

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

LEAVENWORTH EDUCATION ASSOCIATION

Complainant,

vs.

LEAVENWORTH SCHOOL DISTRICT NO. 128

Respondent.

CASE No. 1520-U-78-149

DECISION NO. 533 EDUC

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND ORDER

APPEARANCES

Judith A. Lonquist, Attorney at Law, appearing for the Complainant.

David J. Whitmore and Chancey C. Crowell, Attorneys at Law, appearing for the Respondent.

The above-named complainant filed a complaint with the Public Employment Relations Commission on June 6, 1978 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 PERC 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 June 9, 1978, hearing on the complaint was held at Wenatchee, Washington on July 6, 7, 10, 11, and 26, 1978 before the Examiner. The Examiner, having considered the evidence and arguments makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Leavenworth School District No. 128 is a school district created under Title 28A RCW and is an employer within the meaning of RCW 41.59.020. Leavenworth School District No. 128 has a board of directors comprised of five members who have selected Arleen Blackburn as chairperson: Raymond W. Tupling is superintendent of schools; Tom Pickett is Leavenworth school district principal; Edward McGuire is Leavenworth school district vice-principal; and Robert Cowan is vocational director.

2. Leavenworth Education Association is, and has been at all times material herein, the exclusive bargaining representative for all non-supervisory educational employees of the Leavenworth school district; William Bauer is president of LEA; Leavenworth Education Association is an affiliate of North Central Washington UniServ Council and the Washington Education Association; Doc Dengensis is a UniServ representative of North Central Washington UniServ Council; and Richard Iverson is Regional Bargaining Director, Washington Education Association.

3. Bargaining for a collective bargaining agreement began in 1976 and continued without the parties reaching agreement, until March 1978, when a strike occurred.

4. On March 30, 1978 the parties ratified a two-year collective bargaining agreement and simultaneously signed a separate Memorandum of Agreement between the district and LEA setting forth conditions for termination of the strike, cessation of strike-related activities, amnesty for striking employees and extension of the school calendar.

Additionally, the Memorandum of Agreement, (also referred to as the Back-to-Work and Amnesty Agreement in the transcript of these proceedings) sets forth a procedure, separate and apart, from Article VIII Grievance Procedure of the collective bargaining agreement to process and resolve alleged violations of the terms and conditions of the memorandum of agreement. The last step of the procedure set forth in the memorandum of agreement calls for final and binding resolution of the alleged complaint by a dispute board created by the parties. The procedure set forth in the memorandum of agreement can be invoked by either party upon written notification to the superintendent of schools and/or president of LEA that an alleged violation exists.

5. LEA ratified the 1977-1979 collective bargaining agreement at a meeting held at the home of William Bauer.

At that time, Iverson distributed to all employees present, both members and non-members alike, gold-colored pins in the shape of a footprint of approximately 3/4 inches in length.

The "golden foot pins" were obtained from an employee of Washington Education Association, and evidence presented indicates that the pins are available only from the WEA.

6. The employees, both members and non-members alike, commenced wearing the "golden foot pins" to their respective teaching stations on March 31, 1978.

Unrefuted testimony establishes that the pins were observed being displayed on the persons or possessions of employees by Leavenworth school district administrators throughout the entire month of April, 1978. No comments regarding wearing the pins, or questions concerning the meaning of the pins were raised during that period of time. Additionally, the board of directors took no action and adopted no policy prohibiting the wearing of "golden foot pins" or any other organizational insignias by employees of the district.

7. On an unspecified date subsequent to March 31, 1978, Tupling obtained a copy of the North Central Washington UniServ Newsletter, prepared by Dengensis, and mailed to education associations within the council, which contained a statement that the pins had a special meaning for the superintendent and school board.

8. On May 1, 1978 Tupling, accompanied by Cowan, questioned William Swain about the meaning of the pin he was wearing. Unsatisfied with Swain's reply, Tupling proceeded to contact Bauer regarding the pin's special meaning.

After discussing the meaning of the pins with Bauer, Tupling stated that he considered wearing of the "golden foot pins" to be a violation of the memorandum of agreement and asked Bauer to so inform his members.

9. Bauer reported his conversation with Tupling to LEA members at a regular LEA membership meeting held May 1, 1978. Additionally, Bauer informed the members that he would check with the association's legal counsel to determine whether, or not, the association was violating the memorandum of agreement.

10. On May 4, 1978 Tupling distributed the negotiated collective bargaining agreement and memorandum of agreement to all employees in the bargaining unit.

While distributing the two documents, Tupling informed some employees who were wearing pins that wearing the pins was a violation of the memorandum of agreement. Employees so informed were not directed to remove or to cease wearing the pins.

11. On May 8, 1978 Tupling issued a notice of violation to Kenneth Benson, a teacher of Leavenworth School District, which read:

"Subject: Notice of Violation of Memorandum of Agreement Between Leavenworth School District and Leavenworth Education Association

You are hereby notified that the undersigned, as Superintendent of Leavenworth School District No. 128, has determined that you, as a member of the Leavenworth Education Association or agent thereof, are in violation of paragraph No. 3, Memorandum of Agreement between Leavenworth School District and Leavenworth Education Association, which is stated as follows:

3. "Leavenworth Education Association, its members, officers and agents, shall take no reprisals against the District, members of the Board of School Directors, certificated employees, non-certificated employees or students as a result of participation or non-participation in the strike."

You are further notified that should insignia, symbolic of the strike or strike related activities, by teachers, continue to be worn during school time the Superintendent will take appropriate action."

Benson was not informed what "appropriate action" would result from continued wearing of the pin subsequent to issuance of the notice of violation.

12. On May 18, 1978 William Kampen received a notice of violation, similar to Benson's, for wearing a pin to work.

13. On May 23, 1978 Kampen, acting as grievance director for LEA, presented three grievances to Tupling, who after disagreement regarding the nature of the grievance form to be used, accepted the grievances from Kampen.

14. On May 24, 1978 Kampen wore his pin to work and was served a notice of non-renewal of his teaching contract which reads as follows:

"You are hereby notified that the undersigned, as Superintendent of Leavenworth School District No. 128, has determined that there is probable cause to not renew your contract for the 1978-79 school year.

The probable causes upon which this notice of nonrenewal is based are:

1. Insubordination
2. Failure to follow appropriate administrative directions

You are further notified that pursuant to statute, you may request an informal hearing with the undersigned as superintendent at the District for the purpose of requesting reconsideration of the decision to issue a notice of nonrenewal. Such a request must be made in writing and filed with the Superintendent of the District within ten (10) days after receiving this notice."

Tupling testified that the purpose of serving Kampen with a notice of non-renewal of his teaching contract, which Tupling knew to be defective, because such action must be taken on or before May 15, 1978, was to cause Kampen to appear before the board of directors to explain the meaning of the pin and also notify Kampen of what "appropriate action" would be taken.

Kampen did not attend the next board meeting because he subsequently was discharged before the meeting was held.

15. On May 30, 1978 William Swain was served the following notice of discharge:

"You are hereby notified that the undersigned, as Superintendent of Leavenworth School District No. 128, has determined that there is probable cause to discharge you from your contract with the District effective June 1, 1978.

The probable causes upon which this Notice of Discharge is based are as follows:

1. Insubordination
2. Failure to follow appropriate administrative directions

You are further notified that pursuant to statute you may request a hearing to determine whether or not there is sufficient cause for discharge. A request for a hearing must be made in writing and filed with the Chairman of the Board or the Secretary of the Board of Directors of the district within 10 days after you have received this notice. Your failure to request a hearing within the 10 day period will cause your discharge to become final and effective as of the date of service of this notice upon you."

16. On June 1, 1978 Tupling discharged Linda Orndoff, Linda Flathers, Gary Turner, William Bauer, and William Kampen for wearing golden foot pins. The notice of discharge was similar to the discharge notice served Swain on May 30, 1978.

17. On June 2, 1978 Tupling discharged Margie Eickmeyer.

18. On June 2, 1978 Bauer notified Tupling, by letter, that LEA considered the discharge of employees to be a violation of the memorandum of agreement and requested that Tupling resolve the complaint in accordance with the terms of the memorandum of agreement.

19. On June 5, 1978 Tupling took the following actions when he observed employees wearing pins:

- (a) Discharged Roberta Peterson.
- (b) Served Kenneth Benson with a second notice of violation of the memorandum of agreement.
- (c) Observed Bonnie Powell wearing a pin and did not issue a reprimand, a notice of violation, or a notice of discharge.

20. On June 6, 1978 LEA filed a complaint charging unfair labor practices with the Public Employment Relations Commission.

21. The Examiner finds no evidence that wearing of the pin in question deprives the board of directors of the right to manage the affairs of the school district.

22. The Board of Directors of the Leavenworth School District allows employees to wear insignias, pins, badges, jewelry, and medallions of fraternal organizations or social groups; and to deprive the employees the right to wear the "golden foot pin" which was obtained from Washington Education Association on its face discriminates against the employees statutory rights to support the collective bargaining representative of their choice.

23. The reasons given for the discharge of Swain, Bauer, Orndoff, Flathers, Turner, Kampen, Eickmeyer, and Petersen were pretextual, designed to conceal the true nature and motivation of the respondents actions in that regard; the employees were discharged in reprisal for protected union activities; and by said discharge did in fact, interfere with restrain, coerce, and discriminate in the exercise of their right to engage in concerted activity.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes the following:

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter under RCW 41.59.150.

2. Leavenworth School District No. 128, by the discharge of William Bauer, William Kampen, William Swain, Linda Flathers, Linda Orndoff, Gary Turner, Roberta Petersen, and Margie Eickmeyer in reprisal for the exercise of their rights guaranteed by RCW 41.59.060 has committed unfair labor practices within the meaning of RCW 41.59.140 (1) (c) and (d).

Upon the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following:

#### ORDER

It is ordered that Leavenworth School District No. 128, its Board of Directors and agents, specifically Raymond Tupling, Superintendent of Schools, shall immediately:

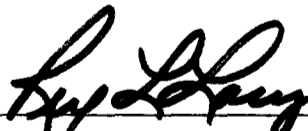
1. Cease and desist from
  - (a) Interfering with the exercise of the rights of employees as detailed in RCW 41.59.060.
  - (b) Discriminating against employees to encourage or discourage membership and activity on behalf of Leavenworth Education Association.

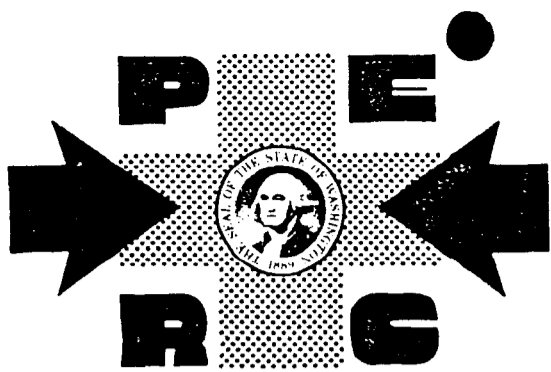
2. Take the following affirmative action which the Examiner finds will effectuate the purposes of RCW 41.59:

- (a) Offer William Bauer, William Kampen, William Swain, Linda Flathers, Linda Orndoff, Gary Turner, Roberta Petersen, and Margie Eickmeyer immediate and full reinstatement to his/her former position, without prejudice to his/her seniority rights and other privileges.
- (b) Make William Bauer, William Kampen, William Swain, Linda Flathers, Linda Orndoff, Gary Turner, Roberta Petersen, and Margie Eickmeyer whole for any loss in pay and benefits he/she may have suffered by reason of his/her discharge, by payment to him/her the sum of money equal to that which he/she would normally have earned or received as an employee from the date of his/her termination to the effective date of the unconditional offer of reinstatement made pursuant to this order, less any earnings he/she may have received during said period, and less the amount of unemployment compensation, if any, received by him/her during said period, and, in the event that he/she received unemployment compensation benefits, reimburse the Employment Security Department of the State of Washington in such amount. Such remedy shall be subject to computation and payment of interest as provided by WAC 391-30-556.
- (c) Post the accompanying notice for a period of sixty (60) days on bulletin boards where notices to employees of the Respondent are usually posted.
- (d) Inform the Public Employment Relations Commission, in writing, within 20 days from the date of this order, as to the steps taken to comply herewith.

Dated this 7<sup>th</sup> day of November, 1978.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

  
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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 offer to William Bauer, William Kampen, William Swain, Linda Flathers, Linda Orndoff, Gary Turner, Roberta Petersen, and Margie Eickmeyer immediate and full reinstatement to his/her former position, without prejudice to their seniority, rights or privileges previously enjoyed by them, and make them whole for any loss of pay and benefits which he/she may have suffered by reason of their discharges.

WE WILL NOT discharge, or threaten employees with discharge in an effort to discourage or prevent employees from exercising the rights guaranteed employees by RCW 41.59.060.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Leavenworth Education Association, or any other labor organization, to bargain collectively through representatives of their own choosing.

Dated this \_\_\_\_\_ day of November, 1978.

LEAVENWORTH SCHOOL DISTRICT NO. 128

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.