



315 Fifth Ave S Suite 1000
Seattle, Washington 98104
phone - 206.676.7000
fax - 206.676.7001

Client Alert

**FROM: Bruce Schroeder
Labor & Employment Group**

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**RE: Court of Appeals Concludes Layoff Decision and Impacts of Decision
Must be Bargained**

Division 1 of the Washington State Court of Appeals recently ruled that public employers must bargain not only the impacts of a layoff decision, but the decision itself. This decision, while consistent with existing PERC case law, underscores the scope of bargaining obligations when you face the need to implement layoffs to address budget shortfalls.

This decision stems from a directive from the Kitsap County Board of Commissioners to cut the Sheriff's Office's budget. The Sheriff's Office concluded the only viable way to implement that directive was to lay off two jail officers. The Corrections Officers' Guild demanded to bargain the layoff decision. The County and the Sheriff's Office took the position that the decision to layoff was part of the budget process and was therefore not a mandatory subject of bargaining. As a second argument, the County argued that language in the expired contract granting the County the right to determine staffing levels constituted a waiver of any bargaining rights the Guild might otherwise possess.

The Court of Appeals rejected the County's arguments. They concluded that the layoff decision was separate from the determination of the budget and was a mandatory subject of bargaining. The Court also agreed with the Superior Court that any waiver language in an expired contract was a permissive subject, and therefore unenforceable during the period after the contract expired.

WHAT DOES THIS MEAN FOR THE REST OF US FACING NECESSARY LAYOFFS?

The implications of this decision depends of the timing of the proposed layoff, the language of the contract, and the interest-arbitration eligibility of the employees affected. If the layoff decision occurs while a contract is in effect, and the contract has language allowing the employer to implement a reduction in force, such language is a waiver of any duty to bargain the layoff decision. You may still need to bargain impacts of that decision.

If you want to implement layoff after the contract has expired, the waiver language mentioned above is not enforceable and you would have a duty to notify the union of your proposed layoff

decision and bargain that decision if the union requests. If the affected employees are not interest arbitration-eligible, you can implement your layoff decision when you reach lawful impasse. If the employee are interest-arbitration eligible, as they were with the jail officers in Kitsap County, or other commissioned law enforcement personnel and firefighters, you would have to negotiate the decision to layoff, and its impacts. If you could not reach agreement, you are not allowed to implement your decision; rather you must go to mediation and interest arbitration. Obviously this presents significant delays and the potential for an interest arbitrator to disagree with your rationale for implementing layoffs.

If you are faced with a situation where you need to bargain the layoff decision, it is critical to notify the union as early as possible and include the deadline by which the layoff decision, or any alternatives to layoff agreed upon in bargaining, must be implemented.