Seattle School District, Decision 8976 (PECB, 2005)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 609, Complainant, vs. SEATTLE SCHOOL DISTRICT, Respondent.	CASE 17183-U-03-4446 DECISION 8976 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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John M. Cerqui, Assistant General Counsel, for the employer.

On February 5, 2003, International Union of Operating Engineers, Local 609 (union), filed a complaint with the Public Employment Relations Commission under Chapter 391-45 WAC, alleging that the Seattle School District (employer) had committed unfair labor practices in violation of RCW 41.56.140. The agency issued a preliminary ruling under WAC 391-45-110, finding the complaint stated a cause of action. Examiner Paul T. Schwendiman held a hearing on April 12, 13, and 14, 2004. The parties filed post-hearing briefs.

Pat Larson worked for 13 years as a custodian at Lawton Elementary School in the Seattle School District. The employer assigned a new principal, Sylvia Hayden, to the school. Hayden soon became concerned about the quality of Larson's work. She sought to have him transferred to another school, but both the employer's and

union's representatives informed her that the bid system in the collective bargaining agreement prohibited the district from involuntarily transferring him. She subsequently formed a belief that Larson may have stolen district computer equipment. At an investigatory meeting, when Larson asked for union representation, Hayden suspended the meeting and had Larson escorted from the school. The district continued with the meeting the next morning at the district office with a union representative present. After the meeting, Larson returned to his duties at the school. The investigation later deemed the theft allegations to be unfounded. Following Larson's return to work, Hayden began keeping track of her concerns about his work performance.

The union filed several requests for information about matters involving Larson. While the union expressed concern about the employer's general lack of responsiveness, it focused on two requests for information. The first requested the time sheet of an office assistant at that school whom the union contended performed custodial work at Hayden's direction. The employer eventually produced the time sheet, but not until 50 days after the request. The union did file a grievance over the issue prior to the production and the parties resolved the grievance by paying Larson for the four hours the office assistant did bargaining unit work. The other request for information asked for witness statements in connection with the computer theft allegations against Larson. The employer did not produce the written statement of Larson's co-worker Gary Jablinske, in fact, the principal subsequently destroyed the statement.

The Examiner concludes the employer:

1. independently interfered with employee rights and refused to bargain when Principal Hayden intentionally destroyed a written witness statement requested by the union;

2. discriminated against Larson when the employer removed Larson from the workplace because he requested union representation at an investigatory meeting;

3. refused to bargain with the union by delaying production of a union-requested document until 50 days after the union's request.

ISSUES

1. Did the employer interfere with a public employee in the exercise of a right under RCW 41.56?
2. Did the employer discriminate against a public employee in the exercise of a right under RCW 41.56?
3. Did the employer refuse to bargain with the union by failing to properly provide documents requested by the union?
4. If so, what is the appropriate remedy?

ANALYSIS

The Legal Standards Applicable to All Issues

RCW 41.56.040 provides: "No public employer . . . shall . . . interfere with, restrain, coerce, or discriminate against any public employee . . . in the free exercise of any other right under this chapter."

Enforcement of those statutory rights is through the unfair labor practice provisions of RCW 41.56.140:

> It shall be an unfair labor practice for a public employer:
>
> (1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;
>
> . . . .

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining.

1. Did the employer interfere with a public employee in the exercise of a right under RCW 41.56?

The Legal Standard

The Commission has succinctly stated the legal standard for an independent interference violation of RCW 41.56.140(1) in *King County*, Decision 6994-B (PECB, 2002):

> An independent violation of RCW 41.56.140(1) will be found whenever a complainant establishes that a party engaged in separate conduct that an employee could reasonably perceive as a threat of reprisal or force or promise of benefit associated with their union activity. *Reardan-Edwall School District, supra* (citing *City of Seattle*, Decision 3066-A (PECB, 1989)). The burden of proving unlawful interference rests with the complaining party and must be established by a preponderance of the evidence, but the test for deciding such cases is relatively simple. WAC 391-45-270; *King County*, Decision 7104-A (PECB, 2001) (citing *City of Tacoma*, Decision 6793-A (PECB, 2000); *City of Omak*, Decision 5579-B (PECB, 1997)). Thus:
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> - The reasonable perceptions of employees are critical when evaluating independent interference allegations under RCW 41.56.140(1). *City of Seattle*, Decision 3066 (PECB, 1989), *aff'd*, Decision 3066-A (PECB, 1989). *See also City of Tacoma, supra; Cowlitz County*, Decision 7037 (PECB, 2000); *City of Pasco*, Decision 3804-A (PECB, 1992). The legal determination of interference is based not upon the reaction of the particular employee involved, but rather on whether a typical employee in a similar circumstance reasonably could perceive the actions as attempts to discourage protected activity. *City of Tacoma, supra*.
> - An intent or motivation to interfere is not required to show interference with collective bargaining rights. *City of Tacoma, supra; Cowlitz*

County, supra. Nor is it necessary to show that the employee involved was actually coerced. *City of Tacoma, supra; Cowlitz County, supra.* It is not even necessary to show anti-union animus for an interference charge to prevail. *City of Tacoma, supra; Cowlitz County, supra.*

- The timing of adverse actions in relation to protected union activity can support an inference of an interference violation under RCW 41.56.140(1). *City of Omak, supra; Mansfield School District,* Decision 5238-A (EDUC, 1996); and *Kennewick School District,* Decision 5632-A (PECB, 1996).

(Citations in original).

Application of the Standard

Destruction of the Jablinske witness statement.

Factual background - On October 28, 2002, Hayden asked Assistant Custodian Gary Jablinske if he knew what happened to some computers with missing parts she had seen in Room 113. Jablinske explained that he and Larson moved the computers to the custodial shop. He told her that he had seen Larson taking parts out of a computer. On October 29, 2002, Jablinske dictated a witness statement to Hayden that she typed on her computer.

Upon arriving at work on October 30, 2002, Hayden found a note from Jablinske on her desk asking her to not use the statement he had provided her and expressing concern that Larson might retaliate against him. Later that day, Hayden met with Larson and after he requested union representation, she continued the meeting and had him removed from the building.

By the close of the workday of October 30, 2002, Shop Steward Mark DeMonbrun met with Employee Relations Manager Gloria Morris seeking information, and presented her with a written request for any and

all witness statements and any and all supervisors' notes or records in connection with Hayden's theft allegation. Morris was surprised by the request, initially responding that she need not provide the requested information.

On November 1, 2002, the employer's Assistant General Counsel John Cerqui advised the union that the employer would respond to its October 30, 2002, information request for all witness statements and supervisor notes.

On November 4, 2002, Shop Steward Mark DeMonbrun and Larson met with Hayden and Custodial Services Manager Mike DeMonbrun seeking information regarding Hayden's allegations and Larson's removal from the workplace.

On November 6, 2002, Labor Relations Analyst Misa Garmoe nee Shimitzu e-mailed the union information request for all witness statements to Hayden. Hayden never provided the Jablinske witness statement to Garmoe nee Shimitzu and Jablinske's witness statement was never provided to the union.

On December 6, 2002, Garmoe nee Shimitzu mailed the union Morris's notes from October 2002 telephone conversations with Hayden that referenced the fact Jablinske had given a statement about the computer issue.

On December 9, 2002, the union requested a copy of the Jablinske statement. On January 7, 2003, Garmoe nee Shimitzu e-mailed a request for information to Hayden: "Do you have a 'written statement' made by Mr. Gary Jablinske? Westberg has requested it. Please advise."

On January 8, 2003, Hayden responded to Garmoe nee Shimitzu's January 7, 2003, e-mail: "I have it [the Jablinske witness statement] but he told me not to release it. I have both letters. The statement and the request for release that gives the reason why he doesn't want it released."

On January 10, 2003, union Business Manager Westberg met with Hayden seeking information regarding the Jablinske witness statement and a union-requested time sheet. Hayden informed him that she had the Jablinske witness statement but would provide it only if directed by employer General Counsel Mark Green.

Hayden subsequently stated she looked for the statement after the meeting but could not find it. She asserted that she had destroyed it when she had cleaned out some files to make room in her desk over the 2002 December holidays.

Analysis - A typical employee could reasonably perceive Hayden's intentional destruction of the witness statement as coercive or threatening. The contents of the witness statement can never be accurately ascertained. Whether the destroyed evidence would have been helpful or harmful to Larson's case will never be known.

Whenever a management official intentionally destroys relevant evidence that was requested by a union on behalf of an employee, a typical employee could reasonably believe that the evidence was destroyed because it favored the employee's defense. A typical employee also obviously could perceive that the intentional destruction was occasioned by the union information request itself. These typical employee perceptions are even more reasonable when the management official intentionally destroying the evidence has

a personal interest in justifying her action to protect herself.[1] The Examiner finds there is a sufficient showing of an independent interference violation.

Totality of conduct - The union also argues that Hayden's actions as a whole constitute evidence of unlawful interference. Some of the specific factual allegations are dealt with below in the context of the discrimination violation contentions, but there is no need to address them further here as an interference violation has been found.

2. Did the employer discriminate against a public employee in the exercise of a right under RCW 41.56?

The Legal Standard

A violation of RCW 41.56.140(1) or 41.56.140(3) "occurs when an employer takes action which is substantially motivated as a reprisal against the exercise of rights protected by Chapter 41.56 RCW." *Grant County Public Hospital District 1,* Decision 6673-A (PECB, 1999). In order to demonstrate discrimination, the complainant must:

1. Establish a prima facie case of discrimination, showing:
   a. The exercise of rights protected by an applicable collective bargaining statute, or communicating an intent to do so;
   b. That one or more employees was/were deprived of some ascertainable right, status or benefit; and
   c. A causal connection between the exercise of protected rights and the discriminatory action.

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[1] In its arbitration request relating to placing Larson on administrative leave, the union's suggested remedies were that Hayden be reprimanded for her actions and the employer provide her additional training.

2. If the complainant makes out a prima facie case, the respondent must set forth lawful reasons for its actions.

3. If the respondent does cite lawful reasons, the complainant must show that the reasons set forth were pretextual and/or that protected activity was nonetheless a substantial motivating factor underlying the disputed action(s).

Educational Service District 114, Decision 4361-A (PECB, 1994) (citing *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991)).

Application of the Standard

Prima Facie Case of Discrimination

a. The exercise of rights protected by an applicable collective bargaining statute, or communicating an intent to do so;

Assertion of contractual transfer provision. Assertion of a contractual right is protected activity. *Valley General Hospital*, Decision 1195 (PECB, 1981), *aff'd*, Decision 1195-A (PECB, 1981). During September and October of 2002, several supervisors told Hayden that the collective bargaining agreement prohibited the transfer of custodial engineers except by seniority-based bidding. Sometime in September 2002, Hayden's first supervisor, Education Director Walter Trotter, discussed the transfer process with her. After that, Custodial Supervisor Stewart informed her of the process when he discussed Hayden's complaints about Larson in a meeting with both Hayden and Larson. During a meeting with Hayden concerning her concerns about Larson, Manager of Custodial Services Mike DeMonbrun also explained the contractual transfer rights under the agreement to Hayden.

There is no dispute between the union and employer as to Larson's transfer right under the contract as explained by testimony of Stewart and Mike Demonbrun.

The Examiner finds the explanation of the *undisputed* employee contractual transfer right to Hayden by management officials appropriate, and a substitute for a union official or Larson asserting the undisputed contractual right to Hayden. With such management communication, neither the union nor Larson would have occasion to assert the contractual right. The management explanation to Hayden satisfies the exercise of an employee right protected by Chapter 41.56 RCW because the explanation of an *undisputed* contractual right is effectively communicated on behalf of both parties to the collective bargaining agreement. Thus, the management communication to Hayden substitutes for the employee or the union asserting the undisputed contractual right, and, like the filing of the Hayden-related grievances, similarly satisfies the proof necessary of the exercise of a protected right for purposes of establishing a prima facie case.

Assertion of the right to union representation. An employee asserting a right to union representation in a possible disciplinary interview is clearly the exercise of a protected right. Larson did so and as a result, he was escorted from the school grounds.

Assertion of a contractual grievance. The filing or communication of the intent to file a grievance is also an exercise of a right. *See King County*, Decision 7104 (PECB, 2000); *Mukilteo School District*, Decision 5899-A (PECB, 1997); *Kennewick School District*, Decision 5632-A (PECB, 1996).

The union filed grievances concerning Hayden's actions. Grievances were filed concerning Hayden placing Larson on administrative leave after the investigatory interview and over Hayden assigning cleaning duties to Office Assistant Maria Perez.

Assertion of the right to request information. The right to seek information when an employee is removed from the workplace during an investigation is a right protected by Chapter 41.56 RCW. *Seattle School District*, Decision 5542-C (PECB, 1997). On October 31, 2002, the union began seeking information when union representative Mark DeMonbrun and Larson met with Morris and hand-delivered its first written information request to her. On November 4, Mark DeMonbrun and Larson met with Hayden and Mike DeMonbrun again seeking information regarding Hayden's allegations and Larson's removal from the workplace. The union continued to file information requests for documents concerning the handling of Larson's case and the potential contracting out of bargaining unit work.

Assertion of the intent to file a ULP complaint. Discrimination for filing an unfair labor practice complaint is directly prohibited by RCW 41.56.140(3). Both state and federal precedent support a finding of discrimination where a party did not actually file a complaint, but did communicate the intent to do so to the other party. *Educational Service District 114*, Decision 4361-A; *Grand Rapids Die Casting Corp. v. N.L.R.B.*, 831 F.2d 112, 116 (6th Cir. 1987). On November 13, 2002, the union told the employer its intent to file an unfair labor practice complaint. Union Business Manager Westberg informed Labor Relations Director Rosmith that "Hayden's actions constitute a blatant ULP which we still have time to initiate" and that further delay in responding to a request

would not be favorable to the employer "when that time comes." The union had also previously filed unfair labor practice complaints.[2]

Conclusion. Protected rights were exercised.

b. That one or more employees was/were deprived of some ascertainable right, status or benefit;

Removal from the workplace. Hayden caused Larson's removal from workplace. Larson was not deprived of an economic benefit because he continued to receive his normal pay and other benefits. However, as the Commission noted in *Seattle School District*, Decision 5542-C (PECB, 1997) "the fact that [employees] were paid has little bearing on the effect of the event itself [being placed on leave without pay during an investigation]. The employees were prohibited from going to work [and] could not depend on returning to work in the future."

Like those employees, Larson faced the same effect by the deprivation of his status as a trusted employee, also being investigated during his absence for wrong-doing and not able to depend on

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[2] The record references a prior unfair labor practice complaint filed with the Commission, the "Brian Cassin" ULP. Transcript 507. The Commission found the employer violated RCW 41.56.140(1) and (4) when it withheld information from the union concerning an employee placed on administrative leave. *Seattle School District*, Decision 5542-C (PECB, 1997). The union also requested judicial notice be taken of the "Dixon" unfair labor practice. Union brief at 21. Commission records indicate this complaint, case number 16076-U-01-04102, was filed on October 24, 2001, a partial order of dismissal was issued (*Seattle School District*, Decision 7607 (PECB, 2001)), and the case closed when the complaint was withdrawn. *Seattle School District*, Decision 7607-A (PECB, 2002).

returning to work in the future. Placing Larson on paid leave during an investigation was a deprivation sufficient to satisfy the second element of the union's prima facie case.[3]

Performance complaints and theft allegation. Hayden's complaints to Larson's supervisors and her allegation to Employee Relations Manager Morris that Larson may have committed a theft would similarly be considered by the employer in making judgments concerning Larson's job security, and are sufficient to establish deprivation of a right, status or benefit.[4] In *Oroville School District*, Decision 6209-A (PECB, 1998), the Commission found a negative job evaluation sufficient to establish deprivation of a right, noting that "Job evaluations are often considered by employers and arbitrators in making judgments about matters affecting job security, such as layoffs, discipline, and discharge, and so affect employee working conditions."

c. A causal connection between the exercise of protected rights and the discriminatory action.

A causal connection is evidence that "the respondent's motivation was the employee's exercise of or intent to exercise statutory

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[3] There may well be good reason to remove an employee from the workplace. In this analysis those reasons are reviewed later as being a pretext or otherwise substantially motivated by the exercise of a right.

[4] The union argues that Morris' decision to investigate the theft allegation likewise constitutes a deprivation. The Examiner disagrees. Morris had cause to further investigate because Hayden alleged serious employee misconduct. Unlike an allegation of misconduct, an investigation of the allegation might be considered positively in making a judgment concerning an employee's job security, depending upon the outcome of the investigation. Here, the outcome of the investigation exonerated Larson.

rights." *King County*, Decision 6994-B (PECB, 2002). "Ordinarily the prima facie case must, in the nature of things, be shown by circumstantial evidence, since the employer is not apt to announce retaliation as its motive." *Wilmot*, 118 Wn.2d 70. "The timing of adverse actions in relation to protected union activity can serve as circumstantial evidence of a causal connection between protected activity and adverse action." *Oroville School District*, Decision 6209-A (PECB, 1998).

Theft allegations. Management officials communicated a custodial engineer's undisputed contractual transfer right to Hayden in September and October, and as late as October 29, 2002. Hayden alleged theft the evening of October 29. The timing infers causation.

Removal from the workplace. When Larson requested union representation on October 30, Hayden immediately asked for Larson's keys and had Farrar escort him from the workplace. The immediacy of Larson's removal from the workplace infers a casual connection.

That connection is confirmed by the meeting between Farrar and Hayden immediately prior to meeting with Larson. There Hayden determined to remove Larson from the school if he asked for union representation.

Performance complaints. Larson asked for union representation on October 30. At meetings on October 31 and November 4, the union officials met with Morris and Hayden, respectively, seeking information relevant to Hayden's allegations and removing Larson from the workplace. On November 6, Hayden received a union information request via the labor relations office. On the next

day, Hayden began handwritten documentation of his faults. The timing infers causation.

There does not appear to be a causal connection between any of these deprivations and the union's notice to the labor relations office on November 13, 2002, to file either a grievance or an unfair labor practice complaint. There was no evidence that Hayden knew of the filing of any prior unfair labor practice complaint or the expressed intention to file either a grievance or an unfair labor practice complaint prior to depriving Larson of a benefit. Thus, causation cannot be inferred in regard to these protected rights as any deprivation occurred before the exercise of those rights.

Conclusion as to the Prima Facie Case

The Examiner finds sufficient evidence to infer all elements of a prima facie case, requiring the employer to advance legitimate reasons for removing Larson from the workplace, the theft allegation, and Hayden's complaints about Larson's performance.

Lawful Reasons or Pretextual?

Once a prima facie case is made, the employer must set forth lawful reasons for its actions. The employer's reasons gleaned from the record[5] are:

- Hayden removed Larson from the workplace because of Hayden's concern for safety and a need to preserve evidence,
- Hayden alleged theft because she suspected theft of computer parts, and

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[5] The employer's argument does not clearly set out its legitimate reasons.

- Hayden complained about Larson's performance because she was concerned about his job performance.

The Examiner finds these to be lawful reasons.

Are the reasons pretextual?

- *Removal from the workplace due to safety concerns and need to preserve evidence.*

The union argues that a deviation from the employer's administrative leave policy infers animus and pretext for the reasons offered. The policy relied upon by the union states only the director of human resources may place an employee on administrative leave except that "In an emergency, principals have the authority to send an employee home for the remainder of the day."[6]

Hayden sought advice from her supervisor and Employee Relations Manager Morris. Morris advised her that a principal could send an employee home before completion of the normal work day without approval from the director of human resources.

Although it is not clear that an emergency existed and Larson was sent home for more than the remainder of his workday, the Examiner

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[6] The policy entitled "Revised Guidelines on Administrative Leave" (Exhibit 20) was addressed to, and was the result of, negotiations between the employer and the Seattle Education Association, a different union that represents the certified employees supervised by Hayden. While the policy does not appear on its face to apply to Larson or other employees represented by the union here, Education Director Sander testified that the policy applies to Larson and other employees represented by the union here.

finds that Hayden acted in conformity with the advice she received and her *understanding* of the policy based on that advice. Hayden believed she was not violating the employer policy by sending Larson home. The Examiner attaches little weight to a technical violation of the employer's written policy as opposed to a knowing violation. The action does not imply either animus or pretext because Hayden acted in conformity with the policy as she understood it.

Hayden was concerned about preserving evidence. Before the October 30 meeting began, Hayden knew Larson had removed parts from computers and believed the parts may have been stolen. At the outset of the October 30 meeting, Hayden told Larson she had some concerns about computers and those concerns involved him. Larson appreciated the seriousness of the situation as he requested representation.

The Examiner infers this exchange made Larson aware he was being investigated about computers from which he had removed parts, and the consequences might be serious. Given Hayden's belief that computer parts may have been stolen, the desirability of preserving the status quo of the computers and any computer parts at, or not at, the school is a reasonable precaution. His explanation the following day proved sufficient to allow him immediate access to the building, however, Hayden had neither his explanation nor the results of the later investigation when she sent him home.

Hayden also had a concern about safety. Before the October 30 meeting, Jablinske left Hayden a note expressing concern about how angry Larson would be with him for giving a statement. After reading Jablinske's note, Hayden e-mailed her supervisor explaining that she was glad Farrar was attending the meeting with Larson, and

voicing a concern for her own safety. Her later actions were consistent with her stated concern, and that infers her concern for safety was genuine, rather than pretextual.

- *Suspected theft of computer parts.*

Hayden noticed some computers on a cart with missing parts had disappeared. When she later asked Jablinske if he knew where those computers had been moved, he told her that he and Larson had moved the computers, and that Larson had removed parts from the computers. Hayden communicated to Sander and Morris that she might have a theft problem. Hayden's theft concern was warranted by the facts as she understood them and justifies bringing her concern to Morris and Sander. The fact Larson was later cleared of the theft allegation is not evidence of pretext because he was cleared only after Hayden's decision to allege theft.

- *Hayden's concern about performance.*

Hayden was clearly concerned about Larson's performance, particularly relating to his cleaning duties. She has high standards and expectations as to the cleanliness of her school. As she testified, "a school should be . . . as clean as a home. . . . I expect the building to sparkle . . ." Hayden had high expectations and desired to correct Larson's cleaning deficiencies.

Hayden complained about Larson's performance to his supervisor, her supervisor, his supervisor's manager, and even the employee relations manager. She also complained of the supervisor's lack of responsiveness to those complaints.

The union suggests that Hayden's performance complaints are inconsistent with Stewart's good performance evaluations and that infers pretext. But on closer examination, Stewart's performance reports contain narrative references to concerns similar to those expressed by Hayden, such as responsiveness, cleaning, and tardiness.

Conclusion. The Examiner finds the union has not proved any of the reasons offered for Hayden's disputed actions were pretextual.

Was the exercise of protected activity nonetheless a substantial motivating factor?

Even if the reasons set forth were not pretextual, a discrimination violation occurs if protected activity was nonetheless a substantial motivating factor underlying the disputed action.

Performance complaints. Given Hayden's expressed cleanliness concerns and the reasoning cited above, the Examiner does not find that the exercise of protected rights was a substantial motivating factor in her actions to log Larson's perceived performance deficiencies.

Removal from the workplace. Immediately prior the October 30, 2002, interview, Hayden decided to remove Larson *if* she could not question him because he requested union representation. When Larson requested representation, Hayden immediately removed him from the workplace. Here, the causation is obvious and the Examiner concludes that Larson's removal was substantially motivated by his exercise of his right to union representation, a right protected by Chapter 41.56 RCW. Thus, the employer violated RCW 41.56.140(1) by discriminating against Larson.

3. Did the employer refuse to bargain with the union by failing to properly provide documents requested by the union?

The Legal Standard

It is an unfair labor practice for a public employer to refuse to engage in collective bargaining. RCW 41.56.140(4). The Commission has stated that the duty to bargain includes a duty to provide relevant, necessary information requested by the opposite party for the proper performance of its duties in the collective bargaining process. *Port of Seattle*, Decision 7000-A (PECB, 2000); *City of Pullman*, Decision 7126 (PECB, 2000); *Seattle School District*, Decision 5542-B (PECB, 1997); *Pasco School District*, Decision 5384-A (PECB, 1996). Union requests for information pertaining to employees in the bargaining unit represented by that union are presumptively relevant. *Port of Seattle; City of Bremerton*, Decision 6006-A (PECB, 1998)); *Seattle School District; Pasco School District*.

This duty extends to requests for information required for the processing of grievances and the sifting out of unmeritorious claims. *Port of Seattle*, Decision 7000-A; *Pasco School District*, Decision 5384-A. The duty to provide information turns on the circumstances of a particular case. *Pasco School District*. The party receiving an information request has a duty to explain any confusion about, or objection to, the request and then negotiate with the other party toward a resolution satisfactory to both. *Port of Seattle; Seattle School District*, Decision 5542-B.

This is consistent with viewing the duty to provide information as part of an ongoing and continuous obligation to bargain. *Port of Seattle*, Decision 7000-A. An employer must make a good faith effort to reach a resolution that will satisfy its concerns and yet

provide maximum information to the union. *Port of Seattle; City of Pullman*, Decision 7126.

In *Seattle School District*, Decision 5542-B, the Commission found the employer had a duty to provide information regarding employees who were removed from the workplace with pay during an employer investigation of alleged employee misconduct.

Analysis

While the union complains of the employer's general lack of responsiveness to its information requests,[7] the union's concern centers on two requests for documents.

Request for a time sheet. On November 26, 2002, Hayden assigned Assistant Secretary Maria Perez four extra hours work that included washing walls and windows at Lawton Elementary School. On November 27, 2002, the union requested of the employer's labor relations office, a "complete and accurate record of the time sheet for the office assistant at Lawton Elementary, who performed the bargaining unit work."

On December 2, 2002, Hayden signed a "Extra Time Reporting Form" authorizing payment to Perez for an additional four hours worked on November 26, 2002.

On December 9, 2002, Garmoe nee Shimitzu e-mailed the verbatim November 27 union request for the time sheet to Hayden. Hayden responded 18 minutes later, "My office assistant did not perform

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[7] The employer eventually supplied all the documents requested by the union except Jablinske's statement and several documents that never existed.

bargaining unit work, so I do not have a time sheet that reflects that."

Almost a month later, on January 6, 2003, Garmoe nee Shimitzu sent the union a letter informing it, "According to Ms. Hayden, the office assistant did not fill out any time sheets regarding this situation. . . . According to Ms. Hayden, no such document exists."

Hayden informed union Business Manager Westberg on January 10, 2003, that she had filled out a time sheet for Perez, authorizing payment for the four extra hours worked by Perez on November 26, 2002.

On January 15, 2003, the union requested "A complete and accurate record of the time sheet for Ms. Maria Perez, office assistant at Lawton Elementary, for the period covering November and December 2002."

On January 16, 2003, 50 days after the union's initial request, the employer finally provided the time sheet.

The parties' contractual grievance procedure provides that a grievance shall be initiated within 45 days after the events upon which it is based.[8] Those 45 days allow the union to evaluate a potential grievance and "sift" the unmeritorious from the meritorious before filing the grievance.

On November 27, 2002, the employer was put on notice that the union had a potential grievance concerning someone performing bargaining unit work at Lawton Elementary School, and the 45 day time limit on

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[8] These are 45 calendar days, because the parties have elsewhere in the grievance procedure specified "working days" where "working days" was intended.

filing a grievance began to run. Forty-six days later, the union, would not be allowed to file a grievance under the terms of the collective bargaining agreement. Thus, the grievance sifting process realistically must be completed sometime before January 11, 2003. The employer was obligated to provide the information requested in time for the union to evaluate the merits of the grievance prior to the filing deadline. The employer did not provide the information until January 16, 2003.

The employer defends its response time because Hayden misunderstood the union's request. The issue is not whether Hayden's response was reasonable,[9] but whether the information was provided in a timely manner. The reason for requiring grievance-related information requested *before* the filing of a grievance is to allow the union to sort out the valid from the invalid. While the union filed a timely grievance before it received the requested time sheet, it should have been provided the time sheet not less than 45 days from the time it was requested.

The employer's system of obtaining information from a reluctant principal to forward to the union was not up to the task of

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[9] Given the employer's need to obtain accurate and timely information from Hayden to fulfill its good faith bargaining obligation, her misunderstandings of her responsibility and her lack of forthright responses to internal inquiries seeking the information she possessed leading to the employer's violations of the law are not reasonable. Hayden's misunderstanding of her responsibility to preserve and produce legitimately requested information led her to deliberately destroy a document requested by the union and her lack of understanding the term "bargaining unit work" in relation to cleaning walls and windows led her to assign such work to an office assistant Perez and sufficiently hamper the employer's internal system of obtaining the information requested by the union to create the multiple unfair labor practices here.

providing a sufficiently timely response to the legitimate union information request. The failure of the employer's internal system to provide timely information caused the employer to violate RCW 41.56.140(4).

Request for witness statements. As discussed above, on October 30, 2002, the union requested all witness statements concerning the theft allegations and Jablinske's statement was never provided to the union. A couple of months later, sometime during winter break, Hayden destroyed the statement.

Hayden's testimony implies she removed and destroyed Jablinske's witness statement to make space in her desk, and selected the witness statement for destruction because she believed it was no longer relevant as Larson already had been exonerated of her theft allegation. However, the Examiner notes that as Hayden made space in her desk, she retained Jablinske's later note expressing fear of Larson. That note occupied space in the same file and was as equally relevant as the destroyed witness statement. The Examiner finds that Hayden removed and destroyed the statement because she did not want the witness statement to be provided to the union.

The requested witness statement concerned a potential grievance concerning an employee represented by the union, and is clearly the type of information that the employer is required to provide the union on request. The employer did not provide the witness statement because Hayden intentionally withheld it and then deliberately destroyed it.

The employer is responsible for an employee's acts constituting a refusal to bargain. See Seattle School District, Decision 5733-B (PECB, 1998). The employer must accept responsibility for Hayden's

alleged confusion concerning her responsibility to produce the witness statement to the labor relations department for timely transmission to the union. The employer also must accept responsibility for its internal communications process which allowed Hayden to destroy the witness statement.

The employer's internal system for responding to union information requests relies almost entirely on the 98 school principals, other supervisors and employer officials who possess the relevant information being requested. Those officials are supposed to correctly understand the employer's responsibility to provide information, and are supposed to understand their own responsibility to respond timely and accurately. The employer's system failed to provide the requested witness statement, and delays and internal communication difficulties allowed Hayden to destroy it. As a result, the employer refused to bargain in good faith in violation of RCW 41.56.140(4).

4. If so, what is the remedy?

The customary remedies in discrimination cases include making the employee whole for lost wages and benefits, posting of notices to employees, and public reading of the notice to inform the general public of the unlawful conduct. In this case, employee status and rights were temporarily lost, but have been restored. No wages or other economic benefits were lost.

The customary remedies in refusal to provide information cases include an order to provide the information requested. In this case one document was provided too late for the union to use it to assess the merits of a grievance, but the grievance was filed and the union was able to negotiate a settlement of that grievance.

Hayden destroyed the other document, the requested Jablinske witness statement. Thus, that document can never be provided to the union.

Other customary remedies include a cease and desist order and the posting of a notice. The employer here should be ordered to cease and desist its unlawful conduct and inform its employees and the public of its unlawful actions by posting the attached notice, reading the attached notice at the next public meeting of its school board, and appending the attached notice to the minutes of that meeting.

An extraordinary remedy that may be ordered is attorney fees. The union has requested that they be awarded.

The Legal Standard

The Commission may award attorney fees when it is necessary to make its order effective. *See Municipality of Metropolitan Seattle v. PERC*, 118 Wn.2d 621 (1992). The Commission uses this extraordinary remedy sparingly. *Public Utility District 1 of Clark County*, Decision 2045-B (PECB, 1989). Attorney fees will be awarded if the defense to the unfair labor practice is frivolous or meritless. *Seattle School District*, Decision 5733-B (PECB 1998). The term "meritless" has been defined as meaning groundless or without foundation. *See State ex rel. Washington Federation of State Employees v. Board of Trustees*, 82 Wn.2d 60 (1980); *Lewis County v. PERC*, 31 Wn. App. 853 (1982), *review denied*, 97 Wn.2d 1034 (1982); *King County*, Decision 3178-B (PECB, 1990).

Commission orders awarding attorney fees have also been based upon repetitive illegal conduct or on egregious or willful bad acts by a respondent that has been found guilty of unfair labor practices.

Chehalis School District, Decision 7878 (PECB, 2002); *City of Bremerton*, Decision 6006-A (PECB, 1998); *Mansfield School District*, Decision 5238-A (EDUC, 1996); *PUD 1 of Clark County*, Decision 3815 (PECB, 1991); *City of Kelso*, Decisions 2633 (PECB, 1988). The Commission also awards attorney fees when the respondent has engaged in a pattern of repetitive conduct showing a patent disregard of its statutory obligations. *City of Vancouver*, Decision 6732-A (PECB, 1999).

Analysis

The Examiner finds the employer's defenses are not clearly frivolous or meritless.[10] Hayden's deliberate destruction of the Jablinske witness statement, however, was egregious and willful. The employer has also engaged in repetitive illegal conduct.

Egregious and willful conduct. Hayden willfully destroyed the Jablinske statement, purposefully denying it forever to Larson and the union. The Examiner finds the deliberate destruction of the document egregious because remedying an employee's reasonable

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[10] In its brief, the employer argued that the Commission did not have jurisdiction because the union should have filed a grievance over the employer's compliance with its own procedures, not an unfair labor practice case over the failure to provide information. Employer brief, fn 5 at page 5. The particular procedure referred to by the employer provided for the release of information when employees are placed on administrative leave. That procedure was negotiated following the Commission's decision in *Seattle School District*, Decision 5542-C (PECB, 1997). In that case, the employer made the same argument about lack of jurisdiction and arbitration being the appropriate forum. The Commission disagreed, clearly finding that the issue fits squarely within the Commission's precedent as an unfair labor practice case. Given the Commission's prior conclusion and explanation to this same employer, its similar argument is perilously close to being frivolous.

perception that the document was helpful to defense of the employee can only be complete with production of the document, and Hayden destroyed the document after repeated internal and external requests for the document.

Repetitive illegal conduct. The Commission has previously found the employer has committed related unfair labor practices. The employer argues these cases are sufficiently dissimilar to this case that attorney fees should not be awarded. The Examiner disagrees:

- In *Seattle School District*, Decision 7349-A (PECB, 2001), an assistant general counsel for the employer likewise effectively denied the union evidence relevant to defending an employee in a grievance arbitration.

- In *Seattle School District*, Decision 5733-B (PECB, 1998), a principal unilaterally changed the lunch hours at his school. The Examiner would normally agree with the employer that this refusal to bargain case was unrelated to case here. However, both involved principals that evidenced a "complete disregard for the obligations of the collective bargaining process." Given the employer's determination in both cases to fulfill much of its bargaining obligation by resting it on its 98 principals, the Examiner finds Decision 5722-B similar.

- In *Seattle School District*, Decision 5542-C (PECB, 1997), the Commission clearly appraised the employer of its obligation to provide information required by the union to assess the merits of a grievance when a represented employee was similarly sent home during an investigation. The Commission also specifically ordered the employer to cease and desist from "[r]efusing to provide relevant information which the International Union of Operating Engineers, Local 609, needs to

fulfill its collective bargaining duties and responsibilities." While that order was issued more than four years prior to the violations here, the record fails to show compliance with that order.

The Examiner concludes attorney fees are necessary here to make the order effective.

FINDINGS OF FACT

1. The Seattle School District (employer) is a public employer within the meaning of RCW 41.56.030(1).

2. International Union of Operating Engineers, Local 609 (union), a bargaining representative within the meaning of RCW 41.56.030(3), is the exclusive bargaining representative of an appropriate bargaining unit of custodians and gardeners employed by the Seattle School District. The employer also recognizes the union as exclusive bargaining representative of other bargaining units composed of food service workers and security personnel.

3. The employer and union negotiated a collective bargaining agreement covering the bargaining unit of custodial engineers and gardeners for the school years beginning in December 7, 2001, and ending August 31, 2004.

4. Pat Larson was custodial engineer at Lawton Elementary School from 1990 until April 2004.

5. In August of 2002, Sylvia Hayden became principal of Lawton Elementary School.

6. By September of 2002, Hayden began complaining about Larson's performance to Larson's supervisors, Custodial Supervisor Mike Stewart and Custodial Services Department Manager Mike DeMonbrun.

7. Prior to October 30, 2004, Mike DeMonbrun had met with Hayden and Stewart concerning Hayden's complaints. Mike DeMonbrun explained to Hayden that custodial engineers are transferred to another school only pursuant to the undisputed seniority-based bid system contained in the collective bargaining agreement between the employer and the union.

8. On October 28, 2002, Hayden asked Assistant Custodian Gary Jablinske if he knew what happened to some computers with missing parts she had seen in Room 113. Jablinske explained that he and Larson moved the computers to the custodial shop. He told her that he had seen Larson taking parts out of a computer.

9. On October 29, 2002, Jablinske dictated a witness statement that Hayden typed on her computer. After returning home, Hayden called her supervisor, Education Director Patricia Sander and reported a potential theft of computer parts. They sought advice from Security Manager Larry Farrar and Employee Relations Manager Gloria Morris.

10. Based on advice provided by Sanders and Morris, Hayden understood the employer's policy relating to administrative leave allowed her to remove Larson from the workplace without obtaining approval from the executive director of the employer's human relations department.

11. Upon arriving at work on October 30, 2002, Hayden found a note from Jablinske on her desk asking her to not use the statement he had provided her and expressing concern that Larson might retaliate against him.

12. At 1:00 P.M. on October 30, 2002, Security Manager Farrar met with Hayden. During the meeting, Farrar told Hayden that Larson had the right to have an attorney or union member present before answering any questions. During that meeting, Hayden decided to have Larson removed from the workplace if he asked for union representation prior to answering questions.

13. At 1:30 P.M. on October 30, 2002, Hayden paged Larson and he reported to her office. Hayden told Larson that she had some questions about missing computer parts. Before Hayden asked any questions, Farrar told Larson that Larson might want a union representative at the meeting before answering Hayden's questions. Larson then told Hayden and Farrar that he wanted a union representative. Hayden responded by telling Larson that Farrar would take his keys and escort him from the building. Hayden caused Larson's removal from the workplace with pay at 2:00 P.M. on October 30, 2002, until the meeting was to be reconvened at 11:00 A.M. on October 31, 2002.

14. The October 30, 2002, meeting was an investigatory interview at which Larson reasonably perceived that discipline might result.

15. Removal from the workplace with pay constitutes a depravation of an employee benefit, status, or right.

16. Hayden removed Larson from the workplace because he requested union representation.

17. After leaving the building, Larson contacted Shop Steward Mark DeMonbrun. Mark DeMonbrun called Larson's immediate supervisor, Mike Stewart, and also called Larson's second level supervisor, Mike DeMonbrun, seeking information about what had transpired at Lawton Elementary School. Mark DeMonbrun's calls were the first information to Larson's supervisors of what happened.

18. By the close of the workday of October 30, 2002, Shop Steward Mark DeMonbrun met with Employee Relations Manager Morris seeking information, and presented her with a written request for any and all witness statements and any and all supervisors' notes or records in connection with Hayden's theft allegation. Morris was surprised by the request, initially responding that she need not provide the requested information.

19. By 3:59 A.M. on October 31, Custodial Services Manager Mike DeMonbrun had interjected himself in place of Hayden into the scheduled 11:00 A.M. meeting with Shop Steward Mark DeMonbrun, Larson, and Morris.

20. At the 11:00 A.M. meeting, Morris asked Larson a series of prepared questions. After the meeting, Larson regained immediate access to the workplace.

21. After the meeting, Morris assigned Eddie Hill to investigate the allegation of theft of computer parts. Hill interviewed Hayden, Larson, Jablinske, a computer technician, and several teachers. Hill reported to Morris on November 9, 2002, that "there was no evidence to indicate that Mr. Larson had removed said computer equipment from school property or converted it

to his personal use." Morris informed Larson of his exoneration of Hayden's theft allegation on December 6, 2002.

22. On November 1, 2002, the employer's Assistant General Counsel John Cerqui advised the union that the employer would respond to its October 30, 2002, information request for all witness statements and supervisor notes.

23. On November 4, 2002, Shop Steward Mark DeMonbrun and Larson met with Hayden and Custodial Services Manager Mike DeMonbrun seeking information regarding Hayden's allegations and Larson's removal from the workplace.

24. On November 6, 2002, Labor Relations Analyst Misa Garmoe nee Shimitzu e-mailed the union information request for all witness statements to Hayden. Hayden never provided the Jablinske witness statement to Garmoe nee Shimitzu and Jablinske's witness statement was never provided to the union.

25. On November 7, 2002, Hayden began handwritten documentation of Larson's performance-related shortcomings. After November 7, 2002, Hayden continued complaining about Larson's performance, primarily in the areas of Larson's tardiness, lack of responsiveness and not meeting her expectations in regard to keeping her building clean. She directed her complaints to Larson's supervisors, her own supervisor, and Employee Relations Manager Morris. These complaints concerned a lack of responsiveness of Larson's supervisors to Hayden's complaints as well as complaints about Larson's performance.

26. Larson was sometimes late to work, sometimes nonresponsive to requests made by Hayden and other Lawton Elementary School

staff, and somewhat deficient in his cleaning of Lawton Elementary School.

27. Hayden's performance complaints are consistent with Larson's supervisor's performance evaluations.

28. On November 13, 2002, union Business Manager Westberg informed Labor Relations Director Rosmith "Hayden's actions constitute a blatant ULP which we still have time to initiate. Any needless delay in responding to this request . . . may not prove to be favorable to your interest when that time comes." The union has also filed prior unfair labor practice complaints against the employer.

29. On November 26, 2002, Hayden assigned Assistant Secretary Maria Perez four extra hours work that included washing walls and windows at Lawton Elementary School.

30. On November 27, 2002, the union requested a "complete and accurate record of the time sheet for the office assistant at Lawton Elementary, who performed the bargaining unit work."

31. On December 2, 2002, Hayden signed a an "Extra Time Reporting Form" authorizing payment to Perez for an additional four hours worked on November 26, 2002.

32. On December 6, 2002, Garmoe nee Shimitzu mailed the union Morris' notes from October 2002 telephone conversations with Hayden that referenced the fact Jablinske had given a statement about the computer issue.

33. On December 9, 2002, Garmoe nee Shimitzu e-mailed the verbatim union request for the time sheet to Hayden. Hayden responded

18 minutes later, "My office assistant did not perform bargaining unit work, so I do not have a time sheet that reflects that."

34. On December 9, 2002, the union requested a copy of the Jablinske statement.

35. Sometime between December 23, 2002, and January 5, 2003, Hayden removed the Jablinske witness statement from her file that also contained Jablinske's request that his statement not be used and other documents in the same file relating to custodians employed at Lawton Elementary School. She then destroyed the Jablinske statement.

36. Hayden intentionally destroyed the Jablinske witness statement so that it could not be provided to the union. That intentional destruction of the Jablinske witness statement was willful and egregious.

37. On January 6, 2003, Garmoe nee Shimitzu sent the union a letter regarding the requested time sheet, "According to Ms. Hayden, the office assistant did not fill out any time sheets regarding this situation. . . . According to Ms. Hayden, no such document exists."

38. On January 7, 2003, Garmoe nee Shimitzu e-mailed a request for information to Hayden: "Do you have a 'written statement' made by Mr. Gary Jablinske? Westberg has requested it. Please advise."

39. On January 8, 2003, Hayden responded to Garmoe nee Shimitzu's January 7, 2003, e-mail: "I have it [the Jablinske witness statement] but he told me not to release it. I have both

letters. The statement and the request for release that gives the reason why he doesn't want it released."

40. On January 10, 2003, union Business Manager Westberg met with Hayden seeking information regarding the Jablinske witness statement and the union-requested time sheet. Hayden informed him that she had the Jablinske witness statement but would provide it only if directed by employer General Counsel Mark Green.

41. Hayden subsequently stated she looked for the statement after the meeting but could not find it. She asserted that she had destroyed it when she had cleaned out some files to make room in her desk over the 2002 December holidays.

42. Hayden also informed Westberg on January 10, 2003, that she had filled out a time sheet for Perez. The time sheet authorized payment for the four extra hours worked by Perez on November 26, 2002.

43. On January 15, 2003, the union requested "A complete and accurate record of the time sheet for Ms. Maria Perez, office assistant at Lawton Elementary, for the period covering November and December 2002."

44. On January 16, 2003, the employer provided the time sheet.

45. The collective bargaining agreement requires that "In order to expedite resolution, the grievance shall be initiated within forty-five (45) [calendar] days time following the events or knowledge of the events or occurrences upon which it is based." The union-requested time sheet was not provided in a

timely manner, thereby not allowing the union to fully evaluate the a grievance before filing it.

46. The employer has engaged in a pattern of repetitive conduct showing a patent disregard of its statutory obligations.

47. The union did not prove Hayden had personal knowledge of the union's intent to file an unfair labor practice complaint or the filing of a complaint prior to taking any adverse action against Larson. Grievances were filed only after Larson was deprived of a benefit, status or right.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW and Chapter 391-45 WAC.

2. By the actions described in the foregoing Findings of Fact, the Seattle School District interfered with, restrained and coerced employees in the bargaining unit represented by International Union of Operating Engineers, Local 609, and committed unfair labor practices in violation of RCW 41.56.140(1).

3. By the actions described in the foregoing Findings of Fact, the Seattle School District discriminated against Pat Larson because he exercised rights protected by Chapter 41.56 RCW and committed unfair labor practices in violation of RCW 41.56.140(1).

4. By the actions described in the foregoing Findings of Fact, the Seattle School District refused to engage in collective bargaining with International Union of Operating Engineers,

Local 609, and committed unfair labor practices in violation of RCW 41.56.140(4).

5. By the actions described in the foregoing Findings of Fact, the Seattle School District acted in a manner warranting an award of attorney fees consistent with the Commission's remedial authority granted by RCW 41.56.160.

ORDER

The Seattle School District, its officers and agents, shall immediately:

1. CEASE and DESIST from:

   a. Interfering, restraining, or coercing public employees in the exercise of their rights under Chapter 41.56 RCW by:

      i. Discriminating against a public employee by removing that employee from the workplace because he requested union representation at an investigatory interview.

      ii. Refusing to bargain with the International Union of Operating Engineers, Local 609, by delaying or refusing to produce relevant requested information and by destroying relevant requested written witness statements.

      iii. In any other manner, interfering with, restraining, or coercing our employees in the exercise of their collective bargaining rights under 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. Reimburse International Union of Operating Engineers, Local 609, for all attorney fees and expenses,

b. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, and in all places where members of International Union of Operating Engineers, Local 609, bargaining units work, copies of the notice attached hereto and marked "Appendix." Such notices shall be duly signed by an authorized representative of the Seattle School District. Such notices shall remain posted for 60 days. Reasonable steps shall be taken by the respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

c. Read the notice attached to this order into the record of the next public meeting of the school board, and append a copy thereof to the minutes of such meeting.

d. Take steps to ensure that requests for relevant information are responded to in an appropriate and timely manner, including informing school principals and other supervisors of the obligation to comply with the good faith bargaining requirement of Chapter 41.56 RCW by timely providing relevant information requested by a collective bargaining representative.

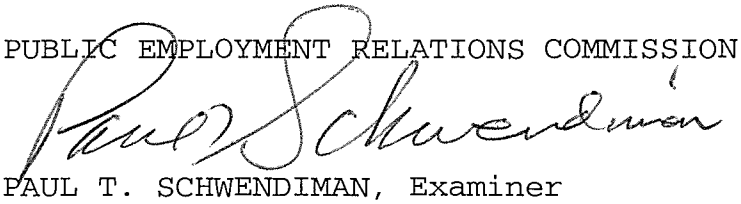
e. Notify the International Union of Operating Engineers, Local 609, in writing, within 20 days following the date

of this order, as to what steps have been taken to comply with this order, and at the same time provide the complainant with a signed copy of the notice attached to this order.

f. Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 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 attached to this order.

Issued at Olympia, Washington, on the 21st day of June, 2005.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



PAUL T. SCHWENDIMAN, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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 NOT discriminate against a public employee by removing that employee from the workplace because that employee requests union representation at an investigatory interview.

WE WILL NOT refuse to bargain with International Union of Operating Engineers, Local 609, by delaying or refusing to timely produce relevant requested information or by destroying relevant requested written witness statements.

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.

WE WILL take steps to ensure that requests for relevant information are responded to in an appropriate and timely manner, including informing school principals and other supervisors of the obligation to comply with the good faith bargaining requirement of Chapter 41.56 RCW by timely providing relevant information requested by a collective bargaining representative.

WE WILL reimburse International Union of Operating Engineers, Local 609, for all attorney fees and expenses.

WE WILL post, in conspicuous places on the employer's premises where notices to all employees are usually posted, and in all places where members of International Union of Operating Engineers, Local 609, bargaining units work, copies of this notice.

WE WILL read the Notice into the record of the next public meeting of our school board, and append copy thereof to the minutes of such meeting.

SEATTLE SCHOOL DISTRICT

DATED: _____ 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, 112 Henry Street NE, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. (A copy of the order, Seattle School District, Decision 8976 (PECB, 2005), is available at www.perc.wa.gov)