BEFORE THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY

Connie R. Wombold, Charging Party, vs. **Cascade School District No. 3** and **Del Voss**, Respondents.	)	HRC Case Nos. 0021010079 & 0021010078
	)	*Final Agency Decision*

I. Introduction

This is the case of the school district custodial supervisor whose infatuation with a female subordinate led to romantic advances toward her at work. Her rejection of his advances triggered a hostile work environment and eventual discharge, because the district superintendent, after telling the supervisor to stop making the advances, allowed the supervisor to abuse his power over the female subordinate for the rest of the school year. The superintendent then relied upon the supervisor's evaluation of her and slanted reports about her and recommended ending her employment, which the district did. The female subordinate suffered lost wages and emotional distress as a result of the acts of the supervisor and the district.

II. Procedure and Preliminary Matters

Connie R. Wombold filed a formal complaint with the Department on April 30, 2002, and an amended complaint on August 28, 2002. She alleged that Cascade School District No. 3 and Del Voss, her supervisor, discriminated against her on the basis of sex (female) when they subjected her to a sexually hostile and offensive work environment and retaliated against her for filing a human rights complaint. The district ended her employment on or about June 30, 2002. On December 6, 2002, the department gave notice of hearing on Wombold's complaint and appointed Terry Spear as hearing examiner.

The hearing proceeded on April 24-25 and concluded on April 29, 2003, in Great Falls, Montana. Wombold attended with her attorney, Elizabeth A. Best, Best Law Offices, P.C. Voss and Superintendent Ken Kelly, (designated representative for the district), attended with Debra A. Silk, Montana School Boards Association, attorney for both respondents. The hearing examiner excluded witnesses on Wombold's motion.

Charging party Wombold, respondent Voss, designated representative Kelly, Dennis Fraser, Tracy Creveling, Roger D. Wright, Alice Marzolf and

Clara Mae Fraser testified. The hearing examiner admitted the deposition testimony of Rennae Johnson, Ph.D. The hearing examiner admitted Exhibits 1-41, 43-47, 49-71 (including 71-7A, filed after hearing), A-W, Z-CC, HH-LL, OO, RR-III, KKK-NNN and QQQ-XXX.[1] The hearing examiner's file docket accompanies this decision. On June 23, 2003, Wombold filed the final post hearing brief.

III. Issues

The issue in this case is whether respondents discriminated against Wombold by subjecting her to a sexually hostile environment or retaliated against her for reporting Voss' advances toward her and subsequently filing a human rights complaint. The amended final prehearing order contains a full issue statement.

IV. Findings of Fact

1. Cascade School District No. 3 is a governmental entity established by the State of Montana. The Board of Trustees is the governing body of the district. At all relevant times, Ken Kelly was the Superintendent of the district. His primary function was to run the district, oversee the district's day-to-day activities and implement the Board's policies and the district's functions.

2. At all relevant times, Del Voss was an employee of the district, acting as Head Custodian. His primary responsibilities were to see that the buildings and grounds of the district were clean and orderly, by his own work and by supervising and evaluating the custodial staff. Kelly was his direct supervisor.

3. The district hired Connie Wombold as a custodian under a series of written employment contracts from the beginning of the 1997-98 school year through the expiration of her last contract in June 2002. Voss initially recommended that the district hire Wombold in 1997. He was her direct supervisor throughout her employment.

4. Under the district's policies, Wombold was a "classified employee." The district had a policy that classified employees had no expectation of continued employment from year to year. Under its policy, the district had the right, at its sole option, to renew or not renew the contracts of its classified employees during the summer of each year. Wombold knew of the policy.

---

[1] After hearing the district filed a cross-reference of duplicated exhibits, for the convenience of any reviewing tribunal.

5. In 1998 and in 1999, Wombold received counseling and a subsequent written reprimand regarding her conduct as an employee. The district renewed her contracts each year after those events. The district produced only one written evaluation of Wombold prior to the 2001-2002 school year. Voss wrote that evaluation on May 17, 2000. He reported that Wombold did a "very good job," had a "great attitude," and "takes a lot of care." Voss went on to state that Wombold "does what she is told" and was "learning all the time." He described her work as "usually excellent," and stated that overall she was "excellent in what she does." Voss recommended that the district hire Wombold again for each school year through 2001-2002.

6. Wombold's 2001-2002 employment contract, like her previous contracts, expressly provided that she had no expectation of continued employment with the district after the expiration of that contract. By signing her contract, she knew and agreed that without board action her employment would automatically terminate upon expiration of the contract. She also knew that the district usually renewed the custodians' contracts unless there were problems with a particular custodian's job performance or with funding for the custodial contracts.

7. During the summer of 2001, new construction was ongoing at the District. Voss and Wombold worked closely together. Her conduct and attire during that summer was proper and appropriate for outdoor work in summer weather. Voss began ogling Wombold. As he continued his covert staring at her body during the summer, he decided that she was deliberately exposing her breasts to encourage him. She was not. Wombold was unaware of Voss' unusual interest in her, and had no indication of his thought processes.

8. During the 2001-2002 school year, Voss was in charge of supervising all of the custodians, including Wombold, Dennis Fraser and Tracy Creveling and Peggy Schneider. Wombold, Fraser and Creveling were primarily involved in the relevant events for this case. Fraser was a new custodian, beginning his probationary employment period in September 2001.

9. Voss suspected that Fraser had a romantic interest in Wombold, which /she might be encouraging. Voss began making negative comments to Kelly about Fraser. In some of those negative comments, Voss also mentioned Wombold and Creveling, casting them in the light of employees being led away from good work habits by Fraser.

10. During September 2001, Voss arranged a meeting with Wombold in a custodial closet on the district's premises during working hours. The custodial closets were very small rooms ("closets") containing the custodial equipment and supplies, and including facilities such as sinks. Voss set up two

chairs in anticipation of the meeting. Once he and Wombold were seated, he told Wombold that he had a "pretty serious" crush on her. He complimented her on her looks and told her that he liked everything about her, her hair, her body and her face. He described his marriage in unfavorable terms. He told her that he didn't want to cause any trouble with her marriage, but wanted to help her in any way he could if anything ever happened between Wombold and her husband.

11. Wombold reasonably interpreted his comments as an invitation to a romantic relationship. She responded by telling Voss repeatedly that she loved her husband. Since Voss was her immediate supervisor, Wombold feared that a more direct rejection of his overtures might hurt Voss' feelings and lead to problems for her at work. She feared that Voss was offering her the choice between either accepting his advances or facing his wrath as her supervisor. Wombold did not believe she had done anything to elicit Voss' romantic overtures. She did not know what to do. She was embarrassed and afraid.

12. The following day, Voss approached Wombold as soon as she came on shift and apologized for his behavior of the previous day, promising never to say anything about it again. Wombold accepted his apology and hoped the matter was closed.

13. In November 2001, one of the construction workers came to Wombold, as she was working in a custodial closet, with a question. Voss observed this worker approach Wombold, and saw him touch her casually. He was jealous, interpreted the approach as a romantic overture. He later warned the construction worker to leave Wombold alone. Neither Wombold nor any other custodian had requested or desired Voss' intervention to chastise the construction worker.

14. Later during that fall and the early winter of 2001, Voss told Kelly that he had concerns over the performance of the custodial staff, particularly Fraser. Voss had told Kelly he wanted to make some changes in the custodial schedules to address those problems. Kelly relied upon Voss' reports both about the problems and about appropriate methods to address those problems.

15. On December 14, 2001, Voss prepared another annual evaluation of Wombold. Despite his negative reports to Kelly about the custodians' performance and the need to make changes, Voss gave Wombold a stellar evaluation. Every rating he gave her indicated that she met the employer's standard, exceeded that standard or was outstanding. Wombold signed the evaluation on December 17, 2001. Voss put nothing in the evaluation that reflected any problems of any kind with Wombold's work attitude, behavior or performance.

16. In mid to late December 2001, Voss initiated another conversation with Wombold, on the district's premises during working time. He had again arranged two chairs in the secluded area to which he took her for the meeting. This time he had also brought two sodas for them to drink during the meeting. He told her that he was still having a difficult time because of his feelings toward her, which he again proceeded to express. He indicated that he would help her go to art school if she were "with him."

17. Wombold reasonably interpreted this conversation as another invitation to a romantic relationship. Her concern grew about what her boss might do if she rejected this renewed overture; she now seriously feared that Voss was giving her the choice between accepting his advances or receiving unfavorable treatment at work. She was also afraid of what he might do if she told anyone at the district about his approaches. Frightened and humiliated, she again responded that she loved her husband, and escaped from the meeting as soon as she could.

18. Stunned, Wombold hid in the bathroom and cried. She cried most of that night at work. She reasonably feared that Voss would continue to pursue her unless she either confronted him or complained to the district. The thought of doing either terrified her. She reasonably believed that she had not done anything to entice Voss' interest in her, and could not understand why he was again soliciting her. She suffered intense emotional distress over Voss' renewed pursuit of her and her fears that her rejection of his overtures would result in Voss creating problems for her at work.

19. The district included a sexual harassment policy and complaint procedure in its Administrative Handbook for Teachers, indicating that the district would "do everything in its power to provide an environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication constituting sexual harassment." The policy prohibited employees from making sexual advances when (a) submission was explicitly or implicitly a term or condition of employment; (b) submission or rejection was the basis for employment decisions or (c) the conduct had the effect of substantially interfering with or creating an intimidating, hostile, or offensive environment. The district also had provisions indicating its zero tolerance for sexual harassment in its Student Handbook.

20. Wombold had received copies of both publications. The district provided copies of the teachers' handbook to all employees. Wombold had children attending school in the district and parents received copies of the student handbook. Neither publication expressly applied any complaint procedure for sexual harassment to classified employees.

21. Wombold talked to Alice Marzolf, the Clerk of the District, about Voss' behavior. Wombold confided in Marzolf because she was a friend, not because she was the district's clerk. Wombold told Marzolf that she wanted Marzolf to keep their conversation confidential and asked her not to say anything to anyone. She wanted to explore her options with Marzolf.

22. Wombold told Marzolf that Voss had said to her that he had feelings for her and that he and his wife were not having intercourse. She confided to Marzolf that Voss had cried and had told her that he was lonely. She also shared that Voss had told her that she had a nice body and that he liked it. She told Marzolf that Voss said to her that if something ever happened to her marriage, he would like her to keep him in mind.

23. Wombold confessed to Marzolf that she was not comfortable confronting Voss about his behavior. Marzolf suggested that Wombold had three choices–to confront Voss, to complain to Kelly or to quit.

24. Just days after Voss' second romantic approach to her, Wombold reluctantly approached Kelly about Voss' actions. They met in late December 2001. She began by telling Kelly that Voss had told her on two occasions that he liked everything about her and had fallen in love with her. She told Kelly that Voss had talked about his dissatisfaction with his own marriage and his desire to help her should her marriage fail. Wombold also told Kelly that Voss seemed jealous of the time she spent with her co-workers Fraser and Creveling and that he had been jealous of another worker in the past. Wombold was visibly disturbed and crying while talking with Kelly.

25. Wombold's difficulty in relating the details of her interactions with Voss left it up to Kelly to decide how much more information he would obtain from her. Kelly did not elicit a full account from Wombold of Voss' conduct. Instead, he responded to Wombold by questioning her about some particulars of the two encounters and then expressing his conclusions. He obtained admissions from Wombold that Voss had neither made any physical contact with her nor made any explicit sexual propositions to her. Kelly decided that Wombold thereby agreed that Voss had not "done anything sexual" during the two conversations. He then told her that he did not think that Voss had sexually harassed her. Wombold conceded that she did not want to make trouble for her supervisor. Kelly then asked what she wanted and she told him that she wanted Voss' conduct to stop, that she had thought of him as a father figure and had no romantic interest in him. Kelly asked her not to tell anyone about the incidents, and assured her that he would resolve the problem.

26. Kelly knew that a supervisor's unsolicited professions of romantic interest to a subordinate, on the employer's premises during working time,

were inappropriate. He knew the district had a duty to prevent such conduct and that failure to do so was potentially actionable. Nevertheless, he did not advise Wombold to fill out a complaint form and did not make any formal report of the conversation. He made some informal notes of the conversation.

27. Kelly decided to talk with Voss. On December 31, 2001, within days of his meeting with Wombold, Kelly met with Voss and discussed what he characterized as Wombold's "concerns." Voss admitted to Kelly that on two occasions he had shared his personal feelings about Wombold with her. Voss began what became his campaign to blame Wombold for his conduct, asserting that the romantic attraction between he and Wombold was "two way." Kelly did not contradict him, even though Wombold had asserted just the opposite and had requested that the district stop Voss' unwelcome attentions. He told Voss that what happened between Voss and Wombold "was their own business," but that such behavior at work was unacceptable and if it continued there would be consequences. He did not tell Voss the conversation was a verbal warning. He made no record in Voss' file of taking any disciplinary action.

28. Kelly knew that Voss planned to impose more strict rules regarding custodians' behavior at work. He knew or reasonably should have known that there was a risk that Voss might use the new rules to punish Wombold both for rejecting his advances and for complaining about them to Kelly. Despite his knowledge, Kelly relied entirely upon Voss to create and impose the new rules on the custodians.

29. The evaluation Wombold signed on December 17, 2001, was typical of the feedback from Voss about her work before he found out that she had gone to Kelly and asked that Voss' romantic overtures to her stop.

30. On January 2, 2002, the next work day after Voss met with Kelly, Voss angrily presented the custodians with a new work schedule, which required each custodian to take breaks at different times from the others and prohibited them from taking breaks together. Voss now insisted that they work in separate areas and barred them from talking to each other while working. Voss told them they could quit if they did not like the changes. He began to check on their whereabouts regularly, berating them if they were not always in their different areas of the buildings working individually. Whenever he saw two of the custodians together, he immediately assumed they were not working and berated them, often writing them up or reporting them as well.

31. No other district employees were subjected to the barrage of hostility, accusation and confrontation that Voss visited upon the custodians. No other district custodians had ever worked under the conditions Voss now

required of these custodians. The custodians had previously freely interacted while working. They had taken breaks together and helped each other with work tasks. If they took a break that was longer than 15 minutes, they would skip the next break to make up for it. They initially could not understand what had triggered Voss' hostility.

32. Voss also angrily confronted Marzolf because she had suggested to Wombold she could talk to Kelly about her problem. He told Marzolf that Wombold had hugged him in a provocative and inappropriate way. He also told Marzolf that he had seen more of Wombold's body than her husband had. Voss thereafter made similar comments to Kelly and others, eventually repeating some of the stories, and fabricating new ones, to the Human Rights Bureau investigator. His comments throughout 2002 regarding Wombold's conduct were both untrue and unfair.

33. Kelly initiated another meeting with Wombold in early January. He told her that he had discussed the issue with Voss. She complained about the new schedule and treatment by Voss. Kelly did not respond, except to verify with Wombold that Voss had made no further advances. Over the next two to three months, Kelly would see Wombold while she was at work at the district approximately twice a month and ask her if "everything was okay." Kelly never asked specifically about Voss' conduct and made no further inquiry into either the prior incidents or the on-going work relationship between Wombold and Voss. Wombold never complained to him of any further advances by Voss.

34. Indeed, after the conversation with Kelly, Voss did not make any further romantic overtures toward Wombold. His demeanor toward her had now changed. He began to find more fault with her work.

35. In January 2002, Marzolf told Wombold about Voss' comments. The report of his untrue innuendoes about her behavior and his continued anger frightened and upset Wombold.

36. Beginning in January 2002, Voss began a practice of appearing where Wombold was working and glaring at her without speaking. Wombold began to dread going to work. She feared Voss and tried to avoid him. She suspected that the new work rules were Voss' way of isolating her from her fellow workers. She suspected he planned to corner her and force his attentions upon her.

37. Wombold shared her fears with Fraser and Creveling. All three custodians agreed that Voss' new rules were in response to Wombold's rejection of him. Fraser in particular voiced his thoughts that Voss might truly

be trying to isolate Wombold in order to attack her. The trio began to monitor Voss (to be aware when he was near Wombold), and to make sure they kept in contact during the course of each evening's work. Voss was furious at this "insubordination." He began writing up the custodial staff, misconstruing and misrepresenting their conduct, both in his complaints to Kelly and in his disciplinary write-ups.

38. On January 21, 2002, Voss submitted the first of several "letters" reporting to Kelly that Wombold was not staying in her area and was talking to other custodians. Kelly told Wombold he would not put the letter in her file. The letter remained part of the district's records regarding Wombold's employment. Kelly did not undertake any verification of Voss' accounts of what happened in this or any other instance.

39. On January 21, 2002, Kelly approved the extension of Fraser's period of probation as a new employee. In taking this action, which was disciplinary in nature, Kelly relied upon Voss' recommendations and reports. Voss blamed Fraser for the conduct of all three of the custodians. His perception was partially accurate. Fraser was instigating at least some of the conduct of Creveling and Wombold which conflicted with Voss' directions.

40. Fraser saw himself as Wombold's protector, and considered the extension of his probation an attempt by Voss to eliminate him so that Wombold would be more vulnerable. He encouraged Wombold and Creveling to join him in open rebellion against Voss' supervision. The three began to spy on Voss in earnest, so they could more easily get together and talk as well as assist each other at work.

41. Voss sensed that the trio were cooperating in avoiding him and his new schedule. His anger grew. As the school year progressed, his hostility toward Fraser, Wombold and Creveling intensified.

42. For example, Voss found Creveling in Wombold's area and wrote her up for discipline, refusing to listen to any explanation. Creveling went to Kelly and explained that she had been in Wombold's area to pick up supplies she needed. Kelly acknowledged her explanation and told her "not to worry about" the write-up. He nevertheless kept the write-up in her file.

43. Voss complained to Kelly and wrote up the custodians for conduct before they started their shifts as well as for conduct after they completed their shifts, including conversations between them that he observed in the school parking lot after they had left work. Kelly never questioned the propriety of any of Voss' litany of purported problems with the custodians, despite the flimsy nature of many of Voss' complaints. Kelly never undertook to verify

any of Voss' reports. He gave no credence to the three custodians' complaints about Voss.

44. Although Kelly attempted to mollify the custodians, who did complain to him about Voss' treatment of them, Kelly never intervened in Voss' escalating war against Wombold and the other custodians. He never did any investigation into whether the complaints of the custodians about Voss' conduct were well-founded. Kelly made reassuring comments to the custodians, while continuing to permit Voss to treat them in a hostile and vindictive fashion.

45. Voss continued to make false and exaggerated reports to Kelly regarding the custodians. He voiced his unsubstantiated suspicion that Fraser was having an affair with Wombold. Kelly, relying upon Voss' reports without undertaking any independent investigations of the custodians' conduct, told Bob Rumney, the Chairman of the District's Board of Trustee, that he would not be recommending the automatic renewal of the employment contracts of Wombold, Creveling, and Fraser and that he thought it was in the best interests of the District to readvertise for all of the custodial positions. Kelly took this action in reliance upon Voss.

46. Voss' hostility toward Wombold resulted from her rejection of his advances and her complaint to Kelly. His hostility toward Fraser resulted from Fraser's support of Wombold and (in Voss' eyes) Fraser's romantic liaison with her. Voss' hostility toward Creveling resulted from her joining with Wombold and Fraser in resisting Voss' efforts at isolating and harassing Wombold.

47. Fraser's campaign against Voss' new rules escalated beyond any legitimate concern for Wombold's safety. It became a turf battle between Fraser and Voss over who would decide how, when and by whom particular work would be done.

48. In April of 2002, Wombold, Fraser, and Creveling met with one of the district's trustees, Roger Wright, to discuss their conflict with Voss. Wright told the custodians that he was not acting in his capacity as a trustee in meeting with them. He was equivocal about the situation. He suggested that the three might carry radios to communicate at night while at work. He recommended to them that they talk to Kelly about their concerns.

49. After the meeting, Wright told Kelly about it. Kelly immediately talked to Wombold and Creveling about their concerns. Kelly continued his practice of listening politely to the custodians, reassuring them and encouraging them to talk to Voss, as their supervisor, about their concerns. At the same time, Kelly continued to commiserate with Voss about his reports

that the custodians were out of control and to encourage him in his attacks upon them.

50. Delighted by the walkie-talkie suggestion, Fraser encouraged the two women to act on it. All three custodians began to carry walkie-talkies at work, without authorization from Voss or Kelly. This allowed them to communicate without being out of the designated areas to which Voss had confined them. It also allowed them to track Voss and tell each other where he was.

51. Voss was furious about the walkie-talkies. He was not dealing rationally with his subordinates. He believed they were hiding in closets to talk about him and meeting in locker rooms to goof off when they were supposed to be working. Sometimes the custodians were talking about him. More often, they were working or discussing work. By now, Voss' efforts to tame his rebellious staff had changed into a full-blown attempt to get all three of them fired. He believed Fraser was trying to get his supervisor's job, although he had no reason to believe that a first year custodian would have any chance of persuading the district to replace him.

52. Kelly, listening to Voss' angry accounts of "insubordination," concluded that the custodians were "playing games" with Voss. Kelly never seriously considered whether Voss' new rules were necessary or appropriate–he simply relied upon Voss. Kelly decided that Voss was right–the three custodians were trying to get Voss fired. He never considered whether Voss had caused the problem, why Voss might be unfairly hectoring his subordinates or whether it was Voss who was working to get the custodians fired. Voss knew, from his discussions with Kelly, that the custodians would have to submit formal re-applications for their jobs, in a departure from the practice for previous years. Voss knew that he and Kelly would be deciding who would receive the jobs. He kept giving Kelly negative reports and complaints about Wombold, Fraser and Creveling.

53. On April 30, 2002, Wombold filed a Human Rights complaint, alleging sexual harassment and hostile work environment. The district had both actual and imputed knowledge of that filing before taking any actual adverse employment action against Wombold for the next school year.

54. On May 23, 2002, Kelly informed Wombold by letter that the district was terminating her employment as of June 30, 2002, at the end of her contract. Creveling and Fraser got similar letters. The three custodians met again with Wright, but got neither support nor encouragement. Wright suggested that if Wombold sued the district it would not hire her for another year and she would be unable to find another job in Montana.

55. Both Wombold and Fraser asked to take vacation time in June. The district preferred not to have custodians take vacation at the end of the school year, because there was much end of year work for the custodial staff. Despite that preference, the district had allowed custodians to take leave in June during past years. Both Wombold and Fraser received their requested leaves.

56. On June 10, 2002, Kelly formally suspended Fraser, with pay, for insubordination. The suspension lasted until his approved vacation began, which covered the balance of the 2001-2002 school year. Effectively, Fraser was done working for the district on June 10, and was specifically directed not to come on the premises for the rest of the school year.

57. Although Kelly, relying upon Voss, had already decided not to rehire Wombold, his May 23 letter invited her to reapply for her position. She did so. Voss and Kelly then made the formal decision, which was already a foregone conclusion, not to interview her.

58. Voss recommended others for the custodial jobs, instead of Wombold, because she had rejected his advances. His selection of others for the custodial jobs in the 2002-2003 school year was the culmination of the events set in motion when he acted upon the idea he had in the summer of 2001 that Wombold might be receptive to his advances.

59. Kelly relied upon Voss in choosing others for the custodial jobs, unreasonably disregarding facts he already knew and facts available had he made reasonable inquiry about Voss' actions and motivations. Kelly decided to end Wombold's employment without ever giving serious consideration to the possibility that Voss had gotten her fired because she had turned down his advances. Kelly recommended and the Board hired three new custodians. Due to other departures not related to this case, the district had one more custodian opening. Voss and Kelly chose Creveling and the Board hired her for that job. Neither Creveling nor the new hirees had better qualifications for the custodian jobs than Wombold.[2]

60. On June 13, 2003, Kelly sent a form letter to Wombold notifying her that she had not been chosen for a position.

61. In the course of the Human Rights Bureau's investigation into Wombold's complaint, Voss repeated and embellished untrue statements he had made to district personnel regarding Wombold's work and her behavior

---

[2] Creveling had a relative by marriage on the district's board of trustees. That trustee was Voss' daughter. Creveling also had not been an object of Voss' romantic attentions. She had no qualifications superior to Wombold's and less experience in the job.

toward him and other males while working. He made additional untrue statements, claiming he protected Wombold from sexual harassment by Fraser and other district and construction workers at various times. Voss never provided a satisfactory explanation at any time for his glowing evaluation of Wombold in December 2001, while he was simultaneously telling Kelly that the custodians, including Wombold, required tighter supervision.

62. Kelly, during the Human Rights investigation, focused upon the conflicts between the custodians and Voss and blamed the custodians. He also asserted that a significant factor in deciding not to rehire Wombold for the 2002-2003 school year was that she requested and took three weeks of vacation in June 2002, showing "disloyalty" to the district. Since Kelly also contended that the decision not to rehire her was essentially made before he learned she had filed the Human Rights complaint, his reliance upon her taking vacation time in June was incredible. During his hearing testimony, Kelly still appeared oblivious of any district obligation at any time to undertake a genuine investigation of Voss' conduct toward Wombold.

63. After she got the May letter notifying her she had to reapply for her job, Wombold was certain Voss had succeeded in getting her fired. She began to look for him around Cascade, suspecting he might now start either stalking her away from work or at least popping up to gloat at her. Cascade being a small town, she often found Voss in sight anywhere she might be. Voss was not deliberately seeking Wombold out, but he was happy to see her anywhere, so he could wave and smirk and glory in how she was now amply repaid for slighting him.

64. But for her rejection of Voss' advances, Wombold would never have been a target of Voss' hostility. During the 2001-2002 school year, Voss acted with unfettered discretion in supervising Wombold. Because Kelly failed to investigate Wombold's December complaint and her subsequent complaints about the hostile supervision beginning in January 2002, Voss was able to punish her for rejecting his romantic approaches, creating a hostile work environment for her due to her sex.

65. Neither Voss nor the district retaliated against Wombold because she filed her Human Rights complaint. Kelly and Voss had already decided upon the adverse employment action before she filed her complaint. Without reversing her own conduct and inviting Voss to resume his romantic overtures, Wombold could not have changed her supervisor's mind. Without a radical change in Voss' reports to Kelly, Kelly would not have rethought his decision to end Wombold's employment by hiring other custodians for the next school year. The Board relied upon Kelly's recommendations. Thus, Wombold lost her job because Voss made her continued employment contingent upon her

response to his romantic overtures. Filing of her Human Rights complaint did not cause or influence the adverse employment decision-making.

66. Wombold has been looking for work since she lost her custodian job with the district. She has applied for jobs through job service and contacted local merchants about work. She has obtained a flagging certificate and, at the time of hearing, had just obtained an application for a possible job. Her husband is a mechanic and body man and his employment makes it unreasonable for the family to move from Cascade, Montana, to improve Wombold's job hunting prospects. If she must commute from Cascade to work, the job must pay well and offer benefits, to compensate for the time away from her family and the expenses involved. Through the date of this decision, Wombold lost wages and benefits for the 2002-2003 school year, in the amount of $26,000.00.

67. Interest accrued to date on her lost wages, at 10% simple interest per year, is $1,300.00.

68. Wombold will continue to lose the difference between her wages with the district, at $26,000.00 per year, and whatever she is able to earn, until she is able to procure a job that matches her earning potential with the district. After the conflict between Wombold and the respondents that occurred in January-June 2002, it would be unrealistic to require that the district rehire her. There is too much hostility toward Wombold on the part of Voss and the district to order them to reinstate her. However, if the district believes it can treat Wombold fairly despite the past problems, it can choose to make a good faith offer of reemployment.

69. Three years from the present is an adequate time, even in the Cascade market, for Wombold, with reasonable effort, to end her wage losses resulting from the actions of Voss and the district. Because the custodians work on yearly contracts without job security, extending projected wage loss more than three more school years would be speculative. Should Wombold obtain or turn down comparable work during that time, her entitlement to front pay will end sooner.

70. From January through May of 2002, Wombold did not want to go to work. Her fear and distrust of Voss made attendance at work extremely uncomfortable. She experienced the on-going conflict with Voss as a "constant agonizing torture." During each work week, she slept poorly and had little appetite. She struggled with memory problems and anxiety. She had severe mood swings, crying one minute and terrified and angry the next. In May 2002, Wombold sought professional help from Renee Johnson, Ph.D., at the Great Falls Clinic, to deal with her emotional distress.

71. Johnson has been a licensed clinical psychologist in Montana since 1989, having previously practiced under a California license. She had treated Wombold in 1999 (three visits that year) for depression related to problems in her family of origin. In 1999, Johnson had referred Wombold to her family practitioner, Denise Gresham, M.D., for medication. Gresham prescribed Wellbutrin, an anti-depressant, and Wombold was still taking that medication when she returned to Johnson in May 2002.

72. Johnson diagnosed an adjustment disorder with anxiety features, dysthymia and a relational problem. She saw Wombold five times prior to the hearing in this case, and was continuing to treat her. Wombold continued to take the Wellbutrin, and in June 2002 Gresham added Celexa, another prescription anti-depressant that addressed anxiety as well. Wombold originally reported, in May 2002, that she needed additional treatment because of her feelings and reactions to the conduct of Voss and the district decision to require her to reapply for her job. She subsequently reported additional problems with anxiety and depression involving finances and marital tension (because she was home and job-hunting instead of working). Johnson was not willing to testify to causes for the emotional problems. From Johnson's testimony, it is clear that Wombold reported both that her need for treatment resulted from her difficulties with Voss and the district, and that her problems with Voss and the district and the financial loss stemming from those problems caused Wombold's marital conflict.

73. Since Wombold lost her job with the district, she has been unable to afford health insurance. The lack of health insurance has made it impossible for her to continue with treatment from Johnson as well as prohibitively expensive for her to purchase and take her medications. As a result, Wombold's emotional distress has lasted longer, and still has not resolved. Wombold is entitled to recover the sum of $7,500.00 to compensate her for her severe emotional distress, past and future.

74. Voss was only able illegally to discriminate against Wombold and cause or contribute to the resulting harm because the district failed to perform its duty properly to supervise him and control his conduct in his supervisory position. The district, by its failure to act, caused the harm resulting from Voss' conduct.

75. There is a risk that the district will ignore another complaint of ***quid pro quo***[3] sex discrimination in the future, relying entirely upon the

---

[3] Literally, "this for that," the phrase describes an offer of employment (or continued employment, a promotion, raise or other benefit) conditioned upon accepting the sexual

representations and reports of a supervisor without adequate response to the complaint(s) of the person supervised and subjected to the discrimination. There is a risk that Voss will subject another female subordinate to sexual harassment and a hostile work environment. Injunctive relief to require training and actual pursuit of investigation of future complaints is necessary, to minimize the risk of such recurrent discrimination.

V. Opinion[4]

Wombold Proved Sexual Harassment in the Workplace

Montana law prohibits adverse employment action toward an employee because of the employee's sex. Mont. Code Ann. § 49-2-303(1). An employer directing unwelcome sexual conduct toward an employee violates that employee's right to be free from illegal discrimination when the conduct is sufficiently abusive to alter the terms and conditions of employment, creating a hostile working environment. *Brookshire v. Phillips*, HRC Case #8901003707 (April 1, 1991), ***aff. sub. nom.*** *Vanio v. Brookshire* (1993), 258 Mont. 273, 852 P.2d 596.

Montana seeks guidance from federal cases that help interpret Montana law the Montana courts have not yet addressed. *Harrison v. Chance* (1990) 244 Mont. 215, 797 P.2d 200, 204 (1990); *Crockett v. Billings* (1988), 234 Mont. 87, 761 P.2d 813, 816; *Johnson v. Bozeman School District* (1987), 226 Mont. 134, 734 P.2d 209. One federal district court has defined the precise application of the law to ***quid pro quo*** conduct by the employer:

> Harassment on the basis of sex is a form of sex discrimination which violates Title VII. *Miller v. Bank of America,* 600 F.2d 211 (9th Cir. 1979); *Barnes v. Costle,* 561 F.2d 983 (D.C.Cir. 1977). Title VII is violated by sexual harassment which creates a hostile, offensive, or intimidating work environment (work environment claim) or by the conditioning of tangible job benefits on acquiescence to requests for sexual favors or other conduct of a sexual nature (job detriment claim). *Katz v. Dole,* 709 F.2d 251 (4th Cir. 1983); *Henson v. City of Dundee,* 682 F.2d 897 (11th Cir. 1982); *Vinson v. Taylor,* 23 FEP Cases 37 (D.C.Cir.1980).
>
> Plaintiff established a *prima facie* case of job detriment by demonstrating that:

---

harassment or acquiescing in the demands for sexual favors.

[4] Statements of fact in this opinion are hereby incorporated by reference to supplement the fact findings. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

(a) she belongs to a protected group (female);
(b) she was subjected to unwelcome sexual harassment;
(c) the harassment complained of was based on sex; and
(d) her reaction to the harassment complained of affected tangible aspects of her employment.

Priest v. Rotary (N.D. Ca. 1986), 634 F.Supp. 571, 581 (emphasis added).

The reasoning of *Priest* is directly applicable to Wombold's claim. Voss conditioned continued approval of Wombold's job performance upon her acceptance (or at least non-rejection) of his advances. The district, failing to investigate and supervise Voss, effectively ratified his conduct. Kelly's malign neglect in the face of increasing conflict and hostility between Voss and the custodians actively supported Voss' creation of a hostile work environment. Wombold's reaction to Voss' advances affected tangible aspects of her employment–it cost her the job.

Wombold proved that she was subject to "conduct which a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment." *Ellison v. Brady* (9th Cir. 1991), 924 F.2d 872, 879 [emphasis added]. The harassment need not be severe and pervasive. *Hostetler v. Quality Dining, Inc.* (7th Cir. 2000), 218 F.3d 798, 808.

The totality of circumstances test determines whether the district's conduct created a hostile work environment. *Harris v. Forklift Sys., Inc.* (1993), 510 U.S. 17, 23. The relevant factors include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris* ***at*** 23; ***see also***, *Faragher v. City of Boca Raton* (1998), 524 U.S. 775, 787-88.

Wombold proved her ***prima facie*** case. When she reacted to Voss' advances, she suddenly was subjected to physically threatening and humiliating treatment which interfered with her work performance and eventually led to loss of her employment.

Voss' attempts to justify his hostile treatment of Wombold during January-June 2002 were wholly incredible. His escalating fabrications about her inappropriate conduct at work and his purported efforts both to protect her from other males and keep her from frittering away work time with her coworkers were neither believable nor consistent with his prior endorsements

of her work performance. Kelly's profound reliance upon Voss left his testimony equally incredible.

After the December 2001 conversation between Kelly and Voss, the district took no action to address Voss' conduct toward Wombold for the rest of the school year. The result of such a failure to act is clear under federal law, which, as already noted, Montana follows if the same rationale applies under Montana's law. The federal law provides appropriate guidance to the department in this case. *Malik v. Carrier Corp.* (2d Cir. 2000), 202 F.3d 97, 106:[5]

> [A]n employer's investigation of a sexual harassment complaint is not a gratuitous or optional undertaking; under federal law, an employer's failure to investigate may allow a jury to impose liability on the employer. ***See,*** *Faragher v. City of Boca Raton*, 524 U.S. 775, 118 S.Ct. 2275, 2292-93, 141 L.Ed.2d 662 (1998); *Torres*, 116 F.3d at 636; *Snell*, 782 F.2d at 1104; 29 C.F.R. § 1604.11(d) ("With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action."). Moreover, the knowledge of corporate officers of such conduct can in many circumstances be imputed to a company under agency principles. ***See*** *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 118 S.Ct. 2257, 2265-71, 141 L.Ed.2d 633 (1998). As a result, an employer must consider not only the behavior of the alleged offender, but also the response, if any, of its managers. Nor is the company's duty to investigate subordinated to the victim's desire to let the matter drop. Prudent employers will compel harassing employees to cease all such conduct and will not, even at a victim's request, tolerate inappropriate conduct that may, if not halted immediately, create a hostile environment. ***See*** *Faragher*, 118 S.Ct. at 2283. . . . .

Wombold's prima facie case shifted the burden of presentation of evidence to the respondents to "articulate some legitimate, nondiscriminatory reason for the employee's rejection." *McDonnell Douglas*, 411 U.S. ***at*** 802.[6] They only had the burden to show, through competent evidence, a legitimate nondiscriminatory reason for imposing the new rules on Wombold and then

---

[5] The *Malik* quotation includes incomplete cites to the following two other federal cases: *Torres v. Pisano* (2d Cir. 1997), 116 F.2d 625; *Snell v. Suffolk County* (2d Cir. 1986), 782 F.2d 1094, 1104.

[6] *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792.

ending her employment, *Crockett* ***op. cit. at*** 817, to rebut Wombold's ***prima facie*** case and frame the factual issue with sufficient clarity so that Wombold then had "have a full and fair opportunity to demonstrate pretext." ***See***, ***e.g.***, *Texas Dpt. of Comm. Affairs v. Burdine* (1981), 450 U.S. 248, 255-56. Voss and the district had to articulate legitimate nondiscriminatory reasons for their treatment of Wombold. *Johnson*, ***op. cit. at*** 212.

Wombold then had the burden to prove that her alleged performance deficiencies, largely framed as noncompliance with Voss' directives, were in fact a pretext. *McDonnell Douglas* ***at*** 802; *Martinez v. Yellowstone Cnty Welf. Dpt.* (1981), 192 Mont. 42, 626 P.2d 242, 246. To meet this third tier burden, Wombold could present either direct or indirect proof of the pretextual nature of the respondents' proffered reasons:

> She may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence.

Burdine ***at*** 256. Ultimately, Wombold had the burden to persuade the fact-finder that the respondents did illegally discriminate against her. *Crockett*, ***op. cit. at*** 818; *Johnson*, ***op. cit. at*** 213. Wombold presented ample evidence that Voss falsely reported her inappropriate conduct and failure to do her job. She also presented ample evidence that the district never took seriously her complaints of unfair treatment after she rebuffed Voss by complaining to Kelly and never scrutinized Voss' treatment of her in January-June 2002. Thus, she established that the respondents presented pretextual justification for their adverse employment action, and persuaded the hearing examiner that both Voss and the district illegally discriminated against her.

In short, the noncompliance with Voss' wishes that got her fired was her rejection of his romantic advances. But for her rejection of his advances, Voss would never have targeted her for his escalating hostility in 2002. Fraser probably would have been the only custodian to lose a job, if Voss' jealousy had still sparked the conflict between the two men at work.[7]

Montana law also follows federal precedent in holding that the employer can prove that it would have taken the same adverse action irrespective of any unlawful discrimination. *Crockett*, ***op. cit.***, 761 P.2d ***at*** 819; ***see***, ***e.g.***, *Muntin v. State of California Parks & Recreation Dept.* (9th Cir. 1984), 738 F.2d 1054, 1056. However, the district's business reasons for ending Wombold's

---

[7] This case does not involve and the hearing examiner has not decided whether Voss and the district had valid reasons to discipline Fraser and ultimately end his employment.

employment were pretextual, and absent those reasons, there was no basis for the district to end her employment except that her boss was taking away her job because she had not acquiesced in his romantic advances. The district and Voss failed to prove that Wombold would have lost her job even if she had not complained about Voss' advances.

Relief Awarded

Upon the finding of illegal discrimination by the respondents, the department may order any reasonable measure to rectify resulting harm that Wombold suffered. Mont. Code Ann. § 49-2-506(1)(b). The purpose of damage awards in employment discrimination cases is to assure that the victim is made whole–compensated for all harm resulting from the discrimination. *P. W. Berry, Inc. v. Freese* (1989), 239 Mont. 183, 779 P.2d 521, 523; *Dolan v. School District No. 10* (1981), 195 Mont. 340, 636 P.2d 825, 830; ***accord***, *Albermarle Paper Co. v. Moody* (1975), 422 U.S. 405.

By proving discrimination, Wombold established an entitlement to recover her actual lost wages. *Albermarle Paper Company*, ***supra. at*** 417-23. She must prove the amount she has lost, but not with unrealistic exactitude. *Horn v. Duke Homes* (7th Cir. 1985), 755 F.2d 599, 607; *Goss v. Exxon Off. Sys.* (3rd Cir. 1984), 747 F.2d 885, 889; *Rasimas v. Michigan Dept. of Mental Health* (6th Cir. 1983), 714 F.2d 614, 626 (fact that back pay is difficult to calculate does not justify denying award). Prejudgment interest on lost income is part of the appropriate award. *P. W. Berry, Inc.*, ***supra at*** 523; *Foss v. J.B. Junk,* HRC No. SE84-2345 (1987).

Front pay is an award for probable future losses in earnings, salary and benefits to make the victim of discrimination whole when reinstatement is not feasible; front pay is temporary while Wombold reestablishes her "rightful place" in her job market. *Rasmussen v. Hearing Aid Inst.*, No. 8801003988 (March 1992); *Sellers v. Delgado Com. Col.* (5th Cir. 1988), 839 F.2d 1132; *Shore v. Federal Expr. Co.* (6th Cir. 1985), 777 F.2d 1155, 1158.

Front pay is appropriate when hostility or antagonism between the parties prevents reemployment. *Cassino v. Reichhold Chem., Inc.* (9th Cir. 1987), 817 F.2d 1338, 1347 (upholding front pay award based on "some hostility" despite testimony that the plaintiff and the defendant were still friends); *Thorne v. City of El Segundo* (9th Cir. 1986), 802 F.2d 1131, 1137; *E.E.O.C. v. Pacific Press Publ. Assoc.* (N.D. Cal.), 482 F.Supp. 1291, 1320 (when effective employment relationship cannot be reestablished, front pay is appropriate), *affirmed*, 676 F.2d 1272 (9th Cir. 1982).

The evidence in this case did establish sufficient hostility on the part of the district and Voss to preclude mandatory reemployment of Wombold. Therefore, in lieu of ordering that the district hire her, the hearing examiner awards Wombold front pay based upon the differential between her actual wages, if any, and her salary with the district for three years from the present unless Wombold sooner obtains or turns down comparable work. The order does not preclude the district from offering her a custodial position. If it does, Wombold can either accept the position or elect not to and forego additional front pay.

Ascertaining future lost wages is necessarily an exercise is reasoned speculation. While the hearing examiner will not hold Wombold to an unrealistic standard of proof (***see*** *Horn*, ***op. cit.***), there must be credible and substantial evidence to support a finding that future lost wages extend into the distant future. The facts here do not include such credible and substantial evidence. Despite Wombold's testimony that she would have worked for the district until she retired, there is no evidence that the district would have maintained her employment for that length of time but for the illegal discrimination. The district may face financial problems in the future that could result in changes to custodial staffing. Wombold's family situation may change. Her career goals may change.

Montana has given weight to these kinds of concerns about long-range prognostication of future wage loss. In the Montana Wrongful Discharge from Employment Act, recovery of lost wages and fringe benefits is for a maximum of four years from the date of discharge. Mont. Code Ann. § 39-2-905(1). There is no comparable statutory limitation applicable to Human Rights complaints, but clearly the legislature wants future lost wages awards to be carefully considered before extending them far into the future. Three years of front pay in addition to one year of back pay is reasonable and supported by the credible and substantial evidence of record. More front pay after the three years awarded is not so supported and would be improper.

Emotional distress is compensable under the Montana Human Rights Act. *Vainio v. Brookshire* (1993), 258 Mont. 273, 852 P.2d 596. The standard for such awards derives from the federal case law. *Vortex Fishing Systems v. Foss*, 2001 MT 312, 308 Mont. 8, 38 P.3d 836:

> For the most part, federal case law involving anti-discrimination statutes draws a distinction between emotional distress claims in tort versus those in discrimination complaints. Because of the "broad remunerative purpose of the civil rights laws," the tort standard for awarding damages should not be applied to civil rights actions. *Bolden v. Southeastern Penn.Transp. Auth.* (3d Cir.1994), 21 F.3d 29, 34;

see also *Chatman v. Slagle* (6th Cir.1997), 107 F.3d 380, 384-85; *Walz v. Town of Smithtown* (2d Cir.1995), 46 F.3d 162, 170. As the Court said in *Bolden,* in many cases, "the interests protected by a particular constitutional right may not also be protected by an analogous branch of common law torts." 21 F.3d at 34 (***quoting*** *Carey v. Piphus* (1978), 435 U.S. 247, 258, 98 S.Ct. 1042, 1049, 55 L.Ed.2d 252). Compensatory damages for human rights claims may be awarded for humiliation and emotional distress established by testimony or inferred from the circumstances. *Johnson v. Hale* (9th Cir.1991), 940 F.2d 1192, 1193. Furthermore, "the severity of the harm should govern the amount, not the availability, of recovery." *Chatman,* 107 F.3d at 385.

Exactly as in *Johnson v. Hale* and *Foss*, the evidence regarding the acts of discrimination and Wombold's evidence, including the testimony of her psychologist, establish a basis for an award of damages for emotional distress. The evidence of emotional distress here is stronger than in those cases, even though the psychologist stopped short of finding a causal connection between the discrimination and the distress. Wombold's testimony credibly provided such a connection. $7,500.00 is an appropriate recovery, rather than the $2,500.00 awarded in *Foss* or even the $3,500.00 awarded in *Johnson*[8] for lesser degrees of emotional distress.

Permanent injunctive relief is necessary. The department can inspect to assure the compliance of a respondent for not more than one year, pursuant to Mont. Code Ann. § 49-2-506(3). The department's injunctive power authorizes a permanent injunction. Mont. Code Ann. § 49-2-506(1)(a).

VI. Conclusions of Law

1. The Department has jurisdiction. Mont. Code Ann. § 49-2-509(7).

2. The **Cascade School District No. 3** and **Dale Voss** (acting as an agent for the district) illegally discriminated against **Connie R. Wombold** on the basis of sex when Voss subjected her to sexual harassment and then took adverse employment action against her by unfairly disciplining her and recommending she not be rehired when she refused to acquiesce in the harassment and when the district ended her employment without investigating the basis of Voss' recommendation. Mont. Code Ann. § 49-2-303(1)(a).

---

[8] In *Johnson v. Hale* (9th Cir. 1994), 13 F.3d 1351, the district court award of $125.00 per plaintiff was set aside and the district court directed to award at least $3,500.00 per plaintiff for emotional distress.

3. The district is liable to Wombold for her economic losses and the emotional distress she suffered as a result of this illegal discrimination, in the sum of $34,800.00 (including $1,300.00 in prejudgment interest), with future losses accruing, for each calendar month, commencing with July 2003, at the difference between Wombold's actual gross wages for that month and the sum of $2,166.67. This sum is due to Wombold from the district within the next calendar month after she submits to the district's counsel pay stubs or other reasonably acceptable verification of her entire income from employment for the immediately preceding calendar month AND sworn accounts of her efforts to seek gainful employment during that previous calendar month should she not have full time employment. This liability for future wage losses ends when Wombold has no actual wage loss in a calendar month, when Wombold refuses an offer of full-time permanent custodial employment with the district, or payment of the liability for June 2006. Mont. Code Ann. § 49-2-506(1)(b).

4. The law mandates affirmative relief against Voss and the district, to address the risk of future similar discrimination. The department permanently enjoins them from further discrimination in employment against female employees by reason of sex. Mont. Code Ann. § 49-2-506(1)(a).

5. The department enjoins the district, when it receives any formal or informal complaint by a female employee of unwelcome sexual attention from her supervisor, immediately to investigate and to document the complaint and the investigation, including monitoring for at least one full school year any adverse actions (including discipline and less positive evaluations) taken by the supervisor against the complaining employee. The district must also immediately consider and determine whether it is possible and appropriate to transfer supervision of the complaining employee to a different supervisor and document its decision and the reasons for it. The district must, within 60 days after this final decision, submit to the Human Rights Bureau proposed policies that comply with this injunction, including therein the means of publishing those policies to its present and future employees, and promptly adopt and implement those policies, with any changes mandated by the Human Rights Bureau, upon Bureau approval of them.

6. The department further enjoins and requires the district to obtain training in sexual harassment and its detection and prevention for Voss and Kelly and current board members within six months of this final decision, and for all other employees within two school years. The training must involve at least eight hours of training for Voss and Kelly and at least four hours of training for the board members and other supervisors. The district must, within 60 days after this final decision, submit a plan to obtain the training to

the Human Rights Bureau and promptly implement that plan, with any changes mandated by the Human Rights Bureau, upon Bureau approval of it.

VII. Order

1. The department grants judgment in favor of **Connie R. Wombold** and against the **Cascade School District No. 3** and **Dale Voss** (acting as an agent for the district), on the charge that they discriminated against her on the basis of sex (female) when they subjected her to a sexually hostile and offensive work environment and ended her employment.

2. The department grants judgment in favor of **Cascade School District No. 3** and **Dale Voss** and against **Connie R. Wombold** on the charge that they retaliated against her for filing a Human Rights complaint against them in April 2002.

3. The department orders the district immediately to pay Wombold the sum of $34,800.00 for lost wages (including $1,300.00 in prejudgment interest) and emotional distress, with future losses accruing and due and owing from the district to Wombold for each calendar month, at the difference between Wombold's actual gross wages for that month and the sum of $2,166.67. The procedure for verifying the future losses, their accrual and due dates and the end of the future loss entitlement all appear above in Conclusion of Law No. 3, which is hereby incorporated by reference into this judgment.

4. The department enjoins and orders both respondents to comply with all of the provisions of Conclusion of Law No. 4, and enjoins and orders the district to comply with the provisions of Conclusions of Law No. 5 and No. 6.

Dated: July 18, 2003

/s/ TERRY SPEAR
Terry Spear, Hearing Examiner
Montana Department of Labor and Industry