

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON STATE UNIVERSITY,
ET AL.,

Plaintiffs,

v.

THE PAC-12 CONFERENCE, ET AL.,

Defendants.

No. 1 0 2 5 6 2 - 9

RULING GRANTING EMERGENCY
MOTION FOR STAY

The University of Washington (UW) and the Pac-12 Conference jointly seek direct discretionary review of a preliminary injunction the Whitman County Superior Court issued in favor of Washington State University (WSU) and Oregon State University (Oregon State) (1) prohibiting the Pac-12 Conference and its board of directors from recognizing as board members any person other than the board representatives of WSU and Oregon State, (2) prohibiting the board from holding any meeting that includes representatives from Pac-12 Conference member schools that have communicated their intent to withdraw from the conference, and (3) prohibiting the board from allowing any representatives of the withdrawing schools to attend, participate, or vote in any board meeting. The injunction was scheduled to take effect on November 20, 2023. On November 15, 2023, UW filed an emergency motion for a stay of the injunction pending direct discretionary review of the superior court's order. Deputy Commissioner Walter Burton entered a temporary stay pending further briefing

and consideration of the instant emergency motion for a stay. WSU and OSU oppose a stay. Meanwhile, UW and the Pac-12 separately filed notices for discretionary review, which are expected to be followed by statements of grounds for direct review and motions for discretionary review of the superior court's order. Now before me for a decision is the emergency motion for a stay. The motion is granted for reasons explained below.

The instant dispute arises from the Pac-12 breaking apart, much to the dismay or delight of collegiate sports fans (particularly football), depending on which side of the field they sit. It all started when Pac-12 stalwarts University of Southern California (USC) and University of California, Los Angeles (UCLA) announced their intent to leave the Pac-12 after the 2023-2024 season and join the Big Ten Conference. This announcement had an apparent domino effect, and by the end of summer of 2023, all Pac-12 schools had announced their intentions to leave the conference after the 2023-2024 season, save WSU and Oregon State.¹ Tens of millions of dollars are at stake due to the media and sponsorship rights affected by this dispute. School reputations and individual collegiate programs could be affected positively or negatively depending on the institution. Staffing levels will likely be affected one way or another. It cannot be doubted that athletic recruiting and student athletes attending or deciding which schools to attend are affected greatly by these events.

The litigation at issue here turns on the meaning of the following provision in the Pac-12 "Constitution and Bylaws" concerning withdrawal from the conference:

¹ Notwithstanding factual and legal disagreements, the following schools are members of the Pac-12 for purposes of this ruling, listed alphabetically by the state in which they are located: University of Arizona (Arizona); Arizona State University (Arizona State); University of California, Berkeley (UC Berkeley); University of California, Los Angeles (UCLA); University of Southern California (USC); Stanford University (Stanford); University of Colorado, Boulder (Colorado); University of Oregon (Oregon); Oregon State University (Oregon State); University of Utah (Utah); University of Washington (UW); Washington State University (WSU).

No member shall deliver a notice of withdrawal to the Conference in the period beginning on July 24, 2011, and ending on August 1, 2024; provided, that if any member does deliver a notice of withdrawal prior to August 1, 2024, in violation of this chapter, the Conference shall be entitled to an injunction and other equitable relief to prevent such breach, and if a court of competent jurisdiction shall deny the Conference such injunctive relief, the Conference shall be entitled to retain all the media and sponsorship rights in the multi-player video distribution (MPVD) and telecommunications/wireless categories of the member purporting to withdraw through August 1, 2024, even if the member is then a member of another conference or an independent school for some or all intercollegiate sports competitions. Additionally, if a member delivers notice of withdrawal in violation of this chapter, the member's representative to the Pac-12 Board of Directors shall automatically cease to be a member of the Pac-12 board of Directors and shall cease to have the right to vote on any matter before the Pac-12 Board of Directors. (6/10, 10/10, 7/11)

Appendix to Emergency Motion for Stay at 37-38 (Chapter 3).

As indicated, UCLA and USC were the first to announce their intention to leave the Pac-12 after August 1, 2024, first informing the board via telephone calls and videoconference meetings, with public announcements made the same day, June 30, 2022. The Pac-12 commissioner, who serves at the pleasure of the board, asserted that UCLA's and USC's announcement triggered Chapter 2-3 of the bylaws. The two schools disagreed, asserting they had not issued a notice of withdrawal and did not intend to do so until August 2, 2024. The board took no action on the disagreement.

In July 2023 Colorado announced its intention to join the Big 12, elaborating that it did not intend to withdraw from the Pac-12 before August 2024 and that its present announcement did not constitute a formal notice of withdrawal under Chapter 2-3. Arizona, Arizona State, Oregon, Utah, and UW followed suit in August 2023. UC Berkeley and Stanford joined the stampede in September 2023. Oregon, Stanford, and UW informed the commissioner that they were not yet providing a notice of withdrawal.

All 12 members of the Pac-12 continue to participate in the conference's 2023-2024 athletic events and continue to assign their media rights to the conference through August 1, 2024. The future of the conference with just WSU and Oregon State

is uncertain. Those two schools might seek membership in other conferences or try to recruit other schools to join and rebuild the Pac-12.

Taking the position that the other conference members were no longer Pac-12 board members by operation of Chapter 2-3, Oregon State and WSU filed the instant action for injunctive relief on September 8, 2023, seeking to exclude the other schools from board membership or bar them from voting on any matters before the board.

On September 11, 2023, the superior court entered a temporary restraining order (TRO) that enjoins the Pac-12 Board of Directors from taking any action without the unanimous consent of all board members, effectively maintaining the status quo within the board as currently constituted.

After additional briefing and argument, the superior court on November 14, 2023, granted Oregon State's and WSU's motion for a preliminary injunction. As indicated, the preliminary injunction (1) prohibits the Pac-12 Conference and its board of directors from recognizing as board members any person other than the board representatives of WSU and Oregon State, (2) prohibits the board from holding any meeting that includes representatives from Pac-12 Conference member schools that have communicated their intent to withdraw from the conference, and (3) prohibits the board from allowing any representatives of the withdrawing schools to attend, participate, or vote in any board meeting. The preliminary injunction effectively embraces WSU's view that under Chapter 2-3 the departing schools automatically lost their board membership and voting rights.

As related above, UW filed the instant emergency motion for stay pending review. The Pac-12 joins in that motion. WSU and Oregon State oppose a stay. Deputy Commissioner Burton entered a temporary stay pending a decision on the motion now before me.

This court may issue orders before accepting a case for review “to ensure effective and equitable review, including authority to grant injunctive or other relief to a party.” RAP 8.3. The main purpose of the rule is to preserve the fruits of a successful appeal. *Wash. Fed’n of State Emps. v. State*, 99 Wn.2d 878, 883, 665 P.2d 1337 (1983). To obtain a stay or other injunctive relief, the moving party must show (1) the case involves debatable issues, (2) a stay is necessary to preserve the fruits of a successful appeal for the moving party, and (3) a stay is justified in light of the equities of the situation. *Confederated Tribes of the Chehalis Reserv. v. Johnson*, 135 Wn.2d 734, 759, 958 P.2d 260 (1998).

As discussed, this case turns on the meaning of Chapter 2-3. In my view the provision is poorly written and possibly ambiguous. It gives no guidance as to what constitutes a formal notice of withdrawal and it seemingly makes it impossible to give notice of withdrawal before its August 1, 2024, expiration date without invoking its penalties; that is, the penalties are triggered even if a school announces that it plans to withdraw but intends the withdrawal to be effective only after that date. It is questionable whether that was the conference’s intent when it adopted Chapter 2-3. On the other hand, maybe it was: a provision designed to penalize harshly any school trying to leave the conference. In short, this is a debatable issue. *See Kennet v. Levine*, 49 Wn.2d 605, 607, 304 P.2d 682 (1956) (moving party need not show ultimate success on the merits, just that the issue is debatable).

A stay in favor of UW will likely preserve the fruits of a successful appeal, should that school prevail in the end. The same would be true if WSU and Oregon State were the moving parties. This dispute is in large part one about money, which affects all parties to this matter. The historical and sentimental aspects of this controversy, and the effect it has on students and staff loom large, again affecting all parties.

Though the question is close, the equities arguably favor UW in light of the harshness of the preliminary injunction. Granting a stay will allow the TRO to remain in place, largely keeping the status quo until the discretionary review issue plays out. To put it more simply, the TRO provides a mechanism for the board, representing all 12 schools, to continue business as usual, with a proviso to act with unanimity. That is the less disruptive temporary posture pending this court's decision whether to grant review under RAP 2.3, and if so, whether to retain the case in this court or transfer it to the Court of Appeals for a decision in the first instance under RAP 4.2.

In light of the foregoing considerations, the emergency motion for a stay is granted until this court orders it lifted. The TRO entered on September 11, 2023, will therefore remain in effect. In light of this stay, it seems appropriate to accelerate the schedule for the answers and replies to the motions for discretionary review. The motions for discretionary review and statements of grounds for direct review are currently due on November 30, 2023. Any answers to the motions for discretionary review or the statements of grounds for direct review should be served and filed by December 7, 2023. Any replies to the answers to the motions for discretionary review should be served and filed by December 12, 2023.



COMMISSIONER

November 28, 2023