

KENT EDUCATION ASSOCIATION
Complainant,
vs.
KENT SCHOOL DISTRICT NO. 415
Respondent.

Decision No. 595 EDUC

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER

Judith Lonnquist, General Counsel, Washington Education Association,
appearing for the complainant.

The above-named complainant filed a complaint with the Public Employment Relations Commission on August 30, 1976 wherein it alleged that the above-named respondent had committed unfair labor practices within the meaning of RCW 41.59.140. Rex L. Lacy, a member of the Commission staff, was designated to act as Examiner and to make and issue findings of fact, conclusions of law and order. Pursuant to notice issued by the Examiner on March 22, 1978, hearing on the complaint was held at Seattle, Washington on May 8, 1978 before the Examiner. The Examiner, having considered the evidence and arguments, makes the following findings of fact, conclusions of law and order.

School districts of this State are required by RCW 28A.58.103 to establish instructional materials committees, as follows:

"Instructional materials--Instructional materials committee--Disposition of used or obsolete material. Every board of directors, unless otherwise specifically provided by law, shall:

- (1) Prepare, negotiate, set forth in writing and adopt, policy relative to the selection of instructional materials. Such policy shall:
- (a) State the school district's goals and principles relative to instructional materials;

(b) Delegate responsibility for the preparation and recommendation of teachers' reading lists and specify the procedures to be followed in the selection of all instructional materials including text books;

(c) Establish an instructional materials committee to be appointed, with the approval of the school board, by the school district's chief administrative officer. This committee shall consist of representative members of the district's professional staff, including representation from the district's curriculum development committees, and, in the case of districts which operate elementary school(s) only, the educational service district superintendent, one of whose responsibilities shall be to assure the correlation of those elementary district adoptions with those of the high school district(s) which serve their children;

(d) Provide for terms of office for members of the instructional materials committee;

(e) Provide a system for receiving, considering and acting upon written complaints regarding instructional materials used by the school district;

(f) Provide free text books, supplies and other instructional materials to be loaned to the pupils of the school, when, in its judgment, the best interests of the district will be subserved thereby and prescribe rules and regulations to preserve such books, supplies and other instructional materials from unnecessary damage.

Recommendation of instructional materials shall be by the district's instructional materials committee in accordance with district policy. Approval shall be by the local school district's board of directors.

Districts may pay the necessary travel and subsistence expenses for expert counsel from outside the district. In addition, the committee's expenses incidental to visits to observe other districts' selection procedures may be reimbursed by the school district.

Districts may, within limitations stated in board policy, use and experiment with instructional materials for a period of time before general adoption is formalized.

Within the limitations of board policy, a school district's chief administrator may purchase instructional materials to meet deviant needs or rapidly changing circumstances.

(2) Establish a depreciation scale for determining the value of texts which students wish to purchase.

Local boards of school directors may declare selected instructional materials obsolete and dispose of them by sale to the highest bidder, following public notice in a newspaper of general circulation in the area...."

Kent School District No. 415 has adopted the philosophy that the relationship of instructional materials to curriculum makes them inseparable. Based on that assumption, the district has refused to bargain with the exclusive bargaining representative of its employees concerning the selection of members to serve on the instructional materials committee required by RCW 28A.58.103.

The district relies on RCW 28A.58.103(c) as authority for the superintendent to appoint members of the professional staff to the instructional materials committee, subject only to final approval of the board of directors.

Kent Education Association points out RCW 28A.58.103(1), requiring the district "to negotiate" instructional materials policy, and contends that the entire process, including subsections a, b, c, d, e, and f of RCW 28A.58.103(1), are mandatory subjects of collective bargaining under Chapter 41.59 RCW.

The National Labor Relations Act, when defining the ambit of obligatory collective bargaining, uses not only the specific terms "rates of pay" and "hours of employment" but also the broad generic phrases "wages" and "other conditions of employment". RCW 41.59.020(2) defines collective bargaining using the terms "wages, hours, and conditions of employment". The similarity of terminology indicates that the Commission should give consideration to the precedents set by the National Labor Relations Board when determining refusal to bargain allegations.

The issue in these proceedings is the method of selection of professional staff to serve on the instructional materials committee.

Certificated educational employees receiving remuneration for services performed outside the normal work day or week is analogous to hourly employees receiving overtime for work performed outside the normal work day or week.

In the Social Security Act, Congress defined the taxable "wages" paid for employment to embrace all remuneration for services rendered by an employee.

The Examiner is persuaded that, in order to effectuate the aims and purposes of Chapter 41.59 RCW, the term "wages" in RCW 41.59.020(2) must be construed to include remuneration for services rendered on extracurricular activities, such as membership on this instructional materials committee.

FINDINGS OF FACT

1. Kent School District No. 415 is a school district created under title 28A RCW and is an employer within the meaning of RCW 41.59.020. Millard T. Battles is a member of the Kent School District board of directors; George Daniel is superintendent of schools; Gary Patrick is manager of employee, pupil, and public relations.

2. Kent Education Association (KEA) is, and has been at all times material hereto, the exclusive bargaining representative for all nonsupervisory educational employees of Kent School District No. 415. Linda Peretti is president of KEA; Corey Olson is executive director of KEA; and KEA is affiliated with Washington Education Association.

3. Kent Education Association and Kent School District No. 415 negotiated their first written collective bargaining agreement for the 1976-1977 school year. Negotiations between the parties from 1965 to 1975 were conducted under repealed RCW 28A.72, and all agreements between the parties during that period were included in district policy.

4. On May 26, 1971, Kent School District adopted its Policy 6001, relating to instructional materials. That policy made provision for procedures, budgeting, challenged materials, the organization and membership of an instructional materials committee, selection and terms of office of members of the instructional materials committee, meetings of said committee, and a "school library bill of rights". The provisions for selection of members of the instructional materials committee were as follows:

"The voting members of the instructional materials committee shall be selected by the superintendent and approved by the board of directors. Voting members shall be selected from lists prepared by the appropriate organizations as follows:

- Teachers - Association of classroom teachers
- Librarian - Association of classroom teachers
- Counselor - Personnel and guidance association
- Principals - Department of administration and supervision

The list shall provide the superintendent with at least two choices for each position. A particular school or department shall be represented only once on each list."

Except for minor changes of nomenclature, including substitution of "Kent Education Association" for "Association of Classroom Teachers", Policy 6001 remained in effect on the effective date of the Educational Employment Relations Act, Chapter 41.59 RCW; and the Kent Education Association continued to supply lists of teachers, librarians and counselors proposed for membership on the instructional materials committee.

5. As an emolument for their service on the instructional materials committee created by Policy 6001, nonsupervisory educational employees of Kent School District received wages at the rate established for work on curriculum development.

6. During negotiations in 1976, KEA submitted written proposals for a comprehensive collective bargaining agreement, one of which detailed proposed changes in district Policy 6001. Negotiators for the district refused to bargain on the KEA instructional materials proposals, stating that the district considered instructional materials to be a nonmandatory subject of bargaining.

7. The Association of School Principals, is, and has been at all times material herein, the exclusive bargaining representative for principals of the Kent School District.

8. On July 28, 1976 the district's board of directors amended Policy 6001. Thereafter, Daniel stopped using KEA-provided lists of professional staff in making appointments to the instructional materials committee, and commenced using lists of professional staff supplied by the Association of School Principals.

9. All other aspects of Policy 6001 and RCW 28A.58.103 were adhered to except as indicated in paragraph 8 of these findings of fact.

10. On September 30, 1976, KEA and Kent School District No. 415 entered into a written collective bargaining agreement for the school year 1976-1977, two letters of agreement and two letters of understanding. One letter of agreement referred to the instructional materials committee as follows:

"In the event the Public Employment Relations Commission rules in favor of the association in its unfair labor practice against the district regarding the placement of teachers on the district's instructional materials committee, the parties agree to reopen negotiations on this item."

11. Remuneration for services performed on curriculum development is set forth in Article VI, Section B.2. of the 1976-77 collective bargaining agreement.

12. Kent School District No. 415 continued to have an instructional materials committee, and that committee continued to be comprised of the same voting membership set forth in revised Policy 6001.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.
2. Kent School District No. 415 by refusing to bargain collectively and in good faith as required by RCW 41.59.020(2), with the representative of its certificated nonsupervisory professional staff, regarding selection of members to serve, for wages, on the instructional materials committee, has violated RCW 41.59.140(1)(e) and (a).
3. Kent School District No. 415 by accepting from a bargaining representative, other than the exclusive bargaining representative of said employees, nomination lists of certificated nonsupervisory professional staff to be appointed to the instructional materials committee, has refused to bargain with Kent Education Association as the exclusive representative and has violated RCW 41.59.140(1)(e) and (a).

On the basis of the foregoing findings of fact and conclusions of law, the Examiner makes the following:

ORDER

It is ordered that Kent School District No. 415, its board of directors, officers and agents, specifically George Daniel, superintendent of schools, shall immediately:

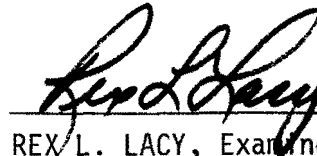
1. Cease and desist from:
 - (a) interfering with the exercise of the rights of employees guaranteed in RCW 41.59.060.
 - (b) Accepting from any bargaining representative other than Kent Education Association nomination of certificated nonsupervisory employees for service on the instructional materials committee.
2. Immediately take the following affirmative action which the Examiner finds will effectuate the purposes of RCW 41.59.
 - (a) Upon request, bargain collectively with Kent Education Association with respect to the selection of certificated nonsupervisory employees for service on the instructional materials committee.

(b) Post the accompanying notice for a period of sixty (60) days on bulletin boards where notices to employees of the district are usually posted.

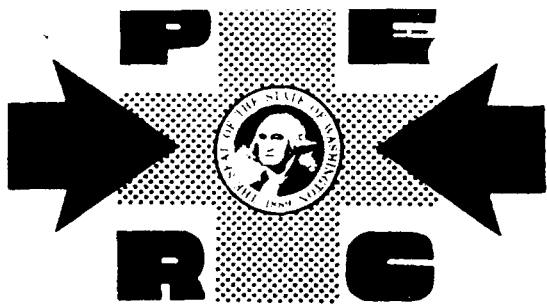
(c) Inform the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to the steps taken to comply therewith.

Dated at Olympia, Washington, this 9th day of February 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Rex L. Lacy", is written over a horizontal line.

REX L. LACY, Examiner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

NOTICE TO ALL EMPLOYEES

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.59, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT refuse to bargain collectively and in good faith with the Kent Education Association, an affiliate of the Washington Education Association, as the exclusive representative of the employees in the appropriate bargaining unit.

WE WILL, upon request, bargain collectively in good faith with the Kent Education Association with respect to the selection of certificated nonsupervisory employees for service on the Instructional Materials Committee.

Dated this _____ day of February 1979.

KENT SCHOOL DISTRICT NO. 415

By: School Board of Directors

Chairperson

By: _____

Superintendent of Schools

This notice must be posted for sixty (60) days from the date hereof and must not be altered, defaced or covered by any material. Any questions concerning this notice or compliance with its provisions may be directed to the PUBLIC EMPLOYMENT RELATIONS COMMISSION, 603 Evergreen Plaza Building, Olympia, Washington. Phone (206) 753-3444.