Kiona Benton School District, Decision 11563 (EDUC, 2012)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

KIONA BENTON EDUCATION ASSOCIATION, Complainant, vs. KIONA BENTON SCHOOL DISTRICT, Respondent.	CASE 24392-U-11-6253 DECISION 11563 - EDUC FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

James A. Gasper, Attorney at Law, Washington Education Association, for the union.

Lyon Weigand & Gustafson PS, by *Jeanie R. Tolcacher*, Attorney at Law, and *Jon L. Seitz*, Attorney at Law, for the employer.

On November 10, 2011, the Kiona Benton Education Association (union) filed an unfair labor practice complaint with the Public Employment Relations Commission. The union alleged that the Kiona Benton School District (employer or district) discriminated by its termination of Amberlee Swensen in reprisal for testifying at an unfair labor practice hearing, and by its termination of Gary Finn in reprisal for being present to testify at a grievance arbitration hearing. Unfair Labor Practice Manager David I. Gedrose reviewed the complaint under WAC 391-45-110 and issued a preliminary ruling on November 18, 2011, finding causes of action to exist. On November 30, 2011, the Commission assigned this case to Examiner Stephen W. Irvin.

On March 23, 2012, the union filed an amended complaint alleging discrimination by the employer's disciplinary action against Jennifer Oliver in reprisal for union activities protected by Chapter 41.59 RCW. On March 27, 2012, I issued a notice of partial deficiency regarding incidents detailed in the amended complaint. On April 9, 2012, the union filed a corrected statement of facts, and I issued an amended preliminary ruling on April 11, 2012, granting the union's request to amend the complaint. I presided over a hearing from July 25, 2012, through July 27, 2012. The parties submitted post-hearing briefs to complete the record.

ISSUES

1. Did the employer discriminate by terminating Amberlee Swensen in reprisal for testifying at an unfair labor practice hearing?

2. Did the employer discriminate by terminating Gary Finn in reprisal for being present to testify against the employer at a grievance arbitration hearing?

3. Did the employer discriminate by disciplining Jennifer Oliver in reprisal for union activities protected by Chapter 41.59 RCW?

Although the union made a *prima facie* case on all three issues, the employer articulated non-discriminatory reasons for its actions, and the union did not meet its burden of proving the employer's reasons were pretextual or the employer's actions were motivated by union animus. As a result, the union's amended complaint is dismissed.

APPLICABLE LEGAL STANDARDS

Discrimination

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of statutorily protected rights. *Seattle School District*, Decision 10732-A (PECB, 2012), *citing Educational Service District 114,* Decision 4361-A (PECB, 1994); *Community College District 13 (Lower Columbia),* Decision 9171-A (PSRA, 2007). The employee maintains the burden of proof in such discrimination cases. To prove discrimination, the employee must first set forth a *prima facie* case by establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute, or communicated to the employer an intent to do so;
2. The employer deprived the employee of some ascertainable right, benefit, or status; and
3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

Ordinarily, an employee may use circumstantial evidence to establish a *prima facie* case of discrimination because parties do not typically announce a discriminatory motive for their actions. *Clark County,* Decision 9127-A (PECB, 2007).

To prove discriminatory motivation, the employee must establish that the employer had knowledge of the employee's union activity. An examiner may base such a finding on an inference drawn from circumstantial evidence, although such an inference cannot be entirely speculative or improbable. Circumstantial evidence consists of proof of facts or circumstances which, according to the common experience, gives rise to a reasonable inference of the truth of the fact sought to be proved. *City of Yakima,* Decision 10270-A (PECB, 2011).

In response to an employee's *prima facie* case of discrimination, the employer need only articulate its non-discriminatory reasons for acting in such a manner. The employer does not bear the burden of proof to establish those reasons. *Port of Tacoma,* Decision 4626-A (PECB, 1995). Instead, the burden remains on the employee to prove by a preponderance of the evidence that the disputed action was in retaliation for the employee's exercise of statutory rights. *Clark County,* Decision 9127-A. The employee meets this burden by proving either that the employer's reasons were pretextual, or that union animus was nonetheless a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

An independent interference violation cannot be found under the same set of facts that failed to constitute a discrimination violation. *Reardan-Edwall School District,* Decision 6205-A (PECB, 1998).

ANALYSIS

Issue 1: Did the employer discriminate by terminating Amberlee Swensen in reprisal for testifying at an unfair labor practice hearing?

Amberlee Swensen worked as a kindergarten teacher at Kiona Benton Elementary School beginning in January 2009. At the end of the 2009-2010 school year, the employer did not renew her contract. She filed a grievance over her nonrenewal, but withdrew it in August 2010

as part of a settlement agreement reinstating her as a kindergarten teacher for the 2010-2011 school year. In October 2010, Swensen testified at a Commission unfair labor practice (ULP) hearing, where the union alleged that her contract wasn't renewed because she filed a grievance against the employer.[1]

The events that led to the union's complaint occurred in 2011, when the employer faced a budget shortfall for the 2011-2012 school year due to projections of a significant reduction in state funding. The employer decided layoffs would be necessary as part of a reduced educational program for the upcoming school year, and the Kiona Benton School District Board of Directors passed a resolution on March 28, authorizing a non-supervisory certificated staff reduction of up to 10 full-time equivalent positions.

Swensen was one of nine bargaining unit employees on an anticipated layoff list district Superintendent Rom Castilleja provided to union President Connie Meredith on May 5. The employer compiled the layoff list according to the terms of the layoff procedures detailed in the parties' collective bargaining agreement (CBA). The layoff list included one employee who had been rehired following retirement, three non-continuing contract employees, and five provisional employees – including Swensen – whose positions are subject to nonrenewal for the first three years of employment in accordance with RCW 28A.405.220.

Castilleja's letter also notified the union of the employer's intent to elevate Joanna Reynolds from provisional status pursuant to RCW 28A.405.220(1)(b). At the time of Castilleja's letter, Reynolds was a fourth-grade teacher in her second full year with the employer and had less seniority than Swensen and three other provisional employees on the layoff list. Castilleja testified that he made the decision to elevate Reynolds from provisional status based on recommendations he received from two principals who had supervised Reynolds and the district's curriculum director. Reynolds' ability to be a trainer in the Guided Language Acquisition Design program also encouraged Castilleja to elevate Reynolds from provisional status.

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[1] A PERC hearing examiner found that the employer did not interfere with employee rights when it non-renewed Swensen because Swensen was informed of her non-renewal prior to filing a grievance. *Kiona Benton School District*, Decision 11035 (EDUC, 2011).

On May 13, Castilleja notified Swensen via letter that the employer had probable cause to nonrenew her contract due to budgetary constraints. Swensen requested that Castilleja reconsider his decision. On June 10, Castilleja sent a letter to Swensen indicating that, because of budgetary concerns, he could not recommend that the school board reconsider the decision. Castilleja's letter informed Swensen that the employer could possibly recall her for a position, and that she was fourth on the list for recall based on seniority.

In June, the employer began to fill positions following the layoff. In a decision that led to a pending grievance by the union, the employer chose to fill openings according to the procedures detailed in the CBA's Assignment and Transfer section, which requires current employees to be given first consideration for job openings, instead of relying on the CBA's Staff Reduction section, which requires employees who were subject to layoff to be offered job openings before others are selected. Among the openings were two kindergarten positions that were restored by the school board. The employer filled both open kindergarten positions with in-district candidates who had more seniority than Swensen. Swensen also applied for two openings in other grades that went to in-district candidates who had more seniority.

On July 29, the Pasco School District sent Swensen a notification of its intent to hire her as a bilingual elementary school teacher for the 2011-2012 school year. Swensen had to sign and return the notification by August 8 in order to accept the position. The Pasco School District issued Swensen a contract on August 10, and she signed it on August 15. According to the Kiona Benton CBA, Swensen's acceptance of a certificated teaching position in another school district automatically terminated her employment relationship with the employer, and she was required to notify the employer that she was employed elsewhere.

Louise Friedrichsen – who handled the employer's human resources duties at the time – testified that the employer learned Swensen had accepted a job with a different district, and on August 8, the employer received a request from the Pasco School District to verify Swensen's certificated teaching experience. The employer unsuccessfully attempted to contact Swensen via phone and e-mail concerning her employment status because – as was stated in an August 11 e-mail from

Friedrichsen to Swensen – Swensen was "actively on the RIF list for consideration of any job opening with the district."

I find the union met its *prima facie* case in its allegations concerning Swensen. Swensen participated in an act protected by the collective bargaining statute when she testified at the hearing in the fall of 2010. The employer deprived her of a benefit when it did not renew her contract for the 2011-12 school year, and sufficient circumstantial evidence exists that the two events were linked to support the union's allegations of discrimination.

In response, the employer's non-discriminatory reasons for its actions revolve around the projected budget shortfall that led the school board to pass a resolution authorizing a reduction of up to 10 full-time non-supervisory certificated staff positions. Swensen was one of nine employees who were laid off in accordance with the provisions of the parties' CBA. When the opportunity arose to fill open teaching positions, the employer opted to look first to in-district candidates before opening the positions to employees in the recall pool.

The union contends the employer's reasons are pretextual because: (a) Swensen was neither recalled for, nor allowed to apply for, vacancies for which she was qualified; (b) the employer ignored the contractual recall procedure and did not contact Swensen until she had accepted a position in another school district; (c) the employer eliminated the bilingual requirement for the open kindergarten positions that had been in place when Swensen was hired; and (d) the employer elevated a teacher with less seniority than Swensen to continuing contract status based on an inapplicable law.

I find the union's recall arguments are not persuasive to make its case for discrimination. At some point, an arbitrator will determine whether the employer relied upon the proper section in the CBA. Nevertheless, the union did not prove that the employer's actions specifically targeted Swensen. Once the employer chose its course, Swensen was one of nine employees on the layoff list. The record indicates Swensen was not the only teacher on the layoff list who was not recalled; in fact, the employer hired only two of the five provisional teachers on the list for the

2011-2012 school year, and a provisional teacher with more seniority than Swensen was also not recalled.

The union's contention that the employer eliminated the bilingual requirement as a pretext to avoid recalling Swensen for the kindergarten openings does not support its burden of proving that the employer discriminated against Swensen. Despite the union's assertion that the employer had no "objectively legitimate business reason" – a standard not applicable to the instant case – for eliminating the bilingual requirement, I find Castilleja's testimony credible that the employer dropped the bilingual requirement in order to have increased flexibility in providing opportunities for teachers with continuing contracts.

Finally, I find the employer did nothing to discriminate against Swensen when it elevated Reynolds from provisional status. The union's post-hearing brief goes to great lengths to argue the statute the employer relied upon was inapplicable and did not give the employer authority to elevate Reynolds, who had less seniority than Swensen and received similar "satisfactory" ratings in the employer's two-tier evaluation system. The union contends the employer deprived Swensen of the opportunity to apply for the position that would have been available had Reynolds not been elevated as part of the employer's elaborate machinations to retaliate against Swensen seven months after she testified at the ULP hearing.

Regardless of whether the employer's actions were consistent with the statute, I credit Castilleja's testimony that Reynolds' elevation to continuing contract status derived from her achievement, and the union offered nothing to refute his testimony. Furthermore, if Reynolds had not been elevated from provisional status and had been on the layoff list, Swensen's position on the list would have remained unchanged, and no evidence was presented that she would have been recalled before taking a job with the Pasco School District.

In conclusion, the union established a *prima facie* case that the employer discriminated against Swensen when it did not renew her contract for the 2011-2012 school year. In response, the employer articulated a non-discriminatory reason – required budget reductions – for its actions. The union then failed to prove the employer's actions were a pretext to discriminate against Swensen or union animus.

Issue 2: Did the employer discriminate by terminating Gary Finn in reprisal for being present to testify against the employer at a grievance arbitration hearing?

Gary Finn taught in the Kiona Benton School District from 1974 until his retirement at the end of the 2007-2008 school year. Finn began working as a substitute teacher in the district in early 2009, and worked sufficient hours in that capacity to be a member of the bargaining unit covered by the Employee Rights and Grievance Procedure articles of the parties' CBA.

On April 11, 2011, Finn was present at the hearing site for a grievance arbitration the parties had scheduled before Arbitrator Howell L. Lankford. The union subpoenaed Finn to testify against the employer. At the ULP hearing in this case, Finn testified he had seen and been seen by district administrators at the grievance arbitration hearing site, but he did not testify there because the hearing did not proceed.

On May 20, Finn was scheduled to substitute in a fourth-grade class at Kiona Benton Elementary School when he was told by elementary school Vice-Principal Jim Perry to report to Castilleja's office for a meeting with the superintendent. Castilleja informed Finn – who was unrepresented at the meeting – that he wouldn't be called upon to substitute in the district again as a result of accusations of inappropriate behavior made against him to Perry by two female fifth-grade students after Finn substituted on May 17.

Within a week of Castilleja's meeting with Finn, union President Meredith and Washington Education Association UniServ Representative Steve Lindholm accompanied Finn to a meeting with Castilleja and Perry. The union's representatives believed Finn's due process rights had been violated by Castilleja's actions, and that a complete investigation should have been undertaken before the district stopped offering Finn future substitute teaching opportunities, especially in light of information provided by Perry indicating that one of the students accusing Finn of inappropriate behavior later believed Finn's actions were unintentional.

On June 10, the union filed a grievance against the employer for violating Finn's due process rights. On July 12, the Kiona Benton School District Board of Directors offered to resolve the grievance by directing Castilleja to notify bargaining unit members of their right to

representation, and authorizing two days of pay to Finn in addition to the half-day of pay he received when he was sent home on May 20.

I find the union met its *prima facie* case in its allegations concerning Finn. Although the grievance arbitration hearing was over before it started, Finn's attendance at the hearing can be construed as participation in an activity protected by the collective bargaining statute. The employer deprived Finn of his status as a substitute teacher nearly a month later, and circumstantial evidence connects the employer's termination of Finn's substitute teaching opportunities with Finn's attendance to testify against the employer at the grievance arbitration hearing.

The employer's non-discriminatory reasons for its actions are tied to the potential liability the employer perceived when confronted with student allegations made against Finn, who had also been accused of inappropriate behavior by a female athlete when Finn was a middle school softball coach prior to his retirement in 2008. Following an investigation, Finn received a letter of reprimand from Kiona Benton Middle School Principal Vance Wing on April 28, 2008, for not complying with a previous request not to touch students. Wing's letter indicates it was copied to Castilleja and union leadership.

The union contends the employer did not have adequate grounds to end Finn's substitute teaching relationship with the district, and violated his due process rights in retribution for his appearance to testify against the employer at the grievance arbitration hearing. The union also asserts the employer's partial reliance on the 2008 accusation is pretextual, because the district's employment of Finn as a substitute teacher would be irresponsible if he had been accused of inappropriate conduct by students in the past.

Although the evidence suggests the employer's investigation of the complaints by the two female students was incomplete, the union's remedy for violation of the contract's due process protections would result from an arbitration hearing rather than an unfair labor practice hearing. The possibility that the employer potentially rushed to judgment while attempting to limit its potential liability does not constitute sufficient evidence of discriminatory intent to carry the

union's burden of proof, especially when I consider the extremely limited nature of Finn's participation – that he was subpoenaed to testify at the grievance arbitration hearing but never testified.

In conclusion, the union established a *prima facie* case that the employer discriminated against Finn when it ended his substitute teaching relationship with the district. In response, the employer articulated a non-discriminatory reason – potential liability for Finn's behavior with female students – for its actions. The union then failed to prove the employer's actions were a pretext to discriminate against Finn or union animus.

Issue 3: Did the employer discriminate by disciplining Jennifer Oliver in reprisal for union activities protected by Chapter 41.59 RCW?

Jennifer Oliver taught in the Kiona Benton School District from 1999 through the present, and held several leadership positions within the union during that time period. During the 2011-2012 school year, Oliver was the union's treasurer and served as the union's senior building representative at Kiona Benton High School in addition to being part of the union's contract negotiation team. At the beginning of that school year, Oliver expressed bargaining unit members' concerns to Castilleja regarding what were perceived as threatening actions by high school Principal Wayne Barrett.

On the morning of October 12, Oliver sent an e-mail to Assistant Principal Bernardo Castillo, Barrett, Castilleja, and the high school teaching staff notifying them of her intent to take four students on a field trip to a Family Career Community Leaders of America meeting in Richland, Washington, on Monday, October 17. Minutes later, Barrett responded to Oliver's e-mail:

> Jennifer please make certain you have discussed this with your evaluator [Castillo]. It is necessary that you get trips approved prior. Thank you for your assistance in maintaining open communication and approval. It sounds like a good opportunity.

Oliver had no further communication with Castillo in the time between Barrett's e-mail and when Oliver left the school with four students in her personal vehicle on the morning of October

17. By mid-afternoon of the day Oliver left, Castillo sent an e-mail to Oliver requesting a meeting on October 21 to discuss his concern with the field trip. In the e-mail, which was copied to Barrett and Castilleja, Castillo advised Oliver to have a union representative present at the meeting. UniServ Representative Lindholm accompanied Oliver to the October 21 meeting with Castillo, Barrett, and high school Secretary Angela Brown.

Two disciplinary actions arose from the October 21 meeting. First, in a letter dated October 28, Castillo gave Oliver written documentation of a verbal warning for insubordination because she did not comply with Barrett's e-mail direction on October 12. Castillo's letter also contained an eight-point list of expectations for future field trips. Second, in a letter dated October 28, Castillo gave Oliver a written reprimand for her behavior during the October 21 meeting. Castillo's letter stated that Oliver said "this is bullshit" in response to one of Castillo's concerns, and this statement violated school board policy prohibiting employees from using language that is "offensive or profane."

I find the union met its *prima facie* case in its allegations concerning Oliver. Oliver consistently participated in activities protected by the collective bargaining statute. Shortly after Oliver met with Castilleja to discuss bargaining unit members' concerns about Barrett, she received two disciplinary actions that were not previously on her record. The timing of the two events creates a strong inference of a causal connection between her protected union activities and the employer's imposition of progressive discipline.

The employer provided non-discriminatory justifications for the two disciplinary actions. The employer gave Oliver a verbal warning for not following Barrett's directive that she contact Castillo prior to the field trip. The employer gave Oliver a written reprimand for the profanity she uttered during her meeting with her supervisors.

The union has a far different interpretation of the e-mail exchange between Oliver and Barrett, and contends Barrett's response to Oliver constituted approval of the field trip. For this reason, the union finds the employer's non-discriminatory reasons pretextual and further asserts Oliver is

being held to an unreasonable standard of behavior for field trips because the employer's field trip protocol was imprecise, nonexistent, or not followed by all employees.

Regarding the discipline tied to profanity, the union finds pretext based on testimony by Oliver and Lindholm, neither of whom could recall Oliver using profanity in the meeting. If profanity had been used, the union argues, the employer would have made its objection to the language known at the meeting instead of waiting until October 28 to issue a written reprimand. Because the meeting involved Barrett, who has had an occasionally acrimonious relationship with Oliver, the union concludes the outcome was "clearly intended to be punitive and retaliatory."

I find no merit in the union's interpretation of Barrett's e-mail response to Oliver, and its contentions regarding the discipline she received for not following Barrett's direction. The plain language of the e-mail's first two sentences directs Oliver to discuss the trip with her evaluator, Castillo, and get Castillo's approval before leaving. Despite having five days between Barrett's e-mail and when she left for the field trip, Oliver did not contact Castillo as requested. Her lack of communication with Castillo – not her failure to follow what testimony revealed to be an inconsistent field trip protocol – resulted in her discipline.

I find no credibility in the union's contentions regarding Oliver's actions during her October 21 meeting with Barrett and Castillo. During direct examination, Oliver testified she "was becoming more and more frustrated. And eventually asked to leave the room so that I did not become unprofessional. I needed time to gather myself and, you know – because I try very hard not to lose my cool." I find it highly probable someone in that emotional state would use profanity. I credit Castillo's testimony when he said Oliver used profanity, and added that her supervisors brought it to her attention that using profanity was unprofessional behavior. Far from punitive and retaliatory, the disciplinary action was a direct result of Oliver's use of profane language during her meeting with her supervisors.

In conclusion, the union established a *prima facie* case that the employer discriminated against Oliver when it disciplined her in connection with the October 17 field trip and October 21 meeting with her supervisors. In response, the employer articulated non-discriminatory reasons

– Oliver's insubordination and use of profanity – for its actions. The union then failed to prove the employer's actions were a pretext to discriminate against Oliver or union animus.

CONCLUSION

After consideration of the record as a whole, I dismiss the union's amended complaint. The union made its *prima facie* case on all three issues. The employer articulated non-discriminatory reasons for its actions, and the union did not carry its burden of proving the employer's reasons were pretextual or that the employer's actions were motivated by union animus.

FINDINGS OF FACT

1. The Kiona Benton School District is an employer within the meaning of RCW 41.59.020(5).

2. The Kiona Benton Education Association (union) is an exclusive bargaining representative within the meaning of RCW 41.59.020(6).

3. Amberlee Swensen worked as a kindergarten teacher at Kiona Benton Elementary School beginning in January 2009.

4. At the end of the 2009-2010 school year, the employer did not renew Swensen's contract. She filed a grievance over her nonrenewal, but withdrew it in August 2010 as part of a settlement agreement reinstating her as a kindergarten teacher for the 2010-2011 school year.

5. In October 2010, Swensen testified at a Commission unfair labor practice (ULP) hearing, where the union alleged that her contract wasn't renewed because she filed a grievance against the employer.

6. In 2011, the employer faced a budget shortfall for the 2011-2012 school year due to projections of a significant reduction in state funding.

7. The employer decided layoffs would be necessary as part of a reduced educational program for the upcoming school year, and the Kiona Benton School District Board of Directors passed a resolution on March 28, authorizing a non-supervisory certificated staff reduction of up to 10 full-time equivalent positions.

8. Swensen was one of nine bargaining unit employees on an anticipated layoff list district Superintendent Rom Castilleja provided to union President Connie Meredith on May 5.

9. The employer compiled the layoff list according to the terms of the layoff procedures detailed in the parties' collective bargaining agreement (CBA). The layoff list included one employee who had been rehired following retirement, three non-continuing contract employees, and five provisional employees – including Swensen – whose positions are subject to nonrenewal for the first three years of employment in accordance with RCW 28A.405.220.

10. Castilleja's letter also notified the union of the employer's intent to elevate Joanna Reynolds from provisional status pursuant to RCW 28A.405.220(1)(b). At the time of Castilleja's letter, Reynolds was a fourth-grade teacher in her second full year with the employer and had less seniority than Swensen and three other provisional employees on the layoff list.

11. On May 13, Castilleja notified Swensen via letter that the employer had probable cause to nonrenew her contract due to budgetary constraints.

12. Swensen requested that Castilleja reconsider his decision. On June 10, Castilleja sent a letter to Swensen indicating that, because of budgetary concerns, he could not recommend that the school board reconsider the decision. Castilleja's letter informed Swensen that the employer could possibly recall her for a position, and that she was fourth on the list for recall based on seniority.

13. In June, the employer began to fill positions following the layoff. In a decision that led to a pending grievance by the union, the employer chose to fill openings according to the procedures detailed in the CBA's Assignment and Transfer section, which requires current employees to be given first consideration for job openings, instead of relying on the CBA's Staff Reduction section, which requires employees who were subject to layoff to be offered job openings before others are selected.

14. Among the openings were two kindergarten positions that were restored by the school board. The employer filled both open kindergarten positions with in-district candidates who had more seniority than Swensen. Swensen also applied for two openings in other grades that went to in-district candidates who had more seniority.

15. On July 29, the Pasco School District sent Swensen a notification of its intent to hire her as a bilingual elementary school teacher for the 2011-2012 school year. Swensen had to sign and return the notification by August 8 in order to accept the position. The Pasco School District issued Swensen a contract on August 10, and she signed it on August 15.

16. According to the Kiona Benton CBA, Swensen's acceptance of a certificated teaching position in another school district automatically terminated her employment relationship with the employer, and she was required to notify the employer that she was employed elsewhere.

17. On August 8, the employer received a request from the Pasco School District to verify Swensen's certificated teaching experience.

18. The employer unsuccessfully attempted to contact Swensen via phone and e-mail concerning her employment status because – as was stated in an August 11 e-mail from Louise Friedrichsen to Swensen – Swensen was "actively on the RIF list for consideration of any job opening with the district."

19. Gary Finn taught in the Kiona Benton School District from 1974 until his retirement at the end of the 2007-2008 school year. Finn began working as a substitute teacher in the district in early 2009, and worked sufficient hours in that capacity to be a member of the bargaining unit covered by the Employee Rights and Grievance Procedure articles of the parties' CBA.

20. On April 11, 2011, Finn was present at the hearing site for a grievance arbitration the parties had scheduled before Arbitrator Howell L. Lankford. The union subpoenaed Finn to testify against the employer. At the ULP hearing in this case, Finn testified he had seen and been seen by district administrators at the grievance arbitration hearing site, but he did not testify there because the hearing did not proceed.

21. On May 20, Finn was scheduled to substitute in a fourth-grade class at Kiona Benton Elementary School when he was told by elementary school Vice-Principal Jim Perry to report to Castilleja's office for a meeting with the superintendent.

22. Castilleja informed Finn – who was unrepresented at the meeting – that he wouldn't be called upon to substitute in the district again as a result of accusations of inappropriate behavior made against him to Perry by two female fifth-grade students after Finn substituted on May 17.

23. Within a week of Castilleja's meeting with Finn, union President Meredith and Washington Education Association UniServ Representative Steve Lindholm accompanied Finn to a meeting with Castilleja and Perry.

24. The union's representatives believed Finn's due process rights had been violated by Castilleja's actions, and that a complete investigation should have been undertaken before the district stopped offering Finn future substitute teaching opportunities, especially in light of information provided by Perry indicating that one of the students accusing Finn of inappropriate behavior later believed Finn's actions were unintentional.

25. On June 10, the union filed a grievance against the employer for violating Finn's due process rights. On July 12, the Kiona Benton School District Board of Directors offered to resolve the grievance by directing Castilleja to notify bargaining unit members of their right to representation, and authorizing two days of pay to Finn in addition to the half-day of pay he received when he was sent home on May 20.

26. Jennifer Oliver taught in the Kiona Benton School District from 1999 through the present, and held several leadership positions within the union during that time period.

27. During the 2011-2012 school year, Oliver was the union's treasurer and served as the union's senior building representative at Kiona Benton High School in addition to being part of the union's contract negotiation team.

28. At the beginning of that school year, Oliver expressed bargaining unit members' concerns to Castilleja regarding what were perceived as threatening actions by high school Principal Wayne Barrett.

29. On the morning of October 12, Oliver sent an e-mail to Assistant Principal Bernardo Castillo, Barrett, Castilleja, and the high school teaching staff notifying them of her intent to take four students on a field trip to a Family Career Community Leaders of America meeting in Richland, Washington, on Monday, October 17. Minutes later, Barrett responded to Oliver's e-mail:

> Jennifer please make certain you have discussed this with your evaluator [Castillo]. It is necessary that you get trips approved prior. Thank you for your assistance in maintaining open communication and approval. It sounds like a good opportunity.

30. Oliver had no further communication with Castillo in the time between Barrett's e-mail and when Oliver left the school with four students in her personal vehicle on the morning of October 17.

31. By mid-afternoon of the day Oliver left, Castillo sent an e-mail to Oliver requesting a meeting on October 21 to discuss his concern with the field trip. In the e-mail, which was copied to Barrett and Castilleja, Castillo advised Oliver to have a union representative present at the meeting. UniServ Representative Lindholm accompanied Oliver to the October 21 meeting with Castillo, Barrett, and high school Secretary Angela Brown.

32. In a letter dated October 28, Castillo gave Oliver written documentation of a verbal warning for insubordination because she did not comply with Barrett's e-mail direction on October 12. Castillo's letter also contained an eight-point list of expectations for future field trips.

33. In a letter dated October 28, Castillo gave Oliver a written reprimand for her behavior during the October 21 meeting. Castillo's letter stated that Oliver said "this is bullshit" in response to one of Castillo's concerns, and this statement violated school board policy prohibiting employees from using language that is "offensive or profane."

CONCLUSIONS OF LAW

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

2. By its actions in Findings of Fact 8, 11, 12, and 14, the employer did not discriminate against Amberlee Swensen in violation of RCW 41.59.140(1)(d).

3. By its actions in Finding of Fact 22, the employer did not discriminate against Gary Finn in violation of RCW 41.59.140(1)(c).

4. By its actions in Findings of Fact 31, 32, and 33, the employer did not discriminate against Jennifer Oliver in violation of RCW 41.59.140(1)(c).

ORDER

The union's amended complaint charging unfair labor practices filed in the above-captioned matter is dismissed.

ISSUED at Olympia, Washington, this 1st day of November, 2012.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

STEPHEN W. IRVIN, Examiner

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

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

CASE NUMBER:	24392-U-11-06253	FILED:	11/10/2011	FILED BY:	PARTY 2
DISPUTE:	ER DISCRIMINATE				
BAR UNIT:	TEACHERS				
DETAILS:	See 24649-S-12-0273				
COMMENTS:					

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