

J. Markham Marshall

Counsel to the Firm
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Areas of Practice

Mark Marshall concentrates his practice on labor law issues. He has represented clients in arbitration proceedings and collective bargaining and advises them in all phases of labor and employment matters. Mark has represented labor clients in trial in both federal and state court and in proceedings before the Ninth Circuit Court of Appeals, the Washington State Court of Appeals and the Washington State Supreme Court. Mark was previously a partner at Preston Gates & Ellis LLP. Prior to that, he was a field attorney for the National Labor Relations Board's 19th Region (Alaska, Washington, Idaho and Montana).

Mark is active in the legal community and is a Fellow of the College of Labor and Employment Lawyers; past chairman of the Seattle-King County Bar Association's Labor Law and Aviation Law Sections; and active in the American Bar Association's Section on Labor and Employment Law. He has served as a mediator in federal court employment suits, and as a court-appointed arbitrator and mediator in civil actions filed in the Superior Court for King County, Wash.

Professional Experience

Partner, Preston Gates Ellis LLP (1977-2002)
Field Attorney, National Labor Relations Board's 19th Region (1966-1967)
McMullen, Brooke, Knapp & Grenier (Seattle, 1967-1969)
Clodfelter, Lindell & Carr (Seattle, 1969-1973)

Admitted to Practice

Washington
District of Columbia
Ninth Circuit Court of Appeals
Federal Circuit Court of Appeals
Washington State Court of Appeals
U.S. District Court, Western District of Washington
U.S. District Court, Eastern District of Washington
U.S. Court of Appeals for the Armed Forces

Academics

Stanford University (LL.B. 1966)
Whitman College (A.B., 1962)

Practice Group and Specialty Team Memberships

Labor and Employment

Representative Matters

Significant Litigated Matters

Godfrey v. State, 84 Wn.2d 959, 530 P.2d 630 (1975) On interlocutory appeal, the Washington Supreme Court ruled that the then-new comparative negligence statute would be applied retroactively (Represented plaintiff Nash)

Wood v. Sears, Roebuck & Co., U.S. District Court for the Western District of Washington (Tacoma), Cause No. C85-535T (1987). Jury trial. Plaintiff claimed age discrimination. The main issues were (1) the quantum of proof of discrimination required for the case to be submitted to the jury, and (2) whether the same quantum of evidence used to establish a claim of “intentional” discrimination could be used to establish a claim of “deliberate” discrimination, for which liquidated damages could be awarded. On appeal, the Ninth Circuit reversed one half of plaintiff’s verdict. (Represented defendant Sears)

Shiffer v. Walla Walla County PTBA (Valley Transit), Walla Walla Superior Court, Cause No. 86-2-00574-0 (1988). Jury trial. Plaintiff alleged that he had been terminated in retaliation for having engaged in protected activity. Directed verdict for defendant. (Represented defendant)

Andres v. Municipality of Metropolitan Seattle, King County Superior Court, Cause No. 83-2-04503-7 (1989). Jury trial. Plaintiff alleged sexual and national origin harassment by co-employees. Defense verdict. (Represented defendant)

Johnson v. Grant County Public Utility District, Grant County Superior Court, Cause No. 90-2-0107-1 (1992). Jury trial. Jury verdict for plaintiff reversed on appeal and case remanded for new trial. Evidentiary questions related to the trial court’s excluding from jury consideration evidence of plaintiff’s pre-termination misconduct both as an employee of defendant PUD and while previously employed by a state agency. (Represented defendant)

Johnson v. Municipality of Metropolitan Seattle, King County Superior Court, Cause No. 90-2-05556-6 (1991). Non-jury trial. Suit against Metro and Local Division 587 of the Amalgamated Transit. Union alleged that Metro had wrongfully terminated plaintiff transit operator after her firearm had been found on a bus she had driven. Defense judgment. (Represented defendant Metro)

Bickham v. The Jore Corporation, King County Superior Court, Cause No. 95-2-12689-8 (1996). Complaint alleged racial harassment and discrimination. When employer moved for summary judgment, plaintiff asserted that he had also suffered handicap discrimination. Summary judgment was entered for defendant. Plaintiff’s appeal was dismissed. (Represented defendant)

Yellow Freight System v. Employment Security Department, King County Superior Court, Cause No. 96-2-04208-1 (1996) (formerly Case No. 2000, Office of Administrative Hearings for the Employment Security Department). Over 40 employees, members of Teamsters Local 174, sought unemployment compensation for loss of employment during nationwide Teamsters strike. The administrative law judge denied compensation. The ESD commissioner reversed, ruling that because Local 174 was party to a separate agreement with the employer, which did not expire until one month after the national agreement covering other Teamster locals, the claimants were entitled to compensation. The Superior Court reversed the ESC commissioner, ruling that the employees were not eligible for unemployment compensation during the strike. (Represented the employer)

Port of Tacoma - regarding International Longshore and Warehouse Union, Local 23 and International Longshore and Warehouse Union, Local 22, Public Employment Relations Commission, Decision 10093-PERC (2008)

National Labor Relations Board v. Squire Shops, 559 F.2d 486 (1977). Administrative trial. The key issue was the authority of an attorney to compromise his client's claims and the basis for that authority — either state law relating to licensing of attorneys or federal labor law relating to agents of a party. (Although the Ninth Circuit panel stated that this was an “important” issue and directed the NLRB to file a supplemental brief on the issue, the subsequent published decision does not deal with the issue.) (Represented defendant Squire Shops)

Interest Arbitration (involving an industrial employer and a local of the International Brotherhood of Electrical Workers (“IBEW”), a two-day contested hearing in 2004 determined previously unresolved contract provisions of a new three-year collective bargaining agreement. The potential costs totaled several millions of dollars. The most expensive provisions were resolved in the employer's favor.)

Significant Appellate Matters

Hargreaves v. American Flyers Airline, 6 Wn.App. 508, 494 P.2d 229 (1972). Established viability of covenants not to sue. (Represented plaintiff)

Godfrey v. State, 84 Wn.2d 959, 530 P.2d 630 (1975). Established retroactivity of statute adopting comparative negligence. (Represented plaintiff Nash)

Cherry v. Municipality of Metropolitan Seattle, 116 Wn.2d 794, 808 P.2d 746 (1991). Established that municipal employers may regulate their employees' possession of firearms while on the job or in the workplace. (Represented defendant)

Municipality of Metropolitan Seattle v. Department of Labor & Industries, 88 Wn.2d 925, 568 P.2d 775 (1977). Established that public employers' supervisory employees may be represented by the same union that represents the employees they supervise. (Represented Municipality of Metropolitan Seattle)

Wingert v. Yellow Freight System, 146 Wn.2d 841, 50 P.3d 256 (2002). Court ruled that state regulations setting employee rest breaks are a non-negotiable minimum standard that will not be varied by collective bargaining. (Represented Yellow Freight)

ILWU v. Port of Tacoma, 154 Wn. App. 373 (2010). (ILWU Local 23, representing longshore workers, claimed the right to perform the work on planning rail car movements for the Port of Tacoma. The work was then performed by Port employees represented by ILWU Local 22. In a hearing in which neither the Port nor ILWU Local 22 was a party, Local 23 obtained an arbitration award granting it jurisdiction to perform such work. On behalf of the Port, I instituted a proceeding before the state Public Employment Relations Commission (“PERC”), which resulted in a ruling that the work was properly assigned to Port employees represented by ILWU Local 22. ILWU Local 23 then filed a suit in Pierce County Superior Court to confirm that arbitration award issued in its favor, and to obtain a court ruling requiring the Port to pay “lost work opportunity” claims of Local 23 members who were not assigned the work performed by Port employees represented by Local 22. The Superior Court granted our motion to dismiss

ILWU local 23's suit on the basis that PERC had jurisdiction to determine the conflicting jurisdiction claims of Locals 22 and 23. Upon appeal by Local 23, the Washington Court of Appeals affirmed PERC's jurisdiction, recognizing its ruling that ILWU Local 23 had no right to have its members perform the work. Thus ruling in favor of the Port and Local 22, the appellate court, however, remanded the case to the Superior Court, to determine if the arbitration award provided a remedy not otherwise inconsistent with the PERC ruling. After remand, Local 23 dismissed the action.)

Speaking Engagements

Mark is a frequent speaker at seminars and CLE programs, including:

“Disemployment: Reduction in Force, Layoffs and Termination,” American Association of Port Authorities (July 2005)

“Legal and Ethical Issues with NLRB Investigations Involving Current, Former and ‘Volunteer’ Agents of a Party Represented by Counsel,” ABA Subcommittee on Practice and Procedure Under the NLRA (February 2002) and ABA's Labor and Employment Law TeleConference Series (May 2002)

Awards and Honors

Peer Review Rated “AV” in Martindale-Hubbell

Named as one of *The Best Lawyers in America*®, Labor Management, Labor & Employment Litigation, Labor and Employment (1983-2012)

Professional and Community Activities

Fellow, College of Labor and Employment Lawyers

American Bar Association, Labor and Employment Law Section

Member, Committee on Practice and Procedure Under the National Care, Labor Relations Act Management co-chair, Northwest Region of Subcommittee on Regional Practice (1993-2005)
Management co-chair, Freedom of Information Act Subcommittee (1986-1993)

Chair, Washington State Bar Association, Ethics Committee, Continuing Legal Education Committee (1987-1988)

Member, State Bar Convention Subcommittee Continuing Legal Education Committee (1988-1989)

King County Bar Association

Chair, Labor Law Section (1980-1981)

Chair, Aviation Law Section (1979-1980)

Member, American Employment Law Council