimate interpretation of an ambiguous statute no longer must be delegated to the agency itself. Justice Gorsuch concurred with the majority opinion, but he wrote separately to explain that stare decisis—the doctrine that courts will adhere to precedent in making decisions—supports the decision to overrule *Chevron* because the doctrine contravened the APA, and because such deference to administrative agencies "runs against mainstream currents in our law" regarding separation of powers, due process, and interpretative rules. Justice Thomas also wrote a concurring opinion, which agreed with the majority but also opined that *Chevron* violated the Constitution's separation of powers. Justice Kagan, joined by Justice Jackson and Justice Sotomayor, dissented, writing that *Chevron* has served as a cornerstone of administrative law for decades, and that it correctly allocated responsibility for statutory construction between courts and agencies given the level of technical expertise agencies possess, which the courts lack. Justice Kagan also criticized the majority for its treatment of precedent, and its recent pattern of reversing settled law.

The Loper Bright *decision curtails the regulatory power of federal agencies with oversight authority over Washington public school districts, such as the U.S. Department of Education.*

Washington Supreme Court

Equitable Tolling

Campeau v. Yakima HMA, LLC
No. 102047-3 (7/11/24)

The Washington Supreme Court held that a class action lawsuit alleging that Yakima HMA LLC wrongfully withheld wages from its nurses could proceed even though it was filed outside of the applicable statute of limitations. In 2015, the Washington State Nurses Association (WSNA), the labor organization representing the nurses, filed a lawsuit against Yakima HMA for unpaid wages over a five-year period. The trial court determined that Yakima HMA had failed to pay approximately $1.5 million in nurses' wages. The Washington Supreme Court later held that WSNA did not have associational standing to recover the unpaid wages on behalf of the nurses, but by the time the decision was issued, the statute of limitations for the nurses to bring their own wage and hour violations claims had passed. Nonetheless, Daniel Campeau, a former union member and nurse with Yakima HMA, filed a class action lawsuit on behalf of the nurses whose wages had been wrongfully withheld. Yakima HMA argued that Campeau's lawsuit should be dismissed because it was filed after the three-year statute of limitations had already passed. The trial court allowed the lawsuit to proceed despite being untimely, finding that the statutory deadline should be equitably tolled because Campeau had diligently pursued his claims through the WSNA lawsuit and reasonably relied on the union's actions to protect his statutory rights. The Court of Appeals reversed the trial court, holding that equitable tolling was not available and even if it were, the doctrine would not apply to Campeau's case. The Washington Supreme Court granted discretionary review and reversed the Court of Appeals. The Court held that a statute of limitations could be equitably tolled, even in the absence of a defendant's bad faith or misconduct (a typical requirement for equitable tolling), when the union's associational standing lawsuit fails and a member then promptly files a class action lawsuit on the same grounds. The Court

reasoned that the principles underlying equitable tolling supported this outcome because the doctrine allows a case to proceed when justice requires it, even though a statutory time period has passed. Under the particular facts of this case, the Court held that applying the doctrine was consistent with the legislative purpose behind labor laws, and application was justified because Yakima HMA had notice of the allegations and Campeau acted in good faith and had reasonably relied on his union to recover his wages. As a result, the Court reversed dismissal of the lawsuit and remanded for further proceedings.

Religious Accommodation

Suarez v. State
No. 101386-8 (7/25/24)

The Washington Supreme Court held that in order to establish an "undue hardship" defense against a claim of failure to accommodate an employee's religious beliefs under the Washington Law Against Discrimination (WLAD), an employer must show that the burden of granting the accommodation would result in substantial increased costs in relation to the conduct of the particular business. The Court further held that this test would nearly always be met if the requested accommodation required the employer to violate the seniority rights of other employees established in a collective bargaining agreement (CBA). Adelina Gabriela Suarez's religion requires the observation of Saturday Sabbath and several religious holidays throughout the year where she must abstain from work. In 2018, Suarez was hired as an attendant counselor at Yakima Valley School, a nursing facility that operates 24 hours per day, seven days per week, and which requires certain staffing levels for each shift to provide sufficient care to residents. Yakima Valley employees are unionized and leave is administered in accordance with a CBA, which gives priority to employees based on seniority. The CBA also allows employees to be excused from mandatory overtime shifts only once per quarter. Suarez requested, as a religious accommodation, to be relieved of several mandatory overtime shifts, and when those requests were denied, she refused to work those shifts in violation of the CBA. On September 27, 2019, Suarez submitted a request for leave without pay on September 28 and 29 for religious reasons. Yakima Valley denied this request because it was made too close in time to the requested dates. On September 29, Suarez informed management that she would not come into work and instead she attended a religious function. This absence required another employee to be called into work to cover Suarez's shift under mandatory overtime. Yakima Valley terminated Suarez in October 2019 based on her attendance, her refusal to work mandatory overtime, and her failure to show up for her scheduled shift on September 29. Suarez filed a lawsuit in superior court, alleging in part violations of the WLAD. The superior court dismissed Suarez's complaint, finding that she was provided reasonable accommodation for her religious practices as a matter of law. Suarez appealed, and the Court of Appeals reversed, holding that there remained a genuine issue of material fact as to whether Yakima Valley reasonably accommodated Suarez's religion. The Washington Supreme Court granted review and reinstated the superior court's ruling dismissing Suarez's case in its entirety. The Court first held that the test for whether accommodating an employee's religion poses an "undue hardship" under the WLAD is the substantial burdens test recently articulated by the U.S. Supreme Court earlier this year in *Groff v. DeJoy*, a case involving a federal employee's religious accommodation request under Title VII of the Civil Rights Act of 1964. Under this test, a defendant employer must show that the burden of granting accommodation would result in substantial increased costs in relation to the conduct of its business. The Court held that Yakima Valley had met the test here because Suarez's requested religious accommodation would have required Yakima Valley to violate seniority rights under the CBA, and Suarez's actions on September 29 forced one of her coworkers to work mandatory overtime to cover the shift. The Court reasoned that requiring an employer to pay premium overtime pay to another employee or transgressing seniority rules in a CBA met the undue burden test under existing federal case law, and it therefore also met the test for undue hardship under the WLAD. As a result, the Court affirmed the trial court's summary judgment order dismissing Suarez's case in its entirety.

Washington Court of Appeals

Public Records Act

Hood v. City of Langley
No. 85075-0-I (7/1/24) (unpublished)

The Washington Court of Appeals affirmed a superior court order imposing a lower range Public Records Act (PRA) monetary penalty against the City of Langley as a result of the City violating the PRA in responding to Eric Hood's records request. In January 2016, Hood emailed the City seeking numerous records related to its former mayor. The City invited Hood to schedule a visit to city hall to view the records, and Hood visited city hall twice to examine those records. Hood also requested and was denied permission to personally search the former mayor's laptop for responsive electronic records, including the former mayor's digital calendar. The City provided Hood certain electronic records in response, as well as an accompanying redaction log. Hood requested to search the laptop himself, which the City denied. However, the records custodian informed Hood that if he specified what records he sought on the laptop, then she would be able to determine whether the laptop contained records responsive to his request. In February 2016, Hood filed a lawsuit against the City, alleging that its response to his request violated the PRA. More than a year later, the superior court dismissed Hood's lawsuit on summary judgment. Hood appealed, and in January 2019, the Court of Appeals reversed dismissal of his PRA lawsuit, holding that there remained issues of fact as to the adequacy of the City's search, including an adequate search for the former mayor's electronic calendars stored on the laptop. One month after the Court of Appeals decision, the City provided Hood with a copy of the former mayor's digital calendar. In spring 2022, Hood filed a motion for partial summary judgment, seeking an order that the City had violated the PRA in responding to his request for the digital calendars. The trial court granted Hood's motion, finding that the City had fair notice of the scope of Hood's request as of March 2016 until the calendar was produced in February 2019. The trial court imposed a lower range daily penalty of $5 multiplied by 1,063 days, for a total penalty award of $5,315.00. Hood appealed the penalty award, arguing that the trial court abused its discretion in imposing a penalty at the lower end of the statutory range. The Court of Appeals affirmed the penalty award, reasoning that trial courts have considerable discretion when determining PRA penalties, and it held that the trial court had appropriately weighed the mitigating and aggravating factors present in this case to determine a lower penalty amount was warranted. In particular, the trial court had found that the City promptly responded to Hood's request, answered Hood's follow-up questions, assisted him in copying records when he physically inspected them, and provided reasonable explanations for noncompliance prior to March 2016 given the scope of Hood's request. The trial court had further found that the calendar Hood sought was not of public importance and that Hood had not suffered any personal economic loss because of the delay in receiving it, which were mitigating factors supporting a lower monetary penalty. As a result, the Court held that the trial court did not abuse its discretion, and it affirmed the low-end PRA monetary penalty against the City.

Public Records Act

Soule v. State of Washington
No. 58559-6-II (7/2/24) (unpublished)

The Washington Court of Appeals held that an email notifying a requestor that failure to pay for an installment of records would result in "administrative closure" of a public records request was insufficient to trigger the one-year statute of limitations under the Public Records Act (PRA). Sheldon Soule submitted three public records requests to the Attorney General's Office (AGO) between July 2019 and January 2020. The AGO assigned each request different tracking numbers and responded to each request in installments. When each installment was ready, the AGO sent Soule an email notifying him that the records were ready and would be provided to him upon receipt of payment. The emails further stated that if Soule did not claim or review the installment, the AGO would consider the request "fulfilled," and it would be "administratively closed for non-payment."

Soule failed to pay for an installment in his first public record request, and the AGO closed that request on May 28, 2021. Similarly, Soule did not provide payment for an installment responsive to his second request, and the AGO closed that request on November 12, 2021. Soule paid for all installments responsive to his third request, and the AGO closed that request as fulfilled in May 2022. After the AGO closed the third request, Soule emailed the agency asking if all three of his records requests were completed. In response, the AGO informed Soule that the first two requests had been administratively closed after no payment was received by the required due date. In response, Soule provided the owed payments for his first two requests, and the AGO produced the remaining records and closed those requests. On May 12, 2023, Soule filed a complaint against the AGO, alleging that it violated the PRA in responding to all three of his requests. The AGO moved for partial summary judgment as to the claims related to the first two records requests, arguing that those cases were time-barred because the office had closed those requests more than a year ago for nonpayment. The superior court granted the AGO's motion and dismissed Soule's claims as to the first two records requests. The Court of Appeals reversed, holding that the AGO's letters warning that future non-payment would result in administrative closure was not sufficient to trigger the one-year statute of limitations under the PRA. Based on recent caselaw from the Washington Supreme Court, the Court held that an agency's closing letter needed to satisfy the "final, definitive response test," which meant putting a reasonable, non-attorney requestor on notice that administrative closure would mean that the agency was not taking further action or providing further records. The Court held that use of the term "administrative closure" did not satisfy this test and created further ambiguity because it was not clear if this was somehow different than general closure of a public records request. As a result, the Court reversed dismissal of Soule's claims and remanded for further proceedings.

Recall Petition

In re Recall of Clark
No. 39862-5-III (consolidated with No. 39863-3-III; No. 39864-1-III) (7/2/24) (unpublished)

The Washington Court of Appeals affirmed a superior court order imposing sanctions on a community member for filing frivolous recall petitions against three Central Valley School District ("District") board members. Robert Linebarger disagreed with the emergency orders imposed by Washington Governor Jay Inslee in response to the COVID-19 pandemic, and he particularly opposed orders creating masking and employee vaccination requirements in K-12 public schools. In the summer of 2021, Linebarger was running for a seat on the District school board, and he routinely spoke out against masking and vaccination requirements. He was also quoted calling COVID-19 "a big phony hoax" in the local newspaper. In August 2021, Linebarger met with board member Debra Long and asked her if she would be willing to push back on the mask mandate, which Long declined, explaining that the District could lose state funding if it disobeyed the statewide mandates. Around this time, Linebarger formed a nonprofit organization called Washington Citizens for Liberty (WCL), whose purpose was to raise money for lawsuits to challenge the COVID-19 mandates. In an email to WCL members, Linebarger stated that he agreed the state would pull funding if the District did not follow the masking and vaccination mandates, but because asking the school board to stand against the mandates had not worked, the group would need to move onto other methods including recall. On September 1, Linebarger emailed a demand letter to the District superintendent and school board in which he voiced his objection to the Governor's mandate requiring public school employees to be vaccinated and demanded that the school board take a stand and denounce the Governor's order. The District did not meet Linebarger's demands, and on September 24, Linebarger filed recall petitions with the Spokane County Auditor against three board members—Long, Keith Clark, and Cynthia McMullen. Linebarger and his two attorneys signed the statement of charges, which were nearly identical allegations for all three board members, including allegations that the board

members had committed acts of misfeasance and abuse of power by following the Governor's mandates. The petitions also alleged that the three board members violated their oaths of office by acting contrary to the wishes of their constituents. The Spokane County Prosecutor's Office filed three actions in superior court challenging the sufficiency of the recall petitions, and the three board members filed briefs challenging the recall petitions as factually and legally insufficient. The three board members also filed motions seeking sanctions against Linebarger and his attorneys, alleging that Linebarger's petitions were baseless and filed for improper purposes. The superior court concluded that the recall petitions were factually and legally insufficient, and it dismissed the petitions with prejudice. The superior court also granted the three board members' motion for sanctions, finding that the recall petitions were not well grounded in fact, not warranted by existing law, intentionally frivolous, and filed for an improper purpose of bullying the board members into taking a political position contrary to law. The court imposed a total of $30,000 in sanctions in favor of the board members. The school board members later entered into a settlement agreement with Linebarger's attorneys, under which the attorneys would each be responsible for $1,000 of the owed sanctions. The court determined that $1,000 and $6,500 were reasonable apportionments for the two attorneys, and that the remaining $22,500 was a reasonable apportionment for Linebarger. Linebarger appealed, and the Court of Appeals affirmed the $22,500 sanctions apportioned to him personally. The Court held that in considering each person's relative fault, the $22,500 imposed on Linebarger was reasonable because Linebarger started the recall petitions for the improper purpose of bullying the three board members to take a position that was contrary to law, and that in viewing the evidence as a whole, Linebarger was mostly to blame for the frivolous recall petitions. As a result, the Court affirmed the $22,500 sanctions imposed on Linebarger.

Public Records Act

Citizen Action Defense Fund v. Washington State Office of Financial Management
No. 58331-3-II (7/16/24)

The Washington Court of Appeals held that collective bargaining proposals are exempt from disclosure under the deliberative process exemption of the Public Records Act (PRA) until the proposal has been "implemented," which means approved by the entity tasked with granting such approval. Prior to June 2022, representatives from the Washington State Office of Financial Management (OFM) began negotiations with various labor unions representing state employees for the 2023-25 collective bargaining agreements (CBAs). The parties reached tentative agreements around October 1, 2022. Following the applicable statutory process, the tentative agreements were sent to the governor, who presented the proposed budget to the legislature at the start of the legislative session in early January 2023. The legislature approved the funds for the proposed budget in April 2023, and after the legislature approved the funding, the final CBAs were signed by the lead negotiators, union leadership, and governor. As this process was pending, in October 2022, Citizen Action Defense Fund (CADF) submitted a records request seeking the original proposals made by the State and unions for the 2023-25 bargaining cycle. OFM denied the request, explaining that the original proposals were exempt from production under the deliberative process exemption of the PRA, RCW 42.56.280, because the bargaining process was not yet complete. CADF filed a PRA lawsuit against OFM, arguing that the records were wrongfully withheld because the bargaining process was complete once the parties reached a tentative agreement, not when the agreements were ultimately approved by the governor. The superior court agreed with CADF and ordered OFM to produce the requested records and pay approximately $1,000 in statutory daily penalties and $33,000 in attorney fees. OFM appealed, and the Court of Appeals reversed the superior court order. The Court held that the deliberative process exemption of the PRA applies to bargaining proposals that are "pre-decisional," which includes policies or recommendations that have not yet

been implemented. In the context of collective bargaining, the Court held that implementation occurs when a proposal is approved by the entity tasked with granting such approval, which here, meant following the multi-step statutory process culminating in the governor's signature. At the time of OFM's request, the parties had reached tentative agreements, but those agreements had not yet been presented to the governor for approval or presented to the legislature for funding. As a result, the Court held that at the time of the request, the deliberative process exemption still applied to the initial proposals requested by CADF, and it reversed the superior court order requiring disclosure and awarding fees to CADF. Finally, the Court clarified that it disagreed with other Court of Appeals opinions to the extent those opinions could be read as ending the applicability of the deliberative process exemption when a policy is "presented" to the approving entity, rather than when it is "implemented" by the entity.

Unemployment

Wilson v. Employment Security Department
No. 39886-2-III (7/18/24) (unpublished)

The Washington Court of Appeals held that a former Puyallup School District employee was not eligible for unemployment assistance through the Employment Security Department (ESD) because the employee failed to show job separation was necessary due to her illness and because the employee failed to pursue reasonable alternatives to preserve her employment. Bonnie Wilson worked as a human resources information analyst for the District until she resigned in December 2021. In July 2020, the District laid off employees in its human resources department, which increased Wilson's workload. The increased workload caused Wilson stress, anxiety, and panic attacks, and in August 2021, Wilson's physician diagnosed her with clinical anxiety and advised her to cease working for approximately six months. Against the advice of her physician, Wilson continued to work until November 2021, and during that time, she met with the District regarding prioritizing her job duties and restructuring the human resources department. The District also assigned some of Wilson's duties to another employee. Wilson requested a leave of absence, which the District granted, and in Wilson's absence, the District continued to work on restructuring the department to alleviate some of Wilson's duties. Five weeks into her leave of absence, in December 2021, Wilson resigned. Wilson then applied for unemployment assistance through the ESD, which the ESD denied, finding that Wilson did not have good reason for quitting her position. Wilson appealed the ESD decision to the Office of Administrative Hearings (OAH), which issued an order affirming the ESD's denial of her application. Wilson appealed the OAH's order to the Commissioner's Review Office (CRO), and the CRO adopted OAH's findings and conclusions denying Wilson's application for unemployment assistance. Wilson appealed the CRO decision to superior court, which transferred the case directly to the Court of Appeals for direct review. The Court of Appeals affirmed the determination that Wilson was not eligible for unemployment assistance because she lacked good cause to sever her employment relationship with the District. The Court reasoned that under the Employment Security Act, a claimant who voluntarily quits is disqualified from receiving unemployment benefits unless the claimant can show that an illness or disability made it necessary to leave work and that the claimant exhausted reasonable alternatives prior to leaving work. The Court held that Wilson failed to meet that burden because her physician estimated that her anxiety would resolve in six months, and the District was actively working to ease Wilson's workload by restructuring the human resources department. As a result, the Court held that Wilson did not exhaust all reasonable alternatives prior to quitting, and it affirmed the CRO decision finding Wilson ineligible for unemployment assistance.

Public Records Act

Kittitas County v. Allphin
No. 39290-2-III (7/23/24) (unpublished)

The Washington Court of Appeals affirmed a trial court's award of fees and penalties related to Kittitas County's failure to disclose six emails under the Public Records Act (PRA), rejecting the requestor's claims on appeal that he was entitled to a greater award. In 2012,

Sky Allphin submitted a PRA request to the County seeking records related to an investigation into his company. The County sought to withhold some of the email records from disclosure, which resulted in years of litigation, including two prior Court of Appeals decisions and a Washington Supreme Court decision. In 2016, the Court of Appeals held that the County violated the PRA by improperly withholding six emails for 98 days. The Court remanded to the trial court to award a per diem penalty, and it expressly gave the trial court discretion to treat the six emails as one group for purposes of calculating the daily penalty. At the conclusion of litigation in the appellate courts, in 2022, the County asked the trial court to make a ruling regarding penalties owed for the six withheld emails. The trial court ultimately decided to group the six emails together for the purpose of assessing the 98-day per diem penalty, and it imposed a total penalty of $490 and awarded $8,750 in attorney fees, and Allphin appealed. The Court of Appeals affirmed the trial court's award, rejecting Allphin's claims that the penalties should have been higher based on the County's "excessive" litigation in the case and the purported evidence the County had engaged in a "massive scheme" to violate the PRA.

Wrongful Termination

Hause v. Spokane County
No. 39659-2-III (7/25/24) (unpublished)

The Washington Court of Appeals affirmed dismissal of a Spokane County employee's wrongful termination lawsuit, holding that an employer's internal policies cannot create a "public policy" for purposes of establishing a wrongful discharge in violation of public policy claim. Charles Hause worked as a forensic specialist in the Spokane County Sheriff's Office. The County maintained a manual of employment policies, which directed employees to report "workplace violence," including any behaviors that threaten violence, coerce, harass, intimidate others, or disrupt the workplace. The Sheriff's Office maintained its own manual, which contained an expectation that its employees refrain from conduct such as "pot stirring / rumor mongering-intentionally causing dissention / disruption." In February 2020, the Sheriff's Office investigated allegations that a different forensic specialist, Trayce Boniecki, had violated its policies by throwing a plastic water spray bottle at another employee and keying another employee's car. The Sheriff's Office investigated the allegations, which resulted in verbally counseling Boniecki regarding the water bottle, and a finding of insufficient evidence to sustain the keying allegations. During that time, Hause was on family leave, but had texted about Boniecki with other coworkers, including a message referring to Boniecki as a "sociopath" and criticizing her work performance. The investigation into Boniecki was complete by the time Hause returned, and the Sheriff's Office warned that anyone who retaliated against or rumor-mongered about Boniecki could be subject to discipline. After hearing this warning, Hause filed a workplace violence complaint regarding the water bottle incident with the County under the internal policy. The Sheriff's Office investigated Hause's complaint and found that the incident did not rise to the level of workplace violence. Although Hause's complaint suggested he had seen Boniecki throw the water bottle, the investigation revealed that Hause had not observed the incident, prompting the Sheriff's Office to order an internal affairs investigation into Hause's conduct in filing the complaint. Hause was interviewed as part of that investigation, and he was dishonest in answering questions related to the communication he had with other coworkers and the policy manuals he had consulted in filing his complaint. Hause also refused to provide relevant text messages on his private phone as part of the investigation. The investigation ultimately concluded that Hause had supplied false or misleading statements to harm the reputation of another, and the Sheriff's Office imposed termination as discipline. Hause's union filed a grievance challenging his termination, which was denied following a hearing. Hause then filed a lawsuit in superior court alleging in part wrongful termination in violation of public policy. The trial court dismissed Hause's lawsuit in its entirety. The Court of Appeals affirmed, holding that to establish a claim for wrongful termination in violation of public policy, the employee must show that the discharge was motivated by reasons that contravene a clear purpose of a constitutional, statutory, or regulatory provision. In asserting his

claims, Hause largely relied upon the internal policies of the Sheriff's Office, which he argued gave him the right to file a complaint about Boniecki's conduct. The Court rejected this claim and held that Hause could not premise a wrongful discharge in violation of public policy claim on internal employment policies because unlike laws or formally promulgated agency regulations, those internal policies do not grant Hause a legal right or privilege. As a result, the Court affirmed dismissal of Hause's wrongful discharge claims.

PERC

Unit Clarification

Clark County
Decision 13905 (PECB, 2024) (7/11/24)

PERC's Executive Director held that Clark County's decision to reassign two employees in its Department Information Systems Coordinator II (DISC) job class constituted a meaningful change in circumstances necessitating clarification of the bargaining units. The County's Information Technology (IT) Department includes approximately 64 employees, most of which are represented by the Clark County Information Technology Guild ("IT Guild"). A separate bargaining unit, the Clark County Sheriff's Office Support Guild ("Support Guild") represents employees of the Sheriff's Department, including employees in the DISC job class. Employees in the DISC job class are responsible for developing and managing a department's use of specialized PC-resident computer systems, and they customize software to fit each department's needs. There are approximately 16 employees in the DISC job class across the County's workforce, and historically none of the DISCs were included in the IT Department. In September 2023, the County decided to reassign two DISC employees that supported and worked in the Sheriff's Office and who were represented by the Support Guild to the IT Department. Although the change impacted those employees' supervisory manager, the County announced that the move would not change the work location or existing union membership. The IT Guild disagreed with the County's assessment, and it filed a petition with the Public Employment Relations Commission (PERC) seeking clarification about the appropriate bargaining unit placement for the DISC positions. Following an evidentiary hearing, the PERC Executive Director held that the County's decision to reorganize the DISC positions sufficiently altered the community of interest and therefore, warranted revision of the existing bargaining units. The Executive Director ruled that the DISCs no longer shared a community of interest with the Support Guild's bargaining unit given that the employees were now subject to the same working conditions and lines of supervision as the other IT employees. The change also provided the DISC employees with increased access to IT tools and authorization like other IT-related positions. In comparison, the employees represented by the Support Guild complete a wide variety of tasks within the Sheriff's Office and report to the Sheriff's Office employees. The Executive Director reasoned that if the DISC employees remained in the existing Support Guild unit, then they would be the only employees in the Sheriff's Office who are supervised by the IT Department, which would disrupt the existing pattern of representation. As a result, the Executive Director held that the changes to the DISC's reporting structure meant that the DISCs now shared a community of interest with the IT Guild, and the Support Guild's bargaining unit would be clarified to no longer include the two DISC positions and the IT Guild's bargaining unit would be clarified to include the two positions.

Washington School Law Update

The **Washington School Law Update** is published by Porter Foster Rorick LLP on or about the 5th of each month. To be added to or removed from our distribution list, simply send a request with your name, organization, and e-mail address to info@pfrwa.com.

Update Editors

Liz Robertson
elizabeth@pfrwa.com

Jay Schulkin
jay@pfrwa.com

August Masthead Photo Credit

Children Learning Letters and Words at Artondale School, 1920. Courtesy of the Gig Harbor Peninsula Historical Society. All rights reserved.

PORTER FOSTER RORICK LLP
601 Union Street | Suite 800
Seattle, Washington 98101
Tel (206) 622-0203 | Fax (206) 223-2003
www.pfrwa.com

Lance Andree
Lynette Baisch
Chase Bonwell
Cliff Foster
Olivia Hagel

Josh Halladay
Parker Howell
Rachel Miller
Buzz Porter
Liz Robertson
Mike Rorick

Jay Schulkin
Sharan Singh
Greg Swanson
Christina Weidner
Lorraine Wilson