PORTER FOSTER RORICK LLP

August 2025

Washington School Law Update

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

Ninth Circuit Court of Appeals

First Amendment

Burch v. City of Chubbuck
No. 24-2646 (7/25/25)

The Ninth Circuit Court of Appeals held that a public employee was not retaliated against for his speech opposing the local mayor because any adverse action against him was justified and would have occurred even without the protected speech. Rodney Burch was appointed as a Public Works Director for the City of Chubbuck, Idaho by Mayor Kevin England in 2015. Beginning in 2021, the relationship between Burch and England had soured, and Burch began exploring the option of moving to a "weak mayor" system by creating a city administrator position. As part of the process, Burch compiled a document that heavily criticized England's policies and performance. The new position was never created, and Burch decided to support England's opponent in the 2021 mayoral election by posting a lawn sign in front of his home. England was re-elected, and immediately sought Burch's removal, asking him to resign, and when Burch refused, reducing his workload. Burch ultimately resigned in April 2022, citing his reduction in workload as a sign that he was being constructively removed from office, and he also asserted that his reduction in work was a result of his speech in opposition to England's re-election. After his resignation, Burch filed a lawsuit against the City and England in federal district court, arguing that his constructive discharge had violated his constitutionally protected speech. The court dismissed Burch's lawsuit on summary judgment. Burch appealed, and the Ninth Circuit affirmed, analyzing Burch's free speech claims under the five-factor test derived from the Supreme Court case *Pickering v. Bd. Of Ed.*, which analyzes whether the plaintiff engaged in protected speech, and if so, whether the state had adequate justification for taking adverse action based upon that speech, and whether it would have taken the adverse employment action absent the protected speech. Applying that test, the Ninth Circuit held that Burch met his burden of showing he spoke as a private citizen on a matter of public concern by posting the campaign sign to his front lawn, and therefore, some of his speech was protected. However, the Ninth Circuit held that the memorandum criticizing England as mayor was created as part of Burch's job responsibilities, and it therefore was not entitled to constitutional free speech protection. Because the undisputed evidence showed that the adverse action against Burch would have occurred even without his protected speech of affixing a campaign sign to his lawn, the Ninth Circuit held that the City and England did not violate Burch's free

speech rights by asking him to resign and reducing his workload. As a result, the Court affirmed the district court's award of summary judgment and dismissal of Burch's lawsuit.

Washington Court of Appeals

Public Records Act

Hood v. City of Langley
No. 86686-9-I (7/21/25)

The Washington Court of Appeals affirmed the dismissal of Eric Hood's Public Records Act (PRA) lawsuit against the City of Langley (City), finding he failed to meet the high bar for vacating a judgment based on new evidence or misrepresentation. In January 2020, Hood submitted a PRA request to the City. On May 7, 2020, the City emailed Hood regarding copying fees that were due. Due to delivery issues, the City re-forwarded the email on May 11 and sent a physical letter on May 19. Hood acknowledged receipt of the letter on May 21, claiming no prior email issues, and the City then sent him copies of the earlier email error messages on May 27. The City received no further response or payment from Hood and closed the request as "abandoned" for non-payment in June 2020. Hood filed a PRA lawsuit in April 2021. The trial court dismissed the case in February 2023, concluding that Hood had been properly notified of the fees and had abandoned his request by failing to pay or communicate further. In February 2024, Hood moved to vacate the dismissal under CR 60(b), arguing he had new evidence showing the May 7 email failed to deliver and that the City misrepresented its knowledge of the May 7 email's failure. The trial court denied his motion in April 2024. The Court of Appeals affirmed the denial, emphasizing that CR 60(b) relief is an extraordinary remedy. The Court found Hood failed to satisfy four of the five factors required to vacate a judgment based on newly discovered evidence. Specifically, he did not explain how the evidence (including emails and opinions from Microsoft Support and a computer forensics expert) could not have been discovered before trial with due diligence. Furthermore, the new evidence regarding the May 7 email did not address the subsequent May 11 and May 27 emails, which successfully forwarded the fee information and for which no delivery problems were reported. Regarding Hood's claims of City misrepresentation, the Court found a lack of clear and convincing evidence. The emails cited by Hood did not prove the City definitively knew the May 7 email failed to deliver. The Court reiterated that CR 60(b) is not a substitute for a timely appeal for parties who "slept on their rights."

PERC

Duty to Bargain

University of Washington
Decision 14000-A (7/2/25)

The Public Employment Relations Commission (PERC) affirmed an Examiner's decision finding that the University of Washington (University) violated its duty to bargain in good faith with United Auto Workers Local 4121 (UAW) by changing its stance on the applicability of the Washington Minimum Wage Act's (WMWA) overtime salary threshold to postdoctoral scholars midway through negotiations and by failing to provide requested information. UAW represents a bargaining unit of post-doctoral researchers ("postdocs") at the University. The parties met in 2022 to negotiate a successor collective bargaining agreement and initially, both parties operated under the assumption that postdocs were subject to the WMWA overtime rules, and much of the negotiations focused on increasing postdoc salaries to maintain their overtime-exempt status in light of new Washington State Department of Labor and Industries (L&I) rules increasing the salary threshold for overtime exemptions. The University had agreed to an initial salary increase to keep postdocs above the threshold for the first year of the proposed agreement, which influenced the UAW to consider agreeing to a longer contract duration. However, midway through negotiations, the University reversed its position, asserting that postdocs were, in fact, exempt from overtime under the WMWA. The University stated it had been discussing this with L&I for an extended period but when the UAW requested information about the University's new legal position and its

communications with L&I, the University largely refused, citing attorney-client privilege, and declining to provide its internal legal analyses. The UAW filed an unfair labor practice complaint with PERC, and following an evidentiary hearing, Examiner Emily Martin ruled that the University failed to bargain in good faith by changing its position midway through negotiations and by denying the union's information request altogether. The Examiner's decision is more fully summarized in the January 2025 edition of the Washington School Law Update. The University appealed, and the Commission affirmed the Examiner's decision and held that, based on the totality of the circumstances, the University's actions constituted a breach of its duty to bargain in good faith. PERC reasoned that the University's sudden and unsupported change in position, made late in negotiations and based on unexplained rationale, amounted to "moving the target" and sufficiently frustrated the bargaining process that it constituted an unfair labor practice.

Interference

University of Washington
Decision 14174 (7/25/25)

A PERC Examiner held that the University of Washington (University) committed an unfair labor practice (ULP) by removing certain employees from an established merit pay increase process after the Service Employees International Union Local 925 (Union) filed petitions for representation. The University employs two groups of professional advising staff—Advising Professional Staff and Continuum College Professional Staff, who were previously not represented for collective bargaining purposes. The employees previously did not receive automatic annual cost of living adjustments or negotiated annual salary increases. Rather, the University would decide each year whether to allocate funds in its budget for merit pay increases for unrepresented employees. In 2024, the University agreed to a three percent merit pay increase for eligible employees, including the previously unrepresented professional advising staff. On June 28, 2024, the Union filed petitions with the Public Employment Relations Commission (PERC) to represent the Advising Professional Staff and Continuum College Professional Staff. After learning that petitions for representation were filed, the University listed the relevant employee units as "Not Included in the Merit Process," which the University argued was necessary to maintain the status quo while the Union's representation petitions were being evaluated. In response, the Union filed ULP complaints, arguing that the University had interfered with the employees' rights by denying them the merit pay increases that had already been set in motion prior to the representation petitions. Following an evidentiary hearing, PERC Examiner E. Matthew Greer held that this was an instance of "dynamic status quo" because the merit pay increases were in motion and communicated to employees before the representation petitions were filed, and therefore, must be completed. The Examiner held that when the University excluded these employees from the merit pay process, it altered the status quo and contravened those employees' reasonable expectations of a wage increase. Although the distribution of increases was not finalized, the Examiner held that no planned change needs to be entirely complete in order to become part of the dynamic status quo. As a result, the Examiner concluded that the University committed a ULP when it excluded eligible employees from the merit pay increase process, and he ordered the standard remedy of requiring the University to restore the status quo by issuing a retroactive three percent salary increase to all affected, eligible employees.

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