STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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| BATTLE GROUND SCHOOL DISTRICT,<br><br>Employer, | CASE NO. 6450-U-86-1266 |
| PUBLIC SCHOOL EMPLOYEES OF BATTLE GROUND,<br><br>Complainant,<br><br>vs.<br><br>BATTLE GROUND EDUCATION ASSOCIATION,<br><br>Respondent. | DECISION 2786-A - PECB<br><br>DECISION OF COMMISSION |

Edward A. Hemphill, General Counsel, appeared on behalf of the complainant before the Examiner. Eric T. Nordlof, Attorney at Law, filed the brief for the complainant on the petition for review.

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

Examiner William A. Lang issued his findings of fact, conclusions of law and order in the above-entitled matter on October 1, 1987. The Battle Ground Education Association filed a timely petition for review, thereby bringing the matter before the Commission.

These proceedings were commenced on June 19, 1986, when 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 the employer and PSE, and by representing members of a bargaining unit represented by PSE.[1] A hearing was held before the Examiner on February 17, 1987, and post-hearing briefs were filed with the Examiner. Both parties have filed briefs on the petition for review.

## BACKGROUND

PSE and BGEA are the exclusive bargaining representatives, respectively, for classified and certificated employees of the Battle Ground School District. This dispute arose from a meeting between officials of the BGEA and the Battle Ground School District where both participants agreed to transfer an employee from a certificated position in the unit represented by BGEA to a classified position in the unit represented by PSE. The transfer was accomplished without posting of the job opening as required by the contract between PSE and the employer.

Because the BGEA agreed with the employer to place the employee in the PSE-represented classified unit, the BGEA has been found by the Examiner to have "induced" the employer into committing an unfair labor practice. The violation arises from

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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: Case No. 6449-U-86-1265 was assigned to the charges against the employer; the instant case involves only charges against the BGEA. The charges against the employer were withdrawn, and Case No. 6449-U-86-1265 was closed on January 27, 1987.

the lack of notification to PSE, the failure to have PSE participate in the meeting, and the placement of the employee in violation of PSE's agreement.

## POSITIONS OF THE PARTIES

The BGEA contends that it has not committed any unfair labor practices, and it specifically petitions for review on the bases that:

1. The Battle Ground Education Association did not know, and should not be held responsible for knowing, that the employer would fail to follow posting procedures in the PSE collective bargaining agreement.

2. The Battle Ground Education Association did not "induce" the school district to violate the posting provisions of the PSE contract.

3. The employer's alleged violation of the PSE contract did not constitute an unfair labor practice.

## DISCUSSION

The applicable statute provides:

> **41.56.150 Unfair labor practices for bargaining representatives enumerated.** It shall be an unfair labor practice for a bargaining representative:
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> . . .
>
> (2) To induce the public employer to commit an unfair labor practice;
>
> (3) To refuse to engage in collective bargaining.

The BGEA's first point, concerning its ignorance of the PSE agreement and its lack of responsibility to see that the

employer did not violate its provisions, is not persuasive. An experienced labor organization like the BGEA should know that PSE had a right under RCW 41.56.080 to notice and an opportunity to participate in any grievance proceeding involving its bargaining unit, including a decision to place an employee in that bargaining unit. Under the same statute, any adjustment reached in grievance discussions between an individual and the employer must be "not inconsistent with the terms of a collective bargaining agreement then in effect." If PSE had participated, both the BGEA and the employer could have been informed of PSE's view of the contractual requirements involved. Further, specifically because of the potential for ongoing problems,[2] the requirement that PSE be fully informed is all the more acute.

On the second point, where BGEA argues that it did not "induce" the district to commit an unfair labor practice, the BGEA appears to be advancing the idea that it was mute while the employer reviewed the employee's situation, devised a course of action and then requested that the BGEA agree. The Examiner has already considered the record and found that the BGEA's active participation in the decision qualifies as inducement, and the Commission agrees with the Examiner.

Finally, the BGEA maintains that the employer's actions did not constitute an unfair labor practice. It claims that the dispute between PSE and the district is a contractual matter more properly resolved through a different procedure. Indeed, the Commission does not remedy contract violations through the unfair labor practice provisions of the statute. Pasco School District, Decision 2546-A (PECB, 1987), aff. Franklin County Superior Court (1987). The Commission disagrees, as to the

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[2] The employee involved was being demoted to a classified position due to emotional problems.

nature of the issue. Excluding PSE (by lack of notification) from exercising its rights as exclusive bargaining representative was a "refusal to bargain" unfair labor practice violation under 41.56.140(4), as found by the Examiner.

The Commission finds that the BGEA lawfully represented its member's interests in obtaining a resignation (as opposed to a less favorable basis for separation from employment), a $4,000 severance payment, extension of medical and dental insurance benefits and a clean personnel file. These points are detailed in the agreement dated January 30, 1986 and signed by the employee, a representative from the district and a BGEA representative. That same document went on, however, to provide in its items numbered 5 and 6 for employment of the individual in the classified bargaining unit. Item Nos. 5 and 6 should have been negotiated by the employer with PSE, which had a right to be a party to any such discussion at that time.

NOW, THEREFORE, it is

ORDERED

1. The findings of fact, conclusions of law and order issued by the Examiner are affirmed.

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

   a) Notify the complainant, in writing, within thirty (30) days following the date of this order, as to what steps have been taken to comply with the Order issued by the Examiner, and at the same time provide the complainant with a signed copy of the notice required by that Order.

b) Notify the Executive Director of the Public Employment Relations Commission, in writing, within thirty (30) days following the date of this order, as to what steps have been taken to comply with the Order issued by the Examiner, and at the same time provide the Executive Director with a signed copy of the notice required by that Order.

DATED at Olympia, Washington, this 29th day of February, 1988.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARK C. ENDRESEN, Commissioner

JOSEPH F. QUINN, Commissioner

Chairman Jane R. Wilkinson did not take part in the consideration or decision of this case.