



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

Public Records Act

Valderrama v. City of Sammamish
No. 86195-6-I (12/16/24)

The Washington Court of Appeals held that the City of Sammamish (City) performed an adequate search for records of communications stored on council members' private devices in response to a public records request. In January 2022, Ramiro Valderrama submitted multiple public records requests to the City, seeking communications between current and former city council members and citizens stored on "external channels," such as the applications Slack and WhatsApp. On February 28, the City emailed all former and current City council members notice of Valderrama's requests, directing them to search their personal devices for responsive records. The City worked with the council members to obtain affidavits detailing the scope and results of their personal device searches, and it produced five installments of responsive records and affidavits between February and June 2022. After June 2022, the City's installments began to slow, in part because it was awaiting an affidavit from council member Ken

Gamblin. The City asked Gamblin several times to provide responsive records and to execute an affidavit, and it warned Gamblin in January 2023 that it may take legal action against him to obtain public records. On February 6, 2023, Gamblin provided the City a completed affidavit in which he asserted that he had searched his personal devices and declared that there were no responsive records. The City provided Valderrama the Gamblin affidavit that same day. On March 2, 2023, Valderrama emailed the City that the only records outstanding were those from council member Kent Treen. In response, the City provided Valderrama an affidavit from Treen, which explained he had searched his personal devices and turned over all responsive records. On March 9, 2023, Valderrama sued the City, alleging that it had violated the Public Records Act (PRA) by failing to conduct an adequate search for his requested records. The trial court dismissed the lawsuit on summary judgment, finding that the City conducted an adequate search as a matter of law. The Court of Appeals affirmed, holding that the City met its obligation under the PRA by supplying the council members' affidavits detailing their personal device searches. The Court rejected Valderrama's argument that the City should have taken action to ensure the affidavits were not executed in bad faith, including suing the council members to forensically examine their personal devices and accounts. In rejecting this argument, the Court reasoned that the City had acted diligently by requesting affidavits from

Gamblin multiple times, and even warning him of potential legal action if he failed to provide it. Because the affidavits were entitled to a presumption of good faith, and the City was not required to take further action to search the council members’ personal devices, the Court affirmed dismissal of Valderrama’s lawsuit in its entirety.

PERC

Duty to Bargain

University of Washington

Decision 14000 (PECB, 2024) (12/5/2024)

A PERC Examiner ruled that the University of Washington (University) failed to bargain in good faith with the UW Postdocs International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local Union 4121 (“Union”) regarding legislative changes that could impact Union members’ overtime eligibility. The Union represents a bargaining unit consisting of postdoctoral researchers (“postdocs”) at the University. The postdocs include postdoc scholars, who are paid a salary, and postdoc fellows, who are paid via stipend. When the parties negotiated the first collective bargaining agreement in 2019, they agreed that the postdocs were exempt from overtime payments. However, the Washington State Department of Labor & Industries (L&I) announced increased salary thresholds effective January 1, 2023, and under those thresholds, unless the postdocs’ salaries were raised, they would become entitled to overtime. The University demanded to bargain regarding the impact of the changes, and in bargaining the parties disagreed about whether the postdoc fellows were subject to the overtime threshold. However, after many bargaining sessions, the University informed the Union for the first time that it no longer believed any postdoc employees—either scholars or fellows— were subject to the overtime threshold. The Union submitted an information request inquiring about the University’s research leading to their changed position. The University refused to provide any of the requested documentation, claiming that it was privileged. On February 14, 2023, the Union filed an unfair labor

practice (ULP) complaint, alleging that the University failed to bargain in good faith by abruptly changing its position in bargaining, and by refusing to provide the requested information. Following an evidentiary hearing, Examiner Emily Martin held that the University acted in bad faith by outwardly expressing a fundamental shared belief regarding the scholars’ overtime eligibility, while inwardly having doubts and then changing its position late into the bargain. The Examiner held that the University should have had a frank conversation with the Union that it was no longer certain the wage threshold applied, and that its behavior had frustrated the bargaining process and was a ULP. The Examiner further held that the University failed to bargain in good faith by denying the information request altogether, using privilege as a reason to block information about the topic without attempting to explore what documents existed and if they were fully privileged. The Examiner ordered the University to cease and desist from breaching its good faith bargaining obligations, and to provide the requested information with privilege logs and redactions.

Confidential Employee

Chelan County

Decision 14012 (PECB, 2024) (12/17/24)

The Public Employment Relations Commission (PERC) held that two employees who served in management roles in the Chelan County Sheriff’s Office could not be excluded from an existing bargaining unit as confidential employees. On December 7, 2023, the Chelan County Sheriff’s Office Admin Group (“Union”) filed a petition with PERC seeking to represent the Chief of Special Operations and the Chief of Patrol, two management positions within the Sheriff’s Office. Both positions report to the Undersheriff, who in turn reports to the elected Sheriff. Both positions have participated in some collective bargaining sessions on behalf of Chelan County (County), but their role was to provide input, which the chief negotiator relied upon during negotiations. Attending bargaining sessions is not a core function of either position, and neither employee occupying the positions participated in the grievance

process for current bargaining units. The County opposed the representation petition, asserting that the two positions were “confidential employees” precluded from exercising collective bargaining rights under chapter 41.56 RCW. Following a hearing, PERC granted the Union’s representation petition, holding that the employees were not required to consistently exercise the sort of independent judgment in formulating the County’s labor relations policy for them to be considered confidential employees. PERC reasoned that the burden to show employees are confidential is heavy, and that the purpose of the exclusion is to guard against conflicts of interest between the employee’s duty to their employer and their status as a bargaining unit member. Because neither the Chief of Special Operations nor the Chief of Patrol consistently assisted in labor relations work to create such conflict of interest, PERC held that they should not be excluded from the Union as confidential employees.

Refusal to Bargain

Okanogan County

Decision 14019 (PECB, 2024) (12/23/24)

A PERC Examiner held that Okanogan County (County) committed a refusal to bargain unfair labor practice (ULP) when it unilaterally contracted out courthouse security work that had previously been performed by a position within the Okanogan County Sheriff Employees Association (“Union”). In 2013, the County created a full-time courthouse security officer position that performed security work for the courthouse, and which was part of the Union. By 2019, the position became an on-call, as-needed position, and it had been vacant beginning December 1, 2021, largely due to the assignment of a corrections deputy in the jail full time. In early 2022, the County began discussing the option of reclassifying the courthouse security officer position to a courthouse security deputy, and creating three levels for the position: an entry level one, an unarmed position at level two, and a level three position filled by a retired police officer who could carry a firearm. The County and Union met to discuss the proposed changes to the position in April and May 2022. At a bargaining session held on May 3, 2022, the

County presented the Union with three separate position descriptions and proposed wage rates. The Union then provided the County what it believed to be comparable wage rates for the position and the proposed levels. In response, the County stepped out of the room, met for five to ten minutes, and then returned to the bargaining room and revoked its offer. The parties did not meet again to discuss the courthouse security officer position, and instead, on February 13, 2023, the County board of commissioners adopted a resolution approving a contract with an outside entity to provide two courthouse security officers to perform the work. The County then sent an email to all staff informing them of the contract. The contracted security officers began their courthouse duties on March 1, 2023. The Union filed a ULP complaint against the County on August 24, 2023, alleging that the County had unlawfully contracted out bargaining unit work without fulfilling its bargaining obligations over the decision. Following an evidentiary hearing, PERC Examiner Page Todd held that the work of the contracted security officers included patrolling the courthouse, looking for suspicious activity, ensuring the safety of staff and visitors, and responding to emergencies, all of which was work previously performed by the courthouse security officer position within the Union. As a result, the Examiner held that the work had historically been performed by the Union, and was therefore bargaining unit work. Because the work was bargaining unit work, the County’s decision to transfer that work to an outside contractor was a mandatory subject of bargaining. The Examiner held that the County did not meet its obligation to bargain in good faith over the decision to contract out the work, given its actions in the May 3, 2022 bargaining session in which it rescinded its offer after receiving a counter from the Union regarding wages, and its failure to engage with the Union again over the topic. The Examiner rejected the County’s argument that the February 13, 2023 resolution approving the outside contract constituted sufficient notice and opportunity to bargain, holding that notice in the form of a board resolution alone is insufficient to constitute “notice” under PERC precedent. The Examiner ordered the standard remedies of ordering the County to cease and desist,

post notice of the violation, and restore the status quo, and rejected the Union’s argument that it was entitled to attorney fees, reasoning that while some of the County’s defenses were frivolous, its conduct in defending itself was not sufficiently bad faith to warrant an award of attorney fees.

PFR Announcements

2025 Bargaining Skills Workshops

January 27, January 28, February 3, and February 4

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 focus on the negotiating skills which help bargaining teams find agreements with public school unions. These skills are important for all members of a management bargaining team, particularly as we head into another challenging year for collective bargaining in 2025. The courses are taught by nine PFR attorneys who regularly represent school districts at bargaining tables with certificated and classified employee unions in Washington State and collectively have negotiated settlements for more than 800 open labor contracts over the past 30 years.

The Bargaining Skills 101 curriculum will be offered twice this year, on Monday, January 27, and Monday, February 3. The Bargaining Skills 201 curriculum will be offered twice this year, on Tuesday, January 28, and Tuesday, February 4. Attendees can choose to come to either or both Bargaining Skills 101 and Bargaining Skills 201. 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 personal interaction with the instructors.

Register to attend by sending an email to info@pfrwa.com with the name and email address for each attendee, the date(s) you wish to attend, and a purchase order number for invoicing your school district. 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.

More information is available on our website or by contacting us at (206) 622-0203 or info@pfrwa.com.

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Update Editors



Liz Robertson
elizabeth@pfrwa.com



Jay Schulkin
jay@pfrwa.com

January Masthead Photo Credit



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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
Collin Burns
Cliff Foster
Olivia Hagel

Josh Halladay
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