STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BATTLE GROUND SCHOOL DISTRICT, Employer,	CASE NO. 6450-U-86-1266
PUBLIC SCHOOL EMPLOYEES OF BATTLE GROUND, Complainant, vs. BATTLE GROUND EDUCATION ASSOCIATION, Respondent.	DECISION 2786 - PECB FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Edward A. Hemphill, General Counsel, appeared on behalf of the complainant.

Faith Hanna, Attorney at Law, appeared on behalf of the respondent.

On June 19, 1986, Public School Employees of Battle Ground, an affiliate of Public School Employees of Washington (PSE), filed a complaint with the Public Employment Relations Commission alleging that the Battle Ground Education Association (BGEA), an affiliate of the Washington Education Association committed unfair labor practices in violation of RCW 41.56.150(2) and (4), by inducing the Battle Ground School District to violate the collective bargaining agreement between that employer and

PSE, and by representing members of PSE bargaining unit.[1] A hearing was held in the above-entitled matter in Battle Ground, Washington on February 17, 1987, before William A. Lang, Examiner. Post-hearing briefs were filed.

FACTS

Public School Employees of Battle Ground is the exclusive bargaining representative of the classified employees of the Battle Ground School District. The Battle Ground Education Association is the exclusive bargaining representative of certificated employees of the school district.

On January 30, 1986, the employer entered into a settlement agreement with a certificated (teacher) employee to avoid a potential disciplinary action against the employee. The teacher was represented by Dean Summers (a high school representative-at-large to the executive board of BGEA and a past-President of BGEA) and Steve Hoskins (the incumbent BGEA President). Summers had been working with the teacher and the department head involved, attempting to correct the teacher's deficiencies. Under the terms of the settlement agreement, the employee resigned his teaching position and was placed in a

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[1] The same complaint alleged that the employer had violated RCW 41.56.140(1) and (2). Two separate cases were docketed by the Commission, one for the charges against the employer (Case No. 6449-U-86-1265) and the other (the instant case) for the charges against the BGEA. The charges against the employer were withdrawn, and Case No. 6449-U-86-1265 was closed on January 27,1987.

"Special Education Assistant" position within the classified employee bargaining unit represented by PSE.[2]

The employee failed to correct his personal problems while working in the classified unit position, and was requested to meet with officials of the employer on the afternoon of June 12, 1986. The employee contacted Summers, and asked him to be at the meeting. Summers agreed to represent the employee, and called Laura Harlow (the President of the PSE chapter) to inquire if she had any objections to his representation of the employee on this matter. Harlow told Summers that it would be fine. Harlow telephoned PSE Field Representative Pat Lambert, who apparently voiced no objections.[3] When Sumner and the ex-teacher arrived at the conference after school hours that afternoon, the employer's officials immediately telephoned Harlow to ascertain whether PSE desired to represent the aide. The employer officials testified that they made it clear to both Harlow and the aide that PSE had a right to represent the employee and that the employer was willing to postpone the meeting until PSE could be present. Harlow again declined.

At the June 12, 1986 conference, the aide was informed that he had failed probation and would be terminated. An agreement was

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2 The classified position was subject to being posted in accordance with the collective bargaining agreement then in effect between PSE and the employer.

3 Lambert testified that Harlow called in a panic, asking whether PSE should represent the ex-teacher who was now in an aide position under the PSE contract. It is not clear from the record whether the phone call from Harlow to Lambert occurred prior to her giving Summer the OK to go ahead. The available inferences appear to favor that PSE had the opportunity to say "no" to the BGEA presence at this meeting. The phone call to Harlow took place in the morning of the day on which the meeting occurred.

reached under which the aide agreed to release the district from claims in exchange for payment of the salary he would have earned if he worked the summer.

DISCUSSION

Inducing An Unfair Labor Practice

PSE argues that the BGEA violated RCW 41.56.150(2), by inducing the employer to commit an unfair labor practice. PSE specifically attacks the January 30, 1986 agreement by which the BGEA and the employer agreed to place a former teacher into a position within the PSE bargaining unit as settlement of a discipline issue arising out of employment in another bargaining unit. The collective bargaining agreement between PSE and the employer provides, in part:

> Section 12.5.1 The employee with the earliest hire date within a classification shall have preferential rights regarding promotions, shift selection, assignment to new or open positions . . . .
>
> Section 12.7 The district will publicize the availability of new or open positions for a period of five (5) working days after the district determines to staff the position. The district will notify association officers, trustees and each building in the district of these new or open positions . . . . The district will also notify employees within specific classifications of openings in that classification if they have requested in writing . . . .

PSE thus contends that the placement agreed upon by the BGEA and the employer violated the posting requirements of its collective bargaining agreement with the employer.

The BGEA claims that it did not influence the district to commit an unfair labor practice by breach of PSE's contract, but merely acquiesced to an employer proposal. According to this logic, one must be more active in the commission of a statutory violation. Under the facts of this case, the BGEA argues that it did not know the provisions of the PSE contract and therefore could not impel its violation. Moreover, the BGEA asserts that the Commission does not have jurisdiction to enforce collective bargaining agreements, and so should dismiss this allegation.

Taking the jurisdictional question first, the Examiner finds the arguments to be inapposite. The BGEA cites a long line of case precedent under which the Commission has declined to assert jurisdiction to enforce purely contractural rights. But the complainant does not seek to enforce its collective bargaining agreement here. Rather, PSE charges that the BGEA has interfered with PSE's contractual rights. This matter may involve incidental interpretation of the posting provisions of the agreement between PSE and the employer, but not their enforcement. The Examiner is not being asked in this case to perform the role of an arbitrator to resolve an ambiguity in PSE's agreement with the district. See, Clallam County, Decision 607-A (PECB 1979). The interpretation of a contract may be a necessary step to determine whether there has been a statutory violation. Pasco School District, Decision 2546 (PECB, 1986). Such an interpretation is called for in this case only to determine whether the BGEA interfered with the contractual rights of the union representing the bargaining unit into which the BGEA and the school district agreed to place the ex-teacher.

Through collective bargaining with PSE, the employer had established certain terms and conditions of employment for the

classified employee bargaining unit. Included among those were procedures for the filling of vacancies. The employer was not at liberty to negotiate with individual members (or potential members) of the classified employee bargaining unit to alter the terms agreed upon with PSE. Such conduct would clearly be a "circumvention" violation under RCW 41.56.140(4). Similarly, the employer was not at liberty to negotiate with a labor organization which represented a minority of the employees in the classified employee bargaining unit (in this case a minority of one) to disregard the contractual procedures when filling vacancies. Such conduct would clearly violate the notion of majority rule which underlies the certification of an "exclusive bargaining representative" under RCW 41.56.080 and would be a violation of RCW 41.56.140(4). Finally, the employer could not unilaterally change the posting and bidding procedure. Such changes in conditions of employment would be either a violation of a collective bargaining agreement or a refusal to bargain in violation of RCW 41.56.140(4). Under any of the alternatives, the injury suffered flows from the undermining of the incumbent union's status as exclusive bargaining representative. See, South Kitsap School District, Decision 472 (PECB, 1978). On the basis of these legal principles fundamental to the collective bargaining process, the BGEA knew or should have known that it was at risk when it took any part in a plan designed to affect employment and/or employment rights in a bargaining unit outside of its own.

The record does not support the contention of the BGEA that there were two positions to be filled under one posting which was made. The record shows that the employer had posted a job vacancy notice on December 4, 1985 for an "aide" position at the Laurant Intermediate School. Although the employer preferred to fill the position with a male, because of duties involving entry into a boys locker room, the only application

received was from a female. No employees of the school district applied. On January 3, 1986, the employer hired the only applicant for the job. On January 30, 1986, when the employer entered into an agreement with the BGEA and one of its certificated teachers to settle a disciplinary situation, the employer was creating a new position. Although that agreement placed the ex-teacher as an "aide" at Laurant Intermediate School with boys locker room duties, there is no indication of a second round of "posting" under the PSE contract or that the second transaction was encompassed within the one round of posting which had occurred. The fact that there were no applicants from within the bargaining unit for the first vacancy did not enable the employer to unilaterally change the conditions of employment or fill the second position by means other than those specified in its contract with PSE.

Nor does the record support the contention that the BGEA served only to witness the January 30, 1986 settlement agreement. Regardless of which of the participants first came up with the idea to transfer the teacher to the classified employee bargaining unit, when the employer and the BGEA participated in an agreement to do so they were bargaining new terms for the filling of vacancies within a bargaining unit for which the BGEA was not the exclusive bargaining representative. Thus, the BGEA's claims that it merely acquiesced in an employer proposal, but did not induce the district to commit an unfair labor practice, strains creditability. Agreeing to a proposal is bargaining and, by bargaining, one induces. The Examiner concludes that, by participating in the negotiation of the January 30, 1986 settlement agreement, the BGEA induced the employer to commit an unfair labor practice.

Ordinarily, a single transgression may be considered of insufficient import to base a finding of a violation where the

activity has negligible effect on the authority of the exclusive bargaining representative. See, Union Electric Co., 196 NLRB 830 (1972). However, the record in this case shows that an affiliate of the BGEA has attempted, on recent occasions, to organize the employees in the classified employee bargaining unit represented by PSE, and that the BGEA's affiliate filed a representation petition for that unit in 1984.[4] In addition, the record shows that the inter-union rivalry continues up to the present time. In view of this background, the Examiner concludes that the BGEA's conduct sufficiently impacts the authority of the PSE as the exclusive bargaining representative to warrant the finding of a violation and the posting of a remedial notice.

Participation in the June 12, 1986 Meeting

PSE argues that the BGEA violated RCW 41.56.150(1) and (2), by inducing the employer to show favoritism toward the BGEA and to interfere with PSE's right to represent employees in the classified employee bargaining unit. Specifically, PSE claims that the BGEA committed a violation of the law when the BGEA represented the ex-teacher in the June 12, 1986 meeting concerning the termination of his employment as an aide. PSE contends that information was given to the PSE chapter president only minutes prior to the meeting, and that this was insufficient and coercive.

The BGEA defends that the PSE agreement permits an employee to choose any person to represent him, and that RCW 41.56.080

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[4] PSE successfully defended its status as exclusive bargaining representative in a representation election conducted in Case No. 5294-E-84-957.

enables an employee to represent himself so long as the exclusive bargaining representative has notice and opportunity to be present at any initial meeting.

The facts in this case clearly show that PSE had sufficient opportunity to object to the BGEA's representation of the employee, and that it has ample opportunity to request a postponement of the meeting. Both a local official and a PSE staff representative had knowledge of the situation. The employer renewed the inquiry before it went ahead with the meeting. The failure of PSE's officials to do so constitutes a waiver of its rights as exclusive representative. City of Montesano, Decision 1101 (PECB, 1981). There was no violation.

FINDINGS OF FACT

1. Battle Ground School District is a school district of the State of Washington, operated pursuant to Title 28A RCW, and is a public employer within the meaning of RCW 41.56.030.

2. Public School Employees of Battle Ground, a bargaining representative within the meaning of RCW 41.56.030, is the exclusive bargaining representative of classified employees of the Battle Ground School District, including "aide" employees. Public School Employees of Battle Ground was certified by the Public Employment Relations Commission as the result of an election conducted in proceedings initiated by Classified Public Employees Association, an affiliate of the Washington Education Association.

3. Battle Ground Education Association, an affiliate of the Washington Education Association, is an employee organization which has a primary purpose of representing employees for the purposes of collective bargaining. The Battle Ground Education Association is the exclusive bargaining representative of non-supervisory certificated employees of the Battle Ground School District under Chapter 41.59 RCW.

4. On January 30, 1986, the Battle Ground Education Association and the Battle Ground School District entered into a settlement agreement concerning a disciplinary action against a teacher theretofore employed in the certificated employee bargaining unit represented by the Battle Ground Education Association. Included among the provisions of that agreement were that the employee resign his teaching position and be that the employer hire the employee as an aide. The aide position is within the classified employee bargaining unit represented by Public School Employees of Battle Ground.

5. The collective bargaining agreement in effect between the Battle Ground School District and Public School Employees of Battle Ground during the period of this controversy required the posting of vacant positions for bid by bargaining unit employees, who were accorded preferential rights in the filling of any vacancies, and giving notice of vacancies to Public School Employees of Battle Ground. These provisions were not followed when the ex-teacher was placed in the special "aide" position as the result of the January 30, 1986 settlement agreement.

6. The employee transferred to the classified employee bargaining unit as the result of the January 30, 1986

settlement agreement failed his probationary period in the "aide" position, and the employer directed that employee to attend a meeting on June 12, 1986 to discuss his employment status. The employee asked the Battle Ground Education Association to represent him. Officials of the Battle Ground Education Association and officials of the employer both informed the president of the local Public School Employees chapter of the conference and expressed willingness to postpone it until Public School Employees representatives could attend. The chapter officer, after consulting with a Public School Employees field representative, advised the employer and the Battle Ground Education Association to go ahead with the meeting.

7. A local inter-union rivalry has continued, since 1984, between Public School Employees and an organization affiliated with the Battle Ground Education Association.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.56 RCW.

2. The Battle Ground Education Association is, when acting in regard to the representation of employees in connection with classified positions in the Battle Ground School District, a "bargaining representative" within the meaning of RCW 41.56.030(5).

3. By participating in the negotiation of a settlement agreement with the Battle Ground School District which involved employment in a bargaining unit for which another labor organization is certified as exclusive bargaining

representative, and which violated the terms of the collective bargaining agreement between the employer and the exclusive bargaining representative in that unit, the Battle Ground Education Association induced the employer to undermine the authority of the other exclusive bargaining representative and committed an unfair labor practice within the meaning of RCW 41.56.150(2) and (1).

4. The failure of Public School Employees of Battle Ground to object, to request a postponement of the June 12, 1986 meeting, or to represent a member of its bargaining unit on June 12, 1986, when given sufficient opportunity to do so, constitutes a waiver of its rights as exclusive representative, so that the Battle Ground Education Association did not violate RCW 41.56.150(2) or (1) by taking part in the June 12, 1986 meeting.

ORDER

The Battle Ground Education Association, its officers and agents, shall immediately:

A. Cease and desist from interfering with the rights of Public School Employees as exclusive representative of classified employees of the Battle Ground School District, by negotiating or attempting to negotiate with the Battle Ground School District concerning matters of wages, hours, or working conditions of employees in the classified employee bargaining unit represented by Public School Employees.

B. Take the following action to remedy the unfair labor practice and effectuate the policies of the Public Employees Collective Bargaining Act:

1) Notify all employees, by posting, in conspicuous places on the employer's premises where union notices to classified bargaining unit employees are usually posted, copies of the notice attached hereto and marked "Appendix". Such notices shall be duly signed by an authorized representative of the Battle Ground Education Association and shall remain posted for sixty (60) days. Reasonable steps shall be taken by the BGEA to insure that said notices are not removed, altered, defaced or covered by other material.

2) Notify the Executive Director of the Public Employment Relations 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 1st day of October, 1987.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

WILLIAM A. LANG, Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.

APPENDIX

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.56, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT interfere with the rights of Public School Employees as exclusive bargaining representative of classified employees of the Battle Ground School District, by negotiating or attempting to negotiate with the Battle Ground School District concerning matters of wages, hours, and working conditions of classified employees in the bargaining unit represented by Public School Employees of Battle Ground.

BATTLE GROUND EDUCATION ASSOCIATION

BY:_____
AUTHORIZED REPRESENTATIVE

Dated_____

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) consecutive days from the date of posting and must not be altered, defaced, or covered by other material. Any questions concerning this notice or compliance with its provision may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.