

SUPREME COURT OF WASHINGTON

In re the Recall of Young

152 Wash. 2d 848 (2004) · Decided November 12, 2004

SUMMARY

The Washington Supreme Court reviewed whether recall petitions against two Marysville School Board members stated legally sufficient charges. The court held that allegations that the board members knowingly and willfully violated a collective bargaining agreement, causing substantial financial harm, could constitute misfeasance or malfeasance and a violation of the oath of office. The superior court’s decision allowing the petitions to proceed to the signature-gathering phase was affirmed.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Alexander, C.J.; Johnson, J.; Madsen, J.; Sanders, J.; Ireland, J.; Bridge, J.; Chambers, J.; Owens, J.; Fairhurst, J.
JURISDICTION	Washington
DECIDED	November 12, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Two Marysville School Board members sought direct review of the Snohomish County Superior Court's determination that one recall charge against each member was legally sufficient to proceed to the signature-gathering phase.
STANDARD OF REVIEW	The Supreme Court reviews recall petitions using the same criteria as the superior court and determines whether the charges are factually and legally sufficient. It does not evaluate the truthfulness of the charges at the sufficiency stage.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	Ronald Young, Helen Mount v. Recall petitioners, Snohomish County prosecuting attorney

TOPICS

- recall elections
- election law
- collective bargaining
- appellate procedure
- standard of review

PRACTICE AREAS

election law

municipal law

labor law

appellate procedure

QUESTIONS PRESENTED

1. Whether the recall charges alleging that Young and Mount knowingly and willfully violated a collective bargaining agreement, causing substantial unnecessary financial harm, were legally sufficient under Washington's recall statute.
2. Whether the recall charges stated conduct amounting to misfeasance, malfeasance, or violation of the oath of office rather than merely an exercise of lawful official discretion.

HOLDINGS

1. A recall petition is legally sufficient when it states with specificity substantial conduct clearly amounting to misfeasance, malfeasance, or violation of the oath of office. Allegations that elected school-board members knowingly and willfully violated a collective bargaining agreement and thereby unnecessarily caused substantial financial harm may satisfy that requirement.
2. At the recall-petition sufficiency stage, courts perform a gateway function by determining factual and legal sufficiency but do not determine whether the allegations are true.

KEY QUOTATIONS

“Although the courts serve a gateway function in the recall process, we do not attempt to evaluate the truthfulness of the charges in a petition.” (152 Wash. 2d at 852)

“To be legally sufficient, the petition must state with specificity substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office.” (152 Wash. 2d at 852)

“We agree with that court that if an elective public officer knowingly and willingly breaks a collective bargaining agreement and thereby unnecessarily causes substantial financial harm, this may be considered an improper act and a violation of oath.” (152 Wash. 2d at 853)

FACTUAL BACKGROUND

The Marysville School Board and the Marysville Education Association had a collective bargaining agreement establishing January 14, 2003, as a school day and June 16, 2003, as the beginning of makeup days. After the Board declared January 14 a nonschool day so teachers could attend a rally, it later designated February 14 as the makeup day, withheld pay from teachers who did not report, and incurred approximately \$74,457.30 in related costs. An arbitrator ruled that the Board violated the collective bargaining agreement, after which district voters filed recall petitions alleging that Young and Mount knowingly and willfully violated contractual rights and their oaths of office.

PROCEDURAL HISTORY

Three school-district voters filed separate recall petitions against Young and Mount alleging multiple charges arising from the Board's handling of a school-calendar makeup day and related wage deductions. The superior

court rejected all but one charge against each official and held the remaining charge legally sufficient. Young and Mount sought direct review, and the Supreme Court of Washington consolidated the proceedings and affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Recall of Wade, 115 Wn.2d 544, 547, 799 P.2d 1179 (1990)
- Cole v. Webster, 103 Wn.2d 280, 288, 692 P.2d 799 (1984)
- In re Recall of Kast, 144 Wn.2d 807, 813, 31 P.3d 677 (2001)
- In re Recall of Beasley, 128 Wn.2d 419, 427, 908 P.2d 878 (1996)
- Chandler v. Otto, 103 Wn.2d 268, 274, 693 P.2d 71 (1984)
- Teaford v. Howard, 104 Wn.2d 580, 585, 707 P.2d 1327 (1985)

OPINION

ALEXANDER, J.

Alexander, C. J. Two members of the Marysville School Board ask this court to reverse the Snohomish County Superior Court's determination that charges in petitions to recall the board members are legally sufficient.

We conclude that the superior court did not err. In May 2002, the Marysville Education Association (MEA) and the board of the Marysville School District entered into a collective bargaining agreement. Among other things, the agreement established the 2002-03 calendar for the school district. Specifically, the agreement provided that January 14, 2003, would be a school day, that February 14, 2003, would be a paid holiday, and that any makeup days would begin on June 16, 2003.

At a meeting, which took place in October 2002, representatives of MEA and the Marysville School Board (Board) discussed the possibility of MEA members attending a "Day of Action" rally in Olympia on January 14, 2003.

The representatives of the MEA and the Board who were present at the meeting agreed that if the association were to participate in the rally, the makeup day would be, as the collective bargaining agreement provided, June 16, 2003.

On December 2, 2002, the MEA announced to the Board that it intended to participate in the rally. On December 18, 2002, the Board met and approved a resolution declaring January 14, 2003, as a nonschool day due to the MEA's participation in the rally. Thereafter, the Marysville schools were closed on January 14, 2003, and members of MEA attended the rally in Olympia.

However, at a meeting on February 3, 2003, the Board voted, over objections of the MEA, that February 14, 2003, would be the makeup day. On February 14, 2003, the Marysville schools were open and the teachers who did not report for work had their wages docked.

The Board spent \$74,457.30 in costs associated with holding school on February 14. The dispute between the MEA and the Board over the makeup day was thereafter submitted to arbitration. The MEA claimed in the arbitration proceeding that the Board violated the collective bargaining agreement by unilaterally changing the makeup day from June 16, 2003, to February 14, 2003.

The Board responded that the MEA violated the no strike clause of the agreement by participating in the rally and not bargaining for a change in the school calendar. The arbitrator ruled in favor of the MEA. On December 22, 2003, three voters and residents of the school district, Deborah Vincelette, Lisa Ann Griffith, and Shannon Bartlett, filed two recall petitions with the Snohomish County auditor.

In one petition they sought the recall of Helen Mount as a member of the Board. In the other petition they sought the recall of Ronald Young as a member of the Board. Although the petitioners initially alleged 10 charges against both Mount and Young, the Snohomish County Superior Court, following a hearing to determine the sufficiency of the recall charges, ultimately *851determined that only one of the charges against Mount and Young satisfied statutory requirements.

The charge is as follows: That, acting as a member of and in concert with other members of the Board of Directors of the Marysville School District, No. 25, [Ronald Young/Helen Mount] knowingly and willfully violated the contractual rights of the district's non-supervisory certificated employees, by taking such action as to open schools on February 14, 2003 as a "make-up" day and by withholding pay from certain non-supervisory certificated staff, which decisions were found by Arbitrator Richard M. Humphreys, in the matter of Marysville Education Association and Marysville School District, AAA Case No. 75-390-00103-03 CRMA, issued September 9, 2003, to have been in violation of the contractual rights of the its [sic] non-supervisory certificated employees, and which decisions caused the district to incur significant unnecessary costs in the form of hiring "entertainers" (such as clowns and jugglers), hiring substitute teachers, and legal fees, and further provided pupils with inferior and substandard instruction and supervision.

Said action, or failure to act, is in violation of the oath of office of said board member and is an act of misfeasance or malfeasance, and is further in violation of RCW 28A[.] 150.230. Young's Clerk's Papers at 27; Mount's Clerk's Papers at 23-24.

The superior court concluded that the petitions for the recall of Mount and Young could proceed to the signature gathering phase on the aforementioned charge. Mount and Young each sought direct review here of that decision and we granted their petitions.¹ Citizens of this state have a

constitutional right to seek removal of elected public officials prior to the expiration of their terms through a recall election.

Wash. Const, art. I, §§ 33-34. Pursuant to former chapter 29.82 RCW, which details the process by which a recall is conducted, an elected *852public official may be recalled only for an act or acts of misfeasance, malfeasance, or violations of the oath of office.² Former RCW 29.82.010 (1984).³ We review “recall petitions using the same criteria as the superior court.” *In re Recall of Wade*, 115 Wn.2d 544, 547, 799 P.2d 1179 (1990); see *Cole v. Webster*, 103 Wn.2d 280, 288, 692 P.2d 799 (1984).

We have previously noted that “[although the courts serve a gateway function in the recall process, we do not attempt to evaluate the truthfulness of the charges in a petition.” *In re Recall of Kast*, 144 Wn.2d 807, 813, 31 P.3d 677 (2001) (citing *In re Recall of Beasley*, 128 Wn.2d 419, 427, 908 P.2d 878 (1996)).

The court’s central purpose in the recall process is to determine whether the charges are factually and legally sufficient. *Chandler v. Otto*, 103 Wn.2d 268, 274, 693 P.2d 71 (1984). Because Mount and Young concede that the charges in question are factually sufficient, the only issue before us is whether the charges are legally sufficient. “To be legally sufficient, the petition must state with specificity substantial conduct clearly amounting to misfeasance, malfeasance or violation of the oath of office.” *Chandler*, 103 Wn.2d at 274 (citing 4 Eugene McQuillan, *The Laws of Municipal Corporations* § 12.251b, at 334 (3d rev. ed.

1979)). This requirement is designed to protect an elected official from recall for exercising his or her lawfully granted discretion. *Id.*; *Teaford v. Howard*, 104 Wn.2d 580, 585, 707 P.2d 1327 (1985). *853We conclude that the superior court did not err in determining that the charges satisfied the criteria for which a recall petition may be filed.

We agree with that court that if an elective public officer knowingly and willingly breaks a collective bargaining agreement and thereby unnecessarily causes substantial financial harm, this may be considered an improper act and a violation of oath. It is alleged that Mount and Young engaged in this conduct, and Mount and Young concede that the allegations are factually sufficient.

The charges are, therefore, legally sufficient. If the petitioners hereafter obtain the requisite number of signatures on the recall petitions, it will be up to voters of the district to determine at a special election if Mount and Young should be recalled from office.

The trial court is affirmed. Johnson, Madsen, Sanders, Ireland, Bridge, Chambers, Owens, and Fairhurst, JJ., concur. Although separate petitions to determine the sufficiency of the recall charges were filed in superior court by the Snohomish County prosecuting attorney, the trial court heard the petitions together. By previous order of this court the reviews were consolidated.

Former RCW 29.82.010 (1984) defines these terms in the following manner: “(1) ‘Misfeasance’ or ‘malfeasance’ in office means any wrongful conduct that affects, interrupts, or interferes with the performance of official duty; “(a) Additionally, ‘misfeasance’ in office means the performance of a duty in an improper manner; and “(b) Additionally, ‘malfeasance’ in office means the commission of an unlawful act; “(2) “Violation of the oath of office’ means the wilful neglect or failure by an elective public officer to perform faithfully a duty imposed by law.” RCW 29.82.010 was amended, effective July 1, 2004, and recodified as RCW 29A.56.110.