STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SPOKANE SCHOOL DISTRICT, Employer.	
JERRY M. HUGHES, Complainant, vs. SPOKANE EDUCATION ASSOCIATION, Respondent.	CASE 12449-U-96-2950 DECISION 5647 - EDUC PARTIAL ORDER OF DISMISSAL

The complaint charging unfair labor practices filed with the Public Employment Relations Commission on April 18, 1996, alleged that the Spokane Education Association had interfered with employees rights, in violation of RCW 41.59.140, by the manner in which a "charter election" was held for the Ferris High School Site Council. The complaint was reviewed for purposes of making a preliminary ruling under WAC 391-45-110.[1] A preliminary ruling letter issued on July 17, 1996, reviewed each of the five allegations separately, noting that two of them did not state claims for relief available through unfair labor practice proceedings before the Commission.

The complainant was given a period of 14 days following the date of the preliminary ruling letter to file and serve amendments to the complaint. The complainant submitted amendatory materials in a

[1] At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

timely fashion, and those materials have been reviewed under WAC 391-45-110.

Allegation 1 - Coding of Ballots

The complaint alleges that the Spokane Education Association (SEA) promoted and assisted a "coding" of ballots cast in a charter election for the Ferris High School Site Council held on November 7-9, 1995. No cause of action exists as to this allegation.

The election described in the complaint was not a representation election conducted by the Public Employment Relations Commission under Chapter 391-25 WAC. Accordingly, that election did not come within the "laboratory conditions" precedents developed by the Commission, the National Labor Relations Board, and other agencies for the administration of employee free choice under a collective bargaining statute. The election does not even appear to be related to the collective bargaining processes administered by the Commission under Chapters 41.59 RCW (covering certificated employees of school districts) and Chapter 41.56 RCW (covering other employees of school districts).

Even if one were to relate the site council at Ferris High School to the collective bargaining process, the facts alleged in this complaint suggest that the "coding" may have been used to effect a separation of employees that is rooted in state law. As noted in the preceding paragraph, the certificated and the classified employees of school districts are covered by two different collective bargaining statutes.[2] The complainant is a member of the certificated bargaining unit, and it appears that all members of that bargaining unit were given ballots of the same design, to effect a separate tally for members of that bargaining unit.

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[2] The two groups cannot lawfully be overlapped or mixed. See, Castle Rock School District, Decision 4722-A (EDUC, 1995.

Allegation 3 - Authorized Circumvention of Union

The complaint alleges that the SEA has sought to shield itself from violations of the collective bargaining statute, by requiring all SEA members working at Ferris High School to endorse a charter sign-off statement, by which the employee acknowledges the authority of the site council and agrees to be bound by future decisions of that body. Assuming for purposes of this preliminary ruling that all of the facts alleged in the complaint are true and provable, this allegation states a cause of action for further proceedings under Chapter 391-45 WAC.

The SEA is the exclusive bargaining representative of certificated employees of the Spokane School District. Under RCW 41.59.080(1), the bargaining unit represented by the SEA must include **all** of the non-supervisory certificated employees of that employer. There is no possibility of a separate bargaining unit at Ferris High School. It would be an unfair labor practice under RCW 41.59.140(2)(a) for the SEA to restrain or coerce employees in the exercise of their right to bargain collectively or to refrain from such activity. The sign-off language challenged in the complaint reads:

> I recognize that I can either choose to participate or choose not to participate in Ferris' democratic site-based governance. I recognize that decisions and policies approved through the decision-making process outlined in the Joel E. Ferris Site Council Charter will be binding upon all staff members.

The challenged site council charter states that the sign-off document must contain the signatures of 100 percent of the staff "in order for Ferris High School to receive future **variances from standards already prescribed or standards prescribed in the future by the SEA contract**, the Spokane School District, or the office of Washington State's Superintendent of Public Instruction." [Emphasis by **bold** supplied.] The complaint also alleges that the

key message at a Joint Council for Restructuring meeting, held with SEA representatives in attendance on a date prior to September 27, 1995, was that 100 percent sign-off on the charter was a necessity in order to get "contract variances". A bargaining unit member could reasonably perceive the SEA's endorsement of the sign-off language as a forfeiture of the employee's right to enjoy the benefits of the collective bargaining agreement negotiated for the district-wide bargaining unit, and therefore as an interference with rights under the collective bargaining statute.

Allegation 4 - Prejudice to Transfer Rights

The complaint alleges that the SEA promoted and negotiated new contract language which prejudices the rights of bargaining unit employees, by requiring them to sign the site council charter as a condition of obtaining a bargaining unit position.[3] Assuming for purposes of this preliminary ruling that all of the facts alleged in the complaint are true and provable, this allegation also states a cause of action for further proceedings under Chapter 391-45 WAC.

A bargaining unit member could reasonably perceive the new transfer language as a forfeiture of the employee's right to enjoy the benefits of the collective bargaining agreement negotiated for the district-wide bargaining unit.

Allegation 5 - Partial Abandonment of Bargaining Rights

The complaint alleges that the SEA promoted and assisted in the transfer of its authority as the exclusive bargaining representative of the employees, by its empowerment of the site council to

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[3] The effect of failure to sign would be as follows: New employees or voluntary transferees would be denied the assignment; involuntary transferees would be placed on the substitute teacher list and lose their classroom teaching position.

seek binding variances from the collective bargaining agreement. Assuming for purposes of this preliminary ruling that all of the facts alleged in the complaint are true and provable, this allegation also states a cause of action for further proceedings under Chapter 391-45 WAC.

Employers and employee organizations operating under the Educational Employment Relations Act do not have the freedom (and the Commission does not have the authority) to form bargaining relationships on anything less than a district-wide basis. RCW 41.59.080(1). While an employee organization could undoubtedly abandon its representation rights for an entire bargaining unit (i.e., either to dissolve the organization or to "go out of the union business" in that unit while retaining the organization for other purposes), any attempt to abandon part of the unit configuration appropriate under RCW 41.59.080 would place the status of the organization in question for the entire unit.

NOW, THEREFORE, it is

ORDERED

1. Allegations 1 and 2, as amended, are DISMISSED as failing to state a cause of action.

2. Katrina I. Boedecker of the Commission staff is designated as Examiner to conduct further proceedings consistent with the foregoing, on allegations 3, 4, and 5 of the complaint.

3. Pursuant to WAC 391-45-110(2), the Spokane Education Association shall:

File and serve its answer to the complaint within 21 days following the date of this order.

a. An answer filed by the respondent shall:

i. Specifically admit, deny or explain each of the facts alleged in the complaint, except if the respondent is without knowledge of the facts, it shall so state, and that statement will operate as a denial.

ii. Specify whether "deferral to arbitration" is requested, and include a copy of the collective bargaining agreement and other grievance documents on which a "deferral" request is based.

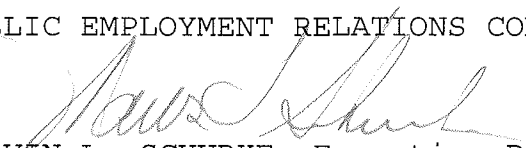
iii. Assert any other affirmative defenses that are claimed to exist in the matter.

b. The original answer and one copy shall be filed with the Commission at its Olympia office. A copy of the answer shall be served, on the same date, on the attorney or principal representative of the person or organization that filed the complaint.

c. Except for good cause shown, a failure to file an answer within the time specified, or the failure of an answer to specifically deny or explain a fact alleged in the complaint, will be deemed to be an admission that the fact is true as alleged in the complaint, and as a waiver of a hearing as to the facts so admitted. WAC 391-45-210.

ISSUED at Olympia, Washington, on the 30th day of August, 1996.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

Paragraph 1 of this order will be the final order of the agency on those matters unless appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.