STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 609, AFL-CIO, Complainant, vs. SEATTLE SCHOOL DISTRICT, Respondent.	CASE 22548-U-09-5764 DECISION 10664 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Schwerin Campbell Bernard Iglitzen & Lavitt, LLP, by *Kathleen Phair Bernard*, Attorney at Law, for the union.

John M. Cerqui, Attorney at Law, for the employer.

On June 15, 2009, the International Union of Operating Engineers Local 609 (union) filed an unfair labor practice complaint against the Seattle School District (employer). In the complaint, the union alleges that the employer interfered with employee rights in violation of RCW 41.56.140(1) and refused to bargain in violation of RCW 41.56.140(4), by failing and/or refusing to provide the union with information it requested related to grievance processing and contract administration. The Public Employment Relations Commission (Commission) appointed Jessica J. Bradley as the Examiner. I conducted the hearing on September 24, 2009, and considered post-hearing briefs filed by the parties in fashioning this decision.

ISSUES

1. Did the employer interfere with employee rights and refuse to bargain by failing to provide the union with all of the e-mails that were responsive to the union's October 10, 2008, information request?

2. Did the employer interfere with employee rights and refuse to bargain by failing to provide the union with notes taken by an investigator who was a contractor of the employer?

3. Did the employer interfere with employee rights and refuse to bargain by providing the union with the Human Resources Analyst position description in response to the union's request for Sue Means' job credentials?

4. If one or more violations are found, are extraordinary remedies appropriate?

The employer violated RCW 41.56.140(1) and (4) by failing to provide the union with e-mails it requested in a timely manner. The employer should have included the October 7, 2008 9:59 A.M. e-mail in its response to the union's October 10, 2008, request. Its failure to provide all responsive documents interfered with the union's ability to investigate a potential grievance and enforce its contract.

The employer also violated RCW 41.56.140(1) and (4) by failing to provide the union with investigation notes taken by its contractor. Although the employer did not physically possess the notes taken by an investigator it hired on contract, the employer had an obligation to provide the notes taken by its agent. The employer's failure to obtain the investigation notes from its contractor demonstrated a lack of good faith and interfered with the union's ability to investigate a potential grievance and enforce its contract.

The employer did not violate RCW 41.56.140(1) and (4) when it provided the union with the Human Resources Analyst position description in response to the union's request.

This case is the fourth information request violation by this employer within the past five years. Based upon the facts of this case, as well as the employer's historical pattern of failing or refusing to provide information, I find that an extraordinary remedy is warranted.

APPLICABLE LEGAL STANDARDS

RCW 41.56.030(4) defines the collective bargaining obligations of employers and unions and requires the parties to negotiate in good faith concerning wages, hours and working conditions. As part of this good faith bargaining requirement, upon request, the parties must provide each other with relevant information needed to properly perform their duties in the collective bargaining process. This includes information relating to both negotiation and administration of the collective bargaining agreement. *King County*, Decision 6772-A (PECB, 1999). "The obligation to provide information extends to information that is necessary for the union to evaluate the merits of a grievance." *City of Seattle*, Decision 10249 (PECB, 2008); citing *King County,* Decision 6772-A. RCW 41.56.140(4) makes it an unfair labor practice for a "public employer to refuse to engage in collective bargaining." Failure to provide relevant information upon request constitutes a refusal to bargain. This is especially true when the information is solely in the control of the party holding the information. *Seattle School District*, Decision 9628-A (PECB, 2008); *Community College District 14 - Clark*, Decision 10221 (CCOL, 2008).

Under RCW 41.56.140(1) it is unfair labor practice for a public employer "[t]o interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by [RCW 41.56]. . . ." An employer's failure to provide a union with information relevant to collective bargaining interferes with the union's ability to represent unit employees and results in a derivative interference violation.

When a party receives a relevant information request, that party must provide the requested information. If the receiving party does not believe the request is relevant to collective bargaining activities or perceives a particular request as unclear, it is obligated to timely communicate its concerns to the requesting party. *Seattle School District*, Decision 9628-A; *Pasco School District*, Decision 5384-A (PECB, 1996). "The Commission emphasizes that parties must communicate with each other and bargain over concerns and objections to information requests." *City of Seattle*, Decision 10249; citing *Port of Seattle*, Decision 7000-A (PECB, 2000).

The duty to provide information does not compel a party to create records that do not exist, but parties do have an obligation "to make a reasonable good faith effort to locate the information requested." *Seattle School District*, Decision 9628-A; *Kitsap County*, Decision 9326-A (PECB, 2008). When a party receives an information request seeking information not in its possession, but the party's relationship to the holder of the information gives it a unique or exclusive ability to obtain the information, that party has an obligation to obtain the information from the third party and provide it to the requesting party. *Community College District 14 - Clark*, Decision 10221; citing *City of Wenatchee*, Decision 8898-A (PECB, 2006). Parties must be prompt in providing relevant information. Unreasonable delay in providing necessary information can constitute an unfair labor practice. *Fort Vancouver Regional Library*, Decision 2350-C (PECB, 1988).

ANALYSIS

The union is the exclusive representative of a bargaining unit of custodians and gardeners employed by the employer. The union and employer were parties to a collective bargaining agreement effective from December 19, 2006, through August 31, 2009. In 2008 and 2009 the union made a series of information requests. Some of the requests related to contract enforcement issues and some related to the employer's investigation of Dave Westberg, the union's business manager. In October of 2008, the employer entered into a personal services contract with Carmen Sebree to investigate what they alleged was unprofessional conduct by Westberg.

In applying the legal standard to the facts here, a chronology of the union's information requests is relevant:

October 10, 2008, Information Request and Response

On October 10, 2008, Mick McBee, the union's recording and correspondence secretary, sent an information request to the employer. One of the items the union requested was copies of all e-mails between Davy Muth, Principal of Wing Luke Elementary School, and Patrick Johnson, a school district administrator, sent since September 22, 2008. The union was seeking this

information in order to determine if Johnson was interfering with the union's ability to communicate with its bargaining unit employees.

On November 14, 2008, the employer provided two e-mails in response to the union's October 10, 2008, information request. The employer did not give any indication that its search for the e-mails was ongoing or incomplete.

December 16, 2008, Information Request and Response

On December 16, 2008, McBee sent the employer an e-mailed information request on behalf of the union. The e-mail stated in part:

> We are considering further action against the District in regards to their unlawful interference in our affairs under the guise of investigating our Business Manager. As Part of our ongoing efforts to represent our members without interference from the employer we will need access to the information listed below. We request this information under both RCW 41.56 and 42.56.
>
> * A complete copy of the investigation on David Westberg and any related materials. This would include, but not be limited to, a list of those interviewed, notes taken, any meeting notes describing the investigations scope or other directions given the investigator, e-mails to and from ... the investigator, e-mails to and from interviewees, HR or other Administrators concerning this investigation, and any other documents related to the investigation. As clarification, we are seeking not only the completed [investigation] but the raw data used and/or complied by the investigator.

On January 16, 2009, employer responded to the union's request with the following:

- a CD of a voice recording of Sebree's interview with Westbrook.
- Copies of several letters
- Nine pages of handwritten notes.
- Copies of e-mails, including one e-mail between Muth and Johnson dated October 7, 2008 9:59 AM with the subject line "RE: Safety Meeting Notes" that the employer had not previously included in its November 14, 2008, response to the union's October 10, 2008, request.
- A typed statement from the Principal at Cooper Elementary School

February 5 & 6, 2009, Information Requests and Responses

On February 5, 2009, the union requested Sue Means' credentials and/or qualifications to conduct a harassment investigation. Means was the employer's human resources employee assigned to investigate a complaint filed by a bargaining unit employee against a school principal.

On February 6, 2009, McBee sent the employer a follow-up letter relating to the union's December 16, 2008, information request that the stated in part:

> We are in receipt of the information you supplied per our information request dated December 16, 2008 regarding the investigation of our Business Manager and his representation of our members. Unfortunately the data is incomplete. Specifically what we need more information on in order to qualify our request as filled is:
>
> **Hand written notes** from the interviews appear to be missing. Only nine pages were supplied. I seem to remember more than that being taken during the one interview I attended.

On February 10, 2009, the employer responded to the union's February 5 request for Sue Means' credentials and/or qualifications to conduct a harassment investigation. The letter from the employer stated:

> The District response is: "Under the Public Records Act RCW.42.56.250.(2) states "All application for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant." Therefore, the requested information is exempt from disclosure. However, Sue Means' job description is attached.

The employer provided the union with a position description for "Human Resource Analyst (Specialized Assignment)."

On February 10, 2009, in a separate letter, the employer responded to the union's February 6 information request. That letter stated in part:

> The District is responding as follows:
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> o No hand written notes from the interviews were requested, therefore, there are no documents in the District's possession.

- No email communication to and from the investigator took place.
- Notes of meeting with the investigator dated October 30, 2008 submitted on December 16, 2008. *Attached*
- No written documents pertaining to the decision to utilize an outside investigator and methodology in the selection of Ms. Sebree. It was an oral discussion.

Information on any and all documents in possession of, or to or from, the current superintendent referencing Mr. Westberg and/or local 609 was submitted to you on February 5, 2009.

ISSUE 1 - E-MAILS BETWEEN MUTH AND JOHNSON

On October 10, 2008, the union requested all of the e-mails exchanged between Muth and Johnson to determine if the employer was restricting Westberg's ability to meet with unit employees. The requested e-mails were relevant to the enforcement of Article IX, Section B of the parties collective bargaining agreement, which states in part:

> Authorized representatives of the Union may have reasonable access to its members in District facilities for transmittal of information or representation purposes before work, during regular breaks, or at any reasonable time as long as the work of District employees and services to the District are unimpaired.

In its brief, the employer describes its failure to provide the October 7, 2008, 9:59 A.M. e-mail as a mistake it independently remedied. However, the testimony and evidence from the hearing indicated that the reason the employer provided the October 7, 2008, 9:59 A.M. e-mail to the union was not that the employer caught its omission in responding to the October 10 request. Rather, the employer later succeed at replying to another, distinct, information request the union made on December 16, 2008.

The fact the employer provided the union with two relevant e-mails in response to its October 10 request, does not excuse the omission of the third relevant e-mail. The employer had a duty to provide all relevant information in response to the union's request, where such a request is clear. It is unreasonable to expect a union to make a second information request in order to make sure an employer has not failed to provide all information in response to an initial request.

Summary

I find that the employer's failure to provide the October 7, 2008, 9:59 AM e-mail from Muth to Johnson in response to the union's October 10, 2008, information request violated the duty to bargain in good faith and interfered with the union's ability to investigate grievances and enforce its contract. The fact that the employer provided the e-mail three months later, in response to another interrelated information request, does not absolve the employer's initial failure to provide the union with the e-mail in responding to the October 10, 2008, information request. The employer violated RCW 41.56.140(1) and (4) by failing to provide the union with all of e-mails it requested in a timely manner.

ISSUE 2 - INVESTIGATOR NOTES

On December 16, 2008, the union requested the employer provide it with a complete copy of the investigation on union official Westberg and specified it was "seeking not only the completed investigation but the raw data used and/or complied by the investigator."

The events leading up to this request are important to understand and evaluate the relevancy of the information request. In October 2008 the union helped a bargaining unit employee file a harassment and discrimination claim against a school principal. Westberg represented the employee who filed the complaint. During the investigation of the employee's harassment complaint, the employer accused Westberg, who is not an employee of the employer, of unprofessional conduct and it filed a complaint against Westberg under the District's Anti-Harassment Policy. An October 8, 2008, letter from the employer to Westberg stated in part "While we investigate these serious charges, I would like to recommend that you do not visit either of these School District properties until the conclusion of the investigation."

In October 2008, the employer entered into a personal services contract with Carmen Sebree to investigate the unprofessional conduct and harassment allegations involving Westberg. The contract between the employer and Sebree stated in part:

> **5. District Use**: All drawings, specifications, materials, information, property and other items obtained or developed in connection with the Services or the cost of

> which is included in the Reimbursable Expenses (including, but not limited to, documents, designs, drawings, plans, specifications, calculations, maps, sketches, notes, reports, data, estimates, reproductions, renderings, models, mock-ups, educational materials, curriculum and instructional material, books, workbooks, videos, and completed Services and Services in progress), together with all rights associated with ownership of such items (such as copyright, patent, trade secret and other proprietary rights), shall become the property of District when so obtained or developed or when such expense is incurred, as the case may be, whether or not delivered to District. It is agreed by the Contractor that the services provided to the District are specially ordered or commissioned and that such services are rendered on a work-made-for-hire basis. This confirms ownership by the District of all right, title, and interest, including all right of copyright, in and to any work of authorship created under this agreement. If for any reason it is determined that services were not provided under a work-made-for-hire situation, the Contractor irrevocably and permanently assigns to the District all ownership interest to any work created under this Agreement Contractor shall deliver such items, together with all materials, information, property and other items furnished by District or the cost of which is included in the Reimbursable Expenses, to District upon request and in any event upon the completion, termination or cancellation of this contract.

The employer never challenged the relevancy of the union's December 16, 2008 information request. The record established that the October 8, 2008, letter from the employer to Westberg recommending that he not visit certain school district properties prompted the union to consider filing a grievance over the district's interference with the union's ability to represent its members under Article IX, Section B of the contract. The union requested the information from Sebree's investigation because it was relevant to the potential grievance. The union also wanted the information to investigate a possible unfair labor practice complaint concerning interference with the union's ability to represent unit employees.[1] Therefore, the investigation notes requested by the union were relevant to collective bargaining; specifically, enforcement of Article IX, Section B of the contract and investigation of potential unfair labor practice complaints.

On February 6, 2009, the union put the employer on notice of its concerns that the employer had failed to provide Sebree's notes. The employer responded on February 10, 2009, in a letter

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[1] The union later filed the interference allegation in a separate complaint, which was docketed by the Commission as case 22030-U-08-5607.

stating "No hand written notes from the interviews were requested, therefore, there are no documents in the District's possession."

In June 2009 the same parties participated in a hearing on a separate unfair labor practice matter before the Commission. Portions of the record from that hearing show Sebree testified that the employer never requested she provide them with copies of hand written notes from her investigation into Westberg's conduct.[2]

As the Commission explained in *Seattle School District*, Decision 9982-A (PECB, 2009), "A public employer cannot circumvent its obligations under Chapter 41.56 RCW by hiring an independent contractor to conduct an investigation. To allow otherwise would impermissibly circumvent the Act." As in that case, here Sebree was an agent of the employer operating under a signed agreement between her and the employer to conduct an investigation into Westberg's conduct. Her notes must be treated like notes taken by any other agent of the employer. The employer had an obligation obtain the requested notes from Sebree and provide them to the union. The employer's defense, that it did not physically possess the notes taken by Sebree, is not a valid reason for failing to provide information. The employer's argument is further weakened by the language in its contract with Sebree, quoted above, that specifically gave the employer "all rights associated with ownership" of the notes taken by Sebree during the performance of services for the employer. Under that contract the Employer was the only party with the ability to obtain Sebree's notes. The employer's self-limited internal search for the investigation notes did not constitute a reasonable good faith effort as required by the statute.

Summary

The employer had an obligation to make a good faith effort to provide the union with Sabree's investigation notes. The employer's failure to do so impacted the union's ability to investigate potential grievances and unfair labor practice allegations. Thus the employer violated RCW 41.56.140(1) and (4) by failing to make a reasonable good faith effort to promptly locate and

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[2] I take notice of the transcript from the hearing in case Seattle School District case 22030-U-08-05607. Portions of this transcript from that hearing were admitted into evidence as part of this hearing.

produce the investigator's notes requested by the union. The employer's unilateral ability to gain access to the investigation notes compounds the significance of this violation.

ISSUE 3 - MEANS' QUALIFICATIONS

The union argues that the employer failed to make a good faith response to its information request because it provided the union with a job description that does not match Means' job title. Documents in the record show Means was promoted to the Senior Human Resource Analyst position in the fall of 2007.

At the hearing Misa Garmoe, human resources manager for the employer, explained that although Means' official title and pay grade changed as a result of her promotion to the Senior Human Resource Analyst position, the nature of her job duties did not. Means continues to perform all job duties described in the "Human Resource Analyst (Specialized Assignment)" position description. Garmoe testified that the employer did not give the union the position description for the Senior Human Resource Analyst position because the document was outdated and did not accurately describe Means' job duties.

It is worth noting that this entire dispute would likely have been avoided if the employer would have communicated its explanation for providing the union with a job description that did not match Means' job title at the time it provided the document. I am not finding the employer's failure to communicate its explanation for providing the seemly incorrect position description to rise to the level of bad faith. However, I hope the employer will learn from this incident and, in the future, provide the union with an explanation in situations where the responsiveness of information may be ambiguous. Good communication in bargaining is key to preventing misunderstandings and litigation.

Summary

Although Sue Means holds the title Senior Human Resources Analyst, testimony established that the Human Resources Analyst position description provided to the union by the employer accurately described Means' job duties and was generally responsive to the union's request. The

employer did not violate RCW 41.56.140(1) and (4) when it provided the union with the Human Resources Analyst position description in response to the union's request for Sue Means' credentials.

REMEDIES

In *Western Washington University*, Decision 9309-A (PSRA, 2008) the Commission held that effectuation of the statute "is best served by tailoring the remedy towards ensuring that in the future the employer fully complies with its obligation to collectively bargain in good faith." The fashioning of remedies is a discretionary action of the Commission. *City of Seattle*, Decision 10249-A (PECB, 2009) citing *City of Seattle*, Decision 8313-B (PECB, 2004). Attorney's fees are appropriate when there is a continuing course of conduct that shows an intentional disregard of the union's collective bargaining rights. *Seattle School District,* Decision 5733-B (PECB, 1998); *Lewis County*, Decision 644-A (PECB, 1979), *aff'd*, 31 Wn. App. 853 (1982), *review denied*, 97 Wn.2d 1034 (1982).

This employer has been involved in a series of information request violations. In *Seattle School District*, Decision 10410 (PECB, 2009), the examiner found that this employer violated RCW 41.56.140(1) and (4) when it failed to provide information requested by the union during the investigation of allegations of misconduct and in the processing of a grievance and awarded attorney's fees. In describing the continuing course of conduct by the employer the examiner looked at recent cases and explained:

> [I]n *Seattle School District,* Decision 8976, (PECB, 2005) . . . the employer was found to have failed to provide the union with documents requested concerning allegations of misconduct against a bargaining unit member. Attorney's fees were awarded in that case based on previous decisions where the Commission had found that the employer had committed a failure to bargain.
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> [I]n *Seattle School District,* Decision 9628-A, (PECB, 2008) . . . the Commission again found that the employer had failed and refused to provide the requested information.

This case, which is the fourth information request violation by this employer within the past five years, demonstrates a troubling pattern of failing to provide information that is necessary and

relevant to collective bargaining. The employer's conduct, particularly its lack of action to obtain and provide the union with the investigator's notes, shows further lack of understanding or disregard of its statutory duty to provide information. Based upon the facts of this case, as well as the employer's historical pattern of failing or refusing to provide information, I find that an extraordinary remedy is warranted.

> [I]n crafting extraordinary remedies for cases [involving repetitive violations]..., our responsibility should focus not only on ensuring that the employees' free exercise of collective bargaining rights is protected, but also to educate the offending party on how to comply with its statutory responsibility. *Western Washington University*, Decision 9309-A.

In addition to the customary remedial order requiring the respondent to cease and desist from its unlawful conduct and post and read notices, I have crafted an order designed to prevent the recurrence of the failure to provide information that took place in this case.

Specifically, I am ordering the employer to participate in mandatory training on its duty to provide information. The employer will send its Director of Labor Relations, Director of Human Resources, Senior Human Resource Analysts and all other employees who are routinely involved in deciding how information requests will processed, responding to information requests, or collecting information in response to information requests, to relevant training to be prepared and conducted by Commission staff. The training will be conducted at the Commission's Olympia headquarters at a date and time deemed convenient by the Executive Director. Once training has been completed to the Executive Director's satisfaction, she will inform the union that the employer has complied with this aspect of the remedial order. The employer shall schedule and complete this training within 90 days of the issuance date of this decision. This remedy is designed prevent reoccurring violations of the same nature

I am also ordering the employer to establish a policy on retrieval of e-mails and any other electronic correspondence used by district employees and agents. This policy should outline how its employees or agents will conduct electronic searches of e-mails and electronic correspondence in response to information requests. This policy should be followed anytime the employer receives information requests for e-mails or other electronic documents related to

collective bargaining. This portion of the remedy is tailored to address the employer's failure to provide all responsive e-mails.

Lastly, I am ordering the employer to pay the union's attorney's fees. The employer has shown a continued disregard for its obligation to provide the union with information that is necessary and relevant to collective bargaining and contract enforcement. The union should not have to expend resources on attorney's fees in order to obtain information to which it is clearly lawfully entitled. I find attorney's fee to be particularly appropriate considering the employer's flagrant failure to provide the union with the investigator's notes. This award is necessary to make the union whole.

FINDINGS OF FACT

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

2. The International Union of Operating Engineers, Local 609, is a bargaining representative within the meaning of RCW 41.56.030(3) and is the exclusive bargaining representative of a bargaining unit of custodians and gardeners employed by the employer.

3. The union and employer were parties to a collective bargaining agreement that was effective from December 19, 2006, through August 31, 2009.

4. Dave Westberg is the union's business manager and Mike McBee is the union's recording and correspondence secretary.

5. On October 10, 2008, McBee, sent an information request to the employer. One of the items the union requested were copies of all e-mails between Davy Muth, Principal of Wing Luke Elementary School, and Patrick Johnson, a school district administrator, sent since September 22, 2008. The union was seeking this information in order to determine

if Johnson was interfering with Westberg's ability to represent unit employees under Article IX, Section B of the collective bargaining agreement.

6. On November 14, 2008, the employer provided two e-mails in response to the union's October 10, 2008, information request.

7. In October of 2008, the employer entered into a personal services contract with Carmen Sebree to investigate unprofessional conduct allegations involving Westberg.

8. The language in the contract with Sebree, described in Findings of Fact 7, gave the employer "all rights associated with ownership" of the notes taken by Sebree during the performance of services for the employer.

9. On December 16, 2008, the union requested that the employer provide it with a complete copy of the investigation on David Westberg and any related materials including notes and e-mails to and from interviewees, HR, or other Administrators concerning this investigation. The union specified it was "seeking not only the completed investigation but the raw data used and/or complied by the investigator." The investigation notes requested by the union were relevant to investigating potential grievances under Article IX, Section B of the contract and potential unfair labor practice allegations.

10. On January 16, 2009, in response to the union's request for a complete copy of the investigation on David Westberg and any related materials, the employer provided documents including, an e-mail between Muth and Johnson dated October 7, 2008 and sent at 9:59 A.M. with the subject line "RE: Safety Meeting Notes" that the employer had not previously included in its November 14, 2008, response to the union's October 10, 2008, request.

11. On February 5, 2009, the union requested Sue Means' credentials and/or qualifications to conduct a harassment investigation.

12. On February 6, 2009, the union put the employer on notice of its concerns that the employer had failed to provide all responsive information, specifically notes taken by Sebree. The employer responded on February 10, 2009, in a letter stating "No hand written notes from the interviews were requested, therefore, there are no documents in the District's possession."

13. On February 10, 2009, the employer responded to the union's February 5, 2009, request described in Finding of Fact 11. The employer stated that Sue Means' job description was attached and provided the union with a position description for Human Resource Analyst (Specialized Assignment). The Human Resources Analyst position description provided to the union by the employer accurately described Mean's job duties

14. In response the union's December 16, 2008 information request describe in Finding of Fact 9 and the union's follow-up request described in Finding of Fact 12, the employer did not ask Sebree for notes taken while conducting the independent investigation into Westberg's conduct. The employer never provided the union with Sebree's investigation notes.

CONCLUSIONS OF LAW

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

2. By failing to provide information requested by the union in a timely manner as described in Findings of Fact 5, 6, and 10 the Seattle School District interfered with employee rights in violation of RCW 41.56.140(1) and refused to bargain in violation of RCW 41.56.140(4).

3. As described in Findings of Fact 7, Sebree was an agent of the employer operating under a signed agreement between her and the employer while conducting the investigation into Westberg's conduct and therefore, by refusing and failing to provide information

requested by the union as described in Findings of Fact 7, 8, 9, 10, 12, and 14, the Seattle School District interfered with employee rights in violation of RCW 41.56.140(1) and refused to bargain in violation of RCW 41.56.140(4).

4. As described in Findings of Fact 11 and 13 the employer did not violate RCW 41.56.140(1) or refuse to bargain in violation of RCW 41.56.140(4) by providing the union with the Human Resources Analyst position description.

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

ORDER

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

1. CEASE AND DESIST from:

   a. Failing to timely provide the union with relevant information it requests when that information is necessary to properly perform its duties in the collective bargaining process.

   b. Failing to take steps to promptly locate and obtain documents, both hard copy and electronic, that are the subject of union information requests under Chapter 41.56 RCW.

   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 41.56 RCW:

a. Within five (5) calendar days of receipt of this order, contact Carmen Sebree and, pursuant to section 5 of your personal services contract with Sebree, direct her to provide all notes, handwritten or typed, responsive to the union's request. Provide the documents to the union within ten (10) days of contacting Sebree.

b. Within fifteen (15) calendar days of receipt of this order the employer shall contact the Executive Director of the Public Employment Relations Commission to arrange a convenient date and time for its Director of Labor Relations, Director of Human Resources, Senior Human Resource Analysts and all other employees who are routinely involved in responding to information requests to attend training consistent with this decision.

c. Within sixty (60) calendar days of receipt of this order, develop and adopt a written protocol for the Seattle School District that sets forth the steps that the employer will take to locate and retrieve e-mails and other electronic documents that are the subject of union requests for information under Chapter 41.56 RCW.

d. Post copies of the notice provided by the Compliance Officer of the Public Employment Relations Commission 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.

e. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the School Board of the Seattle 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.

f. 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 provided by the Compliance Officer.

g. 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 he provides.

ISSUED at Olympia, Washington, this 29th day of January, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JESSICA J. BRADLEY, 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.

CASE 22548-U-09-5764
DECISION 10664 - PECB

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 THE SEATTLE SCHOOL DISTRICT COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF STATE COLLECTIVE BARGAINING LAWS, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY failed to provide the International Union of Operating Engineers Local 609 with some of the relevant information it requested relating to grievance investigations and processing.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL, upon request, provide the union with information related to collective bargaining and contract enforcement.

WE WILL develop and adopt a written protocol for that sets forth the steps that the employer will take to locate and retrieve e-mails and other electronic documents that are the subject of union information requests.

WE WILL send our Director of Labor Relations, Director of Human Resources, Senior Human Resource Analysts, and all other employees who are routinely involved in responding to information requests to training conducted by the Public Employment Relations Commission.

WE WILL reimburse the International Union of Operating Engineers, Local 609, for all attorney fees and expenses related to this complaint.

WE WILL NOT fail or refuse to provide the union with investigation information maintained or collected by an independent contractor of the employer, when the requested information is relevant to grievance processing and contract enforcement.

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

DO NOT POST OR PUBLICLY READ THIS NOTICE. AN OFFICIAL NOTICE FOR POSTING AND READING WILL BE PROVIDED BY THE COMPLIANCE OFFICER.

The full decision is published on PERC's website, www.perc.wa.gov.