

DISCUSSION

The employer relies on a "back to work" agreement signed by the parties on or about September 17, 1979. That agreement provides:

BACK TO WORK AGREEMENT

The Pasco School District and the Pasco Association of Educators, through their undersigned and duly authorized representatives, agree as follows:

1. All bargaining unit employees who participated in the strike shall return to work without intimidation, reprisal, or recrimination either now or in the future from the District or any of its agents or from the PAE and its agents, provided that all assignments shall be made as determined by the District to be in the best interests of the District.
2. No reference to any individual's participation in the strike shall be made in any evaluation or personnel file of any teacher.
3. No student or parent or guardian of a student, shall be subjected to malice or intimidation or in any way penalized or harrassed by any teacher on account of attending school during the strike. Attendance and work records shall be given full recognition and credit by teachers.
4. No employee of the District during the strike who refused to participate in the strike and/or strike-related activities shall be subjected to malice, intimidation, sanction, boycott, blacklist or in any other way, directly or indirectly, be penalized or harrassed by the teachers, PAE personnel or members, the Uni-Serv representative or the WEA or its representatives, the District and its agents.
5. The contract days of those employees who did not report to work will be reduced by the number of days each such employee did not report to work with an appropriate prorated reduction in salary and insurance contributions, said reductions to be equal to 1/183 or 1/185 respectively for each day not worked. Said salary reductions shall be prorated over the next eleven months commencing with the October payroll. Said insurance reductions shall be deducted from the September or October payroll.
6. The District and the PAE agree to withdraw any and all pending unfair labor practice complaints, lawsuits and/or grievances to which the District or the PAE is a party, directly or indirectly relating to or arising from, the strike and/or the entire course of bargaining to date in 1979. The parties hereto further agree that neither will hereafter file, initiate or pursue, or cause to be filed, initiated or pursued, any unfair labor practice, lawsuit, or grievance relating to or arising from the strike and/or the entire course of bargaining to date in 1979.
7. Any complaints of violations of this Agreement shall be presented at a meeting between the Superintendent or his/her designee and the Association's representative. Both parties shall use their best efforts to help resolve such complaints.
8. This agreement shall be effective immediately. Return to work shall occur September 18, 1979, if the District is notified by 4:00 p.m. September 17, 1979, that the agreement has been ratified by the Association.

The answer tendered by the employer at the hearing states, in material part:

RESPONDENT HEREIN denies each and every allegation in the above captioned Unfair Labor Practice complaint.

As an affirmative defense, respondent herein encloses a signed copy of a "Back To Work Agreement" dated September 17, 1979, between the parties wherein complainant "agreed to withdraw any and all pending Unfair Labor Practice complaints....."

This Back To Work Agreement constitutes a bar to this complaint or any other pending Unfair Labor Practices pending on September 17, 1979.

The complainant argued, and later produced testimony to prove that the "back-to-work" agreement relied upon by the employer was not intended to cover the incidents in 1978 which are the subject of this complaint. However arguable that may be, the point need not be decided here.

The Public Employment Relations Commission does not determine "violation of contract" allegations as unfair labor practices, City of Walla Walla, Decision 104 (PECB, 1976), and will not arrogate to itself the role of arbitrator in determining contractual ambiguities which are not necessary to the decision of the case before it. Clallam County, Decision 607-A (PECB, 1979). If the employer claimed some contractual right to have this complaint withdrawn, it should have pursued its contractual remedies through arbitration or the courts.

The rules of the Commission, WAC 391-30-508, provided for withdrawal of the complaint "by the complainant". The complaint was not and has not been withdrawn.

The effects of failing to answer a complaint in a timely fashion are clear. See: Benton City, Decision 436, 436-A (PECB, 1978), aff. Benton Co. Sup. Ct. (1979); and City of Wenatchee, Decision 780 (PECB, 1980).

The Examiner, having considered the evidence and arguments, makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Pasco School District No. 1 is a school district created under Title 28A RCW and is an employer within the meaning of RCW 41.59.020.
2. Pasco Association of Educators is an employee organization within the meaning of RCW 41.59.020 and is the exclusive bargaining representative of all certificated non-supervisory employees of the District.

3. The complaint filed by the Pasco Association of Educators on March 31, 1978 states in part:

"4. On March 13, 1978, the Pasco School District unilaterally adopted a mandatory item of bargaining, a vital component of the school calendar, to wit: the first student day. Said action was taken without first negotiating to impasse or agreement with the Pasco Association of Educators, in spite of its requests to bargain on that issue and its protests against adoption."

4. The respondent failed to timely file an answer to the complaint of unfair labor practices filed by the complainant on March 31, 1978 as required by WAC 391-30-518, and has not shown good cause for its failure.

5. The consequences of failing to timely answer a complaint were spelled out in WAC 391-30-520 which read:

WAC 391-30-520 ANSWER--CONTENTS AND EFFECT OF FAILURE TO ANSWER. An answer filed by a respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. The failure of a respondent to file an answer or the failure to specifically deny or explain in the answer a fact alleged in the complaint shall, except for good cause shown, be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of the respondent of a hearing as to the facts so admitted.

6. Pasco School District No. 1 has refused to bargain with the Pasco Association of Educators regarding hours of employment of certificated non-supervisory employees of Pasco School District No. 1.^{1/}

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.

2. Pasco School District No. 1 by refusing to bargain collectively and in good faith as required by RCW 41.59.020(2) with the representative of its certificated non-supervisory professional staff, regarding hours of employment violated RCW 41.59.140(1) (e) and (a).

On the basis of the foregoing findings of fact and conclusions of law, the Examiner makes the following:

^{1/} See: Edmonds School District, Decision 207 (EDUC, 1977).

ORDER

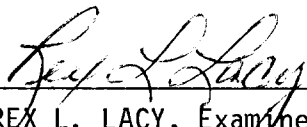
It is ordered that Pasco School District No. 1, its board of directors, officers and agents, shall immediately:

1. Cease and desist from:
 - (a) Interfering with the exercise of the rights of employees guaranteed in RCW 41.59.020(2).
 - (b) Refusing to bargain with Pasco Association of Educators as the exclusive bargaining representative of its certificated non-supervisory employees with respect to wages, hours and conditions of employment.

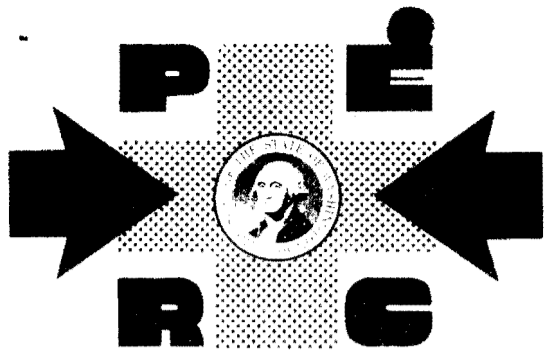
2. Immediately take the following affirmative action which the Examiner finds will effectuate the purposes of RCW 41.59.
 - (a) Upon request, bargain collectively with the Pasco Association of Educators with respect to the make-up of the school calendar.
 - (b) Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notices shall, after being duly signed by an authorized representative of the Pasco School District No. 1, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the Pasco School District No. 1 to ensure that said notices are not removed, altered, defaced or covered by other material.
 - (c) Notify the Executive Director of 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 the Executive Director with a signed copy of the notice required by the preceding paragraph.

DATED at Olympia, Washington, this 19th day of December, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



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 NOT refuse to bargain collectively and in good faith with the Pasco Association of Educators, an affiliate of the Washington Education Association, as the exclusive representative of the employees in the appropriate bargaining unit.

WE WILL, upon request, bargain collectively in good faith with the Pasco Association of Educators with respect to hours of employment, including the school calendar.

DATED: _____

BY: SCHOOL BOARD OF DIRECTORS

Chairperson

BY:

Superintendent of Schools

This notice must be posted (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.