

## EEA/Alderman Arbitration Successful

Last winter the EEA pursued an arbitration on behalf of Irene Alderman to enforce her and all members right under the contract to:

- (1) never be subjected to discipline unless just cause existed;
- (2) exercise one's right as an employee to speak out regarding matters of public concern without being subjected to retaliation.

The Association considered the challenge to this activity to be important, not only to vindicate Ms. Alderman, but also to reinforce these protections for all members. A short statement, summarizing the result, is currently posted at Sheldon High School on three bulletin boards. However, in order for members who wish to have a clearer understanding of the ruling, Ms. Alderman has agreed to allow EEA to have this summary, as well as the full opinion issued by Arbitrator Janet Gaunt, posted on the Association website. (The opinion is attached to this summary.)

The key actions that precipitated the grievance are as follows:

In 1999, a grievance was filed by 18 Sheldon teachers, including Irene Alderman, concerning work equity between teachers in comprehensive high schools (particularly Sheldon) and the International High School based on student contact time (a difference of 18 %) and the opportunity to teach project-based courses, which was only generally available to IHS teachers. When the grievants pointed out that the IHS classes were not long enough to fulfill the Carnegie hours requirements, the District increased IHS classes 10 minutes each, resolving part of the grievance.

In 2004, a Settlement Agreement addressing the 18% student contact time differential was signed. It allowed **all** high school teachers to design and apply for permission to teach Project Courses. The Agreement said the high schools should establish a process for gaining approval of such courses and submit it to JCAC. The Agreement also required reports regarding the recruitment and retention of IEP and Sec. 504 students in the various high school programs with focus on IHS. Irene worked hard with the Association to bring about the resolution and in subsequent years to make sure the Project Courses procedure was honored.

Several years later, in the spring of 2009, proposed budget cuts at Sheldon raised concerns on the part of several members because they believed the cuts violated Board policy by taking money from the core subjects and moving it to various non-core areas. After unsuccessfully attempting to dissuade the administration to revise the budget, in June 2009, several members attended the School Board meeting. A few of them spoke during the public session regarding these concerns. Sheldon's principal, Dr. Bolden, was very unhappy with the statements made. Though it was not shared with the members who attended or spoke, shortly after the meeting, Dr. Bolden wrote a memo to the District Office, not only refuting the statements, but also recommending that four of those who attended should receive a written reprimand, placed in their personnel files, "unsealed", "without an expiration date" and "irremovable". In addition to these penalties, he recommended that Irene be suspended without pay for a week and transferred involuntarily to another building. None of these disciplinary actions were imposed at the time. In fact, Dr. Bolden was expressly advised that the statements at the Board meeting were protected speech for which Irene could not be disciplined.

Though Irene was not aware of the discipline proposed, at various times in the summer and fall of 2009, Irene felt like she was being subjected to scrutiny and criticism for actions which would not have raised such treatment in the past. An extensive discussion of the actions and the Sheldon administration's response is described in the decision. The arbitrator found that there was serious discord among the Social Studies department employees which had not been resolved for several years. Irene had made multiple requests for an outside mediator to come in, particularly after it appeared to her that the administration was retaliating for her activities in the Work Equity grievance and for speaking out at the June Board meeting. In the arbitrator's decision, each of the members of the department were criticized for various actions or statements. The administration was also deemed by the Arbitrator to be ineffectual in bringing the matter to resolution. Irene, however, was the only employee in the department who was written up. The Arbitrator relied upon this fact as part of her basis for concluding that the letter of reprimand and other actions were employed by the administration as a means of retaliating against her.

In addition, the letter was issued a few days after the Association sent a draft of an Unfair Labor Practice complaint to the District, concerning the unfair and retaliatory treatment of Irene since her speaking out at the Board meeting in June. Though the letter had been drafted prior to receiving notice of the ULP, the Association revised the complaint to include the letter of reprimand as a retaliatory unfair labor practice. The Association also filed a grievance to challenge the letter as discipline without just cause.

One more action was taken during the 2009-10 school year that formed the basis for a second grievance and an amended ULP. Toward the end of the year, Dr. Bolden reassigned Irene, the second most senior member of the Social Studies department, to the Sheldon Academy. The grievance alleged that such reassignment was also retaliatory, that is, it would not have happened but for Irene's speaking out at the Board meeting and then filing a grievance and ULP.

The matter was tried before Arbitrator Gaunt over a period of three days. Arbitrator Gaunt drew the following conclusions and issued the following remedies:

#### **AWARD**

**"After careful consideration of all oral and written arguments and evidence, and for the reasons set forth in the foregoing Opinion, it is awarded that:**

**1. The District lacked just cause for the Letter of Reprimand issued on December 8, 2009, which therefore violated Article 12.6 of the Collective Bargaining Agreement."**

*(Article 12.6 provides that no unit member shall be reprimanded in writing, suspended without pay, or reduced in rank or compensation without just cause.)*

**"2. That Letter of Reprimand also constituted an inequitable or unfair application of administration rules and regulations and written School Board policy related to harassment, discrimination, retaliation and/or a respectful workplace."**

*(This ruling is based on a protection in the contract which specifically provides that how the district applies its rules and regulations or Board policy can also subject it to a grievance if it does so in an inequitable or unfair manner. This provision is broader than the protection in many collective bargaining agreements, which only allow grievances based on contract*

violations.)

**“3. The Grievant’s assignment to teach at the Sheldon Academy violated Articles 3.4.8 but not 11.5.1 of the Collective Bargaining Agreement.”**

*(Article 3.4.8 provides that no reprisal of any kind shall be taken by the District or any member of the administration against any member of the Association, or any other participant in the grievance procedure by reason of such participation. The transfer violated this provision.*

*Article 11.5.1 provides that an involuntary transfer will be made only after a meeting between the transferee, the administrator recommending the transfer, and a witness of the unit members’s choice, at which time the specific reason(s) for the transfer will be presented in writing. The arbitrator found that the reassignment to the Sheldon Academy, which is a part of Sheldon High in terms of its supervision, was not a transfer covered by the protections under Article 11.)*

**“4. As an appropriate remedy for the proven contract violations, the District is directed to:**

**(a) Remove the December 8, 2009 Letter of Reprimand from the Grievant’s personnel file, shred it, and ensure it has no further effect.**

**(b) Cooperate with the Association and Mrs. Alderman in trying to identify a regular social studies position in one of the other District high schools (perhaps through a voluntary trade of positions) that can be offered to the Grievant if she prefers not to teach in Sheldon Academy during the 2011-2012 school year**

As a result of this Award, Irene had the option of returning to teaching Social Studies rather than stay at Sheldon Academy, but she would need to find a position in another High School within 4J. The arbitrator’s gave her this option based on the finding that her return to her former position “will simply result in continuing conflict so long as existing members of the Department and the current building administration remain unchanged.” So, this fall, after many years of valuable service since 1994 at Sheldon, Irene has joined the Social Studies Department at North Eugene High School.

As a result of this Arbitration Award, the Sheldon employees should feel more assurance that their rights will be upheld and that retaliation of any type will not be tolerated.

Further, the decision is important to reinforcing the definition of retaliatory treatment and each employee’s right to speak out on matters of general public concern. It is also important in reassuring members that the Association will not tolerate retaliatory action.