

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF GRANDVIEW,	)	CASE NO. 4513-U-83-734
	)	
Complainant,	)	DECISION NO. 1893 - PECB
	)	
vs.	)	
	)	
GRANDVIEW SCHOOL DISTRICT,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER
	)	

Edward A. Hemphill, Legal Counsel, appeared on behalf of the complainant.

Robert D. Schwerdtfeger, Labor Relations Consultant, appeared on behalf of the respondent.

On February 22, 1983, Public School Employees of Grandview (complainant) filed a complaint charging unfair labor practices against Grandview School District No. 116-200 (respondent). The complaint alleged the respondent violated RCW 41.56.140(1) and (4) by assigning bargaining unit work to persons outside the bargaining unit. A hearing was conducted on October 5, 1983 in Grandview, Washington before Jack T. Cowan, Examiner. The parties submitted post-hearing briefs.

BACKGROUND

The respondent recognizes the complainant as exclusive bargaining representative of a bargaining unit which includes both "aides" and "food service workers". This case concerns the serving of noon lunch at two elementary schools in the Grandview School District. The two schools, Harriet Thompson (Grades 1-3) and McClure (Grades K, 4 & 5) are located across the street from one another.

Prior to January, 1983, lunch was served at 11:00 AM at Harriet Thompson School and 12:00 noon at McClure School. The serving crew at Thompson included Trudy Williams, Birdie Bower, and Grace Morris. Connie Garza worked daily for one hour on food service. Garza worked for the employer primarily as an aide. After serving at Thompson, Williams and Bower went across the street to serve lunch at McClure, while Morris remained to perform cleanup duties at Thompson. Students in the 4th and 5th grades at McClure have historically worked as servers and received a free lunch, as do 5th grade students at a third elementary school in the district. Students had not been used to assist with lunch service at Thompson School.

In January, 1983, the district changed from half-day kindergarten to full-day kindergarten. The change affected the lunch schedule and the serving crews at the two schools. Beginning with the start of the full-day kindergarten, lunch was served at 11:15 AM at Thompson and at 11:40 AM at McClure. Birdie Bower no longer assisted with serving lunch at Thompson. Instead she served lunch at McClure until about 1:00 PM, after which time she would go over to Thompson School to help Grace Morris finish the dishes. Trudy Williams, Grace Morris and Connie Garza continued as the serving crew at Thompson. Three (3) special education students from the district's high school were added to the crew at Thompson. The three high school students receive a free lunch and minimum wage for the one hour per day which they work. One third of the student wage is paid from federal funding, the remaining two thirds derived through district sources.

At Grandview's middle school and high school, student workers serve lunch and do cleanup work, for which they are paid and receive a free lunch. Although student work at the middle school and high school has been a long standing practice, students have worked only at the school which they were attending, rather than at any of the other district schools. Handicapped students have worked in in-district jobs before, with the custodian as supervisor and in other places, but had never been paid for their work efforts.

In September, 1983, the district reverted to half-day kindergarten but retained a compressed serving schedule. Lunch was served at 11:20 AM at Thompson by a food service crew which now included Trudy Williams, Birdie Bower and Grace Morris. Connie Garza's food service work was eliminated. Student servers were retained when the district reverted back to half-day kindergarten. The district anticipated moving to full-day kindergarten once again in January, 1984.

Negotiations had taken place between the parties during the summer and fall of 1982. The subject of anticipated changes in the food service activity was raised by the district as a part of those negotiations. Reorganization of the food service program was motivated by a long record of deficits within the program. Savings of up to four (4) hours per day resulted from schedule changes, realignment of assignments to minimize travel time and reduction of ticket sales time. The use of students as servers was not raised or negotiated at that time.

Superintendent Palanuk perceived involvement of the student servers as a training program, similar to chore-type services performed by students outside the district, for which they are paid. He emphasized that the idea of using students as servers occurred after the negotiated reorganization of the food service. At the time he was approached concerning the use of student servers, it was his impression that this was to be a training program and was not intended to replace food service employees. He stated the only

change affecting bargaining unit employees was to place them in the new role of having to supervise the student servers. He never approached the bargaining representative to bargain or discuss the utilization of students.

In response to questions as to how the lunch schedule would be affected if student servers were removed, the business manager responded that it would be necessary to reschedule lunches but would not necessarily require hiring of additional staff. The superintendent responded in a similar manner, saying the district would probably extend the period of time in which lunches are served in the two schools that are involved.

POSITIONS OF THE PARTIES

The complainant alleges a violation of RCW 41.56.140(1) and (4), stemming from what it views as a unilateral change in the food service program, i.e., the use of student workers to perform work historically performed by bargaining unit employees. Claiming that one position was eliminated by this action, and that work opportunities for other bargaining unit members were limited, the complainant requests restoration of the status quo ante, with full restoration of lost pay and benefits to affected employees.

In contrast, the respondent points to the change in kindergarten schedules as a mandated response to program requirements. That change in turn necessitated an accommodation, namely the reorganization of the food service program to be done in such a way as to achieve needed economies for the district. The respondent contends that the employment of special education students as servers was an adjunct which took place as part of a training program and was merely coincidental to the schedule change. The respondent further contends the bargaining representative must either accept student help throughout the entire bargaining unit, or reject it all and demand to negotiate the use of all student helpers.

DISCUSSION

The employer implemented a change of its educational program, namely: the scheduling of kindergarten classes. The union does not contest the underlying change, but merely the impact of that change on bargaining unit employees. Although the changes are small, in relation to the overall program of the school district and perhaps even in regard to individual employees, the principles involved are large and no different than those which would be involved in transfer of the work of an entire bargaining unit. See: South Kitsap School District, Decision No. 472 (PECB, 1978).

The employer first defends its actions on the basis of necessity. The

parties evidently bargained in good faith during the Summer of 1982 to accommodate a program modification and an accompanying financial need of the district. Employees agreed to changes which for some included a reduction in the number of hours worked. The agreed changes went into effect throughout the district in the fall of 1982, although no changes occurred at Thompson School. By contrast, there was no notice to the union or opportunity for bargaining prior to the January, 1983 changes. No food service employee at Thompson School lost any hours due to the January, 1983 program modification. Connie Garza continued to work there through the remainder of the 1982-83 school year. Increased work opportunities due to the schedule change went to the students rather than to bargaining unit employees.

Neither was there any notice to the union nor any bargaining prior to the onset of the 1983-84 school year. Although food service is normally not an aide duty assignment Garza's work hours were part of the overall effort of bargaining unit employees towards the food service function. She did not assist in food service during the 1983-84 school year. Testimony did not establish whether her employment terminated with the completion of the 1982-83 school year or whether she was reassigned to other work activities. In either case, it remains that the work hours of bargaining unit employees, as a group, on food service were cut.

It is difficult to accept the employer's subsidiary contention that the additional serving need was not identified until after the crews were split and serving had begun under the new schedule. First, the evidence establishes that the students appeared in January, 1983, simultaneous with the change of schedule at Thompson School. Second, the evidence amply establishes that the possibility of utilization of students had been under discussion for some time. Specifically, the possibility of using special education students in such a capacity had been raised by the district's special education director, who testified:

I approached Mr. Hall (Business Manager) sometime in November (1982), the best I can recollect, and asked him what the chances were that they could begin to use some in-district facilities for one portion of a several-step kind of vocational program. This could be one part of it. And we had a discussion. A few weeks later we got together again. He said there was a possibility that we could devise a program for our handicapped students at Harriet Thompson.

The district contends the change was economically justified, that there was no adverse effect and there was no refusal to bargain but rather a failure on the part of the representative to request bargaining. The earlier reorganization was economically justified and its effects on employees were negotiated by the parties, but no economic justification for use of student servers has been presented. Adverse effect has been established in previous

discussion. Action of the district in using student servers without notification and/or negotiation is in itself a refusal to bargain. The fait accompli presented the union negates an obligation to request bargaining.

The employer next argues that the use of students was a training program, actually part of their educational process. No student servers were previously used at Thompson School. Although students are used in other schools, the use of high school students as servers in Thompson represented a sharp departure from past practice. While the students admittedly eased the serving process, they unknowingly did assume certain bargaining unit work. Whether the need was identified before or after the January crew split occurred, the employer had an obligation to involve the bargaining representative before the students were added. Regardless of the fact that no hours were initially lost at Thompson by bargaining unit personnel, the represented employees did incur a loss of potential. Students, whether in training or employed, were not available to the district for solving the problem of maximized service within time constraints without negotiations with the bargaining representative, the party which had jurisdiction of the bargaining unit work in question.

Finally, the employer contends that the union's acceptance of the use of student helpers at other schools constitutes a waiver, or at least relieved the employer of the obligation to bargain with the union prior to extending the practice to Thompson School. As noted above, the use of students elsewhere had always been confined to students of the school where the work was performed and the January, 1983 changes at Thompson were a sharp departure from any past practice. Bargaining over one aspect of a broad subject does not satisfy the duty to bargain as to other aspects of the subject. City of Seattle, Decision No. 1667-A (PECB, 1984).

The need to negotiate total district use of students in the varied work capacities was not raised as an issue by the complainant. The issue raised was the use of students at Thompson School, and the use of students in other endeavors will, therefore, not appear as an issue in the subject case.

FINDINGS OF FACT

1. Grandview School District No. 116-200 is a public employer within the meaning of RCW 41.56.030(1).
2. Public School Employees of Grandview is a bargaining representative within the meaning of RCW 41.56.030(3) and represents the classified employees within the district.
3. The 1982 negotiations between the parties did not include any mention concerning possible use of students as food servers at Thompson School.

4. Following completion of 1982 negotiations, the respondent district unilaterally and without notification to the bargaining representative, added three special education high school students to the lunch serving team at Thompson School, there to perform what had previously been bargaining unit work.

CONCLUSIONS OF LAW

1. Public Employment Relations Commission has jurisdiction in this matter pursuant to RCW 41.56.
2. The employer violated RCW 41.56.140(1) and (4) by unilaterally implementing a modification to the food service program and using student workers to perform bargaining unit work.

ORDER

1. Cease and desist from unilaterally removing bargaining unit work without having first given Public School Employees of Grandview notice of the proposed change and an opportunity to negotiate the changes.
2. Take the following affirmative action to remedy the unfair labor practices and effectuate the policies of the Act:
 - (a) Restore the status quo ante by removing student servers from Thompson School, and give notice to Public School of Grandview prior to any transfer of bargaining unit work to persons outside of the bargaining unit.
 - (b) If bargaining is requested on any proposed change, bargain collectively in good faith with Public School Employees of Grandview concerning use of students to supplement lunch service at Thompson School.
3. Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall, after being duly signed by an authorized agent of the Grandview School District be and remain posted for sixty (60) days. Reasonable steps shall be taken by the union to ensure that said notices are not removed, altered, defaced or covered by other materials.

4. Notify the Commission, in writing, within twenty (20) days following the date of this Order, as to what steps have been taken to comply herewith, and at the same time provide a signed copy of the notice required by the preceding paragraph.

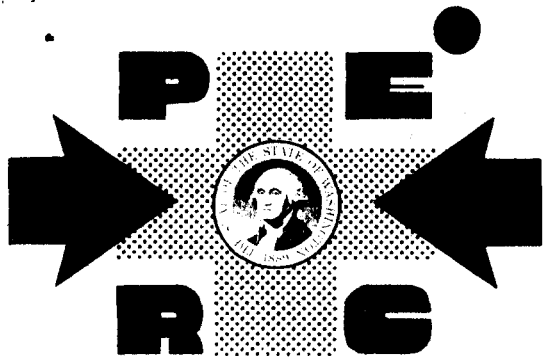
DATED at Olympia, Washington, this 2nd day August, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



JACK T. COWAN, Examiner

This Order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.



PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT unilaterally remove bargaining unit work from the food service program without having first given Public School Employees of Grandview notice of the proposed change and an opportunity to negotiate the change.

WE WILL restore status quo ante and if bargaining is requested on any proposed change, bargain collectively in good faith with Public School Employees of Grandview prior to any transfer of bargaining unit work to persons outside of the bargaining unit.

DATED: _____

GRANDVIEW SCHOOL DISTRICT

By:

AUTHORIZED REPRESENTATIVE

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by any other 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 98504. Telephone (206) 753-3444.