

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. UP-5-07

(UNFAIR LABOR PRACTICE)

GRANTS PASS ASSOCIATION OF)	
CLASSIFIED EMPLOYEES/OEA/NEA)	
AND SHARON BULLINGTON,)	
)	
Complainants,)	RULINGS,
)	FINDINGS OF FACT,
v.)	CONCLUSIONS OF LAW,
)	AND ORDER
GRANTS PASS SCHOOL DISTRICT)	
NO. 7,)	
)	
Respondent.)	
_____)	

Both parties filed, and subsequently withdrew, objections to a Recommended Order issued by Administrative Law Judge (ALJ) Larry L. Witherell on March 10, 2008 following a hearing before ALJ B. Carlton Grew on June 11, 12 and 19, 2007 in Grants Pass and Salem, Oregon. The record closed on August 30, 2007 upon receipt of the parties' post-hearing briefs.

Monica A. Smith and Barbara Diamond, Attorneys at Law, Smith, Diamond, & Olney, 1500 N.E. Irving, Suite 370, Portland, Oregon 97232-4214, represented Complainants.

Nancy Hungerford, Attorney at Law, The Hungerford Law Firm, 653 S. Center Street, P.O. Box 3010, Oregon City, Oregon 97045, represented Respondent.

On February 12, 2007, the Grants Pass Association of Classified Employees/OEA/NEA (Association) and Sharon Bullington filed this unfair labor practice complaint against Grants Pass School District No. 7 (District) alleging that the District violated ORS 243.672(1)(a) when it took a series of employment-related actions against Bullington as a result of her participation in protected union activity.

The issue in this case is:

Did the District violate ORS 243.672(1)(a) by taking adverse action against Sharon Bullington as a result of her participation in protected union activity?

RULINGS

The rulings of the ALJ have been reviewed and are correct.

FINDINGS OF FACT

Introduction

1. The Association is the exclusive bargaining representative for a unit of all full-time and regular part-time classified employees employed by the District, a public employer. The Association and the District were parties to a collective bargaining agreement effective July 1, 2004 to June 30, 2006.

2. At all relevant times, the following individuals were supervisory employees, designated representatives, and agents of the District within the meaning of ORS 243.650(23) and ORS 243.672(1):

Steve Iverson—Superintendent
Dave Currie—Director of Personnel
John Higgins—Business Manager and Assistant Superintendent
Aaron Anderson—Principal, Grants Pass High School
Jim Tardieu—Assistant Principal, Grants Pass High School
Brent Workley—Assistant Principal, Grants Pass High School
Ernie Baldwin—Assistant Principal, Grants Pass High School

3. Bullington has held the position of office manager III at the Grants Pass High School since August 1, 2001, and is a bargaining unit member.

4. The office manager III job description provides that the office manager

“performs as manager of the office of the high school. This position performs independent work as a secretary to the senior high school principal, and assists the principal by performing and overseeing a variety of difficult and responsible clerical and secretarial duties, and related work as required. The School Office Manager III supervises one or more full-time employees

performing clerical and bookkeeping work. * * * The Office Manager III serves as information liaison between administrative officials and teachers, district office personnel, and the general public.” (Emphasis added.)

Other specific duties include:

- “01 Serves as secretary to the high school principal.
- “02 *Directs a clerical staff, keeping varied clerical and financial records; responsible for seeing that the duties of clerical and bookkeeping staff are assigned and completed.*
- “03 Prepares reports related to the school.
- “04 Answers correspondence not requiring the administrator’s attention.
- “05 *Keeps records and prepares drafts of minutes for administrative review.*
- “06 Approves and signs requisitions, vouchers, and other documents as well as records.
- “07 Answers inquiries from students, parents, staff, and the public or directs inquiries to the proper source for information needed.
- “08 Be familiar with school rules and regulations, District Board Policy, and other rules and regulations governing the general operation of the high school.
- “09 Assists the administration with the development of the high school’s budget and budget expenditure control.
- “10 *Works with confidential information.*” (Emphasis added.)

5. Bullington directed the staff and workflow in the front office at the high school. She counseled and corrected front office clerical employees about their work activities and performance. Bullington was responsible for time sheets and attendance of the office employees. Employees, including teachers, who left the building during the work day were to check in with Bullington. She routinely reported concerns about an employee’s performance and conduct to the employee’s supervisor.

6. Bullington has reported to and been supervised by three principals at the high school: René Cardiff (2001-2002), Dave Currie (2002-2004), and Aaron Anderson (2004-2007).

7. The District evaluates its clerical employees twice during the employee’s first year of employment and once every two years thereafter.

The evaluation process assesses 17 factors, including four categories under “work performance” (job knowledge/skill, quality of work, quantity of work, and operation and care of equipment); eight categories under “personal qualities” (adaptability, supportiveness, judgement, initiative, dependability, attitude, professionalism, and accepts direction); and five categories under “work characteristics” (attendance and punctuality, safety practices, knowledge of pertinent policies, laws, and rules, and building and public relations).

The evaluation process provides that an employee is to be rated either “Outstanding,” “Meets Expectations,” “Area to Strengthen,” “Improvement Required,” or “Not Observed.”

Bullington received two evaluations during the 2001-2002 school year, and a biennial evaluation in May 2004. She was scheduled to receive her second biennial evaluation in May 2006.

In her November 2001 evaluation by principal Cardiff, Bullington received 14 “Outstanding” ratings and three “Meets Expectations” (in operation and care of equipment, safety practices, and knowledge of policies, laws, and rules). In her May 2002 evaluation, Bullington received 15 “Outstanding” ratings and two “Meets Expectations” (in operation and care of equipment and safety practices). In her May 2004 evaluation, which was performed by a new principal (Currie), Bullington received seven “Outstanding” ratings and 10 “Meets Expectations.” Bullington received no rating in “Area to Strengthen,” “Improvement Required,” or “Not Observed.”

Article X of the 2004-2006 collective bargaining agreement requires the District to complete evaluations by May 15. However, Bullington never received her May 15, 2006 evaluation. In September or October 2006, Bullington requested her evaluation several times.

8. During this time, the District employed approximately 11 secretary II/educational assistants (office staff) at the high school.

Irene Amble—Secretary II, Curriculum
Sharon Bullington—Office Manager
Mary Chamberlain—Secretary II/Educational Assistant
Tina Hause—Secretary II, Counseling
Lana Lowe—Secretary II, Counseling
Theresa Martes—Secretary II, Attendance/Health Office
Coleen Moore—Secretary II, Career Center
Dawn Murphy—Bookkeeper
Elizabeth Tardieu—Secretary II, Athletics

Ronda Tocher—Registrar
Kathy Wright—Attendance Supervisor

9. The office staff met on the second and fourth Wednesday of each month (referred to as B-Team meetings). Administrators occasionally attended. Bullington prepared the agenda and ran the meetings. During the 2006-2007 school year, Principal Anderson began to run the B-Team meetings. Until January 2007, Bullington was responsible for preparing and issuing the minutes of the B-Team meetings. In January 2007, Anderson began editing the minutes.

10. Article VI, Section (B), of the collective bargaining agreement provides that if a

“vacancy [which is defined as a vacant or newly created position] occurs during the school year, *it shall be posted* on the Association bulletin board in each district building for not less than five (5) working days * * *.” (Emphasis added)

Article VI, Section (E)(1), of the agreement, provides that

“the District may fill any vacancy, provided, however, that prior to the filing of any such vacancy, qualified applicants from within the bargaining unit shall have been interviewed. *When an Interview Committee is used, a classified staff member will be made part of the Interview Committee* selected by the supervisor. If the classified staff member is not available for the Interview Committee, the supervisor and the Association will mutually select an alternate employee for the committee.” (Emphasis added.)

Section (E)(2) provides that

“[w]ith respect to requests for voluntary reassignments and/or transfers, bargaining unit applicants will be assessed * * * in the following areas:

- “a. Knowledge, skills, and abilities/attitudes;
- “b. Education and training;
- “c. Experience.”

11. Prior to June 2006, Bullington served on at least eight interview committees that considered secretaries hired by the District.

Events in May and June 2006

12. In Spring 2006, the District announced it was moving the high school Career Center from the lower level, front office area of the high school building to the second floor. Career Center Secretary Coleen Moore would also move out of the front office area to the second floor. This apparently created a vacancy for a secretary II position in the front office. At least two employees, Irene Amble and Mary Chamberlain, told Bullington that they were interested in the position.

In early May 2006, Principal Anderson told Bullington that Sue Bigelow, then an educational assistant at the North Middle School, would transfer into Coleen Moore's former position in the front office at the high school. Anderson indicated that he was familiar with Bigelow and had worked with her when he was principal at South Middle School. Bigelow is also the spouse of a District administrator at another school.

Bullington told Anderson that there were employees at the high school who were interested in the position and deserved to be considered for the position. She mentioned to Anderson that both Amble and Chamberlain had expressed an interest. The vacant position would give Amble more work days in the contract year and increase Chamberlain's work day from four to eight hours.

During either this or a subsequent conversation, Bullington told Anderson that the District needed to post the secretary II position and that District employees should be given the opportunity to apply for the position. Anderson responded that he was going to bring Bigelow over to the high school to replace Colleen Moore, and if they didn't bring Bigelow over, they probably would not replace Moore's position.¹

During one of the conversations between Anderson and Bullington in May, Anderson wanted to brainstorm, in effect, think out loud with Bullington, based on Anderson's assumption that Bigelow was going to fill the spot.

13. At the end of the regularly scheduled B-Team meeting on May 10, 2006, Bullington announced to the office staff that Bigelow was coming to the high school. Many of the office staff reacted negatively to the announcement, particularly to the way the position had been filled or how Bigelow obtained the position. Bullington

¹Bullington's and Anderson's testimony is often at variance throughout the record. We generally credit Bullington's version of conversations with Anderson because she provides much more detail; Anderson's version was often vague or he could not remember. Anderson often tried to be highly technical in his interpretations or to parse meanings during cross-examination, particularly where the obvious meanings conflicted with his position; and Anderson's versions seemed to be suspect given the surrounding context and timing of actions.

told the staff, "Regardless of how you feel about her, it looks like she's going to be coming on staff, and we're going to treat her with courtesy and respect. We're not going to give her any reason to feel rejected." Bullington suggested the staff meet with Anderson, and the staff agreed to do so.

14. The office staff met with Anderson on May 12, 2006, and again objected to Bigelow's transfer. The staff specifically asked why she was chosen for the transfer. One of the secretaries asked why Bigelow was not interviewed and what qualifications she had for the position.

15. The District transferred Bigelow to the high school to resolve a potential grievance. In March 2006, Association UniServ Consultant Jim Bond contacted District Personnel Director Currie about an office employee at one of the middle schools who was performing secretary II work but being paid at the lower education assistant rate. To resolve the matter, Currie agreed to upgrade the employee to a secretary II position beginning in the 2006-2007 school year.

Shortly thereafter Currie discovered that Bigelow, who worked at another middle school, was being compensated at the educational assistant rate while performing secretary II duties. Currie contacted the principal of the middle school about upgrading Bigelow. However, that particular middle school already had two employees performing secretary II work, but being compensated as educational assistants. The District felt it could not upgrade both employees because it would make the school out of balance with regard to employee classifications.

After Currie consulted with Superintendent Iverson, the District decided to transfer Bigelow to the newly vacant secretary II position in the front office at the high school.

16. The District never notified the Association, Bullington, or any of the office employees at the high school of this arrangement.

17. On May 10 and 12, Secretary Mary Chamberlain informed Bullington about a conversation Chamberlain had with Principal Anderson about the position. Bullington advised Chamberlain to contact the Association. Chamberlain asked if Bullington would do it for her.

18. Bullington understood that the contract required the District to post a vacant position, open it for applications from District employees, and conduct interviews. Accordingly, on May 22, 2006, Bullington contacted Nan Chase, office manager at Parkside Elementary School, past president of the Association, Association grievance committee member, and a building representative for the Association.

Bullington informed Chase that she and the other office staff were concerned about Bigelow's transfer to the high school. Bullington wanted to find out the appropriate course of action.

19. On May 22, 2006, Chase called Personnel Director Currie, and asked if it was true about Bigelow's transfer to the high school. When Currie confirmed it, Chase arranged to meet with Currie on May 23. Gail Stone, the other member of the Association's grievance committee, also attended. At the meeting, Currie said he did not know that he needed to post the position and that the District transfers people all the time.² After he was shown the contract language, Currie agreed that the position would be posted and an interview committee used. Chase stated that there needed to be a classified employee on the interview committee, and suggested Bullington, another secretary, or an office manager. Bullington had been on all the previous clerical interview committees. Currie did not advise Chase and Stone the real reason why Bigelow was transferred.

20. On or about May 23 or 24, 2006, Anderson entered Bullington's office and stated that they had to post the job but they were going to hire Bigelow anyway. Bullington responded that it was inappropriate, and that the District needed to follow the contract language and process.

21. On or about May 23 or 24, Bullington contacted Chase and reported Anderson's comments that Anderson was just going through the motions and he was going to transfer Bigelow to the high school vacancy.

22. On May 24, 2006, Chase sent Currie the following e-mail:

"I just talked with Jim Bond [UniServ consultant for Oregon Education Association] and we both thought it would be a good idea to let you and Aaron [Anderson] know that we will be following up on this issue with Sue [Bigelow] and the possible new job posting at the high school. This is in part because I have heard that [Anderson] has stated that he will go through the steps but intends to hire [Bigelow] anyway. If this is indeed true, this makes me very concerned about his integrity.

"As stated in our contract, we will expect that the most qualified applicant will be hired. If [Bigelow] is hired, we will

²At the hearing, the only evidence of a transfer concerned one or two maintenance employees.

of course want to see proof that she was the most qualified applicant. We also strongly suggest that either an office manager or a secretary be on the interview committee for the Sec II position.

“Thank you for your time yesterday and for your willingness to help us make sure everyone does ‘the right thing.’”

23. On May 26, 2006, the District posted a job vacancy for a secretary II position at the high school and announced that it would accept applications from District employees. The deadline for applications was June 2.

24. In late May 2006, Anderson came into Bullington’s office and asked if Bullington went to the union behind his back. Bullington said yes. Anderson told her that in the future she was to inform him before she went to the union; that he did not want to be surprised. Bullington told Anderson that she completely disagreed with that; that she had a right to go to the union any time she felt like it and that she didn’t need to forewarn him.

25. On or about May 29, 2006, Anderson called Bullington into his office to talk about her position. He told her that he was going to change her position; the administrators were going to work directly with the secretaries and Bullington would not be involved with them any longer. He said that he did not want her to have any influence over the secretaries. When Bullington asked if that was in retaliation for going to the Association he said “Well, sorta,” and then added, “Not really.” He told her she “had caused problems for him.”

26. On June 3, 2006, Chase received an anonymous telephone call from a female who told Chase that Assistant High School Principal Workley was interviewing applicants for the secretary II position.

Chase immediately telephoned Currie and asked if it was true that Workley was conducting the interviews himself. Currie said yes. Chase told Currie that she was disappointed because they had agreed at the meeting that the District would use an interview committee. Currie responded that he mentioned it to Anderson, but he didn’t listen. He then added that Anderson looked at our contract and decided he did not have to use a committee.

Chase told Currie that they needed to meet with Anderson, UniServ Consultant Bond, and Business Manager and Assistant Superintendent John Higgins. She told Currie she was upset that the District was not following the contract.

27. On or about June 5, 2006, Anderson told Bullington that Workley would be interviewing the secretary applicants by himself, without a committee. Bullington asked why, because she had always been involved in the interview process. Anderson responded that since Bullington made problems for him by not letting him transfer Bigelow, he was not going to let Bullington participate on an interview committee. Bullington interpreted the statement as a reference to the fact she had gone to the union. On June 9, Bullington informed Chase that she was feeling threatened based on the conversations with Anderson.

Some time during the posting period, between May 26 and June 2, Anderson told Currie that Bullington had promised Mary Chamberlain the secretary II position at the high school.

Workley picked up through some casual conversation with office employee Ronda Tocher that Mary Chamberlain implied that she was going to get the job. Tocher is extremely hostile to the Association, unions in general, and to Bullington, and admittedly routinely tells lies in the workplace. Workley told Chamberlain what he had heard. He walked away from that discussion with the impression that Chamberlain believed Bullington had told her she would get the high school job.³ Workley then reported the information to Anderson, who contacted Currie.

The District expressed concern that Bullington was biased toward one of the candidates. No administrator ever talked with Bullington about the alleged comments to get her side of the story or suggested that Bullington should be asked about the alleged comments. No administrator ever told Bullington that the reason she was excluded from the interview committee was because the District thought she was biased.

³In February 2007, after this complaint was filed, Workley asked Chamberlain to prepare a statement on their conversation of May 2006. Chamberlain wrote,

“I had a conversation with Sharon Bullington * * * regarding Coleen’s vacated position. Sharon asked me if I was interested in the position. I said ‘Yes’. She then said that since I had previously been in the front office, I would certainly be qualified and she felt that I would be a definite asset to the front office. At this point in the conversation, Sharon said since she was the office manager she would certainly have a great amount of input as to the hiring of the position and she would be glad to inform [Anderson] of my interest. I left with the feeling that I had a very good chance of being placed in the front office position.”

Neither party called Chamberlain as a witness.

Based on Chase's challenge of Anderson for his comments to Bullington, Currie decided it was better not to include Anderson on the interview committee. They decided to have Workley interview and hire the secretary.

28. On June 14, 2006, Anderson, Currie, Chase, Bond, and Assistant Superintendent John Higgins met at the District offices. They discussed the District's decision not to use an interview committee, particularly when Chase believed that Currie had agreed to an interview committee. Higgins asked what the Association wanted. The Association said it wanted the District to announce that there had been an error in the process and ask the applicants to be re-interviewed with an interview committee. The District agreed to re-interview the applicants using a committee. Chase also brought up that Bullington felt threatened by Anderson. Anderson was not surprised, did not ask for any specifics, and just denied it.

29. After the meeting on June 14, Chase sent Bullington a detailed e-mail reviewing the meeting with the District administrators.

"We * * * stated that the association expected an interview committee to handle the interviews and that was not done.

"[Anderson] said he changed his mind at the last moment because there was an issue with having you on the committee and he felt he shouldn't participate either. So he felt the VP could do it alone.

"We said that he could have asked Colleen [*sic*] or another office person to sit in and proceed according to the contract.

"John Higgins agreed with us on that point and asked what we (the association) wanted to do now that the interviews were over and the person hired.

"We stated that the only fair thing to do was to inform the applicants of the error in flowing [*sic*] the contract and invite them to re-interview with a committee. [Higgins] agreed with that and there will be a letter sent out by [Currie]. They will have to interview any of the applicants that choose to re-interview before anyone is officially hired.

"This will make it a more fair process (given the mess it has become) and our members will know that the contract will be adhered to. It also let's [*sic*] the administrators know that we

do expect fair treatment and that they need to always go by our contract.

“Also, we talked about the problem with you feeling [Anderson] is threatening you about your job. He denies that and went on to say he has talked to you about changing your job to fit what you actually do. We all discussed this and agreed that your job description does not correctly show what you do. We did talk about giving your job a new title. Both [Higgins] and [Currie] do not feel they need another confidential supervisor at the HS but do want a title such as a principals’ [sic] assistant or something like that. They want to have your input on redoing the job description when they are ready to tackle this issue.”

30. On June 14, Workley sent out an e-mail announcing that Bigelow had accepted the secretary II position in the front office at the high school. Workley informed Anderson that the interviews were finished and asked Anderson if he should send out the notice. Although the administration, including Anderson, had just agreed at the meeting to re-do the hiring process, Anderson instructed Workley to announce to the staff that Bigelow had been hired. Later, on either June 14 or June 15, Anderson informed Workley that the process was considered “null and void,” and the District would have to use an interview committee and re-interview the applicants.

31. During late May and early June, Bullington told the office staff about her discussion with Chase and the Association. After receiving the June 14 e-mail from Chase, Bullington informed the office staff that the District was going to re-interview applicants using a committee.

32. The District selected June Wickberg, the secretary in human resources, and Lana Lowe, a secretary in the counseling office and wife of one of the school board members, to serve on the interview committee. Workley invited the eight applicants to be re-interviewed with the committee. Five of the applicants withdrew. The committee interviewed the remaining three applicants, and Bigelow was hired for the secretary II position at the high school.

Events during the 2006-2007 School Year

33. When the 2006-2007 school year started, Bullington believed Anderson’s treatment and behavior toward her had changed significantly; that he was disengaged from her; that he was brusque; that his expectations were more petty and

nitpicky; and he made her feel like he was overriding or undermining her. She believed he remained angry over her actions in May and June.

34. On or shortly before August 22, 2006, office staff informed Bullington that the front office phones had not been adequately covered on a day Bullington was out of the building. On August 22, in an effort to reassure the office staff, she sent an e-mail to them:

“Good morning....
“I understand the lack of personnel at the front desk is causing additional work for others....and at the moment, it appears this situation may continue for a while. I have brought this concern to the attention of the administrators. Please be patient.”

35. On August 27, 2006, Principal Anderson, who received a copy of the e-mail, responded to Bullington with three separate e-mails within the space of 16 minutes:

“Is this the day Brent arranged in advanced [*sic*] and we had a sub, and the day you were at costco? Dawn’s email. Let me know. [9:17 p.m.]

“We have the same personnel as before in the front office. Let me know why this is being sent out to all? [9:20 p.m.]

“We need to discuss this email and future communication that comes from your office.” [9:33 p.m.]

36. Bullington and Anderson met on August 28, 2006. She told Anderson that she was concerned that the phones and the front desk were not being adequately covered. Anderson accused her of “stirring up the situation with” Bigelow. Bullington then sent an e-mail to Chase.

“I continue to have a problem with [Anderson]. This morning, he came in and angrily accused me of ‘digging up the dirt’ and ‘stirring up the situation’ with Sue Bigelow (or the reassignment of personnel) because I sent an email to the secretaries advising them to be patient due to the lack of coverage at the front desk. I was blindsided by his accusations. If this is going to continue this year, I want to

have a meeting with him, [Bond], you and me to resolve this conflict.”

37. Bullington still had not received her evaluation, which according to the contract was due on May 15. At some point during this period she “asked for my evaluation to be done by the end of the week.” However, Anderson did not complete her evaluation and told her he was angry with her because she made trouble for him.

38. On the morning of October 12, 2006, Bullington discovered that Lana Lowe, the counseling secretary, was not at her desk. Another employee said she took her son to the dentist and would be gone for a couple of hours. Bullington then sent an e-mail to Lowe, advising her:

“Lana - I need to be notified when you are going to be off campus for appointments. No one up here knew you were leaving or how long you'd be gone this morning. [Anderson] specifically has instructed staff to notify me if they leave campus. If you notified someone other than me, please include me next time. Thank you.”

39. Because Bullington was responsible for completing the time sheets for the office staff, she needed to know when office staff were gone from work.

40. Anderson responded with his own e-mail to Bullington: “Sharon, let's talk about this when you have a moment.” Anderson informed Bullington that the administrators were going to be working directly with the secretaries, and if Bullington had anything to say to the secretaries, she was to go to their administrators from now on. Bullington was no longer to coordinate the office staff or oversee their attendance.

41. On November 21, 2006, Bullington prepared and gave a memorandum to Workley, who is Bigelow's supervisor. In her memorandum, Bullington described a number of problems with Bigelow's performance of her job duties and named six secretaries who had complained about Bigelow.

Bullington had a practice of giving an administrator her concerns and observations, so that they might discuss the matter with the employee. She gave Workley the memorandum and verbally outlined her concerns. He stated that he also had concerns. Workley did not object to that Bullington gave him the memorandum or

with its substance, including the identification of other employees. He stated that he appreciated her observations and that he would use it to discuss things with Bigelow.⁴

42. On November 22, 2006, Bullington and Workley exchanged e-mails concerning the November 21 memorandum.

(a) At 10:45 a.m. Bullington wrote:

“Hi - Brent, I would like to add one more item to my observations on Sue. Also, I would like to be present when you speak with her, if you don’t mind. I think it will add to the seriousness of the situations and allow me to give specific examples of her conduct, if needed. Let me know your thoughts, please.”

(b) At 11:38 a.m. Workley responded:

“Sharon, Since you are not exempt status, you are opening yourself and the administrators to a grievance should I allow you to be present during an evaluation/feedback/talk, however it becomes classified, since you are both represented by the same bargaining unit. I will not allow that to happen. Also, I’m concerned that you might think I am not serious enough about this and that you have to be present to take it to the appropriate stake level.

“This entire situation has been directed towards me, thank you for your inputs. I realize you see a completely different side than I do for two reasons. 1) our physical separation and 2) there is a reporting relationship between Sue and myself where the two of you are peers.

“Trust me when I say I will deal with this, but I will do it my way [*sic*]. I do need and value your input and will listen, but I will respond in the manner I feel appropriate. thanks b.”

⁴We credit Bullington’s description of the conversations with Workley given her details. Workley was generally uncertain or equivocated. For instance, while Workley agrees a conversation occurred, he stated, “We probably had a -- some discussion about it.” Workley failed to give plausible explanations as to why things occurred, or did not occur, as well as the timing of his activities.

(c) At 12:36 p.m. Bullington responded:

“I never meant to offend you or imply anything in the nature of pressuring the situation. I was merely offering support.

“I have complete confidence in your ability to manage things. I’m sorry it came off any other way to you.”

(d) At 12:45 p.m. Workley responded reassuringly:

“None taken, just checking. My request is to let me have the contact in the way I believe it is in everyones [sic] best interest, but I will make my point. I do appreciate your input or feedback, so keep that coming.”

43. Contrary to Workley’s representations to Bullington, there was no evidence that any administrator ever talked with Bigelow about any of the issues set out in Bullington’s memorandum.

44. Article XIX of the collective bargaining agreement provides the following complaint procedure:

“A complaint is a negative remark or criticism made against an employee. It is the intent of this Agreement to provide a complaint procedure, which will handle such complaints expeditiously and fairly.

“A. If a complaint is made against a district employee to an administrator, or supervisor, such complaint shall be processed under the following circumstances:

“1. If the administrator or supervisor intends to make a record in the evaluation report of a complaint received concerning an employee.

“2. If the administrator or supervisor intends to place a record of such complaint in the employee’s personnel file, or take any disciplinary action against the employee.

“B. PROCEDURAL REQUIREMENTS

“1. Level One

“In compliance with A.1. above, a conference between the administrator or supervisor shall be held with the employee, and Association representative if desired, within (7) working days after the complaint is made. The complaint shall be identified. The complaint shall be available to the employee, in writing, at the time of the conference. The date the complaint was filed with the district shall be provided to the employee. The administrator or supervisor must attempt to resolve the matter to the satisfaction of all parties.

“2. Level Two

“If the complaint is not resolved at Level 1, then the employee shall have the right to require a meeting with the complainant and hear the complaint directly. The administrator or supervisor must attempt to resolve the matter to the satisfaction of all parties. If the complainant refuses to meet with the employee the matter shall be closed, unless the administrator reasonably believes that the complaint violates law, rule or policy, then the administrator may proceed with the investigation of the complaint, after informing the employee of this decision.

“C. Any complaint that the administrator or supervisor chooses not to discuss with the employee or which is not discussed within the required time shall not be considered in the employee’s evaluation and shall not be used against the employee in any subsequent action by the district. Oral complaints shall not be considered.

“D. The employee has the right to representation at all levels of this procedure.”

45. On or about December 5 or 6, 2006, Irene Amble called Bullington at home. Amble told Bullington that Workley accused Amble of giving Bigelow a migraine and suggested Amble might like to find another place to work. Amble feared for her job

Shortly after Amble's call Bullington presented the November 21 memorandum to Assistant Principal Ernie Baldwin, Amble's supervisor.

Bullington and Baldwin then went to Anderson. Bullington explained about Amble's telephone call. Bullington stated that it was inappropriate for Workley to scold Amble. She told Anderson that she had given this information to Workley three weeks earlier, hoping to resolve the situation.

Baldwin gave Anderson his own observations about Bigelow's conduct and thought the November 21 memorandum was appropriate. He stated that he also did not appreciate the way Workley treated Amble, who was Baldwin's secretary.

Soon after the meeting, Anderson confronted Bullington and asked her why she signed the November 21 memo. She said she didn't know, she just signed it. He then asked her why she included the other secretaries' names. Bullington said that it was for Workley's information so that he would know what the other secretaries observed. Anderson told her to take her name and the names of the other secretaries off the memo. She replied that she did not think that was appropriate and she wanted to leave it as it was.

In December 2006, Anderson met with Bullington a second time about the November 21 memorandum. During this conversation, Anderson told Bullington to rewrite the memo, not sign it, and take out the secretaries' names. He said he had spoken to three or four of the secretaries, and they did not know Bullington had named them in a formal complaint against Bigelow. Bullington told Anderson that it was not a formal complaint, that it was a memo to Workley stating her observations and comments. Since Workley could not see Bigelow's conduct because of the office arrangement, Bullington wanted to make Workley aware of it.

On or about December 14, Workley met with Tina Hause, Kathy Wright, Irene Amble, and Ronda Tocher.⁵ He asked them if they were aware that their names had been included in a complaint against Bigelow and asked if they had given Bullington permission to include their names. When they responded that they did not want to be included in the complaint, he asked them to send him an e-mail to that effect. He did not show them Bullington's November 21 memorandum, even though they asked to see it. Nor did he tell them what concerns were set out in the memorandum.

Workley never asked Bullington whether she considered the document a formal complaint. He thought Anderson was going to deal with Bullington.

On December 14, 2006, in a meeting with Dawn Murphy, Anderson told her that her name was on a letter of complaint against an employee. Murphy asked to see the letter but Anderson did not show it to her. Anderson instructed her to send him a letter stating whether she had any involvement with the letter or gave anyone information. She told Anderson that she would be glad to write a letter but since she did not know what the letter said, she would be shooting from the hip. Murphy wrote to Anderson and Workley regarding the complaint letter.

“On December 14, 2006, Aaron Anderson brought to my attention that my name had been included on a letter of complaint against Sue Bigelow. Since the administration has refused to let me read this ‘letter of complaint’ with my name mentioned in it, I don’t have all the facts.

“The one fact I do know is that I did not, at any time, voice any kind of complaint against Sue Bigelow to anyone in the front office, especially Sharon Bullington. Sharon is an office manager that cannot be trusted and I would not share anything of a serious nature with her.

“I would hope the District 7 Administration will deal with this appropriately. If they don’t, I will file a complaint against Sharon Bullington for allowing false information to be sent out to administrators with my name attached to it without my knowledge or even a discussion regarding this matter.

⁵Workley claims this meeting occurred within three or four days after the November 21 memorandum. However, all the other evidence leads us to conclude that it was on or shortly before December 14, 2006.

“I do not agree with the way Sue Bigelow was ‘chosen’ for this position but I have not in any way filed any kind of complaint or written any letters or emails to anyone regarding her position.”

Murphy thought it was the responsibility of the office manager to report concerns to the administrators. Murphy had concerns about Bigelow’s performance and qualifications, and was aware of telephone calls going unanswered by Bigelow. She expressed these concerns to her coworkers, including Bullington.

On December 14, 2006, Anderson called Tina Hause into his office and asked if she was aware her name had been attached to a formal complaint against Bigelow. Hause said no. He then asked her if she wanted her name attached to the complaint. She responded that she would have to know what the document contained, but Anderson did not let her see it. Anderson did not inform her what the concerns or issues were. Anderson indicated to Hause that if her name stayed on the complaint he would take the complaint “to the nth degree,” implying that she might have to testify. When Hause expressed concerns about Bigelow’s work performance, Anderson challenged her. “Why is it that you have so much time that you can be observing the things that she’s doing and not doing? How come you’re away from your work area?” Anderson requested Hause to provide an e-mail stating she had not given permission. On December 14, Hause wrote to Anderson.

“In response to your request and our meeting today:

“I did not know that my name was being attached to a formal complaint concerning Sue Bigelow.

“I will say that I have observed [Bigelow] many times use behavior that I would not consider to be professional. I have shared these things with [Bullington]. She is our office manager, one who should be responsible for training, correcting and encouraging new secretaries. This is what she did for me.

“In [Bullington’s] support, I will say that she has been extremely supportive of [Bigelow], always trying to set an example to us.”

Ronda Tocher knew that Bigelow was not covering the front desk adequately and conveyed her concern to Bullington, but when Workley asked her if she wanted to be part of the Bigelow complaint, she said no.

On or about December 14, 2006, Workley talked to J. J. Esposito about Bullington. Esposito was an educational assistant in the special education department, but did not work in the front office. She had been a building representative for the Association for about four years. Workley told Esposito that she might be called into a meeting as a union representative concerning the Bullington matter. His major concern was that Bullington was speaking on behalf of other people.

A day or two later, Workley and Esposito had a second conversation about Bullington. Workley stated they would not be needing Esposito because Anderson was going to handle the Bullington situation. During the conversation Workley made a reference to Bullington being "fired" and asked Esposito if she wanted Bullington's job. Esposito told him no.

Esposito reported the conversation to Nan Chase. In December 2006, Esposito informed Bullington about the Workley conversations.

46. On January 2, 2007, Anderson came to Bullington's office and told her he was going to take more of a leadership role in the office, and that she should get a union representative. He said he had negative behaviors he wanted to address with her and listed a photocopier issue, hanging up on a telephone caller, and a derogatory comment about an employee. He also stated that she had trouble with the other secretaries in the past, and that he would discuss that issue as well. He then told Bullington to get her union representative, and they would meet the next day.

47. On January 3, 2007, at 4:00 p.m., Anderson met with Bullington, Chase (the Association's grievance committee member), and Assistant Principals Jim Tardieu and Ernie Baldwin. Neither Chase nor Bullington knew the purpose of the meeting. When they arrived, Anderson told them it was a fact-finding meeting. He then identified the three issues he wanted to discuss. Chase asked Anderson why these seemingly petty issues warranted this type of meeting. She suggested they be addressed in the office instead of calling in a union representative and two vice principals. Anderson had no response, other than to say that the two vice principals were there because they were better note-takers.

Anderson first brought up a December 2006 telephone incident in which Bullington hung up on an abusive parent. Anderson had referred the call to Bullington because he did not want to deal with it. When the parent became irate and abusive, Bullington hung up on the caller. When the parent called back, Bullington had Baldwin sit with her during the call. The parent continued to be abusive and eventually hung up on Bullington. Baldwin commended Bullington on handling the situation appropriately. When Bullington reported the incident to Anderson, he also commended her. Subsequently the parent called a third time and the call was referred to Bigelow who

then referred it to Workley. The caller was equally abusive with Workley, who wrote up the incident.

48. Next, Anderson referred to a derogatory comment that Bullington allegedly made to Irene Amble about Mike Slagle, an independent contractor who assists the athletic director.

Amble was considering applying for a secretary position in the athletic department and approached Bullington about it. Because two previous athletic department secretaries quit because of difficulties in the department, Bullington told Amble that she may not have the right personality to deal with the supervisors. Bullington described Mike Slagle as "arrogant." Several days later, during a conversation with Athletic Director Tom Blanchard about the position and the department, Amble told Blanchard about Bullington's comment.

49. Next, Anderson brought up an October 2006 incident involving the photocopy machine in the front office.

Bullington was responsible for maintaining the high school photocopy machines. The high school had small copy machines in the front office, library, and career center, as well as two larger machines. Teachers were encouraged to use the larger machines or the District print shop for big jobs. Anderson directed Bullington to understock paper in the office copier to discourage teacher use. In October 2006, the two large high school copy machines were broken. The office copier overheated and stopped working, so Bullington put an "Out of order" sign on it. The copier eventually cooled off and the secretaries began to use it but did not remove the "Out of order" sign. Eventually, Bullington took the sign down and replaced it with a note directing teachers to use copiers in the career center or library, because the other machines were broken.

Two teachers complained to Anderson about the supposedly deceptive sign on the office that falsely stated the copier was "Out of order." Anderson apologized to one of the teachers and discussed the incident with Bullington on October 30, 2006. Bullington thought the issue was resolved.

50. During the January 3, 2007 meeting, Anderson also questioned whether Bullington was following his earlier directives, but did not explain what he meant. Neither Bullington nor Chase knew what he was referring to. Nevertheless,

Bullington stated she preferred not to talk about past problems but wanted to discuss current issues.⁶

51. After the January 3 meeting between Anderson, Chase, and Bullington, either Currie or Iverson asked Association Representative Bond to meet with them about Bullington.

52. Although Bond was told the meeting would be with Iverson and Currie, when he arrived at the January 12, 2007 meeting, Anderson, Workley, and Baldwin were also present. It was unusual to have so many administrators attend a meeting of this nature. Iverson informed Bond that the District intended to terminate Bullington.

Iverson spent 25 to 30 minutes telling Bond that Bullington was a bad employee and had to go. Iverson discussed the importance of the relationship between a principal and an office manager. He discussed concerns about Bullington's relationships with the staff and that the other secretaries did not like working for her.

Iverson told Bond that the District was going to put Bullington on a plan of assistance and that she would not make it. When Bond asked if the District was going to discharge Bullington, Workley responded that it could be taken that way.

Iverson told Bond that the District was going to put a letter in Bullington's personnel file regarding the copier incident and other issues, and showed Bond the letter. The issues discussed at the January 12 meeting with Bond did not relate to the issues set out in the January 12 personnel letter Anderson gave Bullington later that day. (Finding of Fact 58.)

⁶At hearing, the District explained the earlier directives as incidents that happened several years ago. In 2003, Bullington and Tocher had a personal conflict. Bullington initiated a meeting with Tocher and Currie and resolved the issues.

In March 2005, four District secretaries verbally complained to Anderson about Bullington's supervisory style. Bullington initiated a meeting with all the secretarial staff and Anderson to address the issues. Bullington apologized to each staff person and made changes in her own behavior to resolve the issues.

In Spring 2005, a day or two before it was officially announced, Bullington told another secretary that Baldwin had been hired as assistant principal at the high school. In another occurrence prior to 2006, Anderson became upset with Bullington for allowing an employee to see the employee's own personnel file. When the employee asked if there was anything negative in her file, Bullington told her there was not. Bullington maintained the personnel files which were located in her office.

53. After the January 12, meeting, Bond returned to the high school where Bullington and Chase were waiting. Bond told them that the District intended to put Bullington on a plan of assistance, and that the District intended to discharge her.⁷

54. On January 12, 2007, immediately after Bond left his meeting with Bullington and Chase, Anderson and the assistant principals met with Bullington and Chase. Anderson gave Bullington a letter entitled "Re: Meeting on January 3, 2007." There was no discussion of its contents. The document stated that a copy was being put in her personnel file. Bullington was required to sign a statement which said, "I have read this Letter of Summary." Although she did not agree with its contents, she acknowledged reading and receiving it. The memo stated:

"This letter is to summarize the substance of our meeting on Wednesday, January 3, 2007 and to advise you as to my concerns. You and I have had several conversations in which I have expressed to you my concerns about your ability to maintain positive relationships with our staff and the general public and also your ability to maintain a professional level of confidentiality regarding information and activities of these offices. I called this meeting because information came to my attention which caused me to question whether you were following through with these earlier directives.

"In addition to you and I, present at this meeting were Nan Chase (as your union representation), Jim Tardieu, and Ernie Baldwin.

"Specifically, I began by addressing my concern over a recent incident in which you hung up on a parent who had called to speak with an administrator. You explained that the parent was verbally abusive and you believed that it was policy to hang up on this type of call. I explained that I do not believe there is written policy which states this and that further I would expect you (or any other person) to put the caller on hold and attempt to find a way to mediate the situation rather than just hang up.

"Secondly, I addressed concern about a report I received that you had expressed negative sentiments to another employee

⁷The District never prepared a plan of assistance for Bullington, nor did they ever tell her she was to be placed on a plan of assistance.

about another office in our building, including a reported derogatory comment about a specific certified employee. You denied making a derogatory comment but did confirm that you had discussed the office with another employee.

“Thirdly, I addressed my concerns about the way you handled a sign regarding the copy machine in the counseling center in that it appeared that the sign falsely indicated that the machine was broken to the effect of preventing teaching staff from using it, as other copiers in the building were, at that time, out of order. You explained that the machine was down when you had the sign put up but that it had come back on line later and you failed to get back to the area to have the sign removed.

“Understand that because of our earlier discussions, these above aforementioned have caused great concern related to your judgment and performance, and needed to be addressed. I expect that in the future you continue to work on building positive relations with our staff and public and maintaining the aforementioned professionalism regarding confidentiality.”

55. Sometime after the January 12, 2007 meeting, Anderson decided to change Bullington’s job description. Anderson consulted Currie, who cautioned Anderson to be careful.

56. Bullington’s mother passed away and she went on bereavement leave from January 17 to 24.

57. On January 25, 2007, the day she returned from bereavement leave, Anderson called Bullington into his office and told her she was to move out of her office and back to the desk in the front by Monday.

The front office desk to which Bullington was being assigned is only four feet outside of Bullington’s office. She could easily, and did previously, cover the front

office telephones from her original office.⁸ Anderson had used student aides to sit up front in the empty desks and answer the telephones. However, after moving Bullington to the front there would be no empty desks for the student aides.

58. On January 25, 2007, Anderson followed up the meeting with an e-mail to Bullington, entitled "Follow up on our meeting today."

"On Monday, Irene will move over to the athletic office. On this day, I would like for you to please be in the front office where Irene was located. We will be posting Irene's job on Friday for one week, and interviewing after that. There will be period [*sic*] of time where the front office will only have two people out in front, so we should get a sub for this period of time until we fill the position. You may take your time with moving some of your supplies out of the office, as I know this takes time. As for my materials and the personnel files, they can remain in the office. If you need help with anything, we can get help from the custodians or I can help as well. As I mentioned, this will provide three staff members in the front office, which will be beneficial for the office. Thank you for understanding."

59. On or about January 29, 2007, Anderson called Bullington into his office and stated that he was going to reduce her authority level. He said he would discuss it at the B-Team meeting, as well as the fact that she was being moved out of her office to a front desk. He said she would work strictly as his secretary.

60. On January 30, 2007, Bullington wrote an e-mail to Anderson.

"Aaron, I appreciate that you took the time to outline my job responsibilities. I have been performing my job for 6 years and have always been commended for my skills and abilities in my evaluations.

⁸Bullington informed Bond of these developments. Bond then contacted Currie who responded on January 25, 2007 with an e-mail to Bond:

"Jim - I did talk with [Anderson] and [Bullington] has been asked to move out to her old location (where she has been until this year) as Irene is moving to the opening in Athletics. He assures me he said nothing about changing her job duties and is not going to change her duties only her location."

"I'm not sure why you are finding it necessary to explain my duties to me at this time. However, it appears you want to make certain we all understand my job description.

"Toward that end, I would like to request a formal review of my job description with Jim Bond and you and, perhaps, Personnel Director Dave Currie so that we clear up whatever is concerning you at this time.

"I'll ask Jim to arrange a meeting as soon as possible."

61. Anderson responded to Bullington later that day:

"Because of recent issues, I do feel it would be beneficial that you have a clear understanding of your job description. A meeting with Jim Bond and Dave Currie would certainly be appropriate and you are welcome to make arrangements for that. I have attached a copy of our meeting."

62. On about January 29 or 31, 2007, Anderson gave Bullington a memorandum, entitled "Duties of Office Manager."⁹

"As a follow-up to our meeting, this is to clarify the protocols and responsibilities of the position of Office Manager. All of the offices in the administrative and counseling areas of the high school are essentially extensions of the Office of the Principal. This includes the Assistant Principals, the Dean of Students, the Counselors, the Athletic Director, and all of the classified positions of support personnel for these administrators. As such, all are ultimately answerable to the Principal, and the efficient and collaborative operation of all these positions is essential to the success of the school.

"The Principal's Secretary plays the role of Office Manager. The overriding responsibility of this position is to oversee the efficient operations of these combined offices. This responsibility is defined by the following:

⁹The date on Exhibit R-11 is January 29, 2007, while the date on Exhibit C-26 is January 31, 2007. There was no explanation for the different dates.

- “• Observe and assess the functioning of the offices individually and in concert. If and when dysfunction seems to occur, the office manager will notify the principal or principal’s designee of said dysfunction and, if possible and appropriate, make recommendations* for possible solutions. The principal or principal’s designee will then decide as to how the dysfunction will be addressed, either directly or through delegated responsibility. At no point should the Office Manager correct another employee.
- “• Handle, file, and maintain certain confidential records as assigned by the principal, in all cases maintaining the highest standards of professional discretion and confidentiality.
- “• Inform, and if necessary instruct, new classified office personnel in the nature of their job duties and expectations.
- “• Monitor and maintain the principal’s appointment calendar as assigned by the principal.
- “• Provide assistance to the principal in all correspondence as assigned by the principal.
- “• Take notes at all meetings as assigned by the principal.
- “• Check classified employee time sheets, sign, and submit to District Office for remuneration.
- “• If approached by another member of the office personnel with a concern, advise said personnel that the best option is to take the matter up with either the principal or the employee’s immediate supervisor.

“*NOTE: By contract the office manager may not evaluate or discipline another member of the classified bargaining unit.”

63. Bullington would no longer be permitted to correct an employee, but instead would have to report her observations to that employee’s supervisor.

64. At the B-Team meeting on January 31, Anderson announced the changes to Bullington’s job. Bullington’s minutes of the meeting state:

“Interviews will be conducted this week or next for the Secretary II spot at the front desk. [Anderson] congratulated [Amble] who has moved to Athletics.

“[Anderson] stated in order free up [*sic*] counseling center since the front office is not as busy, an adjustment has been made to the front office to compensate for the workload. [Bullington] has been moved out to the front office. He said the bottom line is we will make adjustments to how we do things. [Anderson] will meet with each secretary/department separately to discuss how best to do this. [Anderson] stated the front office has the least amount of interaction with the public and students. He wants cross over training and encouraged everyone to help out if they see someone needing help.

“[Anderson] discussed professionalism and confidentiality stating everyone here is not everyone else’s business. He said if you want to share your business with one trusted person, feel free to do so but keep it with that one person. Beth’s departure was discussed and the fact that, basically, no one knew about it or when it happened.

“[Anderson] stated that it is a trust factor and some news cannot be broadcast. He will announce issues like that whenever appropriate.

“* * * * *

“[Anderson] stated that no staff member, including the Office Manager, will criticize, correct or discipline another employee on their job performance. The only ones who can

make corrections, etc. related to a job performance is an administrator.

“[Anderson] stated that no one should hang up on anyone. If needed, a call should be transferred to an administrator, voice mail or a counselor. If we hang up they will just call back.”

65. Anderson edited Bullington’s minutes of the January 31 B-Team meeting, something he had never done before. When Anderson did this, Bullington asked him to sign that he edited the minutes because she no longer considered them her minutes. Anderson instructed her to put in writing those edits she considered incorrect

On February 6, 2007, Bullington e-mailed Anderson:

“The highlighted sentence is first person and should be revised to read ‘Aaron stated he doesn’t see any issues with our own children being there. He asked that everyone be considerate of their co-workers and don’t place them in an uncomfortable position.’”

Anderson responded:

“As follow up to our earlier discussion today and my last email, I am assuming this email is the only mistake you found to my revised minutes. I would also assume that this is what you were referring to when you said, ‘Embellished and added language that was not said in the minutes.’ Therefore, unless you respond in writing tomorrow, I will assume these revisions in this email, and from our earlier conversation today, are the only statements that were said in the meeting that were reflected as inaccurate in the minutes I submitted to you (Revised copy). If there is no follow up from you in writing, and this email revision is the only statement needing change, I do not find the need to meet to discuss any further, unless you request. We can move on with new business, and complete our tasks at hand. [Bullington], it is important you and I work as a team, as this is not productive and does nothing to improve student achievement, which is why we are both here.”

On February 7, 2007, Bullington responded:

“I was and continue to be surprised at your reaction to my comments about the Minutes. I feel your reaction was out of proportion to the situation.

“Minutes, by definition, is a real-time record of the topics discussed in a meeting. They are by no means verbatim statements but ‘highlights’ of the information. I have taken Minutes at meetings throughout my tenure here and at previous positions and have never had anyone, let alone ‘four people’ make any changes, clarification notwithstanding.

“I must adamantly deny that I had any ‘slant’ to my recording of the meeting. I am almost robotic when it comes to taking Minutes because it is a skilled listening training trait. I have no interest in ‘slant’ing [*sic*] the Minutes and have never tainted my recording of any meeting. I believe your accusation is unfounded and unjustified.

“You may have wanted to clarify your points made in the meeting when you ‘embellished’ on the Minutes but that could have been done with an attachment or separate memo to the staff. For this and future meetings, it might be better to simply follow up a meeting with a recap or summary instead of calling them Minutes to avoid this type of misunderstanding.

“The sentences that concerned me the most were the ones where you used the word ‘I’, making it first person. The Minutes are being submitted by me and the ‘I’ made it sound like statements made by me. I suggested we revise the two sentences to indicate that you made those statements. That was a legitimate revision. I will make the change and return the recap to you for final approval.

“I am equally surprised that you found it necessary to send a copy of your emailed comments to me to Dave Currie, Personnel Director. I’m uncomfortable that our conversations are not remaining at the building level but are being reported to the District Office.

“I agree with you that it would be beneficial for us to go forward and work together as we focus on the school’s mission. I trust that this issue is concluded at this time.”

66. On February 7, 2007, Bullington went on medical leave and she was still on leave at the June 2007 hearing

67. On February 6, 2007, J. J. Esposito resigned from her position as Association building representative. She had been an Association representative in the high school building for about four years.

On or about the same time, Esposito told an employee she resigned because there was something going on at the high school and she did not want to be caught in the middle of Bullington’s situation. However, in an e-mail Esposito publicly stated that the reasons for quitting were personal and family-related issues.

On February 17, 2007, after announcing her intention to quit as an Association representative, Esposito wrote to Chase.

“I know you are not going to want to hear what I have to say but I feel that I have to get this off of my chest. I have wanted to stop being a Union Rep for quite some time. * * * I just am not comfortable with all of the politics. The meetings are a lot of people bitching.

“Now as far as Sharon is concerened [*sic*]. I worry that you are supporting someone who is not worthy of all you are doing. That also brings me to some other feelings that I have about all of this. A while back Sharon had some big problems with all of the ladies that she worked with. There were many complaints on how she treated them and they all got together and stood up against her. * * * I feel that she has brought a lot of this on herself.

“You are a great person and I have great respect for you. I just don’t think that I can put myself in the situations that a Union Rep has too [*sic*].”

After a discussion with Anderson, on February 22, 2007, Esposito forwarded copies of her correspondence with Chase to Anderson, including her letter to Chase. Esposito did not tell Chase she provided copies to Anderson.

Esposito had been an educational assistant for five years in the special education department where she worked six hours per day. She was interested in obtaining another position with the District. Prior to February 7, Esposito told a coworker that she did not want the fact that she was an Association representative to interfere with her chances of working in the office again. In January 2007, Anderson requested that Esposito serve on an interview committee that was considering candidates for a secretarial II position in the Athletic department. This was the position ultimately filled by Amble. Esposito had never served before on an interview committee at the high school. During her participation on the committee, Esposito told Anderson about her own interest in a secretarial position in the high school front office. At Anderson's request, Esposito met with Anderson and Baldwin in March 2007. They asked if she would be interested in a secretarial II position in the front office until the end of the year. She agreed and on March 23 it was announced at the B-Team meeting that Esposito would work four hours for special education as an educational assistant and four hours in the front office as a secretary II. It was a temporary position, substituting for Bullington who was on medical leave.

CONCLUSIONS OF LAW

1. This Board has jurisdiction over the parties and subject matter of this dispute.
2. The District violated ORS 243.672(1)(a) by taking certain employment-related actions against Bullington because she engaged in protected activities.

The Association claims that the District violated ORS 243.672(1)(a) when it took a number of actions against Bullington—changing her job description; removing her from her office; placing a fact-finding memorandum in Bullington's personnel file; threatening to put Bullington on a plan of assistance; and threatening to discharge her because of her participation in protected activities.

The District argues that its actions were legitimate organizational decisions based on reasonable concerns, such as the need to restore harmony in the high school office; a desire to respond to teacher and parent complaints; and to comply with Bigelow's contractual rights.

ORS 243.672(1)(a) provides that it is an unfair labor practice for a public employer to “[i]nterfere with, restrain or coerce employees *in or because of* the exercise of rights guaranteed in ORS 243.662.” (Emphasis added.)

ORS 243.662 provides that public employees have the “right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations.”

ORS 243.672(1)(a) prohibits two types of employer actions: those that interfere with, restrain or coerce employees because of their exercise of protected rights and those that interfere with, restrain or coerce employees in their exercise of protected rights.

To determine if an employer violated the “because of” portion of subsection (1)(a), we examine the reason for the employer’s conduct. If the employer took the disputed action because the employee exercised protected rights, the employer’s conduct is unlawful. *OSEA v. Cove School District #15*, Case No. UP-39-06, 22 PECBR 212, 218 (2007).

An employer violates the “in the exercise” prong of subsection (1)(a) if it engages in activity that, when viewed objectively, has the natural and probable effect of deterring employees from exercising their rights under the Public Employee Collective Bargaining Act (PECBA). A violation of the “in the exercise” portion of subsection (1)(a) may be derivative or independent. A derivative violation occurs when an employer violates the “because of” prong of subsection (1)(a). An employer may also independently violate the “in the exercise” portion of subsection (1)(a), typically by making threatening or coercive statements. *Lebanon Education Association v. Lebanon Community School District*, Case No. UP-4-06, 22 PECBR 323, 352 (2008).

We will analyze each of the actions the District took against Bullington to determine if it violated subsection (1)(a).

Conduct in May and June 2006

The parties presented substantial evidence about activities and events that occurred from May 2006 to February 2007. However, ORS 243.672(3) provides that “[a]n injured party may file a written complaint * * * not later than 180 days following the occurrence of an unfair labor practice.” In this case, the complaint was filed on February 12, 2007. Therefore, we cannot remedy any violations that occurred before August 17, 2006. However, evidence of conduct that occurred more than 180 days before the filing of a complaint may be used “as background to explain the significance of an allegedly unlawful act occurring within the 180-day time period.” *Oregon School Employees Association v. Port Orford-Langlois School District 2J*, Case No. UP-54-92, 13 PECBR 822, 823 (1992). The Court of Appeals has also held that evidence of pre-180-day conduct “sheds light on the state of mind of those responsible” for the

activity within the 180-day period. *Smith v. Employment Division*, 38 Or App 241, 245, 589 P2d 1184 (1979). Accordingly, we consider the activities that occurred in May and June 2006, for purposes of providing background and context to the overall pattern of the District's actions.

In May 2006, the District decided to transfer Bigelow to the high school as a secretary II from her lower-paid position as an educational assistant. On several occasions in early May and June 2006, Bullington objected to Bigelow's transfer, asserting that it did not comply with the provisions of the collective bargaining agreement. Under the terms of the contract, a new or vacant position must be posted for five days.

Anderson seemed to take Bullington's protests personally, and responded stridently, informing Bullington that if the District was not allowed to transfer Bigelow, it would not replace the incumbent.

On May 10, 2006, Bullington told office staff that Anderson was going to transfer Bigelow to the high school office, a move the high school staff opposed.

Bullington then contacted Association grievance official Chase, and told her about the transfer. After a meeting with Chase on May 23, Personnel Director Currie agreed to post the position and to use an interview committee. The Association suggested that Bullington should be on the committee since she had been on the past eight or nine interview committees. Currie's decision upset Anderson who angrily confronted Bullington and told her he was going to hire Bigelow anyway.

Shortly thereafter, Anderson confronted Bullington a second time and accused her of going to the Association behind his back. He told Bullington that she had to talk to him first before going to the Association.

We conclude that by protesting that the transfer did not comply with the contractual provisions, by contacting and seeking the assistance of the Association, and by informing the Association that the District was not complying with a provision of the collective bargaining agreement regarding vacancies, Bullington engaged in protected activity covered by ORS 243.662. A collective bargaining agreement is the heart and soul of employee rights under the PECBA. However, a collective bargaining agreement is not self-enforcing. It requires employees to be familiar with it, to seek the assistance of the respective labor organization, and to bring variances or violations to its attention, whether by filing grievances or merely reporting them. Where an employer interferes with efforts to monitor or enforce the collective bargaining agreement, employees are denied their most fundamental rights under the PECBA, the rights and benefits of a collective bargaining agreement. *See Central Education Association and Vilches v. Central*

School District 13J, Case No. UP-74-95, 17 PECBR 54 (1996), *order modified on recons*, 17 PECBR 93 (1997), *aff'd*, 155 Or App 92, 962 P2d 763 (1998) (asserting a contractual right is protected activity).

Anderson took a number of actions against Bullington in May and June 2006. As discussed above, he ordered her to come to him first before going to the Association with a problem. On May 29, 2006, only a few days after angrily confronting Bullington about her protected activity, Anderson told Bullington he was going to change her position. On June 5, Anderson told Bullington she would not be permitted to participate on the interview committee, which she had done on eight or nine previous occasions, because she had “caused problems” for Anderson. Based on the evidence in the record, we conclude that Anderson took these actions because he was angry about Bullington’s complaints to the Association and the Association’s intervention in a transfer process that appeared to violate the contract. *AFSCME Council 75, Local 3694 v. Josephine County*, Case No. UP-26-06, 22 PECBR 61 (2007), *appeal pending*. In addition, the timing of Anderson’s actions, which occurred almost immediately after Bullington and the Association protested the transfer, is suspicious. We will infer a causal connection when an employer’s conduct is close in time to the employee’s protected activity. *Ibid* at 95.¹⁰

We conclude that the events of May and June show that Anderson took a number of adverse employment actions against Bullington because of her exercise of PECBA-protected rights. With this information as background, we now turn to the Association’s allegations concerning events that occurred during the 180-day time period that violated subsection (1)(a).

Adverse Action: August 2006 to February 2007

During the period from August 2006 through January 2007, the District continued to take adverse action against Bullington. In May 2006, Anderson threatened to change Bullington’s position. He carried out his threat during the 2006-2007 school year. In October 2006, Anderson told Bullington that administrators would be solely responsible for the secretaries and Bullington would have to go to an administrator if she had concerns about the secretaries. This change was inconsistent with Bullington’s longstanding position description.

¹⁰We have held that the requirement that Anderson attempted to impose on Bullington—that she must see him about an employment problem before contacting the Association—is unlawful under subsection (1)(a). See *Junction City Police Association v Junction City*, Case No. UP-18-89, 11 PECBR 780, 792-93 (1989).

In November 2006, Bullington told Workley that she thought Bigelow had some performance problems. Although Workley thanked Bullington for the information, he subsequently changed his mind. Workley and Anderson mischaracterized Bullington's conduct as a formal complaint. The two administrators questioned and instructed secretaries to send written statements to Anderson, in effect disavowing Bullington's actions. Workley also told an employee that Bullington would be terminated and asked the employee if she wanted Bullington's position.

On January 2, 2007, Anderson instructed Bullington to get a union representative because he wanted to discuss three concerns with her. On January 3, Anderson and two assistant principals held what they claimed to be a "fact-finding meeting" with Bullington and Association Representative Chase. On January 12, Anderson gave Bullington a written memorandum about the January 3 meeting, required Bullington to sign the document, and placed the document in her personnel file.

On January 12, 2007, five District administrators met with Jim Bond, an Association representative, and informed Bond that the District was going to put Bullington on a plan of assistance and that the District intended to discharge Bullington.

After January 13, 2007, Anderson changed Bullington's job description. On January 25, Anderson moved Bullington out of her private office, where she had worked since the fall of 2005, and assigned her to work at a desk in the open front area. On January 29, Anderson reduced Bullington's authority as office manager by assigning her to work solely as his secretary. As Anderson's secretary, Bullington no longer had authority to correct the office employees.

We now consider the reasons for the District's actions. As discussed above, Bullington engaged in protected activities. In May and June 2006, the District took adverse action against her because of these activities. Given this background, it is reasonable to infer that the District's subsequent actions against Bullington—from August 2006 through January 2007—were also motivated by the District's dislike of Bullington's PECBA-protected activity. The District, however, claims that it had legitimate reasons for changing Bullington's assignment, moving her out of her office, and threatening to discharge her. We disagree.

The timing of the District's actions are highly suspect. The District claimed that it wanted to correct problems in Bullington's performance. However, the concerns noted by District administrators and discussed with Bullington in their January meetings occurred in 2003, 2004, and 2005. The District had opportunities to comment on and correct Bullington's purported deficient conduct through the evaluation process and at the time these incidents occurred. The District did not do so; instead, it gave Bullington exemplary evaluations in which she received the highest possible rating. A reasonable

employer does not resurrect stale incidents from earlier years as a basis for action against an employee, when the employee was contemporaneously evaluated as an excellent worker. Under these circumstances, we conclude that the District's purported reasons for its harsh treatment of Bullington over her November 2006 memorandum were not reasonable.

The fact that the District changed its position with respect to Bullington's prior conduct also puts their actions in a suspicious, if not dubious, light. At a January 3, 2007 "fact-finding" meeting with Bullington, Anderson brought up an incident involving a phone call in December 2006. Anderson accused Bullington of improperly hanging up on an irate caller. However, both Anderson and Vice-Principal Baldwin knew about this incident at the time it occurred and commended Bullington for the way in which she handled the caller. A reasonable employer does not commend an employee's conduct and then subsequently use the same conduct as the basis for disciplinary action.

Anderson also brought up an allegation that Bullington made a derogatory comment about a member of the athletic department. At worst, Bullington privately told another office employee that the individual was arrogant. A reasonable employer does not rely upon an insignificant allegation as a basis for adverse action against an employee.

Finally, Anderson accused Bullington of failing to follow earlier directives. Anderson never specified what directives Bullington had not complied with when he met with Bullington and Chase in January 2007. At the hearing, however, the District complained that Bullington broke a confidence by telling an employee that Baldwin had been hired as assistant principal, and by permitting an employee to get information from her personnel file. We note that these allegations involved events that occurred long before May 2006. Had the District been sincerely concerned about the way in which Bullington handled these incidents, it could have brought them to her attention at the time they occurred or mentioned them in her evaluations. They did not do so, however.

In sum, the purported reasons the District gave for the adverse actions it took against Bullington are not supported by evidence in the record. We conclude that the District was merely trying to accumulate allegations upon which it could act against Bullington, even if these allegations had no legitimate basis in fact. The District's reasons are not persuasive, and we conclude that they are pretextual. Where the employer's reasons for its actions are found to be pretextual, we reasonably infer that it had an unlawful motive that it wanted to conceal. *AFSCME v. Josephine County*, 22 PECBR at 97; *Oregon State Employees Association v. Central Oregon Irrigation District*, Case No. C-121-80, 5 PECBR 4272, 4279, *AWOP*, 54 Or App 166, 634 P2d 836 (1981).

Summary

We conclude that the District unlawfully threatened to change, and did change, Bullington's job description, duties, and responsibilities because of her protected activities; that the District unlawfully removed Bullington from her office because of her protected activities; that the District unlawfully acted to undermine and interfere with Bullington's position as office manager because of her protected activities; that the District threatened to discharge Bullington because of her protected activities; that the District unlawfully subjected Bullington to a fact-finding session because of her protected activities; that the District unlawfully placed a fact-finding memorandum in Bullington's personnel file because of her protected activities; and that the District unlawfully threatened to place Bullington on a plan of assistance and discharge her because of her protected activities. Accordingly, we conclude that the District violated ORS 243.672(1)(a) by taking the above-described employment-related actions against Bullington *because* she engaged in protected activities.

It follows, in this instance, that the above-described conduct by the District carried out against an employee who engaged in protected activities by seeking assistance from the union and asserting rights under the contract, also violates the *in the exercise* prong of ORS 243.672(1)(a). The conduct of the District will have the natural and probable effect of interfering, restraining, or coercing employees in the exercise of their protected rights. *AFSCME v. Josephine County*, 22 PECBR at 98; *Oregon Public Employees Union and Termine v. Malheur County*, Case No. UP-47-87, 10 PECBR 514, 521-22 (1988).

It is unnecessary to determine whether the District's conduct independently violates the "in the exercise" prong of subsection (1)(a). Since we have found two violations of the statute, it would add nothing to our remedy to find a third. *Milwaukie Police Employees Association v. City of Milwaukie*, Case No. UP-63-05, 22 PECBR 168, 186-87 (2007), *appeal pending*.

Remedies

The Association requests an order declaring that the District's actions violated ORS 243.672(1)(a); directing the District to cease and desist from the unlawful conduct; reinstating Bullington to her former position; restoring her former duties and authority; and returning her to her former office location. We conclude that such remedial action is appropriate and necessary under the authority given to us in ORS 243.676(2)(b) and (c). The Association seeks an order requiring reimbursement for any sick leave that Bullington used because of the stress caused by the District's unlawful conduct. However, we decline to direct such a remedy in the circumstances of this case.

The Association seeks an order awarding a civil penalty; requiring the posting of an appropriate notice to employees; and directing other appropriate relief. ORS 243.676(4)(a) permits this Board to award a civil penalty where this Board finds that the respondent committed an unfair labor practice “repetitively, knowing that the action taken was an unfair labor practice and took the action disregarding this knowledge, or that the action constituting the unfair labor practice was egregious.” See *East County Bargaining Council v. David Douglas School District*, Case No. UP-84-86, 9 PECBR 9184, 9194 (1986); *Lincoln County Education Association v. Lincoln County School District*, Case No. UP-56-04, 21 PECBR 206, 221 (2005). While we found serious violations of subsection (1)(a), they were not egregious or committed with flagrant disregard of the law. Accordingly, we deny the Association’s request. *Roseburg Education Association v. Douglas County School District*, Case No. UP-16-96, 16 PECBR 868, 876-77 (1996); *Association of Professors of Southern Oregon State College v. Oregon State System of Higher Education and Southern Oregon State College*, Case Nos. UP-13/118-93, 15 PECBR 347, 362 (1994); *Washington County Police Officers Association v. Washington County*, Case No. UP-99-89, 12 PECBR 910, 915 (1991).

We will order the posting of a notice to employees in order to remedy or remove the effect of the District’s unlawful conduct. In *Oregon School Employees Association, Chapter 35 v. Fern Ridge School District 28J*, Case No. C-19-82, 6 PECBR 5590, 5601, *AWOP*, 65 Or App 568, 671 P2d 1210 (1983), *rev den*, 296 Or 536 (1984), this Board identified factors for consideration when requiring a respondent to post a notice to employees.

“This Board generally requires the posting of an official notice in situations in which the violation: (1) was calculated or flagrant; (2) was part of a continuing course of illegal conduct; (3) was perpetrated by a significant number of a Respondent’s personnel; (4) affected a significant portion of bargaining unit employees; (5) had a significant potential or actual impact on the functioning of the designated bargaining representative as the representative; or (6) involved a strike, lockout, or discharge.”

This guidance was recently reaffirmed by this Board in *Blue Mountain Faculty Association/Oregon Education Association/NEA and Lamiman v. Blue Mountain Community College*, Case No. UP-22-05, 21 PECBR 673, 781-82 (2007). Here, five District officials were engaged in the conduct against Bullington, including the superintendent, the personnel director, and three vice principals. Their conduct was deliberate and calculated. Anderson and the three principals, who serve as the supervisors of the 11 office employees at the high school, played the leading role and supporting cast in the District’s unlawful conduct. Further, Anderson and Workley involved approximately

six of the 11 office employees in the campaign against Bullington through their interrogations or other actions. Lastly, the District's unlawful conduct struck at the heart of employee rights and protections to assert claims under the collective bargaining agreement and to seek the assistance of a labor organization. In these circumstances, we conclude it is necessary and appropriate to require the posting of a notice to the employees in order to fully remedy the District's conduct. *See McLoughlin Education Association v. McLoughlin Union High School District #3*, Case No. C-212-82, 7 PECBR 5998 (1983).

ORDER

1. The District shall cease and desist from violating ORS 243.672(1)(a).

2. The District shall rescind the January 12, 2007 memorandum and remove it and all other related documents concerning Sharon Bullington from all District files. The District shall not use any such material in any employment related actions regarding Sharon Bullington.

3. The District shall return Sharon Bullington to her previous office location.

4. The District shall rescind the changes made in Sharon Bullington's job description, duties, and responsibilities and shall restore her previous duties and responsibilities.

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5. The District shall sign and post copies of the attached notice for a period of thirty (30) days in a prominent place in all District buildings where work sites for members of the bargaining unit are located, as well as in prominent places in the District administrative offices and the office area of the high school

DATED this 4th day of November 2008.

*

Paul B. Gamson, Chair



Vickie Cowan, Board Member



Susan Rossiter, Board Member

*Chair Gamson concurring:

I concur in the result.



Paul B. Gamson, Chair

This Order may be appealed pursuant to ORS 183.482



NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE STATE OF OREGON EMPLOYMENT RELATIONS BOARD

PURSUANT TO AN ORDER of the Employment Relations Board in Case No. UP-5-07, *Grants Pass Association of Classified Employees/OEA/NEA and Sharon Bullington v. Grants Pass School District No. 7*, and in order to effectuate the policies of the Public Employee Collective Bargaining Act, we hereby notify our employees that:

The Employment Relations Board found that Grants Pass School District No. 7 committed unfair labor practices under the Public Employee Collective Bargaining Act. This Board found that the District unlawfully restrained, coerced, and interfered with employees in the exercise of their protected rights and that the District unlawfully took employment-related adverse action against Sharon Bullington because she engaged in activity protected by the Public Employee Collective Bargaining Act in violation of ORS 243.672(1)(a). To remedy the unfair labor practices, this Board ordered the District to do the following:

1. The District shall cease and desist from:
 - (a) Restraining, coercing, or interfering with employees in the exercise of their protected rights in violation of ORS 243.672(1)(a); and
 - (b) Acting against Sharon Bullington because she sought to assert rights under the collective bargaining agreement, contacted the Association of Classified Employees/OEA/NEA, and/or sought the assistance of the Association of Classified Employees/OEA/NEA in violation of ORS 243.672(1)(a).
2. The District shall:
 - (a) Rescind and remove certain documents concerning Sharon Bullington from all District files; return Sharon Bullington to her previous office location; rescind the changes in Sharon Bullington's job description, duties, and responsibilities; and restore her previous duties and responsibilities; and
 - (b) Sign and post copies of the attached notice for a period of thirty (30) days in a prominent place in all District buildings where work sites for members of the bargaining unit are located, as well as in prominent places in the District administrative offices and the office area of the high school;
 - (c) Comply with this Board's order.

Dated _____, 2008

GRANTS PASS SCHOOL DISTRICT NO. 7

By: _____
Employer Representative

Title

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED

This notice must remain posted in each employer facility in which bargaining unit personnel are employed for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other materials. Any questions concerning this notice or compliance with its provisions may be directed to the Employment Relations Board, 528 Cottage Street N.E. Suite 400 Salem Oregon 97301-3807, phone 503-378-3807.