

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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WASHINGTON STATE COUNCIL OF)	
COUNTY AND CITY EMPLOYEES)	
AFL-CIO, LOCAL #1135R)	CASE NO. 445-U-76-54
)	
Complainant)	DECISION NO. 305 PECB
)	
vs)	
)	<u>DECISION AND ORDER</u>
RIVERSIDE SCHOOL DISTRICT #416)	
)	
Respondent)	
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)	

Appearances

Monty R. Allen, Staff Representative, Washington State Council of County and City Employees, AFL-CIO, for the Complainant

Gerald G. Gesinger, Deputy Prosecuting Attorney, Spokane County, for the Respondent

STATEMENT OF THE CASE

Upon a charge filed by Washington State Council of County and City Employees, AFL-CIO, Local #1135R, herein called the Union, a hearing was held before the undersigned trial examiner on April 13, 1977 with all parties present.

The issues presented are:

1. Whether the Riverside School District, herein called the District, interfered with, restrained, or coerced an employee in the exercise of his rights guaranteed in the Public Employees Collective Bargaining Act (RCW 41.56) herein called the Act, in violation of RCW 41.56.140(1).

2. Whether the District interfered with a bargaining representative in violation of RCW 41.56.140(2) by improperly advising a member of the bargaining unit of the process to be used in appealing a School Board decision.

FINDING OF FACT AND CONCLUSIONS OF LAWI. JURISDICTION

The District is, and has been at all times material herein, a public employer within the meaning of RCW 41.56.030(1).

II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material herein, a bargaining representative within the meaning of RCW 41.56.030(3).

III. THE ALLEGED UNFAIR LABOR PRACTICES

The Union is the exclusive bargaining representative for all non-certificated employees employed by the District.

The Union and Mr. Paul Reedy were given notice of the termination of Reedy's employment by the District on July 29, 1976. Mr. Reedy was advised in this notice:

"Should you wish to present evidence disputing the above charges, you may request, in writing, a hearing before the Riverside Board of Directors. Such a request must be received by the Riverside Superintendent of Schools on or before August 10, 1976"

The above is in direct conflict with Article IV, Section 6 of the Collective Bargaining Agreement between the parties:

"The Employer agrees that he will act in good faith in administering discipline or discharge. The employer will not discharge any employee without just cause. The employee and his shop steward will be notified in writing that the employee has been suspended and/or discharged. Should the Union present a grievance in connection with this article within five (5) working days of such action to the employer, the action taken shall be reviewed under the terms of the grievance procedure as specified in Article V. Any employee called in by the Superintendent, Board of Directors or Supervisor for discipline/discharge shall be allowed to bring with him/her a union steward or representative."

In accordance with Article V (Grievance Procedure) a grievance was filed by the Union on August 10, 1976. The Superintendent responded to the August 10 grievance filing on August 12, 1976 stating that it appeared to him that grievance appeared to have been filed not in accordance with Article V and that the Union failed to properly process the grievance form prior to submission to the District.

The Union, on August 13, 1976 advised the District that in accordance with Article V, Section 3, the facts of the grievance would be submitted to the Board of Directors along with a request that a time and date be set for an executive session. On August 16, 1976, the Union, in a letter to the Chairman of the Board of Directors stated:

"In accordance with Article V, Section 3, we are submitting Mr. Paul Reedy's grievance to step 3 of the grievance procedure. You have already received all of the information submitted on the grievance. I will be awaiting your response."

The District replied on August 26, 1976:

"The Board of Directors is prepared on Tuesday, August 31, to set up either a date or dates for the purpose of meeting with the Union Grievance Committee under Article V, Section 3 of the Union Contract. At the same special meeting on August 31st the Board of Directors will select an employer committee of four members whose purpose will be to meet with the Union Grievance Committee as provided in Article V, Section 3 of the Union Contract. The special meeting of the Board of Directors on August 31st will not concern itself in any way with hearing either in public or in executive session the grievance of Mr. Paul Reedy."

At the August 31st Board meeting, the District Grievance Committee was appointed and a meeting between the District and Union Committees was set for September 8, 1976 at 1:00 p.m.

The Union was notified telephonically on September 7, 1976 followed by a letter on September 9, 1976 that the District Grievance Committee would not meet with the Union as the Union had failed to comply with the prerequisites or preconditions for such a meeting, i.e., strict compliance with procedural matters in the grievance procedure.

The Union replied on September 17, 1976 requesting that the District reconsider their position on the Reedy grievance.

IV. ANALYSIS AND CONCLUSIONS

Based on the record as a whole, it appears to the undersigned that Mr. Paul Reedy has been deprived of some of the guarantees provided by the preamble to the Collective Bargaining Agreement which reads:

"The Board of Directors of Riverside School District #416, hereinafter known as the Employer, and the Washington State Council of County and City Employees, and Local 1135-R of the American Federation of State, County and Municipal Employees, AFL-CIO, referred to hereinafter as the Union, do hereby reach agreement for the purpose of enhancing the material conditions of the employees, to promote the general efficiency of the Employer, and to promote the morale, well-being and security of employees. (Emphasis supplied)"

It appeared that at the onset of Mr. Reedy's problem (July 29, 1976) and as late as August 31, 1976, the parties were acting in accordance with Section 1, of Article V, Grievance Procedure. It states in part:

"Crucial to the cooperative spirit with which this Agreement is made between the Union and the Public Employer is the sense of fairness and justice brought by the parties to the adjudication of the employees complaint."

The record indicates that there has been a collective bargaining agreement between the District and the Union since 1968. The record also reflects that grievances have been handled in the past without "crossing every t or dotting every i" in the process--a clear indication that adjudication of the grievance was paramount rather than procedural exactness. It is noted that while there are certain time limits within the grievance procedure, there is no automatic default if these time limits are not strictly adhered to. The placement of time limits in a grievance procedure is not intended

to provide advantage to either party, rather the time limits provide impetus to the process.

Article IV, Section 6 of the collective bargaining agreement states in part:

"The Employer agrees that he will act in good faith in administering discipline or discharge. The Employer will not discharge any employee without just cause."

It follows that controversy over whether "just cause" for discharge exists must have some vehicle for resolution--i.e., the grievance procedure.

I have concluded that no clear cut violation of RCW 41.56.140(1) or (2) occurred. I shall order that the complaint herein be dismissed, but without prejudice to a later refiling upon proper showing that either:

1. The dispute has not, with reasonable promptness after the issuance of this decision, been resolved by amicable settlement in the grievance procedure or submitted promptly to arbitration, or,
2. The grievance or arbitration procedures have not been fair and regular or have reached a result which is repugnant to the Act.

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, the undersigned trial examiner hereby orders that the complaint against Riverside School District No. 416 be, and it hereby is, dismissed.

DATED at Spokane, Washington this 21st day of November, 1977

PUBLIC EMPLOYMENT RELATIONS COMMISSION


GEORGE G. MILLER, Examiner