STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE EDUCATION ASSOCIATION Complainant, vs. SPOKANE SCHOOL DISTRICT NO. 81 Respondent.	Case No. 2309-U-79-332 Decision No. 718 EDUC PRELIMINARY RULING AND PARTIAL ORDER OF DISMISSAL

The captioned matter was initiated by a complaint filed on September 10, 1979. An amended complaint incorporating the original allegations was filed on September 20, 1979, accompanied by a motion for temporary relief under WAC 391-30-560 and a supporting affidavit. A second amended complaint was filed on September 24, 1979, adding two allegations to the amended complaint. The amended complaint and second amended complaint are accepted, and they constitute the basis for the further proceedings in the matter. Pursuant to WAC 391-30-560-(2), the matter is now before the Executive Director for expedited processing under WAC 391-30-510.

Paragraph 4.A. of the complaint contains the original allegations filed in connection with a request of the Spokane Education Association for enforcement of the order issued by the Public Employment Relations Commission in Decision 310-B (EDUC, 1978). Those allegations state facts on which an unfair labor practice violation could be found.

Paragraph 4.B. of the complaint contains certain allegations which are so lacking in detail that, standing alone, they would be insufficient to base a preliminary ruling. However, the amended complaint which contains those allegations was accompanied by the affidavit of John Beuhler, and the two documents are read together as one. Two subjects are noted, as indicated below, on which violations could be found. Any additional matters to be litigated would have to be the subject of further amendments to the pleadings.

The first clause of Paragraph 4.B. accuses the district of "reneging on proposals, once accepted by SEA." The affidavit identifies reintroduction of a "scope of bargaining unit"

issue as one of two such incidents. The third portion of paragraph 4.B., the affidavit and the exhibits to the affidavit all indicate that a current work stoppage and dispute at the bargaining table revolve, at least in part, around an employer demand that the Association agree to exclude certain "substitute" and "coordinator" employees from the bargaining unit represented by the Association. Unit determination questions in the involved bargaining unit are controlled by RCW 41.59.-080. Interpreting the very similar language of RCW 41.56.-060, the Commission stated:

> "The determination of appropriate bargaining units is a function delegated by the legislature to the Commission. Unit definition is not a subject for bargaining in the conventional 'mandatory/permissive/illegal' sense..." City of Richland, Decision 279-A (PECB, 1978), footnote omitted.

Notice is also taken of the records of the Commission in Spokane School District, Case No. 1458-C-78-64, in which the status of "substitute" employees of the district has already been placed before the Commission for determination and wherein a scheduled hearing date was cancelled at the request of the parties on the representation that they had resolved their differences. That case remains pending on the "open" docket of the agency. It follows that an unfair labor practice could be found at any time a party insists, while at impasse, on "scope of bargaining unit" concessions as a condition of settlement.

The second clause of Paragraph 4.B accuses the district of "imposing regressing and/or more stringent conditions upon proposals, to avoid reaching settlement." The affidavit identifies only a "president's leave" issue which fits that description. The "president's leave" issue is the second bargaining table matter which fits the "reneging" allegation of the first clause of Paragraph 4.B. The same issue also appears, although in somewhat different terms, in Paragraph 4.C. of the complaint.

Paragraph 4.D. of the complaint states facts on which a violation could be found.

Paragraph 4.E. of the complaint alleges that the employer has converted a strike by its educational employees into an "unfair labor practice strike." In Spokane School District,

Decision 310-B (EDUC, 1978), the Commission noted the omission of a "concerted activity" clause from the employee rights of section RCW 41.59. and made two statements which are controlling here: "RCW 41.59.060 does not confer or protect a right to strike."; and "The Commission neither protects nor prohibits strikes under RCW 41.59.140." The allegations of paragraph 4.E. are dismissed as failing to state facts on which an unfair labor practice violation could be found.

Paragraph 4.F. of the complaint alleges communications by the district with individual employees, in circumvention of the bargaining representative, as well as threats made to employees. The factual allegations are minimal. "Circumvention" is the essence of the portions of Decision 310-B which have recently been the subject of enforcement proceedings. On the other hand, an employer has certain "free speech" rights as indicated in RCW 41.59.140(3), and the conventional private sector borderline of "interference" may be shifted somewhat in the context of an unprotected strike involving employees covered by RCW 41.59. See: "Interference" discussion in Decision 310-B as compared with Shelton School District, Decision 579 (EDUC, 1979). It is concluded that, depending on the precise facts proven by the complaint, a violation could be found.

NOW, THEREFORE, it is

ORDERED

1. Paragraph 4.E. of the complaint in the above-entitled matter is dismissed.

2. The remaining allegations of the complaint are referred to Examiner Katrina I. Boedecker of the Commission staff for further proceedings.

DATED at Olympia, Washington this 25th day of September, 1979.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

By: 

MARVIN L. SCHURKE, Executive Director