

67274-6

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No. 67274-6-1

COURT OF APPEALS,
DIVISION I
OF THE STATE OF WASHINGTON

Donald Canfield, Appellant

v.

Michelle Clark & Seattle Public Schools, a municipal corporation,
Defendants.

COURT OF APPEALS
STATE OF WASHINGTON
2021.11.22 PM 3:46


BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The Court below erred in entering the order of April 19, 2011 granting Defendant Clark's Motion for Summary Judgment dismissing Plaintiff Canfield's claims of defamation and outrage.

2. The Court below erred in entering the order of April 19, 2011 granting Defendant SPS' Motion for Summary Judgment in part, dismissing Plaintiff Canfield's claim for failure to pay prevailing wage.

3. The Trial Court erred in reconsidering those issues raised by Defendant SPS in their Motion for Summary Judgment as raised in their Motion for Judgment as a Matter of Law pursuant to CR 50 and granting Defendant SPS' motion.

B. Issues Pertaining to Assignments of Error

1. Whether Plaintiff Canfield supplied sufficient evidence that Defendant Clark made false, defamatory statements that were not subject to a privilege that caused damage to Plaintiff such that Plaintiff should be allowed to proceed to trial. (Assignments of Error 1).

2. Whether Plaintiff Canfield is entitled to pursue a claim of failure to pay prevailing wage under Washington law when Plaintiff was a maintenance worker employed by the school but used to complete work on

public works projects in which contractors were required to be paid and pay employees prevailing wages. (Assignments of Error 2).

3. Whether the Trial Court could readdress issues raised in a motion for summary judgment and motion for reconsideration that were denied by a prior judge assigned to the case after trial and after time had lapsed to file a motion for reconsideration. (Assignments of Error 3).

4. Whether Washington law supports a claim of retaliation for raising a wage claim when the employee raises a wage claim that is not failure to pay minimum wage, that is the least amount required by law be paid an employee, or failure to pay overtime pay absent termination. (Assignments of Error 3)

II. STATEMENT OF THE CASE

A. Procedural Background

1. Filing of Plaintiff's complaints and consolidation.

These cases were filed as two separate cases. CP 293, ¶ 2. The first case against Defendant Michelle Clark ("Defendant Clark") was filed in December 2009, and raised claims against Defendant Clark for defamation and outrage for statements made not only to Defendant SPS' HR personnel, Jeanette Bliss, but to other employees. CP 1-5. The second case against Defendant Seattle Public Schools ("Defendant SPS") raises claims of violations of Washington's Prevailing Wage Act/Wage Payment Act, including

retaliation, Civil Conspiracy, Negligent Supervision and Outrage/Intentional or Negligent Infliction of Emotional Distress. CP 1033-1037. On motion of Defendants, the Court consolidated the cases.

2. Summary Judgment ruling dismissing claims against Defendant Clark and SPS but allowing Plaintiff to move forward on claim of retaliation and civil conspiracy against Defendant SPS.

On April 19, 2011, Judge Craighead entered an order on Defendants' Motion for Summary Judgment dismissing Plaintiff's claims against Defendant Clark of defamation and outrage. CP 704-706. In addition, the Court also granted Defendant SPS's motion as to Plaintiff's claim of violation of the Prevailing Wage Act/Wage Payment Act, RCW 39.12 et. seq. & RCW 49.52 et. seq., but allowing Plaintiff to move to trial on claims of retaliation based on RCW 49.52.050 & RCW 49.46.100 and civil conspiracy. CP 1005-1007. In their request for reconsideration of the ruling on their summary judgment motion, Defendant SPS argued that Plaintiff did not have a claim for retaliation for raising a wage claim absent termination of employment. CP 13-40 & CP 642-658. The Court denied Defendants' motion and allowed Plaintiff to move forward on that claim. CP 698-699. Plaintiff moved for reconsideration of dismissal of his claims and that was denied by the Court as well. CP 700-701. The Court's orders were short on any explanation of its decisions regarding

dismissal. CP 704-706 & 1005-1107 & CP 698-699 & 700-701.

3. Trial Court ruling on motion for judgment after trial dismissing Plaintiff's retaliation claim.

Before trial, the case was transferred to Judge Bruce Heller. See CP 1028-1029. Trial occurred and the jury reached a verdict in favor of Plaintiff Canfield on his claim of retaliation awarding Plaintiff \$500,000 in damages. See CP 1028-1029. Defendant SPS then renewed its motion for judgment as a matter of law pursuant to CR 50(b) raising the same arguments made on Summary Judgment, that Plaintiff Canfield did not have a claim for retaliation for raising a wage claim absent termination under Washington law. CP 823-841. Defendant SPS made no argument that the evidence did not support a finding of retaliation and argued only that Plaintiff had no cause of action under Washington law. CP823-841 & CP 877-891 (Plaintiff's response). Regardless, the Court granted Defendant SPS's motion holding that Plaintiff Canfield had no claim of retaliation for raising a wage claim absent 1) raising a claim for nonpayment of the minimum wage or overtime pay pursuant to RCW 49.46 et .seq. or, 2) termination. CP 1028-1029.

B. History of Employment at Defendant SPS.

The following are the facts that gave rise to Plaintiff's claims as set out in Plaintiff's response to Defendants' summary judgment motion.

1. Promoted to foreman, no history of discipline.

The SPS supervisors/managers relevant to the facts of this case, along with their positions held at the time, are as follows: Fred Stevens, Executive Director of Facilities; Lynn Good, Senior Facilities Manager; Mark Pflueger, Maintenance Manager; Mark Walsh, acting Maintenance Manager prior to Pflueger hiring & first line supervisor; Dan Bryant, Senoir Maintenance Shop Foreman; Jeanette Bliss, Human Resources. CP 235, ¶ 2.¹

Plaintiff first began working as a journeyman electrician, in 1981, after completing a 4 year apprenticeship program. CP 303, 23:10-12; He has held his EL01, journeyman electricians commercial wiring license since that time. CP 304, 28:16-20. During the years he has been an electrician, he has been an active member of his union, IBEW Local 46. *Id.* He began working for Defendant SPS as a maintenance electrician in or about 1992. CP 303, 26:1-10. He became the foreman of the electrical department in or around 2000. CP 307, 41:24-42:4. His duties as foreman of the electrical shop include assigning work and managing the other electricians. CP 235-236, ¶ 3. Although he can discipline employees under him, he does not have the

1. There appears to be an error in the Court's Papers and/or Court file as portions of both the Declaration of Hammack and Declaration of Plaintiff are missing pages. A copy of each of those documents is attached as Exhibits to allow Appellant to file the brief timely. Appellant will be correcting the error with the Superior Court and will file a supplemental statement of arrangements correcting the error so the full documents are produced as Clerk's Papers.

authority to terminate an employee. *Id.* During the time he has worked with Defendant SPS up until December 2007, Plaintiff Canfield had never had any disciplinary action taken against him. *Id.*

2. Problems with funding for purchase of safety equipment, allow unskilled workers to perform electricians work, and participation in supporting a strong Union.

During the time Plaintiff Canfield has worked for Defendant SPS, he has been active in his union and has worked with the union to ensure electricians were treated fairly. CP 236, ¶ 4. Over the years there had been problems with funding to purchase necessary safety equipment including aluminum ladders (using metal ladders is unsafe), flash protection (to protect electrician's in the event of an catastrophic electrical event), earthquake proof shelving, adequate heat in the office, safe trucks (including installation of the safety shield that protects drivers in the event of hard braking). CP 310-311, 81:21 - 85:18. There were always problems with funding and/or having money to purchase safety equipment. *Id.* As explained by Mark Pflueger during his deposition, Defendant SPS consists of two divisions, the maintenance division and the capitol division. CP 325-329, 21:9-25:25. The capitol division has three separate divisions: Building Excellence ("BEX"), responsible for organizing new construction projects; Building Technologies Academics ("BTA"), responsible for remodel work, and Small Works, responsible for

minority/small business contracts. *Id.*; See also CP 236, ¶ 4. Mr. Pflueger explained that there was problems with funding of the maintenance division. *Id.* In addition to the above, in or about April 2007, Plaintiff Canfield had filed a report with the union after he discovered pipe fitters were completing electrical work that required an electrician. CP 308, 45:3-23.

3. History with employees under his supervision - Lynn Good implements progressive discipline policy and push for supervisor's to apply stricter work standards in complying with the policy.

In or around the summer of 2006, Plaintiff Canfield recalls being called into a meeting with his supervisor to discuss some issues with employees in his shop. CP 236-237, ¶ 5. Two of the employees, Nam Chan and Mark Andresen, had broken into Plaintiff Canfield's desk to retrieve a vacation calendar. *Id.* Plaintiff Canfield had been having problems with these employees not providing proper notice before taking vacations. *Id.* The employees had started a habit of entering vacation time on the calendar on a Friday when Plaintiff Canfield was not in the office for the beginning of the following week. *Id.* Plaintiff Canfield became aware of this when he came in on the Monday afterward, the employee would not be present and he noticed the time had been written in on the calendar. *Id.* To remedy the problem, Plaintiff Canfield locked the calendar in his desk. *Id.* After talking with his

supervisor and union representative about the issue, it resolved. *Id.* Plaintiff Canfield was not written up and received no disciplinary action. *Id.* All appeared to remain relatively quite in the shop until Plaintiff Canfield complained about payment of prevailing wages. *Id.* This also corresponded in time to the hiring of Defendant Clark. *Id.*

At or about this time, summer of 2007, new Facilities Manager Lynn Good, began implementing a stricter progressive discipline policy. CP 237, ¶ 6, & CP 243-245. Plaintiff Canfield was instructed by his supervisor to begin using the policy to discipline a few of his employees. *Id.* At the time he was having issues with Nam Chan, Mark Johnson and Jeff Hillard. *Id.*, & CP 247-252. He was instructed to discipline the employees, including writing up Nam Chan. *Id.* Plaintiff Canfield discussed the disciplinary action with Ed Heller and with his direct supervisor Dan Bryant. *Id.* Mr. Bryant told Plaintiff Canfield that he would deliver the written document to Mr. Chan himself. *Id.* See also CP 338, 97:16100:61. When Mr. Bryant delivered the document to Mr. Chan, Mr. Chan was upset and told Mr. Bryant he believed the discipline was unfair. *Id.* Mr. Bryant told him he should go to HR and file a report. *Id.* The report was investigated and found unsubstantiated. *Id.* The stricter disciplinary policy was creating some unrest among the employees. CP 237, ¶ 6.

4. Complaints regarding failure of Defendant SPS to pay his employees what he believed were appropriate wages - payment of prevailing wage and problems with Small Works, "Summit Meeting" just days before being escorted off school property by police.

Also during 2007, Plaintiff Canfield had made complaints that he believed his employees were not being paid correctly when they were used to perform work along side contractors on capitol projects. CP 237-238, ¶ 7. *See also* CP 316-320, 169:4-170:16; 176:2-182:24; 185:20-189:20. Close in time to Defendant Clark's hire, the maintenance electricians were called to work on a BEX project involving the installation of cubicles. *Id.*; *See also* CP 237-238, ¶ 7. Plaintiff Canfield had complained that he believed the maintenance electricians should be paid prevailing wage because they were doing work that was under contract, along side contractors. *Id.* Plaintiff Canfield had complained to the then new Senior Facilities Manager, Lynn Good. *Id.* Mr. Good had responded indicating Plaintiff Canfield and his employees would be paid the prevailing wage for the work completed. CP 263-264. During his deposition, Dan Bryant the Senior Shop Foreman acknowledged that payment of prevailing wages to maintenance employees had been a continuing issue. CP 333-335, 40:17-46:23; CP 339-340, 123:18-125:12..

During a summit meeting, just days before his being escorted off school

grounds by police, Plaintiff Canfield again raised the issue of payment of prevailing wages in relation to a project occurring at Nathan Hale. *See* CP 316-320, 169:4-170:16; 176:2-182:24; 185:20-189:20.; CP 237-238, ¶ 7.

There were several supervisors and managers at the meeting, including union representatives. *Id.* Plaintiff Canfield explained that Mr. Good had agreed to pay prevailing wages to the maintenance electricians on the BEX project and that he believed they should be paid the same on the Nathan Hale project. *Id.* It was obvious to Plaintiff Canfield that this did not sit well with at least one of his supervisors, Mark Walsh. *Id.* Within days Plaintiff Canfield was escorted off the school grounds by police in a very public and embarrassing manner. *Id.*

C. Defendant Michelle Clark makes defamatory statements with the intent to harm Plaintiff.

1. Plaintiff Canfield helps get a friend hired whom he believed was a good worker only to find that she refused to comply with the terms of her employment, refused to take direction and was a difficult employee.

During his time with Defendant SPS, Plaintiff Canfield had also served as the firm alarm technician. CP 238-239, ¶ 8. He did this from 1997 to 2006. *Id.* Plaintiff Canfield was looking to hire a new maintenance electrician to fill the position during the summer of 2007. *Id.* He had known Defendant Clark for several years and knew that she had an ELO6 license and was a licensed

fire alarm tech. *Id.* An ELO6 license is a low voltage electricians license. *Id.* The position he was looking to fill was an EL01 position with a certificate as a fire alarm tech. *Id., also CP 265-269.* He discussed the position with Defendant Clark explained the position would require that she attend class through the union to obtain her ELO1 license and become a union member. *Id.* Defendant Clark indicated she was interested in the position and Plaintiff Canfield set up a meeting with her, Nancy Mason and Janet Lewis, his union representatives, and Ed Heller, the Facilities Manager. *Id.* Mr. Heller left Defendant SPS shortly thereafter. *Id.* An agreement was reached and the terms were documented in a letter dated July 7, 2007 signed by Ed Heller. *Id., also CP 270-271; See also CP 384-385, 51:18-55:17.* The agreement required that Defendant Clark obtain her journeyman electricians license by attending school and working with the Union. *Id.* Unfortunately, it became clear to Plaintiff Canfield rather quickly that Defendant Clark had no intentions of obtaining her EL01 license, was a difficult employee to work with who refused to take direction or follow instructions. *Id.*

2. **Defamatory statements to Aki Piffath and Jeanette Bliss - “when [she] started working here, [at SPS in August 2007] she asked him if he still had a gun on him and he said, yes it was in his pants.”**

During the first few months of her employment, Plaintiff Canfield had ongoing problem with Defendant Clark. CP 239, ¶ 9. Defendant Clark refused to follow direction. *Id.* She began to take equipment off the truck she was assigned including a ladder and pipe benders, something that was necessary in doing work as an ELO1 electrician. *Id.* Plaintiff Canfield asked Defendant Clark to leave the equipment on the truck as she was to obtain her ELO1 license and that there were times when she might be in the field when that equipment was necessary for other employees to use. *Id.* Defendant Clark ignored the request. *Id.* She also had a habit of failing to return phone calls and Plaintiff Canfield had a difficult time locating her. *Id.* To resolve this, he asked her to frequently check in with him. *Id.* This angered Defendant Clark. *Id.* Defendant Clark also had a habit of taking extended lunches and/or lunches at a time that was inappropriate. *Id.* Frustrated, Plaintiff Canfield contacted her previous supervisor to see if he had similar problems. *Id.* Unfortunately he learned that Defendant Clark had a history of failing to follow orders and other frustrating work conduct. *Id.*, Exhibit F.

Because of the issues the parties were having, a meeting was called by Lynn Good to discuss the problem. CP 239-240, ¶ 10. Plaintiff Canfield told Lynn Good that he wanted to write Defendant Clark up for failing to follow orders and failing to act to obtain her ELO1 license. *Id.* Her failure to obtain

the licenses was causing difficulty in scheduling work for Plaintiff Clark as he would have to ensure an EL01 was present and able to assist Defendant Clark with certain of her work projects. *Id.* Lynn Good told Plaintiff Canfield to wait, that she was a new employee and he would deal with it. *Id.* The parties did meet with the union representative present, Nancy Mason. *Id.* Each side discussed their issues and Plaintiff Canfield was hopeful that a resolution could be reached. *Id.* Unfortunately that was not the case and the problems continued. *Id.*

At the end of the week when the Summit Meeting occurred, the one in which Plaintiff Canfield raised the prevailing wage issue again to his supervisors, Plaintiff Canfield had scheduled the Friday off. Ex A, 6-7, ¶ 11 (CP 235-242).² He left Defendant Clark and another employee with instructions that they were to complete certain work orders. *Id.* Instead, Defendant Clark spent a good part of the day arranging to have desks delivered to the maintenance electrician's shop. *Id.* During the meeting with Lynn Good, the parties had discussed purchasing some desks for the shop. *Id.* With Mr. Good's approval, Plaintiff Canfield had planned on moving forward with picking some newer desks from the BEX warehouse. *Id.* While he was gone,

² As referenced in fn. 1, this cite includes one of the missing pages of Plaintiff Canfield's declaration. A complete copy is included as Exhibit A.

Defendant Clark decided to move in some desks, used desks that she had located under the south stands of memorial stadium at the Seattle Center. *Id.* She located the desks and had them brought in that Friday but left them, about 4 desks, in the middle of the floor. *Id.* When Plaintiff Canfield came to work on Monday, stuff had been moved around and access to his desk was blocked. *Id.* Plaintiff Canfield was not happy with what Defendant Clark had done, in large part because she failed to complete her work. *Id.* The desks were also old and rather moldy. *Id.* In addition, she had no work order to complete the work. *Id.* All work at the shop required a work order. *Id.* In trying to get to his desk, Plaintiff Canfield pushed some of the desks out of the way, before beginning work and before any employees were present *Id.* Plaintiff Canfield told Defendant Clark that he was not happy. *Id.* Later, Defendant Clark claimed that Plaintiff Canfield locked her inside the office but that is not true. *Id.* Defendant Clark was dispatched out to work as were the other employees. *Id.* Plaintiff Canfield did not shove a large full file cabinet into Defendant Clark's desk, as alleged by Defendant Clark. CP 393, 85:1-87:16. Her description of how Plaintiff Canfield shoved the desk across the room is a bit remarkable given she acknowledges it was a large file cabinet full of files. *Id.*

Plaintiff Canfield had introduced Defendant Clark to Aki Piffath, a maintenance employee, not an electrician, that lived in Marysville as a possible

car pool partner for Defendant Clark. Ex A, 7, ¶ 12 (CP 235-242) . The parties had been carpooling together. CP 395-398, 89:25-102:7. Apparently, after work that day, Defendant Clark complained to Mr. Piffath about Plaintiff Canfield. *Id.* In the process, she relayed to Mr. Piffath reports that Plaintiff Canfield carried a gun. *Id.* Plaintiff Clark testified that during that drive home, Mr. Piffath suggested that Defendant Clark talk with HR about her complaints. *Id.* It is unclear who first contacted HR, but Ms. Jeanette Bliss, Defendant SPS' HR representative contacted Defendant Clark to arrange a meeting a few days later. *Id.* During that meeting, Defendant Clark complained about Plaintiff Canfield, told Ms. Bliss she was afraid of Plaintiff Canfield and that he carried a gun. CP 416-417, 48:9-49:24. Ms. Bliss took notes during the interview. *Id.*, CP 436-441. Ms. Bliss testified that Ms. Clark told her that Plaintiff Canfield had guns in his home. CP 416-417, 48:9-49:24. She went on to describe an event that occurred several years ago where she met Plaintiff Canfield on a weekend to help her load a pot into her car she was purchasing at a pottery store. CP 395-398, 89:25-102:7; *See also* CP 416-417, 48:9-49:24. She indicated he instructed her to park on school property, across the street from the store, and they walked across the street. CP 395-398, 89:25-102:7. During the walk across the street, Defendant Clark claims that Plaintiff Canfield took out a gun and carried it in his hand. *Id.* After crossing the street,

he put the gun back in his pocket. *Id.* However, that is the only statement Defendant Clark testified that she recalled making. *Id.* Ms. Bliss testified that Defendant Clark stated further that after she began work in August 2007, she asked Plaintiff Canfield if he still had a gun and he said, yes it is in my pants. CP 416-417, 48:9-49:24 & CP 436-441. Mr. Piffath was present during this meeting as well. *Id.*

Ms. Bliss testified that she returned to the school district and immediately had a meeting with Lynn Good, Fred Stevens and she believes security. CP 418-421, 56:12-67:4. It was the groups agreement, that Plaintiff Canfield be immediately placed on administrative leave. *Id.* They also decided that given there were allegations that he was carrying a gun, police should be called. *Id.* Plaintiff Canfield was contacted and brought to the security office. *Id.* When Plaintiff Canfield entered the office, the door was locked behind him. Ex A, 7, ¶ 13 (CP 235-242). He was told that he was being placed on administrative leave and that there was an allegation that he was carrying a gun. *Id.* Shocked, he stated he was not carrying a gun, had never carried a gun on school property and offered to be searched, offered his keys to his personal truck, the company truck and keys to his desk and file cabinets. *Id.* No one from the school district searched him or his things and the police did not search him. *Id.* When he was escorted off the property, he again offered to be

searched but was told no. *Id.*

Plaintiff Canfield was placed on administrative leave beginning that day, December 5, 2007. CP 418-421, 57:4-59:25. Ms. Bliss completed the investigation into Defendant Clark's complaints by the end of December 2007. CP 423, 71:12-72:11. Plaintiff Canfield was left on leave through July 2008. *Id.* Defendant SPS imposed discipline including a demotion, allowing Plaintiff Canfield to return to work but as a maintenance electrician, not as a foreman. CP 425-426, 80:6-82:9.

3. Defamation continues - She told other employees - "he carried a gun and never took it off his body", "I was in the electrical shop one day when he was there. I saw it on him."

During her deposition, Defendant Clark denies any recollection that she made any other statements regarding Plaintiff Canfield carrying a gun other than the story outlined above about the pottery store. CP 395-398, 89:25-102:7; 102:8-103:6. Defendant Clark's defamatory statements did not end with the report to Aki Piffath and Jeanette Bliss. *See* CP 290-292..

In June of 2008, while Plaintiff Canfield was still out on leave, Defendant Clark was working with another temporary electrician, Jessie Logan. *Id.* Ms. Logan describes her first day with Defendant Clark, stating, "[t]he only thing I remember of that afternoon was of her going around to a lot

of the office personnel on the second floor of the school district shop and talking about a “Don.” She goes on to describe the remainder of that week and the following week. *Id.* Ms. Logan explained she continued to talk about “Don” to various office personnel, school custodians and other craft workers at the shop. Ms. Logan goes on to describe:

She started talking to one of the teachers at an elementary school we went to about Don carrying a gun and having such a terrible temper. When I overheard this I asked Michelle, “Did you say that this guy, “Don”, was carrying a gun on the school district’s property?” She told me that he carried a gun and never took it off his body. I asked her if she ever actually SAW the gun on him at the school district shop and she told me, “Yes, I was in the electrical shop one day when he was there. I saw it on him.” I was flabbergasted.

From the way she was talking about him, I really believed he was a potential mass killer. Michelle explained what had happened in the electrical shop just months before I took the call. She said that “Don” went off on her and became very violent on the job, and that it took a SWAT team to remove him from the school district shop. She said that nobody could stand him (not even the teachers in the schools) and that everybody was just glad that he was gone and thanked her for “getting rid of him”. She told me that “Don” was currently on paid administrative leave while the school district could figure out a way to fire him.

Id.

4. **During her Deposition, Defendant Clark does not deny making the statements, claims she does not recall if she made them or not, but admits that a claim that she saw Don Canfield with a gun on school property during the time she was employed there, is false.**

During her deposition testimony, Defendant Clark did not deny much

of what was outlined in Ms. Logan's statement. CP 395-398, 89:25-103:6. In fact, Defendant Clark does not deny making the statement outlined in Ms. Bliss's notes but simply states that she does not recall. *Id.* However, she does admit that she never saw Plaintiff Canfield with a gun on school property while she has been employed with Defendant SPS. *Id.* Further, she admitted that any statement that she had seen Plaintiff Canfield with a gun on school property while she has been employed there would be false. *Id.*

Defendant Clark acknowledged filing other complaints against employees, her supervisor Michael Jackson and Silas Potter. CP 405-406, 152:3-155:25. It was reported to Plaintiff Canfield by another employee that Defendant Clark had admitted filing the complaint against Michael Jackson because she was angry with him for something else. Ex A, 7, ¶ 14 (CP 235-242). When questioned about this, Defendant Clark admitted that she may have said that, she doesn't recall. CP 400-401, 109:7-115:24.

5. Plaintiff Canfield suffers damage - embarrassment, humiliation, emotional distress and damage to his reputation as a result of Defendant Clark's defamation.

Ms. Logan describes the impact the reports by Defendant Clark had on her and her opinion and/or thoughts of Plaintiff Canfield. CP 290-292. Also Dan Bryant described in his deposition how there was talk and rumors going around about the incident. CP 331, 78:9-80:17.

Defendant Clark's statements had a terrible impact upon Plaintiff Canfield's health and well-being. Ex A, 7-8, ¶ 15 (CP 235-242). Her statements regarding the gun were the driving force in his being escorted off school district property in a very public display that was embarrassing and humiliating. *Id.* Plaintiff Canfield had fellow workers approach him outside of work during his leave asking him what happened - Why had the police been called and why did they have to escort him off the property? *Id.* Further, upon his return he was questioned by fellow employees that Defendant Clark had reported the incident to including custodians and other school personnel. *Id.* There were numerous times upon his return that Plaintiff Canfield was approached and asked what happened. *Id.* Defendant Clark's conduct damaged his reputation, caused him embarrassment and has subjected him to contempt and ridicule. *Id.*

D. Defendant SPS retaliates.

- 1. Plaintiff Canfield escorted off the property by police on December 5, 2007, told he was being escorted off by police because there was a claim he had a weapon on his person, however, no one searched him and when he offered, they refused.**

As outlined above, Plaintiff Canfield was not asked to explain or questioned in any manner prior to his being escorted off school grounds. Ex A, 7, ¶ 13 (CP 235-242). Further, during her deposition Ms. Bliss admitted

there were only a few times that she recalled the police ever being called to escort an employee from school grounds and that it was when a teacher or other personnel were suspected of some type of child abuse. CP 412, 32:1-21. It was clear from their conduct, that Defendant SPS employees had no real belief that Plaintiff Canfield had a gun. *See* Ex A, 7 ¶ 13 (CP 235-242). He was never searched and when asked to be searched, they refused. *Id.*

2. Investigation by Defendant SPS completed end of December 2007, administrative leave continues through July 2008, Plaintiff Canfield finally allowed to return to work but demoted and give a written reprimand.

It is also remarkable that Plaintiff Canfield was left on administrative leave for nearly 8 months when the investigation was completed within one month. *See above.* Ms. Bliss testified that he was left on leave for that period of time due to work load issues. CP 423, 71:12-72:1 & CP 424,74:23-75:5. During that time Defendant Clark was left to continue to defame Plaintiff Canfield during working hours with impunity. *See* CP 290-292. Her conduct is something that should have been stopped and dealt with by supervisors.

3. Plaintiff Canfield grieved the actions by Defendant SPS, an arbitration was held, the arbitrator finds the allegations unsupported and orders Plaintiff Canfield be reinstated.

Plaintiff Canfield grieved the demotion and disciplinary action taken against him through his union. CP 240, ¶ 16. After a full hearing, where both

parties were represented and allowed to present testimony, the arbitrator found Plaintiff Canfield's demotion was without just cause. CP 129-151. The arbitrator outlined the issues presented under the union contract, the evidence presented, much the same as alleged in Defendants motion, and found the evidence had "significant defects." CP 143. Plaintiff Canfield denies discriminating against employees or taking retaliatory action. CP 240, ¶ 16. CP 367-329, 7:22-56:25 (transcript of Plaintiff Canfields testimony at hearing).

4. Continued harassment and retaliation after reinstatement.

Although Plaintiff Canfield was reinstated as foremen in name, he was left without any support, without necessary tools to complete his work, and subjected to ongoing harassment.

a. Plaintiff Canfield left with no support from Defendant SPS, his crew cut in half, necessary tools taken away and left to defend himself in a hostile environment.

When Plaintiff Canfield returned as foremen, his crew was cut in half. CP 240, ¶ 17. He was left with four permanent employees. *Id.* Five employees, including Defendant Clark, were moved to the electronic shop under then acting general foreman, Michael Jackson. *Id.* Plaintiff Canfield was left without computer privileges for sometime. *Id.* He was assigned a truck that had ongoing issues. *Id.* His tools were not returned and his personal

items left on his desk were never returned. *Id.* Splitting the employees continued to foster ill feelings. *Id.* Employees were not encouraged to treat Plaintiff Canfield respectfully and were in fact, discouraged from doing so. *Id.*

When he returned, Plaintiff Canfield was under the supervision of Michael Jackson. CP 346, 6:21-23. Mr. Jackson treated Plaintiff Canfield terribly, he frequently yelled and swore at Plaintiff and things progressed to the point where Mr. Jackson physically struck Plaintiff Canfield several times. CP 240, ¶ 17, & CP 256-262. In his deposition, Mr. Jackson described an incident in which he was threatened after making positive comments about Plaintiff Canfield during a meeting. CP 357-359, 62:2-64:8. He was told that perhaps they needed to find someone else to act as general forman. *Id.* He also testified that employees were encouraged to report things about Plaintiff Canfield. CP 348-351, 11:17-12-18.

b. Continued harassment by Defendant Clark - filing of a protective order, compliant after complaint is filed, all with support of Defendant SPS support.

Defendant Clark was left to continue her complaints against Plaintiff Canfield with impunity. Just after his return in August 2008, Defendant Clark began complaining that Plaintiff Canfield . CP 443-444. She complained to Mark Pflueger and Jeanette Bliss. *Id.* In her deposition, she describes several other incidents in which she filed complaints against Plaintiff Canfield, she

complained that he would sit in the dark and wait for her to come into the shop. CP 403-410, 126:1-132:3, 149:1-151:11, 166:13-170:1. She described another incident where Bill Wickersham received a complaint that an employee was sleeping in a van. *Id.* Someone had seen her with her legs out the window in the van parked at Northgate. *Id.* Based upon that event, she claimed that Plaintiff Canfield was circling her car, following her and that he had made the report. *Id.* She also described an incident where a shopping cart was placed in front of her fire alarm cage. *Id.* Defendant Clark also claimed that Plaintiff Canfield kneed her as he was walking past her one day. *Id.* Plaintiff Canfield does recall an event when he accidentally bumped into her as he was passing by in the office, the area she was in was narrow and he was trying to get by to put his time sheet away. CP 241, ¶ 18, & CP 274-275. She also claimed that Plaintiff Canfield put his butt in her face while she was sitting at the same desk. CP 403-410, 126:1-132:3, 149:1-151:11, 166:13-170:1. Plaintiff Canfield explained that again, he was walking past to put in his time sheet and talking to another employee that was standing by the wall. CP 241, ¶ 18. When Defendant Clark turned around from working on the computer, he was standing there and his butt apparently was in front of her face, nothing intentional. *Id.*

Despite the ridiculous nature of these complaints, Defendant SPS has

allowed them to continue and done nothing to attempt to stop Defendant Clark's conduct. Defendant Clark went so far as to file for an anti-harassment order in Court when she learned that Plaintiff Clark was reinstated as foreman. CP 360-365. That petition was denied. *Id.* Dan Bryant testified that he spoke with Defendant Clark about obtaining the order and he indicated he told her to do what she needed to do. CP 338, 97:16-100:61.

5. Damage to Plaintiff Canfield - hostile work environment, change in working conditions, continued stress, anxiety and other general damages.

Plaintiff Canfield's work life has been almost unbearable. CP 241, ¶ 19 . The only reason he has stayed at Defendant SPS is because he is afraid he will not be able to locate another job. *Id.* He has applied for other positions but has been turned down and the job market is extremely poor. *Id.* The retaliation he has suffered has caused him great emotional distress and anxiety. *Id.* Plaintiff Canfield has a medical condition that is aggravated by stress. *Id.* The stress and anxiety has caused his condition to worsen and there are times when he is in a great deal of pain. *Id.* He has lost incredible amounts of sleep. *Id.* At one point he believed he was having a heart attack and went to the emergency room for treatment. *Id.* It turned out it was not a heart attack but caused by anxiety and stress. *Id.* Plaintiff Canfield was doing what he believed was the right thing in standing up for his employees' right to receive

proper wages. *Id.* In return, Defendant SPS has destroyed his work life and caused him damage. *Id.*

III. ARGUMENT

A. Standard of Review

1. CR50 Motion for Judgment as a Matter of Law.

When reviewing a motion for judgment notwithstanding the verdict (judgment as a matter of law), the same standard of review is used as that applied by the trial court. *Goodman v. Goodman*, 128 Wn.2d 366, 371 (1995).

2. Orders on Summary Judgment.

Orders on summary judgment proceedings are reviewed de novo. *Brinkerhoff v. Campbell*, 99 Wn. App. 692, 696, 994 P.2d 911 (2000). In reviewing a summary judgment decision, the facts and all reasonable inferences are viewed in the light most favorable to the nonmoving party. *Samis Land Co. v. City of Soap Lake*, 143 Wn. 2d 798, 803, 23 P.3d 477 (2001).

B. Defendant SPS used a CR50 motion in an attempt to reargue issues raised before Judge Craighead and denied; Washington law does support a claim for retaliation for raising issues of failure to pay wages.

1. **The Trial Court erred in allowing Defendant SPS' to reassert legal issues raised in summary judgment and denied on reconsideration through the filing of a CR 50 motion.**

CR 50(a) provides,

[i]f, during trial by jury, a party has been fully heard with respect to an issue and there is **no legally sufficient evidentiary basis** for a reasonable jury to find or have found for that party with respect to that issue, the court may grant a motion for judgment as a matter of law . . .

(emphasis added). CR 50(b) allows a party to request the Court reconsider its motion after the matter has been decided by a jury. “Motions for directed verdict and motions for judgment notwithstanding the verdict were renamed ‘motions for judgment notwithstanding the law’ effective September 17, 1993.” *Guijosa, et al., v. Wal-Mart Stores, Inc., et al.*, 144 Wn.2d 907, 915 (2001), *citing Litho Color, Inc. v. Pac. Employers Ins. Co.*, 98 Wn. App. 286, 298 n.1 (1999). “A directed verdict or judgment n.o.v. is appropriate if, when viewing the material evidence most favorable to the nonmoving party, the court can say, as a matter of law, that there is no substantial evidence or reasonable inferences to sustain a verdict for the nonmoving party.” *Industrial Indemnity Co. Of the Northwest, Inc., v. Kallevig et al.*, 114 Wn.2d 907, 915, *citing Boeing Co. V. Sierracin Corp.*, 108 Wn.2d 38, 67 (1987); *See also Sing v. John L. Scott, Inc.*, 134 Wn. 2d 24, 29 (1997). In deciding the motion, the trial

court, “. . . must determine whether there was sufficient evidence to support the jury’s verdict.” *Id.*, at 916. “No element of discretion is involved.” *Goodman v. Goodman*, 128 Wn.2d 366, 371 (1995), citing *Davis v. Early Constr. Co.*, 63 Wn.2d 252, 254-55 (1963).

Further, a motion for reconsideration pursuant to CR 59(a) & (b) must be filed within 10 days of entry of the order.³ “A trial court may not extend the time period for filing a motion for reconsideration.” *Schaeferco Inc., et al., v. Columbia River Gorge Commission*, 121 Wn.2d 366, 368 (1993), citing *CR 6(b)*; *Moore v. Wentz*, 11 Wn. App. 796, 799 (1974). A trial court has, “. . . no discretionary authority to extend the time period for filing a motion for reconsideration.” *Metz v. Sarados et al.*, 91 Wn. App. 357, 360 (1998) (citations omitted).

Defendant SPS raised the arguments presented in the CR50 motion before Judge Craighead. Those arguments were rejected in both the underlying motion and in the motion for reconsideration. The Trial Court erred in allowing Defendant SPS to make an end run around Judge Craighead’s rulings.

As stipulated to by Defendant SPS, the motion did not raise any issues addressing the lack of evidence presented at trial as is appropriate in a CR 50

1. This portion of Plaintiff’s argument deals with motions for reconsideration of an order, in this case the order on summary judgment entered by Judge Craighead.

motion.

Should this Court find those issues raised by Defendant SPS in their CR50 motion were properly addressed by the Trial Court, the Trial Court erred in holding Washington law does not recognize a claim for retaliation in raising a wage claim for the reasons that follow.

2. Washington law does support a claim for retaliation when a Plaintiff raises issues relating to wages.

a. Overview of Washington’s acts addressing payment of wages.

As explained by the Washington Supreme Court,

[t]his court has described Washington as a “pioneer” in assuring payment of wages due an employee. *Int’l Ass’n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 35, 42 P.3d 1265 (2002) (quoting *Drinkwitz v. Alliant Techsystems, Incl.*, 140 Wn.2d 291, 300, 996 P.2d 582 (2000)). Toward that end, three wage statutes penalize an employer who willfully withholds wages (WRA), fails to pay the statutory minimum wage (MWA), or fails to pay wages due upon termination of employment (WPA). The court is tasked with construing these laws “liberally” in light of the strong public policy to protect workers’ rights. *Id.* (quoting *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wn.2d 514, 520, 22 P.3d 795 (2001)).

Champagne et al., v. Thurston County, 163 Wn.2d 69, 76 (2008). The statutes applicable in this case include the MWA (RCW 49.46 et seq), WRA (RCW 49.52 et seq) and RCW 32.12 et seq., the Prevailing Wage Act.

RCW 49.46.120 provides, “[t]his chapter establishes a minimum

standard for wages and working conditions of all employees in this state, unless exempted herefrom, and **is in addition to and supplementary to** any other federal, state, or local law or ordinance or any rule or regulation issued thereunder.” To “supplement” is defined as, “to add to.” Webster’s Dictionary, 1992, pg. 482. “Supplementary” is defined as “in addition.” *Id.*

RCW 49.46.010(2) defines wages as, “. . . compensation due to an employee by reason of employment, . . . subject to such deductions, charges or allowances as may be permitted by rules of the director; . . .” RCW 49.46.020 provides for the minimum amount of wages to be paid by an employer to an employee. RCW 49.46.020(4) requires “. . . every employer shall pay to each of his or her employees who has reached the age of eighteen years wages at a rate **of not less than** the amount established under (b) of this subsection. . .” (emphasis added). RCW 49.46.090(1) provides of a cause of action for any employee who is paid, “less than wages to which such employee is entitled under or by virtue of this chapter, . . .” In addition, RCW 49.46.120 clarifies, “[a]ny applicable federal, state, or local law or ordinance, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, or any rule or regulation issued hereunder, shall not be affected by this chapter. . .”

As a general rule where a law addresses an issue more specifically, that

statute applies. *Hama Hama v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 447 (1975) (citations omitted). Further, RCW 49.46.090(1) makes it clear that the intent of the statute was not to preclude application of laws that provided **more favorable** standards. However, the more specific statutes providing for payment of wages as set out below, only address the amount of wages owed and do not address retaliation.

RCW 39.12 et seq., sets out the minimum wages to be paid to employees on public works projects. “The Supreme Court has mandated liberal construction of this ‘remedial’ statute to protect “‘the employees of government contractors from substandard earnings and to preserve local wages standards.’” *City of Spokane et al., v. Dept. Of Labor & Industries*, 100 Wn. App. 805, 811 (2000), quoting *Everett Concrete Prods., Inc. V. Department of Labor & Indus.*, 109 Wn.2d 819, 823 (1988) (quoting *Unity Bank & Trust Co. V. United States*, 756 F.2d 870, 873 (Fed. Cir. 1985). RCW 39.12.020 provides,

The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour’s work in the same trade or occupation in the locality within the state where such labor is preformed . . .

This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality,

or political subdivision created by its laws.

Public works is defined as, “all work, construction, alteration, repair or improvement, other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein.” RCW 39.04.010(4). The statute setting out the definition goes on to mandate, “[a]ll public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW.” Several statutes, including RCW 39.04.020 & RCW 35.23 et. seq., set out requirements for municipalities to contract out and obtain public bids in public works projects that exceed certain sums. RCW 49.52.070 provides for a cause of action for recovery of double wages for any employer who willfully withholds employee wages.

RCW 49.52.050(2) provides,

[a]ny employer, officer, vice principal or agent of any employer, whether said employer be in private business or an elected public official, who . . . [w]ilfully and with intent to deprive the employee of any part of his or her wages, shall pay any employee a lower wage than the wage such employer is obligated to pay such employee by any statute, ordinance, or contract; . . . shall be guilty of a misdemeanor.

Any employer or any officer, vice principal or agent of any employer who shall violate any of the provisions of RCW 49.52.050 (1) and (2) shall be liable in a civil action by the aggrieved employee . . . for twice the amount of the wages unlawfully rebated or withheld by way of exemplary damages, together with costs of suit and a reasonable sum for attorney’s fees . . .

RCW 49.52.070. Again, RCW 49.52 et seq. is silent as to issues of retaliation.

The only statute that addresses retaliation for an employee raising a wage claim is RCW 49.46.100(2).

RCW 49.46.100 (2) provides,

[a]ny employer who discharges **or in any other manner discriminates** against any employee because such employee **has made any complaint to his or her employer**, to the director, or his or her authorized representatives **that he or she has not been paid wages** in accordance with the provisions of this chapter, or that the employer has violated any provision of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under **or related to this chapter**, . . . shall be deemed in violation of this chapter and shall, upon conviction therefor, be guilty of a gross misdemeanor.”

(emphasis added). “RCW 49.46.100 prohibits employer retaliation against employees who assert wage claims, and we [The Washington Supreme Court] have held employers who engage in such retaliation are liable in tort for violation of public policy under this provision.” *Hume, et. al. V. American Disposal Co., et. al.*, 124 Wn.2d 656, 662 (1994) (citation omitted).

Washington case law shows that these statutes should be read together, are not mutually exclusive of one another and that these statutes should be construed “liberally” with the intent of protecting workers’ rights.

- b. Plaintiff does have a remedy for Defendant’s retaliation for raising a wage claim under Washington law.**

A narrow reading of MWA & WRA is contrary to public policy, a liberal construction of the wage statutes and not supported by statute or case law. As indicated above, RCW 49.52.050(2) provides that it is unlawful for an employer to intentionally fail to pay an employee any wage that is required by statute. RCW 39.12.020 sets out the minimum wages owed an employee working on a public works project. It is a statute and failure to pay the required wages under the statute can subject an employer to liability under RCW 49.52 et seq. The statute is unambiguous and provides Plaintiff with a primary cause of action. However, that does not limit Plaintiff's cause of action for failure to pay wages to WRA alone.

Defendant SPS has argued that MWA provides a remedy only for an employer's failure to pay minimum wage or overtime *citing Seattle Prof'l Eng'g Employees Ass'n. v. Boeing*, 139, Wn.2d 824, 830-831, (2000). However, the Court in *Champagne et al. v. Thurston County*, 163 Wn.2d 69, 82-83 (2008), explains the decision in *SPEEA* and, in large part, limits its holding to the facts of that particular case. The Washington Supreme Court explained that the Court of Appeals in reviewing the case determined that Champagne lacked a case of action under WRA based upon its interpretation of *SEPPA*. *Id.* However, the Court recognized that a party could have a claim under both

WRA and MWA. *Id.* In addition, the Court recognized that a violation of WAC 296-128-035, a provision providing for the timing of payment of overtime pay, gave rise to a claim under both MWA and WRA. *Id.* The Court held that WRA provided a cause of action for wages not paid to an employee in violation of a regulation or statute. *Id.*

In addition, in *Chavez et al., v. IBP, Inc., et al.*, 2005 U.S. Dist. Lexis 29681, 3-7 (2005), plaintiff employees argued that they were entitled to compensation of 10-minute rest breaks at their contractual rate as opposed to being limited by the minimum wage rate set out in MWA and *SPEEA*. The Court held the employees were entitled to compensation at their regular contractual rate. *Id.* See also *Wingert v. Yellow Frieght Systems, Incl, 146 Wash. 2d 841, 2002* (holding employees who asserted a regulatory violation for failure to pay for 10-minute rest breaks had a cause of action pursuant to RCW 49.52 et sea.). Case law is clear that Plaintiff's claims relating to failure to pay prevailing wages is not limited to RCW 32.12 et seq and Plaintiff can assert claims under both WRA and MWA. *SEEPA* does not limit an employees claim to MWA but recognizes that an employee can have a claim for wages under both MWA and WRA. *Champagne et al. v. Thurston County*, 163 Wn.2d 69, 83 (2008).

c. *Hume* applies in this case and Plaintiff is entitled to

pursue a claim of retaliation for raising a wage complaint.

In *SPEEA*, the Court limited damages available for violations of MWA, but as set out in *Champagne*, “. . . the court addressed only the extent of recovery available under the MWA, . . .” *Champagne* 163 Wn.2d at 83. Plaintiff does have a claim under MWA for failure to pay wages owed, however, there would be no damages recoverable under MWA in Plaintiff’s circumstances. In order to recover damages for failure to pay wages, Plaintiff was left to assert the wage portion of his complaint under RCW 49.52 et seq. That does not mean that Plaintiff cannot pursue his statutory retaliation claim under RCW 49.46.100. As set out in the statute, the chapter is meant to supplement and/or add to other laws relating to payment of wages. Plaintiff is entitled to pursue a claim under *Hume*.

In *Hume v. American Disposal Co.*, 124 Wn.2d 656, 661 (1994), employees who submitted overtime requests were subjected to verbal abuse and threats, received unwarranted warning letters, some threatening termination if they did not complete routes within 40 hours. When some employees asked for shorter routes, their routes were lengthened. *Id.* The Court recognized the employees had a claim for harassment and those that left, for constructive discharge. *Id.* The statute on its face does not require

discharge and case law has recognized harassment as grounds for asserting a claim under this statute. Further, the statute only requires that a complaint be made and that retaliation result from the complaint. The facts of Plaintiff's case are directly on point with *Hume*.

Plaintiff does have a claim under Washington law for retaliation. Public policy supports the protection of employee rights to payment of wages and to be free from retaliation when an employee asserts his rights to payment of wages.

C. Dismissal of Plaintiff's wage claim against Defendant SPS was in error - Plaintiff and other maintenance electricians were used by Defendant SPS to complete work, that is not maintenance work, that has been under contract to outside contractors - the prevailing wage should be paid.

An employee covered by a CBA is not prohibited from lodging claims for violations of statutory rights in a Washington court. *See Yakima Co. v. Yakima Co. Law Enforcement Officers Guild*, 157 Wn.App. 304, 328 (2010).

Further, when an employee files under a CBA, he acts to protect his contractual rights, his claims lodged in state court under statute or common law are a request for redress of violations of other rights held by the employee. *Id.* at 330, quoting *Civil Serv. Comm'n v. City of Kelso*, 137 Wn.2d 166, 175 (1999) (other citations omitted). The fact that the claims arise from the same set of facts is of no consequence. *Id.*

As set out above, RCW 39.12.020 provides that all workers upon all public works projects shall be paid not less than the prevailing rate of wage. The WRA, RCW 49.52.050(2), provides for a cause of action based upon failure to pay prevailing wages.

Plaintiff Canfield and the other electricians in the maintenance shop are employed as maintenance electricians. They do not perform installations involving new construction or remodel. The work they normally do falls within the exception outlined in WAC 296-1270-010(7)(a)(iv), that is excluded from the prevailing wage statute and includes work not performed by contract on a regularly scheduled basis to service, check or replace items that are items or that is done to maintain an asset. New construction and remodel projects are handled by the capital division of Defendant SPS. Included in the capital division are BEX, BTA and Small Works. Those organizations generally are responsible for obtaining contract bids and arranging work for new construction and remodel. The work completed in these projects would be public works as defined in RCW 39.04.010(4). The work Plaintiff Canfield requested be paid at the prevailing wage rate, was work that was contracted out to outside contractors in which the maintenance electricians were called in to work along side the contractors.

Defendant SPS is required to contract out certain types of work. Work contracted out by statute must ensure all employees are paid the prevailing wage. Defendant SPS and contractors, should not be allowed to circumvent the laws by allowing contractors on public works projects to utilize its employees. Plaintiff has a claim under Washington law for failure to pay prevailing wages and this issue should be remanded back to the trial court to allow Plaintiff to continue discovery as a motion to compel was pending relating to this issue at the time the order dismissing this claim was entered.

D. Defendant Clark maliciously defamed Plaintiff Canfield - the order dismissing Plaintiff's defamation claim should be overturned and the matter remanded for trial.

Plaintiff Canfield hired a friend, he believed had good work ethic and skills. CP 238, ¶ 8. Unfortunately, he quickly learned that Defendant Clark was not the employee he had hoped for. CP 238, ¶ 8. Defendant Clark refused to attend classes to complete the terms and conditions of her employment, failed to follow direction and was engaging in other conduct her supervisor, Plaintiff Canfield found inappropriate. CP 238-239, ¶ 8. Defendant Clark saw the writing on the wall and lashed out, going on the attack. In doing so, she made an outrageous claim that Plaintiff Canfield was carrying a gun while at work. CP 416-417, 48:9-49:24. She did so knowing that the statement was false, with the intent to cause Plaintiff Canfield harm. CP398, 103:7-104:19.

“In Washington, a defamation plaintiff must show four essential elements: falsity, an unprivileged communication, fault and damages.” *John Doe v. Gonzaga University, et. al*, 143 Wn.2d 687, 701 (2001) (reversed on other grounds, *Gonzaga Univ. V. Doe*, 536 U.S. 273 (2002)), quoting *Commodore v. Univer. Mech. Contractors, Inc.*, 120 Wn.2d, 133 (1992).

When the Plaintiff is a private individual, a negligence standard applies. *Vern Sims Ford, Inc., et. al., v. Hagel*, 42 Wn.App. 675, 678 (1986), citing *Caruso v. Local 690, Int’l Bhd. Of Teamsters*, 100 Wn.2d 343, 352 (1983). A Plaintiff is a public figure or public official must show, “‘actual malice’ - that is knowledge of the falsity or reckless disregard of the truth or falsity of the allegedly defamatory statements. *Id.* (citations omitted). Public figures are, “. . . those who ‘occupy positions of such persuasive power and influence that they are deemed public figures for all purposes’, or those who become public figures with response to a particular public controversy because they have ‘thrust themselves to the forefront . . . in order to influence the resolution of the issues involved.’” *Id.* at 679 citing *Hutchinson v. Proxmire*, 443 U.S. 111, 134-35 (1979). “Actual malice is knowledge of the falsity or reckless disregard of the truth or falsity of the statement.” *Id.* at 681 (citation omitted). Actual malice can be inferred from facts, evidence of negligence, motive and intent. *Id.* (citations omitted).

Slanderous statements that affect a person in his business or trade are defamatory per se. *A.F. Grein v. Nugent LaPoma et. al.*, 54 Wn.2d 844, 848 (1959). “Where a defamation is actionable per se, and neither truth nor privilege is established as a defense, the defamed person is entitled to substantial damages without proving actual damages.” *Michielli et al., U.S. Mortgage Co.*, 58 Wn.2d 221, 227 (1961), *citing Cf. Arnold v. National Union of Marine Cooks & Stewards*, 44 Wn. (2d) 183 (1954).

- 1. The statements made by Defendant Clark that Plaintiff Canfield was carrying a gun while at work, on school property are false.**

After making the initial statements and during the course of litigation, both the arbitration and these cases, Defendant Clark has attempted to twist the facts of her statement claiming, the only statement she made referred to a time when Plaintiff Canfield met her on a weekend to help her load a pot in her car. CP 395-396, 90:14-94:13. The parties version of that event differs. Plaintiff Canfield has always stated that event occurred on a Saturday and the parties did not park on school property. CP 370-371, 21:20-23:2. In fact, Defendant Clark admits that the pottery store had its’ own parking. CP396, 93:7-8. When asked, Defendant Clark would not acknowledge day th event occurred but has attempted to claim that she met Plaintiff Canfield and parked on school district property because Plaintiff Canfield was getting off of work. CP 395-396, 90:9-

94:18. This creates a triable issue of fact for the jury. However, Defendant Clark's defamation does not stop there.

Contrary to Defendant Clark's claim, Defendant SPS representative, Jeanette Bliss testified that Defendant Clark told her that shortly after her hire, in August, "she asked him if he still had a gun on him and he said, yes it was in his pants." CP 416-417, 48:9-49:24.. There is no explanation in the record of how this alleged conversation occurred. Frankly, it is a bit odd that someone would accept this type of statement without inquiring as to the basis for it. Regardless, Ms. Bliss's testimony contradicts that of Defendant Clark's. Defendant Clark admits that the statements made to Ms. Bliss were also made to Aki Piffath, another employee with Defendant SPS and a shop steward for a group other than the electricians. CP395-398, 89:25-102:7. During the Union arbitration, Defendant Clark alleged that when she told Mr. Piffath, she was just talking with him and had no intent to "report it" but it was Mr. Piffath who suggested she talk with Ms. Bliss. CP 395-398, 89:25-102:7.

Further, in a letter drafted by Jessie Logan, she testified that Plaintiff Clark made several statements regarding Plaintiff Canfield carrying a gun, not only to her but to others including a teacher and custodians. CP 290-292. Defendant Clark stated he carried a gun and never took it off his body. *Id.* When specifically questioned as to whether she actually saw the gun on him

at the school district shop, Defendant Clark stated, “Yes, I was in the electrical shop one day when he was there. I saw it on him.” *Id.* Ms. Logan goes on to explain, “She said that ‘Don’ went off on her and became very violent on the job, and that it took a SWAT team to remove him from the school district shop.” *Id.* This is also a statement that by everyone’s account is false.

In Defendant Clark’s testimony during the deposition in this case, most frequently when asked if she made these statements, she indicated she did not recall. CP 381-401.. So she does not deny making these statements. However, she does acknowledge that a statement that she saw Plaintiff Don Canfield with a gun during work while she was employed at the school district, would be false. CP 396, 94:16-18; CP 398, 103:7-104:19. Defendant is correct in one regard, that is there is no issue of fact as to the truth or falsity of these allegations. Defendant Clark has admitted they are false.

2. The defamatory communications are not privileged.

“When a plaintiff has established a prima facie case of defamation, the defendant can assert either an absolute or qualified privilege to defend against liability for defamatory statements.” *Valdez-Zontek v. Eastmont School District*, 154 Wn. App. 147, 162 (2010) (citation omitted).

In *John Doe v. Gonzaga University, et. al*, 143 Wn.2d 687, 701-704 (2001) (reversed on other grounds, *Gonzaga Univ. V. Doe*, 536 U.S. 273

(2002)), the Court explained that a qualified privilege exists between parties who have a common interest that have been applied to communications between employees in a corporation or business. However, that privilege is not absolute and does not apply when an employee is not acting in the ordinary course of his or her work. *Id.* The Gonzaga case involved employee allegations that a student educator had sexually assaulted another student. *Id.* The Court found that communications between employees and a report by one employee to an outside agency, were properly before a jury and that a jury could reasonably conclude that the statements were not made during the ordinary course of work. *Id.*

In this case, the statements made by Defendant Clark were not made during the normal course of her work. Certainly, the statements outlined by Jessie Logan fall far outside the scope of Defendant Clark's normal work duties, as do the statements to Aki Piffath. There is no evidence to support the conclusion that the statements made to Mr. Piffath were done so because of his role as shop steward.

Further, this case is directly on point with *Lawson v. The Boeing Co., et al*, 58 Wn. App. 261, (1990). In *Lawson*, the Plaintiff brought suit after female employees reported complaints of sexual harassment to their employer Boeing. *Id.*, at 262. The employees complained that the Plaintiff, their

supervisor, had made sexually explicit comments, had propositioned them and touched them inappropriately. *Id.* An investigation was completed by Boeing and it was found that Plaintiff's conduct was in violation of Company rules. *Id.* As a result, Plaintiff brought suit against the female employees, the investigators and Boeing alleging a number of causes of action including defamation. *Id.*, at 263. The trial court had dismissed all of Plaintiff's claims. *Id.*

In addressing the claims of defamation brought against the female employees who lodged the original complaints, the Court explained, "[c]onditional privilege is routinely applied to complaints as to sexual harassment." *Id.*, at 267, citing *Stockley v. AT&T Information Sys., Inc.*, 687 F. Supp. 764, 769 (E.D.N.Y. 1988). However, the Court noted that the issue was whether the privilege was a result of abuse. *Id.* Because the Plaintiff denied the statements, the Court explained that for purposes of summary judgment, the statements must be assumed to be false. *Id.* As to the complaining employees, the Court also explained, the statements were a matter of fact, not opinion. *Id.* "They spoke of their own personal knowledge. The events were recent. If their allegations were false, they were unquestionably knowingly false." *Id.* The Court concluded that in circumstances such as these, where the statements made were knowingly false, proof of actual malice

was not required. *Id.*, at 268. Relying on Restatement (Second) of Torts § 600 (1976),

Knowledge of Falsity or Reckless Disregard as to Truth
Except as stated in § 602 one who upon an occasion giving rise to a conditional privilege publishes false and defamatory matter concerning another abuses the privilege if he
(a) knows the matter to be false, or
(b) acts in reckless disregard as to its truth or falsity.

Id. The Court found that the statements made by the female employees fell squarely within (a). As explained by the Court, “[i]f an employee knowingly makes a false accusation of sexual improprieties by a superior, it would be grossly unfair to deny the injured party the right to sue for defamation by allowing the maker of such accusation to hide behind the shield of conditional privilege. Conditional privilege does not protect knowingly false accusation.” *Id.* at 269.

This case is directly on point. Defendant Clark made false statements regarding Plaintiff Canfield. Plaintiff Canfield denies that he has ever had a gun on his person while on school district grounds. CP____. Her statements were not ones of opinion but of fact. It would be grossly unfair in these circumstances to take away Plaintiff Canfield’s rights to attempt to clear his name and his rights to hold Defendant Clark accountable for her conduct.

3. Plaintiff Canfield is not a public figure or public official

“Whether the plaintiff is a public figure for purposes of a defamation claim is a question of law for the court to decide.” *Valdez-Zontek v. Eastmont School District*, 154 Wn. App. 147, 159 (2010), citing *Clawson v. Longveiw Publ’g Co.*, 91 Wn.2d 408, 413 (1979). ““To be considered a public figure, courts usually require the plaintiff to voluntarily seek to influence the resolution of public issues.”” *Id.*, quoting *Camer v. Seattle Post-Intelligencer*, 45 Wn. App. 29, 39 (1986) (other citations omitted). In a similar case involving a school district director for special programs who oversaw administration of several state and federally funded school programs, the Court held the director was not a public official or figure for purposes of her defamation claim. *Valdez-Zontek v. Eastmont School District*, 154 Wn. App. 147, 153 & 161 (2010). In deciding the issue, the Court considered 1) the importance of the position held by the Plaintiff, and 2) the nexus between that position and the allegedly defamatory statement. *Id.* at 160. The defamatory allegation was that she was having an affair with the school district superintendent. *Id.* at 153. Some school district employees had taken issue with time recorded on the Plaintiff’s time card that had been approved by the superintendent. *Id.* It was alleged that perhaps the time was approved because

the parties were having an affair. *Id.* All the communications were between school district employees and involved the reporting and subsequent audit of the time card issue. *Id.* Despite the district's argument that the allegations went to the Plaintiff's conduct as an employee, the Court held that an alleged affair had no nexus to the Plaintiff's fitness as an employee or the issue of falsifying a time card. *Id.* at 161.

It is the same in this case. Although a report that an employee is carrying a gun to work would be of interest to any employer, it has nothing to do with any role of public figure that might apply to Plaintiff Canfield. Plaintiff Canfield is a foreman, he is not a manager or even supervisor. He has no authority to manage public funds or even to hire or fire employees. He is not an official of the school district. Plaintiff Canfield is not a public figure or official.

4. Plaintiff Canfield has suffered damages.

The statements made by Defendant Clark are defamatory per se, and Plaintiff Canfield is not required to prove actual damages. Plaintiff Canfield has been employed at SPS for 20 years. At the time of the incidents outlined, he had been employed there 17 years. Plaintiff Canfield has had to endure repeated questions from other employees, that have resulted in humiliation and embarrassment. As a result of Defendant Clark's statements, Plaintiff Canfield

was escorted off work property in a very public way that was not necessary and was not the normal practice of SPS. Defendant Clark's ongoing comments and attempts to damage Plaintiff Canfield's reputation continued and admittedly, she claims that she spoke about it until told not to do so by her supervisor. However, the incidents outlined in the Logan letter occurred in June, 2008, 7 months after the initial report. Plaintiff Canfield was confronted by people both during work hours and while not at work. It has caused him stress and anxiety that has worsened his physical condition, resulting in the need for medical care and along with Defendant SPS's conduct, has turned his work life into a hostile environment. His damages are a question for the jury.

IV. CONCLUSION

For the reasons stated above, Plaintiff requests the Court find under Washington law that Plaintiff does have a cause of action for retaliation in raising a wage claim absent termination and remand the case back to the trial court for reinstatement of the jury verdict and judgment. Further, Plaintiff is entitled to pursue a claim of failure to pay prevailing wages under Washington law and Plaintiff requests the Court remand the case back to the trial court to complete discovery on this issue and proceed to trial. Finally, Plaintiff has supplied ample evidence in support of his claim of defamation by Defendant

Clark to withstand summary judgment and the case should be remanded back to the trial court for trial on this claim.

Respectfully submitted,



Chellie M. Hammack
Attorney for Appellant
WSBA #31796

Certificate of Service

I, Chellie Hammack, attorney for Appellant certify that on May 22, 2012, I placed a true and correct copy of the Appellant's Brief and this Certificate of Service for hand delivery via legal messenger service to:

Emma Gillespie, Mark O'Donnell & Earl Sutherland
Attorneys for Defendants
Preg O'Donnell & Gillett, PLLC
1800 Ninth Avenue, Suite 1500
Seattle, WA 98101

DATED this 22nd day of May, 2012

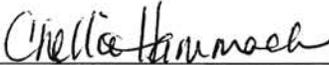

Chellie M. Hammack, WSBA #31796
Attorney for Appellant, Donald Canfield

Exhibit A

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THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

DONALD CANFIELD,
Plaintiff,
v.
MICHELLE CLARK, "JOHN DOE1" and
"JANE DOE1", and their marital community,
and "JOHN DOE2" and "JANE DOE2", and
their marital community,
Defendants.

Case No. 09-2-44040-9

**DECLARATION OF DONALD
CANFIELD IN SUPPORT OF
RESPONSE IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

DONALD CANFIELD,
Plaintiff,
v.
SEATTLE PUBLIC SCHOOLS, a municipal
corporation,
Defendant.

Case No. 10-2-27634-3

I, Plaintiff Donald Canfield, state and affirm as follows:

1. I am the Plaintiff in the above entitled actions. I am over the age of 18 and competent to testify..
2. The following are supervisors and managers I have had during times that are relevant to my claims: Fred Stevens, Executive Director of Facilities; Lynn Good, Senior Facilities Manager; Mark Pflueger, Maintenance Manager; Mark Walsh, acting Maintenance Manager prior to Pflueger hiring & first line supervisor; Dan Bryant, Senoir Maintenance Shop Foreman; Jeanette Bliss, Human Resources.
3. My duties as foreman of the electrical shop included assigning work and managing

ORIGINAL

1 the other electricians. Although I could discipline employees under me, I do not
2 have the authority to terminate an employee. During the time he has worked with
3 Defendant SPS up until December 2007, Plaintiff Canfield had never had any
4 disciplinary action taken against him.
5

6 4. During the time I have worked for Defendant SPS, I have been active in my union
7 and have worked with the union to ensure electricians were treated fairly. There have
8 been safety issues and funding problems. As explained by Mark Pflueger during his
9 deposition, Defendant SPS consists of two divisions, the maintenance division and
10 the capitol division. The capitol division has three separate divisions: Building
11 Excellence ("BEX"), responsible for organizing new construction projects; Building
12 Technologies Academics ("BTA"), responsible for remodel work, and Small Works,
13 responsible for minority/small business contracts. Mr. Pflueger left out Small Works.
14

15
16 5. In or around the summer of 2006, I recall being called into a meeting with my
17 supervisor to discuss some issues with employees in the shop. Two of the
18 employees, Nam Chan and Mark Andresen, had broken into my desk to retrieve a
19 vacation calendar. I had been having problems with these employees not providing
20 proper notice before taking vacations. The employees had started a habit of entering
21 vacation time on the calendar on a Friday when I was not in the office for the
22 beginning of the following week. I became aware of this when I came in on the
23 Monday afterward, the employee would not be present and I noticed the time had
24 been written in on the calendar. To remedy the problem, I locked the calendar in my
25 desk. After talking with my supervisor and union representative about the issue, it
26

1 resolved. I was not written up and received no disciplinary action. All appeared to
2 remain relatively quite in the shop until I complained about payment of prevailing
3 wages. This also corresponded in time to the hiring of Defendant Clark.

4
5 6. At or about this time, summer of 2007, new Facilities Manager Lynn Good, began
6 implementing a stricter progressive discipline policy. A copy of a policy I received
7 from Mr. Good is attached as **Exhibit A**. I was instructed by my supervisor to begin
8 using the policy to discipline a few of his employees. At the time I was having
9 issues with Nam Chan, Mark Johnson and Jeff Hillard. Copies of documents
10 outlining the problems are attached as **Exhibit B**. I was instructed to discipline the
11 employees, including writing up Nam Chan. I discussed the disciplinary action with
12 Ed Heller and with his direct supervisor Dan Bryant. Mr. Bryant told me that he
13 would deliver the written document to Mr. Chan himself. Mr. Chan was upset and
14 filed a complaint. The report was investigated and found unsubstantiated. The
15 stricter disciplinary policy was creating some unrest among the employees.

16
17 7. Also during 2007, I lodged complaints that I believed employees were not being paid
18 correctly when they were used to perform work along side contractors on capitol
19 projects. Close in time to Defendant Clark's hire, the maintenance electricians were
20 called to work on a BEX project involving the installation of cubicles. I had
21 complained that I believed the maintenance electricians should be paid prevailing
22 wage because they were doing work that was under contract, along side contractors.
23 I had complained to the then new Senior Facilities Manager, Lynn Good. Mr. Good
24 had responded indicating we would be paid the prevailing wage for the work
25 completed. A copy of the email I received is attached as **Exhibit C**. During a summit

1 meeting, just days before I was escorted off school grounds by police, I again raised
2 the issue of payment of prevailing wages in relation to a project occurring at Nathan
3 Hale. There were several supervisors and managers at the meeting, including union
4 representatives. I explained that Mr. Good had agreed to pay prevailing wages to the
5 maintenance electricians on the BEX project and that I believed they should be paid
6 the same on the Nathan Hale project. It was obvious to me that this did not sit well
7 with at least one of his supervisors, Mark Walsh. Within days I was escorted off the
8 school grounds by police in a very public and embarrassing manner.

- 9
- 10 8. During my time with Defendant SPS, I had also served as the firm alarm technician.
11 I did this from 1997 to 2006. I was looking to hire a new maintenance electrician to
12 fill the position during the summer of 2007. I had known Defendant Clark for
13 several years and knew that she had an ELO6 license and was a licensed fire alarm
14 tech. An ELO6 license is a low voltage electricians license. The position I was
15 looking to fill was an EL01 position with a certificate as a fire alarm tech. A copy of
16 the job description is attached as **Exhibit D**. I discussed the position with Defendant
17 Clark explained the position would require that she attend class through the union to
18 obtain her ELO1 license and become a union member. Defendant Clark indicated
19 she was interested in the position and I set up a meeting with her, Nancy Mason and
20 Janet Lewis, his union representatives, and Ed Heller, the Facilities Manager. Mr.
21 Heller left Defendant SPS shortly thereafter. An agreement was reached and the
22 terms were documents in a letter attached as **Exhibit E**. The agreement required that
23 Defendant Clark obtain her journeyman electricians license by attending school and
24 working with the Union. Unfortunately, it became clear to me rather quickly that
25 Defendant Clark had no intentions of obtaining her EL01 license, was a difficult

1 employee to work with who refused to take direction or follow instructions.

2
3 9. During the first few months of her employment, I had ongoing problem with
4 Defendant Clark. Defendant Clark refused to follow direction. She began to take
5 equipment off the truck she was assigned including a ladder and pipe benders,
6 something that was necessary in doing work as an ELO1 electrician. I asked
7 Defendant Clark to leave the equipment on the truck as she was to obtain her ELO1
8 license and that there were times when she might be in the field when that equipment
9 was necessary for other employees to use. Defendant Clark ignored the request. She
10 also had a habit of failing to return phone calls and I had a difficult time locating her.
11 To resolve this, I asked her to frequently check in with me. This angered Defendant
12 Clark. Defendant Clark also had a habit of taking extended lunches and/or lunches
13 at a time that was inappropriate. Frustrated, I contacted her previous supervisor to
14 see if he had similar problems. I learned that Defendant Clark had a history of failing
15 to follow orders and other frustrating work conduct. A copy of an email I received
16 from her prior supervisor is attached as **Exhibit F**.

17
18 10. Because of the issues we were having, a meeting was called by Lynn Good to discuss
19 the problem. I told Lynn Good that I wanted to write Defendant Clark up for failing
20 to follow orders and failing to act to obtain her ELO1 license. Her failure to obtain
21 the licenses was causing difficulty in scheduling work for Plaintiff Clark as he would
22 have to ensure an ELO1 was present and able to assist Defendant Clark with certain
23 of her work projects. Lynn Good told Plaintiff Canfield to wait, that she was a new
24 employee and he would deal with it. The parties did meet with the union
25 representative present, Nancy Mason. Each side discussed their issues and I was

1 hopeful that a resolution could be reached. Unfortunately that was not the case and
2 the problems continued.

3
4 11. At the end of the week when the Summit Meeting occurred, the one in which I raised
5 the prevailing wage issue again to his supervisors, I had scheduled the Friday off. I
6 left Defendant Clark and another employee with instructions that they were to
7 complete certain work orders. Instead, Defendant Clark spent a good part of the day
8 arranging to have desks delivered to the maintenance electrician's shop. During the
9 meeting with Lynn Good, the parties had discussed purchasing some desks for the
10 shop. With Mr. Good's approval, I had planned on moving forward with picking
11 some newer desks from the BIX warehouse. While I was gone, Defendant Clark
12 decided to move in some desks, used desks that she had located under the south
13 stands of memorial stadium at the Seattle Center. She located the desks and had
14 them brought in that Friday but left them, about 4 desks, in the middle of the floor.

15 When I came to work on Monday, stuff had been moved around and access to his
16 desk was blocked. I was not happy with what Defendant Clark had done, in large
17 part because she failed to complete her work. The desks were also old and rather
18 moldy. In addition, she had no work order to complete the work. All work at the
19 shop required a work order. In trying to get to his desk, I pushed some of the desks
20 out of the way, before beginning work and before any employees were present I told
21 Defendant Clark that I was not happy. Later, Defendant Clark claimed that I locked
22 her inside the office but that is not true. Defendant Clark was dispatched out to work
23 as were the other employees. I did not shove a large full file cabinet into Defendant
24 Clark's desk, as alleged by Defendant Clark. Her description of how Plaintiff
25 Canfield shoved the desk across the room is a bit remarkable given she acknowledges

1 it was a large file cabinet full of files.

2
3 12. I introduced Aki Piffath to Michelle Clark when she started working at the district
4 because I thought they could car pool together.

5
6 13. When I entered the office, the door was locked behind me. I was told that I was
7 being placed on administrative leave and that there was an allegation that I was
8 carrying a gun. Shocked, I stated he was not carrying a gun, had never carried a gun
9 on school property and offered to be searched, offered his keys to my personal truck,
10 the company truck and keys to my desk and file cabinets. No one from the school
11 district searched me or my things and the police did not search me. When I was
12 escorted off the property, I again offered to be searched but was told no. I was
13 placed on administrative leave beginning that day, December 5, 2007. It was clear
14 to me that they did not believe I had a gun, they were just looking for a reason to get
15 me out.

16
17 14. It was reported to me by another employee that Defendant Clark had admitted filing
18 the complaint against Michael Jackson because she was angry with him for
19 something else. That employee does not want to come forward because he is afraid
20 of being retaliated against.

21
22
23 15. Defendant Clark's statements had a terrible impact upon my health and well-
24 being. I had fellow workers approach him outside of work during my leave asking
25 him what happened - Why had the police been called and why did they have to

1 escort him off the property? Further, upon my return I was questioned by fellow
2 employees that Defendant Clark had reported the incident to including custodians
3 and other school personnel. There were numerous times upon my return that I
4 was approached and asked what happened. Defendant Clark's conduct damaged
5 my reputation, caused me embarrassment and has subjected me to contempt and
6 ridicule.

7
8 16. I grieved the demotion and disciplinary action taken against him through my union.
9 A copy of the grievance is attached as **Exhibit G**. I did not discriminating against
10 employees or take retaliatory action. My testimony offered at the arbitration is true
11 and correct.

12
13 17. Although I was reinstated as foremen in name, I was left without any support,
14 without necessary tools to complete his work, and subjected to ongoing harassment.
15 When I returned as foremen, my crew was cut in half. I was left with four permanent
16 employees. Five employees, including Defendant Clark, were moved to the
17 electronic shop under then acting general foreman, Michael Jackson. I was left
18 without computer privileges for sometime. I was assigned a truck that had ongoing
19 issues. My tools were not returned and my personal items left on my desk were
20 never returned. Splitting the employees continued to foster ill feelings. Employees
21 were not encouraged to treat me respectfully and were in fact, discouraged from
22 doing so. When I returned, I was under the supervision of Michael Jackson. A
23 description of the harassment I received is attached as **Exhibit H**. Jackson treated
24 me terribly, he frequently yelled and swore at me and things progressed to the point
25 where Mr. Jackson physically struck me several times.

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18. I recall a time when I accidentally bumped into Ms. Clark as he was passing by in the office, the area she was in was narrow and he was trying to get by to put his time sheet away. A copy of a photo of the area is attached as **Exhibit I**. Ms. Clark claimed I did it on purpose and that I kneed her. She also claimed that I put my butt in her face while she was sitting at the same desk. I explained that again, I was walking past to put in his time sheet and talking to another employee that was standing by the wall. When Defendant Clark turned around from working on the computer, I was standing there and my butt apparently was in front of her face. I did not do anything intentionally, I was just talking with one of the workers.

19. My work life has been almost unbearable. The only reason I have stayed at Defendant SPS is because I am afraid I will not be able to locate another job. I have applied for other positions but has been turned down and the job market is extremely poor. The retaliation I has suffered has caused me great emotional distress and anxiety. I have a medical condition that is aggravated by stress. The stress and anxiety has caused my condition to worsen, requiring more medications be prescribed. There are times when I is in a great deal of pain on a daily basis. I has lost incredible amounts of sleep. At one point I believed I was having a heart attack and went to the emergency room for treatment. It turned out it was not a heart attack but caused by anxiety and stress. I was doing what I believed was the right thing in standing up for employees right to receive proper wages. In return, Defendant SPS has destroyed my work life and caused me damage.

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20. A true and correct copy the job order at Nathan Hale, the last job I had requested prevailing wage on, is attached as **Exhibit J**.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Dated this 4 day of April, at Seattle, Washington.

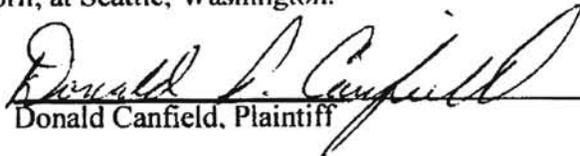

Donald Canfield, Plaintiff

Exhibit B

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6 THE SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY
7

8 DONALD CANFIELD,
Plaintiff,
9 v.
10 MICHELLE CLARK, "JOHN DOE1" and
"JANE DOE1", and their marital community,
11 and "JOHN DOE2" and "JANE DOE2", and
their marital community,
Defendants.
12

Case No. 09-2-44040-9

**DECLARATION OF COUNSEL
CHELLIE HAMMACK**

13 DONALD CANFIELD,
Plaintiff,
14 v.
15 SEATTLE PUBLIC SCHOOLS, a municipal
corporation,
16 Defendant.
17

Case No. 10-2-27634-3

I, Chellie Hammack, state and affirm as follows:

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25
1. I am the attorney for plaintiff in the above entitled action. I am over the age of 18 and competent to testify..
 2. These cases were filed as two separate cases. Decl. of Counsel, ¶ 2. On motion of Defendants, the Court consolidated the cases adopting the schedule in the Clark case, providing for a much shorter discovery period than normal in the SPS case. A true and correct copy of the case schedule in the Clark case is attached as Exhibit A. A true and correct copy of the case schedule in the SPS case is attached as exhibit B.

1 projects (Small Works projects). This information is directly relevant to Plaintiff's
2 prevailing wage claim and retaliation claim.

3 In addition, the depositions of the Union Representatives is scheduled for later this
4 month. Plaintiff's counsel anticipated that she would be able to have contact with
5 Nancy Mason, a prior union representative that was the primary representative for
6 Plaintiff during the relevant time period in this case. However, counsel for the Union,
7 Dan Hutzenbiler, has indicated he believes that it would be best that all
8 communication occur through deposition. It is believed that Ms. Mason has
9 information relating to Defendant Clark's allegations, Defendant SPS's reponse and
10 Plaintiff Canfield's claim of retaliation and failure to pay the prevailing wage. Ms.
11 Mason is also aware and familiar with the terms of Defendant Clark's hiring and
12 issues Plaintiff Canfield was having with Ms. Clark. Ms. Mason obtained the letter
13 by Ms. Jessie Logan outlining Defendant Clark's continued defamatory conduct.
14 Further, it is believed that other union representatives, Elwood Evans and Jim Tosh
15 overheard a conversation by Defendant SPS indicating there was a plan to terminate
16 Plaintiff Canfield.

- 17 6. A true and correct copy of the transcript of Plaintiff Canfield's testimony at the
18 arbitration is attached as Exhibit J.

19 I declare under penalty of perjury under the laws of the State of Washington that the
20 foregoing is true and correct to the best of my knowledge.

21 Dated this 4TH day of April, at Seattle, Washington

22 /s/Chellie Hammack
23 Chellie Hammack, WSBA#31796
24 Attorney for Plaintiff