

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 92, |) | CASE 8618-U-90-1878 |
| |) | |
| Complainant, |) | DECISION 3779-A - PECB |
| |) | |
| vs. |) | |
| |) | |
| VANCOUVER SCHOOL DISTRICT, |) | DECISION OF COMMISSION |
| |) | |
| Respondent. |) | |
| |) | |

Hafer, Price, Rinehart and Schwerin, by Lawrence Schwerin, Attorney at Law, and Schauermaann and Thayer, by William Thayer, appeared on behalf of the complainant.

Horenstein and Duggan, by Dennis R. Duggan, Attorney at Law, appeared on behalf of the respondent.

This case comes before the Commission on a timely petition for review filed by the Service Employees International Union, Local 92, seeking to overturn a decision issued by Examiner Kenneth J. Latsch.

BACKGROUND

Vancouver School District is located in Clark County, Washington, and provides a variety of educational services for local residents. Daily operations are supervised by Superintendent James F. Parsley. Assistant Superintendent Mike Bruener is responsible for personnel and administrative services.

The union represents a bargaining unit of classified employees engaged in providing mechanical maintenance, building maintenance, grounds maintenance, warehouse, campus security, custodian,

transportation, and food services. The instant unfair labor practice complaint involves Robert Wilcox, a bargaining unit employee working as a school bus driver.

During the 1989-90 school year, Wilcox drove bus routes for Fort Vancouver High School and for Walnut Grove Elementary School. In October, 1989, a student on one of Wilcox's bus routes complained that Wilcox had grabbed him. Wilcox met with the school principal and Pupil Transportation Supervisor Robert Dolhanyk, to establish a process to follow if student discipline became a problem.

The record indicates that a second incident occurred in December, 1989, when a parental complaint about an alleged shoving incident resulted in another meeting between Wilcox and Dolhanyk. Investigation revealed that Wilcox had not pushed the student, but had tapped the student on the shoulder. Dolhanyk cautioned Wilcox to avoid such incidents in the future, and Wilcox did not have further difficulties in his job until March, 1990.

On March 28, 1990, Wilcox was driving his elementary students home. One of the students was not sitting in her assigned seat and was trying, with several of her friends, to push one another student into the aisle. When Wilcox noticed the activity, he stopped the school bus, approached the children who were causing the disturbance, and confronted the student who was not in her assigned seat. Wilcox is then alleged to have grabbed the student in the neck or shoulder area, and forced her against the wall of the school bus in returning her to her assigned seat. As the student left the bus at her bus stop, Wilcox allegedly made further statements to her.

The student allegedly perceived Wilcox's statements as threatening, and she told her parents of the incident. Her parents, in turn, notified school district officials. Dolhanyk then spoke with Wilcox, who denied that he acted improperly. Dolhanyk told Wilcox

that he would be **suspended with pay**, starting on March 30, 1990, while the employer conducted an investigation.

Wilcox contacted his union representative, Larry Church, who was in subsequent contact with Bruener about the investigation. At some unspecified time during April, 1990, Church was allowed to review Wilcox's personnel file. Church also had several conversations with Bruener, during which he learned that the employer was conducting a series of interviews with certain students who were on the bus on March 28, 1990. When Church asked that additional students be interviewed, the employer did so.

Church and Wilcox met with Bruener and Dolhanyk on May 8, 1990. At that meeting, employer officials informed Church and Wilcox that the investigation was complete, and that Wilcox was being **suspended without pay** from May 8, 1990 through June 12, 1990. Bruener gave Wilcox a letter explaining the employer's decision in the following terms:

... The district's investigation involved the interviewing of students as well as yourself. Based on this investigation, I have determined that your behavior on the day in question was unacceptable in that you lost control, became angry and improperly touched a student and used inappropriate language. Furthermore, you have had previous incidents of similar behavior this school year in which you lost control and improperly disciplined students by touching or grabbing them. These previous incidents were discussed with you by your supervisor ...

Bruener's letter went on to explain that similar action would subject Wilcox to discharge, and that he would not be returned to work on the bus route for Walnut Grove School. Church indicated that the union would be conducting its own investigation. He requested a copy of Wilcox's personnel file, as well as information relating to other employees involved in similar incidents.

On May 9, 1990, Church contacted Dolhanyk, requesting permission to ride on Wilcox's former bus route, and to interview students who had been present on the bus on March 28, 1990. The request was denied, and Church was told to contact Bruener directly regarding any further matters related to the investigation. The record does not reveal that Church made any effort to protest, or to file a grievance concerning the employer's denial of Church's request for direct student interviews on the school bus.¹

On May 10, 1990, Bruener sent a letter to Church, confirming that a copy of Wilcox's personnel file would be provided, along with copies of the statements of students involved in the March 28, 1990 incident. Church spoke with Bruener on the same day, informing him that the union's investigation would involve contacting students. Bruener expressed concern about the volatile nature of the incident, and suggested that students not be interviewed without the permission of their parents. Church agreed with Bruener, and assured him that the union would proceed carefully.

Later on May 10, 1990, Church and Wilcox drove to the last stop on Wilcox's former school bus run, in order to speak with the students involved in the March 28, 1990 incident.² While awaiting arrival of the bus, Church approached a parent who was waiting to pick up his child. Church explained why he and Wilcox were there, and asked permission to speak with that parent's child about the March 28, 1990 incident. The parent gave his consent for Church to speak

¹ At an unspecified time, Church asked Lucinda Warren, the school bus driver who replaced Wilcox on the Walnut Grove bus route, for either the names and addresses of the students who rode the bus or for an opportunity to ride on the route in order to interview students who were present on the bus on March 28, 1990. Upon checking, Warren was told by her dispatcher not to allow Church or Wilcox on her bus.

² Church suggested that Wilcox accompany him, in order to identify those students whom Wilcox thought should be interviewed.

with the child when the bus arrived. Church met with another parent who arrived at the bus stop, and received permission to speak with that student as well.³ Church then returned to his automobile, and waited with Wilcox for the arrival of the bus.

When the school bus arrived, both Church and Wilcox were standing outside Church's automobile. Noticing their presence, School Bus Driver Warren did not let the students off the bus immediately. Instead, Warren radioed to the employer's dispatch center for instructions as to whether the students should be permitted to leave the bus. She was told to let the students disembark. As the students filed out of the bus, Warren told them that they did not have to speak with Church or Wilcox if they did not want to.

When the students left the bus, Church and Wilcox approached several children, asking where they lived and whether their parents were home. None of the children responded, and Church noticed that they appeared frightened. The children were allowed to leave without further questioning.

Before leaving the bus stop, Church proceeded to interview one student whose parent had given permission. Two other students were interviewed at their homes, with their parent present. During all of these interviews, Wilcox remained in Church's car.

After leaving the residence of the third child interviewed, Church and Wilcox travelled to a residence where Theresa Smith operated a licensed daycare facility. Smith had two sons of her own, and cared for two children of Linda Poe. A number of the children rode the Walnut Grove school bus.

³ Wilcox waited in Church's automobile while Church spoke with the two parents. The record indicates that Wilcox did not speak with either of the parents himself.

Shortly before Church and Wilcox arrived, Smith received a call from the principal of the Walnut Grove School, telling her that Wilcox was in the neighborhood. The principal suggested that Smith tell the children to come inside immediately, if they saw him. Smith passed that information along to the children, and then informed Linda Poe when she arrived to pick up her children. Poe became very concerned when told about the principal's call.

Upon arriving at Smith's residence, Wilcox remained in the automobile. Church left his automobile and encountered Linda Poe in the front yard of Smith's residence. Poe demanded to know why Church was "harassing" the students from the bus. Church explained that he was not there to harass anyone, and that he was conducting an investigation on Wilcox's behalf. Poe told Church that he did not have permission to speak with her child, and she asked that he leave the area before she called the police. Church then went back to his automobile, without speaking to any of the children.

Poe followed Church to the car, where she exchanged words with Wilcox. Poe again made clear that Wilcox could not contact her child, and that she would call the police if he and Church did not leave immediately. According to Poe, Wilcox responded with words to the effect that Poe would "live to regret" her actions. Wilcox and Church then left the neighborhood, and had no further contact with any of the students regarding the March 28, 1990 incident.

Bruener was subsequently contacted by several parents about the events of May 10, 1990, and Bruener and Church discussed the incident by telephone on May 11, 1990. Church explained what had happened, but Bruener determined that further investigation was required.

On May 14, 1990, Superintendent Parsley sent a letter to Wilcox and Church, concerning the events of May 10, 1990. After expressing his strong objections to the attempted contacts with students, and

stating that civil and criminal legal action were being pursued, Parsley concluded his letter by saying:

Please be advised that neither of you are to have any contact with any of the Walnut Grove students and/or staff, including the school bus driver. If there should be any further contact with the students, staff and/or bus driver, or if either of you should come upon the Walnut Grove premises, I will notify the Clark County Sheriff's office and the prosecuting attorney's office and request that appropriate charges be filed. These charges could include trespassing, harassment, assault, disturbing the peace and any other charge that would be appropriate under the circumstances. Be further advised that any further contact as above-outlined by Mr. Wilcox will be considered insubordination and breach of his employment contract [sic] with the Vancouver School District, and I will recommend immediate termination.⁴

After receipt of Parsley's letter, neither Church nor Wilcox made any of the contacts that Parsley had warned against.

On May 16, 1990, Church sent Bruener a letter requesting postponement of a "pre-grievance hearing" to be held under the parties' collective bargaining agreement.⁵ Church suggested that the parties meet on May 21, 1990.

Also on May 16, 1990, the union's attorney, Lawrence Schwerin, sent a letter to Parsley, by telefacsimile device, in response to Parsley's May 14, 1990 letter. Schwerin maintained that Parsley's

⁴ At one point in that letter, Parsley stated that Wilcox and Church had posed as deputy sheriffs in their contacts with the students. The record does not contain any credible evidence to support this accusation.

⁵ The record indicates that the collective bargaining agreement allows a "pre-grievance hearing" that is to be used in settlement of potential grievances at the earliest stage possible.

letter contained a number of factual errors, and that the union was proceeding to appropriately investigate the March 28, 1990 incident. Schwerin warned Parsley that further interference with the investigation could lead to unfair labor practice charges.

On May 18, 1990, Bruener sent Church a letter in which he agreed to meet on May 21, 1990. Bruener went on to explain the employer's intended course of action:

Please be advised that the purpose of our meeting is to issue Mr. Wilcox a letter which indicates that the district has decided to terminate his employment with the Vancouver School District. I assume that you will utilize the grievance procedure as the result of my decision to terminate Mr. Wilcox's employment from the district. Please be advised that the Vancouver School District is willing to stipulate that the parties can bypass the steps in the grievance procedure and proceed directly to arbitration as set forth in Step 3 of the grievance procedure.

On May 21, 1990, Bruener sent a letter to Wilcox, by certified mail, detailing the reasons for the termination of Wilcox's employment:

Please be advised that I have reconsidered my decision of suspending you from your work responsibilities without pay and have determined that justifiable and/or sufficient cause exists to terminate your employment with the Vancouver School District. Please be advised that your suspension without pay is hereby revoked and you are discharged and terminated from your employment with the Vancouver School District, effective May 8, 1990.

The reasons for your discharge and termination are as follows:

1. Incidents of behavior for the school year 1989-90 in which you lost control and improperly disciplined students by touching or

grabbing them. These previous incidents were discussed with you by your supervisor.

2. Improper or unprofessional conduct, specifically losing control, becoming angry, improperly touching a student, and using inappropriate language on or about March 28, 1990.

3. Violation of the rules and regulations of the Board of Directors of the Vancouver School District.

4. Your actions and conduct as set forth in the letter directed to you dated May 14, 1990. Reference is hereby made to the letter of May 14, 1990 and attached hereto and by this reference made a part of this letter.

Bruener met with Church on May 21, 1990. Wilcox was not present. At that meeting, Bruener gave Church a copy of the letter that had been sent to Wilcox.

On May 31, 1990, the union filed the instant unfair labor practice complaint, alleging that the employer had violated RCW 41.56.140-(1), (2) and (4), by discharging Robert Wilcox from employment.⁶ Examiner Latsch dismissed the complaint after a hearing, ruling that the employer could discharge Wilcox because his activities on May 10, 1990 were not protected activity within the meaning of Chapter 41.56 RCW.

The union petitioned for review of the Examiner's decision, thus bringing the matter before the full Commission.

POSITIONS OF THE PARTIES

The union asserts that the motivating reason for the discharge of Robert Wilcox was not the events of May 10, 1990, but rather the

⁶ A grievance was also filed pursuant to the grievance procedure of the collective bargaining agreement.

union's insistence on its right to investigate Wilcox's grievance. The union contends that it acted reasonably in conducting its investigation, and that the May 10th investigation was protected activity. In the union's view, the employer violated Chapter 41.56 RCW by escalating the suspension of Wilcox to the level of a discharge, in reprisal for the union's attempts to investigate his grievance. The union argues the Examiner's decision should be set aside, and the unfair labor practice charge sustained.

The employer asserts that Wilcox's conduct on May 10, 1990 was unreasonable, unprotected activity and just cause for discharge. The employer agrees with the Examiner's decision, and asks that it be affirmed by the Commission.

DISCUSSION

This case presents two principal issues. The first is the employer's actual motivation for terminating the employment of Wilcox. The second is the scope of protected activity when an employee is processing a grievance. The Examiner focused on the second of those issues, without directly resolving the first.

The Motivation for the Discharge

We find that the record clearly indicates that employer officials were upset by the actions of Church and Wilcox on May 10, 1990. The employer investigated that conduct, and issued both gentlemen a warning to refrain from any further contact with students or staff of the Walnut Grove School. At that point, however, the employer gave no indication that it felt termination was justified on the basis of what had already transpired. Indeed, Superintendent Parsley only indicated in his May 14, 1990 letter that he would recommend termination of employment if Wilcox had any further such contact.

Associate Superintendent Bruener acknowledged at the hearing that the employer did not learn of any additional contact by either Church or Wilcox with students after issuance of the May 14th letter. In fact, the record indicates that both men refrained from any further actions that could have exacerbated the parental concerns that had triggered the employer's warning letter.

The employer received no further evidence against Wilcox, and has not identified any other intervening events between May 14 and May 18, 1990, that would have affected the employer's decision. Nevertheless, the union was notified on May 18th that the warning issued to Wilcox for alleged misbehavior on May 10th was to be escalated to a termination of employment. That was confirmed by the employer in letters issued on May 21, 1991.

One thing that did occur between May 14 and May 18 was that union counsel sent a letter to the employer on May 16, protesting the employer's "no contact" order as an unlawful interference with the union's right to investigate Wilcox's grievance.⁷ Two days after receipt of the letter from the union's attorney, the employer converted the suspension of Wilcox to a discharge. The timing of these events supports the conclusion that the employer's decision to discharge Wilcox was motivated by the union's insistence on its right to interview witnesses. See, City of Olympia, Decision 1208-A (PECB, 1982), citing Wright Line, 251 NLRB 1083 (1980).

The Scope of Protected Activity

The definition of "collective bargaining" contained in RCW 41.56.030(4) includes specific mention of "grievance procedures" as a mandatory subject of bargaining. The Commission has long held that the processing of grievances pursuant to a collective

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The same letter also put the employer on notice that some of the employer's allegations of improper conduct on May 10, 1990 might be challenged as incorrect.

bargaining agreement is an activity protected by Chapter 41.56 RCW. Clallam County, Decision 1405-A (PECB, 1984), affirmed 43 Wn.App. 589, WPERR CD-319 (Division II, 1986); Valley General Hospital, Decision 1195-A (PECB, 1981). As such, public employers are prohibited from interfering with, restraining, or coercing public employees who exercise that right. RCW 41.56.140(1).

The Grievance -

Wilcox had been suspended **with pay** following the incident that occurred on March 28, 1990. That was converted to a suspension **without pay**, effective May 8, 1990, and he was pursuing a grievance over that suspension. In order to investigate that grievance, the union had a legitimate right to interview the only witnesses to the March 28, 1990 incident (i.e., the students who were on the bus). So long as witnesses are contacted in a reasonable manner, the employer has no right to prohibit such contacts. Thus, the Examiner correctly noted in this case that the employer could not prohibit the union from contacting students having relevant information, assuming that parental consent was obtained.

The Letter from the Union's Attorney -

The May 16, 1990 letter from the union's attorney, asserting the right of the union to represent Wilcox and to investigate the events of March 28, 1990, clearly falls within the scope of activity protected by the statute. It is patently unlawful for an employer to "up the ante" (i.e., to punish an employee more severely than would otherwise have occurred), in reaction to a union's assertion of its lawful rights. We find unpersuasive the only explanation offered by the employer for its change of direction (i.e., that it simply reevaluated its earlier decision regarding the May 10th conduct).

The Attempt to Interview Students -

Even if one assumes, for the sake of argument, that the actions of Church and Wilcox on May 10, 1990, were a motivating factor in the

termination decision, we find those actions also to have been protected activity.

The fact that grievance processing constitutes protected activity does not mean that employees or union officials can act with impunity. If behavior becomes too disruptive or confrontational, it loses the protection of the act. Pierce County Fire District 9, Decision 3334 (PECB, 1989).⁸ Thus, we agree with the Examiner that the specific acts must be examined.

The Examiner concluded that the actions of Church and Wilcox on May 10, 1990 fell outside the scope of protected activity, because they directly contacted students:

Given the strong emotional reaction to the initial incident, and the nature of the underlying complaint, the complainant was not acting in a reasonable manner when Church and Wilcox approached children on May 10, 1990.

Because of the limited nature of the contacts disclosed by the record, we disagree.

The record indicates that, prior to directly contacting students, Church had asked the employer for permission to interview students on the school bus. The employer denied that union request, and did not suggest any joint or cooperative interview process. Church had asked the substitute bus driver for the names and addresses of students who rode the bus, but he had not been provided that information. Finally, Church had given Bruener advance notice that

⁸ In that case, an employee's role as a union representative did not allow him to disregard normally acceptable standards of behavior in dealings with his superiors.

the union would try to talk with the students.⁹ The record also indicates that Bruener made, and Church acknowledged, an admonition that the union should not interview students without parental permission.

The only contacts made with students on May 10, 1990 were either made with parental permission, or limited to asking the students for information designed to obtain parental permission before further conversation. There is no evidence that either Wilcox or Church harassed any of the students. Wilcox approached only a couple of students, and only asked those if their parents were home and where they lived. There is no evidence that he pursued the children in any way, or that he verbally threatened them when they did not respond to his inquiries.

Because of the nature of the March 28th incident, and the local community's special sensitivity to potential threats against its children, it would no doubt have been preferable if Wilcox had not approached any students at all on May 10, 1990. We cannot agree, however, that the limited contacts he had with students on that date should deprive Wilcox of the protections of the collective bargaining statute.

Wilcox's mere presence and approach could have had the unintended effect of frightening some students, but the actions of the substitute bus driver, first in refusing to let the students off the bus and then in telling them they did not have to talk to

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The Examiner wrote that Church did not give notice of the union's intentions to contact the individual children, but a preponderance of the evidence indicates otherwise. Church testified that, before going to the bus stop, he told Bruener that he was going to be "out conducting an investigation talking with some of the students." Tr. 43. Bruener acknowledged having a conversation in which Church said "that they were going to do some investigations or try to talk with children, but that was the extent of the conversation." Tr. 239.

Church and Wilcox, had no doubt already heightened the anxiety of the students on the bus. So too at Smith's house, where a call from the school principal triggered alarm before Church and Wilcox ever arrived or had any opportunity to explain the reason for their visit. Consequently, it is unfair to hold Church and Wilcox solely responsible for the fact that some children might have become frightened by their presence.

The record indicates that several parents cooperated in the union's investigation, and that Linda Poe was the first parent to express any objection to Church and Wilcox being in the neighborhood. Once Poe voiced her objection, Church and Wilcox left the area, and did not try to contact any more students or their families.

The employer has acknowledged that it increased the disciplinary action from a suspension to a termination based on those May 10th actions. In light of the foregoing, we do not find the actions of Church and Wilcox on May 10, 1990 so egregious as to fall outside the scope of the statutorily protected activity of making a reasonable investigation concerning the Wilcox grievance.

Conclusions

By increasing the severity of its disciplinary action against Robert Wilcox, either in reaction to the letter received from the union's attorney on May 16, 1990, or in reaction to the grievance investigation activities of Church and Wilcox on May 10, 1990, the employer committed an unfair labor practice within the meaning of RCW 41.56.140(1) and (2). For all of the foregoing reasons, the decision of the Examiner is REVERSED.

In so ruling, the Commission makes no judgment on the past or future suitability of Robert Wilcox as a school bus driver. This case concerns only the process rights of Wilcox and the union. The merits of the suspension of Wilcox without pay through June 12,

1990 were, and remain, a matter for the parties' contractual grievance procedure.¹⁰

AMENDED FINDINGS OF FACT

1. Vancouver School District provides a number of educational services for local residents, and is a "public employer" within the meaning of RCW 41.56.030 (1).
2. Service Employees International Union, Local 92, represents a bargaining unit of classified employees of Vancouver School District, and is a "bargaining representative" within the meaning of RCW 41.56.030(3).
3. Robert Wilcox was a bargaining unit employee working as a school bus driver. In October and December, 1989, Wilcox was counseled by school district officials because of complaints that he had grabbed or shoved students on his bus.
4. On March 28, 1990, while transporting elementary school students on his assigned route, Wilcox reacted to a disturbance on the bus by allegedly yelling at a student, using obscenities, and physically intimidating the child. The incident was reported to school district officials by a number of parents.
5. Transportation Supervisor Robert Dolhanyk suspended Wilcox with pay, effective March 30, 1990, pending investigation.

¹⁰ The distinction between "process" and "merits" is important, and has been a subject of comment in previous cases of this nature. For example, in a concurring opinion in Clallam County, supra, Chief Judge Worswick described a discriminatee as a "churl", but nevertheless affirmed the finding of an unfair labor practice violation.

6. Wilcox contacted the union, and Business Agent Larry Church contacted Deputy Superintendent Michael Bruener for information about the March 28, 1990 incident. Church was allowed access to Wilcox's personnel file, and other documentation was provided by the employer.
7. The employer's investigation into the March 28, 1990 incident included interviews of a number of students who were present on the school bus. Bruener reported the results of those interviews to Church. Church reviewed the report, and requested that the employer conduct additional interviews. Church provided the names of the students that he desired the employer to interview. The employer complied with Church's request, and interviewed the additional students.
8. At a meeting held on May 8, 1990, employer officials informed Church and Wilcox that the employer was changing the suspension of Wilcox to be a suspension without pay, effective from May 8, 1990 through June 12, 1990, as discipline for the incident which occurred on March 28, 1990.
9. At an unspecified time, Church asked the school bus driver who replaced Wilcox on the assigned bus route for the names and addresses of the students who rode the bus. The union received no response to that request.
10. On May 9, 1990, Church contacted Dolhanyk, asking permission to ride on Wilcox's bus route and to interview children while on the bus. Dolhanyk referred Church's request to Bruener, who denied the request. Church informed Bruener of his intention to interview students who might have knowledge of the March 28, 1990 events. Bruener expressed concern about the volatile nature of the incident, and admonished Church that any interviews of students should be conducted with

parental consent. Church acknowledged the employer's admonition.

11. On May 10, 1990, Church and Wilcox drove to the last bus stop on the school bus route involved in the March 28, 1990 incident. Church found several parents waiting to pick up their children, and asked them for permission to interview their children. The parents present at the bus stop gave their permission, and Church went back to his car to wait for the bus to arrive.
12. When the bus arrived, the school bus driver saw Church and Wilcox waiting, and kept students on the bus while she radioed for instructions. After a delay, the students were permitted to leave the bus, but were advised that they did not need to talk to Church or Wilcox if they did not want to.
13. As students departed from the bus, some were approached by Church or Wilcox and were asked questions limited to where they lived and whether their parents were at home. Those students who did not respond were not questioned further. During all remaining contacts with students or parents, Wilcox remained in Church's car.
14. Church then interviewed three students whose parents had given permission for such interviews. One of the interviews occurred at the bus stop. The rest were conducted in the children's homes. During all of these interviews, Wilcox remained in Church's car.
15. Based on information provided by school district employees working in the area, Church and Wilcox went to the residence of Theresa Smith, who ran a licensed day care center where a number of students from the school bus would wait for their

- parents to pick them up after work. Smith's own child also rode the Walnut Grove bus.
16. Prior to the arrival of Church at Smith's home, Smith had received a telephone call from an employer official, informing her that Church and Wilcox were in the area, and advising her to have the children at her residence to come inside if they saw Wilcox. Smith passed along that instruction to the children present at her home, and mentioned the call to Linda Poe, a parent who arrived to pick up her children.
 17. As Church approached Smith's house, several children saw him and became agitated. Before Church reached the house, he was confronted by Linda Poe, who demanded to know why Church was "harassing" the students from the bus. Church explained that he was not there to harass anyone; that he was conducting an investigation on Wilcox's behalf. Poe told Church that he did not have her permission to speak with her child, and asked that he leave the area before she called the police. Church and Wilcox then left the neighborhood and had no further contact with any children.
 18. Parents subsequently contacted school district officials, and Bruener discussed the matter with Church on May 11, 1990.
 19. On May 14, 1990, Superintendent James Parsley sent a letter to Church and Wilcox, unconditionally prohibiting further contact by Church and Wilcox with students or staff of the Walnut Grove elementary school. Possible civil and criminal litigation was threatened in that letter.
 20. On May 16, 1990, the attorney for the union, Lawrence Schwerin, sent a letter to Parsley by telefacsimile, responding to Parsley's May 14, 1990 letter. Schwerin maintained that Parsley's letter contained a number of factual errors, and

advised the employer that the union was proceeding appropriately to investigate the March 28, 1990 incident. Schwerin also warned Parsley that further interference with the investigation could lead to unfair labor practice charges.

21. On May 18, 1990, Bruener sent a letter to Church, agreeing to meet on May 21, 1990 and telling Church that the employer intended to terminate the employment of Wilcox with the Vancouver School District.
22. On May 21, 1990, Bruener gave Church a copy of a termination notice which had been sent on the same date to Wilcox by certified mail. The actions taken by Church and Wilcox on May 10, 1990, to investigate the grievance were included among conduct cited as a basis for the discharge of Wilcox.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. The filing, processing and investigation of grievances of public employees is a "protected activity" within the meaning of RCW 41.56.040.
3. The investigation conducted on behalf of Service Employees International Union, Local 92, including the demand made on the employer by Larry Church for direct interviews with the witnesses to the incident, the contacts made with students made on May 10, 1990 by Larry Church and Robert Wilcox, and the letter directed to the employer on May 16, 1990 by counsel for the union, was reasonably related to the processing of the grievance protesting the suspension of Robert Wilcox, so as to

be within the scope of "protected activity" within the meaning of RCW 41.56.040.

4. By increasing the severity of the discipline imposed upon Robert Wilcox, as described in paragraphs 19, 21 and 22 of the foregoing findings of fact, the Vancouver School District committed unfair labor practices within the meaning of RCW 41.56.140(1) and (2).

ORDER

The Vancouver School District, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

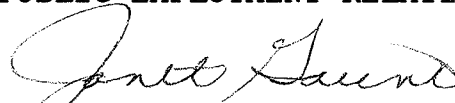
1. CEASE AND DESIST from:
 - a. Interfering with the processing of grievances by its employees or by Service Employees International Union, Local 92, on behalf its employees.
 - b. Enforcing, making reference to, or otherwise giving any effect to the written warning issued on May 14, 1990 to unconditionally prohibit Robert Wilcox and the business agent of the union, Larry Church, from having any further contact with students or staff of the school involved in the grievance filed on behalf of Robert Wilcox.
 - c. Enforcing, making reference to, or otherwise giving any effect to the discharge of Robert Wilcox from employment with the Vancouver School District, as announced by the employer in its letter dated May 21, 1990.

- d. In any other manner interfering with, restraining or coercing its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:
 - a. Offer Robert Wilcox immediate and full reinstatement as an employee in good standing of the Vancouver School District as of the end of the period of suspension "without pay" imposed by the employer on May 8, 1990, and make him whole by payment of back pay and benefits, for the period from June 13, 1990 to the date of the unconditional offer of reinstatement made pursuant to this Order. Such back pay shall be computed, with interest, in accordance with WAC 391-45-410.
 - b. Upon request, process the grievance filed by Service Employees International Union, Local 92, to protest the suspension of Robert Wilcox for all or any part of the period from March 30, 1990 through June 12, 1990, without asserting any procedural defenses based on the passage of time since the unlawful discharge of Robert Wilcox.
 - c. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

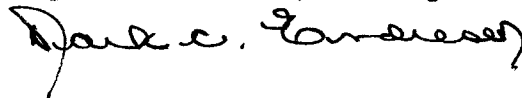
- d. Notify the above-named complainant, in writing, within 30 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.
- e. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 30 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

Issued at Olympia, Washington, the 13th day of February, 1992.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



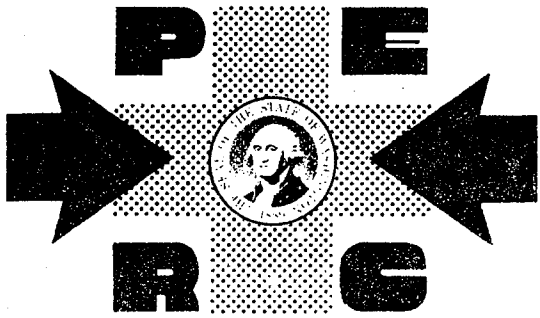
JANET L. GAUNT, Chairperson



MARK C. ENDRESEN, Commissioner



DUSTIN C. MCCREARY, Commissioner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL offer to Robert Wilcox, immediate and full reinstatement as an employee in good standing of the Vancouver School District as of June 13, 1990, and will make him whole by payment of back pay and benefits, for the period since June 13, 1990.

WE WILL, upon request, process the grievance of Robert Wilcox concerning his suspension "without pay" for the period from May 8, 1990 through June 12, 1990, without asserting any procedural defenses based on the passage of time since the unlawful discharge of Robert Wilcox.

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of their collective rights under state law, including the right to investigate and process grievances.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

DATED: _____

VANCOUVER SCHOOL DISTRICT

BY: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (206) 753-3444.