Seattle School District, Decision 12842 (PECB, 2018)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 609, Complainant, vs. SEATTLE SCHOOL DISTRICT, Respondent.	CASE 128823-U-17 DECISION 12842 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On March 1, 2017, the International Union of Operating Engineers, Local 609 (union) filed a complaint with the Public Employment Relations Commission alleging unfair labor practices against the Seattle School District (employer or district). On April 5, 2017, the Commission's unfair labor practice manager issued a preliminary ruling finding causes of action to exist for employer interference with employee rights and employer discrimination in violation of Chapter 41.56 RCW. On April 12, 2017, the Commission assigned the matter to Stephen W. Irvin.

On April 26, 2017, the union filed an amended complaint that included new facts related to allegations of employer discrimination in reprisal for union activities. I reviewed the amended complaint under WAC 391-45-070 and WAC 391-45-110 and granted the union's motion to amend its complaint. I issued an amended preliminary ruling on May 3, 2017.

On June 1, 2017, the union filed a second amended complaint.[1] I reviewed the second amended complaint under WAC 391-45-070 and WAC 391-45-110 and granted the union's motion to amend its complaint. I issued a second amended preliminary ruling on June 6, 2017, that found a cause of action to exist for an allegation of employer refusal to bargain in violation of Chapter 41.56 RCW related to an information request made by the union. I presided over a hearing on August 14, 15, and 16, 2017, and October 9, 2017. The parties filed post-hearing briefs on December 18, 2017, to complete the record.

ISSUES

As framed by the second amended preliminary ruling, the issues presented in the second amended complaint are as follows:

1. Did the employer interfere with employee rights in violation of RCW 41.56.140(1) by making statements to employee Mustefa Tessi on December 8, 2016, that could reasonably be perceived as a threat of reprisal, or force, or promise of benefit, associated with the employee's union activity?

2. Did the employer discriminate in violation of RCW 41.56.140(1)

    a) since December 12, 2016, by making complaints about Tessi's work performance, in reprisal for union activities protected by Chapter 41.56 RCW; and
    b) since December 19, 2016, by delaying the processing of Tessi's discrimination complaint against Madrona Principal Mary McDaniel?

3. Did the employer refuse to bargain in violation of RCW 41.56.140(4) and (1) by refusing to provide relevant information requested by the union on April 25, 2017?

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[1] On May 26, 2017, the union filed a second amended complaint without a motion to the Examiner. On June 1, 2017, the union refiled its second amended complaint along with a motion to amend.

Issue 1

The union was unable to establish that an employee in Tessi's position could reasonably perceive McDaniel's statements on December 8, 2016, as a threat of reprisal or force associated with union activity. McDaniel's statements could not reasonably be perceived as a threat of reprisal because Tessi understood that McDaniel was not his supervisor, and was unable to carry out the threats she made regarding his future employment at Madrona because of provisions contained in the parties' CBA. In addition, McDaniel's statements to Tessi were connected to her frustration over Tessi's refusal to honor her requests to move the science kits and not connected to Tessi's union activity. The union's allegation is dismissed.

Issue 2

The union was unable to establish that the employer deprived Tessi of an ascertainable right, benefit, or status in connection with his participation in an activity protected by the collective bargaining statute. The union was therefore unable to establish a prima facie case for discrimination in connection with the employer's complaints about Tessi's work performance since December 12, 2016, or the employer's processing of Tessi's complaint against McDaniel. The union's allegations are dismissed.

Issue 3

The employer did not refuse to bargain by refusing to provide relevant information requested by the union on April 25, 2017. The employer performed good faith searches on five dates that provided documents responsive to the request on May 5, 2017, but did not include an e-mail chain that the union discovered during a meeting with the employer on May 24, 2017. The employer provided the entire e-mail chain upon the union's request, thereby fulfilling its duty to bargain. The union's allegation is dismissed.

ISSUE 1: Did the employer interfere with employee rights by making statements to employee Mustefa Tessi on December 8, 2016, that could reasonably be perceived as a threat of reprisal, or force, or promise of benefit, associated with the employee's union activity?

Background

At the time of the events in question, the union and the employer were parties to a collective bargaining agreement (CBA) that expired on August 31, 2017. The union is the exclusive bargaining representative for a bargaining unit that includes the employer's custodial employees and gardeners.

During the 2016-2017 school year, Madrona K-8 School (Madrona) included students from kindergarten through fifth grade in one wing of the east Seattle building and students from sixth through eighth grade in another.[2] Mary McDaniel has been the school's principal since the 2013-2014 school year, and reports to Executive Director of Schools Sarah Pritchett. Bruno Cross was the school's assistant principal during the 2016-2017 school year.

At the end of the 2015-2016 school year, Madrona had an opening for a custodian engineer because of Bill Vernon's retirement. Mustefa Tessi, who has been a custodian in the Seattle School District since 2005, bid for the position and was selected to replace Vernon beginning in the 2016-2017 school year.

As a custodian engineer, Tessi oversees the building and other members of Madrona's custodial crew and is supervised by Area Supervisor Patrick Chan, whose supervisor is Director of Facilities Bruce Skowyra. School administrators are considered the custodian engineer's customers, but they are not in custodian engineers' chain of command.

The custodian engineer's duties and responsibilities are detailed in a position description that has remained essentially unchanged since 1980. In addition, custodian engineers at each of the employer's schools have detailed work assignments that indicate tasks that must be performed daily, periodically, or on an as-needed basis. The custodian engineer's daily work assignments include "provide educational support," a term that has been at the heart of disputes between the employer and the union in the past.

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[2] Madrona K-8 School also included developmental preschool students. Beginning in the 2017-2018 school year, students in the sixth through eighth grades no longer attended the school, and the school's name was changed to Madrona Elementary School.

During the first half of the 2016-2017 school year, McDaniel and Tessi had a number of disagreements regarding work jurisdiction issues at Madrona. McDaniel testified that she was accustomed to Vernon promptly completing tasks that she assigned him, even when the tasks were outside of the custodian engineer's position description or work assignments, but she did not receive a similar level of cooperation from Tessi.

Tasks at a school that are not part of the custodian technician position description or work assignments are most often completed by district employees in other job classifications. Some tasks require custodian engineers to fill out a work order that is submitted to the district office, and school principals have to approve the work order if the cost of labor and materials is charged to the school's budget. In some cases during the 2016-2017 school year, Tessi would tell McDaniel or her office staff that a work order would be necessary to complete a task, or that a task was not within his job duties.

In October 2016, for example, Tessi told McDaniel that a work order would be needed to move two file cabinets and a table from a second floor hallway.[3] McDaniel contended that the file cabinets were empty, but the record demonstrated that at least one of the file cabinets contained dictionaries and other items. On October 14, 2016, McDaniel sent an e-mail to Tessi and Chan regarding her request to move the file cabinets and table, and her e-mail also referred to a request for Tessi to move copy paper. Prior to McDaniel's e-mail, Tessi gave school Administrative Secretary Tana Leybold a copy of a union e-mail forwarded to him in 2015 that provided support for his contention that lifting boxes of paper was not part of his job duties.

McDaniel wrote that she would not pay for a work order to move the file cabinets and table, and "[s]ince you are not on light duty assignment, you are to help maintain the safety and cleanliness of this building which includes moving furniture to designated areas." Additionally, McDaniel's e-mail stated that "[y]ou gave Tana the attachment stating lifting boxes of paper is not your responsibility as a custodial employee. Then please explain to me who will do it – I will not and nor will my office staff. Each time you are asked to complete a task, you refuse or explain why

[3] Events occurring before December 8, 2016, are included in order to provide context for subsequent events.

you can't do it. What I want to hear is a deadline to get it done." McDaniel closed her e-mail by asking Chan for a meeting that would include Chan, Tessi, and Tessi's union representative.

Chan responded to McDaniel and Tessi via e-mail on October 15, 2016. Chan's e-mail directed Tessi to move the file cabinets, table, and copy paper, and stated that "[f]ailure to perform the above tasks is considered a work performance issue." A day later, Chan e-mailed McDaniel to inform her that he would cancel the work order for moving the file cabinets and table, and added "I expect Mustefa to move them. I will come by on Monday and deal with Mustefa. Don't need to involve the union. If Mustefa chose [sic] to involve the union, I will deal with them."

Tessi and Wisdom Bui, the night custodian at Madrona, moved the file cabinets and table, and Tessi moved the copy paper as Chan directed, but work jurisdiction issues arose again in December 2016 in connection with moving science kits that were on pallets against the wall of a first-floor hallway outside of the main office. Students in six classrooms passed by the pallets on their way to the school's lobby and other areas of the school.

On December 7, 2016, McDaniel e-mailed Tessi at 6:07 a.m., with a copy to Chan, directing him to "[d]eliver science kits to teacher classrooms today. This is not the teachers [sic] responsibility; it is yours. They have been sitting in the hallway since last week. Please let me know when they have been delivered."

At 7:41 a.m. that day, Chan e-mailed Tessi, writing "[p]lease deliver the science kits to classrooms as part of our job to support the educational program. You can deliver all in one [day] (today) or deliver in two days (today & tomorrow)." Chan also provided direction for Tessi in regard to future science kit deliveries.

At 8:56 a.m., Tessi forwarded Chan's e-mail to the union, and union Business Manager Dave Westberg e-mailed Chan at 10:42 a.m., writing "[p]lease inform this principal that the delivery of supplies to classrooms is a function of office staff. Not teachers OR custodians. There is always the overtime option you could explain. You might add that SHE doesn't order our people around like servants."

On December 8, 2016, McDaniel and Tessi had a discussion in the school hallway regarding delivery of the science kits to classrooms. McDaniel and Tessi have differing accounts of the discussion, and whether the discussion became confrontational or animated.

McDaniel testified that Tessi told her "I'm not doing it. Not my job. You do it," and that "[y]ou can't tell me what to do. You're not my boss." Tessi testified that McDaniel angrily told him that "[t]his is my school. This is my building. So if you not listening to me, you have to get out of here. You have to find another job." McDaniel and Tessi denied making the statements attributed to them.

Applicable Legal Standard

It is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their statutory rights. RCW 41.56.140(1). An employer may interfere with employee rights by making statements, through written communication, or by actions. *King County*, Decision 12582-B (PECB, 2018); *Snohomish County*, Decision 9834-B (PECB, 2008); *Pasco Housing Authority*, Decision 5927-A (PECB, 1997), *remedy aff'd*, *Pasco Housing Authority v. Public Employment Relations Commission*, 98 Wn. App. 809 (2000). 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 other employees. *Kennewick School District*, Decision 5632-A (PECB, 1996).

To prove an interference violation, the complainant 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. To meet its burden of proving interference, a complainant need not establish that an employee was engaged in protected activity. *State – Washington State Patrol*, Decision 11775-A (PSRA, 2014); *City of Mountlake Terrace*, Decision 11831-A (PECB, 2014). The complainant is not required to demonstrate that the employer intended or was motivated to interfere with an employee's protected collective bargaining rights. *City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee was actually coerced by the employer or that the employer had union animus. *Id.*

Application of Standard

The union contends that Tessi reasonably perceived a threat of reprisal for his union activity when McDaniel confronted him in the hallway about delivery of the science kits on December 8, 2016, and stated that his continued employment at Madrona would be in jeopardy if he failed to complete the task. The union argues that the stage was set for the confrontation months earlier when Tessi engaged in protected activity by raising work jurisdiction issues and sharing documentation from the union with office staff, and McDaniel responded by criticizing Tessi's work performance to his supervisor.

The employer maintains that there is considerable uncertainty regarding whether McDaniel made the statements attributed to her. The employer argues that even if McDaniel did make the statements, an employee in Tessi's position would not reasonably perceive her actions as a threat of reprisal or force, because custodian engineers understand that a school principal is not their supervisor and lacks the authority to transfer custodian engineers out of a school, based on Article XIII, Section A of the parties' CBA, which states that the employer does not have the ability to transfer custodian engineers without the employee's agreement. Furthermore, the employer asserts that McDaniel's alleged statements could not reasonably be perceived as being related to, or meant to discourage, protected union activity.

Given the nature of their communications prior to their conversation on December 8, 2016, I am convinced McDaniel and Tessi made the statements that have been attributed to them by the other. McDaniel's frustration with Tessi is evident from the record, as is Tessi's reluctance to perform work that he considered to be outside the scope of his job duties. The question at hand is whether Tessi could reasonably perceive McDaniel's statements as a threat of reprisal or force, or a promise of benefit, associated with his union activity.

The record demonstrates that Tessi, who had worked for the employer for more than a decade, accurately perceived the limit of McDaniel's authority. Tessi told McDaniel that she was not his supervisor, and reiterated that a task he was being asked to perform was not included in his job description. Based on those statements, Tessi understood that McDaniel was unable to carry out the threats she made regarding his future employment at Madrona, and thus would not reasonably perceive McDaniel's statements as a threat of reprisal.

The union relies on *Seattle School District*, Decision 12237 (PECB, 2015) to support its premise that Tessi reasonably perceived McDaniel's statements on December 8, 2016, as a threat of reprisal or force for engaging in union activity. In that case, a custodian engineer filed a grievance and sought union assistance regarding issues he had with a principal. The Examiner found that the principal's actions could be reasonably perceived as a threat of reprisal or force when the principal made comments regarding the custodian engineer's decision to seek union assistance, stated that he would not be able to give the custodian engineer a positive job reference, and complained about the custodian engineer's work performance to the employee's supervisor.

The instant case is distinguishable from *Seattle School District*, Decision 12237, in that Tessi did not involve the union directly in his dispute with McDaniel until he forwarded Chan's December 7, 2016, e-mail to the union later that day. There is no evidence in the record that McDaniel knew of Tessi's contact with the union when they confronted each other in the hallway a day later.

McDaniel's actions and words on December 8, 2016, while not particularly well-chosen, were a product of the frustration she felt due to Tessi's refusal to move the science kits, even after Tessi's immediate supervisor had directed him to do so a day earlier. This leads to the conclusion that McDaniel's actions were more closely associated with Tessi's inactivity regarding her requests than his union activity.

Conclusion

The union was unable to establish that an employee in Tessi's position could reasonably perceive McDaniel's statements on December 8, 2016, as a threat of reprisal or force associated with union activity. McDaniel's statements could not reasonably be perceived as a threat of reprisal because Tessi understood that McDaniel was not his supervisor, and was unable to carry out the threats she made regarding his future employment at Madrona because of provisions contained in the parties' CBA. In addition, McDaniel's statements to Tessi were connected to her frustration over Tessi's refusal to honor her requests to move the science kits and not connected to Tessi's union activity. The union's allegation is dismissed.

ISSUE 2: Did the employer discriminate

a) since December 12, 2016, by making complaints about Tessi's work performance, in reprisal for union activities protected by Chapter 41.56 RCW; and

b) since December 19, 2016, by delaying the processing of Tessi's discrimination complaint against Madrona Principal Mary McDaniel?

Background

The science kits discussed in Issue 1 were still on pallets outside of the main office on December 12, 2016, when McDaniel e-mailed Tessi, with a copy to Chan, directing him to move the science kits and cases of copy paper.[4] Addressing Chan, McDaniel wrote:

> I continue to hear from staff "no" it's not my job when Mustefa is asked to do something related to moving items. I have asked for a meeting with him, you and his union representative. I do not feel heard or respected by him since his arrival and am frustrated with his lack of work effort. I am ready to formally file a complaint so please let me know your process for making this happen.[5]

On December 13, 2016, Chan e-mailed McDaniel to inform her that Skowyra "has asked for a meeting with the union after I showed him your email. And I am writing up Mustefa up [sic] for not following my instruction/suggestions that I emailed on 12/7/16 to provide educational support." Chan testified that Tessi received no discipline in connection with the issues discussed in Chan's December 7, 2016, e-mail, primarily because of a discussion Chan had with union Recording Secretary Michael McBee in which McBee informed Chan that the union and the employer disagreed over custodians' responsibility for delivery of classroom and office supplies.

McDaniel and Chan exchanged e-mails regarding Tessi's work performance again on December 22, 2016. McDaniel asked Chan who would pay for a lock that Tessi had installed on the custodian office's door without McDaniel's approval. In the last paragraph of the e-mail, McDaniel restated

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4 McDaniel's e-mail included a bulleted list of six items that she reportedly had discussed with Tessi since September, five of which had no relation to the delivery of science kits or copy paper.

5 McDaniel did not file any complaints against Tessi during the time period relevant to this case.

her frustration that Tessi had not moved the science kits and copy paper, and again asked to meet with Tessi's union representative.

Chan responded later in the day that Skowyra, the union, and the superintendent were scheduled to meet on December 19, 2016, but the meeting was canceled. Chan attached a job description for elementary school administrative secretaries that included tasks that were highlighted by the union in preparation for the meeting. McDaniel responded that night.

> I clearly know and understand the responsibilities of my secretary and do not need her job description sent to me. What I need is a custodian who can maintain this building and perform assigned tasks. I would like to be invited to the meeting with the superintendent and the union representative. Who shall I contact?
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> Again, I [sic] requesting a change for Mustefa as soon as possible. This is not a good fit for this school; he is very difficult to work with and continues to tell me and staff "what is not his job!" His behavior is unprofessional! ... I don't want anyone here who reminds us What is Not His Job! This kind of behavior is not ok and will not be tolerated.

That same day, McDaniel and Westberg engaged in an e-mail exchange in which McDaniel sought to meet with Westberg at the school, and Westberg replied that "[t]here would be no valid business reason for me to meet with you as long as you adhere to District job responsibilities by proper assignment."

On December 29, 2016, McDaniel e-mailed Westberg again regarding a meeting to discuss Tessi. Westberg replied that he was unwilling to meet with McDaniel because she was not Tessi's supervisor, and that "[t]here will soon be an investigation of your behaviors."

Approximately one half-hour after Westberg sent his e-mail, McDaniel sent an e-mail to Tessi, with copies to the union and Chan. McDaniel's e-mail contained a photo attachment showing the science kits, copy paper, and art supplies on pallets outside the wall of the main office, and asked him to remove the items from the hallway. McDaniel's e-mail also read, "I am in the process of getting clarification of your responsibilities. For the safety of students, I have directed office staff to have all deliveries be [sic] placed in the custodian's office or outside of your office area." Tessi

moved the items sometime before January 3, 2017. McDaniel thanked Tessi for doing so in an e-mail that was copied to the union and others, but not Chan.

On January 18, 2017, McDaniel received notification from Executive Director of Labor and Employee Relations Stan Damas that the human resources department had received a complaint filed by Tessi against McDaniel. Tessi's formal complaint filed on December 19, 2016, alleged that McDaniel violated the employer's prohibition of harassment, intimidation, and bullying (HIB) policy, and its nondiscrimination and affirmative action policy.

In early February 2017, Tessi's work performance was at issue on a couple of occasions. On February 7, 2017, Cross sent an e-mail to Tessi with a copy to Chan regarding Tessi's actions during the day to clear snow around the school. The assistant principal's e-mail, which included photographs taken approximately around the middle of the school day, stated that "[a]s the day progressed, I noticed that there was no action taken to support our campus. At the beginning of the day, I noticed that families, staff, students were walking into our building and the front walkway was covered in snow. I also noticed that the stairs leading from upstairs in the middle school wing were also covered in snow."

On February 8, 2017, Tessi e-mailed Chan with a copy to the union, writing that Cross's account of his actions was incorrect. Westberg forwarded Cross's e-mail and Tessi's response to Damas, writing that "[t]his retaliation is so blatantly obvious," and that Westberg believed he and Damas needed to visit McDaniel. Westberg's retaliation claim and request for a meeting triggered the scheduling of a meeting with a union representative, McDaniel, Pritchett, and Damas or his designee in accordance with a memorandum of understanding (MOU) in the parties' CBA.[6]

Later that day, Chan forwarded Cross's e-mail and the attached photographs to Skowyra and asked to have the employer's information technology department examine computer usage for Tessi and another employee from January 4, 2017, through February 8, 2017. Chan testified that his request

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[6] On February 10, 2017, the union withdrew its request for the meeting.

for a computer usage report for Tessi came after McDaniel expressed to him that Tessi "stays on the computer a lot."[7]

McDaniel also e-mailed Tessi at the end of the day, with a copy to Chan, regarding popcorn that had been left on the library floor on February 7, 2017, and was cleaned by a parent. Tessi replied that he cleans the library on Wednesdays as part of an alternating cleaning schedule, one day after the event in question.

On February 9, 2017, McCarty e-mailed McDaniel and Pritchett, with a copy to Damas.

> Local 609's attorney is calling the District's attorney and complaining that there are emails coming from Mary's office that are critical of the work performance of Mr. Tessi. I hope this information is incorrect. If it is correct, please provide me with copies of any and all communications with Mr. Tessi.
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> Local 609 has alleged that the Madrona's [sic] Principal's office has retaliated against Mr. Tessi's office by the email on February 7th from the Assistant Principal inquiring why the steps and sidewalks had not been cleaned on the previous snow day. We can handle that allegation. If there are additional emails now being critical of Mr. Tessi's work immediately following this allegation of retaliation, our ability to handle this matter will be more complicated.
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> If there are critical remarks being directed to Mr. Tessi from the Principal's office, it will make this matter easier to handle if those remarks, veral [sic] or written, cease. Any issues with Mr. Tessi's work performance should be directed through Bruce Skowyra, Director of Facility Operations.

On March 1, 2017, Deputy Superintendent Stephen Nielsen sent letters to McDaniel and Tessi regarding the result of the investigation into Tessi's HIB and discrimination complaint. Nielsen found that McDaniel did not discriminate against Tessi, but that she "engaged in communications and actions that were intimidating and bullying." Nielsen also informed McDaniel and Tessi that he had directed labor relations staff to work with them to provide clarity regarding Tessi's job duties and future communications between McDaniel, Tessi, and Chan.

On March 2, 2017, McCarty e-mailed a copy of Nielsen's letter to McDaniel, and indicated that he and McDaniel would need to meet to address the concerns expressed in the letter. McDaniel

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[7] Chan testified that the employer did not run a computer usage report for Tessi.

responded that "[t]his is false reporting on many levels so I am forced to filed [sic] an HIB complaint against Mr. Tessi."[8]

On March 14, 2017, McCarty e-mailed McDaniel and Cross with a phone number to call in case issues arose with custodial staff. Following that e-mail, McDaniel reported issues to McCarty and did not include Tessi. In March and April, for example, McDaniel contacted McCarty with questions regarding Tessi's re-installation of a fire door in a bathroom, his restriction of access to building spaces for a program that provided activities before and after school, and an absence in which Tessi informed the district office as required but did not inform McDaniel.

Tessi's complaint

On December 19, 2016, Tessi filed a formal complaint with the employer's human resources department, alleging that McDaniel violated the employer's prohibition of harassment, intimidation, and bullying (HIB) policy, and its nondiscrimination and affirmative action policy.

As part of the parties' 2013-2017 CBA, they agreed to a memorandum of understanding (MOU) detailing protocols for processing and resolving harassment and discrimination complaints. The MOU states, in part, that the employer "will respond to complaints promptly and assign an investigator as soon as possible, ordinarily no later than one week from the filing of the complaint."

The employer's discrimination complaint process, approved in May 2016, states that, unless otherwise agreed by the complainant, the superintendent will respond in writing to a formal complaint no later than 30 days after receipt of the complaint. The employer's procedures attached to HIB complaints, approved in 2011 and revised in 2014, state that the employer's human resources department "shall attempt" to complete its investigation within 60 days of receiving the complaint.

On January 18, 2017, Westberg e-mailed General Counsel Noel Treat, Assistant Superintendent of Human Resources Clover Codd, and Chief of Schools Mike Starosky to appeal Tessi's HIB complaint to the school board because more than 30 days had passed "with no action undertaken

[8] McDaniel did not file an HIB complaint against Tessi during the time period relevant to this case.

whatsoever in HR." Westberg e-mailed the same recipients that same day with names of union-represented employees who had not yet received written responses to their complaints, including Tessi.

Damas responded to the union via a conversation with Westberg on January 18, 2017, and a follow-up e-mail to him later that day. Damas requested a three-week extension to conclude the investigation and report the results of Tessi's complaint. Westberg agreed to the extension during his conversation with Damas, provided McDaniel was informed of the complaint, and Westberg confirmed his agreement in an e-mail on January 21, 2017.

McCarty and investigator Brett Rogers were assigned to the Tessi complaint on or about January 18, 2017. On February 7, 2017, Damas e-mailed Westberg to inform him that the investigation was complete, but that he needed an extension to February 10, 2017, to issue the determination letter. Westberg replied that Tessi would respond to the request, and in an e-mail on February 10, 2017, Tessi granted the district's subsequent request for an extension until February 17, 2017.

On February 17, 2017, Damas e-mailed Westberg and McBee with an update on the investigations and conclusions regarding Tessi's complaint. Damas wrote that the draft of the investigative report was ready for Nielsen to review before making his decision, and asked for an extension to February 24, 2017, to allow time for that to occur. The union did not object to the request, and Nielsen sent letters to McDaniel and Tessi on March 1, 2017, regarding the result of the investigation.

Applicable Legal Standard

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of statutorily protected rights. RCW 41.56.140(1); *King County*, Decision 12582-B. The complainant maintains the burden of proof in a discrimination case. To prove discrimination, the complainant must first establish a prima facie case by showing that:

1. The employee participated in protected activity 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 protected activity and the employer's action.

City of Vancouver v. Public Employment Relations Commission, 180 Wn. App. 333, 348-349 (2014); *Educational Service District 114*, Decision 4361-A (PECB, 1994).

If the complaining party establishes a prima facie case, the burden of production shifts to the respondent. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349; *Port of Tacoma*, Decision 4626-A (PECB, 1995). The respondent may articulate a legitimate, nondiscriminatory reason for the adverse employment decision. *City of Vancouver v. Public Employment Relations Commission*, 180 Wn. App. at 349. If the respondent meets its burden of production, the complainant bears the burden of persuasion to show that the employer's stated reason was either a pretext or substantially motivated by union animus. *Id.*

Application of Standard

To establish a prima facie case, the union must first show that Tessi participated in activity protected by the collective bargaining statute. If it is able to do so, the union must then show that Tessi was deprived of a right, benefit, or status, and that Tessi's exercise of a protected activity caused the employer's action.

The union asserts with substantial support from the record and without dispute from the employer that Tessi participated in union activity throughout the 2016-2017 school year by invoking work jurisdiction when asked to perform tasks that he believed were outside of his job duties, and by seeking union assistance in disagreements involving school administrators and in the filing of his complaint against McDaniel. Because the union established that Tessi participated in protected activity, the analysis of the union's prima facie case turns to the question of whether Tessi was deprived of a right, benefit, or status.

As it pertains to the employer's complaints about Tessi's work performance since December 12, 2016, the union argues that Madrona administrators' unjustified complaints to Tessi and his supervisors deprived Tessi of the good reputation he had built during his tenure with the district

and his right to a non-hostile work environment. The employer counters that Tessi was not subject to any of the progressive discipline actions described in Article XVII of the parties' CBA, did not receive a negative work evaluation, was not transferred to another school in the district, and saw no differences in his wages, hours, and working conditions as a result of the administrators' complaints.

The union relies on *Seattle School District*, Decision 8976 (PECB, 2005) for its argument that unfounded complaints about Tessi were sufficient to establish a deprivation of a right, status, or benefit because of their potential to influence Tessi's job evaluations. In that case, a school principal complained about a custodian's job performance and sought to have the custodian transferred to another school, followed by an investigation of the custodian regarding theft of district computer equipment. The custodian was escorted from the school after requesting union representation during an investigatory interview.

The Examiner in the 2005 case found that the union established that the custodian was deprived of a right, status, or benefit when the custodian was 1) removed from the workplace; and 2) the subject of the principal's work performance complaints to the custodian's supervisors and to the employer's human resources department regarding the alleged theft, which was eventually disproven. Regarding the second point, the Examiner used *Oroville School District*, Decision 6209-A (PECB, 1998) as support for the premise that a negative job evaluation is sufficient to establish deprivation of a right.

The record in the instant case indicates that the Madrona administrators' complaints had little or no effect on Tessi's rights, status, or benefits. Tessi did not receive a letter of counseling, written warning, reprimand, or suspension during the 2016-2017 school year as a result of the administrator's complaints, nor was he transferred to another school or terminated. In addition, Chan's February 2017 evaluation of Tessi's performance reflected improvement over the previous year in three categories. The only area in which Tessi was rated lower than the year before pertained to whether he was working at his capacity, which Chan credibly testified was a result of Tessi not receiving exceptional marks in all areas of the evaluation.

As it pertains to the delayed processing of Tessi's December 19, 2016, complaint, the union contends that the employer intentionally deprived Tessi of the internal remedies for McDaniel's behavior and allowed McDaniel's harassment of Tessi to continue while the complaint was processed. The employer maintains that the one-month delay in beginning the investigation of Tessi's complaint did not deprive Tessi of any right, benefit, or status.

Once again, the employer's argument that Tessi was not deprived of any right, benefit, or status, is well-founded. Despite the delay at the initial stage of the complaint process, the employer preserved Tessi's rights, benefits, and status by performing a full investigation that culminated in Nielsen's report on March 1, 2017. Between the beginning of the investigation on January 18, 2017, and March 1, 2017, the union and Tessi granted the employer three extensions to complete its work, which bolsters the conclusion that Tessi was not deprived of any right, benefit, or status.

Conclusion

The union was unable to establish that the employer deprived Tessi of an ascertainable right, benefit, or status in connection with his participation in an activity protected by the collective bargaining statute. The union was therefore unable to establish a prima facie case for discrimination in connection with the employer's complaints about Tessi's work performance since December 12, 2016, or the employer's processing of Tessi's complaint against McDaniel. The union's allegations are dismissed.

ISSUE 3: Did the employer refuse to bargain by refusing to provide relevant information requested by the union on April 25, 2017?

Background

On April 25, 2017, Westberg sent an e-mail to the employer's information request address with a copy to Codd, requesting "any and all communications to or from McDaniel, Cross or any other employee at Madrona K-8 (including email and text) regarding the custodial staff, nutrition staff or office staff. This should include, but not be limited to, correspondence to or from McDaniel, Pritchett, Tessi, Skowyra, Chan, and Labor Relations staff from **March 1, 2017 to today's date.**" (emphasis by underline and bold in original).

The employer acknowledged receipt of the information request on April 25, 2017, and committed to providing the union a status update on the request by May 2, 2017. The employer provided e-mails responding to the union's April 25, 2017, information request on May 5, 2017.

It is undisputed that the employer did not provide the union one e-mail chain with its response to the union's information request. The e-mail chain began on April 17, 2017, as an e-mail from Aaron Franco-Ross to McDaniel about Tessi restricting access to Madrona building spaces for the Launch program, which provides activities for students before and after school.

McDaniel forwarded Franco-Ross's e-mail to McCarty on April 17, 2017, and McCarty responded on April 24, 2017, that Skowyra had been consulted and the matter had been addressed with Tessi. Later in the day on April 24, 2017, the e-mail chain ended with an exchange between McDaniel and McCarty regarding Tessi's absence from work that day. Skowyra was copied on both e-mails McCarty sent on April 24, 2017.

On May 24, 2017, Westberg met with Skowyra about issues at Madrona that pertained to Tessi and McDaniel. During that meeting, Skowyra mentioned the e-mails he received on April 24, 2017, and Westberg responded that he had not seen those e-mails. Skowyra printed the April 24, 2017, e-mails and gave them to Westberg, who subsequently requested and received the complete e-mail chain from the employer.

Applicable Legal Standard

The duty to bargain requires a public employer and the exclusive bargaining representative to bargain in good faith over grievance procedures, wages, hours, and working conditions. RCW 41.56.030(4); *Island County*, Decision 11946-A (PECB, 2014).

The duty to bargain includes an obligation to provide relevant information needed by the opposite party for the proper performance of its duties in the collective bargaining process. *City of Bellevue v. International Association of Fire Fighters, Local 1604*, 119 Wn.2d 373 (1992). The flow of information between the parties must continue during the parties' preparation for interest

arbitration. *City of Clarkston (International Association of Fire Fighters, Local 2299)*, Decision 3246 (PECB, 1989).

In evaluating information requests, the Commission considers whether the requested information appears reasonably necessary for the performance of the union's function as bargaining representative. *City of Bellevue*, Decision 4324-A (PECB, 1994). Failure to provide relevant information upon request constitutes a refusal to bargain unfair labor practice. *University of Washington*, Decision 11414-A (PSRA, 2013).

Communication is essential to fulfilling the obligation to provide information. Upon receiving a relevant information request, the receiving party must provide the requested information or engage in negotiations about the information request. *City of Yakima*, Decision 10270-B (PECB, 2011); *Seattle School District*, Decision 9628-A (PECB, 2008); and *Port of Seattle*, Decision 7000-A (PECB, 2000). During those negotiations, the receiving party must timely explain why it does not think the information request is relevant or clear. *Pasco School District*, Decision 5384-A (PECB, 1996).

The obligation to communicate about the information request continues once the responding party begins gathering responsive information. The responding party must communicate with the requesting party to ensure that the information being gathered is the type of information that has been requested. *Kitsap County*, Decision 9326-B (PECB, 2010), *citing City of Seattle*, Decision 10249 (PECB, 2008), *remedy aff'd*, Decision 10249-A (PECB, 2009).

The requirement to communicate continues even after the responding party provides information to the requesting party. After receiving a response, if the requesting party does not believe the information provided sufficiently responds to the original request, the requesting party has a duty to contact the responding party and engage in meaningful discussions about what type of information the requestor is seeking. *Kitsap County*, Decision 9326-B. Delay in providing requested information can constitute an unfair labor practice. *Fort Vancouver Regional Library*, Decision 2350-C (PECB, 1988). One factor to be considered when determining whether a delay constitutes an unfair labor practice is the preparation required for the response. *City of Seattle*,

Decision 10249, *remedy aff'd*, Decision 10249-A. If the response will be delayed due to the time required to prepare the response, such a delay must be communicated.

Application of Standard

The union argues that the employer refused to produce one relevant e-mail chain in response to its April 25, 2017, information request, adding that the employer did not make a reasonably competent search for it that included Tessi's first or last name. The employer contends that it made a good faith search that produced timely and responsive records to the union's request, and that the e-mail chain in question was provided to the union upon request and within the contractual timeline for the union's use of that information in the grievance process.

The union requested information from the employer on April 25, 2017. The record indicates that the employer performed searches connected with the union's information request on April 25, 26, and 27, and May 2 and 3, 2017. The searches included e-mail addresses for the identified employees in addition to the "custodial staff," "nutrition staff," and "office staff" search terms the union requested. The searches did not include the names of the identified individuals independent of their e-mail addresses.

The employer provided the documents that it collected via its searches to the union on May 5, 2017. The union did not communicate with the employer regarding the information request between May 5, 2017, and May 24, 2017, when Westberg discovered from Skowyra that there was an e-mail chain that the union had not received that would have been responsive to its information request. Skowyra provided Westberg the part of the e-mail chain Skowyra had access to, and Westberg requested the entire e-mail chain from the employer after his meeting with Skowyra ended. The employer responded by providing the requested information to the union.

Conclusion

The employer did not refuse to bargain by refusing to provide relevant information requested by the union on April 25, 2017. The employer performed good faith searches on five dates that provided documents responsive to the request on May 5, 2017, but did not include an e-mail chain that the union discovered during a meeting with the employer on May 24, 2017. The employer

provided the entire e-mail chain upon the union's request, thereby fulfilling its duty to bargain. The union's allegation is dismissed.

FINDINGS OF FACT

1. The Seattle School District (employer) is an employer within the meaning of RCW 41.56.030(12).

2. International Union of Operating Engineers, Local No. 609 (union) is a bargaining representative within the meaning of RCW 41.56.030(2).

3. The union is the exclusive bargaining representative for a bargaining unit that includes the employer's custodial employees and gardeners.

4. At the time of the events in question, the union and the employer were parties to a collective bargaining agreement (CBA) that expired on August 31, 2017.

5. Mary McDaniel has been the principal at Madrona K-8 School (Madrona) since the 2013-2014 school year. McDaniel reports to Executive Director of Schools Sarah Pritchett. Bruno Cross was the school's assistant principal during the 2016-2017 school year.

6. At the end of the 2015-2016 school year, Madrona had an opening for a custodian engineer. Mustefa Tessi, who has been a custodian in the Seattle School District since 2005, bid for the position and was selected for it beginning in the 2016-2017 school year.

7. As a custodian engineer, Tessi oversees the building and other members of Madrona's custodial crew and is supervised by Area Supervisor Patrick Chan, whose supervisor is Director of Facilities Bruce Skowyra. School administrators are considered the custodian engineer's customers, but they are not in custodian engineers' chain of command.

8. The custodian engineer's duties and responsibilities are detailed in a position description that has remained essentially unchanged since 1980. In addition, custodian engineers at each of the employer's schools have detailed work assignments that indicate tasks that must be performed daily, periodically, or on an as-needed basis.

9. The custodian engineer's daily work assignments include "provide educational support," a term that has been at the heart of disputes between the employer and the union in the past.

10. Tasks at a school that are not part of the custodian technician position description or work assignments are most often completed by district employees in other job classifications. Some tasks require custodian engineers to fill out a work order that is submitted to the district office, and school principals have to approve the work order if the cost of labor and materials is charged to the school's budget.

11. In some cases during the 2016-2017 school year, Tessi would tell McDaniel or her office staff that a work order would be necessary to complete a task, or that a task was not within his job duties.

12. On December 7, 2016, McDaniel e-mailed Tessi, with a copy to Chan, directing him to "[d]eliver science kits to teacher classrooms today. This is not the teachers [sic] responsibility; it is yours. They have been sitting in the hallway since last week. Please let me know when they have been delivered."

13. Chan e-mailed Tessi on December 7, 2016, writing "[p]lease deliver the science kits to classrooms as part of our job to support the educational program. You can deliver all in one [day] (today) or deliver in two days (today & tomorrow)." Chan also provided direction for Tessi in regard to future science kit deliveries.

14. Tessi forwarded Chan's e-mail to the union on December 7, 2016, and union Business Manager Dave Westberg e-mailed Chan later that day, writing "[p]lease inform this principal that the delivery of supplies to classrooms is a function of office staff. Not

teachers OR custodians. There is always the overtime option you could explain. You might add that SHE doesn't order our people around like servants."

15. On December 8, 2016, McDaniel and Tessi had a discussion in the school hallway regarding delivery of the science kits to classrooms. McDaniel testified that Tessi told her "I'm not doing it. Not my job. You do it," and that "[y]ou can't tell me what to do. You're not my boss." Tessi testified that McDaniel angrily told him that "[t]his is my school. This is my building. So if you not listening to me, you have to get out of here. You have to find another job."

16. Tessi understood that McDaniel was not his supervisor, and was unable to carry out the threats she made regarding his future employment at Madrona.

17. The science kits were still on pallets outside of the main office on December 12, 2016, when McDaniel e-mailed Tessi, with a copy to Chan, directing him to move the science kits and cases of copy paper. McDaniel expressed frustration with Tessi in the e-mail and asked for a meeting with Chan, Tessi, and Tessi's union representative.

18. On December 13, 2016, Chan e-mailed McDaniel to inform her that Skowyra "has asked for a meeting with the union after I showed him your email. And I am writing up Mustefa up [sic] for not following my instruction/suggestions that I emailed on 12/7/16 to provide educational support."

19. Tessi received no discipline in connection with the issues discussed in Chan's December 7, 2016, e-mail.

20. On December 22, 2016, McDaniel asked Chan who would pay for a lock that Tessi had installed on the custodian office's door without McDaniel's approval. In the last paragraph of the e-mail, McDaniel restated her frustration that Tessi had not moved the science kits and copy paper, and again asked to meet with Tessi's union representative.

21. Chan responded to McDaniel later on December 22, 2016, that Skowyra, the union, and the superintendent were scheduled to meet on December 19, 2016, but the meeting was canceled. Chan attached a job description for elementary school administrative secretaries that included tasks that were highlighted by the union in preparation for the meeting.

22. McDaniel responded on December 22, 2016, writing that "[w]hat I need is a custodian who can maintain this building and perform assigned tasks." McDaniel asked to be invited to the meeting with the superintendent and requested a change of assignment for Tessi, writing that "I don't want anyone here who reminds us What is Not His Job! This kind of behavior is not ok and will not be tolerated."

23. Chan did not transfer Tessi from his position at Madrona. Article XIII, Section A of the parties' CBA states that the employer does not have the ability to transfer custodian engineers without the employee's agreement.

24. On December 22, 2016, McDaniel and Westberg engaged in an e-mail exchange in which McDaniel sought to meet with Westberg at the school, and Westberg replied that "[t]here would be no valid business reason for me to meet with you as long as you adhere to District job responsibilities by proper assignment."

25. On December 29, 2016, McDaniel e-mailed Westberg again regarding a meeting to discuss Tessi. Westberg replied that he was unwilling to meet with McDaniel because she was not Tessi's supervisor, and that "[t]here will soon be an investigation of your behaviors."

26. On December 29, 2016, McDaniel sent an e-mail to Tessi, with copies to the union and Chan, that contained a photo attachment showing the science kits, copy paper, and art supplies on pallets outside the wall of the main office, and asked him to remove the items from the hallway. McDaniel's e-mail also read, "I am in the process of getting clarification of your responsibilities. For the safety of students, I have directed office staff to have all deliveries be [sic] placed in the custodian's office or outside of your office area."

27. Tessi moved the items sometime before January 3, 2017. McDaniel thanked Tessi for doing so in an e-mail that was copied to the union and others, but not Chan.

28. On January 18, 2017, McDaniel received notification from Executive Director of Labor and Employee Relations Stan Damas that the human resources department had received a complaint filed by Tessi against McDaniel. Tessi's formal complaint filed on December 19, 2016, alleged that McDaniel violated the employer's prohibition of harassment, intimidation, and bullying (HIB) policy, and its nondiscrimination and affirmative action policy.

29. On February 7, 2017, Cross sent an e-mail to Tessi with a copy to Chan regarding Tessi's actions during the day to clear snow around the school. The assistant principal's e-mail, which included photographs taken approximately around the middle of the school day, stated, in part, that "[a]s the day progressed, I noticed that there was no action taken to support our campus."

30. On February 8, 2017, Tessi e-mailed Chan with a copy to the union, writing that Cross's account of his actions was incorrect. Westberg forwarded Cross's e-mail and Tessi's response to Damas, writing that "[t]his retaliation is so blatantly obvious," and that Westberg believed he and Damas needed to visit McDaniel.

31. Westberg's retaliation claim and request for a meeting triggered the scheduling of a meeting with a union representative, McDaniel, Pritchett, and Damas or his designee in accordance with a memorandum of understanding (MOU) in the parties' CBA. On February 10, 2017, the union withdrew its request for the meeting.

32. Later on February 8, 2017, Chan forwarded Cross's e-mail and the attached photographs to Skowyra and asked to have the employer's information technology department examine computer usage for Tessi and another employee from January 4, 2017, through February 8, 2017.

33. The employer did not run a computer usage report for Tessi.

34. McDaniel also e-mailed Tessi at the end of the day on February 8, 2017, with a copy to Chan, regarding popcorn that had been left on the library floor on February 7, 2017, and was cleaned by a parent. Tessi replied that he cleans the library on Wednesdays as part of an alternating cleaning schedule, one day after the event in question.

35. On February 9, 2017, McCarty e-mailed McDaniel and Pritchett, with a copy to Damas.

> Local 609's attorney is calling the District's attorney and complaining that there are emails coming from Mary's office that are critical of the work performance of Mr. Tessi. I hope this information is incorrect. If it is correct, please provide me with copies of any and all communications with Mr. Tessi.
>
> Local 609 has alleged that the Madrona's [sic] Principal's office has retaliated against Mr. Tessi's office by the email on February 7th from the Assistant Principal inquiring why the steps and sidewalks had not been cleaned on the previous snow day. We can handle that allegation. If there are additional emails now being critical of Mr. Tessi's work immediately following this allegation of retaliation, our ability to handle this matter will be more complicated.
>
> If there are critical remarks being directed to Mr. Tessi from the Principal's office, it will make this matter easier to handle if those remarks, veral [sic] or written, cease. Any issues with Mr. Tessi's work performance should be directed through Bruce Skowyra, Director of Facility Operations.

36. On March 1, 2017, Deputy Superintendent Stephen Nielsen sent letters to McDaniel and Tessi regarding the result of the investigation into Tessi's HIB and discrimination complaint. Nielsen found that McDaniel did not discriminate against Tessi, but that she "engaged in communications and actions that were intimidating and bullying." Nielsen also informed McDaniel and Tessi that he had directed labor relations staff to work with them to provide clarity regarding Tessi's job duties and future communications between McDaniel, Tessi, and Chan.

37. On March 2, 2017, McCarty e-mailed a copy of Nielsen's letter to McDaniel, and indicated that he and McDaniel would need to meet to address the concerns expressed in the letter. McDaniel responded that "[t]his is false reporting on many levels so I am forced to filed [sic] an HIB complaint against Mr. Tessi."

38. McDaniel did not file an HIB complaint against Tessi.

39. On March 14, 2017, McCarty e-mailed McDaniel and Cross with a phone number to call in case issues arose with custodial staff. Following that e-mail, McDaniel reported issues to McCarty and did not include Tessi.

40. As part of the parties' 2013-2017 CBA, they agreed to a memorandum of understanding (MOU) detailing protocols for processing and resolving harassment and discrimination complaints. The MOU states, in part, that the employer "will respond to complaints promptly and assign an investigator as soon as possible, ordinarily no later than one week from the filing of the complaint."

41. The employer's discrimination complaint process, approved in May 2016, states that, unless otherwise agreed by the complainant, the superintendent will respond in writing to a formal complaint no later than 30 days after receipt of the complaint. The employer's procedures attached to HIB complaints, approved in 2011 and revised in 2014, state that the employer's human resources department "shall attempt" to complete its investigation within 60 days of receiving the complaint.

42. On January 18, 2017, Westberg e-mailed General Counsel Noel Treat, Assistant Superintendent of Human Resources Clover Codd, and Chief of Schools Mike Starosky to appeal Tessi's HIB complaint to the school board because more than 30 days had passed "with no action undertaken whatsoever in HR." Westberg e-mailed the same recipients that same day with names of union-represented employees who had not yet received written responses to their complaints, including Tessi.

43. Damas responded to the union via a conversation with Westberg on January 18, 2017, and a follow-up e-mail to him later that day. Damas requested a three-week extension to conclude the investigation and report the results of Tessi's complaint.

44. Westberg agreed to the extension during his conversation with Damas, provided McDaniel was informed of the complaint, and Westberg confirmed his agreement in an e-mail on January 21, 2017.

45. McCarty and investigator Brett Rogers were assigned to the Tessi complaint on or about January 18, 2017. On February 7, 2017, Damas e-mailed Westberg to inform him that the investigation was complete, but that he needed an extension to February 10, 2017, to issue the determination letter.

46. Westberg replied that Tessi would respond to the request, and in an e-mail on February 10, 2017, Tessi granted the district's subsequent request for an extension until February 17, 2017.

47. On February 17, 2017, Damas e-mailed Westberg and McBee with an update on the investigations and conclusions regarding Tessi's complaint. Damas wrote that the draft of the investigative report was ready for Nielsen to review before making his decision, and asked for an extension to February 24, 2017, to allow time for that to occur.

48. The union did not object to the request, and Nielsen sent letters to McDaniel and Tessi on March 1, 2017, regarding the result of the investigation.

49. On April 25, 2017, Westberg sent an e-mail to the employer's information request address with a copy to Codd, requesting "any and all communications to or from McDaniel, Cross or any other employee at Madrona K-8 (including email and text) regarding the custodial staff, nutrition staff or office staff. This should include, but not be limited to, correspondence to or from McDaniel, Pritchett, Tessi, Skowyra, Chan, and Labor Relations staff from **March 1, 2017 to today's date.**" (emphasis by underline and bold in original)

50. The employer acknowledged receipt of the information request on April 25, 2017, and committed to providing the union a status update on the request by May 2, 2017. The employer provided e-mails responding to the union's April 25, 2017, information request on May 5, 2017.

51. The employer did not provide the union one e-mail chain with its response to the union's information request. The e-mail chain began on April 17, 2017, as an e-mail from Aaron Franco-Ross to McDaniel about Tessi restricting access to Madrona building spaces for the Launch program, which provides activities for students before and after school.

52. McDaniel forwarded Franco-Ross's e-mail to McCarty on April 17, 2017, and McCarty responded on April 24, 2017, that Skowyra had been consulted and the matter had been addressed with Tessi. Later in the day on April 24, 2017, the e-mail chain ended with an exchange between McDaniel and McCarty regarding Tessi's absence from work that day. Skowyra was copied on both e-mails McCarty sent on April 24, 2017.

53. On May 24, 2017, Westberg met with Skowyra about issues at Madrona that pertained to Tessi and McDaniel. During that meeting, Skowyra mentioned the e-mails he received on April 24, 2017, and Westberg responded that he had not seen those e-mails. Skowyra printed the April 24, 2017, e-mails and gave them to Westberg, who subsequently requested and received the complete e-mail chain from the employer.

CONCLUSIONS OF LAW

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

2. Based on Findings of Fact 15 and 16, the employer did not interfere with employee rights in violation of RCW 41.56.140(1) by making statements to employee Mustefa Tessi on December 8, 2016, that could reasonably be perceived as a threat of reprisal, or force, or promise of benefit, associated with the employee's union activity.

3. Based on Findings of Fact 17 through 26, 29, and 31 through 39, the employer did not discriminate in violation of RCW 41.56.140(1) since December 12, 2016, by making complaints about Tessi's work performance, in reprisal for union activities protected by Chapter 41.56 RCW.

4. Based on Findings of Fact 28, 36, and 42 through 48, the employer did not discriminate in violation of RCW 41.56.140(1) since December 19, 2016, by delaying the processing of Tessi's discrimination complaint against Madrona Principal Mary McDaniel.

5. Based on Findings of Fact 49 through 53, the employer did not refuse to bargain in violation of RCW 41.56.140(4) and (1) by refusing to provide relevant information requested by the union on April 25, 2017.

ORDER

The complaints charging unfair labor practices filed in the above-captioned matter are dismissed.

ISSUED at Olympia, Washington, this 9th day of March, 2018.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

STEPHEN W. IRVIN, Examiner

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

COLLECTIVE BARGAINING
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RECORD OF SERVICE - ISSUED 03/09/2018

DECISION 12842 - PECB has been mailed by the Public Employment Relations Commission to the parties and their representatives listed below:

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