

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

PUBLIC SCHOOL EMPLOYEES OF	)	
GOLDENDALE SCHOOL DISTRICT,	)	
an affiliate of PUBLIC SCHOOL	)	CASE NO. 4000-U-82-622
EMPLOYEES OF WASHINGTON,	)	
	)	
Complainant,	)	DECISION NO. 1634 - PECB
	)	
vs.	)	
	)	
GOLDENDALE SCHOOL DISTRICT NO. 404,	)	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 Specialist, appeared on behalf of the respondent.

The above-named complainant filed a complaint with the Public Employment Relations Commission on March 11, 1982, wherein it alleged that the above-named respondent had committed unfair labor practices within the meaning of RCW 41.56.140. George G. Miller was designated as Examiner to make and issue Findings of Fact, Conclusions of Law and Order. Pursuant to notice issued by the examiner, hearing on the complaint was held on August 4, 1982 at Goldendale, Washington. The parties filed post-hearing briefs.

THE UNFAIR LABOR PRACTICE ALLEGATIONS

The material allegations set forth in the complaint are:

The District unilaterally established a new position within the bargaining unit and without raising the issue with the union negotiated directly with the individual involved, one Bonnie Beeks, to establish the salary for the position. Said salary is vastly in excess of the salary established for similar jobs in the District.

Such action on the part of the District constitutes not only a refusal to bargain but has the effect of "intimidating and coercing" employees who are union members.

BACKGROUND

Public School Employees of Washington was certified by the Public Employment Relations Commission on July 29, 1980 as the exclusive bargaining representative of a bargaining unit of employees of the Goldendale School District described as:

INCLUDED: All classified Public School Employees in Transportation, Food Service, Secretarial, Aide, and Custodial-Maintenance general job classifications.

EXCLUDED: Secretary to the Superintendent, Business Manager, Payroll and Personnel Officer, Custodial-Maintenance Supervisor, and all other employees of the district.

Goldendale School District, Decision 940 (PECB, 1980)

The parties have a collective bargaining agreement dated February 1, 1981, in which they described the bargaining unit as follows:

ARTICLE I

RECOGNITION AND COVERAGE OF AGREEMENT

Section 1.1. The District hereby recognizes the Association as the exclusive representative of all employees in the bargaining unit described in Section 1.4, and the Association recognizes the responsibility of representing the interests of all such employees.

Section 1.2. Nothing contained herein shall be construed to include in the bargaining unit any person whose duties as deputy, administrative assistant, or secretary necessarily imply a confidential relationship to the Board of Directors or Superintendent of the District pursuant to RCW 41.56.030(2). Additionally excluded are the Secretary to the Superintendent, Business Manager, Payroll and Personnel Officer, Custodial-Maintenance Supervisor, and all other employees of the District.

Section 1.3. Descriptions for all positions subject to this Agreement are attached hereto and by this reference incorporated herein.

Section 1.4. The bargaining unit to which this Agreement is applicable shall consist of all classified Public School Employees in Transportation, Food Service, Secretarial, Aide, Custodial, and Maintenance general job classifications.

That contract provided for "Instructional Aide" and "General Duty Aide" classifications, with pay rates of \$4.51 to \$5.10 per hour. A new wage schedule signed on October 12, 1982 and effective for the 1981-82 school year specified the same "aide" classifications, with pay rates of \$4.78 to \$5.41 per hour.

On December 29, 1981, the President of Goldendale Public School Employees, Ruby Bargas, discovered that a classified employee position entitled "classified instructor" was not included in the bargaining unit. She met with Superintendent Callan on the 29th of December, 1981, to discuss the matter. At that time, the employer asserted that the incumbent of the position was neither a classified employee nor a certificated employee, and that PSE had no right to negotiate her salary. Callan also indicated to Bargas that if there were any problems with the "classified instructor" position, it would be eliminated.

The position in question has existed in the district since 1978 or 1979, as part of a program for gifted children. The first incumbent of the position, Kim Carruthers, held certification as an educator under Title 28A RCW. During the 1980-81 school year, the position was held by Colin Chisholm, a person "experienced" with gifted children, but the record fails to establish that he had either a college degree or certification as an educator under Title 28A RCW. During the 1981-82 school year, the position was held by Bonnie Beeks, who also had prior experience with gifted children. The record indicates that Beeks has a college degree but does not have certification as an educator under Title 28A RCW. Beeks was listed on the employer's payroll documents as a "classified" employee. She was paid at a rate of \$8.00 per hour.

Examination of the record reveals that, with the exception of the "classified instructor", there are no classified positions excluded from the bargaining unit other than those specifically enumerated in the certification and in Section 1.2 of the collective bargaining agreement.

The certification resulted from a cross-check of records conducted pursuant to a consent cross-check agreement filed under the rules of the Commission. The consent cross-check agreement and its attached list of eligible employees were not made an exhibit in this case, but are available as part of the official record in the representation proceedings which led to the certification. The Examiner takes notice of those documents contained in the case file in Case No. 2768-E-80-538. The eligibility list attached to the consent cross-check agreement is a copy of a memorandum directed to the Commission by Superintendent Callan in response to a request for a list of employees. The list purports to contain "all classified employees in the Goldendale School District". Certain individuals were designated on the original document as supervisory or confidential, and one was designated as "C.E.T.A.". The stipulations of the parties to exclude three confidential employees and one supervisor are noted on the list by initials and lines drawn through those names. None of the names of the incumbents of the "classified instructor" position appear on that list.

POSITIONS OF THE PARTIES

PSE contends that it first became aware of the position when it obtained payroll documents from the employer during the 1981-82 school year. It steadfastly maintains that it has not waived its right to bargain on the disputed position through either the representation or contract negotiations procedures. PSE further contends that threats made by Superintendent Callan to eliminate the position were a violation of RCW 41.56.140(1).

The district's answer to the complaint stated:

The Goldendale School District denies the charges, in that the position of "classified instructor" (currently held by Bonnie Beeks) was discussed with the PSE union at the time the union was recognized. In the initial contract bargaining sessions, the PSE union attempted to place this position now held by Bonnie Beeks on the classified salary schedule, thereby bringing the position into the union.

The District refused, and bargaining was concluded. By their acts, the PSE union agreed that the position of "classified instructor" was not a part of the recognized classified bargaining unit represented by PSE.

The District suggests this matter could better be resolved by a unit clarification hearing by P.E.R.C.

The district does not directly respond to the "interference" arguments made by the union in simultaneously filed brief.

DISCUSSIONBargaining Unit Status

The certification issued by the Commission gives PSE a colorable claim to the position in question. Nothing is found in the record of the representation proceedings or in the record in the instant case which substantiates the employer's claim that the position was discussed and excluded by agreement in the course of the representation proceedings. From the tidbit of evidence that the first incumbent of the disputed position held certification as an educator under Title 28A RCW, it might be inferred that the position now in question was ignored by both parties to this case when they went through the representation.

The position in question may have been a classified position during the 1980-81 school year, and was clearly treated by the employer as a classified position by the time the union discovered the position in a review of payroll records during the 1981-82 school year. If the employer had any doubts about the propriety of inclusion of that position in the PSE bargaining unit, it

could have discussed its concerns with PSE and, if necessary, filed a petition with the Commission for clarification of the existing bargaining unit. The decisions of the Commission in Oak Harbor School District, Decision 1319 (PECB, 1982) and Bremerton School District, Decision 1620 (PECB, 1983) suggest that the employer might have met with limited success, particularly since the "classified instructor" would be stranded in a one-person bargaining unit inappropriate under Town of Fircrest, Decision 248-A (PECB, 1977) and Port of Bellingham, Decision 1570-A (PECB, 1983), and would therefore be deprived of the right to engage in collective bargaining which would be available to either a certificated teacher under RCW 41.59 or a classified employee under RCW 41.56. The employer did not even file the unit clarification, and its conduct must be judged under RCW 41.56.140(4) in that light.

Duty to Bargain and Waiver

RCW 41.56.140(4) makes it an unfair labor practice for a public employer to refuse to engage in collective bargaining with the exclusive bargaining representative concerning the wages, hours and conditions of employment of the employees in the bargaining unit. It is clear in this case that the district did not negotiate with the union, but rather negotiated directly with the individual employee, concerning the wages, hours and working conditions of the "classified instructor". The district maintains that the Association waived its right to bargain for this position by acquiescing to its exclusion. The record fails to substantiate that defense. The record is devoid of testimony that the position of classified instructor was ever specifically discussed. The Association did, upon discovery of the existence of the position, make a timely request for bargaining on the classified instructor position. Waivers must be knowingly made. City of Kennewick, Decision 482-B (PECB, 1980). Therefore, the Association did not waive its bargaining rights by silence.

Interference Allegation

An interference violation flows automatically as a derivative from the finding of a refusal to bargain violation. See: Spokane School District, Decision 310-B (EDUC, 1979). A threat made to the incumbent of a position to deter the exercise of rights secured by RCW 41.56.040 would clearly be an independent violation of RCW 41.56.140(1). In this case, the "threat" was made to a representative of the union while serving in her official union capacity. While a union official must be credited with some capacity to engage in the give and take of exchange of bargaining positions with the employer, matters of unit determination are not subjects of collective bargaining in the usual sense. City of Richland, Decision 279-A (PECB, 1978). A statement of the nature made by Superintendent Callan in this case thus exceeds the bounds of lawful give and take.

FINDINGS OF FACT

1. Goldendale School District No. 404 is a public employer within the meaning of RCW 41.56.030(1).
2. Public School Employees of Washington is a bargaining representative within the meaning of RCW 41.56.030(3) and is the certified representative of an appropriate bargaining unit consisting of "All classified Public School Employees in Transportation, Food Service, Secretarial, Aide, and Custodial-Maintenance general job classifications".
3. On December 29, 1981, the Association became aware of a classified position titled classified instructor that was not included in the bargaining unit. The president of the Association met with the district superintendent on December 29, 1981 to clarify the matter. The association representative was advised that the position was not in the bargaining unit and if there were any problems with the association, the classified instructor position would be eliminated.
4. The classified instructor is carried on the classified payroll records of the district. The position does not require certification under Title 28A RCW.
5. The association made a timely attempt to assert its right to bargain regarding the classified instructor upon learning of the existence of the position, as a classified employee of the district.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.
2. By refusing to bargain with the Public School Employees of Washington regarding the classified instructor position, Goldendale School District No. 404 violated RCW 41.56.140(4) and (1).
3. By threatening to eliminate the classified instructor position if it caused any problems with the association, Goldendale School District No. 404 violated RCW 41.56.140(1).

ORDER

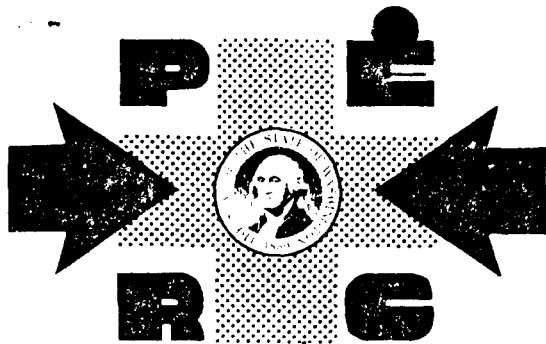
Upon the basis of the above Findings of Fact and Conclusions of Law, and pursuant to RCW 41.56.160 of the Public Employees Collective Bargaining Act, it is ordered that the Goldendale School District, its officers and agents, shall immediately:

1. Cease and desist from:
 - (a) Refusing to bargain collectively with Public School Employees of Washington as the exclusive bargaining representative of all of its employees in the appropriate bargaining unit, by insisting that the position of classified instructor is not within the bargaining unit.
 - (b) Threatening to eliminate the position of classified instructor if it caused any problems with the Public School Employees of Washington, the certified bargaining representative of all of its employees in the appropriate bargaining unit.
2. Take the following affirmative action which is necessary to effectuate the policies of Chapter 41.56 RCW:
 - (a) Upon request, bargain collectively in good faith with Public School Employees of Washington regarding the classified instructor position.
 - (b) 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 A". Such notice shall, after being duly signed by an authorized representative of Goldendale School District No. 404, be and remain posted for sixty (60) days. Reasonable steps shall be taken by Goldendale School District No. 404 to insure that said notices are not removed, altered, defaced, or covered by other material.
 - (c) Notify the Executive Director of the Public Employment Relations 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 the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 9th day of May, 1983.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


GEORGE G. MILLER, Examiner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

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 refuse to bargain collectively with Public School Employees of Washington, as the exclusive bargaining representative of all classified employees in the appropriate bargaining unit, regarding the position of classified instructor.

WE WILL NOT threaten to eliminate any bargaining unit position(s) to avoid the duty to bargain collectively.

Dated _____

GOLDENDALE SCHOOL DISTRICT NO. 404

BY: _____
AUTHORIZED AGENT

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.