STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE SCHOOL DISTRICT, Employer.	
NATALIE POULSON, Complainant, vs. SPOKANE EDUCATION ASSOCIATION, Respondent.	CASE 134852-U-22 DECISION 13619 - EDUC FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Austin Hatcher, Attorney at Law, Hatcher Law, PLLC, for Natalie Poulson, the complainant.

Sarah N. Harmon, Attorney at Law, Powell, Kuznetz & Parker, P.S., for the Spokane Education Association.

On February 24, 2022, Natalie Poulson filed an unfair labor practice complaint with the Public Employment Relations Commission (Commission) against the Spokane Education Association (union). The Spokane School District (employer) is not a party to this complaint. Poulson's complaint alleged that the union breached its duty of fair representation by failing to provide requested information concerning an investigatory meeting. A cause of action statement was issued on March 15, 2022, and an answer was filed on April 4, 2022. The union filed a motion for summary judgement on August 24, 2022, which was denied on September 14, 2022. A hearing was conducted by videoconference on September 21, 2022. The parties filed briefs on November 10, 2022, to complete the record.

ISSUE

The issue, as framed by the cause of action statement, is:

> Union interference with employee rights in violation of RCW 41.59.140(2)(a), within six months of the date the complaint was filed, by breach of its duty of fair representation when Jeremy Shay told Natalie Poulson he would provide Poulson a copy of notes from the investigatory hearing, Poulson relied on Shay's statements and did not take notes, then Shay refused to provide the notes.

Based on the record, the union violated its duty of fair representation when Shay refused to provide Poulson a copy of the notes Shay took during a January 20, 2022, investigatory interview. The notes Poulson requested related to an investigation by the employer that led to Poulson's discharge. Shay promised Poulson a copy of the notes before the investigatory interview but later refused to provide the notes. The union's conduct was arbitrary. The union could have provided the notes as previously promised and failed to provide any substantial countervailing interest in refusing to provide the notes to Poulson.

BACKGROUND

Poulson was employed by the employer as a certificated teacher for approximately 18 years. Poulson worked at Finch Elementary as a special education teacher at the start of the 2021–22 school year. Poulson was a member of the union for many years but stopped paying dues in February 2021 and became a nonmember.

The union represents all certificated teachers and has a collective bargaining relationship with the employer. At all times relevant to this matter, the parties had a collective bargaining agreement (CBA) in place, which included language that expressed employees' rights to nondiscrimination and access to the grievance procedure. Article I, Section 4.B of the parties' CBA states, "There shall be no discrimination, interference, restraint, coercion, or harassment, including sexual harassment, by the District or the Association of any District or Association employee, member of the Board, or its representatives." Article IV, Section 3.C.5 states, "An employee shall have . . .

access to the grievance procedure." Article VII, Section 1.A defines a grievance as "an alleged violation of a specific term of this Agreement, or a dispute regarding an interpretation of the Agreement." Article VII, Section 1.B defines a grievant as "an individual employee, group of employees within a building or program, or the Association."

In July 2021, the Department of Health published K–12 COVID-19 requirements for the 2021–22 school year that stated, "[A]ll staff and students must continue to wear face coverings/masks, regardless of vaccination status." On August 27, 2021, the union and employer entered into a Memorandum of Understanding (MOU) stating that "all school personnel . . . and students must wear cloth face coverings, or an acceptable alternative . . . at school when indoors . . . ." On September 27, 2021, Governor Jay Inslee entered Proclamation 21-14.2, which required all employees in an educational setting to be vaccinated against COVID-19 by October 18, 2021, with exceptions for disability and religious exemptions. Poulson sought and received a religious exemption to the vaccination requirement, which required Poulson to wear a mask while at work.

On November 23, 2021, Poulson and several other employees participated in a protest against the mask mandate. Throughout the day Poulson refused to wear a mask while working around staff and students at Finch Elementary. The following day, the employer placed Poulson on paid administrative leave for insubordination and failing to wear a mask.

On January 12, 2022, the employer sent a notice requesting Poulson appear at the district office on January 20, 2022, for an investigatory interview. On January 15, 2022, Poulson emailed Union President Jeremy Shay, requesting union representation for the interview. Shay responded on January 18, 2022, stating that someone from the union would attend the meeting. Ultimately, Shay attended the January 20, 2022, investigatory interview as Poulson's representative.

Shay and Poulson met privately before the start of the meeting on January 20, 2022. Poulson asked if Shay intended to take notes during the interview. Shay replied in the affirmative, and Poulson asked to receive a copy of Shay's notes. Shay testified that he told Poulson he would scan a copy of the notes he took during the meeting and email them to Poulson.

During the January 20, 2022, meeting, district officials questioned Poulson for several hours about her actions on November 23, 2021. Shay testified that he took six to seven pages of handwritten notes containing a shorthand memorialization of the questions the employer asked and the answers Poulson provided during the interview.[1] Poulson testified that she did not take any notes during the interview because she expected to receive a copy of Shay's notes following the meeting. The employer did not issue Poulson any discipline at the conclusion of the meeting but continued to keep Poulson on paid administrative leave.

On February 14, 2022, at 9:32 a.m., Poulson sent Shay an email requesting a scanned copy of his handwritten notes per their prior verbal agreement. Shay responded one minute later stating, "I will not be providing my notes as I am not obligated to do so." A couple of hours later Poulson replied, "Please send me the policy that does not allow you to send me your notes. This is very frustrating considering you have [sic] a verbal promise prior to the meeting that you were going to scan and send to me via email." Within minutes, Shay provided the following response:

> The law that requires me to serve as your representative does not require me to provide any notes to you. Only that I ensure that no provisions of the collective bargaining agreement have been violated by the district. In all the times I have served as a representative I have never provided my notes to the individual.

At 12:45 p.m., Poulson wrote back to Shay:

> What law is that? That is extremely frustrating, Jeremy, that you would give me a verbal agreement that you would be providing me your notes and then rescind once the meeting has concluded and I have no recourse to go back and provide my own notes. I am asking to follow through with your original agreement with me to provide the notes you took in the meeting on January 20.

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[1] Shay's notes were not introduced as evidence at the hearing.

Shay did not respond, so Poulson sent another email on February 16, 2022, stating:

> I'm still curious about what law you are referring to. Please let me know what law that is. Also, I'd like to request the notes again that you verbally promised to me prior to the meeting. I am the "client" and therefore should be able to access the materials created from you as my representation [sic].

Two minutes later, Shay responded, "I am not providing my notes. They are my notes and I am not providing them."

On February 18, 2022, Poulson sent another email asking for a copy of Shay's January 20, 2022, notes. Poulson's email stated:

> I am concerned that the district will be terminating me, and I need your notes in order to review whether I should pursue a grievance or statutory hearing challenging my termination or some other appeal process. To that end, I need to know whether any CBA provisions were breached or if there was any procedural error . . . You have provided no SEA [union] policy that prevents you from sending your notes, only that they are yours and you are not sending them, which is in direct contradiction to what you told me prior to the meeting.

Later the same day, Shay responded, "Nothing that has occurred violates any provision of the collective bargaining agreement. I am not going to be providing my notes to you."

Shay testified that there was no official union policy prohibiting Shay from providing a copy of his notes. Shay attested that he spoke to a union advocacy staff person after promising to provide a copy of the notes to Poulson. This unnamed staff employee told Shay that the union did not want to turn over copies of interview notes because doing so could open the union up to accusations of insufficient note-taking. The staff person stated the union generally did not provide staff notes to members and did not recommend providing Shay's notes to Poulson. Shay did not inform Poulson that he changed his mind on providing a copy of the notes until Poulson contacted Shay by email on February 14, 2022.

On February 24, 2022, Poulson attended another meeting at the district office to receive a letter of the employer's findings. Poulson arrived at the meeting without a union representative. The employer then contacted Shay and asked if he was available to act as Poulson's representative. Once Shay arrived at the district office, the employer handed Poulson a letter detailing the district's findings of its investigation into Poulson's actions on November 23, 2021. The letter concluded that the employer had probable cause to immediately discharge Poulson's employment and issue a notice of nonrenewal. The letter further stated that Poulson could appeal the employer's determinations pursuant to chapter 28A.405 RCW. Poulson and Shay both read the letter and the meeting ended.

Shay testified that this was the first findings meeting Shay had participated in where the employee was terminated. Shay further attested that on some previous occasions when a union member received a findings letter following an investigation, Shay would check his notes from the interview to ensure that the findings letter was accurate. Shay did not compare the statements in Poulson's findings letter to his notes from the January 20, 2022, interview.

Following the February 24, 2022, meeting, Poulson timely requested a statutory hearing, pursuant to RCW 28A.405.310, to challenge her notice of discharge and nonrenewal.

ANALYSIS

Applicable Legal Standard

Duty of Fair Representation

It is an unfair labor practice for a bargaining representative to interfere with, restrain, or coerce public employees in the exercise of their rights. RCW 41.59.140(2)(a). One way unions can interfere with public employees' rights is by breaching the duty of fair representation. *City of Tacoma (Tacoma Police Management Association)*, Decision 12849-A (PECB, 2018). The duty of fair representation arises from the rights and privileges held by a union when it is certified or recognized as the exclusive bargaining representative under a collective bargaining statute. *State – Washington State Patrol (Washington State Patrol Troopers Association)*, Decision 12967-A (PECB, 2019) (citing *C-TRAN (Amalgamated Transit Union, Local 757)*,

Decision 7087-B (PECB, 2002); *City of Seattle (International Federation of Professional and Technical Engineers, Local 17)*, Decision 3199-B (PECB, 1991)).

In *Allen v. Seattle Police Officers' Guild*, 100 Wn.2d 361 (1983), the Washington State Supreme Court adopted three standards by which to measure whether a union has breached its duty of fair representation:

1. The union must treat all factions and segments of its membership without hostility or discrimination.

2. The broad discretion of the union in asserting the rights of its individual members must be exercised in complete good faith and honesty.

3. The union must avoid arbitrary conduct.

Each requirement represents a distinct and separate obligation.

The employee claiming a breach of the duty of fair representation has the burden of proof and must demonstrate that the union's actions or inactions were discriminatory or in bad faith. *City of Spokane (Washington State Council of County and City Employees)*, Decision 13088-A (PECB, 2020) (citing *City of Renton (Washington State Council of County and City Employees)*, Decision 1825 (PECB, 1984)). An exclusive bargaining representative breaches its duty of fair representation when its conduct is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171 (1967); *City of Seattle (Seattle Police Officers' Guild)*, Decision 11291-A (PECB, 2012). A union member's dissatisfaction with the level and skill of representation does not form the basis for a cause of action, unless the member can prove the union violated the rights guaranteed in statutes administered by the Commission. *City of Seattle (PROTEC17)*, Decision 13533-A (PECB, 2022) (citing *Dayton School District (Dayton Education Association)*, Decision 8042-A (EDUC, 2004)).

Application of Standard

The complainant argues that the union breached its duty of fair representation owned to Poulson by promising to provide a copy of Shay's notes and then arbitrarily refusing to provide the notes. Recently, an Examiner found a violation in a case with a set of facts similar to those present here. In *East Valley School District – Spokane (Public School Employees of Washington)*, Decision 13114 (PECB, 2019), a custodial employee was the subject of an investigatory interview and several other performance-related meetings. A union representative attended each meeting as the employee's representative. About two months after the last investigatory meeting, the employee requested copies of the notes the union representative took during the meetings. The employee did not take their own notes. The union refused to provide the notes because the notes were the property of the union and it "had a practice of not sharing notes with members."

The Examiner noted that the Commission had "not yet been asked to decide whether a union violates its duty of fair representation under the *Allen v. Seattle Police Officers' Guild* standards by refusing to provide a union member with notes from an investigatory meeting involving a union member." As a case of first impression the Examiner looked to National Labor Relations Board (NLRB) case law interpreting the National Labor Relations Act (NLRA) for guidance. There, the Examiner found an analogous case:

> The NLRB has found that a union can violate its duty of fair representation if it fails to provide information to union members under certain circumstances. In *Letter Carriers Branch 529*, 319 NLRB 879 (1995), the NLRB affirmed the administrative law judge's decision that the union violated its duty of fair representation when it refused to provide a union member with copies of her grievance forms. While the NLRB, as well as the Commission, provided unions with "a wide range of reasonableness in serving the unit employees," the NLRB applied the following factors in finding that the union's conduct fell so far outside of the wide range of reasonableness as to be irrational:
>
> 1. The documents requested pertained to a grievance filed by the union member;
>
> 2. The union member had a legitimate general interest in obtaining the documents;

> 3. The legitimate interest in obtaining the documents was communicated to the union;
>
> 4. The union raised no substantial countervailing interest in refusing to provide the union member with the copies of the requested documents;
>
> 5. The ability of the union to provide copies of the documents; and
>
> 6. The relative ease with which the union could have complied with the request, taking into account the limited amount of documentation requested.
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> 319 NLRB at 881-2; *see also Mail Handlers Local 307 (Postal Service)*, 339 NLRB 93 (2003); *Letter Carriers Branch 758 (Postal Service)*, 328 NLRB 952 (1999). In the *Letter Carriers [Branch] 529* case, a member requested grievance forms that were in the union's possession, the documents related to a grievance the member had filed, and the legitimate general interest was communicated to the union. The NLRB found a violation because the union provided no substantial countervailing interest or reason not to provide the documents to the union member.

East Valley School District – Spokane (Public School Employees of Washington), Decision 13114.

The Examiner also quoted a section of the *Letter Carriers Branch 529* decision where the NLRB rejected the union's defense for refusing to provide the documents:

> We are unable to fit the Respondent's refusal to provide [the union member] with copies of the forms within even the wide range of reasonableness that must be allowed a statutory collective-bargaining representative. Even the respondent's arguably good-faith, nondiscriminatory reliance on [the National Association of Letter Carriers]'s asserted "policies" of not providing grievants with standard grievance forms and not giving out copies of grievance forms, and the Respondent's ignorance of the underlying reasons for [the union member]'s request cannot rescue its conduct from drifting beyond the borders of reasonableness, into arbitrariness. . . . [The union] relied simply on the wobbly footings of the "advice of our national business agent," and the assertion that [the union member's] grievance forms were the "property" of the Respondent.

Letter Carriers Branch 529, 319 NLRB 879, 882 (1995). The Examiner in *East Valley School District – Spokane (Public School Employees of Washington)* then applied the six *Letter Carriers Branch 529* factors and determined that the union's refusal to provide the representative's meeting

notes "fell so outside the wide rage of reasonableness as to be irrational" and, thus, violated the duty of fair representation.

Applying the six *Letter Carriers Branch 529* factors to the facts present here, I conclude that the union engaged in arbitrary conduct prohibited by *Allen v. Seattle Police Officers' Guild* when it refused, without reasonable explanation, to provide Shay's meeting notes to Poulson. Concerning the first element, Poulson had not filed a grievance at the time she requested Shay's meeting notes on February 14, 2022. However, Poulson could not have filed a grievance at the time Shay refused to provide the notes because the employer had not yet taken any disciplinary action against Poulson. Shay's notes, though, did pertain to an investigative interview that ultimately led to Poulson's termination and nonrenewal of employment. A record of the questions that were asked of Poulson and her responses during the meeting are directly relevant to Poulson's potential recourse in challenging the employer's termination decision. As such, Shay's notes did relate to a potential grievance.

The January 20, 2022, investigatory interview resulted in Poulson's termination, and the union knew Poulson intended to challenge a discharge determination. Poulson told Shay in the February 18, 2022, email, "I am concerned that the district will be terminating me, and I need your notes in order to review whether I should pursue a grievance . . . ." Thus, Shay's notes pertained directly to a potential grievance at the time Poulson requested the notes and Shay refused to provide them.

Ultimately, Poulson did not file a grievance over her discharge because RCW 28A.405.310 provides a separate statutory hearing procedure to appeal teacher discharge and contract nonrenewal. In applying the first element of the *Letter Carriers Branch 529* six-factor test, I find that Poulson's pursuit of a statutory hearing under RCW 28A.405.310 equivalent to a private sector employee pursuing a discharge grievance. The NLRB fashioned the *Letter Carriers Branch 529* test for private sector employment relationships covered by the NLRA. In the private sector grievances are uniformly the only means for unionized employees to challenge disciplinary actions taken against them. The statutory hearing Poulson utilized to challenge her termination is unique to certificated public school district employees, and I consider it, for the limited purpose of

applying the *Letter Carriers Branch 529* test, to be an extension of the grievance procedure available to Poulson as an employee covered by a contract and represented by a union.

Regarding the second factor, Poulson had a legitimate interest in obtaining a copy of Shay's notes because they memorialized an investigatory interview that resulted in Poulson's termination. Critically, Poulson did not take notes during this important interview because Shay had promised to provide a copy of his notes. Third, Poulson clearly communicated a legitimate interest in obtaining the notes in her February 18, 2022, email to Shay. Fourth, the union raised no substantial countervailing interest in refusing to provide Poulson with a copy of Shay's notes. Shay never communicated to Poulson any legitimate interests the union had in refusing to provide the notes aside from a general assertion that the union had not provided such notes in the past and that the notes were Shay's property. These are similar asserted union interests rejected by the Examiner in *East Valley School District – Spokane (Public School Employees of Washington)* and the NLRB in *Letter Carriers Branch 549*. I find no reason to come to a different conclusion. Shay promised to provide a copy of his notes of a consequentially important disciplinary meeting to Poulson who relied on that promise in deciding not to take her own notes. Shay later refused to provide the notes because no one had asked for his notes before and they were his property. Such reasons are arbitrary and certainly do not amount to substantially countervailing interests that would justify refusing to provide the relevant notes. Regarding elements five and six, Shay testified that he took six to seven pages of handwritten notes during the January 20, 2022, interview, and retained possession of the notes at the time Poulson requested a copy. The union could easily have scanned Shay's notes and emailed them to Poulson as an attachment.

The union argues that simple negligence, ineffectiveness, or poor judgement is insufficient to establish a breach of the union's fair representation duties. *Washington State Liquor and Cannabis Board (Washington Federation of State Employees)*, Decision 13333 (PSRA, 2021); *City of Redmond (Redmond Employees Association)*, Decision 886 (PECB, 1980). Here, Shay promised to provide Poulson with a copy of his notes. Relying on Shay's promise, Poulson did not take notes during a lengthy investigatory interview that resulted in Poulson's discharge. Shay later refused to provide the notes to Poulson and failed to provide any legitimate interest for the refusal. Such

conduct is clearly arbitrary. Like the Examiner in *East Valley School District – Spokane (Public School Employees of Washington)*, I find that the *Letter Carriers Branch 529* test provides a rational standard to analyze the facts of this case that is consistent with the Commission's holding in *Allen v. Seattle Police Officers' Guild* that unions must avoid arbitrary conduct.

CONCLUSION

The union engaged in arbitrary conduct and violated its duty of fair representation by refusing to provide Poulson with a copy of Shay's notes from the January 20, 2022, investigatory interview. This case is decided on the facts presented and each future case must be decided upon its own facts. Thus, this decision does not create absolute rights or absolute duties on unions on behalf of bargaining unit members.

REMEDY

Washington State law grants the Commission and its examiners the authority to issue appropriate orders to remedy unfair labor practices. RCW 41.59.150. The standard remedy for an unfair labor practice violation includes ordering the offending party to cease and desist and, if necessary, to restore the status quo; post notice of the violation; and publicly read the notice. *State – Corrections*, Decision 11060-A (PSRA, 2012); *City of Anacortes*, Decision 6863-B (PECB, 2001).

Poulson seeks the standard remedies and an award of attorney fees. The award of attorney fees constitutes an extraordinary remedy. Attorney fees are only awarded when a defense is frivolous or when the respondent engages in egregious bad acts or a repetitive pattern of illegal conduct. *State – Corrections*, Decision 11060-A; *Western Washington University*, Decision 9309-A (PSRA, 2008).

I award Poulson the standard remedies. The union is ordered to provide Poulson with a copy of Shay's notes from the January 20, 2022, investigatory interview. I do not award the extraordinary remedy of attorney fees. The union's defense was not frivolous, nor was there evidence the union engaged in recidivist conduct. The Commission's standard remedy is sufficient.

FINDINGS OF FACT

1. The Spokane School District (employer) is a public employer within the meaning of RCW 41.59.020(5).

2. The Spokane Education Association (union) is an employee organization within the meaning of RCW 41.59.020(1) and is the exclusive bargaining representative of certificated teachers.

3. The employer and the union were parties to a collective bargaining agreement effective September 1, 2019, through August 31, 2022.

4. Jeremy Shay was the union's president for the 2021–22 school year.

5. Natalie Poulson was employed by the employer as a certificated teacher for approximately 18 years.

6. Poulson worked at Finch Elementary as a special education teacher at the start of the 2021–22 school year.

7. Poulson was a member of the union for many years but stopped paying dues in February 2021 and became a nonmember.

8. At all times relevant to this matter, the union and employer had a collective bargaining agreement (CBA) in place, which included language that expressed employees' rights to nondiscrimination and access to the grievance procedure. Article I, Section 4.B of the parties' CBA states, "There shall be no discrimination, interference, restraint, coercion, or harassment, including sexual harassment, by the District or the Association of any District or Association employee, member of the Board, or its representatives." Article IV, Section 3.C.5 states, "An employee shall have . . . access to the grievance procedure." Article VII, Section 1.A defines a grievance as "an alleged violation of a specific term of this Agreement, or a dispute regarding an interpretation of the Agreement." Article VII,

Section 1.B defines a grievant as "an individual employee, group of employees within a building or program, or the Association."

9. In July 2021, the Department of Health published K–12 COVID-19 requirements for the 2021–22 school year that stated, "[A]ll staff and students must continue to wear face coverings/masks, regardless of vaccination status."

10. On August 27, 2021, the union and employer entered into a Memorandum of Understanding (MOU) stating that "all school personnel . . . and students must wear cloth face coverings, or an acceptable alternative . . . at school when indoors . . . ."

11. On September 27, 2021, Governor Jay Inslee entered Proclamation 21-14.2, which required all employees in an educational setting to be vaccinated against COVID-19 by October 18, 2021, with exceptions for disability and religious exemptions. Poulson sought and received a religious exemption to the vaccination requirement, which required Poulson to wear a mask while at work.

12. On November 23, 2021, Poulson and several other employees participated in a protest against the mask mandate. Throughout the day Poulson refused to wear a mask while working around staff and students at Finch Elementary.

13. On November 24, 2021, the employer placed Poulson on paid administrative leave for insubordination and failing to wear a mask.

14. On January 12, 2022, the employer sent a notice requesting Poulson appear at the district office on January 20, 2022, for an investigatory interview.

15. On January 15, 2022, Poulson emailed Shay, requesting union representation for the interview. Shay responded on January 18, 2022, stating that someone from the union would attend the meeting. Ultimately, Shay attended the January 20, 2022, investigatory interview as Poulson's representative.

16. Shay and Poulson met privately before the start of the January 20, 2022, meeting. Poulson asked if Shay intended to take notes during the interview. Shay replied in the affirmative,

and Poulson asked to receive a copy of Shay's notes. Shay told Poulson he would scan a copy of the notes he took during the meeting and email them to Poulson.

17. During the January 20, 2022, meeting, district officials questioned Poulson for several hours about her actions on November 23, 2021. Shay took six to seven pages of handwritten notes containing a shorthand memorialization of the questions the employer asked and the answers Poulson provided during the interview. Poulson did not take any notes during the interview because she expected to receive a copy of Shay's notes following the meeting. The employer did not issue Poulson any discipline at the conclusion of the meeting but continued to keep Poulson on paid administrative leave.

18. On February 14, 2022, at 9:32 a.m., Poulson sent Shay an email requesting a scanned copy of his handwritten notes per their prior verbal agreement. Shay responded one minute later stating, "I will not be providing my notes as I am not obligated to do so." A couple of hours later Poulson replied, "Please send me the policy that does not allow you to send me your notes. This is very frustrating considering you have [sic] a verbal promise prior to the meeting that you were going to scan and send to me via email." Within minutes, Shay provided the following response:

> The law that requires me to serve as your representative does not require me to provide any notes to you. Only that I ensure that no provisions of the collective bargaining agreement have been violated by the district. In all the times I have served as a representative I have never provided my notes to the individual.

19. On February 14, 2022, at 12:45 p.m., Poulson wrote back to Shay:

> What law is that? That is extremely frustrating, Jeremy, that you would give me a verbal agreement that you would be providing me your notes and then rescind once the meeting has concluded and I have no recourse to go back and provide my own notes. I am asking to follow through with your original agreement with me to provide the notes you took in the meeting on January 20.

20. Shay did not respond, so Poulson sent another email on February 16, 2022, stating:

> I'm still curious about what law you are referring to. Please let me know what law that is. Also, I'd like to request the notes again that you verbally promised to me prior to the meeting. I am the "client" and therefore should be able to access the materials created from you as my representation.

21. Two minutes after Poulson sent her February 16, 2022, email, Shay responded, "I am not providing my notes. They are my notes and I am not providing them."

22. On February 18, 2022, Poulson sent another email asking for a copy of Shay's January 20, 2022, notes. Poulson's email stated:

> I am concerned that the district will be terminating me, and I need your notes in order to review whether I should pursue a grievance or statutory hearing challenging my termination or some other appeal process. To that end, I need to know whether any CBA provisions were breached or if there was any procedural error . . . You have provided no SEA [union] policy that prevents you from sending your notes, only that they are yours and you are not sending them, which is in direct contradiction to what you told me prior to the meeting.

23. Later, on February 18, 2022, Shay responded, "Nothing that has occurred violates any provision of the collective bargaining agreement. I am not going to be providing my notes to you."

24. There is no official union policy prohibiting Shay from providing a copy of his notes to Poulson.

25. Shay testified that he spoke to a union advocacy staff person after promising to provide a copy of the notes to Poulson. This unnamed staff employee told Shay that the union did not want to turn over copies of interview notes because doing so could open the union up to accusations of insufficient note-taking. The staff person stated the union generally did not provide staff notes to members and did not recommend providing Shay's notes to Poulson.

26. Shay did not inform Poulson that he changed his mind on providing a copy of the notes until Poulson contacted Shay by email on February 14, 2022.

27. On February 24, 2022, Poulson attended another meeting at the district office to receive a letter of the employer's findings. Poulson arrived at the meeting without a union representative. The employer then contacted Shay and asked if he was available to act as Poulson's representative. Once Shay arrived at the district office, the employer handed Poulson a letter detailing the district's findings of its investigation into Poulson's actions on November 23, 2021. The letter concluded that the employer had probable cause to immediately discharge Poulson's employment and issue a notice of nonrenewal. The letter further stated that Poulson could appeal the employer's determinations pursuant to chapter 28A.405 RCW. Poulson and Shay both read the letter and the meeting ended.

28. The February 24, 2022, meeting was the first findings meeting that Shay had participated in where the employee was terminated.

29. Shay testified that on some previous occasions when a union member received a findings letter following an investigation, Shay would check his notes from the interview to ensure that the findings letter was accurate. Shay did not compare the statements in Poulson's findings letter to his notes from the January 20, 2022, interview.

30. Following the February 24, 2022, meeting, Poulson timely requested a statutory hearing, pursuant to RCW 28A.405.310, to challenge her notice of discharge and nonrenewal.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under chapter 41.59 RCW and chapter 391-45 WAC.

2. By refusing to provide meeting notes to Poulson as described in findings of fact 4 through 30, the union breached its duty of fair representation to Poulson and violated RCW 41.59.140(2)(a).

ORDER

The Spokane Education Association, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

1. CEASE AND DESIST from:

   a. Failing or refusing to represent Natalie Poulson by refusing to provide investigatory meeting notes to Poulson, without a reasonable explanation for refusing to do so.

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

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

   a. Provide Natalie Poulson with a copy of Jeremy Shay's meeting notes of Poulson's January 20, 2022, investigatory interview.

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

   c. Read the notice provided by the compliance officer into the record at a regular public meeting of the governing body or board of the Spokane Education

Association, and permanently append a copy of the notice to the official minutes of the meeting where the notice is read as required by this paragraph.

d. Notify the complainant, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide the complainant with a signed copy of the notice provided by the compliance officer.

e. Notify the compliance officer, in writing, within 20 days following the date of this order as to what steps have been taken to comply with this order and, at the same time, provide the compliance officer with a signed copy of the notice the compliance officer provides.

ISSUED at Olympia, Washington, this 13th day of January, 2023.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

DANIEL M. HICKEY, Examiner

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

RECORD OF SERVICE

ISSUED ON 01/13/2023

DECISION 13619 - EDUC has been served by mail and electronically by the Public Employment Relations Commission to the parties and their representatives listed below.

BY: AMY RIGGS

CASE 134852-U-22

EMPLOYER: SPOKANE SCHOOL DISTRICT

REP BY:
ADAM SWINYARD
SPOKANE SCHOOL DISTRICT
200 N BERNARD
SPOKANE, WA 99201
adamsw@spokaneschools.org

KAMMI MENCKE SMITH
WINSTON & CASHATT
601 W. RIVERSIDE AVE STE 1900
SPOKANE, WA 99201
kms@winstoncashatt.com

PARTY 2: NATALIE POULSON

REP BY:
NATALIE POULSON
6208 N WALNUT ST
SPOKANE, WA 99205
njpoulson77@yahoo.com

AUSTIN HATCHER
ATTORNEY AT LAW
11616 N MARKET ST STE 1090
MEAD, WA 99021
austin@hatcherlawpllc.com

PARTY 3: SPOKANE EDUCATION ASSOCIATION

REP BY:
JEREMY SHAY
SPOKANE EDUCATION ASSOCIATION
230 E MONTGOMERY AVE
SPOKANE, WA 99207
jeremy.shay@washingtonea.org

SARAH N. HARMON
POWELL, KUZNETZ & PARKER, P.S.
1106 N. WASHINGTON STE A
SPOKANE, WA 99201
sarah@pkp-law.com