STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF WASHINGTON, Complainant, vs. KENNEWICK SCHOOL DISTRICT, Respondent.	)	CASE 12234-U-95-2888 DECISION 5632-A - PECB DECISION OF COMMISSION

Eric T. Nordlof, Attorney at Law, appeared for the union.

Robert D. Schwerdtfeger, Schwerdtfeger and Associates, appeared for the employer.

This case comes before the Commission on a petition for review filed by Public School Employees of Washington, seeking to overturn an order of dismissal issued by Examiner Vincent M. Helm.[1]

BACKGROUND

The Kennewick School District (employer) and Public School Employees of Kennewick (union) are parties to a collective bargaining agreement in effect from September 1, 1995 through August 31, 1997 covering food service employees. The employer contracts management of its food service program to Marriott Food Services, and Sam Shick manages the food service program in the district for the contractor. The employees who prepare and serve the food are bargaining unit employees covered by the collective bargaining agreement.

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[1] Kennewick School District, Decision 5632 (PECB, 1996).

Elaine Lechelt, a cook at Eastgate Elementary School, has been active in the union for many years. She has been a secretary of the local union, a member of its collective bargaining team, and a member of the union's board of directors. She routinely helps process grievances. She currently serves on a labor management conference committee which meets once a month, and she works with employer representatives to handle any problems that may arise. Her husband was a former president of the union. Her daughter is a custodian with the employer, and is also an officer in the union.

The Grievance -

On November 16, 1995, Lechelt and a local union vice president met with Shick in an effort to add another hour to Lechelt's work day. Shick denied the request. During the meeting, Lechelt told Shick that they would be filing a grievance about the issue. Shick is accused of having then stated, "You better think twice before you file a grievance," and that he could cut the breakfast program. Lechelt filed a class-action grievance that same day, challenging Shick's staffing decision. Lechelt told two people, "Mark my words, he's going to do something to retaliate against me." The school board eventually resolved Lechelt's grievance in her favor and allowed the staffing adjustment.

The Salad Incident -

Around November 2, 1995, Gerry Hexum, a maintenance employee, had been working near the kitchen when he noticed and inquired about some bags of lettuce. Lechelt told him he could take a bag. The lettuce was slimy when he cut the bag open, so he threw it away.

Patricia Williams, a kitchen employee who recently had been transferred to another school as a result of personality conflicts, claimed to have witnessed Lechelt giving Hexum the lettuce, and the employer asked Williams to write a memo regarding the matter. On November 20, 1995, Williams responded, stating she was in the kitchen cleaning the refrigerator on November 2nd "because there

was no school the following week", and observed Lechelt allow a "guy that was working in the storage room" take a bag of lettuce.

On December 4, 1995, as part of an investigation into Lechelt's work behavior, the employer questioned Hexum about taking food from the kitchen. Hexum advised the employer that Lechelt had given him salad. Hexum was never disciplined for taking the food.

The Ice Cream Bars -
Kitchen staff at several schools, including Eastgate, had a practice of giving ice cream bars at the end of every week to the students who worked in the kitchen. When Lechelt began work eight years prior to this controversy, she continued the established practice.

On November 27, 1995, employer representatives and Shick met with Lechelt to inquire about the reason ice cream bars appeared on invoices, when they were not on menus. Lechelt stated that the practice extended back to when she began employment at Eastgate, and that other schools did the same thing. Shick directed Lechelt to stop giving ice cream bars to students.

On November 29, 1995, the employer sent a memorandum to all food service staff reminding them that (1) schools are not allowed to special order products to give their student workers as a "thank you" for working; and (2) leftovers are not to be taken home, given to staff members, or given free as seconds for customers.

Surveillance -
At an unspecified time, Shick sat outside the school in a car to surreptitiously observe Lechelt at work.

The Complaint -
On December 18, 1995, the union filed a complaint charging unfair labor practices alleging three causes of action: (1) that the

employer targeted Lechelt for investigation solely to harass, embarrass, and intimidate Lechelt in retaliation for her role in initiating the class-action grievance; (2) that Shick warned Lechelt to think twice about the grievance, thereby interfering with, restraining, and coercing Lechelt and the local union vice-president in the exercise of protected collective bargaining rights; and (3) that the employer's conduct at the December 4, 1995 meeting with the maintenance employee was intended to, and did, interfere with, restrain, and coerce Lechelt in the exercise of protected collective bargaining rights.

The Reprimand and Performance Evaluation -

On January 31, 1996, the personnel director issued a letter of reprimand to Lechelt. That document directed her to:

> 1. not remove or take food from Kennewick School District property.
> 2. not give food to other school staff or students unless approved by food service supervisors.
> 3. not allow other Kennewick School District staff to take food from the school or kitchen at Eastgate Elementary.

On May 16, 1996, Lechelt was given a performance evaluation which included comments about her giving salad mix to an employee, and taking chicken breasts home with her. It also made reference to the January 31, 1996 letter of reprimand, and warned Lechelt that any repeat of the behavior could lead to disciplinary action, suspension or termination.

The Hearing and Examiner's Decision -

Examiner Vincent M. Helm held a hearing on June 12, 1996. The union's evidence at the hearing included the letter of reprimand issued to Lechelt on January 31, 1996, and the performance evaluation issued on May 16, 1996. Examiner Helm determined that those documents were not properly before the Examiner because the

union did not amend its complaint to include any discrimination charges or occurrences after the filing of the complaint. The Examiner found no interference violation and dismissed the unfair labor practice complaint on September 6, 1996.

POSITIONS OF THE PARTIES

The union argues that evidentiary and legal errors led to an improper dismissal of the complaint, and requests the decision be reversed. It contends that the later events which the Examiner refused to consider were only circumstantial evidence of the employer's motivation in undertaking the events alleged in the complaint. The union asserts the Examiner did not apply the proper analysis to the facts, that the employer offered no explanation as to why Lechelt was singled out, and that the evidence in support of the union's contentions was ignored.

The employer argues the record supports the Examiner's decision, and urges the Commission to affirm the decision.

DISCUSSION

The Legal Standards

Chapter 41.56 RCW prohibits employers from interfering with or discriminating against a public employee who exercises collective bargaining rights secured by statute:

> **RCW 41.56.040 RIGHT OF EMPLOYEES TO ORGANIZE AND DESIGNATE REPRESENTATIVES WITHOUT INTERFERENCE.** No public employer, or other person, shall directly or indirectly, **interfere with, restrain, coerce, or discriminate against** any public employee or group of public employees in the free exercise of their right

> to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter.

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

> **RCW 41.56.140 UNFAIR LABOR PRACTICES FOR PUBLIC EMPLOYER ENUMERATED.** It shall be an unfair labor practice for a public employer:
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> (1) **To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;**
>
> (2) To control, dominate or interfere with a bargaining representative;
>
> (3) **To discriminate against a public employee who has filed an unfair labor practice charge;**
>
> (4) To refuse to engage in collective bargaining.

[Emphasis by **bold** supplied.]

The Commission has jurisdiction to determine and remedy unfair labor practice claims. RCW 41.56.160.

Legal Standards for Interference -

The burden of proving an allegation of unlawful interference with the exercise of rights protected by Chapter 41.56 RCW rests with the complaining party, and must be established by a preponderance of the evidence. To establish an "interference" violation under RCW 41.56.140(1), a complainant need only establish that a party engaged in conduct which employees could reasonably perceive as a threat of reprisal or force or promise of benefit associated with their union activity. City of Seattle, Decision 3066 (PECB, 1989), affirmed, Decision 3066-A (PECB, 1989). See, also, City of Pasco, Decision 3804-A (PECB, 1992), and cases cited therein. A showing that the employer acted with intent or motivation to interfere is

not required. Nor is it necessary to show that the employees concerned were actually interfered with or coerced.[2]

It is not even necessary to show anti-union animus for an interference charge to prevail. Clallam County v. Public Employment Relations Commission, 43 Wn.App. 589 (1986).

Legal Standards for Discrimination -

The Commission and Supreme Court require a higher standard of proof to establish a "discrimination" violation.[3] A discrimination violation occurs when: (1) The employee exercised a right protected by the collective bargaining statute, or communicated to the employer an intent to do so; (2) The employee was discriminatorily

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[2] The Commission has found interference where employees could reasonably perceive a lay-off of a union activist as a threat of reprisal associated with union activity (City of Federal Way, Decision 5183-A (PECB, 1996)); where an employee's prior behavior was characterized as misconduct and he was warned about it only after the processing of his grievance (City of Pasco, supra); where the employer allowed an employee to have a union representative present during investigatory interview, but refused to allow the representative to actively participate in meeting (King County, Decision 4299 (PECB, 1993)); where the employer refused requests for a union representative at an "investigatory" meeting where the employee had a reasonable belief the interview could lead to disciplinary action against him (City of Seattle, Decision 3593-A (PECB, 1991)); and where employees could have perceived interview questions as directed toward stifling union activity, and characterization of a union activist as "iconoclastic" or "argumentative" could be reasonably perceived as a threat of reprisal associated with union activity. (Port of Tacoma, Decision 4626-A (1995)). The Commission found no interference violation in Seattle School District, Decision 5237-B (EDUC, 1996), where union activity was limited to a group grievance filed after the employer began working with the employee to improve performance, and the record was devoid of anti-union animus.

[3] See, Wilmot v. Kaiser Aluminum, 118 Wn.2d 46 (1991), and Allison V. Seattle Housing Authority, 118 Wn.2d 79 (1991).

deprived of some ascertainable right, benefit or status; and (3) There was a causal connection between the exercise of the legal right and the discriminatory action. See, Educational Service District 114, Decision 4361-A (PECB, 1994) and Mansfield School District, Decision 5238-A and 5239-A (EDUC, 1996).

In a discrimination case, a complainant has the burden to establish a prima facie case of discrimination, after which the employer has the opportunity to articulate legitimate, nonretaliatory reasons for its actions. The burden remains on the complainant to prove, by a preponderance of the evidence, that the disputed employer action was in retaliation for the employee's exercise of statutory rights, which may be done by: (1) showing the reasons given by the employer were pretextual; or (2) showing that union animus was nevertheless a substantial motivating factor behind the employer's action. Educational Service District 114, supra.

The Scope of the Allegations

The Examiner refused to consider any allegations with respect to the written reprimand issued to Lechelt on January 31, 1996, or with respect to the performance evaluation dated May 16, 1996. He noted that both of these events occurred after the filing of the complaint, and that the union did not formally amend its complaint to make allegations which included those incidents.

We agree that an amended complaint is the preferred procedure for bringing the legitimacy of events that take place after the filing of a complaint before the Commission.[4] Here, however, we find

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[4] Chelan-Douglas Mental Health Center, Decision 3886-A (PECB, 1992). See, also, Fort Vancouver Regional Library, Decision 2396-A (PECB, 1986), where the Commission found that charges in an amended complaint must relate to the charges set forth in the original complaint, or they will be considered new items that carry their own six-month time limit from the time of filing.

substantial justification for considering a "discrimination" theory, and for subjecting at least the reprimand to the analysis appropriate for a discrimination allegation:

(1) In its complaint, the union alleged that the employer targeted Lechelt in retaliation for initiating a grievance. Therefore, the complaint in essence included an allegation of discriminatory treatment in retaliation for union activity.

(2) The employer was the first to refer to the January 31, 1996 reprimand in this proceeding. In its answer to the unfair labor practice complaint, the employer asserted that it investigated Lechelt's providing salad mix to a maintenance employee, and that the information resulted in a **reprimand** to Lechelt and an order not to give away District food under penalty of discipline. In its answer, the employer denied that there was any connection between "its investigation and Lechelt's reprimand and Union activity", essentially denying a "discrimination charge" in relation to the reprimand.

(3) In its opening statement, the union's attorney stated that the evidence would show Lechelt had been:

> singled out for disciplinary treatment and investigation by the employer in a manner that other employees, that have not exercised collective bargaining rights, have not, even though they have been in the same circumstances as Ms. Lechelt.

The employer made no objection to the union's opening statement.

(4) The complainant went to some length at the hearing to show Lechelt was active in the union. That evidence, which was only relevant to show employer knowledge of the complainant's union activities as the basis of a discrimination case, was entered without objection from the employer. Such extensive evidence concerning Lechelt's union activities would have been unnecessary if the parties were only litigating an interference violation.

(5) Both the January 31, 1996 reprimand and the May 16, 1996 performance evaluation were admitted into evidence, without objection by the employer.

(6) Both union and employer witnesses testified at the hearing, without objection from the employer, that Lechelt was given a written reprimand and was disciplined as a result of the ice cream incident, and that no other cook was disciplined. Shick testified that Lechelt was, in fact, treated differently than other cooks who were not disciplined.

(7) The employer squarely faced the discrimination issue at hearing with its questioning of its own personnel manager about whether he had knowledge of other food service employees being disciplined or reprimanded, or having critical evaluations, and in its questioning of employer witnesses about discipline and retaliation. The employer used the reprimand in its cross-examination, and was clearly attempting to show that Lechelt was not singled out for disparate treatment.

(8) In its post-hearing brief, the employer did not argue against the consideration of the reprimand, but rather argued that the evidence did not sustain the complainant's burden of proof. It asserted that evidence regarding the employer was "picking on" Lechelt due to her union activities was lacking, and that the union failed to establish anti-union animus, all of which might defend against a discrimination charge, but are unnecessary to defend against an interference violation. By attempting to establish that Shick did not cut Lechelt's breakfast program after Lechelt filed her grievance, the employer defended on the basis of no retaliation. The employer tried to establish that Lechelt was not the only one reprimanded or accused of stealing in connection with the "ice cream bars" investigation, and that the reprimand was a combination of issues.

(9) It was only after the Examiner's decision was issued that the employer objected to a discrimination/retaliation charge.

In summary, the parties in this case acted as if "discrimination" was alleged. The employer responded to the case as if it included a discrimination charge and made no objection to evidence of discrimination and retaliation. Both parties acted as if the January 31, 1996 reprimand was an action of the employer on which the Commission could rule.[5] The parties have had a fair opportunity to present their cases.[6] We conclude that the Examiner erred in not considering the merits of a discrimination allegation related to the investigations and reprimand.

The Independent Interference Allegation

The November 16, 1995 Meeting -

Four people attended the November 16, 1995 meeting. Two union witnesses testified that Shick told Lechelt that she better "think twice about filing a grievance"; two employer witnesses denied Shick made any such remarks. Having found nothing in the demeanor of the witnesses or their testimony which would cause him to conclude that one version should be adopted over the other, the Examiner concluded that the complainant did not sustain its burden of proof. As the Commission has previously noted:

> We attach considerable weight to the factual findings and inferences therefrom made by our

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[5] See, White Pass School District No. 303, Decision 573-A (PECB, 1979), where the Commission addressed a supervisory claim not specifically urged in the unit clarification petition. The Commission noted that legal and factual issues should be clarified by the close of a hearing, but in that case, the parties argued the issue and therefore were not prejudiced by any delay in refining the issue.

[6] See, Lake Washington Technical College, Decision 4721-A (PECB, 1995), where the Commission affirmed an Examiner's granting of a motion to conform its statement of facts to the evidence presented at the hearing because the employer had made no objection to evidence concerning an incident at issue, and had a fair opportunity to respond.

> Examiners. They have had the opportunity to personally observe the demeanor of the witnesses. The inflection of the voice, the coloring of the face, and perhaps the sweating of the palms, are circumstances that we, as Commission members are prevented from perceiving through the opaque screen of a cold record. This deference, while not slavishly observed on every appeal, is even more appropriate of a "fact oriented" appeal ...

City of Pasco, Decision 3307-A (PECB, 1990), citing Asotin County Housing Authority, Decision 2471-A (PECB, 1987); Educational Service District 114, Decision 4361-A (PECB, 1994). See, also, Seattle School District, Decision 5237-B (PECB, 1996).

We defer to the Examiner's finding that the union did not sustain its burden of proof on this allegation.

The Investigation -

The employer began an investigation of the lettuce incident within four days after Lechelt filed a grievance. Eleven days after the grievance was filed, the employer met with Lechelt to inquire about her giving away ice cream bars, a practice that had been in effect for many years at multiple schools. Because of the timing of the employer's investigations so soon after the filing of Lechelt's grievance, employees could reasonably believe that the employer's actions occurred because of Lechelt's exercise of her statutory collective bargaining rights.

The Timing of the Reprimand -

The employer reprimanded Lechelt less than three months after the filing of the grievance, and within a month and a half after the filing of the unfair labor practice complaint. Because of the close timing of those events, employees could reasonably believe that the employer's actions occurred because of the employee's exercise of her statutory collective bargaining rights.

Discrimination - The Prima Facie Case

It was undisputed that Lechelt has been active in the union for many years, with various visible roles. Members of her family have been active in the union. An inference can easily be made that the employer was fully aware of her union activities.

By filing a grievance on November 16, 1995, concerning her work day, Lechelt was exercising rights protected by the collective bargaining statute. Inherent in the collective bargaining process is a right of employees to engage in union activities, file grievances, and file unfair labor practice complaints free from discriminatory and retaliatory actions by the employer. The employer began its investigation regarding Lechelt soon after she filed the grievance, and reprimanded her in writing soon after the union filed an unfair labor practice complaint on her behalf.

The record is devoid of evidence that any investigation was performed in regard to anyone else.[7] While kitchen staff in other schools also ordered ice cream bars to give away to students as treats, Lechelt was the only employee reprimanded.

Anti-union animus of the employer and a causal connection are demonstrated in this case by: (1) the timing of the investigations into the ice cream and lettuce incidents, and (2) the timing of the reprimand.

The Timing of Adverse Actions - Generally -
The timing of adverse actions in relation to protected union activity can serve as circumstantial evidence of a causal connec-

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[7] While the timing of Shick's surreptitious observations of Lechelt from a car is not established by the evidence, the fact there was such surveillance was offered in the context of discriminatory treatment of Lechelt, and supports a view that Lechelt was being treated in an unusual manner.

tion between the protected activity and the adverse action. City of Winlock, Decision 4784-A (PECB, 1995). See, also, Mansfield School District, Decision 5238-A and 5239-A (EDUC, 1996)

The Timing of the Investigations -
The timing of events is undisputed. Within four days after Lechelt filed a grievance, the employer began an investigation of her providing a maintenance employee with lettuce. Within the same month, the employer inquired about Lechelt giving away ice cream bars under a practice in effect for at least eight years.

On December 4, 1996, union and employer representatives met with the maintenance employee regarding Lechelt's actions in giving him lettuce. The Examiner credited Williams' characterization of the lettuce incident as a give-away, but her story did not actually differ substantially from the testimony of Hexum and that of Lechelt's daughter. It is clear that Lechelt allowed the maintenance employee to take a bag of lettuce. Whether the lettuce was fit for human consumption, already spoiled, or destined to spoil[8] and whether the bag was on the counter or already in the garbage, are irrelevant, however. If Lechelt knowingly violated an established procedure, we might be convinced that the employer had a valid reason for the investigation it pursued in regard to Lechelt's giving of the lettuce.[9]

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[8] According to the testimony of the whistleblower, the action occurred on a day when there was to be no school for 11 days. There is a high probability that the lettuce would have been unusable for students after that length of time.

[9] The record contains nothing to show that the employer had in place a procedure for dealing with perishable foods in situations where the foods could not be used for student meals.

Timing thus forms the basis for a strong inference of a causal connection between Lechelt's filing of the grievance and the investigations the employer pursued in regard to Lechelt.

The Timing of the Reprimand -
The timing of the reprimand, less than three months after the filing of the grievance and within a month and a half of the filing of the unfair labor practice complaint, is particularly significant. An attack on employees who file charges or give testimony in unfair labor practice proceedings before the Commission violates the express provisions of RCW 41.59.140(1)(d), and attacks the entire system of dispute resolution put in place by the Legislature for the regulation of the collective bargaining process. See, e.g., Mansfield School District, Decision 5238-A and 5239-A (EDUC, 1996). Because of the suspicious timing, we can infer a causal connection between Lechelt's exercise of protected activity and the reprimand.

Conclusions on Prima Facie Case -
The union has established a causal connection between Lechelt's exercise of protected activity and the investigations and reprimand, and established a prima facie case of discrimination.

Employer's Burden of Production

The employer asserts that it treated Lechelt the same as other employees, and that it took no discriminatory treatment against her after she filed the grievance, but its arguments are not persuasive.

No other employee was investigated to the extent Lechelt was investigated, and no other employee was reprimanded for giving ice cream bars to students. Shick admitted that Lechelt was, in fact, treated differently than other cooks who were not disciplined. When asked whether he had knowledge of other food service employees

being disciplined or reprimanded, or receiving critical evaluations, the personnel manager did testify there were other employees, but he did not specify that other employees had actually been disciplined or reprimanded for providing ice cream bars to students or giving away food.

The employer argues that the union failed to establish anti-union animus. Again, we are not persuaded. We can infer anti-union animus from the suspicious timing of events.[10]

Substantial Motivating Factor Analysis

The employer having failed to articulate legitimate, nonretaliatory reasons for its actions, and Lechelt having been treated differently than others, we are led to conclude that the employer's motives in investigating and reprimanding Lechelt had a great deal to do with her union activity and her filing of the grievance. Because of the timing of the discriminatory actions so soon after Lechelt's filing a grievance, we find that anti-union animus was a substantial motivating factor in the employer's actions of investigating and reprimanding Lechelt for the distribution of ice cream bars to student helpers and for allowing a maintenance employee to take a bag of lettuce.

A finding of discrimination necessarily includes a finding of interference, since by discriminating against an employee on the basis of that employee's union activity, an inference can be made that employees could reasonably perceive a threat to their rights. Educational Service District 114, Decision 4361-A (PECB, 1993). In this case, employees could reasonably perceive that the employer's discriminatory actions toward Lechelt were the result of her union activity and her filing of a grievance.

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[10] See, Mansfield School District, supra.

The Performance Evaluation

Little evidence or argument was presented by the parties about the performance evaluation dated May 16, 1996. While a paragraph under "OTHER ITEMS NOT LISTED IN EVALUATION FORM" lists instances that flow from the discriminatory investigations and discriminatory reprimand found to be illegal in this order and a paragraph, "CONCLUSION", makes reference to misappropriation of food service products, the evaluation itself was several months removed from the union activity in the record in this case. The evidence is insufficient to show that the entire performance evaluation might be due to anti-union animus.

It will suffice to order the employer to re-issue the performance evaluation after eliminating references to the unlawful investigations and reprimand.

NOW, THEREFORE, the Commission reverses the Examiner's Findings of Fact, Conclusions of Law and Order, and makes and enters the following:

AMENDED FINDINGS OF FACT

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

2. Public School Employees of Washington is a bargaining representative within the meaning of RCW 41.56.030(3).

3. At all times material herein, there was in existence a collective bargaining between Kennewick School District and Public School Employees of Washington covering terms and conditions of employment of food service employees, including those employed at 9 or 10 elementary schools.

4. At all times material herein, Elaine Lechelt was employed as the more senior of two cooks at Eastgate Elementary School, a part of the Kennewick School District.

5. At the time of the hearing, Elaine Lechelt had been employed as a cook for the Kennewick School District for approximately 12 years, the last 8 at Eastgate Elementary School.

6. At all times material herein, as well as for an extended time prior thereto, Elaine Lechelt was a local union officer, and a member both of its negotiating committee and a joint conference committee that processed bargaining unit grievances and other matters on a monthly basis.

7. The food services bargaining unit is the smallest, in terms of size, of five bargaining units of Kennewick School District employees represented by Public School Employees of Washington, but had been the most prolific source of grievances for one year or more preceding the date of hearing herein.

8. Kennewick School District, at all times material herein, has contracted with Marriott Food Service for management of its food service operations at all school locations. At all times material herein, Sam Shick has been employed by Marriott Food Service to supervise its operations on behalf of the Kennewick School District.

9. Shick is responsible for direction of employees of the Kennewick School District engaged in food service activities as well as for ordering food items, reviewing billings associated with food service operations, and directing overall operations of food service.

10. At all times material herein, the Kennewick School District has employed Jim Verhulp as director of personnel, Carole

Jones as classified employees personnel manager, and Denise Christensen as assistant director of food services.

11. Pat Williams worked as a cook at the Eastgate Elementary School, until transferred sometime in November 1995, as a result of discord with Elaine Lechelt and Lechelt's daughter, who is employed as a custodian at Eastgate Elementary School.

12. Sometime prior to Thanksgiving 1995, Shick became aware that the Kennewick School District was being invoiced by a vendor for ice cream bars delivered to the Eastgate Elementary School. This food product had not been ordered by Shick, and was not a menu item at that location.

13. Sometime between November 2, 1995 and November 20, 1995, Williams informed Christensen that Elaine Lechelt had given employer-owned lettuce or salad mix to a maintenance employee of the Kennewick School District. Christensen advised Shick and Verhulp of this allegation.

14. On November 16, 1995, Elaine Lechelt and Patsy Ball, vice president of the union, met with Shick and Christensen at the request of the two bargaining unit employees. The purpose of the meeting was to discuss Lechelt's desire to extend her normal scheduled daily shift by one-half hour for purposes of obtaining additional contract benefits predicated upon hours in the normal work shift, rather than all hours worked.

15. In the November 16 meeting, Shick stated the school district needed to be more efficient and cost effective in the operation of food services, and that work hours at both breakfast and lunch were being reviewed to determine whether scheduled hours should be reduced. The conversation then turned to specifics of the breakfast workload at Eastgate. The parties disagreed on that subject and Shick advised Lechelt he would

not extend her work hours. Lechelt advised Shick to consider their meeting as Step One in the grievance procedure.

16. There is a conflict in testimony as to whether, at the November 16 meeting, Shick advised Lechelt to think twice about filing a grievance and/or that her breakfast servings were down. While Shick and Christensen deny such statements were made, Lechelt and Ball testified as to such statements. A preponderance of the evidence does not support a finding that the complained-of statement was uttered by Shick.

17. The union filed a grievance on Lechelt's behalf on November 16, 1996, after the meeting with Shick, and the Kennewick School District did grant the extended work shift.

18. Upon the employer's request, on November 20, 1995, Williams wrote the employer a memorandum detailing an incident of November 2, 1995, when Elaine Lechelt allowed a "guy that was working in the storage room" to take a bag of lettuce.

19. Sometime shortly prior to Thanksgiving 1995, the employer notified the union of a required meeting on November 27, 1995, with Elaine Lechelt concerning her conduct. In response to Lechelt's inquiry, Jones said the meeting involved allegations of theft.

20. The employer did not investigate the practice, with respect to ordering and distributing ice cream bars prior to meeting with Lechelt on the subject, nor did it inquire of Williams concerning this matter before meeting with Lechelt on the subject.

21. At the November 27, 1995 meeting, the matter of the ice cream bars was among the subjects discussed. Both Shick and Verhulp raised this issue in the context of whether Lechelt had

ordered them, her authority for doing so, and their disposition. Lechelt said she ordered ice cream bars and gave them to student helpers in the cafeteria to reward good work, in conformity with a practice at Eastgate when she started working there and as was done at other elementary schools.

22. After the meeting, the employer and the union conducted independent investigations of the matter and confirmed that Lechelt's description of past practice concerning ice cream bars was correct.

23. The employer sent a memorandum to all food service staff on November 29, 1995, advising them that the only items that may be given to student workers are the regular lunch and items they would be discarding anyway; and that leftovers are not to be taken home, given to other staff members, or given free as seconds to customers. So far as it appears from this record, that was the first announcement of such a policy by the employer.

24. As part of an employer investigation regarding Elaine Lechelt's work behavior, on December 4, 1995, union and employer representatives met with Gary Hexum regarding allegations that Elaine Lechelt had given him lettuce. Hexum admitted this, but contended the lettuce was not fit for human consumption and had been placed in the trash. Hexum also said he and other employees over a period of many years had received free food from Lechelt as well as cooks at other schools.

25. The employer instituted no investigation with respect to Hexum's allegations concerning other cooks giving food to himself and other employees. Nor did the employer make any independent inquiries concerning whether any other kitchen

staff in any of its schools, besides Elaine Lechelt, had given food to employees.

26. Sometime in either December 1995 or January 1996, Lechelt was again implicated with respect to giving employer food products to a student and taking some home herself.

27. On January 31, 1996, Verhulp issued a written reprimand to Lechelt which was intended to encompass the three food incidents described in paragraphs 20 and 23 above. No other employee was disciplined, at any time material herein, for personal use of respondent food products. Although other school district kitchen staff had been ordering ice cream bars and giving them to student helpers, no other employee besides Elaine Lechelt was reprimanded for doing so.

28. On May 16, 1996, Christensen issued an evaluation of Lechelt's work performance which made negative references to her actions with respect to the ice cream bar and lettuce incidents.

29. Shick attempted to surreptitiously observe Lechelt at work at some unspecified time for unknown purposes.

30. The Kennewick School District, through its agents Verhulp and Shick, has characterized Lechelt's activities in connection with food products as theft or misappropriation during discussions of her activities with other management representatives, in the November 27 meeting and in Lechelt's reprimand and evaluation.

AMENDED CONCLUSIONS OF LAW

1. Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW.

2. The employer's actions in (1) investigating Lechelt's practices with regard to giving away food soon after Lechelt filed a grievance, and (2) reprimanding Lechelt less than three months after the filing of her grievance and within a month and a half after the filing of the unfair labor practice complaint, could reasonably be perceived by employees as a threat of reprisal associated with union activity, so that the Kennewick School District interfered with employees' rights in violation of RCW 41.56.140(1).

3. The Kennewick School District's actions in singling out Elaine Lechelt for investigation relating to ordering and distribution of food products to students and/or employees, and in reprimanding Lechelt to the exclusion of others were substantially motivated by anti-union animus, so that the employer discriminated against Lechelt in violation of RCW 41.56.040 and RCW 41.56.140(3) and (1).

4. By its actions with respect to singling out Elaine Lechelt for investigation relating to ordering and distribution of food products to students and/or employees and reprimanding Lechelt to the exclusion of others, employees could reasonably perceive the discriminatory treatment as a threat of reprisal associated with their union activity, so that the Kennewick School District committed an interference unfair labor practice in violation of RCW 41.56.040 and RCW 41.56.140(3) and (1).

AMENDED ORDER

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

a. CEASE AND DESIST from:

1. Interfering with or discriminating against Elaine Lechelt for her exercise of her collective bargaining rights under Chapter 41.56 RCW.

2. In any like or related manner, interfering with, restraining or coercing its employees in their exercise of their collective bargaining rights secured by the laws of the State of Washington.

b. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.56 RCW:

1. Remove the Letter of Reprimand dated January 31, 1996, from Elaine Lechelt's file.

2. Re-issue Elaine Lechelt's performance evaluation of May 16, 1996, deleting references to the January 31, 1996, Letter of Reprimand and misappropriation of food products, including the entire paragraph under "Other Items Not Listed in Evaluation Form".

3. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

c. Notify the above-named complainants, in writing, within 30 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time

provide the above-named complainants with a signed copy of the notice required by the preceding paragraph.

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

Issued at Olympia, Washington, on the 20th day of December, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARILYN GLENN SAYAN, Chairperson

SAM KINVILLE, Commissioner

JOSEPH W. DUFFY, Commissioner

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 remove the Letter of Reprimand dated January 31, 1996, from Elaine Lechelt's file.

WE WILL re-issue Elaine Lechelt's performance evaluation of May 16, 1996, deleting references to the January 31, 1996, Letter of Reprimand and misappropriation of food products, including the entire paragraph under "Other Items Not Listed in Evaluation Form".

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

DATED: _____

KENNEWICK SCHOOL DISTRICT

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (360) 753-3444.