STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF PULLMAN, an affiliate of PUBLIC SCHOOL EMPLOYEES OF WASHINGTON,	)	CASE NOS. 6290-U-86-1215 6407-U-86-1254
Complainant,	)	DECISION 2632 - PECB
vs.	)	
PULLMAN SCHOOL DISTRICT NO. 267,	)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
Respondent.	)	

Eric T. Nordlof, attorney at law, appeared on behalf of the complainant.

Richard R. Loucks, attorney at law, appeared on behalf of respondent.

On March 17, 1986, Public School Employees of Pullman (PSE) filed a complaint charging unfair labor practices with the Public Employment Relations Commission (Case No. 6290-U-86-1215), alleging that the Pullman School District violated RCW 41.56-.140(1) by interfering with an employee's right to file a grievance and by terminating an employee for processing a grievance.

On May 23, 1986, the union filed a second complaint charging unfair labor practices against the school district (Case No. 6407-U-86-1254), alleging that the respondent violated RCW 41.56.140(4) by failing to disclose information necessary for the

administration of the parties' collective bargaining agreement and for the processing of the unfair labor practice complaint. The two cases were consolidated for purposes of a hearing conducted in Pullman, Washington, on September 10, 1986, before William A. Lang, Examiner. Post-hearing briefs were filed on November 14, 1986.

PART I - INTERFERENCE AND DISCRIMINATION ALLEGATIONS

FACTS

Craig Fisher was hired as a custodian by the Pullman School District in October, 1984, and was assigned to the evening shift at the Lincoln Middle School. On April 15, 1985, and again on September 11, 1985, Custodial Services Supervisor Sonny Hendrix formally evaluated Fisher, recommending him for retention and salary advancement. The September evaluation rated Fisher's performance between "satisfactory" and "outstanding" in most categories, and also contained the supervisor's comment that Fisher "is extremely thorough and in my opinion professional".

In early February, 1986, Fisher and another custodian, Jim Brown, bid for a vacancy in a day shift custodial position at the high school. Brown, who was the more senior, was transferred to the position. After a few days, Brown felt the duties of the day shift position were too demanding for his health, and he returned to his former position. Fisher visited the school and discussed the job with Brown, who told Fisher it was a tough job.

On February 20th, Hendrix asked Fisher if he was still interested in the day shift position. Fisher said, "Definitely". Fisher met with Hendrix and the high school principal, who was considered to be the actual "boss". They emphasized to Fisher that the position was a tough job, "painting the worst possible picture".

Fisher assumed the duties of the day shift custodial position at the high school on February 24, 1986. After several days in the position, Fisher asked Hendrix if he could return to his former job at Lincoln Middle School. Hendrix asked Fisher to give the day shift job a couple more days' try, "to give himself a fair shot at it and to give us a fair shot at it". The next day, Fisher again asked to return to his former job. Hendrix told him that the district had filled the position at Lincoln Middle School.

On or about February 27, 1986, arrangements were made to move Fisher to the evening shift at the high school. After discussing the situation with a union representative, Fisher changed his mind and decided he would remain on the day shift.

On March 6, 1986, Fisher filed a grievance challenging Hendrix's refusal to transfer him back to his former position.

On Wednesday, March 12, 1986, Fisher was directed to meet with Hendrix and Superintendent of Schools Clayton Dunn. Francisco Ortiz, another custodian, was present at that meeting in his capacity as local chapter president of the union. There is a conflict in testimony as to what transpired: Fisher claims the superintendent told him that if he pursued the grievance he would be terminated. The superintendent admits that he told Fisher he would be terminated, but that the statement was made in the context of substandard job performance rather than because Fisher filed a grievance. Ortiz confirmed the threat. Jim Lyle, a past-president of the union and then a member of its grievance committee, recalled Fisher and Ortiz telling the committee of the threat shortly after the meeting. Lyle testified that he later telephoned Hendrix, who confirmed that the superintendent had made the threat. Hendrix corroborated the superintendent's version and testified he does not remember a call from Lyle.

On Tuesday, March 18th, the high school principal handed Fisher a written reprimand specifying areas of job performance deficiencies on the previous day. The memo was actually from Hendrix, and contained the warning that "any non-performance of assigned tasks will result in your being placed on probation or your immediate termination". Hendrix testified that the memo was the result of discussion among himself, the superintendent and the principal. On March 21, 1986, Hendrix told Fisher "the seven areas are looking better".

On March 23rd, Fisher sent a written response to the March 18th memo, detailing his efforts to correct the problems and stating that he was unaware of some of the responsibilities.

On March 27, 1986, by way of a handwritten memo, Fisher asked Hendrix to give him three-days' notice of meetings so he could arrange to be accompanied by a PSE representative.

On March 28, 1986, by way of a handwritten memo, Fisher asked Hendrix for a "list of work description for my area" and the time required for each cleaning task. Later on that day, Hendrix, the principal, and the superintendent decided to terminate Fisher's employment the following Monday, April 1, 1986.

DISCUSSION

The Public Employees Collective Bargaining Act, Chapter 41.56 RCW, protects the right of public employees to file and pursue grievances. Valley General Hospital, Decision 1194-A (PECB, 1981). Even though the employer had the authority, under the applicable collective bargaining agreement, to discharge for cause, it may not utilize that authority to punish an employee for pursuing a grievance. Adverse action against an employee

because of the exercise of protected activities is a violation of RCW 41.56.140(1) and, as such, is within the jurisdiction of the Public Employment Relations Commission. Port of Seattle, Decision 1624 (PECB, 1983).

The standard for determining whether the employer's conduct was an unfair labor practice was set forth by the Commission in City of Olympia, Decision 1208-A (PECB, 1982), where the Commission embraced the causation test set forth in Wright Line, Inc., 251 NLRB 150 (1980). The use of that test was affirmed in Clallam County v. PERC, ___ Wn.App ___ (Division II, May 6, 1986). The complainant is required to make a prima facie showing sufficient to support an inference that the employee's protected conduct was a motivating factor in the employer's decision. Once such a showing is made, the employer must come forward with credible evidence to demonstrate that the same action would have occurred even in absence of protected conduct. Wright Line, Inc. modified a series of decisions which seem to immunize a union activist against legitimate discipline for genuine offenses. The burden of proof now placed on the employer is one of production of reasonable justification for its actions, not of proving by a preponderance of evidence that an unfair labor practice has not occurred.

Union's Prima Facie Case

The superintendent's testimony in this proceeding includes an admission that he threatened Fisher with termination during the March 12, 1986 meeting. The Examiner understands the evidence of record to show that the superintendent's threat was reasonably and actually understood by Fisher as linking the threatened termination with Fisher's pursuit of the grievance. Fisher's version of what transpired at the March 12, 1986 meeting was fully and credibly corroborated by the reluctant testimony of

Ortiz.[1] Although hearsay, Lyle's recollection of a grievance committee meeting later that same day includes consistent recounting of the threat by Fisher and Ortiz. Lyle testified from first-hand knowledge of his telephone conversation that evening with Hendrix, who both witnessed the March 12, 1986 meeting and admitted the threat.

The superintendent's testimony linking the threat to substandard job performance is not creditable. The meeting at which he made the threat was a hearing at the third step of the grievance procedure on a grievance relating to transfer and reversion rights. Fisher was asking to return to his former position where, by the district's admission, Fisher had performed in a better-than-satisfactory manner. Substandard job performance in the day shift job at the high school was not at issue. It would appear incongruous to warn Fisher about his deficiencies in a job from which he was requesting transfer.

The Examiner also finds evidence of animus in the unusual procedures by which an "oral warning" on work performance was issued directly by the superintendent at a grievance meeting, by-passing both the building principal and the director of custodial services. The record does not show the principal was even aware of any difficulties up to this point.

The Examiner finds no merit in the line of argument by which the district seeks to bolster the superintendent's credibility by showing he was hired because of his labor expertise gained over a period of years as a teacher or administrator sitting in bargaining sessions in a number of small school districts. Because of

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1 The Examiner credits the testimony of Ortiz based on his demeanor at the hearing. Ortiz, who has since transferred to a maintenance job outside the PSE unit, was visibly upset at having to testify against the superintendent.

this experience, counsel maintains that the superintendent would not intimidate an employee who files a grievance. Aside from the fact that sitting at a bargaining table does not make one an expert in all aspects of labor relations, the admitted fact that the superintendent threatened an employee in a grievance hearing would seem to belie any professed expertise.

The union has established a prima facie case demonstrating that the termination was based on an improper motive. Having established the inference that protected conduct was a motivating factor in the employer's decision, the burden shifts to the school district to produce evidence of good reasons for its actions.

Employer's Motivation

The record establishes that the daytime position at the high school was a difficult one. The custodial supervisor, the high school principal and several custodians all told Fisher the job would be arduous, primarily because the high school students were disrespectful.

Fisher's work shift at the high school began at 9:30 AM. His first assignment of his work day was to "police" the areas outside the building, picking up trash and emptying garbage cans. From 11:00 AM to 1:00 PM, Fisher was to work the cafeteria while students ate lunch, cleaning up spills, picking up trash, and wiping tables. Fisher was told he would have help in the cafeteria from students in a work study program.[2] In the afternoon, Fisher was to clean several offices, classrooms, restrooms, a faculty lounge, a library, a commons area, a back hall and an elevator.

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2 When this student assistance was sporadic, Hendrix told Fisher not to rely on it.

Hendrix stated that he worked with Fisher, orienting him to the new position. Taking his words at face value, any criticism of Fisher in the initial five or six days was more in the nature of assisting an employee in a new job.

Even after Fisher indicated a desire to transfer back to his former position, it was Hendrix who asked him to give it a further try. It defies logic to suggest that Hendrix would have made such a request had Fisher's performance been unsatisfactory.

Prior to the grievance meeting, Hendrix and the building principal were willing to accommodate Fisher' desire to leave the day shift position, offering him the evening shift. Up to this point, there is no evidence that the employer had any reservations about the quality of Fisher's performance. To the contrary, if the supervisors had such concerns they would not have arranged to move Fisher to the evening shift at the same school.

The district argues that Fisher's general performance and attitude was poor, that he did the bare minimum, and that he always left tasks undone, but the testimony supporting this theme is not creditable. The statements of the district's witnesses appear contrived and contradictory. In most instances, the district's witnesses merely responded "yes" or "no" to leading questions. The main criticism of Fisher's performance came from an employee named Johnson who, though described as a supervisor, was in fact a lead worker included in the bargaining unit. Aside from the leading nature of the questions, Johnson was notably hostile to Fisher. This animosity permeated his testimony.[3] Moreover, since Johnson is a bargaining unit employee, his evaluation cannot be imputed to the employer's officials.

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[3] The record shows that on two occasions, March 20th and 27th, angry words were exchanged between Fisher and Johnson.

It appears from the record that Fisher's difficulties really began with the filing of the grievance on March 6, 1986. It was at that point that Fisher was informed that he should do cleanup in the "F" building (a locker room), and that he should "spray and buff" for an hour prior to the end of his shift. The cleaning of "F" building was a seasonal chore which appeared to require more effort than the general policing tasks which it was to replace in Fisher's daily routine, and so can aptly be viewed as an increase in workload. The "spraying and buffing" task was no longer required after Fisher's termination, and so also appears to have been a contrived increase in Fisher's workload.

Four working days after the grievance was filed, on March 12th, the superintendent told Fisher he would be let go if he pursued the grievance.

Four working days after the initial threat, on March 18th, Fisher was handed a written reprimand by a supervisor who, so far as it appears from this record, had not indicated any dissatisfaction with Fisher's performance up to that point. One of the described deficiencies, i.e., the partial cleaning of an "ESL room", was discredited. The author of the memo, Hendrix, admitted that the teacher in the "ESL" area had reported to him that Fisher cleaned her room well, and that Fisher conscientiously inquired if anything else was needed.

Fisher's written response to the reprimand acknowledged the deficiencies and promised improvements. Hendrix told him three days later, on March 21st, that the "seven areas were looking better", seemingly putting the "performance" issue to rest.

The "transfer" grievance was not withdrawn, however, and Fisher did not cease to assert himself. His March 27, 1986 memo on the subject of advance notice of meetings invoked a right to repre-

sentation which was protected by the collective bargaining statute and Commission precedent.[4] Fisher once again took the initiative on March 28th, asking for a list of his duties. Within the day, the employer decided Fisher was to be terminated.

The district contends that "it would be logical for the district to try to salvage an employee who had performed properly for them in the past". Indeed, Hendrix had previously formally evaluated Fisher as "extremely thorough" and "professional". Yet even upon improvement on noted deficiency, the record shows unseemly haste to fire him. The examples given (partially vacuuming a room, failing to remove a two inch ink spot from a floor tile, and failing to properly clean a drain) are trivial and certainly do not warrant imposition of a summary dismissal penalty usually reserved for instances of gross misconduct, such as theft, drug abuse, or drinking on the job.

The record shows that Fisher made a practice of collecting aluminum cans from the trash for recycling. The district asserts that Fisher's continued collection of aluminum cans interfered with his job, and that Fisher's refusal to stop collecting cans shows his poor attitude and performance. The record does not support the district's claims. Fisher was authorized to collect the cans by the building principal. Hendrix stated he told Fisher during Fisher's first week at the high school to not spend time on collecting cans, and that he noticed Fisher "speeded it up" thereafter. Hendrix recalled instructing Johnson, during the second week of Fisher's tenure at the high school, to tell Fisher to "leave the cans alone unless he is going to get his work done". Fisher testified that Johnson told him on March 6th,

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[4] See, Okanogan County, Decision 2252-A (PECB, 1986), where the Commission affirmed the right of public employees to be represented by their union in investigatory interviews scheduled by the employer.

"he'd have to let those pop cans go and really get some work done", but that this was the only comment he received on the subject. That discussion with a fellow bargaining unit employee hardly qualifies as notice from the employer of a problem warranting summary discharge. Discrediting the employer's present reliance on the "cans" issue, the March 18th written warning does not mention any problem with the collection of cans.

Based on this record, the Examiner finds the school district's reasons for termination to be pretextual. Sufficient evidence exists to conclude that Fisher's termination was for discriminatory reasons, in reprisal for his exercise of rights protected by the collective bargaining statute.

PART II - THE DISCLOSURE OF PERSONNEL FILES

FACTS

On May 7, 1986, the union requested information from the district which the union believed necessary in prosecution of two unfair labor practice complaints which were then pending before the Public Employment Relations Commission:[5]

> 1. The complete personnel file of Craig Fisher, Susan Haider, and the individual who replaced Craig Fisher after Mr. Fisher was terminated for processing a contract grievance, as well as the individual who assumed the Lead I Custodian position at Lincoln Middle School, following its transfer from first to second shift.

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5 One of those cases, Case No. 6290-U-86-1215, is decided here. The other case, Case No. 6351-U-86-1238, involving an employee named Haider, was subsequently withdrawn. The union was also processing parallel grievances under the collective bargaining agreement.

2. All files or documents maintained by Norm Ingram with respect to classified employees of the school district for any reason, including specifically, but not limited to, the "unofficial" files maintained by Mr. Ingram within his personal workspace.

3. All documents which the school district intends to offer as evidence in either of the pending unfair labor practice matters or in any pending contract grievance or any other documents in your possession, in the possession of any employee of the school district, or to which any employee of the district or yourself might reasonably expect to gain access, which are material to the pending unfair labor practice matters or pending contract grievances.

4. The complete personnel files of all employees, whether classified or certificated, who have been disciplined for any reason or placed upon probation because of job performance, or for any other reason, within the past five (5) year period.

On May 13, 1986, the school district replied:

In answer to your first question, since you represent Craig Fischer (sic) and Susan Haider you are welcome to examine their personnel files when you come over. As for the personnel file of the person assuming the lead one position, your request is denied for two reasons. First because it is the private personnel file of a person not a party to this litigation and therefore not subject to disclosure. Second, your request in that regard is denied because the request is for information which even if not privileged is not relavent (sic) to the dispute and not reasonably calculated to lead to the discovery of admissable (sic) evidence.

With response to your request number two for all files of classified employees other than Craig Fisher and Susan Haider that information is not subject to disclosure because those files are the confidential personnel

> files of employees of the district. Furthermore, the files are quite extensive and the scope of the request is overly broad, burdensome and oppressive.
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> In response to your request number three the documents the district intends to offer as evidence consists of first the contractual agreement between the Pullman School District and the union you represent dated September 1, 1984 (both cases) second, memos from Craig Fischer (sic) copies of which are attached and third, the 3/18/86 reprimand.
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> In response to your request number four requesting the complete personnel file of all employees that have been disciplined that request is denied for two reasons first that information is confidential information and second the request is overly broad, burdensome, and oppressive, for that reason also the request is denied.

The union filed its complaint in Case No. 6407-U-86-1254 on May 23, 1986 as a result of the district's refusal to provide the personnel files for all employees who have been disciplined in the last five years and the files and documents maintained by Norm Ingram, assistant superintendent for personnel.

DISCUSSION

The union contends that the information it requested is necessary for it to make a determination on whether rules have applied even-handedly in just cause proceedings.

It is well settled, and beyond reasonable challenge, under the National Labor Relations Act (NLRA) that an employer has a statutory duty to turn over to the union information that is needed by the bargaining representative for the proper performance of its duties. NLRB v. Truitt Mfg. Co., 351 US 149 (1956).

This duty also extends to requests for information necessary for the processing of grievances. NLRB v. Industrial Co., 385 US 432 (1967). The failure to do so constitutes an unfair labor practice. Compliance with an National Labor Relations Board (NLRB) order requiring a telephone company to provide grievance-related information concerning employees who had been disciplined for violation of a similar rule was found not to be unduly burdensome in C & P Telephone Co. v. NLRB, 259 NLRB 225, enf. 687 F.2d 633 (1982).

Once a good faith demand is made for relevant and necessary data, the information must be made available promptly and in useful form. If the employer claims that compiling data will be unduly burdensome, it must assert that claim at the time the request is made, so that an arrangement can be made to lessen the burden. J. I. Case Co. v. NLRB, 253 F.2d 149 (CA. 7, 1958), enf. 145 NLRB 152 (1963).

When interpreting the provisions of Chapter 41.56 RCW, the Public Employment Relations Commission will give due consideration to decisions of the NLRB and federal courts which enforce generally similar provisions of the NLRA. Clallam County, Decision 1405-A (1982). Since the duty to bargain under RCW 41.56.030(4) is similar to the duty to bargain under Section 8(d) of the NLRA, federal precedent developed in "refusal to bargain" cases under Section 8(a)(5) of the NLRA is persuasive in determining "refusal to bargain" allegations under RCW 41.56.140(4). The question of whether a public employer is compelled to produce information which the union believes necessary for collective bargaining or for the processing of grievances and unfair labor practice complaints has been addressed in several cases. The Commission ruled in City of Yakima, Decision 1124, 1124-A (PECB, 1981) that an employer's refusal to supply information in collective bargaining violates RCW 41.56.140(4) as a failure to bargain in

good faith. As under federal precedent, the bargaining representative must make a request for specific information. Once requested, the employer must promptly furnish data relevant to the situation at hand. Toutle Lake School District, Decision 2474 (PECB, 1986) upheld the right of a union to receive information relevant and necessary to its responsibilities in administering the collective bargaining agreement.

Seeking to support its position within labor law precedent, the school district urges Detroit Edison v. NLRB, 440 U.S. 301 (1979) as authority to bar the disclosure of its personnel files. At issue in Detroit Edison were aptitude tests which theoretically reveal intellectual capacity and psychological makeup. This information is considered by psychologists who administer such tests to be highly sensitive, and disclosure was not required. In the present case, by contrast, the union seeks specific employment-related information relating to pending grievances and/or disciplinary actions. As such, its request is readily distinguishable from the much more remote information at issue in Detroit Edison. See, also, Salt River Valley v. NLRB, 272 NLRB 296, aff. 769 F.2d 639 (1985), which rejected a "confidentiality of personnel files" argument in refusing to extend the Detroit Edison precedent to a union request for personnel files or similar disciplinary actions. There is no employee expectation that such records would be immune from disclosure to the union which represents the bargaining unit in which they are employed. Pfizer, supra, at 919.

The employer's contentions that the requested material is not relevant are similarly not persuasive. Arbitrators routinely consider employee work records in deciding whether employers have applied their disciplinary rules in a consistent and non-discriminatory manner. This is a fundamental principle of industrial justice. Pfizer Inc. v. NLRB, 763 F.2d 887 (1985).

The school district urges RCW 42.17.310(1)(b) and (i) as preventing compliance with the union's request. RCW 42.17.310(1)(b) exempts personnel records of non-parties from public inspection, unless each consents to disclosure. RCW 42.17.310(1)(i) exempts internal notes or memorandum expressing policy or opinions. The union counters that the purpose of Chapter 42.17 RCW is to allow the public to scrutinize government. The act was never intended to be used as a shield.

Chapter 42.17 RCW, known as the State Freedom of Information Act, codified Initiative 276, enacted after a vigorous campaign by the "Coalition for Open Government.[6] The coalition included strong support by organized labor as well as church, press, league of women voters, young republicans, bar association, and government officials. The initiative is predicated on the principle that the right to receive information from government is fundamental to right of free speech. RCW 41.17.290 states the chapter's intent is to provide full public access to public records. The provisions of Chapter 42.17 RCW mandating disclosure of public records are liberally construed and its exemptions are narrowly confined. Laborers International Union of North America Local 374 v. City of Aberdeen, 31 Wn.App. 445 (1982).

RCW 42.17.310(1)(b) exempts personal information in files "to the extent disclosure would violate their right to privacy", but the information contained in personnel files is exempt only if such material would be highly offensive to a reasonable person. Hearst Corp. v. Hoppe, (1978) 90 Wn.2d 123, 580 P.2d 246. Employment applications containing answers to personal questions relating previous employment history, medical disabilities, financial deductions and convictions under criminal laws have been held to be exempt because of concerns for privacy. Human

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6 The legislative history is set forth in Fritz v. Gorton, 83 Wn.2d 275, (1973); appeal dismissed 417 US 902 (1974).

Rights Commission v. Seattle, 25 Wn.App 364 (1980). The school district contends that decision stands as authority to bar complete personnel files from disclosure. The Examiner disagrees. There have been several decisions since Human Rights Commission which specifically permit disclosure of information relating to employment conduct. Thus, the written statements of 13 police officers submitted to a city manager concerning the professional performance of the police chief regarding making transfers and handling of grievances did not violate privacy rights of either the chief or the officers who made the statements, although identification would be apparent from events described. Columbia Publishing Company v. City of Vancouver, 36 Wn.App 25 (1983). The privacy exemption is inapplicable to the job performance of public officials, even if such information may be personally embarrassing to the official. Similarly, the details of public employee misconduct while in the performance of duties is subject to full disclosure. Cowles Publishing Company v. State, ___ Wn.App ___, 724 P.2d 379 (August 12, 1986). Based on those decisions, the Examiner concludes that the exemption is intended to shield highly personal information contained employment applications and personnel files, but not information on grievances or disciplinary actions. Whenever the public record is not highly offensive, the public interest in disclosure outweighs the individual privacy interest. Cowles Publishing Co., supra.

The exemption of "internal" materials under RCW 42.17.310(i) has also been narrowly confined by recent decisions, and so does not support the school district's resistance to disclosure of files or documents under the control of Norm Ingram. The purpose of the "deliberative process exemption" is to allow uninhibited discussion during the decision-making process. To rely on this exemption, the agency must show the documents contain predecisional opinions or recommendations of subordinates, such that

disclosure would injure the deliberative process. Raw factual data on which personnel decisions are based are not exempt. Hearst Corp., supra. See, also, Hafernehl v. University of Washington, 29 Wn.App. 336 (1981) [exempting three faculty letters opposing the promotion of another], and Columbia Publishing Co., supra. [statements on misconduct of police chief held not exempt]. Further, even pre-decisional materials that might be exempt from disclosure to the general public under the public dislosure law may still be available to the exclusive bargaining representative under the separate authority of the collective bargaining law.

Finally, the school district claims the union's request is overly broad and oppressive. This objection is noted and is taken into account in the following order.

FINDINGS OF FACT

1. The Pullman School District No. 267 is a "public employer" within the meaning of RCW 41.56.030(1). Clayton Dunn is superintendent of schools. Sonny Hendrix is a supervisor of custodian employees of the school district.

2. The Public School Employees of Pullman, an affiliate of the Public School Employees of Washington, is a "bargaining representative" within the meaning of RCW 41.56.030(5).

3. Craig Fisher was a full-time custodian employee of the Pullman School District from October, 1984 until April 1, 1986, when he was discharged.

4. On April 15, 1985 and September 11, 1985, Hendrix issued formal evaluations of Fisher, recommending him for retention

and a salary increase, and rating Fisher as thorough and professional.

5. On February 24, 1986, Fisher accepted transfer to a day shift position at the high school operated by the school district. Fisher's subsequent request for return to his former position was refused by the school district.

6. On March 6, 1986, Fisher filed a grievance under the collective bargaining agreement between the union and the school district, concerning the refusal of the school district to permit him to return to the position he held prior to February 24, 1986.

7. On March 12, 1986, during the course of a meeting held pursuant to the collective bargaining agreement on Fisher's grievance, Dunn threatened Fisher with discharge if he pursued the grievance.

8. Kathy Black, a teacher employed by the school district, told Hendrix that Fisher did a good job in the cleaning of an area at the high school known as the "ESL room".

9. On March 18, 1986, the school district issued a written warning to Fisher, outlining certain deficiencies. Among the claimed deficiencies was a failure to properly clean the "ESL room" referred to in paragraph 8 of these findings of fact.

10. On March 21, 1986, Hendrix told Fisher that his work showed improvement.

11. On March 23, 1986, Fisher responded to the March 18th warning, stating that he would correct the deficiencies.

12. On March 27, 1986, Fisher handed Hendrix a handwritten request for three-days notice for future meetings so he could arrange union representation.

13. On March 28, 1986, Fisher handed Hendrix a handwritten request for a list of his duties and the anticipated time for the performance of each such duty. Later that day, Hendrix and Dunn, together with the high school principal, decided to terminate Fisher's employment.

14. Fisher's employment with the school district was terminated April 1, 1986. The reasons advanced by Pullman School District for the discharge of Craig Fisher were pretexts designed to conceal a true motivation of discrimination against Fisher for pursuing a grievance under the collective bargaining agreement and engaging in other activities protected by Chapter 41.56 RCW.

15. On May 7, 1986, the exclusive bargaining representative made a request of the employer for personnel and other files concerning employees who were disciplined within the previous five-year period and other related information, in order to process grievances filed by Fisher and another employee. Such information was in the possession of the school district and was reasonably relevant and necessary to the performance by the union of its functions as exclusive bargaining representative in the administration of the collective bargaining agreement.

16. On May 13, 1986, the school district refused to provide the information requested, on the grounds of relevance, confidentiality, and possible violation of Chapter 42.17 RCW.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under RCW 41.56.160.

2. By discharging Craig Fisher in reprisal for his engaging in activities protected by RCW 41.56.040, Pullman School District has engaged in and is engaging in an unfair labor practice in violation of RCW 41.56.140(1).

3. By refusing, upon request, to provide Public School Employees with information from personnel and other files that was necessary to the function of the union as exclusive bargaining representative, Pullman School District has refused to bargain and has engaged in and is engaging in an unfair labor practice in violation of RCW 41.56.140(4).

ORDER

It is ordered that Pullman School District, its officers and agents, shall immediately:

1. Cease and desist from:

   A. Discharging or otherwise discriminating against any employee for their pursuit of rights under a collective bargaining agreement or for engaging in any other activity protected by Chapter 41.56 RCW.

   B. Refusing to furnish to Public School Employees, upon request, information (other than highly personal information not relating to wages, hours and working conditions of the employee) which is in its possession

and relates to discipline of employees or is otherwise relevant and necessary for the union's performance of its functions as exclusive bargaining representative, including the administration of collective bargaining agreements.

2. Take the following affirmative action which the Examiner finds will effectuate the purposes of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW:

A. Offer its employee, Craig Fisher, immediate and full reinstatement to his former or substantially equivalent position, without prejudice to his seniority and other rights and privileges.

B. Make its employee, Craig Fisher, whole for any loss of pay or benefits he may have suffered by reason of his discriminatory discharge, by payment of the amount he would have earned as an employee, from the date of the discriminatory action taken against him until the effective date of an unconditional offer of reinstatement made pursuant to this Order. Deducted from the amount due shall be the amount equal to any earnings such employee may have received during the period of the violation, calculated on a quarterly basis. Also deducted shall be an amount equal to any unemployment compensation benefits such employee may have received during the period of violation, and respondent shall provide evidence to the Commission that such amount has been repaid to the Washington State Department of Employment Security as a credit to the benefit record of the employee. The amount due shall be subject to interest at the percentage rate established by the Superior Court in Whitman County for

civil judgments, calculated quarterly from the date of the violation to the date of the payment.

C. Upon request, the school district shall provide the following information to the union:

1. Information from the personnel files of all bargaining unit employees who have been disciplined in the past five years because of improper job performance which is or was relevant to the discipline. Personal information contained in job applications, personnel evaluations from prior employers and information of a highly personal nature and not related to the wages, hours or working conditions of the employees shall be withheld unless relied upon in making the decision to discipline or in responding to grievances thereon.

2. Information under the control of Norm Ingram relating to the discipline of Fisher or other bargaining unit employees, including factual data on which personnel decisions are based. The employer may withhold information concerning predecisional opinions or recommendations not actually relied upon, such that disclosure would injure the deliberative process.

D. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall, after being duly signed by an authorized representative of Pullman School District be and remain posted for sixty (60)

days. Reasonable steps shall be taken by Pullman School District to ensure that said notices are not removed, altered, defaced or covered by other material.

E. Notify the Executive Director of the Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 5th day of March, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

William A. Lang

WILLIAM A. LANG, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

"APPENDIX"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT discharge any employee for engaging in activities protected by RCW 41.56.040, including the pursuit of grievances under a collective bargaining agreement.

WE WILL offer our employee, Craig Fisher, immediate and full reinstatement to his former or substantially equivalent position without prejudice to his seniority and other rights and privileges.

WE WILL make our employee, Craig Fisher, whole for any loss of pay or benefits he may have suffered by reason of his discriminatory discharge, by payment of the amount he would have earned as an employee, from the date of the discriminatory action taken against him until the effective date of an unconditional offer of reinstatement made pursuant to this Order.

WE WILL, upon request by the Public School Employees, provide all information from official and unofficial personnel files and other documents in the possession of the school district that is relevant to and necessary for the preparation and processing of grievances and the representation of employees in collective bargaining.

PULLMAN SCHOOL DISTRICT NO. 267

BY: _____
AUTHORIZED SIGNATURE

DATED: _____

THIS OF AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.