STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES, Complainant, vs. TOUTLE LAKE SCHOOL DISTRICT, Respondent.	CASE NO. 5826-U-85-1078 DECISION NO. 2474 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Edward A. Hemphill, Legal Counsel, appeared on behalf of the complainant.

Calbom, Pond, Falkenstein, Warme and Engstrom, by Steven H. Pond, Attorney at Law, appeared on behalf of the respondent.

On May 22, 1985, Public School Employees (PSE) filed a complaint charging unfair labor practices with the Public Employment Relations Commission alleging that the Toutle Lake School District had committed unfair labor practices in violation of RCW 41.56.140. An amended complaint was filed on July 2, 1985. A second amended complaint was filed on July 23, 1985. As so amended, the union alleges that the respondent intimidated and coerced employees in the exercise of their rights and violated RCW 41.56.140(1) by issuing written reprimands to the chapter president and vice-president for engaging in union activities; that the respondent bypassed employee Bea Hall in a layoff situation because of her prior union activities; that the respondent monitored the union activities of the local union president; that the respondent refused to notify the union of new hires and disciplinary action; refused to bargain concerning layoffs and the effects of layoffs; and that the respondent failed to deduct dues from Judith Hoys' paycheck despite

a signed dues authorization card. A hearing was conducted at Toutle, Washington, on October 23 and 24, 1985, before Jack T. Cowan, examiner. The parties submitted post-hearing briefs setting forth their legal arguments.

FACTS AND ANALYSIS

Refusal to Notify - New Hires

The school district is located in Cowlitz County. In August, 1984, the employer advertised in the Daily News, the principal newspaper in Cowlitz County, as follows:

> Openings for three teacher aides in the Toutle River Boys' Ranch alternative program: One, four-hour day, five days a week; two, two hours per evening, three nights a week . . . . Apply at Toutle Lake School District office by August 31, 1984.

Notices of the openings were also posted on bulletin boards in the school district buildings. Hiring of the three new aides took place at a school board meeting which occurred in mid-September 1984. Written notice of the hiring and of the names of the newly hired employees was not sent to the union, although such a procedure is prescribed in the collective bargaining agreement between the parties. Article XX of the collective bargaining agreement is headed "Association Membership". Within that article, Section 20.5. provides inter alia:

> The District will notify the Association of all new hires within ten (10) working days of the new hire date. At the time of hire, the District will inform the new hire of the terms and conditions of this Article.

The language of the agreement does not prescribe how such notification is to take place. The information was, however, posted on school bulletin boards and, additionally, appeared in the newspaper.

The new Boys' Ranch aides became a subject of concern in the spring of 1985 when reduction-in-force (layoff) activity was begun. When a request was made by the union, the employer provided the names within four days.

The Public Employment Relations Commission does not assert jurisdiction through the unfair labor practice provisions of Chapter 41.56 RCW to remedy violations of collective bargaining agreements. City of Walla Walla, Decision 104 (PECB, 1976). If there was a violation of the contract, it is not subject to a remedy in this proceeding.

The Commission does enforce the duty to bargain created by RCW 41.56.030(4) through RCW 41.56.140(4), and the duty to bargain does include a duty to provide information necessary for the purposes of bargaining and contract administration. c.f., City of Yakima, Decision 1124, 1124-A (PECB, 1981). The employees at issue here were hired in 1984 following advertisements in the newspaper, posting of notices on the bulletin boards, and discussions in public meetings. There is no evidence to indicate an effort to conceal their existence from the union or even of a failure of the district to advise the new employees concerning their rights and obligations regarding Article XX, supra. There was no refusal or unusual delay in providing the requested information once the request was made. It is difficult to accept the union's premise of lack of awareness concerning the new hires in a school district and community of the small size involved in the instant case. The failure to notify at an earlier time is not a violation of RCW 41.56.140.

Refusal to Notify - Disciplinary Action

Bargaining unit employee John Robards was reprimanded by the employer. PSE Local President Claudia Scattergood wrote a letter to the superintendent requesting information concerning that disciplinary action, and that request was denied by the employer.

The evidence shows that the union's request for information on Robards' discipline was denied by the employer at the request of Robards himself, who

felt the discipline to be justified and did not want to pursue the matter. The district respected and adhered to his wishes. An employee has a right, under RCW 41.56.090, to present his or her own grievance to the employer. Impliedly, an employee could also choose not to pursue a potential grievance in any manner. Lacking a desire of the only affected employee to pursue the matter, it is difficult to understand how the requested information could be reasonably needed by PSE for the purposes of bargaining or contract administration, within the meaning of established precedent. There was no grievance filed. No unfair labor practice violation can be found on this charge.

Discrimination

Prior to April 15, 1985, the school district had five employees classified as "custodial-maintenance" including custodian Davida Nall. Sometime in January or February, 1985, Nall approached the employer concerning a possible medical retirement. Subsequently, and in anticipation of Ms. Nall's medical retirement, the school district's superintendent, Jack Adams, notified both the district's maintenance supervisor, Bill Leeper, and union representatives that Ms. Nall would not be replaced. Adams directed Leeper to revise custodial-maintenance assignments to take that reduction into account. By not replacing Ms. Nall, the employer avoided the necessity of having to layoff a custodial-maintenance person due to budgetary constraints.

Leeper adjusted the work hours and duties of the remaining custodians, including a re-assignment of the most senior custodian, Bea Hall, from a day shift (6:00 AM to 2:30 PM) to an evening shift (3:00 PM to 11:30 PM). The work hours of maintenance employee John Robards remained at 7:00 AM to 4:00 PM, although he was assigned new custodial duties in addition to his regular grounds and maintenance work. Positions were posted and bidding occurred prior to implementation of the new schedules on April 15, 1985. Despite her seniority and her bid for day shift, Hall was nevertheless moved to evening shift. She filed a grievance because an employee having less seniority (Robards) was allowed to remain on day shift. She also charged a refusal to bargain and discrimination based upon her previous union activities.

In the collective bargaining agreement between the parties for the period of September 1, 1983 through August 31, 1986, Article II, Rights of the Employer, states, in part:

* * *

> Section 2.1 It is agreed that the customary and usual rights, powers, functions, and authority of management are vested in management officials of the District. Included in these rights in accordance with applicable laws and regulations is the right to direct the work force, the right to hire, promote, retain, transfer, and assign employees in positions; the right to suspend, discharge, demote, or take other disciplinary action against employees; the right to release employees from duties because of lack of work or for other legitimate reasons. The District shall retain the right to maintain efficiency of the District operation by determining the methods, the means, and the personnel by which such operation is conducted.

Article V, Appropriate Matters of Consultation and Negotiation, states, in part:

* * *

> Section 5.1 It is agreed and understood that matters appropriate for consultation and negotiation between the District and the Association are policies, programs, and procedures relating to or affecting general working conditions of employees in the units subject to this Agreement, including but not limited to, such matters as safety, training, employee-management cooperation, employee services, methods of adjusting grievances, appeals, leave, promotion plans, demotion practices, pay practices, reduction-in-force practices, and hours of work.

The particular unfair labor practice charge at issue here is discrimination against Bea Hall due to her prior union activity, not a refusal to bargain or a violation of seniority rights. The cited provisions of Article II, Section 2.1, supra, particularly those concerning the right to transfer and assign employees, indicate that the parties have bargained on this subject. As

noted above, violation of the collective bargaining agreement itself is not before the examiner.

The union alleges that the district's failure to allow Hall to remain on day shift constitutes discrimination based upon union activities. The allegation is based, however, upon Hall's personal opinion and feelings, which are not substantiated by other evidence. The record is insufficient to shift the burden of proof to the employer under City of Olympia, Decision 1208-A (PECB, 1981).

Even if the burden of proof were shifted to the employer, no violation could be found from this record on this allegation. The retirement of Davida Nall impacted the employer in two ways. First, it provided an opportunity to respond to an existing financial problem calling for reduced expenditures; second, it created a need to accommodate existing workload with reduced staff. The re-allocation of remaining custodial and maintenance employees to new or different assignments surfaced as an appropriate means of facilitating the necessary changes. The job duties of the positions occupied by Hall and Robards were dissimilar. Maintenance duties, which Bea Hall did not perform and did not want to perform, were necessarily performed during day shift hours. It was decided that limited custodial duties could be added to the maintenance function, thereby eliminating the need for other custodial staff to be present during the day shift. It appears that the organizational revisions of the custodial and maintenance staff were well within the rights reserved to the employer in the collective bargaining agreement. The alleged violation of seniority rights has been treated elsewhere, in an arbitration proceeding not conducted by this agency.

Surveillance

The school district is located near both the Green River and the Toutle River, to the west and north of Mount St. Helens. The area to the north of the mountain was devastated by volcanic eruption during and following May 1980, and both of the river valleys were disrupted by mudflows and floods

secondary to the volcanic activity. Within approximately 18 miles of Toutle, a major portion of Highway 504 was destroyed by the volcanic eruption. Because of the close proximity of the school district to the mountain, certain warning devices were installed to alert the school district's managers to possible future eruptions. One such safeguard is a plectron. To a casual observer, a plectron looks somewhat like a tape recorder. However, it records incoming emergency radio message broadcasts, not conversations in the room.

A union-management meeting was held on April 24, 1985 in the office of the superintendent. Attending were Adams, Scattergood, Nancy Brandhorst (the PSE local vice-president), and Dan Smith (the high school principal). Numerous union-management matters were discussed. As they departed following the meeting, Scattergood observed a plectron unit located near the door of the superintendent's office. The unit appeared to her to be a tape recorder with lights on and keys pushed down. In what was described as a somewhat joking manner, she asked if she could have a copy of the tape of the meeting. Responding in kind, Adams said yes and asked if she also wanted a written transcript. She laughed and said, "No, as long as there isn't an 18-minute gap on it, why you know that's okay".

After telling Brandhorst that the meeting had been taped, Scattergood returned to the classroom where she worked as aide to teacher Mike Sturgill. When she repeated the "meeting was taped" claim to Sturgill, he told her the unit in the superintendent's office was a plectron, not a normal tape recorder. Scattergood responded to questioning in this record, as follows:

> Q. Do you know precisely why the district would have a plectron?
>
> A. Because of the volcano. I'm not sure how it operates but it has something to do with the volcano.

In earlier testimony, Scattergood agreed there had been joking by both sides at the meeting. There was also evidence that Scattergood had previously

questioned the principal of the district's elementary school about a similar unit located in his office, which was likewise identified as a plectron.

Brandhorst, in the meantime, returned to the bus barn and told various persons in the barn that the meeting had been taped without permission. Those so informed included drivers Kathy Packwood, Jeanne Hamer, Virginia Evitt and School Board Chairman Virgil Williams. Shortly thereafter, Williams confronted Adams concerning the alleged taping.

On April 25, 1985, Adams wrote a letter to Scattergood and Brandhorst asserting that he had not taped the conversation at the meeting and stating that their remarks were both false and unprofessional.

In City of Westport, Decision 1194 (PECB, 1981), it was held that an employer violates the act if it creates the impression that it is engaged in surveillance of employees engaged in the pursuit of their statutory rights under Chapter 41.56 RCW. In that instance, a consultant acting on behalf of the employer inquired into the previous union activity of employees. In the instant case, no such conclusion can be reached.

Both parties were well aware what was taking place in the meeting along with what was being said. There were no secrets, one from the other. Nothing in the record indicates how long the plectrons have been located in the superintendent's and principal's offices, but since the units have been the subject of earlier questions as brought out in the evidence, it is reasonable to assume that they have been on-site for quite awhile, perhaps as far back as 1980. Further, the evidence indicates that Scattergood knew or should have known of both the existence and nature of the devices. Finally, the fact that the plectron was located near the door of the superintendent's office, well away from the center of the conversation during the union-management meeting, supports an inference against any sort of surveillance. A tape recorder and microphones intended for recording conversation would normally be placed in closer proximity to the person(s) being recorded, not in a remote location.

The crux of the matter stems from comments made following the close of the meeting. Under the circumstances, it seems doubtful that the words of the superintendent could reasonably be given a purely literal interpretation. Scattergood's response concerning an "18-minute gap" indicates that she did not give credence to the superintendent's comment regarding a transcript. The complainant has not proven that a recording of the conversation was made. It has only proven that what actually occurred was different from what a person said she thought was occurring. There has been, at most, a breakdown in communications or perceptions. How or why Scattergood felt threatened by such imagined taping of a business meeting was never revealed in testimony. Her reluctance to pursue the matter further on the date of the meeting raises additional doubts as to whether she ever believed what she had been told by the superintendent. At the close of the meeting, she could have asked additional questions to remove any doubts. After her conversation with Mr. Sturgill and his assurance concerning the plectron, she could have returned to the superintendent's office to verify the information, but no such effort was made. The situation was escalated by the erroneous statements made in the bus barn, which served to incite the bus drivers and a school board member. The erroneous statements were not activity protected by RCW 41.56-.040, and the letters subsequently sent to Scattergood and Brandhorst do not constitute interference, restraint, or coercion in the instant case.

Harassment

The collective bargaining agreement between the parties defines association and employee rights but does not authorize employees who are union officers to conduct union business with other employees during working hours. The charge of harassment of union president Claudia Scattergood arose from several events occurring in late April or early May, 1985.

One incident involved Scattergood and the school district's high school principal, Dan Smith. Scattergood, an aide, had occasionally interrupted the work of Smith's secretary when Scattergood used the duplicating equipment in the school office. Smith talked with Scattergood and resolved the matter.

This occurred prior to Scattergood becoming local union president and is not linked by the testimony to her union activity.

While later employed at the elementary school, Scattergood was questioned by the district's elementary school principal, Roger Calhoun, when she was observed writing checks, presumably paying bills, at the special education office during working hours. She indicated she was on a break.

On another occasion, Calhoun confronted Scattergood on the school grounds while she was conducting union business during school hours. Calhoun suggested that she should attend to her classroom duties.

Calhoun called Scattergood to his office on another occasion to express concern over conduct of union business on school time. Scattergood again indicated she had been on a floating break. A schedule of her breaks was requested and provided. An agreed schedule appeared to resolve the matter in a mutually satisfactory manner.

On one occasion, Scattergood saw Calhoun with a note in his hand and believed the note to be one that she had written to Superintendent Adams and had placed in a basket on the desk of Calhoun's secretary. Calhoun evidently picked up the note from his secretary's desk, saw that it was addressed to the superintendent and put it down again. He did not open it or read it. Notes addressed to Calhoun were commonly placed in the same location.

Sturgill reported to Scattergood that he had seen notes of Calhoun's conversation with Scattergood on Calhoun's desk. Sturgill's inference that Scattergood's union activity was being monitored was not mentioned to the principal or to the superintendent and was his own personal opinion. Sturgill's impression is not substantiated by any other evidence in this proceeding. In contrast to Sturgill's conclusions, Calhoun testified that it is his practice to take notes on conversations which he feels are necessary to record. Such practice is not limited to his relationship with Mrs. Scattergood, but rather extends to substantive conversations with any

certificated or classified employees who work for him. He testified he had not made it a practice to take notes on Mrs. Scattergood regarding her union activity. This uncontroverted testimony counters the union allegation that Sturgill was singled out for harassment.

The actions of the employer appear to exhibit a normal concern about the activities of employees during normal working hours. Scattergood had historically been observed in certain types of conduct, as noted. When contacted by the employer, any variances were readily and amenably resolved. A general practice of making notes to oneself regarding meetings or conversations is not, in itself, grounds for suspicion. The opinion or conception of why the notes exist is, as evidenced by Sturgill's interpretation, one of personal impression. Similarly, to pick up a note where one normally picks up notes is hardly an indication of prying or surveillance. The matters in this charge do not show or verify alleged harassment of a union officer.

Failure to Deduct Union Dues

Judith Hoy was initially hired by the employer in 1980 under the federal Comprehensive Employment Training Act (CETA) program. She signed a union dues authorization card at that time. Hoy was laid off when CETA funds were depleted in April or May of 1981. She was rehired by the district in October, 1981 in an Indian education program, but was not asked by the union to sign another dues authorization card until January, 1985. At that time, she was approached by Nancy Brandhorst and Virginia Evitt. After receiving the card, Hoy consulted with Calhoun and later with Adams, who told her she had to join the union. She signed the card and, after an indefinite period of time, the card was given to (or picked up by) a union official.

There is conflicting testimony as to who received the card and when, as well as concerning the routing of the card thereafter. Hoy testified she gave the card to Ruby Zeager or Bea Hall, but could not specify the date. Ms. Zeager did not testify. Hall testified she never received the card. Virginia Evitt claimed to have picked up the card and turned it in to Business Manager Pat

Goodrich on January 23, 1985. When asked if she was sure she did not give the card to Evitt, Hoy responded, "No, I didn't give it to Mrs. Evitt". There is also testimony of a statement attributed to Goodrich and supposedly made after the card had been submitted in January, 1985, to the effect that Adams had instructed Goodrich not to deduct union dues from Hoy's salary. Evitt testified:

> Q. Did you later check back with her concerning dues deductions?
>
> A. Yes, I did.
>
> Q. What did she say?
>
> A. She said Jack [the superintendent] requested her not to do so.
>
> Q. Was that in May?
>
> A. No. That was probably March or April.
>
> Q. You were no longer president after mid-April, were you?
>
> A. No.

Although the question did not specifically inquire concerning Judith Hoy, by name, the reference could be inferred. A school district secretary, Carolynn Bradult, testified that the dues authorization card for Hoy was placed in her "in" basket one day at the end of May, 1985, and that the card was given to Goodrich on the same day. Goodrich testified that she received the card on May 31, 1985, and she categorically denied receiving the card at an earlier date. Further, Goodrich testified that, after receiving the card, she notified Superintendent Adams.

It is clear that no union dues were deducted from Hoy's pay during the first five months of 1985. It is also clear that Hoy was again laid off or terminated from employment with the school district in May, 1985, and that Adams personally notified Hoy in May, 1985 that he would not withhold union dues from her May 31st pay check. This was because she had only a few days

left in the school year. Finally, it is clear that Hoy has since been re-employed, that she is working as an aide at the boys' ranch, that she is currently a member of the bargaining unit, and that union dues have been withheld from her wages since her re-employment with the school district.

This issue was not raised in the initial unfair labor practice complaint filed on May 22, 1985, nor in the amended complaint filed July 2, 1985. It appeared in the second amended complaint filed July 23, 1985, where the allegation in the statement of facts read as follows:

* * *

> 6. That the association discovered on or about July 12, 1985, that the district was not deducting dues from Judith Hoy's paycheck despite a signed authorization card.

Thus, the discovery date of July 12, 1985 alleged in the complaint even contrasts somewhat with the March or April time period appearing in the testimony of Mrs. Evitt that is the most favorable to the union. By July of 1985, Hoy was no longer an employee in the bargaining unit.

It is clear that the omission had been going on from October, 1981 until at least January, 1985, when Hoy was approached by Brandhorst and/or Evitt. It is also clear that the employer's officials advised Hoy of her obligation to join the union, at least prospectively. RCW 41.56.110 entitles the incumbent exclusive bargaining representative to checkoff of union dues from the pay of bargaining unit employees, but that provision appears to operate prospectively from the time an authorization card is filed. The right of the union to collect back dues may be a separate matter. See, International Association of Machinists and Aerospace Workers, District Lodge No. 15, AFL-CIO, 231 NLRB 103 (1977). But that need not be decided here. The record on this issue is so fractious, as indicated by the conflicting testimony, that, lacking the wisdom of Solomon to determine where the fallacy(-ies) may lie, the examiner must dismiss this allegation for failure to satisfy the burden of proof.

Refusal to Bargain

In January, 1985, Pat Lambert, the PSE field representative assigned to the Toutle Lake bargaining unit, became aware of the possibility of layoffs. He requested negotiations, and a meeting was scheduled for February 7, 1985. That meeting was later cancelled at the request of the superintendent, who wished to defer negotiations pending conclusion of the legislative session. The employer implemented layoffs of aides in late March 1985. The complainant alleges that the employer refused to bargain regarding the layoffs, and that it did not provide information regarding layoffs or the inter-related hiring of the new aides at the boys' ranch, as addressed above.

The contractual right of the school district to make a unilateral decision to lay off is set forth in Article II, Section 2.1, supra. The timing of the school district's actions concerning the aides is explainable in relation to its actions concerning certificated employees. Specifically, RCW 28A.67.070 provides that, in the event a school district has probable cause to non-renew the employment contract of a certificated employee (teacher) for the next ensuing school term, the employee must be notified, in writing, on or before the May 15th preceding the commencement of such term. Acting in accordance with that statute because of a decline in enrollment accompanied by a reduction in state funding, the district sent letters of non-renewal on March 27, 1985 to certain of it certificated employees. Notice was sent simultaneously to affected aides. Among the seven aides so terminated were two regular school aides, three aides at the boys' ranch, and two Indian aides.

The contractual right of the employer concerning layoff is subject under Article II, Section 2.1, supra, to an obligation of consultation and negotiation, if requested by the union. In this situation, the union did not and has not questioned the financial crisis facing the employer or the employer's right to decide that layoffs were necessary. It has not waived its right to negotiate concerning the effects of the layoffs, however. The record does not disclose any request by the union for bargaining between the time of its initial request and the layoffs, but that initial request remains adequate

evidence of the union's desire and request for negotiation. Having been so notified, the employer had an obligation to negotiate prior to effecting the layoffs. Whether the employer failed by neglect, avoidance, or refusal, there was no negotiation concerning layoffs despite the request of the union to discuss the impact of the layoff. The employer thereby violated RCW 41.56.140(4). Entiat School District, Decision 1361-A (PECB, 1982).

FINDINGS OF FACT

1. Toutle Lake School District No. 130, located in Cowlitz County, is a public employer within the meaning of RCW 41.56.030(1).

2. Public School Employees of Toutle Lake, an affiliate of Public School Employees of Washington, is a bargaining representative within the meaning of RCW 41.56.030(3) which is recognized as the exclusive bargaining representative of the classified employees of the Toutle Lake School District.

3. The union and the district were parties to a collective agreement which covered the period from September 1, 1983 through August 31, 1986.

4. In September 1984, the district hired three new employees as aides without providing written notice to the union. The union was, or reasonably could have made itself, aware of the transaction. The district provided the information in a timely manner in response to a request by the union.

5. The district reprimanded bargaining unit employee John Robards. The employee accepted the disciplinary action without grievance. At the request of Robards, the district declined in May, 1985 to provide the union with information on the discipline of Robards.

6. Due to budgetary constraints, the district restructured and rescheduled its custodial-maintenance staff in April, 1985, coincident with the elimination of a position by attrition. Despite her seniority and her bid for the day shift, employee Bea Hall was assigned to evening shift work. The record does not establish a motive of discrimination on the part of the employer based on Hall's union activities. Allegations of violation of Hall's seniority rights were the subject of a separate arbitration hearing.

7. A union-management meeting was held in the office of Superintendent Jack Adams on April 24, 1985. The meeting was not tape-recorded by the employer. An emergency alerting device, the appearance of which is similar to that of a tape recorder, was mistaken by a union official for a tape recorder. Having been advised of the nature of the device, the union official took no steps to correct the misunderstanding.

8. In late April or early May 1985, union president Claudia Scattergood was confronted by Principal Roger Calhoun concerning the conduct of union business on school time. An agreed break schedule resolved the matter in a mutually satisfactory manner. Scattergood's concerns of alleged harassment by Calhoun for making notes of their conversation and his supported viewing of a note which Scattergood sent to Superintendent Adams did not constitute harassment.

9. The district did not deduct union dues for Judith Hoy in early 1985. The facts concerning the execution and submission of a dues checkoff authorization cannot be determined on this record.

10. In January, 1985, the union became aware of the possibility of layoffs and requested negotiation on surrounding issues. A meeting scheduled for February 7, 1985 was later cancelled at the request of the district. Without consultation or negotiation with the union, the employer implemented layoffs of certain aides in March, 1985.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. By the events described in paragraphs 4 and 5 of the foregoing findings of fact, the Toutle Lake School District did not violate the obligation of RCW 41.56.030(4) to provide information reasonably necessary to the pursuit of collective bargaining or contract administration, and has not violated RCW 41.56.140(4).

3. By its elimination of full-time custodian services on the day shift in preference for a maintenance position with some custodial assignments, as described in paragraph 6 of the foregoing findings of fact, the Toutle Lake School District has not discriminated against Bea Hall, and has not violated RCW 41.56.140(1).

4. By its actions described in paragraph 7 of the foregoing findings of fact, the Toutle Lake School District has not engaged in surveillance of bargaining unit employees or union officials and has not violated RCW 41.56.140(1).

5. By its actions described in paragraphs 7 and 8 of the foregoing findings of fact, the Toutle Lake School District has not harassed or discriminated against Claudia Scattergood and has not violated RCW 41.56.140(1).

6. The complainant has failed to sustain its burden of proof showing that the Toutle Lake School District refused a timely request for checkoff of union dues from the pay of Judith Hoy, as described in paragraph 9 of the foregoing findings of fact.

7. By its actions as described in paragraph 10 of the foregoing findings of fact, the Toutle Lake School District laid off certain bargaining unit employees under circumstances such that the effects of the decision were

a mandatory subject of bargaining under RCW 41.56.030(4), without having bargained the issues surrounding the layoff and has violated RCW 41.56.140(4).

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that the Toutle Lake School District, its officers and agents shall immediately:

1. Cease and desist from:

   A. Unilaterally implementing a layoff of bargaining unit members during the existence of a collective bargaining agreement between the parties, without having bargained collectively with Public School Employees of Washington concerning the effects of such layoff.

   B. Refusing to bargain collectively in good faith with Public School Employees of Toutle concerning the issues surrounding proposed layoff of bargaining unit members.

2. Take the following affirmative actions to remedy the unfair labor practices and to effectuate the policies of the Act:

   A. Upon request, bargain collectively in good faith with Public School Employees of Washington concerning the effects on its employees of the layoff referred to in paragraph 10 of the foregoing findings of fact.

   B. Provide backpay to employees affected by the layoff at the rate of their normal wages when last in respondent's employ, from five (5)

days after the date of this order until the occurrence of the earliest of the following conditions: (1) the date the respondent and Public School Employees of Washington bargain to agreement concerning the effects of the layoff; (2) a bona fide impasse is reached in bargaining; (3) the failure of the union to request bargaining within five (5) days following the date of this order, or to commence negotiations within five (5) days of respondent's notice of its desire to bargain with the union; or (4) the subsequent failure of the union to bargain in good faith; but in no event shall the sum paid to any of the named employees exceed the amount that employee would have earned as wages from the time of his or her layoff by the respondent to the time that employee secured equivalent employment elsewhere or was reinstated by the respondent; provided, however, in no event shall this sum be less than such employee would have earned for a two (2) week period. Backpay shall be computed in accordance with WAC 391-45-410.

C. Preserve and, upon request, make available for examination and copying all payroll records, social security payment records, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this order.

D. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of Toutle Lake School District No. 130, be and remain posted for sixty (60) days. Reasonable steps shall be taken by Toutle Lake School District No. 130, to ensure that said notices are not removed, altered, defaced, or covered by other material.

E. Notify the Executive Director of the Public Employment Relations Commission, in writing, within twenty (20) days following the date of this order, as to what steps have been taken to comply herewith,

and at the same time provide the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 19th day of December, 1986.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

JACK T. COWAN, Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally implement a layoff of bargaining unit members without bargaining surrounding issues.

WE WILL, upon request, bargain collectively in good faith with Public School Employees of Washington concerning surrounding issues prior to any layoff of bargaining unit members.

TOUTLE LAKE SCHOOL DISTRICT

_____

AUTHORIZED REPRESENTATIVE

DATED _____

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

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.