Seattle School District, Decision 12672 (EDUC, 2017)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE EDUCATION ASSOCIATION, Complainant, vs. SEATTLE SCHOOL DISTRICT, Respondent.	CASE 127738-U-15 DECISION 12672 - EDUC FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On November 25, 2015, the Seattle Education Association (union) filed an unfair labor practice complaint against the Seattle School District (employer). The Commission's unfair labor practice manager issued a preliminary ruling on December 7, 2015, finding causes of action for employer interference, domination, and discrimination. On April 13, 2016, the union filed an amended complaint; on April 25, I issued an amended preliminary ruling. On May 2, 2016, the union filed a second amended complaint and on May 11, the employer objected to the union's second amended complaint. I issued a second amended preliminary ruling on May 19, 2016. I held a hearing on September 19 and 20, 2016, and the parties submitted briefs on December 22, 2016.

ISSUES

The issues identified in the preliminary rulings are as follows:

Employer Interference

Employer interference with employee rights in violation of RCW 41.59.140(1)(a) by:

1. Principal Aida Fraser-Hammer sending an e-mail to Temple Robinson on June 19, 2015, that discouraged employees from engaging in union activity and contained threats of reprisal for engaging in protected union activities.

2. Fraser-Hammer sending an e-mail to the union's building representatives at Chief Sealth International High School (Chief Sealth) on June 24, 2015, that discouraged union activity and contained threats of reprisal for engaging in protected union activities.

3. Fraser-Hammer sending an e-mail to bargaining unit employee Nan Johnson on September 5, 2015, seeking to discourage Johnson from contacting her union and engaging in protected union activities and implying that it is improper for Johnson to raise concerns with her union without first discussing them with the employer.

4. Since September 2015, Fraser-Hammer announcing that Chief Sealth would not follow the hiring rules that were developed by the building leadership team because of a meeting held on June 17, 2015, in which the union criticized Fraser-Hammer's leadership style and other issues.

5. Fraser-Hammer sending an e-mail to Chief Sealth's Seattle Education Association building representatives on April 20, 2016, that could reasonably be perceived as a threat of reprisal or force, or promise of benefit, associated with the union activity of those employees or of other employees.

Employer Domination

Employer domination of the union in violation of RCW 41.59.140(1)(b) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)] since October 12, 2015, by sending letters informing the union that its representative, Robinson, is not permitted on the Chief Sealth premises unless preapproved permission is obtained from Geoff Miller, the employer's labor and employee relations director.

Employer Discrimination

Employer discrimination in violation of RCW 41.59.140(1)(c) [and if so, derivative interference in violation of RCW 41.59.140(1)(a)] by:

1. Since May 25, 2015, proposing that woodshop at Chief Sealth be eliminated in reprisal for Johnson's protected union activities.[1]

2. On June 15, 2015, denying the budget committee's idea of expanding the size of the woodshop classroom at Chief Sealth in reprisal for Johnson's protected union activities.

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[1] I do not separately address this allegation; it is incorporated into the other allegations addressing the proposals to eliminate woodshop.

3. On August 17, 2015, cancelling third period woodshop at Chief Sealth and assigning Johnson to travel and teach woodshop at Denny Middle School in reprisal for Johnson's protected union activities.

4. On September 9, 2015, assigning Johnson to teach a third period credit retrieval class, a class that would require Johnson to complete additional training that she has not previously received, after learning that Johnson's contract did not permit the employer to assign her to teach at a middle school.

Employer discrimination in violation of RCW 41.59.140(1)(c) and RCW 41.59.140(1)(d) [and if so, derivative interference in violation RCW 41.59.140(1)(a)] by Fraser-Hammer taking the following actions in reprisal for Johnson's protected union activities and involvement in filing an unfair labor practice complaint:

1. With respect to Chief Sealth's budget:

    a. On February 28, 2016, proposing at a budget committee meeting that the woodshop program be eliminated because of a reduction of funds.

    b. During the week of March 21, 2016, stating at a budget committee meeting that the woodshop program should be eliminated or significantly reduced even though more money was available to Chief Sealth.

    c. In March 2016, not allowing staff to vote on an alternative proposed budget that funded the woodshop program.

    d. On March 21, 2016, submitting to the district the Chief Sealth budget that included the reduction or elimination of the woodshop program without having staff vote on the revised budget.

2. On March 28, 2016, presenting Johnson with the option of working part time in the Chief Sealth woodshop program or finding a job at another district school.

Employer discrimination in violation of RCW 41.59.140(1)(d) [and if so, derivative interference in violation RCW 41.59.140(1)(a)] by Fraser-Hammer taking the following actions in reprisal for Johnson's involvement in filing an unfair labor practice complaint:

1. In January 2016, assigning a number of students receiving special education and English language learner (ELL) services to Johnson's woodshop class for the second semester without support.

2. On or about February 26, 2016, removing the aide who had been assigned to Johnson's class as a result of Johnson requesting support from the head of the ELL Department.

3. Since the start of the second semester in 2016, removing six students from Johnson's class.

As detailed below, I find the employer interfered with employee rights in violation of RCW 41.59.140(1)(a) when Fraser-Hammer sent an e-mail to union building representatives on June 24, 2015, and when Fraser-Hammer sent an e-mail to Johnson on September 5, 2015. Both e-mails discouraged union activity and could reasonably be perceived as containing threats of reprisal for engaging in protected union activities. However, I find the union did not meet its burden of proof to establish causes of action for domination, discrimination, or the other interference allegations.

BACKGROUND

The union represents the employer's non-supervisory, certificated employees.[2] At all times material to this decision, the union and employer were parties to a collective bargaining agreement (CBA).

Nan Johnson began working for the employer in December 1998 and has worked as a woodshop teacher within the career and technical education (CTE) program at Chief Sealth since 2002 or 2003. She served as a union building representative during the 2014-15 school year and as an alternate building representative during the 2013-14 and 2015-16 school years. As a building representative, Johnson attended meetings and provided guidance to other teachers.

The union maintains four building representatives and two alternate building representatives at Chief Sealth. The representatives are bargaining unit employees who work at the school. Temple Robinson works for the Washington Education Association, which is affiliated with the union, as a UniServ Representative; she represents the employer's bargaining unit employees, including employees at Chief Sealth.

Aida Fraser-Hammer began working as principal of Chief Sealth in July 2013. During the present 2016-17 school year, Chief Sealth serves approximately 1,150 students with one principal, two assistant principals, approximately 75 certificated employees, and approximately 25 classified employees.

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[2] The union also represents some of the employer's classified employees in a separate bargaining unit.

Chief Sealth's budget and class size play a central role in this decision. Below I provide a brief overview of these topics before detailing the other relevant facts of this case.

Overview

Chief Sealth Budget

Chief Sealth's budgeting process begins with the principal receiving information from the employer on the following school year's staff allotment and discretionary funds. Based on that information, the principal develops a budget proposal to present to the budget committee; Fraser-Hammer views the budget proposal as a starting point for conversations. Fraser-Hammer testified that in putting the budget together, she focuses on what is important to the school based on its continuous school improvement plan (CSIP).

The budget committee includes 16–20 members, including Fraser-Hammer, Assistant Principal Clint Sallee, certificated employees, classified employees, and a parent.[3] A majority of the school's budget committee must approve the budget before it is presented to the entire school staff for approval. To pass the budget, two-thirds of the entire school staff, not just of the number of staff members actually voting, must vote yes.[4]

The CBA provides a process in the event a school staff does not meet the two-thirds requirement. The first step of the process includes a meeting with a union representative, an employer representative, and the staff to resolve the budget. The parties refer to that meeting as a "mediation." If the mediation does not resolve the budget, the superintendent's designee makes the final decision.

Class Size

The testimony of Sallee, who has been an assistant principal at Chief Sealth since July 2013, provides context for the class size issues presented in this case. Sallee is in charge of the school's

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3 While some witnesses referred to this committee as the building leadership team (BLT) or a subgroup of the BLT, I refer to it as the budget committee.

4 The record indicates that this was the union's interpretation of the CBA and that the language was subject to different interpretations.

master schedule. Sallee explained that the school needs enough seats in classes for the number of students in the school to avoid students having holes in their schedules. He testified that it feels like the staffing allocation falls short of the school's needs and, with the limited budget, the ability to fill a class is especially important. "[E]very seat really matters," according to Sallee.

Sallee testified that classes that run considerably below 32 students cause a real problem. He explained that while woodshop is limited to 16 students, all of the other CTE classes "take the max of 32, 35" students.[5]

Chief Sealth offers its students an international baccalaureate (IB) diploma program. The program requires students to take a certain number of higher-level classes. According to Sallee, there are a few classes like higher level mathematics that historically might run at 18 students in one section. Such courses are crucial to the school's IB program.

The CBA states, "The scheduling and assignment of teachers, the assignment of students to classes, and the daily schedule of classes and activities shall be made with staff participation and be consistent with the CSIP, while recognizing that the principal has the right to make the final decision."

Woodshop Class Size During the 2013-14 School Year

Early during Fraser-Hammer's first year as principal, in September 2013, Johnson and a union building representative raised concerns about the large number of students enrolled in Johnson's woodshop classes. Johnson testified that 32 students were enrolled in her classes, including students receiving special education services. According to Johnson, Chief Sealth had adhered to an unwritten agreement that her classes would have 18 to 20 students due to the size of the woodshop space. She also testified that the number of students receiving special education services in her classes was limited due to safety issues. The union filed a grievance on Johnson's behalf to address the class size issue.

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5 Fraser-Hammer referred to a CTE "buy down" to 24 students. Neither party addressed the "buy down" in its brief, and I discuss it no further.

Fraser-Hammer testified that the master schedule for the 2013-14 school year was developed prior to Fraser-Hammer starting at the school and she inherited Johnson's class sizes. She explained that she sought to memorialize the class size maximum for woodshop but was unable to determine who had set the 20 student maximum and his or her credentials. Fraser-Hammer, with the assistance of her supervisor, requested that the employer's risk management department inspect the woodshop space to determine student enrollment limits. Based on the inspection, the class size maximum in woodshop dropped to 14–16 students.

The Woodshop Wall

Johnson and the union advocated for expanding student enrollment numbers in woodshop by removing a wall between the woodshop and a neighboring classroom. This would have allowed Johnson to work with the same number of students in the shop while supervising students in the classroom at the same time. The classroom space at issue was a computer-based classroom designated for Denny Middle School's Project Lead the Way; it was not the classroom Johnson had been using.

In the spring of 2015 Fraser-Hammer obtained bids to remove the wall. By memorandum dated June 15, 2015, Fraser-Hammer informed the staff of her decision not to remove the wall between the woodshop and the Denny Middle School (Denny) classroom. In six pages, Fraser-Hammer provided background information, weighed the pros and cons of removing the wall as well as two other options, explored special considerations, and explained her decision. Ultimately, Fraser-Hammer determined that with the $15,000 cost of the project, as well as other considerations detailed in her memorandum, removing the wall to add capacity for eight more students was not an effective use of money.

Meeting of June 17, 2015, and E-mails of June 19 and 24, 2015

On June 17, 2015, Fraser-Hammer attended a meeting. She testified that she thought the meeting was a regular meeting with the union's building representatives. It was not. The purpose of the meeting, which was not disclosed to Fraser-Hammer in advance, was to discuss concerns about Fraser-Hammer's leadership, including issues relating to transparency, communication, master scheduling, and the union's climate surveys. Two parents attended the meeting at the invitation

of the union representatives. According to Robinson, the union had invited parents because the union thought their presence might help get some movement from Fraser-Hammer. The union had also invited Fraser-Hammer's supervisor, Israel Vela, to attend, but he declined due to scheduling conflicts. According to Fraser-Hammer, the meeting lasted approximately two hours.

Johnson's role at the meeting was to share the union's climate survey results with Fraser-Hammer. The union conducted two staff climate surveys, one in the fall of 2014 and the other in the spring of 2015. Johnson helped develop questions for each. Johnson testified that she told Fraser-Hammer during the meeting that the staff was "pretty dissatisfied;" over 60 percent had negative comments, and the staff was "pretty much ready to do a vote of no confidence."

Fraser-Hammer felt ambushed at the meeting and communicated her emotions about the meeting in two separate e-mails. On June 19, 2015, she sent an e-mail to Robinson and Jonathan Knapp, who she thought was Robinson's supervisor. Knapp was the union president, not Robinson's supervisor. Fraser-Hammer started the page-and-a-half-long e-mail expressing her "disgust" with the meeting and indicating it was "unprofessional, inappropriate and inflammatory." Fraser-Hammer stated, "You and the [union] building representatives planned and executed an ambush." The e-mail expressed frustration with the lack of advance notice of the meeting agenda, the attendance of parents at the meeting, and the inclusion of topics Fraser-Hammer believed fell outside the union's purview. The e-mail also retracted her agreement during the meeting to have a mediation between administration and staff because, she explained, the issues did not represent contractual violations. Fraser-Hammer expressed the importance of clarifying roles as follows:

> I am, however, open to continued conversation and discussion with the group. I sincerely want to mind [sic] broken relationships and build trust. I firmly believe this is possible if we first assume good intent, listen to each other's viewpoint and respect each other's role. I believe it is also extremely important that you and the building representatives begin to draw lines between complaints and violations. Complaints (such as the topics addressed in the meeting) go to my boss, the ombudsman or to [Human Resources]. Violations of the contract go to the [union].
>
> I am requesting a meeting with you and your supervisor regarding your involvement in the ambush referenced above and your continued representation of the [union] members in my building. Please let me know when we can meet for this purpose.

On June 24, 2015, Fraser-Hammer sent an e-mail concerning the meeting to the union building representatives. She expressed some of the same frustrations she communicated in the e-mail to Robinson and Knapp:

> I am writing this email to express my disappointment with the nature and content of the meeting held on June 17th, 2015. Your actions at that meeting were unprofessional, inappropriate, inflammatory and insubordinate.
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> This entire process was very irregular and I am greatly saddened that it was the method you chose to address the issues at hand. First of all, I was not informed ahead of time of the nature of the meeting; secondly, the topics raised were all based on discontent with my leadership and not with any violations of the [union] contract; and furthermore, I am still mystified about your decision to include parents in this meeting. . . .
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> Please know that I will no longer meet with the group unless I am provided with a written agenda ahead of time. If the proposed topics have nothing to do with items covered by the [union] contract, I will not address it in [a union] meeting. I will instead suggest the proper venue to address the issue.
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> This change is not in retaliation for the personal ambush and lack of respect extended to me during the meeting, but it is an attempt to force this group to stick within the purview of its charge and to help the [Chief Sealth] staff to address issues in the proper and appropriate venues. The time has come to firmly differentiate between issues that are covered by the [union] contract and those that are not. Streamlining our procedures and clearly defining the domains and spheres of control of the different groups (BLT, IC, SEA, DL, CLT, etc.) will help staff know how, when and where to raise concerns and/or ask questions. It will also help us all to engage in more professional dialogue and academic discourse around student achievement and to refrain from negative secret conversations that divide and separate us.
>
> Know that I am still very willing to have conversations with staff members individually or collectively to provide me with feedback and input – good or bad – about my style, discuss decisions I make, concerns with personnel, etc. I recognize that I am not perfect and that I have made and will continue to make many mistakes. For this reason, I am always open to constructive feedback, input and pushback. I genuinely want to do the best job possible. I genuinely love this school. And I know you all do too. We are all in this together.

Fraser-Hammer testified that her intent in sending the e-mail to the union building representatives was to help determine how to move forward; her intent was not to threaten. She wanted to draw attention to what she perceived as the inappropriate manner in which the meeting was held and how she felt. Fraser-Hammer testified, "I wanted to expose my vulnerability as a human being

and how they treated me that day." From Robinson's perspective, Fraser-Hammer's e-mail admonished the union building representatives "for doing the hard work that need[ed] to be done."

Johnson's Assignment for the 2015-16 School Year

Chief Sealth and Denny have a history of trading teachers; the history predates Fraser-Hammer becoming principal. Teachers are shared between the two schools to accommodate the needs at each school, and the schools have shared music, drama, math, and Spanish teachers. The schools also share a campus, including some facilities.

In planning for the 2015-16 school year, Fraser-Hammer agreed with the Denny principal to trade Denny's drama teacher and Johnson for one period so that Chief Sealth students could take drama. On August 7, 2015, during summer break, Fraser-Hammer initiated contact with Johnson about her assignment for the 2015-16 school year but Johnson was not able to talk at that time.[6] When they spoke on August 17 or 18, Fraser-Hammer informed Johnson that she would teach woodshop to Denny students third period. Johnson submitted a letter to Fraser-Hammer on August 20, 2015, indicating issues and barriers to teaching middle school students, including concerns about safety, developing a new middle school curriculum, and coordinating schedules. Johnson also expressed concern about losing her mentorship class, a class she taught two days per week, due to some variations between the two schools' class schedules.

By e-mail dated August 24, 2015, Fraser-Hammer responded to Johnson's concerns. On August 31, 2015, Robinson e-mailed Fraser-Hammer with concerns about Johnson's third period assignment. Robinson stated she had contacted the employer's human resources department and learned that Johnson had signed a contract to work 1.0 FTE at Chief Sealth. As a result, her contract would have to be rewritten to effect the proposed change. Robinson expressed in the e-mail that she did not believe Fraser-Hammer respected Johnson's professional judgment. Robinson concluded the e-mail by indicating that if Fraser-Hammer continued her effort to assign Johnson to teach middle school woodshop during third period, a step one grievance hearing would need to be coordinated.

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6 Johnson was out of state for her father's funeral.

In a lengthy e-mail from Fraser-Hammer to Johnson dated Saturday, September 5, 2015, Fraser-Hammer expressed concern that Johnson did not seek an informal discussion with her, consistent with the CBA's grievance procedure, stating, "I am very disappointed that once again you choose [sic] not to grant me the common courtesy of a personal conversation to raise your concern so that I may have the opportunity to address it. You choose [sic] instead to circumvent the process and have Temple Robinson attack me." Fraser-Hammer's e-mail identified the informal step of the grievance process and expressed the need to follow procedure. She stated, "Bypassing a conversation with the principal lacks the spirit of genuinity [sic], collaboration or cooperation and instead reeks of distrust and perpetuates it."

Fraser-Hammer's e-mail went on to explain that while trading third period woodshop to Denny opened up 32 seats for Chief Sealth students, she understood from Human Resources that she could not make that trade. Fraser-Hammer explained that she could not reopen third period high school woodshop because the students had already been assigned to other classes, and she identified the following options for third period: CTE financial algebra, credit retrieval, substitute teaching within Chief Sealth, or co-teaching. She wrote, "I will be working over the weekend with [Sallee] to solidify the schedule. If you would like to come talk to me, please come on in anytime."

Fraser-Hammer testified that she wanted people to come to her before going out of the building with concerns because she could address matters at a rudimentary level and get problems fixed. She wanted that opportunity. Fraser-Hammer said she was not condemning Johnson for talking to Robinson; she wanted a fresh start.

Johnson responded to Fraser-Hammer by e-mail dated September 7, 2015. She expressed her lack of understanding as to why she could not teach high school woodshop third period.

Fraser-Hammer credibly testified that having Johnson teach high school woodshop during third period was not a viable option at that point in time. According to Fraser-Hammer, the students who had requested woodshop for third period were already assigned to other classes and, as a result, the record no longer existed in Chief Sealth's master scheduling system to determine which students had selected third period woodshop. Even if there were a way to determine which students

had selected the class, however, reconstituting the class assignments would create significant challenges. For example, if a student had been placed in woodshop originally and then reassigned to English third period, the student would need to take English during another period, requiring more schedule adjustments. Changing schedules at that point would have required counselors to do it manually.

September 8 Conversation and September 9 and 16, 2015, E-Mails

Robinson went to Fraser-Hammer's office to speak with her about Johnson's assignment for the year on or about September 8, 2015.[7] Near the end of the conversation after Robinson had gone to the door to leave, Fraser-Hammer made a statement to Robinson about wanting to speak with Johnson directly. According to Robinson, Fraser-Hammer said, "I want to be able to have a conversation with [Johnson] without [the union] being present," and "I don't want them to talk to you, period, until after they talk to me."

According to Fraser-Hammer, Fraser-Hammer told Robinson to remind Johnson that Johnson could bring things to Fraser-Hammer and give Fraser-Hammer an opportunity to address them before complaining to Robinson. Fraser-Hammer testified that Robinson slammed the office door closed and was enraged with her eyes wide, nostrils flaring, and teeth clenching. She described Robinson as in her face, pointing at her and telling her she would come after her. Fraser-Hammer felt intimidated and threatened during this incident, which was one of only two times in her career that she felt intimidated.

At hearing, Robinson denied the allegation that she became hostile and did not recall being in Fraser-Hammer's personal space. Robinson stated she told Fraser-Hammer that if she continued to participate in retaliatory behavior, the union was "not going to have a choice but to move forward and file a[n unfair labor practice complaint] against her because she [would] not stop."

On September 9, 2015, Fraser-Hammer responded to Johnson's September 7 e-mail, indicating Johnson would have third period credit retrieval. Fraser-Hammer testified the credit retrieval courses offered during the school day are important to Chief Sealth and are part of its CSIP. Credit

[7] Classes did not start on time because the union's bargaining unit employees were on strike.

retrieval classes allow students who have failed any class to retake and pass classes that are necessary for graduation. The school departments have taken turns assigning teachers to the class. Fraser-Hammer agreed with Johnson's testimony that no one wants to teach credit retrieval. The class requires no direct instruction because the students take the courses online; the teacher supervises the students as they work independently.

Johnson complained she did not receive proper training for the credit retrieval class and had to learn on the fly. In e-mails she questioned how she would be paid for the necessary training. While she testified that the trainings were three and seven or eight hours in length, the evidence demonstrates the training videos were just a few minutes long.

On September 16, 2015, at 7:15 p.m., Robinson e-mailed Fraser-Hammer in response to Fraser-Hammer's September 9 e-mail to Johnson. Robinson began the e-mail by stating,

> [The union] challenges your assignment of Ms. Johnson to a credit retrieval class for 3rd period. First, you attempted to break district policy by assigning her to teach at Denny. When you learned that this was not possible, you shamed Ms. Johnson for exercising her right of union representation and assigned her to credit retrieval for 3rd period.

The e-mail advocated for allowing Johnson to teach woodshop third period, addressed Fraser-Hammer's interpretation of the grievance procedure, and concluded with the following: "Based on the contractual violations, [the union] is initiating the grievance process regarding your discriminatory behavior towards Ms. Johnson. We believe you are targeting Ms. Johnson because of her participation in union activities with an emphasis of pushing her out of [Chief] Sealth."

On September 16, 2015, at 10:34 p.m., three hours and 19 minutes after Robinson's e-mail and eight days after the September 8 conversation, Fraser-Hammer e-mailed John Donaghy, the union's executive director and Robinson's supervisor, describing "an unpleasant and scary interaction between Temple Robinson and [Fraser-Hammer]." She sent copies of the e-mail to Vela, Dana DeJarnatt from the employer's human resources department, and Knapp. The e-mail recounted her perception of the September 8, 2015, conversation in which she believed Robinson was trying to intimidate her. Fraser-Hammer explained that as Robinson was walking out of

Fraser-Hammer's office, Fraser-Hammer said, "Please remind [Johnson] that I would like her to allow me the opportunity to address an issue before she takes it to the [union]." Fraser-Hammer's e-mail described that Robinson responded by slamming the office door shut, berating her, and threatening, "I will come after you." Fraser-Hammer's e-mail detailed her feelings about Robinson as follows:

> I understand that [Robinson] may think of me as the enemy but nonetheless her job requires her to maintain a basic level of professionalism which she has not been exhibiting. I do not want this type of behavior to continue. The incident mentioned above is not the first that [Robinson] has attempted to intimidate and bully me. In June, she orchestrated an ambush on me in front of parents which too was very unprofessional. Her actions can be classified as harassment and I will not allow it any more. Her actions with me and my staff are causing a hostile environment where I am unable to work with certain members of my staff. In addition, since the incident above, I have been having dreams of [Robinson] holding me down in my office while 2 others beat me up.

Employer's Investigation and October 12, 2015, Letter Restricting Access

As a result of Fraser-Hammer's report of the September 8 incident, the employer initiated an investigation under its Harassment, Intimidation and Bullying (HIB) policy. Geoff Miller, the employer's then-labor/employee relations director, sent a letter dated October 12, 2015, to Donaghy. The letter indicated that Miller met with Donaghy on or about September 17 and recounted the allegations contained in Fraser-Hammer's September 16 e-mail. The letter requested that Donaghy provide a statement from Robinson in response to Fraser-Hammer's allegations. The letter also detailed restrictions the employer was placing on Robinson's access to Chief Sealth during the investigation:

> While the investigation is under way, we would ask that an alternative representative service the school, to insure the safety of all concerned. We are happy to discuss other alternatives, but to avoid further potential hostile, threatening, and intimidating interactions at Sealth with Ms. Fraser-Hammer, effective immediately, Ms. Robinson is not permitted on the Sealth premises unless pre-approved permission is obtained from me. I need time to review campus visit request to ensure that Ms. Fraser-Hammer is not on the Sealth campus. Once the investigation is completed, based on the findings in the investigation, the District will determine whether this limitation is maintained, eliminated, or modified. In addition, my staff is happy to arrange another school or central office location or

> site for Ms. Robinson to meet with any Sealth staff she represents, if you decide to keep her as the Uniserve [sic] Representative for Sealth.

The record includes no evidence that Robinson or Donaghy sought alternate arrangements or that Robinson sought access to Chief Sealth through Miller or the human resources department.

Robinson never submitted a statement in response to Fraser-Hammer's allegations as requested by Miller. The employer made the request of Robinson's supervisor for a statement; the employer did not directly ask her for a statement. Robinson testified that the HIB policy does not apply to her because she does not work for the employer. Miller testified that the policy applies to students, employees, and third parties—anyone on school property. For example, he noted the employer has applied the policy to parents.

The investigation had not concluded at the time of the hearing and the restrictions on Robinson's access to Chief Sealth remained in place, requiring her to meet with staff at alternate locations.

Second Semester, 2015-16 School Year

During the next semester, in February 2016, Johnson complained that her woodshop classes had a significant number of students receiving special education and ELL services. According to Johnson, five to six of the students in one period presented safety issues because they had difficulty understanding instructions.

In response to her requests, an ELL instructional assistant, a special education instructional assistant, and a special education teacher all provided Johnson support. On February 26, 2016, Fraser-Hammer removed the ELL instructional assistant from woodshop. According to Veronica Gallardo, the employer's director of ELL and international programs, for the nine years she has been the director, the employer has used the best practice of deploying ELL instructional assistants in core academic classes such as literacy and science—anything subject to state assessment. In an e-mail from Gallardo to Robinson dated April 25, 2016, Gallardo stated, "When we provide professional development to school leaders and when we assign IA [instructional assistant] staffing we always stress the need for IA staffing in core content only."

In contrast, Johnson and Delfino Munoz, a bilingual instructional assistant and classified employee union building representative, denied the practice of deploying ELL instructional assistants to core academic classes only. They both testified that instructional assistants have been assigned to woodshop at Chief Sealth for years.

Budgeting for the 2016-17 School Year

Due to a projected reduction in student enrollment, Chief Sealth planned for a budget shortfall for the 2016-17 school year. Fraser-Hammer proposed a budget to the budget committee that included the elimination of woodshop as well as the elimination or reduction of other positions. The majority of the budget committee approved a budget that included the elimination of woodshop. On March 17, 2016, the staff voted on the budget and two-thirds of the total staff did not vote in favor.

A nurse working at Chief Sealth who was not on the budget committee developed and shared an alternate budget proposal that did not eliminate or reduce woodshop. The nurse withdrew her proposal because it depended on funds that could not be guaranteed.

The employer provided Chief Sealth some additional funds and the budget committee developed and approved another proposed budget with woodshop funded at .6 FTE. Only one budget committee member voted against the budget. The majority of the staff who voted on the budget voted to approve it, but the number of those who cast "yes" votes did not exceed two-thirds of the total staff. On March 21, 2016, Fraser-Hammer submitted the budget to the employer.

On March 28, 2016, Fraser-Hammer had a teacher take over Johnson's class so that Fraser-Hammer could meet with Johnson along with a union building representative and Fraser-Hammer's secretary. At the meeting, which took place in a small space, Fraser-Hammer presented Johnson with the option of staying at Chief Sealth on a part-time basis or transferring to another school. Johnson testified that she was seated and Fraser-Hammer was standing over her, shaking displacement paperwork at her, and Johnson felt intimidated, bullied, and harassed. Johnson stated to Fraser-Hammer, "I'm free. I'm white. I'm 21. You can't make me do anything

I don't want to do."[8] The next day, Johnson signed the displacement paperwork indicating she would maintain her 1.0 FTE and transfer to another school.

When two-thirds of the entire staff did not vote to approve the budget committee's proposed budget, the employer scheduled the "mediation" as provided by the CBA for April 6, 2016. The budget still was not resolved so, consistent with the CBA, the budget was submitted to Associate Superintendent Michael Tolley for a final decision.

By e-mail dated April 20, 2016, Fraser-Hammer asked one of the union's building representatives to stop by her office to sign the Statement of Assurance form for the budget process. The representative responded that members of the union team felt they should not sign until the budget was finalized. Fraser-Hammer responded to the building representatives by e-mail communicating her frustration with the lack of cooperation from the union.

By memorandum dated April 29, 2016, Tolley approved the budget committee's proposed budget that included the reduction in woodshop to a .6 FTE. In his memorandum Tolley noted that woodshop is "the one class that can be provided to students offsite. Other offerings, if discontinued or reduced, would not be able to be provided to [Chief Sealth's] students." Tolley also stated, "Unfortunately, at this time we are not able to restore your budget to what it was in the past or increase funding to [Chief Sealth]."

For the current 2016-17 school year, Johnson has been teaching first and second period woodshop at Chief Sealth and spends the rest of her work day in the skills center at Rainier Beach High School.

ANALYSIS

Applicable Legal Standards

Chapter 41.59 RCW prohibits employer interference, domination, and discrimination. I detail the legal standards for each cause of action below.

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[8] Fraser-Hammer does not appear to be Caucasian.

Interference

RCW 41.59.140(1) provides that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of rights guaranteed by RCW 41.59.060. There, employees are guaranteed the right to self-organize; to form, join, or assist employee organizations; and to bargain collectively through representatives of their own choosing.

To establish interference, the union must prove by a preponderance of the evidence that the employer's conduct interfered with protected employee rights. *Grays Harbor College*, Decision 9946-A (PSRA, 2009); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000) (remedy affirmed). An employer interferes with employee rights when an employee could reasonably perceive the employer's actions as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996). An employer may interfere with employee rights by making statements, through written communication, or by actions. *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A.

The Commission differentiates between statements made to union representatives and those made to rank-and-file bargaining unit employees. *Grant County Public Hospital District 1*, Decision 8378-A (PECB, 2004); *City of Bremerton*, Decision 3843-A (PECB, 1994). In *City of Renton*, Decision 7476-A (PECB, 2002), the examiner explained, "[U]nion officials should be accustomed to controversial situations, and can be expected to receive and interpret harsh words, criticism, and displeasure."

The Commission's standard for finding an interference violation is low. The union is not required to demonstrate that the employer intended to interfere with employees' protected rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). An employer representative can take action with no intention of impacting an employee's rights and commit an interference violation. Additionally, the union is not required to show that the employee involved was actually coerced by the employer or that the employer had union animus. *Id.*

Domination

It is an unfair labor practice in violation of RCW 41.59.140(1)(b) for an employer to "dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it." The Commission and its examiners find domination when a union proves that an employer intended to control or interfere with the administration of the union or intended to dominate the union's internal affairs. *Northshore Utility District*, Decision 10534-A (PECB, 2010).

Discrimination

It is an unfair labor practice for an employer to "encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or condition of employment" or to "discharge or otherwise discriminate against an employee because he or she has filed charges or given testimony under this chapter." RCW 41.59.140(1)(c) and (d).

An employer unlawfully discriminates when it takes action against an employee in reprisal for the employee's exercise of protected rights. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The union maintains the burden of proof in employer discrimination cases. To prove discrimination, the union 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.

Id.; *Central Washington University*, Decision 10118-A (PSRA, 2010). To prove an employer's motivation for an adverse employment action was discriminatory, the union must establish that the employer had knowledge of the employee's union activities. *Metropolitan Park District of Tacoma*, Decision 2272 (PECB, 1986), *aff'd*, Decision 2272-A (PECB, 1986). The union may use circumstantial evidence to establish its prima facie case because a party does not typically

announce a discriminatory motive for its actions. *Jefferson County Public Utility District No. 1*, Decision 12332-A (PECB, 2015).

When the union establishes a prima facie case, the union creates a rebuttable presumption of discrimination. In response to a union's prima facie case of discrimination, the employer need only articulate a nondiscriminatory reason for its actions. The employer does not bear the burden of proof to establish the reason. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the union to prove by a preponderance of the evidence that the disputed action was in retaliation for an employee's exercise of statutory rights. *Seattle School District*, Decision 9355-C (EDUC, 2010). The union meets this burden by proving either that the employer's reason was pretextual or that union animus substantially motivated the employer's actions. *Port of Tacoma*, Decision 4626-A.

Application of Standards

Interference

The union alleges Fraser-Hammer interfered with employees' protected rights by taking five actions, including sending four separate e-mails and making an announcement relating to hiring policies. As detailed below, I find the employer interfered with employee rights by Fraser-Hammer sending two of the e-mails; I dismiss the other three allegations of interference.

1. June 19, 2015, E-Mail to Robinson – Not Interference

On June 19, 2015, Fraser-Hammer sent an e-mail to Robinson and Knapp. She erroneously thought Knapp was Robinson's supervisor. Fraser-Hammer also copied her own supervisor on the e-mail. As detailed under the Background section above, in the e-mail Fraser-Hammer expressed her "disgust" with the June 17, 2015, meeting, referring to it as "an ambush" that was "unprofessional, inappropriate and inflammatory."

The law indicates that it is an unfair labor practice for an employer to interfere with, restrain, or coerce *employees* in the exercise of rights guaranteed by RCW 41.59.060. Robinson does not work for the employer and, therefore, is not an employee covered by Chapter 41.59 RCW.

Fraser-Hammer only sent the e-mail to Robinson and Knapp. Although Knapp is an employee of the employer, he is also the union president.

The Commission and its examiners analyze communications made to union representatives differently than communications made to rank-and-file bargaining unit employees, recognizing that union representatives have more experience and ability to receive and properly process the criticisms and sometimes harsher words shared in labor relations.

In *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014),[9] the Commission recognized that employer and union representatives need to be able to share with each other their frustrations:

> Employer statements interfere with employee rights when those statements could reasonably be perceived as a threat of reprisal or force, or a promise of benefit, associated with the union activity of that employee or of other employees. Employer statements to union officials may not interfere with employee rights when those statements are shared in conversations in which both parties are airing frustrations with the bargaining process or their relationship.

The parties in *City of Mountlake Terrace* struggled with a difficult relationship and ongoing litigation. During a conversation between the union president and the assistant city manager, the assistant city manager referred to the union's attorney as a liar and a mistress in the parties' relationship. According to the examiner's decision,

> Jones [the union president] testified that Hugill [the assistant city manager] equated the union and the employer to being a marriage and said that Cline [the union's attorney] was like the mistress between the employer and the union and he was causing all these problems. Jones also testified that Hugill called Cline a liar. Jones testified that Hugill said Cline's only interest was in bringing forth as much litigation as possible to get his name out there to get more clients. Jones inferred from these words that the issues between the union and the employer would continue as long as they retained Cline and Associates as their attorneys. It felt like an ultimatum to him.

City of Mountlake Terrace, Decision 11831 (PECB, 2013), *aff'd in part, rev'd in part*, Decision 11831-A.

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[9] This case is currently pending in Snohomish County Superior Court, Case No. 14-2-03470-7.

The Commission held that the employer's statements did not constitute an interference violation in light of the context of the parties' relationship, and because both parties expressed frustration with their ongoing litigation. The Commission asserted, "It is not reasonable for one side to raise its frustrations with the relationship and expect the other side not to share its frustrations." *City of Mountlake Terrace*, Decision 11831-A.

In the present case, Fraser-Hammer was raising her frustrations with the relationship after Robinson, the non-employee union representative, and the union's building representatives raised their frustrations about Fraser-Hammer and her leadership. Fraser-Hammer did not copy the June 19 e-mail to any rank-and-file bargaining unit employees. A typical union representative could not reasonably perceive the e-mail as a threat of reprisal or force, or a promise of benefit, associated with union activity. As a result, the employer did not interfere with employee rights by sending a non-employee union representative and the union president an e-mail expressing frustration with the non-employee union representative's behavior. I dismiss this allegation.

2. June 24, 2015, E-Mail to Union Building Representatives – Interference

Fraser-Hammer sent an e-mail to the union building representatives on June 24, 2015. As detailed in the Background section above, Fraser-Hammer expressed her "disappointment" with the June 17, 2015, meeting, referring to it as an "attack" that was "unprofessional, inappropriate, inflammatory and insubordinate." She advocated in her e-mail to only discuss with the union topics covered by the CBA and described this change as "an attempt to force this group to stick within the purview of its charge." She stated, "It will also help us all to engage in more professional dialogue and academic discourse around student achievement and to refrain from negative secret conversations that divide and separate us."

The employer argues that the June 17, 2015, meeting did not constitute union activity and points to Robinson's own testimony in which she characterized the meeting as more of a "stakeholders" meeting than a union meeting since parents were in attendance. In *City of Mountlake Terrace*, Decision 11831-A, the Commission clarified earlier case law and held that to establish interference, a union is not required to prove an employee engaged in protected activity.

I find Fraser-Hammer interfered with employees' protected rights by sending the June 24, 2015, e-mail. In reaching this conclusion, I considered *City of Mountlake Terrace*, Decision 11831-A, and find the facts of the present case distinguishable.

In this case, Fraser-Hammer went beyond candid, critical communication; she was not just venting her frustration. The e-mail declared that the employees had been insubordinate and unprofessional at the meeting. The tone of the e-mail was coercive. From the overall context, a typical union representative could reasonably perceive Fraser-Hammer's caution "to refrain from negative secret conversations that divide and separate us" to mean to refrain from conversations with the union. A typical union representative could reasonably perceive Fraser-Hammer's e-mail as a threat of reprisal associated with union activity. Through Fraser-Hammer's e-mail, the employer interfered with protected employee rights.

3. September 5, 2015, E-Mail to Johnson – Interference

Fraser-Hammer sent an e-mail to Johnson on September 5, 2015. In the e-mail, Fraser-Hammer stated, "I am very disappointed that once again you choose [sic] not to grant me the common courtesy of a personal conversation to raise your concern so that I may have the opportunity to address it. You choose [sic] instead to circumvent the process and have Temple Robinson attack me." I find Fraser-Hammer's e-mail interfered with employees' protected rights.

A significant point of contention between Fraser-Hammer and Robinson involved Johnson consulting with Robinson about issues. Fraser-Hammer wanted employees to talk with her first and give her the opportunity to address their concerns directly before they consulted the union.

Fraser-Hammer's desire in this regard is not unusual. It is typical that supervisors prefer employees come to them directly with concerns. Often when employees "go over the head" of their supervisors, whether it be to their superiors or to union representatives, supervisors feel frustrated that they were not given an opportunity to hear the concerns directly and work to resolve them. It is also typical that union representatives and employees prefer that issues get resolved at the level closest to the problem. Employers and unions often share the interest in having those closest to the problem resolve it.

Regardless of a supervisor's desire, however, an employer cannot compel an employee to consult with the employee's supervisor before consulting with the employee's union representative. In this case, Johnson was not required to speak with Fraser-Hammer prior to consulting with her union representative.

In her testimony, Fraser-Hammer focused on CBA language addressing the informal step of the grievance procedure which states,

> Step 1: Informal Discussion: An employee shall first take up a complaint or problem with his/her immediate administrative supervisor in private informal discussion(s) and every effort shall be made to adjust the complaint or deal with the problem in an informal manner. The informal conference shall occur within ten (10) working days of the employee's request for the conference.

The CBA defines a grievance broadly to include "a claim based upon an event or condition which affects the conditions or circumstances under which an employee works, allegedly caused by the misinterpretation or inequitable application of written SPS regulations, rules, procedures, or SPS practices and/or the provisions of this Agreement." The contract also states, "At each step of the procedure for adjusting grievances the grievant may request to be accompanied by a representative of the [union] . . . ."

Robinson credibly testified that it has been common practice for employees to contact their union for support before talking with their administrator as well as having building representatives participate in step one of the grievance procedure. Her testimony was not rebutted.

None of the CBA language impacts my finding that Fraser-Hammer interfered with Johnson's protected rights. The CBA does not require an employee to talk about concerns with his or her supervisor directly prior to consulting the employee's union representative, nor does the CBA bar an employee from having his or her union representative speak on the employee's behalf.

The employer argued in its post-hearing brief that this case is like *Seattle School District*, Decision 9858-A (EDUC, 2009), where a principal was found not to have interfered with employee rights when he insisted on discussing a grievance with the grievant who also served as a union building

representative. In that case, the Commission found that as a grievant, Robert Femiano was obligated under the CBA to informally discuss the matter with his supervisor. The Commission explained, "Where, in cases such as this, the parties' grievance procedure calls for informal discussions of the matter, we will not infer a party's reasonable attempt to engage in that process as interfering with protected collective bargaining rights."

This case is distinguishable. In *Seattle School District*, Decision 9858-A, Femiano and other teachers had filed a grievance. In this case, although Robinson threatened to file a grievance on Johnson's behalf, no grievance had been filed at the time of the September 5, 2015, e-mail.

Fraser-Hammer's e-mail indicated her disappointment in Johnson for initiating contact with her union representative and suggested that doing so was discourteous and "circumvent[ed] the process." The tone of the e-mail was coercive. A typical union representative could reasonably perceive Fraser-Hammer's e-mail as a threat of reprisal associated with union activity, discouraging Johnson from seeking her union representative's advice and support. Through Fraser-Hammer's e-mail, the employer interfered with protected employee rights.

4. Hiring Policy Announcement – Not Interference

From the union's post-hearing brief, it appears the union may have abandoned the allegation that Fraser-Hammer's announcement relating to hiring rules constituted employer interference. In the event the union did not intend to abandon this allegation, I find that the employer did not interfere with employee rights and dismiss the allegation.

During the 2014-15 school year, the BLT discussed documenting the hiring policy and could not agree on language. At the end of the year, it appeared there was agreement and Munoz agreed to work on drafting the language and bring it back the next school year. He brought it back to the BLT in September 2015. Munoz testified that Fraser-Hammer announced she would not agree to anything the BLT or union came up with on the hiring policy and would only abide by the language detailed in the CBA because of something that happened the year before.

The burden of proving interference rests with the union. The evidence concerning this allegation is vague and limited. The record includes insufficient evidence to establish an interference violation, and I dismiss this allegation.

5. April 20, 2016, E-Mail to Building Representatives – Not Interference

At the time of the April 20 e-mail, the budget approved by Chief Sealth's budget committee had not received the two-thirds approval from the entire staff, and the budget was in the hands of Tolley for his final decision.

By e-mail dated April 20, 2016, Fraser-Hammer asked one of the union building representatives to sign the Statement of Assurance Form on behalf of the union. The form would certify the following:

> [C]lassroom teachers, including special education and bilingual teachers; Title I/LAP funded staff; specialists; and classified staff have been directly involved in the development and submittal of the school's proposed operating budget for the 2016-2017 school year utilizing the agreed upon decision making process as outlined in Article II Section A Number 4 of the Collective Bargaining Agreement.

The building union representative responded on April 20 by e-mail indicating, "The [union] team feels that we should not sign the Statement of Assurance Form, until the budget is finalized." In her April 20 e-mailed response, Fraser-Hammer communicated her frustration with the union building representatives as follows:

> No problem. Although I am very disappointed to read your response to my request, I will accept your decision. In order to show that I have attempted to perform the functions and requirements of my job, II [sic] will forward your email to the the [sic] interested parties at the district office so they will know why I am turning in the form without a signature from the [union] building reps. I am not sure whether you read or understood the verbiage on the form or if you made the decision merely because of distrust, spite or because you don't like the situation we are currently experiencing. I asked Donna to give you a copy so you can read it. It is merely a statement that the process was followed. I am sure we can all attest to the fact that the process was followed. The fact that the budget is currently on the desk of Michael Tolley is more than enough evidence that the process was followed. In addition, at no time, did any of you make a claim that the process was not followed. So your current action baffles me. It appears that you are trying to hold up the

> process and to force and bully the district into making a decision in your favor. This type of behavior is definitely not fair play nor professional. May I suggest that you check with your [union] representative to confirm that this action is supported by the contract and that your current action will be defended. I think someone can make a claim that it is an act of bullying, intimidation and retaliation.
>
> Thank [sic] for your cooperation (or lack thereof). As usual I appreciate it.

Reviewing this e-mail in the context of the entire budget process, I do not find this e-mail constitutes interference. The budget process for the 2016-17 school year had been challenging for the school staff and administration as they struggled to balance the budget with a reduced staffing allocation.

In the e-mail, Fraser-Hammer communicated her frustration with the union's building representatives and criticized their decision to not sign the form. She accused the representatives of trying to hold up the budget and engaging in bullying tactics.

I find that Fraser-Hammer's e-mail is the type of candid, critical communication that the Commission held was not interference in *City of Mountlake Terrace*, Decision 11831-A. The communication was not coercive and was made to union representatives, not to rank-and-file bargaining unit employees. A typical union representative could not reasonably perceive the e-mail as a threat of reprisal or force, or a promise of benefit, associated with union activity. As a result, the employer did not interfere with employee rights by sending union representatives the April 20, 2016, e-mail, and I dismiss the allegation.

Domination

The union alleges that the employer dominated the union in violation of RCW 41.59.140(1)(b) by sending a letter informing the union that Robinson was not permitted on the Chief Sealth premises unless she obtained preapproval from Miller.

Miller's October 12, 2015, letter to Donaghy communicated restrictions on Robinson's access to Chief Sealth during the employer's investigation of allegations against Robinson. While the letter asked that an alternative representative service the school to ensure the safety of all concerned, the

letter said, "We are happy to discuss other alternatives." The letter did not presume the union would assign an alternative representative. Instead, the letter stated Robinson could access the school by obtaining preapproval from Miller. The letter indicated the Human Resources staff would make arrangements at another school or central office for Robinson to meet with Chief Sealth staff.

According to Miller, Fraser-Hammer's complaint sounded very serious and the employer needed to conduct an investigation. The employer's HIB Procedure states, "All complaints of harassment, intimidation, or bullying, will be taken seriously and will be investigated." Miller explained that when investigating allegations, the employer needs to figure out how to isolate the person making the complaint from the person who engaged in the conduct that allegedly violated the policy.

Miller did not intend to permanently restrict Robinson from Chief Sealth. Miller wanted to get the investigation done as soon as possible and then determine how to proceed. Miller testified that he had repeated conversations with Donaghy from September 2015 to January 2016 in which Miller asked for a statement from Robinson or that the employer be allowed to interview Robinson. Donaghy refused to provide a statement. Miller did not contact Robinson directly.

From Robinson's perspective, being restricted from meeting with employees in their classrooms was inconvenient. She testified that it would have been inconvenient to contact Miller in advance of a potential meeting at Chief Sealth and wait for a response. The record shows that neither Robinson nor Donaghy requested an alternate arrangement.

As of the time of the hearing, 11 months later, there was no evidence that the investigation had concluded. According to Miller, cases can take a long time to resolve. The employer's HIB Procedure states that, with respect to formal complaints, "[Human Resources] shall attempt to complete the investigation of all harassment, intimidation, and bullying complaints filed under this procedure within sixty (60) days."

Based on the undisputed testimony, the union refused to cooperate with the employer's investigation. The employer's letter invited the union to suggest an alternate arrangement and the

union did not. Robinson did not pursue the option of meeting with employees on campus by contacting Miller. While I appreciate Robinson's skepticism about how effective that course of action would have been, she chose not to try it, not to suggest an alternative, and not to participate in the investigation. Instead, the union adhered to its position that the policy did not apply because Robinson is not an employee.

The union appears to suggest that Fraser-Hammer misrepresented what occurred during the September 8, 2015, conversation with Robinson with the intention of forcing the union to assign a different UniServ representative to Chief Sealth. I agree with the union that the timing of Fraser-Hammer's e-mail raises questions. Why did she wait eight days to report the incident? Why did she report it three hours and 19 minutes after receiving an e-mail from Robinson which contested Johnson's third period assignment and alleged Fraser-Hammer was discriminating against Johnson? Additionally, staff working in the office on September 8 did not corroborate some of Fraser-Hammer's assertions.

Despite these questions, the evidence does not establish that Fraser-Hammer misrepresented what occurred during the September 8 conversation with the intention of forcing the union to assign a different UniServ representative to Chief Sealth. Based on the entire record, I find Fraser-Hammer's testimony about feeling intimidated by Robinson on September 8 to be credible. During the hearing, Robinson demonstrated that she gesticulates and is not always aware of it. "I didn't know I was pointing my finger at you," she testified when counsel for the employer asked Robinson if she realized how frequently she pointed her finger during her testimony. The record demonstrates that Robinson was extremely frustrated with Fraser-Hammer on September 8 and, based on what I observed at the hearing, Robinson would have shown that frustration to Fraser-Hammer by her verbal and nonverbal communication.

Considering the entire record in this case, the union did not prove that the employer intended to control the administration of the union, interfere with the administration of the union, or dominate the union's internal affairs when Miller restricted Robinson's access to Chief Sealth. As a result, I dismiss the union's domination allegation.

Discrimination

The union alleges that the employer discriminated in violation of RCW 41.59.140(1)(c) and (d) by taking a variety of actions relating to Johnson and her woodshop class in reprisal for Johnson's protected activities, including her involvement in filing this unfair labor practice complaint.

The Commission and its examiners recognize that employers do not typically announce when they take action based on an employee's union activities. As a result, in applying the legal standards for discrimination, I carefully analyze the record, including witness credibility, to determine whether the employer's actions were based on Johnson's union activity.

As detailed below, I conclude that the union did not meet its burden of proof to establish its allegations of discrimination.

1. June 15, 2015: Rejected Woodshop Classroom Remodel Idea – Not Discriminatory

The union alleges that the employer discriminated against Johnson on June 15, 2015, when Fraser-Hammer announced her decision not to remove the wall between the woodshop and a neighboring classroom, which would have expanded the maximum number of students in woodshop from 16 to 24.

Union's Prima Facie Case

To establish a prima facie case of discrimination, the union must prove that Johnson participated in protected union activity; that the employer deprived her of some ascertainable right, benefit, or status; and that a causal connection existed between Johnson's exercise of a protected activity and the employer's action.

The employer does not dispute that Johnson participated in activities protected by the collective bargaining statute. She served as a union building representative or an alternate union building representative each year since Fraser-Hammer became principal. Johnson also participated with the union in filing a formal grievance in 2013.

While the union established Johnson participated in activities protected by the collective bargaining statute, the union did not establish that the employer deprived her of an ascertainable right, benefit, or status by deciding not to expand the size of the woodshop classroom. Johnson had no entitlement to the classroom space next to her woodshop. The idea of removing the wall and dedicating the classroom space to woodshop was just that—an idea. When the idea was rejected, Johnson continued with her existing woodshop and separate classroom space.

Even if the employer's action was properly classified as a deprivation and a causal connection between that and Johnson's protected activity existed, as detailed below, the union did not meet its burden of proof; the union did not establish that animus substantially motivated the employer's actions or that the employer's reasons were pretexts.

Employer's Nondiscriminatory Reasons

The employer articulated nondiscriminatory reasons for Fraser-Hammer's decision. By memorandum dated June 15, 2015, Fraser-Hammer announced her decision not to remove the wall between Chief Sealth's woodshop and the neighboring Denny classroom. In six pages, Fraser-Hammer provided background information, weighed the pros and cons of removing the wall as well as two other options, explored special considerations, and explained her decision. Ultimately, Fraser-Hammer determined that with the $15,000 cost of the project, as well as other considerations detailed in her memorandum, removing the wall to add capacity for eight more students was not an effective use of money.

The employer meets its burden of production. Fraser-Hammer's memorandum and testimony demonstrated that she took the idea of removing the wall seriously and analyzed the advantages and disadvantages in detail.

Union's Ultimate Burden

Because the employer met its burden of production, the union bears the burden of proving by a preponderance of the evidence that the employer's stated reasons were pretexts or that union animus substantially motivated the employer's actions. The union did not meet its burden.

The union points to no specific evidence demonstrating that Fraser-Hammer's actions were motivated by reasons other than what she articulated in her memorandum. When Fraser-Hammer made the decision, Johnson had filed the 2013 grievance and served as a union building representative or alternative representative, but the June 17 meeting had not occurred and there is no evidence Fraser-Hammer knew of the climate surveys or Johnson's role in them. When Fraser-Hammer made the decision, she had not sent any of the e-mails I have concluded constituted interference.

The union did not establish that the employer's reasons for rejecting the idea of removing the wall were pretexts or that union animus substantially motivated the employer's actions. I dismiss this allegation.

2. 2015-16: Actions Regarding Johnson's Third Period Assignment – Not Discriminatory

The union alleges the employer discriminated against Johnson based on her protected union activity when Fraser-Hammer cancelled third period high school woodshop in August 2015, assigned Johnson to teach middle school woodshop third period, and then assigned Johnson to teach credit retrieval third period after Johnson did not agree to teach middle school woodshop.

Union's Prima Facie Case

While the union established Johnson participated in protected union activities, these allegations again present a question of whether she was deprived of an ascertainable right, benefit, or status.

Johnson was informed by Fraser-Hammer that she would teach woodshop to middle school students third period. She would teach in her regular Chief Sealth woodshop and classroom; she would not be required to travel. When Fraser-Hammer learned that Johnson could not be required to teach middle school students, Fraser-Hammer identified three other options before assigning Johnson to teach third period credit retrieval at Chief Sealth.

In *Mansfield School District*, Decision 5238-A (EDUC, 1996), the Commission found the employer deprived a teacher of a right, benefit, or status when she was transferred to a high school math position for which she had no teaching experience. She had taught kindergarten and

elementary grades for 15 years and had completed two years toward a master's degree in elementary curriculum development. In *Kiona-Benton School District*, Decision 11035 (EDUC, 2011), the examiner found that transferring a teacher from first grade to eighth grade was a deprivation of her status because it required her to prepare for subjects she had never taught before, work with a new curriculum, and teach an age of students she had not taught before.

This case presents different facts. Had Johnson agreed to teach middle school woodshop, she would have taught an age of students she had not taught before, she may have needed to make some modifications to her curriculum, but she would have remained in the same woodshop and classroom space. Teaching credit retrieval, Johnson worked with high school students and remained on the same campus. The class was just one period of the day and although she had never taught the course before, it required no direct instruction and curriculum. Johnson's role was to supervise the students while they worked independently on computers.

The union asserts the credit retrieval class required Johnson to complete additional training that she had not previously received for the administrative functions of the job. She complained that she was not provided the time for the required training and had to learn on the fly. Johnson testified that she needed to take two trainings online, one for three hours and another for seven or eight hours. The evidence demonstrates the trainings were only a few minutes long.

Despite the fact that the credit retrieval class appeared to require no preparation and no work outside the class period, the record reflects that teachers did not want to be assigned credit retrieval and departments rotated that responsibility. Although being assigned to one period of credit retrieval per day does not seem comparable to the transfers described in *Mansfield School District* and *Kiona-Benton School District*, for purposes of this analysis, I will consider the assignment to teach third period middle school woodshop and third period credit retrieval a deprivation of an ascertainable right, benefit, or status.

Presuming these assignments are properly classified as a deprivation and a causal connection existed between that deprivation and Johnson's protected activity, as detailed below, the union did

not meet its burden of proof in establishing that union animus substantially motivated the employer's actions or that the employer's reasons were pretexts.

Employer's Nondiscriminatory Reasons

The employer articulated nondiscriminatory reasons for its actions. The record unequivocally demonstrated that Chief Sealth and Denny have a history of trading teachers for specified class periods. The trades are made easier by the fact that the schools share a campus, including some facilities. Fraser-Hammer wanted to offer Chief Sealth students the opportunity to take drama and negotiated a trade with the Denny principal for Denny students to take woodshop. Fraser-Hammer credibly testified that the Denny principal initiated the idea of trading for a woodshop class; her testimony was not rebutted.

When Johnson declined to teach middle school students, Fraser-Hammer needed to assign Johnson to teach something at Chief Sealth for third period. She initially presented Johnson with three options. Fraser-Hammer then assigned Johnson to teach one period of credit retrieval.

I find Fraser-Hammer's testimony credible that assigning Johnson to teach high school woodshop third period was not a viable option. As described above in the Background section, the master scheduling system had already removed the third period woodshop and assigned the students to other classes. To try to reconstitute the class assignments would have been a challenge for the counselors, who would have had to do the work manually.

I also find Fraser-Hammer's testimony concerning the reasons for assigning Johnson to teach credit retrieval to be credible. The credit retrieval courses offered during the school day are important to Chief Sealth and are part of its CSIP. Credit retrieval classes allow students who have failed any class to retake and pass classes that are necessary for graduation. Someone needed to teach the third period credit retrieval class and it had not yet been assigned.

Union's Ultimate Burden

Because the employer met its burden of production, the union bears the burden of proving by a preponderance of the evidence that the employer's stated reasons were pretexts or that union animus substantially motivated the employer's actions. The union did not meet its burden.

In its post-hearing brief, the union argues it met its burden of proving the employer's union animus based on Fraser-Hammer's June 2015 e-mails and negative statements against the union:

> In order to make the transfer, it was necessary for Ms. Fraser-Hammer to violate both the terms of the collective bargaining agreement and Ms. Johnson's individual contract of employment. This violation of clearly written [employer] procedures is evidence of Ms. Fraser-Hammer's intent to discriminate against Ms. Johnson because of her union activity. Ms. Fraser-Hammer's failure to consider other alternatives to Ms. Johnson's transfer, including transferring teachers in other programs who had been transferred in the past, is further evidence of discrimination. The [employer] will argue that Ms. Fraser-Hammer made the transfer to allow a Denny Middle School drama teacher to teach at Chief Sealth. However, given the evidence of Ms. Fraser-Hammer's intense union animus shown in her emails dated June 17, 2015 [sic] and June 19, 2015, and her stated opinion that the [union] representatives at Chief Sealth "breed a culture of division by providing an audience for staff to complain" it is apparent that this reason was merely a pretext.

I disagree. The record shows that Fraser-Hammer was following a practice started by prior principals of trading teachers with Denny for specific class periods. I credit Fraser-Hammer's testimony that she did not know she could not assign Johnson to teach middle school. Additionally, Fraser-Hammer considered alternative trades. She testified, for example, that the music teacher was new and filled a .8 FTE, so .2 FTE of that music teacher was not available to trade. She testified that the Spanish teachers already had full classes. When middle school woodshop was no longer an option, Fraser-Hammer considered and rejected the idea of assigning Johnson to teach third period high school woodshop and identified three other options. As she worked with Sallee on the master schedule, Fraser-Hammer e-mailed the other options to Johnson and invited her to discuss them.

I recognize that in the midst of the decisions relating to Johnson's assignment for third period, Fraser-Hammer was frustrated with Johnson and the union and, as I concluded above, interfered with protected employee rights by sending Johnson the September 5, 2015, e-mail. She had also interfered with protected employee rights by sending the earlier e-mail on June 24, 2015. Fraser-Hammer's frustration with the union, lack of understanding about union representation, and her interference with union rights do not, however, independently translate into union animus.

The union bears the burden of proof and I conclude the union did not meet its burden. I find Fraser-Hammer credibly testified as to the reasons for her actions and they were neither pretexts nor substantially motivated by union animus. As a result, I dismiss this allegation.

3. 2016: Proposals to Eliminate Woodshop for 2016-17 School Year, Displacement Papers – Not Discriminatory

The union alleges the employer discriminated against Johnson when it took the following actions relating to the budget and Johnson's assignment for the 2016-17 school year: (1) on February 28, 2016, proposing at a budget committee meeting that the woodshop program be eliminated because of a reduction of funds; (2) during the week of March 21, 2016, stating at a budget committee meeting that the woodshop program should be eliminated or significantly reduced even though more money was available to Chief Sealth; (3) in March 2016, not allowing staff to vote on an alternative proposed budget that funded the woodshop program at 1.0 FTE; (4) on March 21, 2016, submitting to the employer the Chief Sealth budget that included the reduction or elimination of the woodshop program without having staff vote on the revised budget; and (5) on March 28, 2016, presenting Johnson with the option of working part time in the Chief Sealth woodshop program or finding a job at another of the employer's school.

Union's Prima Facie Case

The union established that Johnson participated in protected union activities, including participating with the union in filing an unfair labor practice complaint against the employer. It is less clear that the employer deprived Johnson of an ascertainable right, benefit, or status with respect to four of these allegations. In and of themselves, the proposal to eliminate woodshop, the statement that woodshop should be eliminated or significantly reduced, and the submission of the budget to the employer that included the elimination of woodshop did not independently deprive Johnson of an ascertainable right, benefit, or status. The effectuation of the proposal to eliminate or significantly reduce woodshop did, however, as described below.

With respect to the fourth allegation that the employer did not allow staff to vote on an alternate budget, I find the union did not establish a prima facie case. The record includes limited evidence of this allegation. What evidence does exist established that a school nurse who did not serve on

the budget committee developed her own proposed budget that included a 1.0 FTE for woodshop. The school nurse's proposed budget relied on funds that were not guaranteed and she withdrew the proposal. Such facts do not establish employer actions that deprived Johnson of an ascertainable right, benefit, or status.

When Fraser-Hammer effectuated the proposal to eliminate or reduce woodshop by presenting Johnson with the option of teaching woodshop part time at Chief Sealth or finding a job at another of the employer's schools, the employer deprived Johnson of an ascertainable right, benefit, or status. Commission precedent on the causal connection element indicates that timing alone is typically sufficient. *Mansfield School District*, Decision 5238-A. The union filed the unfair labor practice complaint on November 25, 2015, and approximately four months later, Fraser-Hammer informed Johnson that she could either remain at Chief Sealth with a reduced .6 FTE assignment or transfer to another school. As a result, the union established a causal connection and a prima facie case that the employer discriminated against Johnson when Fraser-Hammer presented Johnson with the option of teaching woodshop part time at Chief Sealth or finding a job at another of the employer's schools.

Employer's Nondiscriminatory Reasons

It is undisputed that Chief Sealth had to reduce staffing. Fraser-Hammer included the elimination of woodshop in her proposed budget because she believed the woodshop program was a proper place to make cuts. Fraser-Hammer clearly saw value for students to take woodshop and testified that it was an essential offering. Because Chief Sealth students could take woodshop at the employer's skills center, eliminating woodshop at Chief Sealth did not eliminate opportunities for students to take woodshop.

Fraser-Hammer was not operating in isolation in recommending the reduction of woodshop. An assistant principal, the budget committee, and Tolley supported reducing woodshop to .6 FTE.

Sallee, the assistant principal responsible for master scheduling, unequivocally supported eliminating woodshop. He testified credibly and compellingly. The small class sizes in woodshop were problematic for the master schedule. Sallee was a stronger advocate for eliminating

woodshop than Fraser-Hammer. When extra funds became available to Chief Sealth, Sallee thought they should be used elsewhere and did not vote for the funds to go to woodshop; Fraser-Hammer did. The record includes no evidence of any conflict between Sallee and Johnson or Sallee and the union. Although Fraser-Hammer serves as Sallee's evaluator, the union offered no credible evidence that his testimony reflected any pressure from, or deference to, Fraser-Hammer.

Furthermore, the budget committee, made up of many staff members, voted in support of the elimination and then the reduction of the woodshop class. According to Sallee, Fraser-Hammer was "considerably less vocal than most people on the budget committee." Finally, when the budget was presented to Tolley, he approved the budget committee's proposed budget that included the reduction in woodshop to .6 FTE. In his memorandum Tolley noted that woodshop is "the one class that can be provided to students offsite. Other offerings, if discontinued or reduced, would not be able to be provided to [Chief Sealth's] students."

Union's Ultimate Burden

Because the employer met its burden of production, the union bears the burden of proving by a preponderance of the evidence that the employer's stated reason is a pretext or that union animus substantially motivated the employer's actions. The union did not meet its burden.

The union argues that the employer targeted woodshop for elimination because of Johnson's union activities and did not consider eliminating other small classes. Johnson testified that after she raised safety concerns and filed a grievance during the 2013-14 school year, she felt bullied by Fraser-Hammer. She testified that Fraser-Hammer—who was not her assigned evaluator—visited her classroom daily for a while. Johnson complained that Fraser-Hammer has called her and woodshop out for the program being expensive and serving few students.

The evidence demonstrates that Fraser-Hammer considered eliminating other classes. When asked on cross-examination if she could have cut other CTE programs, she responded as follows:

> No, I could not. Because if I were to take away the Family and Consumer Science, the—we have an Academy of Hospitality and Tourism for which we also get

> funded, and for which we have model status and our students also get IB credit for. If I were to take away that class, then there is no alternative class for the kids to go to. If I were to take away any of these [referring to a list of most of the CTE classes offered at Chief Sealth], there is no alternative class because we have the hospitality, and we also have finance classes for our students.
>
> However, if we were to take away the wood shop, the students can still go to the Skills Center and still take wood shop. And so that was a consideration that I looked at.

The union argues the employer could have eliminated some of the other classes with lower enrollment, including IB classes instead of woodshop. When asked on cross-examination about some classes with historically lower enrollment not being cut, Sallee responded,

> Oh, no. That's not true. I mean, we've not run classes that haven't been filled. I put the message out to teachers, too, that if you want to run these classes, you need to recruit to get those numbers up as close to 28. Because if we can't afford to fund them—you know, if we—if we're stretching to make ends meet, classes that don't fill are going to be the first to go.

Additionally, I credit the testimony of Fraser-Hammer and Sallee about the need to offer the small IB classes. The IB program requires students to take a certain number of higher-level classes. According to Sallee, there are a few classes like higher level mathematics that historically might run at 18 students in one section. Such courses are crucial to the school's IB program.

I am not persuaded by Johnson's testimony that she felt bullied by Fraser-Hammer after filing the 2013-14 school year grievance. Johnson's testimony demonstrated she was prone to exaggeration and sometimes drew negative conclusions about Fraser-Hammer's actions and motivations that were not supported by the evidence. For example, when Fraser-Hammer called Johnson on August 7, 2015, to talk with her about her assignment for the 2015-16 school year, there is no evidence that Fraser-Hammer knew Johnson was out of town burying her father on that day. The tone of Johnson's testimony, however, made it appear Fraser-Hammer timed her call to disrupt the burial. Johnson described Fraser-Hammer following up with her 10 or 11 days later as Fraser-Hammer "actively, aggressively pursuing" her on vacation. Additionally, with respect to Johnson's "I'm free. I'm white. I'm 21. You can't make me do anything I don't want to do" comment, Johnson appeared to deflect responsibility for her statement and, instead, blamed Fraser-Hammer. When

questioned on cross-examination as to why she made the statement, Johnson testified, "I was under a great deal of stress. I had a woman standing over me throwing papers in my face."

The union also refers to Fraser-Hammer's "intense dislike of the [union]" and argues animus with respect to the following testimony. On cross-examination, counsel for the union asked Fraser-Hammer, "Is it your opinion that the group of [union] reps at Chief Sealth breed a culture of division by providing an audience for the staff to complain? Is that your opinion?" Fraser-Hammer responded as follows:

> That was my opinion, and that was what we were trying to rectify because I have had those conversations with them. And we—and it's not just—it's not just the [union]. It's the BLT [building leadership team]. It's also the IC [instructional council]. I think that the school had gotten convoluted in its functions, and nobody knew the purview of any of their functions.
>
> And so I was trying to streamline that, and I pointed out that—that if we can work together to point people in the right direction—so if it is a complaint that has nothing to do with the contract, they should be directed to the BLT if it's a BLT issue, the IC if it's an IC issue.

The evidence demonstrates Fraser-Hammer was hurt and angry about the June 17, 2015, meeting where the union's building representatives criticized her performance; was frustrated that Johnson took issues to Robinson without, in her view, giving her the opportunity to try to resolve the issues first; felt intimidated by Robinson during the September 8, 2015, conversation; and believed that the union and some of the teams, councils, or committees at Chief Sealth needed to clarify their functions. As a result of her strong emotions, Fraser-Hammer sent two e-mails that interfered with protected employee rights. At other times, such as through the April 20 e-mail, she also openly communicated her frustrations to the union building representatives.

After carefully analyzing the totality of the evidence, I do not find that the union established the employer's actions were motivated by union animus or that its stated reasons were pretexts.

The budget committee, a large group made up of many staff members in addition to a parent and administrators, voted to approve budgets that eliminated and then reduced woodshop. In its post-hearing brief, the union argued that although members of the budget committee voted to

approve the reduction of the woodshop program, all members (except the parent member) were under the supervision of Fraser-Hammer, implying that they acted under pressure from Fraser-Hammer. Although Fraser-Hammer served as the evaluator for some on the committee, the record includes no evidence that any person voted in favor of the budgets that eliminated or reduced woodshop based upon pressure from, or deference to, Fraser-Hammer.

Sallee testified unequivocally that he was a strong advocate for the elimination of the woodshop class. The record includes no evidence that he held any animus toward Johnson or the union or that he had experienced any conflict with Johnson, Robinson, or the union. Additionally, Tolley—someone who had no involvement in developing the budget—approved it. With respect to the staff, the majority of whom are bargaining unit employees, two-thirds of those who voted, voted to approve the budget that reduced woodshop to .6 FTE.

The union bears the burden of proof, and I conclude the union did not meet its burden. I find Fraser-Hammer credibly testified as to the reasons for her actions and they were neither pretexts nor substantially motivated by union animus. As a result, I dismiss this allegation.

4. Assignment of Students Receiving Special Education Services and English Language Learners in 2016 – Not Discriminatory

The union alleges the employer discriminated against Johnson in violation of RCW 41.59.140(1)(d) for participating with the union in filing an unfair labor practice complaint when Fraser-Hammer took the following actions: (1) in January 2016, assigning a number of students receiving special education and ELL services to Johnson's woodshop class for the second semester without support; (2) on or about February 26, 2016, removing the ELL instructional assistant who had been assigned to Johnson's class; and (3) since the start of the second semester in 2016, removing six students from Johnson's class.

Union's Prima Facie Case

The union established that Johnson participated with the union in filing an unfair labor practice complaint against the employer in November 2015, prior to the alleged events contained in this section. It is less clear that the employer deprived Johnson of an ascertainable right, benefit, or

status. Assuming for purposes of this analysis that the employer's actions are properly classified as a deprivation of an ascertainable right, benefit, or status and a causal connection existed, as described below, the union did not carry its ultimate burden of establishing that the employer was substantially motivated by animus or that its reasons for its actions were pretexts.

Employer's Nondiscriminatory Reason

Andra Maughan, who served as an assistant principal at Chief Sealth from 2012 through June of 2015, testified about students enrolled in woodshop who received special education services. She testified that Johnson did not want special education students in her class unless additional staff members came with the students. According to Maughan, that approach is out of compliance with requirements to place students in the "least restrictive environment."

She testified that the case managers and counselors schedule students receiving special education services into classes based upon the students' individualized education plans. She was not employed at Chief Sealth during the time of this allegation.

The evidence does not establish who assigned which students to Johnson's classes at the time in question. The record includes no credible details on the students' abilities and needs. When Johnson raised a concern, special education support was provided; a special education instructional assistant and special education teacher were assigned time in woodshop.

With respect to students enrolled in woodshop who received ELL services, the evidence does not establish who assigned which students to Johnson's classes at the time in question. The record includes no credible details on the students' English proficiency or needs. When Johnson raised a concern, an ELL instructional assistant was assigned time in woodshop. On or about February 26, 2016, Fraser-Hammer removed the ELL instructional assistant.

Gallardo testified that for the nine years she has served as the director of ELL and international programs, the employer has used the best practice of deploying ELL instructional assistants in core academic classes such as literacy and science—anything subject to state assessment. She testified that this best practice is included in the employer's "electronic binder" which consists of

information, including state and federal policies, on how to support English language learners. The union argues in its post-hearing brief that Gallardo's testimony should not be credited because a printout of the electronic binder was not offered into evidence. Although a printout of the electronic binder would have reinforced her testimony, I have no reason to doubt Gallardo's veracity.

The union introduced no evidence relating to the removal of six students from Johnson's class since the start of the second semester in 2016.

Union's Ultimate Burden

Because the employer met its burden of production, the union bears the burden of proving by a preponderance of the evidence that the employer's stated reason is a pretext or that union animus substantially motivated the employer's actions. The union did not meet its burden.

With respect to the students receiving special education services enrolled in woodshop, the evidence does not establish who assigned which students to Johnson's classes or why. Regardless, support was provided and remained.

With respect to the students enrolled in woodshop and receiving ELL services, the evidence does not establish who assigned which students to Johnson's classes or why. On or about February 26, 2016, Fraser-Hammer removed the ELL instructional assistant. In contrast to Gallardo's testimony, Johnson and Munoz denied the practice of deploying ELL instructional assistants to core academic classes only. They both testified that instructional assistants have been assigned to woodshop at Chief Sealth for years.

I find that the conflicting testimony on the issue of ELL support in woodshop does not reflect any witness exaggeration or dishonesty. I find Gallardo credibly testified as to best practices that she believed were implemented in the employer's 100 schools. Johnson and Munoz credibly testified about their experiences and observations over their time at Chief Sealth.

The union established that practices at Chief Sealth were inconsistent with the ELL department's best practices. Fraser-Hammer acted consistently with the ELL department's best practices when she removed the ELL instructional assistant from woodshop. As a result, I conclude that the union did not meet its burden of proving that the employer's actions were substantially motivated by animus or that the stated reason for its actions was a pretext, and I dismiss the allegation.

CONCLUSION

The employer interfered with employee rights in violation of RCW 41.59.140(1)(a) when Fraser-Hammer sent an e-mail to union building representatives on June 24, 2015, and when Fraser-Hammer sent an e-mail to Johnson on September 5, 2015. Both e-mails discouraged union activity and could reasonably be perceived as containing threats of reprisal for engaging in protected union activities. The union did not meet its burden of proof to establish causes of action for domination, discrimination, or the other interference allegations.

FINDINGS OF FACT

1. The Seattle School District (employer) is a public employer within the meaning of RCW 41.59.020(5). Chief Sealth International High School (Chief Sealth) is one of the employer's schools.

2. The Seattle Education Association (union) is an employee organization within the meaning RCW 41.59.020(1) and is the exclusive bargaining representative of the employer's non-supervisory, certificated employees.

3. At all times material to this decision, the union and employer were parties to a collective bargaining agreement (CBA).

4. Nan Johnson began working for the employer in December 1998 and has worked as a woodshop teacher within the career and technical education (CTE) program at Chief Sealth since 2002 or 2003. Johnson participated in activities protected by the collective

bargaining statute, including serving as a union building representative or alternative building representative each year since Fraser-Hammer became principal. As a building representative, Johnson attended meetings and provided guidance to other teachers. Johnson also participated with the union in filing a formal grievance in 2013 and the present unfair labor practice complaint.

5. The union maintains four building representatives and two alternate building representatives at Chief Sealth. The representatives are bargaining unit employees who work at the school.

6. Temple Robinson works for the Washington Education Association, which is affiliated with the union, as a UniServ Representative; she represents the employer's bargaining unit employees, including employees at Chief Sealth.

7. Aida Fraser-Hammer began working as principal of Chief Sealth in July 2013.

8. Clint Sallee has been an assistant principal at Chief Sealth since July 2013 and is in charge of the school's master schedule. The record includes no evidence that Sallee experienced any conflict with Johnson, Robinson, or the union, and the union does not allege Sallee bore union animus. Although Fraser-Hammer serves as Sallee's evaluator, the union offered no credible evidence that his testimony reflected any pressure from, or deference to, Fraser-Hammer.

9. Chief Sealth's budgeting process begins with the principal receiving information from the employer on the following school year's staff allotment and discretionary funds. Based on that information, the principal develops a budget proposal to present to the budget committee; Fraser-Hammer views the budget proposal as a starting point for conversations. Fraser-Hammer testified that in putting the budget together, she focuses on what is important to the school based on its continuous school improvement plan (CSIP).

10. The budget committee includes 16–20 members, including Fraser-Hammer, Sallee, certificated employees, classified employees, and a parent. A majority of the school's budget committee must approve the budget before it is presented to the entire school staff for approval. To pass the budget, two-thirds of the entire school staff, not just of the number of staff members actually voting, must vote yes.

11. The CBA provides a process in the event a school staff does not meet the two-thirds requirement. The first step of the process includes a meeting with a union representative, an employer representative, and the staff to resolve the budget. The parties refer to that meeting as a "mediation." If the mediation does not resolve the budget, the superintendent's designee makes the final decision.

12. With respect to class size, Chief Sealth needs enough seats in classes for the number of students in the school to avoid students having holes in their schedules. Sallee testified that it feels like the staffing allocation falls short of the school's needs and, with the limited budget, the ability to fill a class is especially important. Every seat really matters. Classes that run considerably below 32 students cause a real problem. All of the CTE classes take the maximum of 32 to 35 students.

13. Chief Sealth offers its students an international baccalaureate (IB) diploma program. The program requires students to take a certain number of higher-level classes. A few classes like higher level mathematics historically might run at 18 students in one section. Such courses are crucial to the school's IB program.

14. In September 2013, Johnson and a union building representative raised concerns about the large number of students enrolled in Johnson's woodshop classes. Johnson testified that 32 students were enrolled in her classes, including students receiving special education services. According to Johnson, Chief Sealth had adhered to an unwritten agreement that her classes would have 18 to 20 students due to the size of the woodshop space. She also testified that the number of students receiving special education services in her classes was

limited due to safety issues. The union filed a grievance on Johnson's behalf to address the class size issue.

15. Fraser-Hammer testified that the master schedule for the 2013-14 school year was developed prior to Fraser-Hammer starting at the school and she inherited Johnson's class sizes. She explained that she sought to memorialize the class size maximum for woodshop but was unable to determine who had set the 20 student maximum and his or her credentials. Fraser-Hammer, with the assistance of her supervisor, requested that the employer's risk management department inspect the woodshop space to determine student enrollment limits. Based on the inspection, the class size maximum in woodshop dropped to 14–16 students.

16. Johnson and the union advocated for expanding student enrollment numbers in woodshop by removing a wall between the woodshop and a neighboring classroom. This would have allowed Johnson to work with the same number of students in the shop while supervising students in the classroom at the same time. The classroom space at issue was a computer-based classroom designated for Denny Middle School's Project Lead the Way; it was not the classroom Johnson had been using.

17. In the spring of 2015 Fraser-Hammer obtained bids to remove the wall. By memorandum dated June 15, 2015, Fraser-Hammer informed the staff of her decision not to remove the wall between the woodshop and the Denny Middle School (Denny) classroom. In six pages, Fraser-Hammer provided background information, weighed the pros and cons of removing the wall as well as two other options, explored special considerations, and explained her decision. Ultimately, Fraser-Hammer determined that with the $15,000 cost of the project, as well as other considerations detailed in her memorandum, removing the wall to add capacity for eight more students was not an effective use of money. Fraser-Hammer's memorandum and testimony demonstrated that she took the idea of removing the wall seriously and analyzed the advantages and disadvantages in detail.

18. The employer did not deprive Johnson of an ascertainable right, benefit, or status by deciding not to remove the wall between the woodshop and a neighboring classroom. Johnson had no entitlement to the classroom space next to her woodshop. The idea of removing the wall and dedicating the classroom space to woodshop was just that—an idea. When the idea was rejected, Johnson continued with her existing woodshop and separate classroom space.

19. The union points to no specific evidence demonstrating that Fraser-Hammer's actions relating to the removal of the wall were motivated by reasons other than what she articulated in her memorandum. The union did not establish that the employer's reasons for rejecting the idea of removing the wall were pretexts or that union animus substantially motivated the employer's actions.

20. On June 17, 2015, Fraser-Hammer attended a meeting that she thought was a regular meeting with the union's building representatives. It was not. The purpose of the meeting, which was not disclosed to Fraser-Hammer in advance, was to discuss concerns about Fraser-Hammer's leadership, including issues relating to transparency, communication, master scheduling, and the union's climate surveys. Two parents attended the meeting at the invitation of the union representatives. Johnson's role at the meeting was to share the union's climate survey results with Fraser-Hammer. The union conducted two staff climate surveys, one in the fall of 2014 and the other in the spring of 2015. Johnson helped develop questions for each. Johnson told Fraser-Hammer during the meeting that the staff was "pretty dissatisfied;" over 60 percent had negative comments, and the staff was "pretty much ready to do a vote of no confidence."

21. Fraser-Hammer felt ambushed at the meeting and communicated her emotions about the meeting in two separate e-mails. On June 19, 2015, she sent an e-mail to Robinson and Jonathan Knapp, who she thought was Robinson's supervisor. Knapp was the union president, not Robinson's supervisor.

22. In her June 19, 2015, e-mail to Robinson and Knapp, Fraser-Hammer was raising her frustrations with the relationship after Robinson, the non-employee union representative, and the union's building representatives raised their frustrations about Fraser-Hammer and her leadership. Fraser-Hammer did not copy the June 19 e-mail to any rank-and-file bargaining unit employees. A typical union representative could not reasonably perceive the e-mail as a threat of reprisal or force, or a promise of benefit, associated with union activity.

23. On June 24, 2015, Fraser-Hammer sent an e-mail concerning the meeting to the union building representatives. She expressed some of the same frustrations she communicated in the e-mail to Robinson and Knapp.

24. Fraser-Hammer's June 24, 2015, e-mail went beyond candid, critical communication; she was not just venting her frustration. The e-mail declared that the employees had been insubordinate and unprofessional at the meeting. The tone of the e-mail was coercive. From the overall context, a typical union representative could reasonably perceive Fraser-Hammer's caution "to refrain from negative secret conversations that divide and separate us" to mean to refrain from conversations with the union.

25. During the 2014-15 school year, the building leadership team (BLT) discussed documenting the hiring policy and could not agree on language. At the end of the year, it appeared there was agreement and Delfino Munoz, a bilingual instructional assistant and classified employee union building representative, agreed to work on drafting the language and bring it back the next school year. He brought it back to the BLT in September 2015. Munoz testified that Fraser-Hammer announced she would not agree to anything the BLT or union came up with on the hiring policy and would only abide by the language detailed in the CBA because of something that happened the year before.

26. Chief Sealth and Denny have a history of trading teachers; the history predates Fraser-Hammer becoming principal. Teachers are shared between the two schools to

accommodate the needs at each school, and the schools have shared music, drama, math, and Spanish teachers. The schools also share a campus, including some facilities.

27. In planning for the 2015-16 school year, Fraser-Hammer agreed with the Denny principal to trade Denny's drama teacher and Johnson for one period so that Chief Sealth students could take drama. Fraser-Hammer had considered alternative trades. For example, the music teacher was new and filled a .8 FTE, so .2 FTE of that music teacher was not available to trade, and the Spanish teachers already had full classes.

28. On August 7, 2015, during summer break, Fraser-Hammer initiated contact with Johnson about her assignment for the 2015-16 school year but Johnson was not able to talk at that time. When they spoke on August 17 or 18, Fraser-Hammer informed Johnson that she would teach woodshop to Denny students third period. Johnson submitted a letter to Fraser-Hammer on August 20, 2015, indicating issues and barriers to teaching middle school students, including concerns about safety, developing a new middle school curriculum, and coordinating schedules.

29. By e-mail dated August 24, 2015, Fraser-Hammer responded to Johnson's concerns. On August 31, 2015, Robinson e-mailed Fraser-Hammer with concerns about Johnson's third period assignment. Robinson stated she had contacted the employer's human resources department and learned that Johnson had signed a contract to work 1.0 FTE at Chief Sealth. As a result, her contract would have to be rewritten to effect the proposed change. Robinson expressed in the e-mail that she did not believe Fraser-Hammer respected Johnson's professional judgment. Robinson concluded the e-mail by indicating that if Fraser-Hammer continued her effort to assign Johnson to teach middle school woodshop during third period, a step one grievance hearing would need to be coordinated.

30. In a lengthy e-mail from Fraser-Hammer to Johnson dated Saturday, September 5, 2015, Fraser-Hammer expressed concern that Johnson did not seek an informal discussion with her, consistent with the CBA's grievance procedure, stating, "I am very disappointed that once again you choose [sic] not to grant me the common courtesy of a personal

conversation to raise your concern so that I may have the opportunity to address it. You choose [sic] instead to circumvent the process and have Temple Robinson attack me." Fraser-Hammer's e-mail identified the informal step of the grievance process and expressed the need to follow procedure. She stated, "Bypassing a conversation with the principal lacks the spirit of genuinity [sic], collaboration or cooperation and instead reeks of distrust and perpetuates it."

31. The CBA does not require an employee to talk about concerns with his or her supervisor directly prior to consulting the employee's union representative, nor does the CBA bar an employee from having his or her union representative speak on the employee's behalf. Robinson credibly testified that it has been common practice for employees to contact their union for support before talking with their administrator as well as having building representatives participate in step one of the grievance procedure. No grievance had been filed at the time of the September 5, 2015, e-mail.

32. The tone of Fraser-Hammer's September 5, 2015, e-mail was coercive. A typical union representative could reasonably perceive Fraser-Hammer's e-mail as a threat of reprisal associated with union activity, discouraging Johnson from seeking her union representative's advice and support.

33. Fraser-Hammer's September 5, 2015, e-mail to Johnson also explained that while trading third period woodshop to Denny opened up 32 seats for Chief Sealth students, she understood from Human Resources that she could not make that trade. Fraser-Hammer explained that she could not reopen third period high school woodshop because the students had already been assigned to other classes, and she identified the following options for third period: CTE financial algebra, credit retrieval, substitute teaching within Chief Sealth, or co-teaching. She wrote, "I will be working over the weekend with [Sallee] to solidify the schedule. If you would like to come talk to me, please come on in anytime."

34. Johnson responded to Fraser-Hammer by e-mail dated September 7, 2015. She expressed her lack of understanding as to why she could not teach woodshop third period.

35. Fraser-Hammer credibly testified that having Johnson teach high school woodshop during third period was not a viable option at that point in time. According to Fraser-Hammer, the students who had requested woodshop for third period were already assigned to other classes and, as a result, the record no longer existed in Chief Sealth's master scheduling system to determine which students had selected third period woodshop. Even if there were a way to determine which students had selected the class, however, reconstituting the class assignments would create significant challenges. For example, if a student had been placed in woodshop originally and then reassigned to English third period, the student would need to take English during another period, requiring more schedule adjustments. Changing schedules at that point would have required counselors to do it manually.

36. Robinson went to Fraser-Hammer's office to speak with her about Johnson's assignment for the year on or about September 8, 2015. Near the end of the conversation after Robinson had gone to the door to leave, Fraser-Hammer made a statement to Robinson about wanting to speak with Johnson directly. According to Robinson, Fraser-Hammer said, "I want to be able to have a conversation with [Johnson] without [the union] being present," and "I don't want them to talk to you, period, until after they talk to me."

37. According to Fraser-Hammer, Fraser-Hammer told Robinson to remind Johnson that Johnson could bring things to Fraser-Hammer and give Fraser-Hammer an opportunity to address them before complaining to Robinson. Fraser-Hammer testified that Robinson slammed the office door closed and was enraged with her eyes wide, nostrils flaring, and teeth clenching. She described Robinson as in her face, pointing at her and telling her she would come after her. Fraser-Hammer felt intimidated and threatened during this incident, which was one of only two times in her career that she felt intimidated.

38. At hearing, Robinson denied the allegation that she became hostile and did not recall being in Fraser-Hammer's personal space. Robinson stated she told Fraser-Hammer that if she continued to participate in retaliatory behavior, the union was "not going to have a choice but to move forward and file a[n unfair labor practice complaint] against her because she [would] not stop."

39. On September 9, 2015, Fraser-Hammer responded to Johnson's September 7 e-mail, indicating Johnson would have third period credit retrieval.

40. Johnson complained she did not receive proper training for the credit retrieval class and had to learn on the fly. In e-mails she questioned how she would be paid for the necessary training. While she testified that the trainings were three and seven or eight hours in length, the evidence demonstrates the training videos were just a few minutes long.

41. Had Johnson agreed to teach middle school woodshop, she would have taught an age of students she had not taught before, she may have needed to make some modifications to her curriculum, but she would have remained in the same woodshop and classroom space. Teaching credit retrieval, Johnson worked with high school students and remained on the same campus. The class was just one period of the day and although she had never taught the course before, it required no direct instruction and curriculum. Johnson's role was to supervise the students while they worked independently on computers. Teachers did not want to be assigned credit retrieval and the departments rotated that responsibility.

42. Fraser-Hammer credibly testified concerning the reasons for assigning Johnson to teach credit retrieval. The credit retrieval courses offered during the school day are important to Chief Sealth and are part of its CSIP. Credit retrieval classes allow students who have failed any class to retake and pass classes that are necessary for graduation. Someone needed to teach the third period credit retrieval class and it had not yet been assigned.

43. As described in Findings of Fact 26, 27, 32, 33, 35, 39, 41, and 42, the employer articulated nondiscriminatory reasons for cancelling third period high school woodshop in August 2015, assigning Johnson to teach middle school woodshop third period, and assigning Johnson to teach credit retrieval third period after Johnson did not agree to teach middle school woodshop.

44. In the midst of the decisions relating to Johnson's assignment for third period, Fraser-Hammer was frustrated with Johnson and the union and interfered with protected

employee rights by sending Johnson the September 5, 2015, e-mail. She had also interfered with protected employee rights by sending the earlier e-mail on June 24, 2015. Fraser-Hammer's frustration with the union, lack of understanding about union representation, and her interference with union rights do not, however, independently translate into union animus. Fraser-Hammer credibly testified as to the reasons for her actions and they were neither pretexts nor substantially motivated by union animus.

45. On September 16, 2015, at 7:15 p.m., Robinson e-mailed Fraser-Hammer in response to Fraser-Hammer's September 9 e-mail to Johnson. The e-mail advocated for allowing Johnson to teach woodshop third period, addressed Fraser-Hammer's interpretation of the grievance procedure, and concluded with the following: "Based on the contractual violations, [the union] is initiating the grievance process regarding your discriminatory behavior towards Ms. Johnson. We believe you are targeting Ms. Johnson because of her participation in union activities with an emphasis of pushing her out of [Chief] Sealth."

46. On September 16, 2015, at 10:34 p.m., three hours and 19 minutes after Robinson's e-mail and eight days after the September 8 conversation, Fraser-Hammer e-mailed John Donaghy, the union's executive director and Robinson's supervisor, describing "an unpleasant and scary interaction between Temple Robinson and [Fraser-Hammer]." She sent copies of the e-mail to Israel Vela, Dana DeJarnatt from the employer's human resources department, and Knapp. The e-mail recounted her perception of the September 8, 2015, conversation in which she believed Robinson was trying to intimidate her. Fraser-Hammer explained that as Robinson was walking out of Fraser-Hammer's office, Fraser-Hammer said, "Please remind [Johnson] that I would like her to allow me the opportunity to address an issue before she takes it to the [union]." Fraser-Hammer's e-mail described that Robinson responded by slamming the office door shut, berating her, and threatening, "I will come after you."

47. As a result of Fraser-Hammer's report of the September 8 incident, the employer initiated an investigation under its Harassment, Intimidation and Bullying (HIB) policy. Geoff Miller, the employer's then-labor/employee relations director, sent a letter dated October

12, 2015, to Donaghy. The letter indicated that Miller met with Donaghy on or about September 17 and recounted the allegations contained in Fraser-Hammer's September 16 e-mail. The letter requested that Donaghy provide a statement from Robinson in response to Fraser-Hammer's allegations. The letter also detailed restrictions the employer was placing on Robinson's access to Chief Sealth during the investigation.

48. According to Miller, Fraser-Hammer's complaint sounded very serious and the employer needed to conduct an investigation. The employer's HIB Procedure states, "All complaints of harassment, intimidation, or bullying, will be taken seriously and will be investigated." Miller explained that when investigating allegations, the employer needs to figure out how to isolate the person making the complaint from the person who engaged in the conduct that allegedly violated the policy.

49. Miller did not intend to permanently restrict Robinson from Chief Sealth. Miller wanted to get the investigation done as soon as possible and then determine how to proceed. Miller testified that he had repeated conversations with Donaghy from September 2015 to January 2016 in which Miller asked for a statement from Robinson or that the employer be allowed to interview Robinson. Donaghy refused to provide a statement. Miller did not contact Robinson directly. Robinson never submitted a statement. Robinson testified that the HIB policy does not apply to her because she does not work for the employer. Miller testified that the policy applies to students, employees, and third parties—anyone on school property. For example, he noted the employer has applied the policy to parents.

50. The record includes no evidence that Robinson or Donaghy sought alternate arrangements or that Robinson sought access to Chief Sealth through Miller or the human resources department.

51. As of the time of the hearing, 11 months later, there was no evidence that the investigation had concluded and the restrictions on Robinson's access to Chief Sealth remained in place, requiring her to meet with staff at alternate locations. According to Miller, cases can take a long time to resolve. The employer's HIB Procedure states that, with respect to formal

complaints, "[Human Resources] shall attempt to complete the investigation of all harassment, intimidation, and bullying complaints filed under this procedure within sixty (60) days."

52. Although the timing of Fraser-Hammer's e-mail raises questions, as does the lack of corroboration of some of Fraser-Hammer's assertions from staff working in the office on September 8, the evidence does not establish that Fraser-Hammer misrepresented what occurred during the September 8 conversation with the intention of forcing the union to assign a different UniServ representative to Chief Sealth.

53. Fraser-Hammer's testimony about feeling intimidated by Robinson on September 8 was credible. During the hearing, Robinson demonstrated that she gesticulates and is not always aware of it. "I didn't know I was pointing my finger at you," she testified when counsel for the employer asked Robinson if she realized how frequently she pointed her finger during her testimony. The record demonstrates that Robinson was extremely frustrated with Fraser-Hammer on September 8 and, based on what I observed at the hearing, Robinson would have shown that frustration to Fraser-Hammer by her verbal and nonverbal communication.

54. During the next semester, in February 2016, Johnson complained that her woodshop classes had a significant number of students receiving special education and English language learner (ELL) services. According to Johnson, five to six of the students in one period presented safety issues because they had difficulty understanding instructions. The union introduced no evidence relating to the removal of six students from Johnson's class since the start of the second semester in 2016.

55. Andra Maughan, who served as an assistant principal at Chief Sealth from 2012 through June of 2015, testified that Johnson did not want special education students in her class unless additional staff members came with the students. According to Maughan, that approach is out of compliance with requirements to place students in the "least restrictive environment." She testified that the case managers and counselors schedule students

receiving special education services into classes based upon the students' individualized education plans. She was not employed at Chief Sealth during the time of this allegation.

56. The evidence does not establish who assigned which students to Johnson's classes and why. The record includes no credible details on the students' abilities and needs.

57. In response to Johnson's requests, an ELL instructional assistant, a special education instructional assistant, and a special education teacher all provided Johnson support. On February 26, 2016, Fraser-Hammer removed the ELL instructional assistant from woodshop. According to Veronica Gallardo, the employer's director of ELL and international programs, for the nine years she has been the director, the employer has used the best practice of deploying ELL instructional assistants in core academic classes such as literacy and science—anything subject to state assessment. In an e-mail from Gallardo to Robinson dated April 25, 2016, Gallardo stated, "When we provide professional development to school leaders and when we assign IA [instructional assistant] staffing we always stress the need for IA staffing in core content only."

58. In contrast, Johnson and Munoz denied the practice of deploying ELL instructional assistants to core academic classes only. They both testified that instructional assistants have been assigned to woodshop at Chief Sealth for years.

59. The conflicting testimony on the issue of ELL support in woodshop does not reflect any witness exaggeration or dishonesty. Gallardo credibly testified as to best practices that she believed were implemented in the employer's 100 schools. Johnson and Munoz credibly testified about their experiences and observations over their time at Chief Sealth. Practices at Chief Sealth were inconsistent with the ELL department's best practices. Fraser-Hammer acted consistently with the ELL department's best practices when she removed the ELL instructional assistant from woodshop. The union did not establish that the employer's actions were substantially motivated by animus or that the stated reason for the actions was a pretext.

60. Due to a projected reduction in student enrollment, Chief Sealth planned for a budget shortfall for the 2016-17 school year. Fraser-Hammer proposed a budget to the budget committee that included the elimination of woodshop as well as the elimination or reduction of other positions. The evidence demonstrates that Fraser-Hammer considered eliminating other classes. Fraser-Hammer included the elimination of woodshop in her proposed budget because she believed the woodshop program was a proper place to make cuts. Fraser-Hammer clearly saw value for students to take woodshop and testified that it was an essential offering. Because Chief Sealth students could take woodshop at the employer's skills center, eliminating woodshop at Chief Sealth did not eliminate opportunities for students to take woodshop.

61. The majority of the budget committee approved a budget that included the elimination of woodshop. Although Fraser-Hammer served as the evaluator for some on the committee, the record includes no evidence that any person voted in favor of the budgets that eliminated or reduced woodshop based upon pressure from, or deference to, Fraser-Hammer.

62. On March 17, 2016, the staff voted on the budget and two-thirds of the total staff did not vote in favor.

63. A nurse working at Chief Sealth who was not on the budget committee developed and shared an alternate budget proposal that did not eliminate or reduce woodshop. The nurse withdrew her proposal because it depended on funds that could not be guaranteed. Such facts do not establish employer actions that deprived Johnson of an ascertainable right, benefit, or status.

64. The employer provided Chief Sealth some additional funds and the budget committee developed and approved another proposed budget with woodshop funded at .6 FTE. Only one budget committee member voted against the budget.

65. The majority of the staff who voted on the budget voted to approve it, but the number of those who cast "yes" votes did not exceed two-thirds of the total staff. On March 21, 2016, Fraser Hammer submitted the budget to the employer.

66. On March 28, 2016, Fraser-Hammer had a teacher take over Johnson's class so that Fraser-Hammer could meet with Johnson along with a union building representative and Fraser-Hammer's secretary. At the meeting, which took place in a small space, Fraser-Hammer presented Johnson with the option of staying at Chief Sealth on a part-time basis or transferring to another school. Johnson testified that she was seated and Fraser-Hammer was standing over her, shaking displacement paperwork at her, and Johnson felt intimidated, bullied, and harassed. Johnson stated to Fraser-Hammer, "I'm free. I'm white. I'm 21. You can't make me do anything I don't want to do." The next day, Johnson signed the displacement paperwork indicating she would maintain her 1.0 FTE and transfer to another school.

67. When two-thirds of the entire staff did not vote to approve the budget committee's proposed budget, the employer scheduled the "mediation" as provided by the CBA for April 6, 2016. The budget still was not resolved so, consistent with the CBA, the budget was submitted to Associate Superintendent Michael Tolley for a final decision.

68. By e-mail dated April 20, 2016, Fraser-Hammer asked one of the union's building representatives to stop by her office to sign the Statement of Assurance form for the budget process. The representative responded that members of the union team felt they should not sign until the budget was finalized. Fraser-Hammer responded to the building representatives by e-mail communicating her frustration with the lack of cooperation from the union.

69. Fraser-Hammer's April 20, 2016 e-mail was not coercive and was made to union representatives, not to rank-and-file bargaining unit employees. A typical union representative could not reasonably perceive the e-mail as a threat of reprisal or force, or a promise of benefit, associated with union activity.

70. By memorandum dated April 29, 2016, Tolley approved the budget committee's proposed budget that included the reduction in woodshop to a .6 FTE. In his memorandum Tolley noted that woodshop is "the one class that can be provided to students offsite. Other offerings, if discontinued or reduced, would not be able to be provided to [Chief Sealth's] students." Tolley also stated, "Unfortunately, at this time we are not able to restore your budget to what it was in the past or increase funding to [Chief Sealth]."

71. For the current 2016-17 school year, Johnson has been teaching first and second period woodshop at Chief Sealth and spends the rest of her work day in the skills center at Rainier Beach High School.

72. In and of themselves, the proposal to eliminate woodshop, the statement that woodshop should be eliminated or significantly reduced, and the submission of the budget to the employer that included the elimination of woodshop did not independently deprive Johnson of an ascertainable right, benefit, or status.

73. When Fraser-Hammer effectuated the proposal to eliminate or reduce woodshop by presenting Johnson with the option of teaching woodshop part time at Chief Sealth or finding a job at another of the employer's schools, the employer deprived Johnson of an ascertainable right, benefit, or status. The union filed the unfair labor practice complaint on November 25, 2015, and approximately four months later, Fraser-Hammer informed Johnson that she could either remain at Chief Sealth with a reduced .6 FTE assignment or transfer to another school. As a result, the union established a causal connection. The union established a prima facie case that the employer discriminated against Johnson when Fraser-Hammer presented Johnson with the option of teaching woodshop part time at Chief Sealth or finding a job at another of the employer's schools.

74. On cross-examination, counsel for the union asked Fraser-Hammer, "Is it your opinion that the group of [union] reps at Chief Sealth breed a culture of division by providing an audience for the staff to complain? Is that your opinion?" Fraser-Hammer responded as follows:

> That was my opinion, and that was what we were trying to rectify because I have had those conversations with them. And we—and it's not just—it's not just the [union]. It's the BLT [building leadership team]. It's also the IC [instructional council]. I think that the school had gotten convoluted in its functions, and nobody knew the purview of any of their functions.
>
> And so I was trying to streamline that, and I pointed out that—that if we can work together to point people in the right direction—so if it is a complaint that has nothing to do with the contract, they should be directed to the BLT if it's a BLT issue, the IC if it's an IC issue.

75. Johnson testified that after she raised safety concerns and filed a grievance during the 2013-14 school year, she felt bullied by Fraser-Hammer. She testified that Fraser-Hammer—who was not her assigned evaluator—visited her classroom daily for a while. Johnson complained that Fraser-Hammer has called her and woodshop out for the program being expensive and serving few students. Johnson's testimony demonstrated she was prone to exaggeration and sometimes drew negative conclusions about Fraser-Hammer's actions and motivations that were not supported by the evidence. For example, when Fraser-Hammer called Johnson on August 7, 2015, to talk with her about her assignment for the 2015-16 school year, there is no evidence that Fraser-Hammer knew Johnson was out of town burying her father on that day. The tone of Johnson's testimony, however, made it appear Fraser-Hammer timed her call to disrupt the burial. Johnson described Fraser-Hammer following up with her 10 or 11 days later as Fraser-Hammer "actively, aggressively pursuing" her on vacation. Additionally, with respect to Johnson's "I'm free. I'm white. I'm 21. You can't make me do anything I don't want to do" comment, Johnson appeared to deflect responsibility for her statement and, instead, blamed Fraser-Hammer. When questioned on cross-examination as to why she made the statement, Johnson testified, "I was under a great deal of stress. I had a woman standing over me throwing papers in my face."

76. The evidence demonstrates Fraser-Hammer was hurt and angry about the June 17, 2015, meeting where the union's building representatives criticized her performance; was frustrated that Johnson took issues to Robinson without, in her view, giving her the opportunity to try to resolve the issues first; felt intimidated by Robinson during the

September 8, 2015, conversation; and believed that the union and some of the teams, councils, or committees at Chief Sealth needed to clarify their functions. As a result of her strong emotions, Fraser-Hammer sent two e-mails that interfered with protected employee rights. At other times, such as through the April 20 e-mail, she also openly communicated her frustrations to the union building representatives. The union did not establish the employer's actions in eliminating and then reducing woodshop to .6 FTE for the 2016-17 school year were motivated by union animus or that its stated reasons were pretexts.

77. Sallee unequivocally supported eliminating woodshop. He testified credibly and compellingly. The small class sizes in woodshop were problematic for the master schedule. Sallee was a stronger advocate for eliminating woodshop than Fraser-Hammer. When extra funds became available to Chief Sealth, Sallee thought they should be used elsewhere and did not vote for the funds to go to woodshop; Fraser-Hammer did.

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. As described in Findings of Fact 23 and 24, the employer interfered with protected employee rights in violation of RCW 41.59.140(1)(a) by Fraser-Hammer sending the June 24, 2015, e-mail to the union building representatives. A typical union representative could reasonably perceive the e-mail as a threat of reprisal associated with union activity.

3. As described in Findings of Fact 30 through 32, the employer interfered with protected employee rights in violation of RCW 41.59.140(1)(a) by Fraser-Hammer sending the September 5, 2015, e-mail to Johnson. A typical union representative and bargaining unit employee could reasonably perceive the e-mail as a threat of reprisal associated with union activity.

4. As described in Findings of Fact 21 and 22, the employer did not interfere with employee rights in violation of RCW 41.59.140(1)(a) by Fraser-Hammer sending a non-employee union representative and the union president the June 19, 2015, e-mail.

5. As described in Finding of Fact 25, the employer did not interfere with protected employee rights in violation of RCW 41.59.140(1)(a) with regard to a hiring policy.

6. As described in Findings of Fact 68 and 69, the employer did not interfere with protected employee rights in violation of RCW 41.59.140(1)(a) by Fraser-Hammer sending union representatives the April 20, 2016, e-mail.

7. As described in Findings of Fact 6, 36 through 38, and 45 through 53, the union did not establish that the employer intended to control the administration of the union, interfere with the administration of the union, or dominate the union's internal affairs in violation of RCW 41.59.140(1)(b) and, if so, derivatively interfered in violation of RCW 41.59.140(1)(a) when Miller sent a letter dated October 12, 2015, that restricted Robinson's access to Chief Sealth pending the employer's investigation.

8. As described in Findings of Fact 4 and 16 through 19, the union did not establish that the employer discriminated against Johnson in violation of RCW 41.59.140(1)(c) and, if so, derivatively interfered in violation of RCW 41.59.140(1)(a) when Fraser-Hammer decided not to remove the wall between the woodshop and a neighboring classroom.

9. As described in Findings of Fact 4, 26 through 30, 33, 35, and 39 through 44, the union did not establish that the employer discriminated against Johnson in violation of RCW 41.59.140(1)(c) and, if so, derivatively interfered in violation of RCW 41.59.140(1)(a) when Fraser-Hammer cancelled third period high school woodshop in August 2015, assigned Johnson to teach middle school woodshop third period, and then assigned Johnson to teach credit retrieval third period after Johnson did not agree to teach middle school woodshop.

10. As described in Findings of Fact 4, 8 through 15, 60 through 67, and 70 through 77, the union did not establish that the employer discriminated against Johnson in violation of RCW 41.59.140(1)(c) and (d) and, if so, derivatively interfered in violation of RCW 41.59.140(1)(a) when Fraser-Hammer (1) on February 28, 2016, proposed at a budget committee meeting that the woodshop program be eliminated because of a reduction of funds; (2) during the week of March 21, 2016, stated at a budget committee meeting that the woodshop program should be eliminated or significantly reduced; (3) in March 2016, did not allow staff to vote on an alternative proposed budget that funded the woodshop program at 1.0 FTE; (4) on March 21, 2016, submitted to the employer the Chief Sealth budget that included the reduction or elimination of the woodshop program without having staff vote on the revised budget; and (5) on March 28, 2016, presented Johnson with the option of working part time in the Chief Sealth woodshop program or finding a job at another of the employer's schools.

11. As described in Findings of Fact 54 through 59, the union did not establish that the employer discriminated against Johnson in violation of RCW 41.59.140(1)(d) and, if so, derivatively interfered in violation of RCW 41.59.140(1)(a) when Fraser-Hammer (1) in January 2016, assigned a number of students receiving special education and ELL services to Johnson's woodshop class for the second semester without support; (2) on or about February 26, 2016, removed the ELL instructional assistant who had been assigned to Johnson's class; and (3) since the start of the second semester in 2016, removed six students from Johnson's class.

ORDER

The 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. Sending e-mails to bargaining unit members that could reasonably be perceived as discouraging union activity or as a threat of reprisal or force, or promise of benefit, associated with protected union activity.

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

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

a. Contact the Compliance Officer at the Public Employment Relations Commission to receive official copies of the required notice posting within 20 days of the date this order becomes final. Post copies of the notice provided by the Compliance Officer in conspicuous places on the employer's premises where notices to all bargaining unit members are usually posted. These notices shall be duly signed by an authorized representative of the respondent and shall remain posted for 60 consecutive days from the date of initial posting. The respondent shall take reasonable steps to ensure that such notices are not removed, altered, defaced, or covered by other material.

b. Read the notice provided by the Compliance Officer into the record at a regular public meeting of the Seattle School District Board of Directors, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

c. Notify the complainant, in writing, within 20 days following the date this order becomes final 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.

d. Notify the Compliance Officer, in writing, within 20 days following the date this order becomes final as to what steps have been taken to comply with this order and, at the same time, provide her with a signed copy of the notice she provides.

ISSUED at Olympia, Washington, this 23rd day of March, 2017.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Jamie Siegel

JAMIE L. SIEGEL, 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 127738-U-15
DECISION 12672 - EDUC

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

STATE LAW GIVES YOU THE RIGHT TO:

- **Form, join, or assist an employee organization (union).**
- **Bargain collectively with your employer through a union chosen by a majority of employees.**
- **Refrain from any or all of these activities, except you may be required to make payments to a union or charity under a lawful union security provision.**

THE WASHINGTON STATE PUBLIC EMPLOYMENT RELATIONS COMMISSION CONDUCTED A LEGAL PROCEEDING, RULED THAT THE SEATTLE SCHOOL DISTRICT COMMITTED AN UNFAIR LABOR PRACTICE, AND ORDERED US TO POST THIS NOTICE TO EMPLOYEES:

WE UNLAWFULLY sent an e-mail to union building representatives at Chief Sealth International High School on June 24, 2015, and an e-mail to an employee/union building representative at Chief Sealth International High School on September 5, 2015, that could reasonably be perceived as discouraging union activity or as a threat of reprisal or force, or promise of benefit, associated with protected union activity.

TO REMEDY OUR UNFAIR LABOR PRACTICES:

WE WILL respect the rights of our employees to engage in protected union activities.

WE WILL NOT send e-mails that discourage employees or union building representatives from engaging in protected union activity.

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.

COLLECTIVE BARGAINING
PERC
STATE OF WASHINGTON

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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MARK R. BUSTO, COMMISSIONER
MIKE SELLARS, EXECUTIVE DIRECTOR

RECORD OF SERVICE - ISSUED 03/23/2017

DECISION 12672 - EDUC has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

BY: VANESSA SMITH

CASE NUMBER: 127738-U-15

EMPLOYER:	SEATTLE SCHOOL DISTRICT
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