Clover Park School District, Decision 9801 (EDUC, 2007)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON EDUCATION ASSOCIATION, Complainant,	)	CASE 20256-U-06-5166
vs.	)	DECISION 9801 - EDUC
CLOVER PARK SCHOOL DISTRICT, Respondent.	)	FINDINGS OF FACTS, CONCLUSIONS OF LAW AND AND ORDER

Eric R. Hanson, Staff Attorney, for the union.

Vandeberg, Johnson & Gandara, LLP, by *William A. Coats*, for the employer.

On March 9, 2006, the Clover Park Education Association, a division of the Washington Education Association (union), filed charges of unfair labor practices against the Clover Park School District (employer). The union represents the employer's teachers and guidance counselors. The union charged that during the 2005-2006 academic school year, the employer interfered with employees' collective bargaining rights and discriminated against Rebecca Wahl and other counselors at Lakes High School in reprisal for union activities. The charge was found to state a cause of action on May 2, 2006. On July 3, 2006, the union filed an amended complaint adding charges that the employer interfered with the guidance counselors' rights through its later questioning of the counselors regarding the original unfair labor practice complaint. The amended complaint also charged that the employer interfered with the rights of and discriminating against Louise Jones, a teacher. The additional charges were found to state a cause of action on August 14, 2006. A hearing before the undersigned Examiner was held on October 17 and 18, 2006. The parties filed post-hearing briefs to complete the record.

ISSUES

1. Did Lakes High School co-principal Georgia Dewhurst interfere with high school teacher Jones' collective bargaining rights when she confronted Jones for supporting the union's effort to in challenging a new performance evaluation tool called a teacher's portfolio? Did Dewhurst subsequently discriminate against Jones by giving her a negative performance evaluation?

2. Did high school administrators interfere with employees' bargaining rights when the administrators attempted to stop counselors from raising concerns with their union unless they first raised the concerns directly with the administrators?

3. Did Dewhurst interfere with the rights of, or discriminate against, counselor Wahl by questioning her use of leave?

4. Did school administrators interfere with bargaining rights when they interviewed counselors regarding an unfair labor practice complaint?

Dewhurst's confrontation of Jones regarding the portfolio interfered with collective bargaining rights, but the outcome of the evaluation was not discrimination because Jones failed to follow an attached instruction to resubmit her portfolio to an impartial evaluator.

The administrators' attempt to force the counselors to communicate concerns directly to them prior to taking concerns to the union was interference.

The specific questioning of Wahl's use of leave was not discrimination because she was not denied an ascertainable right. It was not

interference because it was not connected to a collective bargaining issue.

The interviewing of counselors about the unfair labor practice complaint was interference because it was done in a coercive manner. The employer asked the counselors to provide legal conclusions about whether unfair labor practices had occurred and the interviews were conducted in a manner that was likely to generate fear of discrimination for supporting the unfair labor practice complaint.

RELEVANT LAW FOR INTERFERENCE

RCW 41.59.140 provides that an employer has committed an unfair labor practice if it interferes with, restrains, coerces, or discriminates against public employees in the exercise of their collective bargaining rights. The test for interference is whether a typical employee could, in the same circumstances, reasonably perceive the employer's action as discouraging his or her union activities. *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004). A complainant is not required to show intent or motive for interference, that the employee was actually coerced, or that the respondent had a union animus. *King County*, Decision 8630-A (PECB, 2005).

In *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004) the Commission outlined seven questions to ask when determining whether an employer's statements could constitute interference with protected employee rights:

1. Is the communication, in tone, coercive as a whole?

2. Are the employer's comments substantially factual or materially misleading?

3. Has the employer offered new "benefits" to employees outside of the bargaining process?

4. Are there direct dealings or attempts to bargain with the employees?

5. Does the communication disparage, discredit, ridicule, or undermine the union? Are the statements argumentative?

6. Did the union object to such communication during prior negotiations?

7. Does the communication appear to have placed the employer in a position from which it cannot retreat?

ISSUE 1 - INTERFERENCE REGARDING THE TEACHER'S EVALUATION PORTFOLIO

This issue involves an particular incident that occurred at the end of the 2005-2006 school year, at Lakes High School, between co-principal Georgia Dewhurst and teacher Louise Jones regarding teacher portfolios. Teacher portfolios were a new way to evaluate teachers. Teachers would gather evidence of their teaching methods in portfolios which administrators would then use when doing the teachers' performance evaluations. The union and the district's human resources department had agreed that portfolios were not required and that teachers could provide evidence of their work in other ways. At Lakes High School, Dewhurst believed that the teachers supported portfolios. According to her testimony she became very disappointed when the union encouraged teachers to object to the portfolios and not to turn them in to their supervisors. The union's position was that Lakes High School was requiring portfolios which the employer did not have the right to do. Union president, Michelle Jenner testified that the union was preparing to challenge any negative evaluation caused by failing to turn in a portfolio.

Dewhurst testified that she felt that the portfolios were an important way for the school to meet its goals, and that teachers were required to provide evidence of their work and that individual portfolio were the preferred way to satisfy this requirement. She testified that:

> several of the new teachers came to me and said I don't know what to do, I had my portfolio done but I'm getting so much pressure with the teachers on my hall saying you better not turn that in. So I had these very young educators totally conflicted. They want to please the boss, somebody is telling them that I want to look at their work. . . . I really felt just like, you know, 10 years and there is no accountability.

Initially, Jones did not turn in a portfolio. Jones testified that she did not do so because she wanted to support the union's efforts. Dewhurst saw that Jones had not turned in her portfolio and began to write a negative evaluation for Jones. The evaluation was negative in saying that Jones had not provided proof of her work. Meanwhile, Jones learned that some of the other teachers in her department had turned in portfolios. Jones testified that learning of the other teachers' decisions made her reconsider her choice.

As of May 15, 2006, Dewhurst had not yet given Jones her negative evaluation. That morning, Dewhurst confronted Jones in a hallway of the high school. Dewhurst testified that she was upset that the portfolios were not being turned in and that she could not imagine that teacher she was close to, like Jones, would not turn in the portfolio. At one point, Dewhurst testified that she was upset by the portfolio situation in general. But when asked at the hearing if she was upset with the fact that Jones was following what the union told her to do, Dewhurst said that she felt personally betrayed. Dewhurst testified that during the confrontation she told Jones that she felt betrayed. She also testified that she had

told Jones that "People need to do what the principal says, or at least think about it rather than just doing what they're told to do blindly." Dewhurst admitted that this statement was referring to the advice of the union.

Dewhurst also testified that during the confrontation, she reminded Jones of the consequences of not turning in the portfolio. Dewhurst had been giving teachers who did not provide portfolios, or other forms of evidence, a negative evaluation, stating that there was "no proof" of their accomplishments. The union later challenge these evaluations through the grievance procedures. The grievance concerning portfolios and the evaluation process was not completed at the time of the hearing and the outcome of the challenge is not part of this record.

At hearing, Dewhurst appeared to be a passionate, expressive person with a strong commitment to educating students. She seemed to be a forceful advocate, and someone who would not shy away from expressing displeasure or disappointment. She also seemed to be someone who passionately believed that teachers should turn in their portfolios. From both Jones and Dewhurst's accounts of this confrontation, the Examiner concludes that Dewhurst accused Jones of placing collective bargaining interest over the interest of her student and the comments to Jones were argumentative and were intended to disparage and undermine the union. Therefore, these comments were interference.

RELEVANT LAW ON DISCRIMINATION

The second issue is whether Jones' negative evaluation was discrimination in reprisal for the exercise of her rights protected by state collective bargaining law and thus a violation of RCW 41.59.140(1).

The standard for discrimination was established by the Supreme Court of the State of Washington in *Wilmot v. Kaiser Aluminum*, 118 Wn.2d 46 (1991) and *Allison v. Seattle Housing Authority*, 118 Wn.2d 79 (1991) and then by the Commission in *Educational Service District 114*, Decision 4361-A (PECB, 1994). As recently stated in the Commission's *City of Yakima*, Decision 9451-B (PECB, 2007), the following must be shown:

> 1. An employee exercises a right protected by the collective bargaining statute, or communicates to the employer an intent to do so;
> 2. The employee is discriminatorily deprived of some ascertainable right, benefit, or status; and
> 3. There is a causal connection between the exercise of the legal right and the discriminatory action.
>
> Where a complainant establishes a prima facie case of discrimination, the employer need only articulate non-discriminatory reasons for its actions. It does not have the burden of proof to establish those matters. *Port of Tacoma*, Decision 4626-A (PECB, 1995). The burden remains on the complainant to prove, by a preponderance of the evidence, that the disputed action was in retaliation for the employee's exercise of statutory rights That may be done by showing that the reasons given by the employer were pretextual, or by showing that union animus was nevertheless a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

ISSUE 2 - DISCRIMINATION REGARDING JONES' EVALUATION

Jones turned in her portfolio in the week after the May 15 confrontation. Instead of reconsidering the evaluation with the portfolio, on May 21, Dewhurst gave Jones the evaluation as had been drafted before the confrontation that said Jones had provided "no proof" of her work. Dewhurst's account of the events differs from Jones' account. According to Dewhurst, she put a separate note with the evaluation saying that she was unable to fairly evaluate Jones and that Jones should resubmit it to another

administrator. Jones' account did not include the instruction to resubmit. In judging the conflicting testimony, the Examiner determines that both women appeared to testify to what they believed was the truth. Dewhurst's communication to Jones to resubmit the evaluation was not effectively communicated, but the Examiner determines Dewhurst is credible in that she attempted to communicate this message with a note. Dewhurst testified that this confrontation was upsetting and ended a warm professional relationship. Jones' agitated demeanor at hearing demonstrated that she also found the matter to be upsetting. After the confrontation, Jones determined that she was did not want a follow-up conversation. Dewhurst retired at the end of that school year. Because Jones did not resubmit her evaluation, she was not deprived of an ascertainable right, benefit or status. Discrimination did not occur.

ISSUE 3 - INTERFERENCE REGARDING CONTACTING THE UNION

The other issues in these proceedings involve the counselors at Lakes High School. The counselors and high school administrators had a series of disputes throughout the 2005-2006 school year. The first counselor issue is whether the employer interfered with collective bargaining rights during these disputes by trying to force the counselors to bring concerns directly to them before contacting their union.

At the beginning of the 2005-2006 school year, just after classes has begun, Dewhurst and other administrators met with the counselors to fix the school's class schedule which was in disarray. Dewhurst started the meeting by saying that she did not know which counselors had gone to the union regarding a concern unrelated to the schedule, but that union issues would have to wait until after the schedule was completed. Rebecca Wahl and Bobbi Richardson, the

counselors who had taken the concern to the union, remembered that meeting differently from Dewhurst. Their account was that Dewhurst had demanded to know who had contacted the union. Sandra Hughes, another counselor at the meeting, did not recall such a strong emphasis on identifying those who had complained and so Wahl and Richardson's account is not entirely credible.[1] In light of Dewhurst's testimony about her strong interest in promoting direct communication between the counselors and administrators, the Examiner finds that Dewhurst made the comment to promote more direct communication.

Dewhurst testified that she had a strong interest in promoting direct communication with the counselors. That school year, she was having difficulty with the union's new leadership. With the previous union president, Dewhurst had been able to work out problems more easily, sometimes with informal phone calls. With the union's new president, Dewhurst would hear from the school district's main office that the union had raised concerns regarding something at her school. In Dewhurst's view, learning about union's the concerns through the district office made problem solving more difficult than if employees at the school had brought their concerns directly to her and allowed her to address them informally. In light of her description about the change in her relationship with the union, the Examiner concludes that Dewhurst viewed the union as an obstacle. Throughout her testimony,

---

[1] Another situation where Richardson overstated the employer's comments is her testimony about a February counselors meeting where Shavonne Lee and counselors discussed portfolios. The employer wanted not only teachers but also counselors to also compile a portfolio of their work which would be considered in their performance evaluation. Richardson's account is that Lee told the counselors not to take concerns to the union. This is not credible because it was not supported by the testimony of Angela Swain, the counselor who was most vocal in opposing the portfolios.

Dewhurst's communication style was very direct. It was unlikely that she would mask her frustration with the union, especially if she thought she could use it to persuade the counselors to speak directly with her instead of through an intermediary.

According to her testimony, Dewhurst also was trying to apply lessons learned from a communications consultant. A few years earlier, the guidance department had some interpersonal conflicts, and the school had hired the consultant to provide training on interpersonal communications. The consultant's advice included avoiding "triangulation" which is when people do not speak directly to each other about a problem, but instead talk with third parties which leads to further mis-communications.

In the autumn of 2005, some time after the meeting about the school's class schedule, some of the counselors, administrators and the new union president had a meeting about Richardson and Wahl's relationship with their new supervisor, Shavonne Lee. In the summer, before classes had begun, Wahl and Richardson had a conflict with Lee when discussing an incident from the previous school year. At the meeting about the conflict, Wahl, Richardson, and Lee agreed to work on improving their communication. At this meeting, improving communication and avoiding triangulation was a goal shared by the union. The union's agreement from that particular meeting, however, does not mean that Dewhurst and the administrators had the union's support in requiring the employees to talk to administrators before talking to the union. While avoiding triangulation was a reasonable concern, an employer cannot prevent employees from first contacting their union.

There were other meetings that year in which Dewhurst made comments to or about Wahl in regard to direct communication. In one, Dewhurst, the other co-principal Brian Lambauch, and Wahl met

regarding an issue that the union raised on Wahl's behalf regarding compensation for extra work done the prior school year. The union had sent an e-mail to Dewhurst about the issue. At the end of the meeting, Dewhurst asked Wahl if she would be getting more e-mails from the union. Dewhurst said that she was clarifying whether the matter was resolved. Wahl's interpretation was that Dewhurst was trying to discourage further interventions by the union. The Examiner observed from her testimony that Dewhurst's frustration was apparent but that she was also trying to make sure that the issue was resolved.

The issue of direct communication was raised again when Dewhurst attended a weekly counselor's meeting in November 2005. Prior to the meeting, Wahl had complained to the union about a new tool known as "student success contract" that Dewhurst and other administrators wanted to use to motivate students. Counselors and students were supposed to sign this document regarding behavioral and academic expectations. Wahl told the union that she was concerned about the counselors signing legal contracts. When Dewhurst attended the counselors' meeting, she asked who had gone to the union about the student contracts. No one identified themselves. For medical reasons, Wahl left the meeting early and according to Richardson, after Wahl left, Dewhurst made a comment about Wahl going to the union. According to Richardson, Dewhurst abbreviated the conversation about the contracts saying that she knew that Wahl had gone to the union about the issue and since she was gone further conversation was not needed. In the context of Dewhurst's strong feelings about triangulation and the union, Richardson's account is credible even though she did not remember Dewhurst's exact words. In light of the history of Dewhurst's frustration that the counselors had gone to the union without first talking with her, the Examiner find that a comment was made to negatively single out Wahl in order to prevent counselors from taking other issues to the union before talking to administrators.

The Examiner determines that by making a comment about Wahl, Dewhurst demonstrated anger against Wahl in an effort to discourage the employees from going to the union before talking about concerns with her. This determination is bolstered by the testimony of Shavonne Lee, the counselors' supervisor. Lee testified that at the meeting there was a discussion about the administrators wanting the counselors to have discussions with the employer first to try to resolve the issue "and if the issue couldn't be resolved . . . if they wanted to go to the union there was no issue with that." Taking concerns to the union is a right of organized employees, and once the employees made it clear that they wanted to exercise this right, the employer cannot continue to make an issue of it to force employees not to exercise their right. To do so, interferes with the collective bargaining right of the employees.

ISSUE 4 - INTERFERENCE AND DISCRIMINATION INVOLVING A COUNSELOR'S USE OF LEAVE

At the end of October 2005, Wahl was in a car accident. Although injured, she did not immediately take leave to recuperate because of her work responsibilities. Weeks later, near Thanksgiving, she requested unpaid leave to recuperate from the accident. Dewhurst questioned both the appropriateness of using unpaid leave since Wahl had sick leave available and the timing of the leave. Dewhurst asked these questions pursuant to the employer's policy that unpaid leave could not be granted unless the employee has first exhausted their sick leave. Upon the intervention of the union, Wahl was granted an exception to this policy. As discussed earlier, one of the requirement for a discrimination claim is that an employee must have been deprived of some ascertainable right, benefit, or status. *City of Yakima*, Decision 9451-B (PECB, 2007). Since Wahl was not deprived of leave, discrimination in this situation did not occur. Comments made by Dewhurst to Wahl in

questioning the leave are not interference since they were reasonable given the delay in taking the leave and the fact that leave extended a holiday break, a practice that the employer discouraged. Dewhurst also asked Wahl whether she was a good fit for the stresses of working in a high school. This comment is also reasonable in the context of the discussion about Wahl's inability to take the leave closer to the accident because of her work responsibilities. In this context, the typical employee could not reasonably perceive the Dewhurst's comments as discouraging union activities and so it is not interference.

ISSUE 5 - INFERENCE BY THE INTERVIEWING THE COUNSELORS REGARDING THE FILING OF AN UNFAIR LABOR PRACTICE COMPLAINT

Relevant Law on Interrogations

The last issue involves the employer's interviews of counselors Sandra Hughes, Bob Saxon, and Bobby Richardson. The interviews were part of the employer's preparation for the hearing in this unfair labor practice proceeding. While an employer has a right to interrogate bargaining unit members regarding employee activities, this right is limited in order to protect employees from interrogations that interfere with employees bargaining rights. In *PERC v. City of Vancouver*, 107 Wn.2d 694 (1999), a police department interrogated employees regarding a union meeting where union members allegedly discussed retaliating against a fellow officer who had cooperated with an internal investigation of sergeants. In that case, the Court of Appeals determined that the following criteria, similar to those used by a number of federal circuits, should be considered in evaluating interrogations:

> (1) the history of the employer's attitude toward its employees;
>
> (2) the type of information sought;
>
> (3) the company rank of the questioner;

(4) the place and manner of the conversation;

(5) the truthfulness of the employees' response;

(6) whether the employer had a valid reason for obtaining the information;

(7) if so, whether the employer communicated it to the employee: and

(8) whether the employer assured the employee that no reprisal would be forthcoming should he or she support the union.

Application of Law

During a weekly counselors' meeting, after the original unfair labor practice complaint in this case was filed, Hughes, Saxon, and Richardson were individually taken from the meeting to be interviewed by the employer's Risk Management Director Mike Brown, and the employer's Human Resource Director Don Warring. The counselors were asked if they knew of any interference or discrimination by the employer, if they knew of any time where an administrator had said that bargaining unit members could not talk with the union and if they believed that anyone had been discriminated against. These questions were first asked orally, and then the counselors were each instructed to write their answers on a questionnaire. Richardson supplemented her written responses after the meeting because she did not feel like she was able to answer the questions completely during her interview.

In applying the factors laid out in *City of Vancouver*, the first consideration is the history of the employer's attitude toward the employees. As discussed above, the relationship between Dewhurst and the union had become strained in the 2005-2006 school year, and the Examiner concludes that Dewhurst viewed the union as a obstacle to the goals of the high school. But Dewhurst and the other Lakes High School administrator did not take part in the interviews of Hughes, Saxon, and Richardson. There was not enough evidence about the employers overall, district wide attitude toward the union to

determine that whether there was a negative history between the union and district administrators.

The second factor is the type of information sought. The questions, as written on the questionnaire that each counselor was told to complete, were:

> 1. Do you know of any time when your building administrator(s) committed and "unfair labor practice" by interfering with your (or any other certified staff) right to contact communicate or work with representatives of the Clover Park Education Association or the Soundview Uniserv Council?
>
> 2. Do you know of any time when your building administrator(s) committed an "unfair labor practice" by discriminating against you (or any other certified staff) in retaliation for exercising your right to contact, communicate or work with representatives of the Clover Park Education Association or the Soundview Uniserv Council?
>
> 3. Do you know of any time when your building administrator(s) told you (or any other certified staff) that you could not contact, communicate or work with representatives or the Clover Park Education Association or the Soundview Uniserv Council?
>
> 4. Do you believe that you or any other School Counselor in Lakes High School has been discriminated against because you or another School Counselor has exercised your right to contact, communicate or work with representative of the Clover Park Educational Association or the Soundview Uniserv Council?
>
> 5. Do you have any other comments you want to add to this statement concerning an investigation of Unfair Labor Practices and Discrimination in Retaliation for Union Activities?

By asking the counselors if they knew of times that the employer committed an unfair labor practice the questions did not just focus on the facts but also it probes the counselors for their legal opinion. The employer has some discretion to investigate the case but should not attempt to force employees make legal conclusions

about whether they believe that the their union's allegations have merit. Because these questions probe into the employee's beliefs rather that just attempt to gather facts, the questions discourage the employee's support of the union and demonstrate interference.

The third and fourth factors are the company rank of the questioner and the place and manner of the conversation. Warring and Brown were administrators from the district's central office and were are not in the bargaining unit. Therefore, the rank of these interviewers makes the interview more unlawful in general. The place and manner of the conversations also raise concerns. The employees were gathered together for counselors' meeting, and then individually removed for questioning in a separate room. They were given a questionnaire to write and they initialed each of their answers. Such formality makes the interviews more intimidating and therefore demonstrates interferences.

The fifth factor is the truthfulness of the interviewee's response. If a person is able to answer freely and truthfully, the interview is less likely to be inference. Two of the three interviewed employees, Hughes and Richardson, testified at the hearing in this matter. In her written responses Hughes indicated that she did not know of any interference and discrimination by her employer. Her testimony at the hearing matched her written responses. However, she was also less involved in bringing issues to the attention of the union, and she said that she was less disturbed by the comments made by the employer to discourage the counselors who had raised issues.

Richardson's involvement and perspective of the dispute was different from that of Hughes. Richardson was one of the counselors who supported the unfair labor practice. She testified that she felt uncomfortable with the interview and about how she

exhibited this discomfort at the interview. In particular, she testified that she told Warring that he was questioning her integrity. When she supplemented her answers the next day, she said she did so because she felt that she was not able give a full account during the interview. Her need to supplement her answer about whether she feared retaliation showed her discomfort with the interview. Of the three interviews, Richardson's interview showed the most support of the union's charge of unfair labor practices. At the interview, she answered that she knew of a situation where the employer had committed an interference unfair labor practices but she was unable to answer the question about discrimination unfair labor practice. Her written reply stated "I'm not sure how to answer this question because of an on-going issue I'm dealing with right now." Her inability to answer questions fully and truthfully leads the Examiner to believe that the interviews were coercive.

The last three factors to be considered are whether the employer had a valid reason for gathering the information and whether this reason was communicated to the employees and whether the employer assured the employees that reprisal would not be forthcoming should the employee support the union. In this case, the employer did have a valid reason. In the interest of resolving disputes, employers should attempt to determine whether allegations made against them are supported by the evidence. However, the record does not show that the employer communicated this reason to the employees and assured them that their questioning was not to interfere or discriminate against them. Such assurances are always required under those jurisdictions which follow the rational applied in National Labor Board's decision in *Johnnie's Poultry Co.*, 146 NRLB 770 (1964). The Court of Appeals cited this decision in the *City of Vancouver*, 107 Wn.2d 694 (1999), where a limiting statement was read which gave assurance to the interviewee that the

interview had a limited purpose. In the interview of Richardson, such assurances would have been especially useful because the interviewers should have known by her responses that she thought that employer had committed unfair labor practices. When the interviewers learned that Richardson agreed with the union's unfair labor practice allegations, the interviewers should have known that Richardson could reasonablely fear that her support of these allegation could put her at risk of intimidation and discrimination and so the interviewers should have taken measures to assure her that her own rights would not be violated.

In conclusion, the interviews constituted interference with the employee's collective bargaining rights. Although the negative history between the employer and union may have been limited to the high school, the interviewers being from the district office, the formality of the interview, the questioning of the counselors' support of the unfair labor practices, and Richardson's difficulty in answering the questions truthfully provide sufficient evidence of interference. Additionally, Richardson was a known supporter of the allegations in the unfair labor practice complaint, and so she also should have been given assurances that she would not be punished for supporting the unfair labor practice complaint. For these reasons, the employer committed an unfair labor practice with the interviews.

FINDINGS OF FACT

1. Clover Park School District is a "public employer" within the meaning of RCW 41.59.020(5). The employer operates Lakes High School and staffs it, in part, with teachers and guidance counselors.

2. The Clover Park Educational Association, a division of the Washington Educational Association, is a "bargaining representative" within the meaning of RCW 41.59.020(1) and is the exclusive bargaining representative of teachers and guidance counselors, including those employed at Lakes High School.

3. At the end of the 2005-2006 academic school year, a teacher at Lakes High School, Louise Jones, did not include a teacher's portfolio in the documents she submitted for her performance evaluation. By not submitting the portfolio, she communicated her intent to join the union's effort to challenge the employer's ability to require the portfolio as part of the evaluation of teachers.

4. After seeing that Jones did not submit a portfolio, co-principal Georgia Dewhurst drafted a negative evaluation of Jones, saying that she did not provide proof of her work. Before giving the evaluation to Jones, Dewhurst publicly confronted Jones on March 15, 2006, and accused her of placing collective bargaining interests over the interests of her students in an effort to stop Jones from participating in the union's challenge of the portfolios.

5. Within days of the confrontation, Jones turned in her portfolio. Instead of redrafting the evaluation, on May 21, 2006, Dewhurst returned the negative evaluation to Jones with instructions to resubmit it to a different administrator for a new evaluation. Jones did not resubmit her evaluation.

6. During the 2005-2006 academic school year, there was a series of disagreement between some counselors and administrators at Lakes High School. In reaction to these disagreements, some counselors, including Barbara Wahl, contacted the union.

7. Without first discussing the matter with Dewhurst or the other administrators, Wahl took her concern to the union regarding the requirement that counselors sign a potential legal contract with students. In a counselors' meeting regarding these contracts, Dewhurst asked to the person who had gone to the union to publicly identify themselves. Wahl did not admit that she had gone to the union. When Wahl left the meeting early for medical reasons, Dewhurst abbreviated the conversation about the contracts saying that because Wahl had gone to the union about the issue and since she had left the meeting, further conversation was not needed.

8. In late October of 2005, Wahl suffered injuries in a car accident and in late November applied for unpaid leave to recover.

9. Dewhurst questioned the appropriateness of the leave, however, the leave was ultimately granted. The conversation about her leave was not connected to union activity.

10. The initial filing of this complaint described allegations that the employer had interfered with the rights of the counselors and discriminated against them in reprisal for protected activities.

11. In reaction to the initial complaint in these proceedings, administrators from the school district's main office formally questioned counselors regarding their beliefs on whether the employer had committed unfair labor practices. One of the counselors, Richardson, identified herself as a supporter of the union's allegations. She had difficultly in being able to speak freely at the interview and the interview was not conducting in a manner that sufficiently assured her that she would not be discriminated against for supporting the unfair labor practice complaint.

CONCLUSION OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.59 RCW and Chapter 391-45 WAC.

2. The confrontation of Louise Jones by co-principal Georgia Dewhurst was intended to stop her from supporting the union's plan to grieve the use of a new evaluation tool, and therefore was an unfair labor practice in violation of RCW 41.59.140(1)(a).

3. The employer did not commit an unfair labor practice of in violation of RCW 41.59.140(1)(c) when Jones's performance evaluation stated that she had not provided proof of her work.

4. By attempting to prevent the counselors from contacting their union with employment-related concerns before giving administrators notice, the employer committed an unfair labor practice in violation of RCW 41.59.140(1)(a).

5. By questioning Rebecca Wahl's use of medical leave the employer did not commit an unfair labor practice in violation of RCW 41.59.140(1)(a) and (c).

6. By coercively interviewing counselors regarding their support of the initial unfair labor practice in this case, the employer committed an unfair labor practice in violation of RCW 41.59.140(1)(a).

ORDER

CLOVER PARK SCHOOL DISTRICT, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Making statements to employees which interfere with their collective bargaining rights such as such as accusing teachers of blindly following what their union says rather than listing to their principal and negatively singling out an employee for taking a concern to the union before talking about the concern with administrators.

   b. Interrogating employees regarding their support of union activity in a manner that is likely to generate fear or apprehension of retaliation.

   c. In any other manner interfering with, restraining or coercing its employees in the exercise of their collective bargaining rights under by the laws of the state of Washington.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.59 RCW:

   a. Post copies of the notice attached to this order in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent, and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

   b. Read the notice attached to this order into the record at a regular public meeting of the Board of Directors of the

CLOVER PARK SCHOOL DISTRICT, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

c. Notify the complainant, 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.

d. Notify the Compliance Officer 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 Compliance Officer with a signed copy of the notice attached to this order.

ISSUED at Olympia, Washington, this 11th day of July, 2007.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

EMILY H. MARTIN, 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 WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING IN WHICH ALL PARTIES HAD THE OPPORTUNITY TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION RULED THAT WE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY made comments to an employee in an attempt to prevent the employee from supporting the union's plan to grieve evaluation portfolios which the union considered to be a violation of the collective bargaining agreement.

WE UNLAWFULLY made a comment to employees in an attempt to stop employees from to contacting the union with concerns before notifying the employer of their concerns.

WE UNLAWFULLY interrogated employees about whether they believed the employer committed unfair labor practices, in a manner which was likely to generate more fear of retaliation.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

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

DATED: _____ CLOVER PARK 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, and must not be altered or covered by any other material. Questions about this notice or compliance with the Commission's order may be directed to the Public Employment Relations Commission (PERC), 112 Henry Street NE, Suite 300, PO Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 570-7300. The full decision will be published on PERC's web site, www.perc.wa.gov.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

112 HENRY STREET NE
P. O. BOX 40919
OLYMPIA, WASHINGTON 98504-0919

RECORD OF SERVICE - ISSUED 07/11/2007

The attached document identified as: DECISION 9801 - EDUC has been served by the Public Employment Relations Commission by deposit in the United States mail, on the date issued indicated above, postage prepaid, addressed to the parties and their representatives listed in the docket records of the Commission as indicated below:

PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY/S/ ROBBIE DUFFIELD

CASE NUMBER:	20256-U-06-05166	FILED:	03/09/2006	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	TEACHERS				
DETAILS:	-				
COMMENTS:					

EMPLOYER: CLOVER PARK S D
ATTN: DORIS MCEWEN HARRIS
10903 GRAVELLY LK DR SW
LAKEWOOD, WA 98499-1341
Ph1: 253-583-5190 Ph2: 253-583-5000

REP BY: WILLIAM A COATS
VANDEBERG JOHNSON GANDARA
1201 PACIFIC AVE STE 1900
PO BOX 1315
TACOMA, WA 98401
Ph1: 253-383-3791

PARTY 2: WASHINGTON EDUCATION ASSN
ATTN: JERRY PAINTER
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7020 Ph2: 253-946-7232

REP BY: MICHELLE JENNER
CLOVER PARK EDUCATION ASSN
10901 BRIDGEPORT WAY SW
LAKEWOOD, WA 98499-3511
Ph1: 253-582-1822

REP BY: ERIC R HANSEN
WASHINGTON EDUCATION ASSN
33434 8TH AVE S
PO BOX 9100
FEDERAL WAY, WA 98063-9100
Ph1: 253-765-7024 Ph2: 800-622-3393