

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

GORDON W. ROSIER,)	
)	CASE NO. 2480-U-79-356
Complainant,)	
)	DECISION NO. 1122 - EDUC
vs)	
MUKILTEO SCHOOL DISTRICT NO. 6)	
&)	
MUKILTEO EDUCATION ASSOCIATION,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondents.)	AND ORDER
)	

Gordon W. Rosier, appeared pro se.

Clifford Gillies, representative, appeared on behalf of the district.

Symone Scales, attorney-at-law, appeared on behalf of the association.

A formal hearing was held on November 19, 1980, at the district administration center before J. T. Cowan, Examiner.

BACKGROUND:

On December 12, 1979, Gordon W. Rosier filed a complaint charging unfair labor practices with the Public Employment Relations Commission. An amended complaint was filed on August 20, 1980. Mr. Rosier alleged the Mukilteo Education Association and Mukilteo School District, No. 6 had violated RCW 41.59.060; RCW 41.59.100 and RCW 41.59.140 by their actions concerning the collective bargaining agreement between the parties for the period from September 1, 1978 through August 31, 1981.

Rosier is a teacher employed by the district. He was not a member of the association prior to September 1, 1978, and, under the terms of the previous (1976-1978) agreement, paid no dues. Under the terms of the current agreement, dues deductions were made from his wages although he did not authorize any such deduction. Rosier alleged the agreement failed to safeguard his "rights to non-membership". His right to a religious exception to union security obligations is the subject of a separate proceeding.

DISCUSSION:

Article III, Section 4, of the current bargaining agreement provides in part:

For teachers hired by the start of the school year, the Association shall have from September 1 to October 10 of each school year to sign up new teachers or teachers not formerly members for payroll deduction of dues. This sign-up shall be done on a form provided by the Association, which form shall authorize deduction of membership dues and assessments (including WEA, NEA, PULSE, and NEA-PAC); a copy of said form shall be provided the District no later than October 10 of each school year. Deduction of such members' annual dues shall be made in either twelve (12) or eleven (11) equal amounts dependent on whether authorization for such deductions are received by the District in time for the September or the October payroll.

* * *

Authorizations for dues deductions shall continue in effect from year to year unless a written request of revocation is submitted to the District and the Association, signed by the teacher, and received between August 15 and September 15.

* * *

In the event that any *teacher fails to authorize dues deductions within the deadline provided above or who revokes membership in the Association as set forth above, the District agrees to deduct from the salary of such teacher a representation fee in an amount equal to membership dues (at the rate of 1/12 of such annual dues for each whole month the teacher is not a member of the Association--not to include PULSE or NEA-PAC deductions). Teachers who have joined the Association and paid by means other than payroll deduction, by October ten (10) shall not be subject to this deduction. The representation fee for temporary employees who are members of the bargaining unit and who have not joined the Association shall be assessed at the rate of 1/180th of the total annual dues of the Association for each day or portion of a day the temporary employee is employed in the District and is a member of the bargaining unit. Such fees for temporary employees accumulate during each month and a total deduction shall be made at the regular monthly pay date for all eligible days worked during the month.

Any teacher claiming a bona fide religious objection to the agency shop fee provided herein shall notify the Association and the Board of such objection in writing within ten (10) days of commencement of employment.

Pending determination of any bona fide religious objection, the Board agrees to deduct from the salary of the teacher claiming such objection an amount equivalent to the Association dues; provided, however, that said monies shall not be transmitted until such time as the Board is notified that a final determination pursuant to the Act has been

made. In the event that it is finally determined that the teacher does not have a bona fide religious objection, the Board agrees promptly to remit to the Association all monies being held.

RCW 41.59 provides as follows:

41.59.060 Employee rights enumerated--Fees and dues, deduction from pay. (1) Employees shall have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and shall also have the right to refrain from any or all of such activities except to the extent that employees may be required to pay a fee to any employee organization under an agency shop agreement authorized in this chapter. (emphasis added).

41.59.100 Union security provisions--Scope--Agency shop provision, collection of dues or fees. A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. (If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payment to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues.) All union security provisions must safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. (emphasis added).

41.59.140 Unfair labor practices for employer, employee organization, emunerated. (1) It shall be an unfair labor practice for an employer:

- (a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060;
- (b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: Provided, That subject to rules and regulations made by the commission pursuant to RCW 41.59.110, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;
- (c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or condition of employment, but nothing

contained in this subsection shall prevent an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 41.59.100;

(d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this chapter;
 (e) To refuse to bargain collectively with the representatives of its employees.

(2) It shall be an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed in RCW 41.59.060: Provided, That this paragraph shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (ii) an employer in the selection of his top representatives for the purposes of collective bargaining of the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1) (c) of this section;

(c) To refuse to bargain collectively with an employer, provided it is the representative of its employees subject to RCW 41.59.090.

(3) The expressing of any views, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of *this chapter, if such expression contains no threat of reprisal or force or promise of benefit. (emphasis added).

The previous collective bargaining agreement between the respondents contained a "grandfather" clause under which Rosier exercised a contractual right to remain a non-member. Rosier defined the issue as his "right of non-membership". He characterized the contractual language contained in Article III, Section 4 and offered an interpretation of the various paragraphs. He overlooks the fact that the respondents, acting within their statutory rights, negotiated different union security provisions in their current contract which have eliminated the contractual grandfather clause and contractual "right to non-membership" previously enjoyed by Rosier.

The district and association appear to have acted in compliance with the language of the 1978-81 bargaining agreement. There is an obligation on the part of the district to deduct a representation fee for any teacher who does not authorize a dues deduction or exercise the right to revoke membership within the stipulated time period. A procedure is also available in which to claim a bona fide religious objection. Although the unfair labor practice complaint was docketed and noted for hearing, the alleged violation was not specifically defined. The charges of an unlawful agreement, as stated in the complaint, were not substantiated.

No testimony was offered and nothing evidentiary was introduced other than a copy of the contract at issue.

The moving party has the burden of proof. The allegations of the complainant were not supported by evidence, and the Examiner's reading of the disputed contract leads to the conclusion that the contract language is within the statutory rights of the respondents. The complaint was therefore dismissed on motion made at the close of the complainant's case in chief, and that order is confirmed herein.

FINDINGS OF FACT

1. Mukilteo School District, No. 6 is an employer within the meaning of RCW 41.59.080.
2. Mukilteo Education Association is an employee organization within the meaning of RCW 41.59.020(1).
3. Gordon W. Rosier is an educational employee of the Mukilteo School District No. 6 within the meaning of RCW 41.59.020(4), and a member of the bargaining unit represented by the Mukilteo Education Association.
4. Mukilteo School District and Mukilteo Education Association negotiated a union security agreement in their 1978-81 collective bargaining agreement, which is an agency shop provision which eliminated an exception found in the union security provisions of their 1976-78 agreement.
5. As an educational employee, Rosier could be required to pay a representation fee under the terms of the 1978-81 bargaining agreement, eventhough he was not required to be a member under the previous agreement.
6. Rosier filed a complaint on December 12, 1979 charging unfair labor practices by both the district and association, stating the bargaining agreement failed to safeguard his rights to non-membership.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to RCW 41.59.
2. The district and the association are not obligated to make an exception for an employee not covered under the previous contractual agreement and have negotiated a lawful union security provision pursuant to RCW 41.59.100.

3. By the events described in Findings of Fact 3, the district and association did not commit an unfair labor practice violative of RCW 41.59.140.

ORDER

The complaint charging unfair labor practices is hereby dismissed.

DATED at Olympia, Washington this 30th day of March, 1981.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


J. T. COWAN, Examiner