

Kennewick School District, Decision 5632 (PECB, 1996)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF)	
WASHINGTON,)	CASE 12234-U-95-2888
)	
Complainant,)	
)	
vs.)	DECISION 5632 - PECB
)	
KENNEWICK SCHOOL DISTRICT,)	
)	FINDINGS OF FACT,
Respondent.)	CONCLUSIONS OF LAW
)	AND ORDER
)	

Eric T. Nordlof, Attorney at Law, appeared for the union.

Robert D. Schwerdtfeger, Schwerdtfeger and Associates, appeared for the employer.

On December 18, 1995, Public School Employees of Washington (union) filed a complaint charging unfair labor practices alleging that Kennewick School District (employer) had interfered with employee rights in violation of RCW 41.56.140(1) with respect to three specific incidents involving Elaine Lechelt, a bargaining unit employee and union officer. A hearing was held at Kennewick, Washington, on June 12, 1996, before Examiner Vincent M. Helm. The parties filed post-hearing briefs.

BACKGROUND

Allegations of the Complaint -

In connection with the discussion of a request by Ms. Lechelt for her normal work shift to be extended, the union contends an employer agent threatened to reduce the work hours of Lechelt if she filed a grievance concerning the matter. The union alleges that the employer then singled out Lechelt for investigation with

regard to the purported theft of ice-cream bars because she filed a grievance concerning her hours of work. Lastly, the union contends that the employer attempted to develop additional spurious theft charges against Ms. Lechelt, involving giving employer property to a fellow employee, because of her activities as a union officer. Each of these actions were alleged to interfere with her statutory rights.

The Parties' Bargaining Relationship -

The union represents five bargaining units of the employer, including one consisting of food service employees. The food service bargaining unit is the smallest in size, but the most prolific in grievance filings.

The Employer's Food Service Operations -

The employer contracts management of its food service operations to the Marriott Corporation. Sam Shick is a Marriott employee, who has been designated to supervise those functions. In this role, Shick supervises the Kennewick School District employees who provide food service functions at various schools including 9 or 10 elementary schools. In the complaint he is identified as the employer agent or representative who engaged in or instigated the complained of conduct.

Elaine Lechelt as Employee and Union Activist -

Elaine Lechelt has been employed as a cook for 12 years. Along with another cook, she is responsible for preparing and serving breakfast and lunch to children enrolled at Eastgate Elementary School, where she has worked for eight years. Her current work day is 7:00 a.m. to 9:00 a.m. for breakfast and 10:00 a.m. to 2:00 p.m. for lunch. Elaine Lechelt's daughter, Dawn Lechelt, works at the same school as a day custodian and assists in the kitchen. Elaine and Dawn Lechelt are officers in the local union. Elaine Lechelt also serves on the union's bargaining committee and is a union member of a joint conference committee that meets to discuss

grievances once per month. She has been very active in union affairs and her role is well known to the employer.

The Discussion of Lechelt's Hours of Work -

On November 15, 1995, Lechelt and Patsy Ball, vice president of the union, met with Shick and Denise Christensen, a management representative of the Kennewick School District who reports to Shick. The purpose of the meeting was to discuss Lechelt's request to have the work schedule increased by one-half hour for herself and her fellow cook. Her rationale for the request was they continually worked that amount of time beyond their scheduled work assignment in the afternoon. Scheduled hours of work determine benefit entitlements, so while paid, the extra time worked was not credited for purposes of vacation, holiday, and other benefits. Lechelt told Shick that cooks at other elementary schools had their work time increased in the same manner as she was requesting.

Shick stated he had studied the overall situation at Eastgate and other schools, with the intent of achieving the most efficient and cost effective method of providing food services. According to Shick and Christensen, breakfast work hours might be cut where numbers served did not justify the hours being worked. There was some discussion with respect to whether the volume of breakfasts had declined, with Lechelt insisting she was serving significantly more students than the employer representatives were willing to admit to. Shick told Lechelt that she could get her work done in the allotted time, and he would not extend her work day. Lechelt responded that she was filing a class action grievance, and that Shick should consider this meeting as Step One of the contract's grievance procedure. The first alleged interference followed.

Ball and Lechelt testified that Shick essentially responded that Lechelt had better think twice about filing a grievance, because her breakfast numbers (referring to children served) were not that high. According to Ball and Lechelt, that implied Lechelt's

assigned time for serving breakfast could be reduced. Employer representatives emphatically deny that Shick made that response. Christensen recalls Shick responding that it was Lechelt's privilege to file a grievance. At the conclusion of the meeting Lechelt told Ball, outside the presence of employer representatives, that Shick would cut her work time for breakfast if she filed a grievance. Ball assured her that Schick could not do that. Lechelt did in fact file a grievance and ultimately the employer did increase her work shift by one-half hour without cutting her time for serving breakfast.

Williams as Catalyst for Lechelt Theft Charge -

Pat Williams was the second cook assigned to Eastgate between November 2 and November 20, 1992. Some time in that period, Williams advised Christensen that Lechelt had given employer property to a fellow employee. At Christensen's request, Williams prepared a memorandum, dated November 20, 1995, regarding the incident. This incorporated material noted by Williams in a daily diary she maintained relative to her work day. Williams' memorandum stated that Lechelt had given lettuce belonging to the employer to an unidentified maintenance worker who was working at the Eastgate school on November 2, 1995. Christensen informed Shick, who, in turn, contacted Kennewick School District Director of Personnel James Verhulp, with regard to the allegations. Investigation by the employer indicated the potential recipient of the lettuce was Gerry Hexum, who was assigned to work at Eastgate at the time the incident was alleged to have occurred.

Employer Notification of Lechelt of November 27 Meeting -

Gwen Stouffer, president of the local union, contacted Lechelt approximately one week before Thanksgiving, to inform her of a letter from the employer indicating that the attendance of Lechelt would be required at a meeting with employer and union representatives, on November 27, 1995, to investigate allegations of misconduct on Lechelt's part. Lechelt had not received her copy of

the correspondence, and she telephoned Carole Jones, the employer's classified employee personnel manager, to ascertain the reason for the meeting. At that point, Lechelt was advised the meeting involved a theft from the employer.

Purpose of the November 27 Meeting According to the Employer -

The meeting originally was intended by the employer to address four matters: First was the personality conflict between the Lecheltes, mother and daughter, and Williams, who, as a result of the dissension, was transferred from that school during the month of November. Second was the employer's concern that Lechelt was ordering ice-cream bars on the employer's account and utilizing them for personal rather than employer use.¹ The third topic of the meeting was to be allegations by the Eastgate principal and some school staff that Lechelt raised her voice to students. A fourth topic was the food give-away allegations by Williams. This was not addressed because the employer was unable to meet with the alleged recipient of the food prior to November 27.

What Transpired at the November 27 Meeting -

The employer representatives at the meeting were Shick, Christensen, and James Verhulp, who is the employer's personnel director. Union Field Representative Lee Buzzard, Ball and Lechelt also attended.

Verhulp told those in attendance that Williams had been transferred from Eastgate to resolve the conflict between her and the Lecheltes. He went on to say that they would have to work harmoniously with the replacement cook at Eastgate and, if that were not the case, one or both of the Lecheltes could be transferred.

¹ The employer's focus in this area was prompted by Shick becoming aware that the employer was being invoiced for ice-cream bars purchased at Eastgate school although they were never on the school's menu.

Shick then asked Lechelt if she had been ordering ice-cream bars on the employer account and giving them to students. Verhulp asked who had given her permission to order ice-cream bars, and if she had taken any home for her personal use. Lechelt responded that she had been working at Eastgate for eight years and that the practice existed when she arrived of ordering ice-cream bars for distribution each week as treats to student helpers in food services for good work. She said she merely continued the practice by ordering a case of ice-cream bars three times during the school year and distributing them to student helpers at the end of each school week as a "thank you". Lechelt said cooks at other schools were doing the same thing, and asked why she was being singled out. She noted that Williams also ordered ice-cream bars in Lechelt's absence and gave them to students.² Shick stated he was unaware of the practice of giving ice-cream bars to students and directed Lechelt to desist from doing so in the future. There was no testimony as to the substance of any discussions relative to the instances of Lechelt raising her voice to students or staff.

Follow-up to November 27 Meeting -

After the November 27, 1995 meeting, Shick and the union representatives conducted independent investigations of varying intensity. Each concluded there existed a rather widespread practice of cooks ordering ice-cream bars and distributing them as free treats to student helpers in elementary school cafeterias. Pursuant to Verhulp's instructions, Shick sent a memo dated November 29 to all employees directing them to not give away any employer food products to employees or students.

² Williams confirmed this at the hearing, as well as testifying she had taken employer food products for personal use at unspecified times. She had so advised her employer supervisors, who instructed her to refrain from such activity in the future.

At a meeting held on December 4, 1995, with union representatives and employer representatives, Hexum admitted receiving lettuce from Elaine Lechelt.³ Under questioning, he further conceded that over the course of his 20 plus years of employment he and other employees had received employer food on many occasions, not only from Lechelt but also from many other food service employees at various school locations. Hexum was told to refrain from such activities in the future.⁴ The employer initiated no further investigations with respect to Hexum's allegations.

Lechelt's January 31, 1996 Reprimand -

Verhulp's written reprimand to Elaine Lechelt, issued nearly six weeks after filing of the complaint herein, refers to a written response by Lechelt to Verhulp's written inquiry concerning:

..."verbal abuse of staff and theft and mis-allocation of food products".... I am issuing a "Letter of Reprimand to you.... Your written response to allegations number 2 and 3 serve as admission of guilt for stealing food and misallocating food products by either giving or allowing other Kennewick staff to take food from the kitchen. ... In review, you are directed to:

1. not remove or take food from Kennewick School District,
2. not give food to other school staff or students unless approved by food service supervisors,

³ There was sharp conflict between the testimony of Hexum, Lechelt and Williams as to the condition of the lettuce, and as to whether title to the lettuce had reverted to the vendor at the time of the transaction.

⁴ The giving of employer food to students or employees was not confined to employees. As admitted at hearing, Shick himself also engaged in such incidents. This was unknown to the employer prior to the hearing.

3. not allow other Kennewick School District staff to take food from the school or kitchen at Eastgate Elementary." ⁵

As a reading of the cited portions of the reprimand indicates, there is nothing within the four corners of the document which states precisely what incidents are being addressed. This failure led to a variety of conclusions on the part of Lechelt and employer representatives or agents as to the specific acts for which Lechelt was reprimanded. While the parties are unclear as to the precise conduct for which Lechelt received a reprimand, they are in agreement that the reprimand has been grieved by the union and is pending arbitration.

Lechelt testified the reprimand referenced, in part, her distribution of ice-cream bars. Shick and Jones indicate the reprimand was issued with respect to the ice-cream bars and lettuce incidents. Verhulp, the author of the written reprimand, testified at one point that he did not reprimand Lechelt for either the ice-cream bars or lettuce give aways, but for an unrelated incident involving Lechelt giving some cooked chicken to a student and taking some home for her own use. According to Verhulp this occurred just prior to the reprimand being issued and nearly two months after his meeting with Lechelt. Verhulp, at another point in his testimony, indicated that the ice-cream bars and lettuce incidents are encompassed in the written reprimand. Shick testified that the chicken incident occurred after Exhibit 2 was issued and that a second written reprimand was issued for the chicken incident.

Evidence Concerning Theft Charges by the Employer -

The uncontroverted testimony of Lechelt is that Jones told her that the subject of the meeting on November 27 would be theft. Shick testified that Verhulp, in the meeting of November 27, described

⁵ Neither the written response referenced by Verhulp, nor his written inquiry are a part of the record.

Lechelt's use of ice-cream bars as misappropriation and that Shick had told Christensen that Lechelt was stealing employer property. Lastly, in the reprimand, there is a reference to stealing food.

Evidence Concerning Investigation / Discipline of Other Employees -

Testimony of all witnesses indicates that the employer, with the exception of questioning Hexum and verifying the practice of giving away ice-cream bars, undertook no investigation of or disciplined food service employees, other than Lechelt, in connection with the misuse of employer food products.

The Performance Evaluation -

On May 16, 1996, Lechelt received a performance evaluation from Christensen. She indicated the January 31 reprimand was in part for giving salad mix to another employee on November 2, 1995, and for taking some chicken breasts home on December 12, 1995. The evaluation also contained negative references to: conflicts with a co-worker and school staff, and raising her voice to students.

Evidence of Surveillance -

Although not alleged in the complaint as being a violation of statute, the union obtained an admission from Shick, who was called by the employer, that, at some unspecified time, he had gone to Eastgate to surreptitiously observe Lechelt at work. There is no indication as to how the union became aware of this.

POSITIONS OF THE PARTIES

The union's complaint cited the employer's targeting of Elaine Lechelt for investigation, as retaliation for her filing a grievance concerning her hours of work. The union also contended that, in the meeting where Lechelt requested that her work schedule be expanded, the employer threatened to cut her hours of work if she filed a grievance. Lastly, the union alleged that the employer

attempted to influence a fellow employee to accuse Lechelt of theft of a bag of salad mix because of Lechelt's activities as a union officer. These actions were only alleged to be interference with employee rights and were alleged to have all been perpetrated by Shick. In its opening statement, the union went on to contend that Lechelt later received a performance evaluation which contained a negative reference to the salad mix incident. The union then alleged that charges of verbal abuse on the part of Lechelt were contested by the union and, while no discipline was imposed, the employee received a negative reference on her evaluation with respect to that subject.

In its post-hearing brief, the union alleges, for the first time, that Lechelt was disciplined in the form of a written reprimand for giving away ice-cream bars to students and lettuce to another employee and surreptitiously observed at work because of her protected activities in violation of RCW 41.56.140(1) and that the employer thereby discriminated against Lechelt for exercising her rights under the statute.

The employer denies that any of the actions complained of in the complaint were initiated in order to interfere with Lechelt's union activities and denied any threats in violation of the statute. The employer contends that the investigation of Lechelt's activities was solely in response to information that came to it of possible misconduct on her part. Both in its answer to the complaint and at the hearing, the employer asserted that Lechelt received a written reprimand for the lettuce incident. The employer also asserted in its brief that the reprimand was for a combination of three incidents which can be described as ice-cream bars, lettuce, and chicken. The employer contends the union's allegations are groundless, unsupported by the evidence, and represent an effort by the union to manipulate the system.

DISCUSSION Allegations Not Properly Before the Examiner

The complaint filed on December 18, 1995, was never amended, either prior to or during the hearing held on June 12, 1995. The written reprimand was issued January 31, 1996, and the evaluation was dated May 16, 1996, both after the filing of the complaint. Similarly, the incident of surveillance disclosed by the evidence was not an allegation in the union's complaint, and no time frame was established.

Trial by ambush is precluded under Commission precedent, statute and rules of procedure. The Examiner, therefore, may not consider any allegations with respect to those matters in any substantive manner because they have not been the subject of the unfair labor practice complaint herein. Royal School District, Decision 1419-A (PECB, 1983); Metro, Decision 2147 (PECB, 1985). The complainant certainly had ample opportunity to amend the complaint, as it was fully aware of the existence of the reprimand and the evaluation prior to the hearing. Since it introduced the question of surveillance, it was presumably aware of that incident also. Had the complainant followed the appropriate procedure, evidence of disparate treatment could have imposed a burden upon the employer to establish nondiscriminatory reasons for its actions subject to being rebutted by the complainant showing the employer rationale was pretextual, or that union animus was a substantial motivating factor. City of Winslow, Decision 4784-A (PECB, 1995). The occasion for the employer to go forward with its evidence never arose, because of the failure to raise this as an issue.

Substantive Issues to be Determined -

The Examiner must determine whether the evidence establishes that the employer singled out Lechelt for investigation in connection with the purchase and distribution of ice-cream bars and the giving of lettuce to a fellow employee because she filed a grievance concerning her hours of work and/or was active in union activities,

and/or threatened her with reduced hours of work if she filed a grievance concerning her work hours.

Analysis of the Evidence

There is no doubt that Lechelt has been active in union activities, both as a union officer and in initiating and processing grievances. It also appears that her bargaining unit has had a rocky relationship with the employer. Further, the timing of the employer investigations concerning Lechelt's activities is suspect in relation to the timing of her complaint concerning work hours as they commenced within two weeks of her grieving her work hours. If unexplained, it might be argued that the investigations were prompted by an employer intent to interfere with her protected right to file a grievance pursuant to provisions of a collective bargaining agreement, or reasonably perceived to be such, and therefore, violative of the statute. Valley General Hospital, Decision 1195-A (PECB, 1981). This concern with respect to employer motivation could be enhanced when coupled with a threat to Lechelt of reprisal if she filed a grievance. The union however, introduced no evidence in support of its allegations, other than timing.

The employer, for its part, established that the investigation of the ordering and disposition of ice-cream bars was triggered solely by its observation that the employer was being invoiced for ice-cream bars ordered from Eastgate school. Since ice-cream bars were not a menu item, the employer quite properly would investigate the matter. Because Lechelt was the senior cook at Eastgate, and the second cook at Eastgate had been transferred or was in the process of being transferred, the direction of an initial inquiry to Lechelt appears to be a logical procedure.

With respect to the lettuce incident, the evidence is undisputed that the employer did not initiate an investigation as the result

of Lechelt's complaint concerning her hours of work nor did it attempt to fabricate the scenario. The investigation was the result of information provided by her fellow cook at Eastgate. Under the circumstances, it would have been the zenith of irresponsibility for the employer to ignore the information it had been provided.

The investigation initiated by the employer, with respect to use of employer food items by other employees, consisted of a cursory review of other elementary schools, to determine whether other cooks had engaged in the same type of activity with respect to ordering ice-cream bars. Once it was established that there was a significant practice in accord with Lechelt's actions, a general memorandum was issued to all food service employees, which advised them to not special order any products to give students as a "thank you" for working. Again, in view of the extensive history with regard to the matter, it appears no action beyond instructions to "cease and desist" would have been appropriate.

While Hexum did implicate the Lechelts as providers of free food to employees, he also advised that many other food service employees at various schools throughout his 20 years of employment had provided him and other employees with free food. Upon the basis of this information the employer did not launch a full scale investigation of all food given away. Its decision to not do so is reasonable, under the circumstances. To attempt to engage in a witchhunt involving unspecified allegations spanning a period of perhaps decades would have been irrational, and no doubt could have engendered potentially valid complaints from the union. The employer's memo, while issued prior to the meeting with Hexum, said leftovers are not to be taken home or given away to other employees or customers. This would appear to sufficiently address situations such as involved Lechelt and Hexum.

In summary, the union has failed to sustain its burden of proof,⁶ to show that the employer's investigation of Lechelt was motivated by animus to her protected activities, or that it attempted to contrive spurious charges with respect to her activities. While, normally, the intent of the employer is immaterial in establishing a violation of RCW 41.56.140(1), and the focus is on the reasonable perception of the employee as to the actions of the employer,⁷ this rule must have some reasonable parameters. A union officer who actively files and processes grievances, does not thereby become immune from employer inquiry into his or her activities. A violation of the statute does not automatically flow from the mere fact an employee filed or processed grievances during the time period that the employer has investigated unrelated allegations of wrongdoing on the part of that employee. To hold otherwise would give a preferred and unassailable status to such an individual, not contemplated by statute.

Under the facts of this case it is clear that the union is stretching, beyond reason, both the credulity of the Examiner and the basic intent of the statute in advancing its claims that the investigations by the employer, of certain of Lechelt's activities, are violative of the statute, either because intended to interfere with statutory rights or reasonably perceived as such by Lechelt or other bargaining unit employees.

The Threat to Reduce Hours of Work -

The Examiner cannot conclude, with any degree of certainty, what was actually said in the November 16 meeting, with respect to potential employer reaction to the filing of a grievance by Lechelt. There were four witnesses to the incident. Two of them are motivated to affirm the threat was made and two of them are equally motivated to deny the threat was made. There was nothing

⁶ City of Mercer Island, Decision 1108 (PECB, 1981).

⁷ City of Olympia, Decision 1208 (PECB, 1981).

in the demeanor of the witnesses or their testimony which would cause the Examiner to conclude that one version should be adopted over the other. With the evidence in this posture, the Examiner must conclude that the complainant has not sustained its burden of proof, and this allegation of the complaint must be dismissed.

Assuming Shick did make the statement attributed to him, the question would still remain if, in the context of this case, a remedial order would be appropriate. In view of the extensive collective bargaining relationship, the militant posture of the union and the unwavering zeal of Lechelt in championing her individual grievances as well those of others, the lack of any other evidence of employer unfair labor practices, a violation of the act, even if established, may not be worthy of a remedial order.⁸

FINDINGS OF FACT

1. Kennewick School District is a public employer within the meaning of RCW 41.56.030(1).
2. Public School Employees of Washington is a bargaining representative within the meaning of RCW 41.56.030(3).
3. At all times material herein, there was in existence a collective bargaining between Kennewick School District and Public School Employees of Washington covering terms and conditions of employment of food service employees, including those employed at 9 or 10 elementary schools.

⁸ Spokane School District, Decision 310 (EDUC, 1977).

4. At all times material herein, Elaine Lechelt was employed as the more senior of two cooks at Eastgate Elementary School, a part of the Kennewick School District.
5. At the time of the hearing, Elaine Lechelt had been employed as a cook for the Kennewick School District for approximately 12 years, the last 8 at Eastgate Elementary School.
6. At all times material herein, as well as for an extended time prior thereto, Elaine Lechelt was a local union officer, and a member both of its negotiating committee and a joint conference committee that processed bargaining unit grievances and other matters on a monthly basis.
7. The food services bargaining unit is the smallest, in terms of size, of five bargaining units of Kennewick School District employees represented by Public School Employees of Washington, but had been the most prolific source of grievances for one year or more preceding the date of hearing herein.
8. Kennewick School District, at all times material herein, has contracted with Marriott Corporation for management of its food service operations at all school locations. At all times material herein, Sam Shick has been employed by Marriott Corporation to supervise its operations on behalf of the Kennewick School District.
9. Shick is responsible for direction of employees of the Kennewick School District engaged in food service activities as well as for ordering food items, reviewing billings associated with food service operations, and directing overall operations of food service.
10. At all times material herein, the Kennewick School District has employed Jim Verhulp as director of personnel, Carole

Jones as classified employees personnel manager, and Denise Christensen as assistant director food services.

11. Pat Williams worked as a cook at the Eastgate Elementary School, until transferred sometime in November 1995, as a result of discord with Elaine Lechelt and Lechelt's daughter, who is employed as a custodian at Eastgate Elementary School.
12. Sometime prior to Thanksgiving 1995, Shick became aware that the Kennewick School District was being invoiced by a vendor for ice-cream bars delivered to the Eastgate Elementary School. This food product had not been ordered by Shick, and was not a menu item at that location.
13. Sometime between November 2, 1995 and Thanksgiving 1995, Williams informed Christensen that Elaine Lechelt had given employer-owned lettuce or salad mix to a maintenance employee of the Kennewick School District. Christensen advised Shick and Verhulp of this allegation.
14. On November 16, 1995, Elaine Lechelt and Patsy Ball, vice president of the union, met with Shick and Christensen at the request of the two bargaining unit employees. The purpose of the meeting was to discuss Lechelt's desire to extend her normal scheduled daily shift by one-half hour for purposes of obtaining additional contract benefits predicated upon hours in the normal work shift, rather than all hours worked.
15. In the November 16 meeting, Shick stated the school district needed to be more efficient and cost effective in the operation of food services, and that work hours at both breakfast and lunch were being reviewed to determine whether scheduled hours should be reduced. The conversation then turned to specifics of the breakfast workload at Eastgate. The parties disagreed on that subject and Shick advised Lechelt he would

not extend her work hours. Lechelt advised Shick to consider their meeting as Step One in the grievance procedure.

16. There is a conflict in testimony as to whether, at the November 16 meeting, Shick advised Lechelt to think twice about filing a grievance and/or that her breakfast servings were down. While Lechelt and Ball testified as to such statements. Shick and Christensen deny such statements were made. The Examiner does not find that a preponderance of the evidence supports a finding that the complained-of statement was uttered by Shick.
17. A grievance concerning the hours of work was filed and the Kennewick School District did grant the extended work shift.
18. Sometime shortly prior to Thanksgiving 1995, the employer notified the union of a required meeting on November 27, 1995, with Elaine Lechelt concerning her conduct. In response to Lechelt's inquiry, Jones said the meeting involved allegations of theft.
19. The employer did not investigate the practice, with respect to ordering and distributing ice-cream bars prior to meeting with Lechelt on the subject, nor did it inquire of Williams concerning this matter before meeting with Lechelt on the subject.
20. At the November 27, 1995 meeting, the matter of the ice-cream bars was among the subjects discussed. Both Shick and Verhulp raised this issue in the context of whether Lechelt had ordered them, her authority for doing so, and their disposition. Lechelt said she ordered ice-cream bars and gave them to student helpers in the cafeteria to reward good work, in conformity with a practice at Eastgate when she started working there and as was done at other elementary schools.

21. After the meeting, the employer and the union conducted independent investigations of the matter and confirmed that Lechelt's description of past practice concerning ice-cream bars was correct.
22. On December 6, 1995, union and employer representatives met with Gary Hexum, who was alleged to have received lettuce from Elaine Lechelt. Hexum admitted this but contended the lettuce was not fit for human consumption and had been placed in the trash. This allegation was supported by Lechelt and her daughter, but was disputed by Williams. Because of the detailed specifics Williams noted of the incident at the time it occurred and the relative motivation for prevarication, Williams' version is credited. Hexum also said he and other employees over a period of many years had received free food from Lechelt as well as cooks at other schools.
23. The respondent instituted no investigation with respect to Hexum's allegations concerning other cooks giving food to himself and other employees.
24. Sometime in either December 1995 or January 1996 Lechelt was again implicated with respect to giving employer food products to a student and taking some home herself.
25. On January 31, 1996, Verhulp issued a written reprimand to Lechelt which was intended to encompass the three food incidents described in paragraphs 20 and 22 above. No other employee was disciplined, at any time material herein, for personal use of respondent food products.
26. On May 16, 1996, Christensen issued an evaluation of Lechelt's work performance which made negative references to her actions with respect to ice-cream bars, lettuce and other matters not germane to this proceeding.

27. Shick attempted to surreptitiously observe Lechelt at work at some unspecified time for unknown purposes.
28. The Kennewick School District, through its agents Verhulp and Shick, has characterized Lechelt's activities in connection with food products as theft or misallocation during discussions of her activities with other management representatives, in the November 27 meeting and in Lechelt's reprimand and evaluation.
29. The facts set forth in paragraphs 23, 24, 25, 26 and 27 are not part of the subject matter of this complaint.
30. The respondent's conduct set forth in paragraphs 19, 20, 22, and 28 was not intended to, nor should it have been reasonably perceived as interfering with rights protected by RCW 41.56-.130(1).

CONCLUSIONS OF LAW

1. Public Employment Relations Commission has jurisdiction in this matter under Chapter 41.56 RCW.
2. The employer did not interfere with employee rights in violation of RCW 41.56.140(1) by its actions with respect to investigation of Elaine Lechelt in connection with the ordering and distribution of food products to students and/or employees.
3. The employer did not interfere with employee rights under RCW 41.56.040(1) by virtue of statements made by its agent to Elaine Lechelt on November 16, 1995.

4. No other allegations of unfair labor practices are properly before the Examiner.

NOW, THEREFORE, it is

ORDERED

The complaint charging unfair labor practices filed in this matter is hereby DISMISSED.

Issued at Olympia, Washington, this 6th day of September, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


VINCENT M. HELM, Examiner

This order will be the final order of the agency unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.