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SUPREME COURT
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No. 65037-8-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION I

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NOV 23 2011
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
[Signature]

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL
286,

Appellant,

v.

PORT OF SEATTLE,

Respondent.

PETITION FOR REVIEW

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IDENTITY OF PETITIONER

Petitioner International Union of Operating Engineers, Local 286 (“Local 286”, “Union”) is a labor organization representing employees employed by the Port of Seattle (“Port”), including maintenance employees at the Seattle Tacoma International Airport. Its objects and purposes include encouraging a higher standard of skill among its members, and organizing all persons within its jurisdiction without regard to race, creed, color, sex, religion, age, or national origin. Local 286 was the Appellant in the Court of Appeals and the Respondent/Defendant in the King County Superior Court.

COURT OF APPEALS DECISION AND ORDER

The Court of Appeals filed its published decision on October 17, 2011 (Appendix, A-1 through A-21).

ISSUES PRESENTED FOR REVIEW

Two issues merit Supreme Court review pursuant to RAP 13.4:

1. Did the Court of Appeals err when it held that the Washington Law Against Discrimination (“WLAD”), Chapter 49.60 RCW, A-22 through A-24, provides an explicit, well-defined, and dominant public policy which prohibits an employee who is accused of racial harassment and terminated from being reinstated to employment with only a four work-week suspension?
2. Did the Court of Appeals err when it held that the award issued by Arbitrator Vivenzio reducing the discipline imposed on a Port of Seattle employee who was accused of racial harassment from termination to a four work-week suspension violated the public policy of the state of Washington because it

impermissibly conflicted with the Port's duty to eliminate and prevent racial discrimination in the workplace?

STATEMENT OF THE CASE

I. Nature of the Lawsuit

On October 12, 2007, long-time Port employee Mark Cann was asked by his supervisor to remove a length of rope from the floor. Mr. Cann took the rope and, with the help of another employee, tied and hung a full-sized hangman's noose. Mr. Cann claimed it was part of a long-running joke between himself and another employee, a 75-year-old white man named Dick Calhoun. The noose was discovered by an African-American employee named Rafael Rivera, who reported it to management. The Port conducted an investigation which resulted in their terminating Mr. Cann's employment on February 11, 2008.

During this period, Mr. Cann was represented by Local 286. Local 286 and the Port of Seattle are parties to a collective bargaining agreement ("CBA") which, *inter alia*, provides that discipline and termination will only be for just cause; and provides for final and binding arbitration of disputes arising under the CBA. *See* CP 6-20. After Mr. Cann was terminated by the Port, Local 286 invoked the CBA's grievance procedure, alleging that the termination was not compliant with the CBA. CP 499.

The dispute was eventually referred to a mutually-selected arbitrator, Anthony Vivenzio. An arbitration hearing was held in Seatac, Washington on October 13 and 14, 2008. The parties stipulated that the issue to be decided by the arbitrator was, “[w]as there just cause for the Port to terminate Mark Cann’s employment, and if not, what is the appropriate remedy?” C.P. 635.

On February 2, 2009, Arbitrator Vivenzio issued a 26-page decision, at CP 633-659, in which he decided that although the employer was justified in disciplining Mr. Cann, termination was “too harsh a penalty under the circumstances, and was not imposed for just cause.” CP 657. The arbitrator reasoned that Mr. Cann was “more clueless than racist.” *Id.* The arbitrator reduced the termination to a 20-day (four work-week) suspension and otherwise ordered Mr. Cann to be reinstated to employment at the Port and made whole. CP 658.

On February 25, 2009, the Port filed a petition for a constitutional writ of certiorari in King County Superior Court seeking to vacate the arbitration award. Case 09-2-10355-1 SEA. On April 22, 2009, Local 286 filed a lawsuit to compel enforcement of the Award. Case 09-2-16679-0.

II. The Superior Court’s Decision

The Port’s petition for a writ of certiorari, and Local 286’s lawsuit to compel enforcement, were consolidated by The Honorable Steven C.

Gonzalez. CP 1-3. On cross motions for summary judgment, on February 4, 2010, Judge Gonzalez granted the Port's motion for summary judgment and vacated Arbitrator Vivenzio's decision on the basis that it was "excessively lenient given the facts and circumstances of this case." CP 725-27. The Union's motion for summary judgment enforcing the award was denied. *Id.*

Judge Gonzalez ordered the Port to reinstate Mr. Cann to employment, but imposed a suspension of over one year in the place of the four work-week suspension imposed by Arbitrator Vivenzio. *Id.* Mr. Cann was also ordered to write a "sincere letter of apology" and attend diversity and anti-harassment training. *Id.* The court also imposed a four-year probationary period during which Mr. Cann would be subject to immediate and final termination for any policy violation whatsoever. *Id.*

On March 3, 2010, Local 286 filed a notice of appeal stating that it sought review of the superior court's Order Granting Port's Motion for Entry of Post-Hearing Order and Order Granting in Part Plaintiff IUOE Local 286's Motion for an Award of Reasonable Attorney Fees.

III. Court of Appeals, Division I Decision

On October 17, 2011, Division I of the Court of Appeals issued its decision. The Court of Appeals held that Arbitrator Vivenzio's award reducing the termination to a four work-week suspension violated the

public policy of the Washington Law Against Discrimination (“WLAD”), finding the award impermissibly conflicted with the Port’s efforts to fulfill its affirmative duty to eliminate and prevent racial discrimination in the workplace.

The Court of Appeals agreed with the superior court that Arbitrator Vivenzio’s award was too “lenient,” and held that “the policies of the WLAD require that an arbitration award be substantial enough to discourage repeat behavior.” A-14-15. The Court of Appeals on this basis vacated Arbitrator Vivenzio’s award as violating the public policy of the state of Washington.

The Court of Appeals also held that the superior court “exceeded the scope of its authority when it substituted its own determination of appropriate discipline for the arbitrator’s.” A-17. The Court found that “the superior court here should have interfered to the least possible degree while upholding public policy. A-18. This limited interference could have been achieved by remanding the case for further arbitration.” A-18. The Court of Appeals therefore affirmed the superior court’s decision to vacate Arbitrator Vivenzio’s award, but remanded for further proceedings.

ARGUMENT

I. Review Should be Granted Under RAP 13.4(b)(1) Because the Court of Appeals' Decision Conflicts With the Holding of the Supreme Court that the Narrow "Public Policy" Exception to Enforcing Arbitration Awards Only Applies Where the Award Violates an "Explicit," "Well Defined" and "Dominant" Public Policy.

Washington public policy, like federal labor law policy, strongly favors finality of arbitration awards. *Davidson v. Hensen*, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998). Accordingly, the Supreme Court has set out an extremely limited standard of review for arbitration awards. *Clark County PUD No. 1 v. Int'l Bhd. of Elec. Workers, Local 125*, 150 Wn.2d 237, 246, 76 P.3d 248 (2003) ("*Clark County*"). Review of an arbitration decision under a constitutional writ of certiorari is limited to whether the arbitrator acted illegally by exceeding his or her authority under the contract. *Id.* at 245.

What this means is that when reviewing an arbitration proceeding, an appellate court does not reach the merits of the case. *Clark County*, 150 Wn.2d at 245. Courts instead must "give exceptional deference to an arbitrator's decision, particularly in the realm of labor relations." *Klickitat County v. Beck*, 104 Wn. App 453, 460, 16 P.3d 692 (2001).

In *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 167 Wn.2d 428, 219 P.3d 675 (2009), this Court "join[ed] the federal and other

state courts in adopting the narrow public policy exception to enforcing arbitration awards.” 167 Wn.2d at 436. The Court noted that “[t]his public policy exception is limited to decisions that violate an ‘explicit,’ ‘well defined,’ and ‘dominant’ public policy, not simply ‘general considerations of supposed public interests.’” *Id.* at 435. The public policy exception is not met simply because the Court believes the arbitrator’s decision “was not good public policy” or thinks the remedy ordered by the arbitrator was “distasteful.” *Id.* at 439.¹

In *Kitsap County*, an employer terminated a sheriff’s deputy after 29 incidents relating to unfitness for duty. After the union filed a grievance, an arbitrator reduced the termination to final written warnings, and ordered the deputy reinstated and made whole. The Court of Appeals held that the arbitration decision violated public policy because the officer “had violated his duties as a deputy sheriff and could not serve in a position of public trust.” *Id.* at 433 (citation omitted).

This Court reversed the Court of Appeals and found that the arbitration award was not subject to being vacated as violating public

¹ The Court thus adopted in Washington the standard set forth by the United States Supreme Court, which requires that “a public policy must be explicit, well defined, and dominant for a court to overturn an arbitration decision.” *Id.* at 435, n. 4, quoting *E. Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 67 (2000) (“*Eastern*”). “General considerations of supposed public interests” alone do not trigger the “exacting requirements” of the public policy exception to the enforcement of arbitration awards. *Id.* at 435, quoting *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757 (1983).

policy. The Court observed that although “Washington statutes prohibit making false statements to a public officer,” the Court found that “there is no statute or other explicit, well defined, and dominant expression of public policy that requires the automatic termination of an officer found to have been untruthful.” *Id.* at 437-38.

This decision was well-grounded in federal law, which has long provided that where a “public policy” challenge is directed not at the arbitration decision *in toto*, but rather at “specific relief” provided in that decision, it is the burden of the party challenging the decision to show that the “specific relief” violates the public policy. Thus, the party challenging the arbitration decision has to demonstrate that public policy “specifically militates against the relief ordered by the arbitrator.” *Virginia Mason Hosp. v. Washington State Nurses Ass'n*, 511 F.3d 908, 916 (9th Cir. 2007), quoting *Stead Motors of Walnut Creek v. Auto. Machinists Lodge No. 1173*, 886 F.2d 1200, 1212-13 (9th Cir.1989).

The Court of Appeals’ decision below substantially conflicts with this Court’s decision in *Kitsap County*. Although the WLAD certainly does represent a strong public policy against employment discrimination, there is no statute or other explicit, well defined and dominant expression of public policy that specifically provides, as the Court of Appeals found, that some punishment in excess of a four work-week suspension was

necessary in order for the Port of Seattle to “fulfill its affirmative duty to eliminate and prevent racial discrimination in the workplace.” *See* A-10.

Put bluntly, the Court of Appeals reached its conclusion that a four work-week suspension was inadequate in this case based on nothing more than its own “gut instinct” that this period of suspension was “too lenient.” Significantly, the Court of Appeals cited only out-of-state authority in support of its conclusion in this regard, and cited neither any treatises nor any other authority in support of its assessment of the “adequacy” of a nearly month-long period of suspension “to persuade Cann and potential violators to refrain from unlawful conduct.”²

Neither the WLAD nor any other Washington State statute sets any particular threshold of discipline which a public employer must impose on a worker found guilty of misconduct.³ In the absence of such a statute or other “explicit, well defined and dominant expression of public policy” so

² The absence of any analysis underlying this assertion is startling. It is a truism, after all, that many workers are just one or two paychecks away from homelessness or bankruptcy. *See, e.g.,* Jacqueline Murray Brux, “Economic Issues and Policy” (4th Ed. 2008) at 199 (“Furthermore, many of our nation’s families are just one or two paychecks away from homelessness”). The idea that losing nearly an entire month’s worth of income is a trivial sanction to blue-collar employees such as Mr. Cann and his coworkers is risible.

³ WLAD established a Commission with the authority to eliminate and prevent discrimination in employment. RCW 49.60 *et. seq.* Among the rights guaranteed to Washington citizens is the right to “obtain and hold employment without discrimination.” RCW 49.60.030(1)(a). However, there is nothing in the statute that states, or even remotely suggests, that a person who has committed a discriminatory act of some sort must necessarily be suspended for a period of time in excess of four work-weeks prior to being permitted to return to work, nor that a public employer’s “efforts to fulfill its affirmative duty to eliminate and prevent racial discrimination in the workplace” is impeded by an arbitrator ruling that such discipline is excessive..

providing, the Court of Appeals' decision represents an impermissible intrusion by the judicial branch of government into the decision-making province of the arbitrator.

The Court of Appeals' decision simply cannot be reconciled with *Kitsap County* and is likely to lead to serious confusion as to when an underlying public policy is explicit, well-defined, and dominant enough to provide a basis for vacating a remedy issued by a labor arbitrator.

A knowledgeable attorney or trial judge would find that the decisions are sufficiently contradictory to cause confusion as to what is the proper scope of review on a motion to vacate a labor arbitration award. Although the Court of Appeals paid lip service to the principle that judges may not "substitute [their] own determination of appropriate discipline for the arbitrator's," the decision below clearly invites judges to do just that, i.e., to inquire whether a labor arbitration award is too "lenient" or "substantial enough" under state public policy. It would be impossible to say, under the Court of Appeals' decision, where the line falls between proper and improper inquiry.

The decision of the Court of Appeals, if left standing, would effectively overrule *Kitsap County* and permit state court judges to second-guess the factual findings and remedies issued by labor arbitrators and impose their own personal brand of industrial justice under the guise of

enforcing what would inevitably be a vague and statutorily unrestricted concept of what “public policy” requires. At the very least, the Court of Appeals’ decision would so limit these cases as to vitiate this Court’s decisions.

II. Review Should be Granted Under RAP 13.4(b)(4) Because the Court of Appeals’ Decision Involves Issues of Substantial Public Interest That Should be Determined by the Supreme Court.

Review of the Court of Appeals’ decision is also warranted under R.A.P. 13.4(b)(4) because the decision below involves issues of substantial public interest that should be determined by the Supreme Court.

In finding that an “exceptionally limited” standard of review applies to review of labor arbitration awards, the *Clark County* Court noted that both parties voluntarily submit to binding arbitration in the collective bargaining context in order to achieve speedy and inexpensive resolutions to their disputes. *Clark County*, 150 Wn.2d at 253. “The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards.” *Id.* (citing *United Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593, 596, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960)).

The Court of Appeals' determination in this case that it was free to independently analyze the dispute that was the subject of the underlying arbitration and reject the arbitrator's judgment as to the proper remedy to be imposed has broad implications. The Court of Appeals' decision effectively throws the courthouse doors wide open for trial courts to review public sector labor arbitration decisions on the merits.

If left undisturbed, the Court of Appeals decision also leads to an extremely bizarre procedural system that directly conflicts with the policy interests of finality in labor arbitration expressed by this Court in *Kitsap County*. Under the Court of Appeals' decision, after an arbitration award is issued, the losing party may ask a trial court to make its own determination as to whether the award was too "lenient" or "substantial enough." A-14-15 . Not free to "substitute its own determination of appropriate discipline for the arbitrator's", A-17, however, if the court thinks an award is too lenient, it must "remand[] the case for further arbitration." A-18.

Presumably the arbitrator would then issue a new decision with a different award, which the parties could then bring back to court again to evaluate if the new award is now "substantial enough" to meet the public interest. This kind of ping-pong game between arbitration and superior

court directly conflicts with the policy of finality articulated by this Court in *Kitsap County*.⁴

With probably hundreds of public sector labor arbitrations occurring in Washington each year, the issue of the superior court's role in reviewing labor arbitration decisions is one of substantial public interest. Whether the Supreme Court will adhere to a policy of finality in labor arbitration, or whether it will accept the Court of Appeals' discarding of that policy, will have significant impacts on public sector employers and employees, as well as the workload of our courts, for years to come.

Substantial public interest has also already been demonstrated in this case by the participation of the Washington State Labor Council in the Court of Appeals as *amici curiae*. The Washington State Labor Council represents approximately 550 local and state-wide unions associated with the AFL-CIO, which in turn represents approximately 450,000 members. Amicus Brief of Washington State Labor Council ("Amicus Brief"), pg. 1. The climate of labor relations in this state affects thousands of individuals,

⁴ This point can hardly be overstated. While the Court of Appeals declared that the four work-week suspension imposed by Arbitrator Vivencio was "too lenient," it provided zero guidance as to how it came to that conclusion and offered no direction to the Arbitrator, to whom it remanded the matter for a new ruling, as to what type of punishment would **not** run afoul of this indeterminate standard. Thus, one can easily imagine multiple arbitration awards, followed by multiple appeals by whichever party feels an award was either "too lenient" or "too severe," prior to finality ever being achieved.

both on the employer and employee side of the coin. As stated by the Labor Council:

It has long been understood by both management and labor that the arbitration result is final, and that it is fruitless to attempt to overturn the award... This finality directly contributes to stable labor relations in this state and great care should be taken before permitting any change in the courts' deference to labor arbitration awards.

Further, if employers (or unions, for that matter) have reason to expect that the courts will entertain requests to adjust arbitration remedies, the utility of the labor arbitration process will be diminished. Employers and unions will no longer view arbitration decisions as final and binding, and will no doubt turn to the courts as the decision-maker of last resort.

Amicus Brief, pg. 16.

Clearly, the Court of Appeals decision, by affirming the superior court's authority to vacate an arbitration award on the basis that it feels the discipline imposed on an employee was insufficiently severe to allow the Port to fulfill its duties under the WLAD, will undercut this important social policy in precisely the manner feared by the Washington State Labor Council.

CONCLUSION

The Court of Appeals rendered a decision below which substantially conflicts with previous decisions of this Court and involves issues of substantial public interest that should be determined by this court.

Therefore, the undersigned respectfully submits that Local 286's Petition for Review by this Court be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean Leonard", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2011, I caused the foregoing Petition for Review to be delivered via legal messenger to:

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A handwritten signature in black ink, appearing to read "Sean Leonard", written over a horizontal line.

Sean Leonard, WSBA # 42871

Appendix

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

INTERNATIONAL UNION OF)
OPERATING ENGINEERS,)
LOCAL 286,)

Appellant,)

v.)

PORT OF SEATTLE,)

Respondent.)

PORT OF SEATTLE,)

Respondent,)

v.)

ANTHONY D. VIVENZIO and)
MARK CANN,)

Defendants,)

INTERNATIONAL UNION OF)
OPERATING ENGINEERS, AFL-CIO,)
LOCAL 286,)

Appellant.)

NO. 65037-8-1

DIVISION ONE

PUBLISHED OPINION

FILED: October 17, 2011

LEACH, A.C.J. — A Washington court may vacate an arbitration award that violates a well-defined, explicit, and dominant public policy.¹ The International Union of Operating Engineers, Local 286 (Union) appeals a superior court order vacating an arbitrator's decision under this public policy exception. The arbitrator reinstated a Port of Seattle (Port) employee fired for hanging a noose at work, reducing his discipline from termination to a retroactive 20-day suspension. We agree that the arbitration award violated Washington's well-defined, explicit, and dominant public policy against discrimination. However, we hold the superior court did not have the authority to determine the appropriate discipline for the employee. We therefore affirm the superior court's decision to vacate the arbitrator's decision, reverse the superior court's revised award, and remand for further proceedings consistent with this opinion.

FACTS

In December 2007, Port employee Mark Cann tied a noose in a length of rope and hung it on a rail overlooking a high traffic work area. Rafael Rivera, an African American employee with whom Cann "had a recent falling out," was working within 30 feet of the noose. Rivera saw and reported it. After a lengthy

¹ Kitsap County Deputy Sheriff's Guild v. Kitsap County, 167 Wn.2d 428, 435, 219 P.3d 675 (2009) ("[L]ike any other contract . . . an arbitration decision arising out of a collective bargaining agreement can be vacated if it violates public policy." (citing E. Associated Coal Corp. v. United Mine Workers of Am., 531 U.S. 57, 67, 121 S. Ct. 462, 148 L. Ed. 2d 354 (2000))).

investigation, the Port concluded that Cann had violated its zero-tolerance antiharassment policy and terminated him.²

The Union initiated a grievance under its collective bargaining agreement with the Port. Following unsuccessful attempts to settle the grievance, the matter proceeded to arbitration. The parties stipulated to these issues: "Did the Employer have just cause for their [sic] termination of Mark Cann on February 11, 2008, and, if not, what shall the remedy be?"

To guide his decision, the arbitrator considered the collective bargaining agreement between the Union and the Port, the Port's antiharassment policy, the Port's work rules, and the aviation maintenance work rules, all of which inform employees that workplace harassment and discrimination are prohibited. The Port's work rules state that the Port "does not tolerate illegal harassment in the workplace," including "[d]isplaying or circulating pictures, objects, or written materials . . . that demean or show hostility to a person because of the person's age, race, color, national origin/ancestry . . . or any other category protected by law." The Port's rules warn employees that it has "zero-tolerance" for workplace harassment, meaning "[a]ny alleged violation of this (anti-harassment) policy will generate an investigation and, if verified, will be considered 'gross misconduct' and can subject an employee to immediate termination."

² Cann had been a Port employee for 12 years. At the time, Cann held the position of maintenance operating engineer and was a Union shop steward.

In addition to these rules and policies, the arbitrator also considered Cann's testimony. Cann admitted that he received a copy of the Port's rules, underwent antiharassment training, and understood the Port's zero-tolerance policy. Nevertheless, Cann admitted that he tied nooses in ropes at the workplace "a few times" due to his "twisted sense of humor." Cann claimed he was unaware of the noose's discriminatory symbolism. Instead, he linked nooses to "Cowboys and Indians." Cann said he intended the particular noose to be a prank on Dick Calhoun, a 75-year-old employee with whom he had a "joking relationship." According to Cann, when he tied the noose, he remarked, "This is for Dick Calhoun, to put him out of his misery."³

When Cann heard that the noose had offended Rivera, he apologized. Wallace Mathes, Cann's supervisor, testified that Cann tried to apologize to Rivera "while trying to preserve his macho image," opining, "He did his best." During the apology, however, Cann produced the page from the dictionary defining "noose," "apparently to counter the notion that he had tied a noose."

Although Rivera and Calhoun did not testify, leaving the arbitrator "with less than solid impressions of the impacts upon [them]," the arbitrator reviewed documents from the Port's investigation, including interviews and e-mails from Rivera. In one interview, Rivera recounted that Cann remarked to Rivera that

³ E-mails in the record between Port employees during the investigation mention that age discrimination is also prohibited by the Port's antiharassment policy, although that does not appear to have been a factor in the Port's decision to terminate Cann.

Martin Luther King Day was “take a nigger to lunch day.”⁴ In an e-mail, Rivera told the Port that seeing the noose made him feel “not threatened, but angry.” Rivera explained that as a member of the military in the 1960s, he had been stationed in the South, where he “witnessed firsthand and lived daily with racism.” After Rivera saw Cann’s noose, he experienced “many sleepless nights” and “relive[d] a time in [his] life that was demeaning, degrading, humiliating, and de-humanizing.”

Following a two-day hearing, the arbitrator issued a written decision. The arbitrator found, “a noose is an object of a nature such that its display would reasonably be expected to be demeaning or show hostility to people of a protected class within the purview of the policies of the Employer.” By hanging the noose, Cann “performed acts constituting a violation of the Employer’s anti-harassment policy.”⁵ The arbitrator also noted that he doubted the sincerity of Cann’s apology to Rivera. When assessing the reasonableness of the Port’s policies, the arbitrator observed that the Port had several interests at stake when it disciplined Cann. Those interests included “the elimination of discrimination in the workplace, protecting itself from costly lawsuits that could arise from discrimination, and the preservation of its reputation.” However, when assessing the reasonableness of the Port’s discipline, the arbitrator stated, “[I]n this matter,

⁴ Another represented Port employee told an investigator that Cann had “race problems” but later retracted his statement.

⁵ In light of this finding, we find inaccurate appellant’s insistence that “Mr. Cann was expressly found not to have engaged in racially harassing misconduct.”

[Cann] was more clueless than racist.” Therefore, the arbitrator concluded that Cann’s conduct warranted substantial discipline but did not provide just cause to terminate him. The arbitration award reinstated Cann with lost earnings and benefits and reduced his discipline from termination to a retroactive 20-day suspension.⁶

The Port petitioned King County Superior Court for a writ of certiorari, alleging that the arbitrator exceeded his jurisdiction and acted contrary to public policy. The superior court accepted review and found in the Port’s favor, vacating the arbitration award because it violated Washington’s public policy prohibiting discrimination in the workplace. The superior court explained,

Employers have an affirmative duty to provide a workplace free from racial harassment and discrimination. Employees have a right to such a workplace. The Award undermined the well-defined, explicit and dominant public policy expressed in WLAD because it was excessively lenient. Under the Award, Mr. Cann was ordered back to work with back pay and without significant consequence, without training or other warning.

The court ordered the Port to reinstate Cann but lengthened his suspension from 20 days to 6 months. The court also ordered Cann to “write a sincere letter of

⁶ The arbitrator relied on a federal arbitration decision, Federal Aviation Administration, 109 Lab. Arb. Rep. (BNA) 699 (1997) (Briggs, Arb.). In that decision, an air traffic controller, who had not received any diversity training, hung a noose as a Halloween prank in a location where it went unnoticed. 109 Lab. Arb. Rep. at 700, 701, 704. He received a two-day suspension, while another employee, who, a month later, threatened African American employees with a different noose, received only a written warning. 109 Lab. Arb. Rep. at 700-701, 705. The arbitrator, finding that the employee meant no harm by making and displaying the noose and did not understand its racial significance, reduced the employee’s suspension to a written admonishment. 109 Lab. Arb. Rep. at 705-06. We note that as an arbitration decision, it necessarily does not address public policy considerations or the public policy exception.

apology” and attend diversity and antiharassment training. Finally, the court imposed a 4-year probationary period, during which Cann would be subject to immediate and final termination for any additional policy violations.

The Union appeals.⁷

ANALYSIS

We must decide whether the arbitration award here conflicts with an explicit, well-defined, and dominant public policy. This involves a question of law, which we review de novo.⁸

Cases like this one necessarily involve competing public policy concerns: here, the finality of arbitration awards competes with the elimination and prevention of discrimination. Because Washington public policy strongly supports alternative dispute resolution and favors the finality of arbitration awards,⁹ we show great deference to arbitration decisions, particularly in the labor management context.¹⁰ We limit our review to whether the arbitrator acted illegally by exceeding his or her authority under the collective bargaining agreement.¹¹ We do not review the merits of the underlying dispute; “the arbitrator is the final judge of both the facts and the law, and ‘no review will lie for

⁷ The Washington State Labor Council filed an amicus curiae brief in support of the Union.

⁸ Kitsap County Deputy Sheriff's Guild, 167 Wn.2d at 434.

⁹ Yakima County v. Yakima County Law Enforcement Officers Guild, 157 Wn. App. 304, 317, 237 P.3d 316 (2010) (citing Davidson v. Hensen, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998)).

¹⁰ Klickitat County v. Beck, 104 Wn. App. 453, 460, 16 P.3d 692 (2001).

¹¹ Clark County Pub. Util. Dist. No. 1 v. Int'l Bhd. of Elec. Workers, Local 125, 150 Wn.2d 237, 245-46, 76 P.3d 248 (2003).

a mistake in either.”¹² “[A] more extensive review of arbitration decisions would weaken the value of bargained for, binding arbitration and could damage the freedom of contract.”¹³

Despite this public policy in favor of finality, we may vacate an arbitration award that violates an “explicit,’ ‘well defined,’ and ‘dominant’ public policy.”¹⁴ We determine whether a public policy is explicit, well-defined, and dominant by reference to laws and legal precedents, and not simply from “general considerations of supposed public interests.”¹⁵ We do not examine whether the employee’s underlying conduct violates a public policy, but whether the arbitrator’s decision does.¹⁶

First, we ask whether Washington has an applicable explicit, well-defined, and dominant public policy. The Washington Law Against Discrimination (WLAD), chapter 49.60 RCW, is, indisputably, such a policy. When the Washington Legislature exercised the State’s police power to fulfill our state constitution’s provisions concerning civil rights by enacting the WLAD, it declared that “discrimination . . . threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic

¹² Clark County Pub. Util. Dist., 150 Wn.2d at 245 (internal quotation marks omitted) (quoting Dep’t of Soc. & Health Servs. v. State Pers. Bd., 61 Wn. App. 778, 785, 812 P.2d 500 (1991)).

¹³ Kitsap County Deputy Sheriff’s Guild, 167 Wn.2d at 435.

¹⁴ Kitsap County Deputy Sheriff’s Guild, 167 Wn.2d at 435 (internal quotation marks omitted) (quoting E. Associated Coal Corp., 531 U.S. at 62).

¹⁵ Kitsap County Deputy Sheriff’s Guild, 167 Wn.2d at 435 (quoting E. Associated Coal Corp., 531 U.S. at 62).

¹⁶ E. Associated Coal Corp., 531 U.S. at 62-63.

state.”¹⁷ The Washington Legislature directed that the WLAD “shall be construed liberally for the accomplishment of the purposes thereof.”¹⁸

The WLAD also declared the right to be free from discrimination in employment to be a civil right: “The right to be free from discrimination because of race . . . is recognized as and declared to be a civil right. This right shall include, but not be limited to: (a) The right to obtain and hold employment without discrimination.”¹⁹ In addition, through the WLAD, the legislature imposed liability upon an employer for both its own discrimination and that of any of its employees who are acting directly or indirectly in its interest.²⁰

According to our Supreme Court, the WLAD embodies “public policy of the highest priority,”²¹ the “overarching purpose” of which is “to deter and to eradicate discrimination in Washington.”²² It has also stated that the WLAD “clearly condemns employment discrimination as a matter of public policy.”²³ And we have interpreted the WLAD to impose upon an employer with affirmative

¹⁷ RCW 49.60.010.

¹⁸ RCW 49.60.020.

¹⁹ RCW 49.60.030(1); see also Roberts v. Dudley, 140 Wn.2d 58, 69-70, 993 P.2d 901 (2000).

²⁰ Brown v. Scott Paper Worldwide Co., 143 Wn.2d 349, 360 n.3, 361, 20 P.3d 921 (2001); see also Perry v. Costco Wholesale, Inc., 123 Wn. App. 783, 793, 98 P.3d 1264 (2004) (“Once an employer has actual knowledge through higher managerial or supervisory personnel of a complaint of sexual harassment, then the employer must take remedial action that is reasonably calculated to end the harassment.”).

²¹ Antonius v. King County, 153 Wn.2d 256, 267-68, 103 P.3d 729 (2004) (internal quotation marks omitted) (quoting Xieng v. Peoples Nat’l Bank of Wash., 120 Wn.2d 512, 521, 844 P.2d 389 (1993)).

²² Brown, 143 Wn.2d at 360 (quoting Marquis v. City of Spokane, 130 Wn.2d 97, 109, 922 P.2d 43 (1996)).

²³ Roberts, 140 Wn.2d at 69-70.

knowledge of its violation in the workplace an obligation to take remedial measures adequate to persuade potential violators to refrain from unlawful conduct.²⁴ We have cautioned that a punishment that fails to take into account the need to maintain a discrimination-free workplace may subject the employer to suit.²⁵ In light of the foregoing, we conclude that the WLAD contains an explicit, well-defined, and dominant public policy with the dual purpose of ending current discrimination and preventing future discrimination.

Next we must decide whether the arbitration award violated this public policy by improperly limiting the Port's ability to comply with the WLAD. Specifically, we must decide whether the arbitrator's decision to reinstate Cann with back pay and benefits, subject only to a 20-day retroactive suspension, impermissibly conflicts with the Port's efforts to fulfill its affirmative duty to eliminate and prevent racial discrimination in the workplace. Because this case presents an issue of first impression in Washington, we find some guidance from other jurisdictions that have considered the scope of the public policy exception in the discrimination context.

In City of Brooklyn Center v. Law Enforcement Labor Services, Inc.,²⁶ a police officer was terminated for repeated acts of sexual harassment. The arbitrator concluded that much of the alleged conduct was time barred and that

²⁴ Perry, 123 Wn. App. at 793 (quoting Ellison v. Brady, 924 F.2d 872, 882 (9th Cir. 1991)).

²⁵ Perry, 123 Wn. App. at 793 (quoting Ellison, 924 F.2d at 883).

²⁶ 635 N.W.2d 236, 238-39 (Minn. Ct. App. 2001).

"the remaining conduct, while serious, did not warrant outright dismissal."²⁷ He reinstated the officer without back pay, noting that the period between termination and reinstatement would constitute the appropriate discipline.²⁸ The Minnesota Court of Appeals vacated the arbitration award in light of Minnesota's "well-defined and dominant public policy that imposes upon governmental units an affirmative duty to take action to prevent and to sanction sexual harassment and sexual misconduct by law enforcement officers"²⁹ and the employer's "duty to prevent sexual harassment in the workplace."³⁰ Allowing the officer to continue his employment, according to the court, would have been "tantamount to exempting the city from its duty to enforce its own policy and the public policy against sexual harassment."³¹

Similarly, in State v. AFSCME, Council 4, Local 387,³² an on-duty corrections officer directed an obscene racial epithet to a state legislator in a

²⁷ City of Brooklyn Ctr., 635 N.W.2d at 240.

²⁸ City of Brooklyn Ctr., 635 N.W.2d at 240.

²⁹ City of Brooklyn Ctr., 635 N.W.2d at 242.

³⁰ City of Brooklyn Ctr., 635 N.W. 2d at 243. We acknowledge that the repeat nature of the officer's conduct was important to the Minnesota Court of Appeals' holding in City of Brooklyn Center. But Washington's public policy exception does not require prior offenses and warnings because an employer has a duty to take corrective action once it has actual knowledge of any illegal discrimination. Perry, 123 Wn. App. at 793. "If 1) no remedy is undertaken, or 2) the remedy attempted is ineffectual, liability will attach." Perry, 123 Wn. App. at 794 (quoting Fuller v. City of Oakland, 47 F.3d 1522, 1528-29 (9th Cir. 1995)). If we were to hold that the public policy exception is applicable only when an employee is a repeat offender, it would directly interfere with an employer's ability to appropriately discipline its employees and eliminate discriminatory acts in the workplace.

³¹ City of Brooklyn Ctr., 635 N.W.2d at 244.

³² 747 A.2d 480, 482 (Conn. 2000).

telephone message. The employer terminated the officer's employment, and the arbitrator reduced the termination to an unpaid, 60-day suspension.³³ The Connecticut Supreme Court found that the arbitrator's attempts to rationalize the officer's conduct "minimize[d] society's overriding interest in preventing conduct such as that at issue in this case from occurring."³⁴ The court vacated the arbitrator's decision because a "lesser sanction . . . would, very simply, send the message that . . . poor judgment, or other factors, somehow renders the conduct permissible or excusable."³⁵

The Union cites two cases, Way Bakery v. Truck Drivers Local No. 164³⁶ and Gits Manufacturing Co. v. Local 281 International Union,³⁷ where courts upheld arbitration awards reinstating employees who had engaged in discriminatory conduct. The arbitration awards in those cases, however, have an important, distinguishing characteristic: the arbitrator imposed a penalty far harsher than 20 days. In both cases, the employees received a 6-month suspension from work, and in Way Bakery the arbitrator imposed a 5-year probationary period.³⁸ Given the significant sanctions in those cases, we find

³³ AFSCME, 747 A.2d at 483.

³⁴ AFSCME, 747 A.2d at 486 (alteration in original).

³⁵ AFSCME, 747 A.2d at 486.

³⁶ 363 F.3d 590 (6th Cir. 2004). In that case, an employee told a black co-worker to "relax Sambo." 363 F.3d at 592.

³⁷ 261 F. Supp. 2d 1089 (S.D. Iowa 2003). In Gits, a supervisor called another employee a "fucking nigger." 261 F. Supp. 2d at 1092.

³⁸ Way Bakery, 363 F.3d at 595; Gits, 261 F. Supp. 2d at 1092.

they support the position advanced by the Port—that compliance with the WLAD requires more discipline than occurred here—not that of the Union.³⁹

However, “American courts differ in their application of the public policy exception.”⁴⁰ Cases from other jurisdictions provide some guidance but rely on analyses of the public policies of other jurisdictions. They do not analyze what is at issue in this case, the public policy of the State of Washington. Therefore, our analysis depends largely upon the Legislature’s expression of an explicit, well-defined and dominant public policy. Here, the arbitrator applied seven considerations to determine that Cann violated the Port’s antiharassment policy but that a 20-day suspension was the appropriate sanction:

1. Did the Employer give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee’s conduct?
2. Was the Employer’s rule or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the Employer’s business and (b) the performance that the Employer might properly expect of the employee?

³⁹ In a statement of supplemental authority, the Union cites City of Richmond v. Service Employees International Union, Local 1021, 189 Cal. App. 4th 663, 118 Cal. Rptr. 3d. 315 (2010), review denied (Jan. 12, 2011), where the California Court of Appeals upheld an arbitrator’s decision to reinstate an employee accused of sexual harassment because the employer failed to act on the accusation within the time limit set forth in the collective bargaining agreement. The court held that public policy did not preclude arbitration enforcement of the limitation period. 189 Cal. App. 4th at 671-72. Because the Service Employees International Union court was asked to decide a different issue than the one presented here, it is inapposite.

⁴⁰ Serv. Emps. Int’l Union, 189 Cal. App. 4th at 674-75 (“[C]ase law on [the] public policy exception to arbitral finality ‘is not just unsettled, but also is conflicting and indicates further evolution in the courts.’” (quoting 1 JAY E. GRENIG, ALTERNATIVE DISPUTE RESOLUTION § 24:19, at 622 (3d ed. 2005))).

3. Did the Employer, before administering discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

4. Was the Employer's investigation conducted fairly and objectively?

5. At the investigation, did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?

6. Has the Employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?

7. Was the degree of discipline administered by the Employer in a particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the Employer?⁴¹

The arbitrator answered the first five questions "yes." He characterized question 6 as an affirmative defense that the Union failed to prove. The arbitrator relied primarily upon his answer to question 7 to decide whether to modify the discipline of termination. He answered question 7 "no." However, none of the seven questions or the arbitrator's analysis of the appropriate discipline take into account the dominant public policies of the WLAD, including a Washington employer's affirmative duty to impose sufficient discipline to "send a strong statement"⁴² adequate to persuade both Cann and potential violators to refrain from unlawful conduct. By imposing such a lenient sanction, the arbitrator minimized society's overriding interest in preventing this conduct from occurring⁴³ and interfered with the Port's ability to discharge its duty under the WLAD to prevent future acts of discrimination. By describing Cann's conduct as "more

⁴¹ The arbitrator cited Enterprise Wire Co., 46 Lab. Arb. Rep. (BNA) 359 (1966) (Daugherty, Arb.), as the source for these considerations, known as the "Seven Tests."

⁴² Perry, 123 Wn. App. at 803.

⁴³ See AFSCME, 747 A.2d at 486.

clueless than racist,” the arbitrator “very simply, sen[t] the message that . . . poor judgment, or other factors, somehow render[ed] the conduct permissible or excusable.”⁴⁴ This message and decision violate the public policy of the State of Washington. We recognize that a second chance may be warranted, but the policies of the WLAD require that an arbitration award be substantial enough to discourage repeat behavior. Because the arbitration award failed to provide an adequate sanction for the employee’s conduct and did not allow the Port to fulfill its affirmative legal duty to provide a discrimination-free workplace, we vacate it.

The Union asserts that our Supreme Court’s decision in Kitsap County Deputy Sheriff’s Guild v. Kitsap County⁴⁵ requires a different result because the WLAD is not “a public policy prohibiting the remedy ordered by the arbitrator.” The Union reads Kitsap County too narrowly. There, Kitsap County terminated a deputy sheriff’s employment for 29 documented incidents of misconduct, including dishonesty to his employer.⁴⁶ An arbitrator determined that termination was not the appropriate remedy, reinstated the deputy, and reduced his penalty to three written warnings.⁴⁷ On appeal, the county argued that the arbitrator’s award violated criminal statutes and the Brady rule,⁴⁸ which together prohibit public officers from knowingly making false statements and require prosecutors

⁴⁴ AFSCME, 747 A.2d at 486.

⁴⁵ 167 Wn.2d 428, 219 P.3d 675 (2009).

⁴⁶ Kitsap County Deputy Sheriff’s Guild, 167 Wn.2d at 431.

⁴⁷ Kitsap County Deputy Sheriff’s Guild, 167 Wn.2d at 432-33.

⁴⁸ Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963) (holding that a prosecutor’s suppression of evidence violates due process where the evidence is material to guilt or punishment).

to disclose exculpatory evidence, including an officer's dishonesty.⁴⁹ The court held that those laws were inadequate to establish a public policy sufficient to vacate the award because they did not "prohibit[] the reinstatement of any officer found to violate these statutes."⁵⁰

Under the Union's analysis, the legislature must mandate specific penalties for particular acts of discrimination before we can find that an arbitration award violates the WLAD. The Union's position virtually eliminates the public policy exception to judicial enforcement of an arbitration award. Neither the Washington Legislature nor Congress has acted to eliminate reviewing enforcement of arbitration awards for this purpose. We decline the Union's invitation to judicially adopt a rule requiring such a restrictive standard.

Notably, the Kitsap County Deputy Sheriff's Guild court offered examples of statutes from other jurisdictions that have qualified as explicit, well-defined, and dominant public policies in comparable cases. Citing City of Brooklyn Center, the court included "the affirmative duty under federal statute to prevent sexual harassment by law enforcement officers" in its list of explicit, well-defined, dominant public policies.⁵¹ Accordingly, our Supreme Court distinguished statutes like the WLAD from those it considered in Kitsap County Deputy Sheriff's

⁴⁹ Kitsap County Deputy Sheriff's Guild, 167 Wn.2d at 436.

⁵⁰ Kitsap County Deputy Sheriff's Guild, 167 Wn.2d at 436, 438.

⁵¹ Kitsap County Deputy Sheriff's Guild, 167 Wn.2d at 437.

Guild and thus suggested that the WLAD expresses the type of policy required for application of the public policy exception.⁵²

In sum, the WLAD constitutes an explicit, well-defined, and dominant public policy, which creates an affirmative duty on the part of an employer to eradicate racial discrimination in the workplace. We do not attempt to define the outer limits of the enforceability of labor arbitration awards or adopt any requirement for a specific discipline for violation of the WLAD. "The judicially created public policy exception to labor arbitration awards is a fact-specific, contextually sensitive doctrine and therefore well suited to development through the common law mode of adjudication. Only in the light of concrete cases will the precise contours of the public policy exception become visible."⁵³ We hold that the arbitration award here violates Washington State public policy by preventing the Port from effectively discharging its duties under the WLAD. Accordingly, we vacate the arbitration award.

However, we also hold that the superior court exceeded the scope of its authority when it substituted its own determination of appropriate discipline for the arbitrator's. After vacating the arbitration award, the trial court imposed a six-month suspension, awarded back pay for the additional time Cann was off work, ordered Cann to write a sincere letter of apology that included a promise to never

⁵² Kitsap County Deputy Sheriff's Guild, 167 Wn.2d at 437 ("Washington has no similar statute . . . placing an affirmative duty on counties to prevent police officers from ever being untruthful.").

⁵³ State v. Pub. Safety Emps. Ass'n, 257 P.3d 151, 162 (Alaska 2011).

again engage in similar conduct, required that Cann attend diversity and antiharassment training, and placed Cann on a probationary status for four years, during which any of his conduct that violated the Port's antiharassment policy would result in his termination.

As explained by the United States Supreme Court, a reviewing court that vacates an arbitration award should not then make its own determination on the merits:

[A]s a rule the court must not foreclose further proceedings by settling the merits according to its own judgment of the appropriate result, since this step would improperly substitute a judicial determination for the arbitrator's decision that the parties bargained for in the collective-bargaining agreement. Instead, the court should simply vacate the award, thus leaving open the possibility of further proceedings if they are permitted under the terms of the agreement. The court also has the authority to remand for further proceedings when this step seems appropriate.^[54]

Considering the arbitration award is an extension of the parties' contract, the superior court here should have interfered to the least possible degree while upholding public policy. This limited interference could have been achieved by remanding the case for further arbitration. Accordingly, we affirm the trial court's decision to vacate but remand for further proceedings consistent with this opinion.

⁵⁴ United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 40 n.10, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987).

Attorney Fees

The Union also claims that the superior court erred by partially denying its request for attorney fees under RCW 49.48.030. This court reviews the reasonableness of the amount of an award for an abuse of discretion.⁵⁵ "A court abuses its discretion if its decision is manifestly unreasonable, exercised on untenable grounds, or for untenable reasons."⁵⁶

In the superior court, the Union requested \$123,780 in attorney fees under RCW 49.48.030 for work performed by Dimitri Iglitzin, the Union's retained counsel, and Terry Roberts, the Union's in-house counsel. In support of its motion, the Union submitted Iglitzin's and Roberts's declarations. Iglitzin accompanied his declaration with time records. Roberts's declaration, in contrast, contained only a statement of the total number of hours with no supporting documentation. According to Roberts, he

[c]onservatively . . . spent one hundred and twenty eight hours of time working on the Arbitration aspects of this case and seventy three hours working on legal issues related to the vacation and confirmation of the Arbitrator's award. The fair value of my time is \$350.00 per hour and I spent at least two hundred and one hours on this matter.

The superior court denied Roberts's fees. The court explained that the Union's request was not supported by adequate documentation:

In-house counsel are entitled to reasonable fees if adequate documentation accompanies the request. The Union provides only an estimate of Terry Roberts' fees. The court is not able to

⁵⁵ Hulbert v. Port of Everett, 159 Wn. App. 389, 407, 245 P.3d 779 (2011), review denied, 171 Wn.2d 1024, 257 P.3d 662 (2011).

⁵⁶ Hulbert, 159 Wn. App. at 407.

evaluate the reasonableness of the fees given the quality of the information provided. Any calculation would be arbitrary. Therefore, the court has deducted \$70,350 from the award representing Terry Roberts' fees.

RCW 49.48.030 provides for the award of reasonable attorney fees and costs for employees who prevail in a wage claim civil action. The attorney requesting fees has the burden of proving the reasonableness of the requested fees.⁵⁷ This attorney must provide reasonable documentation of the work performed,⁵⁸ including "contemporaneous records documenting the hours worked."⁵⁹ The "documentation need not be exhaustive or in minute detail, but must inform the court, in addition to the number of hours worked, of the type of work performed and the category of attorney who performed the work."⁶⁰

Here, the superior court awarded attorney fees for Iglitzin's work but denied Roberts's attorney fees because it received only an estimate of the hours Roberts worked. Without contemporaneous time records documenting Roberts's hours, the superior court lacked the documentation required to make an adequate determination about the reasonableness of the fees requested. Therefore, the trial court did not abuse its discretion in denying part of the Union's request.

⁵⁷ Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993).

⁵⁸ Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 597, 675 P.2d 193 (1983).

⁵⁹ Mahler v. Szucs, 135 Wn.2d 398, 434, 957 P.2d 632 (1998).

⁶⁰ Bowers, 100 Wn.2d at 597.

CONCLUSION

We affirm the superior court's decision to vacate the arbitration award and to partially deny the Union's request for attorney fees. However, because the superior court should not have fashioned its own award, we remand for further proceedings consistent with this opinion.

Leach, A.C.J.

WE CONCUR:

Sperry, J.

GOX, J.

RCW 49.60.010
Purpose of chapter.

This chapter shall be known as the "law against discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

[2007 c 187 § 1; 2006 c 4 § 1; 1997 c 271 § 1; 1995 c 259 § 1; 1993 c 510 § 1; 1985 c 185 § 1; 1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614-20.]

Notes:

Effective date -- 1995 c 259: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 259 § 7.]

Severability -- 1993 c 510: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 510 § 26.]

Severability -- 1969 ex.s. c 167: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 167 § 10.]

Severability -- 1957 c 37: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1957 c 37 § 27.]

Severability -- 1949 c 183: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1949 c 183 § 13.]

Community renewal law -- Discrimination prohibited: RCW 35.81.170.

RCW 49.60.020

Construction of chapter — Election of other remedies.

The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his or her civil rights. This chapter shall not be construed to endorse any specific belief, practice, behavior, or orientation. Inclusion of sexual orientation in this chapter shall not be construed to modify or supersede state law relating to marriage.

[2007 c 187 § 2; 2006 c 4 § 2; 1993 c 510 § 2; 1973 1st ex.s. c 214 § 2; 1973 c 141 § 2; 1957 c 37 § 2; 1949 c 183 § 12; Rem. Supp. 1949 § 7614-30.]

Notes:

Severability -- 1993 c 510: See note following RCW 49.60.010.

RCW 49.60.030

Freedom from discrimination — Declaration of civil rights.

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

[2009 c 164 § 1; 2007 c 187 § 3; 2006 c 4 § 3; 1997 c 271 § 2; 1995 c 135 § 3. Prior: 1993 c 510 § 3; 1993 c 69 § 1; 1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

Notes:

Intent -- 1995 c 135: See note following RCW 29A.08.760.

Severability -- 1993 c 510: See note following RCW 49.60.010.

Severability -- 1993 c 69: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 69 § 17.]

Severability -- 1969 ex.s. c 167: See note following RCW 49.60.010.

Severability -- 1957 c 37: See note following RCW 49.60.010.

Severability -- 1949 c 183: See note following RCW 49.60.010.