STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 609, Complainant, vs. SEATTLE SCHOOL DISTRICT, Respondent.	CASE 23073-U-10-5874 DECISION 11045-A - PECB DECISION OF COMMISSION

Schwerin Campbell Barnard Iglitzin & Lavitt, LLP, by *Kathleen Phair Barnard*, Attorney at Law, for the union.

Kevin F. O'Neill, Senior Assistant General Counsel, for the employer.

On February 26, 2010, the International Union of Operating Engineers, Local 609 (union) filed a complaint alleging that the Seattle School District (employer) discriminated against and interfered with Vilando Wynter's (Wynter) protected employee rights and failed to provide the union with pertinent and necessary collective bargaining information in violation of Chapter 41.56 RCW. Examiner Phillip Huang held a hearing and ruled that the employer committed an unfair labor practice by retaliating against Wynter for his exercise of protected activity and by failing to respond to the union's information request.[1]

The union filed a timely appeal asking this Commission to review the Examiner's decision. In the union's opinion, the Examiner erred by not making a finding that the employer threatened Wynter with a negative performance evaluation for engaging in protected activities. The union also challenges the Examiner's failure to make a finding that the employer deliberately and

[1] *Seattle School District*, Decision 11045 (PECB, 2011).

flagrantly provided the union with false information. On appeal, the union asks that extraordinary remedies be imposed.

The employer filed a timely notice of cross-appeal challenging the Examiner's determination that it discriminated against Wynter. The employer did not challenge the Examiner's determination that it refused to provide information to the union. However, the employer opposes the union's request that the Examiner's decision be modified to reflect that the employer deliberately violated its duty to provide information and opposes the union's request for attorney's fees.

ISSUES PRESENTED

1. Does substantial evidence support the Examiner's findings and conclusions that the employer discriminated against Wynter by subjecting him to heightened scrutiny and by issuing a letter of reprimand regarding his attendance in retaliation for Wynter's exercise of protected employee rights?
2. Did the Examiner err by not making a specific finding that the employer threatened Wynter with a negative evaluation in retaliation for his exercise of protected employee rights?
3. Did the Examiner err by not making a finding that the employer's failure to provide the union information was deliberate and therefore warranted an award of attorney's fees?

For the reasons set forth below, we reverse the Examiner's findings and conclusions that the employer discriminated against Wynter in retaliation for Wynter challenging Principal Jill Hudson's interpretation of the school's search policy and for disobeying Hudson's direction.[2]

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[2] This Commission reviews conclusions and applications of law, as well as interpretations of statutes, *de novo*. We review findings of fact to determine if they are supported by substantial evidence and, if so, whether those findings in turn support the Examiner's conclusions of law. *C-TRAN*, Decision 7088-B (PECB, 2002). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Renton Technical College*, Decision 7441-A (CCOL, 2002). Unchallenged findings of fact are accepted as true on appeal. *C-TRAN*, Decision 7088-B. The Commission attaches considerable weight to the factual findings and inferences, including credibility determinations, made by its examiners. *Cowlitz County*, Decision 7210-A (PECB, 2001). The union alleged that the employer retaliated against Wynter for his union activities by placing him on administrative leave for two incidents with students, one on December 4, 2009, and one on December 7, 2009. The Examiner dismissed this allegation, and the union did not appeal the dismissal of this allegation. Therefore, it is unnecessary in this decision to discuss that incident other than to reference it here.

Hudson, as the school's principal, had the authority to direct Wynter in his work and Wynter was obligated to follow Hudson's directions and not be insubordinate towards Hudson, even if her instructions were in violation of the bargained policy. If Wynter or his union believed that Hudson's interpretation of the search policy was incorrect, the proper forum to clarify the policy was through bargaining or the contract's grievance procedure. The Examiner's findings and conclusions that the employer discriminatorily scrutinized Wynter's attendance and issued him a letter of reprimand in retaliation for his union activity are also reversed. Additionally, the union's request for a specific finding that the employer threatened Wynter with a negative performance evaluation is denied because Hudson's comment was in response to non-protected activity.

With respect to the union's request that the employer's production of information was a deliberate and flagrant violation of Chapter 41.56 RCW meriting an award of attorney's fees, we decline to make such an award at this time.

DISCUSSION

A recitation of the pertinent facts is important to place our decision in its proper context. Wynter worked as a security specialist at Nathan Hale High School, and is a member of the union's bargaining unit. Pacifico Quitiquit also worked as a security specialist. Ron Newton was the school's assistant principal and was the direct supervisor of the security specialists. Hudson started work as the principal at the school for the 2009-2010 school year.

During the 2008-2009 school year, Newton observed that Wynter's attendance was becoming a problem. Newton testified that Wynter would not inform the employer when he was going to arrive to work late or miss work. Wynter exhausted his regular leave and was forced to take unpaid leave. On June 19, 2009, Newton issued a letter documenting Wynter's attendance problems.

On October 16, 2009, Wynter and Quitiquit conducted a search of the backpack of a student who was suspected of stealing an iPhone. Wynter and Quitiquit took the student to a private part of the school's activity area to conduct the search. Hudson, as an observer, followed Wynter,

Quitiquit, and the student to watch the search. Shortly after the search was completed, Quitiquit and the student left, and Hudson started asking Wynter questions about the search, including why Wynter did not contact the student's parents before commencing the search. Wynter responded that under the existing search policy, the security specialists were not required to contact the student's parents before the search, rather a search report is generated after the search is completed, and that information goes to the parent. Wynter testified that Hudson started to argue with him about the security policy, saying "that's not the way we do things." Wynter also testified that Hudson informed him that he should not conduct searches in an open space. Wynter stated that he tried to inform Hudson that they "do things by the manual" and that if Hudson wanted the procedure changed, she had to talk with the union. Wynter testified that Hudson was not interested in listening to him.

Hudson testified that because she and Wynter were becoming argumentative in an open area, she ended the conversation and stated that they would meet later. Although Wynter agreed to meet with Hudson, he stated he would not do so without union representation. Hudson agreed to Wynter's request to have a representative of his choosing at the meeting.

On October 26, 2009, Hudson, Newton, Wynter, and David Westberg, the union's business manager who was present on Wynter's behalf, met to discuss Wynter's and Hudson's disagreement. At the start of the meeting, Hudson stated that she wanted to discuss three points: 1) how searches were conducted at the school; 2) Wynter's attendance problems, which included arriving to work late and leaving early, and 3) Wynter's failure to work at his assigned stations.

Both Wynter and Hudson testified that the conversation became animated and that they became argumentative with each other. When Hudson raised a point of criticism about Wynter's past search, Wynter responded by claiming that Hudson was attempting to change policy. Wynter also made a comparison between his performance and Hudson's when Hudson had taken a marijuana pipe from a student (Wynter's testimony), or picked it up from the ground (Hudson's testimony). Hudson responded to Wynter's comparison by stating that it was "ridiculous." Hudson also stated that this matter would need to be addressed through Wynter's performance evaluation. At one point Westberg suggested that Wynter ask to be transferred out of the school because Westberg's experience with Hudson showed that Wynter would face discrimination.

Because the meeting became confrontational, Hudson ended the meeting and left the room without the matter being resolved.

Following the meeting, Hudson sent an e-mail to Pegi McEvoy, the employer's Director of Security, stating that Wynter would not take feedback, accusing Wynter of inappropriate behavior, and stating that Wynter was harassing her. Hudson's e-mail also stated that she wanted Wynter transferred from the school immediately and that she would "write him up." Finally, Hudson's e-mail also detailed Wynter's attendance problems.

On that same day, Hudson gave Wynter a "letter of expectations" which outlined how Hudson believed searches should be conducted and about the expectations being placed on Wynter regarding his attendance. Hudson also directed Wynter not to be insubordinate during meetings where feedback is provided, and not to argue with supervisors.

On November 3, 2009, Newton issued a letter of reprimand to Wynter for his excessive tardiness, leaving work early, and acts of insubordination. The letter first outlined the purpose of the October 26 meeting and then noted that Wynter had not checked in and out of work as directed. The letter then cited thirteen days on which Wynter did not arrive to work on time, nine of which occurred before October 26, 2009, and four instances which came after. The letter also cited six instances where Wynter did not respond to radio calls, two of which occurred prior to October 26, one instance occurring on October 26, 2009, and three instances which came after. Newton's letter also described an October 28, 2009 instance when Wynter was not at his assigned work station. The letter concluded by detailing the employer's expectations of Wynter: his regular work hours, a requirement that he check in with Newton, and providing approval for the use of leave, such as having a doctor's note.

On November, 4, 2009, Westberg requested a meeting with the employer's Human Resources Manager Gloria Morris, Michelle Toley, the employer's Education Director, and McEvoy to raise concerns he had about the letters of reprimand. Toley is Hudson's direct supervisor. Westberg wanted two meetings, one to address the issue of the requirements placed on Wynter's leave, and the other to address what Westberg perceived as retaliatory acts against Wynter. Westberg did not want Hudson present at these meetings.

On November 13, 2009, Morris e-mailed Newton about Westberg's request for a meeting to review the details surrounding these matters. Hudson was copied on that e-mail. On November 14, 2009, Hudson sent an e-mail to Morris stating that she was not sure how Wynter or his union could grieve the matter.

On November 18, 2009, the union filed a grievance on Wynter's behalf alleging that the employer was violating the parties' prior non-discrimination agreement. The union claimed that the letters of reprimand issued to Wynter were in retaliation for his exercising protected rights at the October 26 meeting.

On December 2, 2009, Newton issued a second letter of reprimand to Wynter. The letter outlined thirteen new instances when Newton believed Wynter had not arrived on time, six new instances when Newton believed Wynter had left work early, and also warned Wynter that he was being insubordinate if he continued to disobey directions.

Also on December 2, 2009, Westberg attended a step-two grievance meeting with the employer's Labor Relations Director Debra Hillary, McEvoy, and Tolley where Westberg provided Wynter's version of events and attempted to explain how Hudson was the center of the problem. Westberg also stated that Wynter did not wish to be transferred from Nathan Hale High School.

On December 3, 2009, the union sent an information request to Hillary asking for any and all information used to discipline Wynter, and for any and all copies of any discipline imposed on Wynter for the last four years. The employer did not respond to the union's request for information until March 16, 2010, nor did it explain its delay. When the employer did provide information to the union, one of the documents the employer provided was a copy of Wynter's June 19, 2009 evaluation. This evaluation differed from the copy that Wynter was given at the time of the evaluation, as the copy of the "punctuality and attendance" section of the evaluation provided by the employer to the union had been marked "below average," while Wynter's original copy did not contain such a mark. Additionally, on the second page of the copy provided by the employer, Wynter's overall evaluation was marked with a typewritten "X," while the original copy was marked with a handwritten "X." Finally the copy provided by the

employer was not signed, while Wynter and Newton signed the copy originally provided to Wynter.

ISSUES 1 and 2 – Discrimination for Challenging Hudson

Applicable Legal Standard – Discrimination

An employer unlawfully discriminates against an employee when it takes action in reprisal for the employee's exercise of rights protected by the Chapter 41.56 RCW. *Educational Service District 114*, Decision 4361-A (PECB, 1994). The employee maintains the burden of proof in employer discrimination cases. To prove discrimination, the employee must first make a prima facie case by establishing the following:

1. The employee participated in an activity protected by the collective bargaining statute, or communicated to the employer an intent to do so;

2. The employer deprived the employee of some ascertainable right, benefit, or status; and

3. A causal connection exists between the employee's exercise of a protected activity and the employer's action.

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

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

In response to a prima facie case of discrimination, the employer need only articulate its non-discriminatory reasons for acting in such a manner. The employer does not bear the burden of proof to establish those reasons. *Port of Tacoma*, Decision 4626-A (PECB, 1995). Instead, the burden remains on the employee to prove either that the employer's reasons were pretextual, or that union animus was a substantial motivating factor behind the employer's actions. *Port of Tacoma*, Decision 4626-A.

Applicable Legal Standard - Interference

Generally, the burden of proving unlawful interference with the exercise of rights protected by Chapter 41.56 RCW rests with the complaining party or individual. An interference violation exists when employees could reasonably perceive the employer's actions as a threat of reprisal or force, or promise of benefit, associated with the union activity of the disciplined employee. *Kennewick School District*, Decision 5632-A (PECB, 1996). The complainant is not required to demonstrate the employer intended, or was motivated, to interfere with employees' protected collective bargaining rights. *See City of Tacoma*, Decision 6793-A (PECB, 2000). Nor is it necessary to show that the employee involved was actually coerced by the employer or that the employer had a union animus for an interference charge to prevail. *City of Tacoma*, Decision 6793-A.

Application of Standards - Discrimination

The first step in the discrimination analysis is to determine whether the union established its prima facie case. The first step in establishing a prima facie case is to determine if the employee involved was engaged in protected activity. The Examiner found that Wynter's act of challenging Hudson about the search policy in October 2009 was union activity because Wynter continually stated that the search policy was a "union issue." The Examiner also found that Wynter's request for a *Weingarten* representative at the meeting with Hudson was also protected union activity, as that meeting could have, and did, lead to discipline. Finally, the Examiner found that Wynter was engaged in union activity when he filed a grievance regarding the letters of reprimand issued to him. The next step of the prima facie case is to determine if the employee has been deprived of a certain right or benefit based upon the employer's conduct. The final step is to determine if there is a causal connection between the employee's protected activity and the imposed discipline. We examine each in turn.

The October 2009 Student Search

When determining the limits of protected activity, this Commission must be mindful that although Chapter 41.56 RCW protects an employee's right to form, join or assist a union, employers still have the right to manage their operations and direct employees in their day-to-day activities. When Hudson challenged Wynter about how he conducted student searches, Wynter became argumentative with Hudson because he believed that Hudson's instructions on how to conduct those searches ran contrary to his interpretation of the bargained policy.

Nothing in Chapter 41.56 RCW permits employees to be insubordinate to their supervisors. Employees have an obligation to follow the reasonably issued instructions of their supervisors, even if those instructions run afoul of the provisions of a collective bargaining agreement or a negotiated policy. An employee may inform his or her supervisor that the instructions are contrary to the agreement, but Chapter 41.56 RCW does not protect employees who argue or become insubordinate with their supervisors about those instructions or the performance of their duties.

Furthermore, the individual employee does not have the authority to bargain with the employer on behalf of the entire bargaining unit. Chapter 41.56 RCW precludes an employer from negotiating the terms and conditions of employment directly with its organized employees.

Where an employee believes that instructions from a supervisor run contrary to the provisions of a negotiated policy, the employee is obligated to follow the instruction of her or his supervisor, and then, on his or her own time, the employee may contact their exclusive bargaining representative to discuss the matter. If an employer retaliates against an employee for going to his or her union to discuss the matter or in retaliation for the employee filing a grievance, then a discrimination violation could be found if the basis for the retaliation was because of such protected activity.

Applying these standards to the facts presented here, Wynter's verbal challenge to Hudson about how searches were to be carried out was not protected activity. Wynter was obligated to follow Hudson's instructions, and take the matter to his union at a later time. Accordingly, any discipline of Wynter for being insubordinate was not issued in violation of Chapter 41.56 RCW.

The October 26, 2009 *Weingarten* Meeting

Following the initial student search incident, Hudson informed Wynter that she wanted to have a meeting with him about the way searches were to be conducted. Wynter asked for a *Weingarten* representative at that meeting.[3] *Weingarten* recognizes that employees have the right to be accompanied and assisted by their union representatives or fellow employees at investigatory meetings that the employees reasonably believe could result in disciplinary action. Additionally, *Weingarten* places certain procedural limitations on employers regarding how such meetings are to be conducted, such as allowing an employee to have a representative of her or his choosing and permitting the employee's chosen representative the ability to speak on behalf of the employee. *E.g., Omak School District*, Decision 10781-A (PECB, 2010). If an employer violates the procedural standards enunciated through *Weingarten* and its progeny, then the employer commits an unfair labor practice by interfering with protected employee rights. *See Methow Valley School District*, Decision 8400-A (PECB, 2004). In this case, there is no question that Hudson called for an investigatory meeting that Wynter could reasonably have believed that discipline could result from, that Wynter requested a *Weingarten* representative, that Hudson granted Wynter's request, and that Westberg attended the meeting as Wynter's representative.

The Examiner's *Weingarten* Analysis

The Examiner concluded that Wynter's invocation of his *Weingarten* rights was protected activity. We agree. *Weingarten* not only allows an employee to have a representative at an investigatory meeting, but also allows the employee and his or her representative to participate in the process. This is an accurate statement of the law.

The Examiner found that Wynter's attempt to defend himself by arguing with Hudson was "reasonable conduct" and therefore also protected activity. We disagree.

In reaching his conclusions that Wynter's arguing was protected activity, the Examiner explained that *Weingarten* permits employees to "reasonably" explain themselves. The Examiner also found that the union proved that Wynter's attempt to explain himself was reasonable and the

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[3] *NLRB v. Weingarten*, 420 U.S. 251 (1975), *cited with approval in Okanogan County*, Decision 2252-A (PECB, 1986).

substantial motivating factor behind the employer's decision to discipline him. We disagree with the Examiner's reasoning and his conclusion that Wynter's conduct during the meeting was protected.

The Commission has not squarely ruled on the protections afforded to an employee's conduct during an investigatory interview. In the absence of existing Commission precedent, this Commission and Washington Courts interpret issues arising under Chapter 41.56 RCW by examining federal decisions construing the National Labor Relations Act (NLRA) when the language of the two statutes is similar. *IAFF Local 609 v. City of Yakima*, 91 Wn. 2d 101 (1978). While Section 7 of the Act and RCW 41.56.040(1)(3) are not identical, the Commission has previously held that the rights granted in Section 7 may be inferred in RCW 41.56.040. *Okanogan County*, Decision 2252-A.

In *Yellow Freight System, Inc.*, 317 NLRB 115 (1995), the National Labor Relations Board (NLRB) recognized employee representatives are not permitted to transform investigatory meetings into confrontational sessions and when they do, they lose protection of Section 7 of the NLRA is lost. In that case, an employee's *Weingarten* representative used demeaning language and called the employee's manager a liar during the course of a meeting. The employer terminated the meeting, and the employee's representative was disciplined for his conduct at the meeting. The union filed a complaint claiming the discipline was improperly imposed in retaliation for the exercise of protected activity. In dismissing the union's complaint, the NLRB found that an employer exercising the legitimate prerogative of investigating employee misconduct calls for a more restrictive test than what is allowed in other labor management settings. Therefore, unlike other labor management settings, where profane language and discourteous conduct is tolerated, the conduct of an employee at an investigatory meeting must meet a higher standard.

The policy announced in *Yellow Freight System, Inc.* is readily applicable to public sector collective bargaining and applicable to the individual employee being investigated. Furthermore, even though the *Yellow Freight System, Inc.* case involved the conduct of an employee's chosen representative, we find the standards announced by the NLRB are readily applicable to the individual employee as well. Like their private sector counterparts, public employers have a

legitimate interest in investigating employee misconduct. Requiring employees and their representatives to conduct themselves in a respectful manner during the course of a *Weingarten* meeting does not infringe upon the other procedural protections afforded to employees during such a meeting.

Applying these standards to the case before us, the record clearly establishes that Wynter's conduct towards Hudson during the October 26 meeting was disruptive. Wynter consistently interrupted Hudson, argued with her, and at one point accused Hudson of lying. Hudson's statement about "taking care of this matter" through the evaluation process was made in response to Wynter's outbursts. Hudson's conduct at the meeting was far from exemplary, and the fact that she became noticeably angry was hardly conduct that would be expected from a professional educator. However, Hudson's conduct did not excuse Wynter's behavior. Because Wynter's conduct was argumentative and disruptive, it was not protected by Chapter 41.56 RCW. Thus, while the act of invoking one's *Weingarten* rights is a protected activity, the fact that employee misconduct occurs in a *Weingarten* meeting does not excuse the misconduct.[4]

The evidence in this case demonstrates that the letters of reprimand were not issued for Wynter's union activity; rather, the employer issued the letters in response to his non-protected conduct. The employer willingly granted Wynter the right to have Westberg at the meeting, and on one occasion during the meeting, Hudson even asked for Westberg's assistance in communicating with Wynter. Transcript, pg. 84, line 9 – 13. Furthermore, Wynter was on notice prior to the meeting that his attendance was an issue and was being monitored. Because the union failed to demonstrate a *prima facie* case of discrimination, this portion of the Examiner's decision is reversed, and the union's allegation that the employer discriminated against Wynter for invoking his *Weingarten* rights is dismissed.

Union's Request for Additional Interference Findings

Where a complaint alleging discrimination is dismissed, an independent interference violation cannot be found based on the same facts. *See Reardan-Edwall School District*, Decision 6205-A

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[4] We also reject the Examiner's "reasonableness" test. Under this approach, any "reasonable" statement made by an employee during an investigatory interview would gain protection under the Act, stretching *Weingarten* well beyond current law.

(PECB, 1998). Because we have dismissed the discrimination portion of the complaint, an independent interference violation cannot be found.

ISSUE 3 – Union's Request for Extraordinary Remedies for Failure to Provide Information

Applicable Legal Standards

The Legislature empowered this Commission to prevent and remedy unfair labor practices. RCW 41.56.160. The fashioning of remedies is a discretionary action of the Commission. *City of Seattle*, Decision 8313-B (PECB, 2004). When interpreting the Commission's remedial authority, the Supreme Court of the State of Washington approved a liberal construction of the statute to accomplish its purpose. *METRO v. Public Employment Relations Commission*, 118 Wn.2d 621 (1992). Appropriate remedial orders include remedies necessary to effectuate the purposes of the collective bargaining statute and to make the Commission's lawful orders effective. *METRO*, 118 Wn.2d at 633.

Application of Standards

The Examiner found that the employer failed to provide the union with the information it requested in a prompt manner. Additionally, the Examiner found that the employer provided materially misleading information to the union. The Examiner declined the union's request for attorney's fees based upon the fact that this agency ordered the employer to attend agency mandated training on how to deal with information requests. *See Seattle School District*, 10664-A (PECB, 2010). That training was held in April 2010. The Examiner specifically found that the employer should be given an opportunity for the training to take full effect before imposing extraordinary remedies.

The employer has not challenged these findings and conclusions. The union is asking for extraordinary remedies based upon what it terms a flagrant violation of the act.

We are deeply troubled by the employer's response to the union's information request. The union presented credible evidence that the June 16, 2009 evaluation in Wynter's possession, which was signed by both Wynter and Newton, did not negatively reflect on his punctuality and attendance. However, when the employer provided the union its copy of that document as part

of the union's information request, that copy showed that Wynter received negative remarks for punctuality and attendance, and it was not signed by the employer.

It readily appears that the employer materially altered Wynter's previous evaluations to reflect negatively upon him. The union did not allege or prove by a preponderance of the evidence that this alteration was in retaliation for Wynter's filing of a grievance over whether the letters of reprimand were properly issued. However, we can use our remedial authority for the unchallenged violation to ensure that the altered evaluations are not made part of Wynter's permanent file. Accordingly, the only copy of Wynter's June 19, 2009 evaluation that should be in his file is the copy that he and Newton originally signed.

With respect to the union's request for attorney's fees, we agree with the Examiner that the employer's violations in this case occurred prior to the employer being ordered to attend agency mandated training, and that training should be allowed to take hold before imposing additional remedies. Accordingly, we decline the union's request for attorney's fees in this case, but should this employer again fail in its obligation to provide a union with necessary and relevant information, the appropriateness of attorney's fees will be reconsidered.

NOW, THEREFORE, it is

ORDERED

I. The Findings of Fact issued by Examiner Philip Huang are AFFIRMED and adopted as the Findings of Fact of the Commission.

II. The Conclusions of Law issued by Examiner Phillip Huang are AFFIRMED and adopted as the Conclusions of Law of the Commission, except Conclusion of Law 2, which is amended to read as follows:

2. The evidence, as described in paragraphs 3 through 10 of the foregoing findings of facts, establishes that Vilando Wynter's union activity was not a substantial

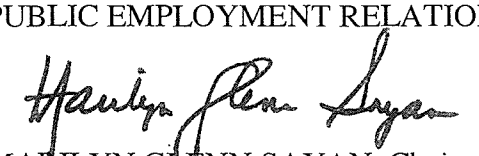
factor in the Seattle School District's decision to issue letters of reprimand to Wynter.

III. The Order issued by Examiner Phillip Huang is AFFIRMED as the Order of the Commission, except paragraphs 1.a., 2.a. and 2.b., which are stricken from the record. Additionally, the Commission issues the following supplemental new order as a new paragraph 3:

3. The complaint filed by International Union of Operating Engineers, Local 609 alleging that the Seattle School District discriminated against Vilando Wynter in retaliation for his exercise of protected activity is DISMISSED.

ISSUED at Olympia, Washington, this 18th day of November, 2011.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY:/S/ MAJEL C. BOUDIA

CASE NUMBER:	23073-U-10-05874	FILED:	02/26/2010	FILED BY:	PARTY 2
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BAR UNIT:	SECURITY				
DETAILS:	Vilandro Wynter				
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