

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE SCHOOL DISTRICT NO. 1)	
Complainant,)	CASE NO. 959-U-77-122
vs,)	DECISION NO. 629-B EDUC
SEATTLE TEACHERS ASSOCIATION)	FINDINGS OF FACT,
Respondent,)	CONCLUSIONS OF LAW
)	AND ORDER

APPEARANCES:

Perkins, Coie, Stone, Olsen & Williams, by Lawrence B. Hannah and Thomas E. Platt, attorneys at law, for the Seattle School District No. 1.

Symone Scales, attorney at law, for the Seattle Teachers Association.

Prehearing Procedural Background

On June 14, 1977, the Seattle Teachers Association (STA) filed a complaint with the Public Employment Relations Commission (PERC) alleging that the Seattle School District No. 1 (District) violated RCW 41.59.140 (1)(a) and (e) by unilaterally adopting the first working day and the schedule for Christmas vacation of the school calendar.

On June 23, 1977, the District filed a complaint with PERC alleging that the STA had:

engaged in bad faith, surface bargaining. The STA has refused to embrace its own proposals and has refused to bargain further on calendar. The STA's conduct evidences an intent to avoid good faith bargaining and to avoid reaching agreement, all in violation of RCW 41.59.140 (2)(a)(i) and (c).

The District further alleged that:

...the STA is, through its refusal to bargain on calendar, attempting to block the lawful, timely opening of school in the fall of 1977 and thereby is insisting to impasse upon what amounts to an illegal proposal, namely, that the STA be permitted to engage in an unlawful strike. The STA refused to bargain on calendar in order to promote and facilitate a strike, all in violation of RCW 41.59.140(2)(a)(i) and (c). Said conduct also constitutes an independent violation of the STA's duty to fairly represent employees under RCW 41.59.140 (2)(a)(i).

Finally, the STA has, through its conduct, sought to impede the Board in the discharge of its legal responsibilities for calendar under, inter alia, RCW 28 A.59.180 (7) and RCW 41.59.930, all in violation of RCW 41.59.140 (2)(a)(i) and (c).

The complaints of the District and the STA were consolidated for hearing. The hearing commenced on February 26, 1979.^{1/}

The Facts

On October 12, 1977, the District and the STA executed a two year collective bargaining agreement. That agreement included a provision dealing with the school year calendar. Among other things, it specified the first day of classes and the days of Christmas vacation.

Earlier, in negotiations leading up to that agreement, the District and the STA had exchanged proposals on the subject of the school calendar. While the proposals reflected agreement on the Christmas vacation, the two sides were one day apart on the opening day of school. On May 18, 1977, in response to the District's assertion that for various reasons it needed a prompt resolution of the calendar issue, the STA suggested that the superintendent announce a tentative starting date for students. However, the STA indicated that it would not formally agree to a calendar until the balance of the contract was agreed upon.

^{1/} In its brief, the District renewed its motion, made at hearing, to have the factual allegations in its complaint deemed admitted as true pursuant to WAC 391-30-520. The District argued that it had not received a copy of the STA's answer in a timely fashion and the one which it eventually received was not sufficiently specific. The STA supplied proof that it had arranged for a legal messenger service to serve both PERC and the District and that someone at the District signed for it. PERC did receive service. The Examiner was not convinced that the District was not served, but in any case found that the STA had shown good cause to justify the alleged service failure. At hearing, pursuant to the directive of the Examiner, the STA amended its answer to supply additional specificity. The Examiner hereby reaffirms his rulings made at hearing. However, in view of the position taken by the District, even if the facts contained in its complaint were deemed to be true, it would not change the disposition of this case.

On May 20, 1977, the District informed the STA that it agreed to the STA's proposal for the starting day and that it would be presented to the School Board for its approval. The STA, by letter, reiterated that it would "not come to a tentative or permanent agreement as to the employee work calendar prior to final agreement on the entire contract", and objected to its Board adoption in the interim.

On June 1, 1977, the Seattle School Board formally adopted the dates for the first day of school and the Christmas vacation. The STA's unfair labor practice complaint followed, with the District's complaint close behind. Negotiations continued. A mediator was called in. In early August, the matter was submitted for fact finding. On September 5, 1977, the parties reached an overall agreement including a provision relating to student calendar.

Procedural Events After The Hearing Commenced

On the second day of hearing, after the STA had rested its case and the District was in the middle of presenting its case, the STA announced that it wished to withdraw its complaint. The STA explained that it was taking that action because it became apparent that the District was attempting to defend itself by proving that the calendar was a permissive subject of bargaining, a matter that the STA was not prepared to litigate. The District objected to the withdrawal and asserted, that in any event, it should be permitted to litigate the issue of whether calendar was a permissive subject of bargaining. The hearing was continued in order to permit both parties to file appropriate motions and briefs.

On March 8, 1979, the STA filed a motion with PERC's Executive Director requesting that it be permitted to withdraw its complaint pursuant to WAC 391-30-508. On March 23, 1979, the District filed a motion to amend its complaint to add the following assertions:

4.F. In the above-cited period and through September, 1977, the STA maintained its position that there would be no bargaining agreement without District concession on the bargaining status and content of the student calendar, whereby the STA conditioned bargaining of mandatory subjects upon bargaining of a permissive subject, including beyond a legal impasse, all in violation of RCW 41.59.140(2)(a)(i) and (c).

4.K. Note: It is the District's position that the first student day and Winter Recess for a school year--as components of the student calendar--are permissive (or non-mandatory) subjects for bargaining. Accordingly, the District's unfair labor practice allegations are in the alternative insofar as the bargaining status of the student calendar is concerned.

The STA then indicated that it wished to withdraw its motion to withdraw in the event that the District's motion to amend was granted.

The Executive Director issued his decision on April 20, 1979, Decision No. 629, (EDUC, 1979). In that decision, he reconsidered his prior decision to issue a complaint regarding the District's allegations that the STA was insisting to impasse on an illegal subject, i.e., the right to strike, and that the STA was unlawfully violating its duty of fair representation. Pursuant to WAC 391-30-510, those allegations were stricken for failing to state a claim for relief. The Executive Director further held that the District's original complaint alleged insufficient facts to support an allegation that the STA had insisted to impasse on a permissive subject of bargaining.

The District's motion to amend both the nature of the complaint and the time period to be considered was denied by the Executive Director on the basis of the doctrine of laches. He explained that the District was time barred from amending its complaint since more than 17 months had passed from the settlement of the contract negotiations resulting in the complaint, until the District amended its complaint, and since the school year involved has long since passed.

On May 10, 1979, the District petitioned for a declaratory ruling from PERC regarding the issue of whether the student calendar was a permissive subject for bargaining. On August 17, 1979, PERC issued its decision on the District's request for a Declaratory Ruling and on its appeal from the Executive Director's decision. Decision Nos. 629-A and 698 (EDUC 1979). PERC held that it would not resolve scope of bargaining questions in the context of declaratory rulings. It affirmed the Executive Director's denial of the motion to amend, granted the STA's motion to withdraw its complaint, and dismissed that complaint with prejudice. The case was then remanded to the Examiner to resume the hearing and dispose of the remaining allegations.

When the hearing resumed on January 18, 1980, the District asserted that it should be permitted to prove whether the subject of the student calendar is a mandatory or a permissive subject for bargaining. It was ruled that, based on the decisions of the Executive Director and PERC, testimony on the subject would not be received, and the hearing would proceed on the presumption that the subject was a mandatory subject of bargaining since that was admitted by the STA. The District again moved to amend its complaint to permit it to argue the scope question, and also to extend the time period which its complaint covered through August 12, 1977.

The Examiner again denied the former request, but without objection ruled that he would consider the course of events through August 12, 1977.

Positions of the District

The District argues that the STA unlawfully refused to bargain by insisting to impasse on a permissive subject of bargaining, namely, the student calendar. Alternatively, on the theory that student calendar is a mandatory subject of bargaining, the District asserts that the STA unlawfully refused to bargain by preconditioning bargaining on the student calendar on resolution of all other issues, by abandoning its own proposal on the student calendar after the District agreed to it, and by not bargaining to reach agreement, but rather to frustrate agreement. In its brief, the District indicates that it desires to withdraw its mandatory subject theories unless "(a) the status of student calendar is first decided herein, and (b) the student calendar thereby is found to be a mandatory subject".^{2/} It argues that in order to decide this case, under any of the District's theories, PERC must initially decide whether the student calendar is a mandatory or a permissive subject for bargaining, and that the actions of the parties cannot usurp this responsibility. It points out that the effect of PERC's decision on the procedural appeal was not to foreclose the District's permissive subject theories, but rather to condition further prosecution of those theories upon the establishment of a factual foundation. The status of the student calendar should be decided because of a change in circumstances, which is the availability of the transcribed record which reflects the substantial record made on the nature of the student calendar, and also the agreement of the STA Counsel and the Examiner to extend the time period covered by the complaint.

Position of the STA

The STA contends that the only issue for resolution is whether the STA refused to bargain a mandatory subject of bargaining, and that the subject of whether or not the subject is a mandatory subject of bargaining was not in issue since it had already been determined to be mandatory by PERC. The STA argues that it lawfully merely refused to finalize the agreement on student calendar prior to the execution of the entire agreement.

^{2/} Complainants post-hearing brief, p. 32.

Discussion

PERC has already decided in terse language to affirm the decision of the Executive Director to refuse to permit the District to amend its complaint in order to assert that student calendar is a permissive subject for bargaining and that the STA unlawfully insisted to impasse on a permissive proposal. PERC held:

The Executive Director was correct in denying the District's motion to amend and to broaden the issues seventeen (17) months after the events, and after the STA had rested its case and while the District was presenting its evidence. In making this determination, we do not foreclose the procedure of a motion to amend a complaint to conform to the proof, when made at an appropriate time and under appropriate circumstances.

The Executive Director had found that the original complaint could not be the basis for an allegation of insisting to impasse on a permissive subject for bargaining. He said:

The complainant is barred from amending its complaint at this late date to alter both the nature of its complaint and the period of time to be considered. The employer has failed to do in a timely fashion what it ought to have done to protect or assert its rights.

Similarly, at the conclusion of the hearing, the District moved to amend its complaint "so that there is no doubt about the District's position that the student calendar is a permissive subject of bargaining." That motion was denied (TR. p. 286-287). That ruling is hereby reaffirmed on the basis of, and for the reasons set forth in, the decisions of the Executive Director and PERC.

Neither the availability of the transcribed record, nor this Examiner's ruling (without objection) to extend the time frame under consideration adds new dimension to the matter. Before PERC made its decision to deny the motion to amend, the District had the opportunity to, and in fact did, bring to the attention of PERC the extent of the record already made.

While at the conclusion of the hearing I indicated that I would consider the course of events through August 12, 1977, I denied the District's motion to amend its complaint to permit it to argue the mandatory or permissive status of the student calendar. Further, at the portion of the hearing which was held after PERC's ruling on the motion to amend, the District was not permitted to enter into the record additional testimony to support its contention that student calendar is a permissive subject for bargaining. As I explained at the hearing, it would be inappropriate for me to reverse PERC's ruling. At the

conclusion of the hearing, the parties fully understood that there would be no decision made on the bargaining status of the student calendar.

The District's complaint is based on the premise that the student calendar is a mandatory subject for bargaining. The STA concedes that it is a mandatory subject, and a previous decision by a PERC examiner has so held. Edmonds School District, Decision No. 207 (EDUC 1977). Under the circumstances, for the purposes of this case, I would presume that calendar is a mandatory subject for bargaining. With regard to allegation that the STA refused to bargain regarding a mandatory subject for bargaining, namely calendar, the district attempts to prove that it is not a mandatory subject for bargaining. The District is in no position to argue this since it is inconsistent with the theory of its own case. In effect, it is seeking a declaratory ruling. PERC has indicated that it will not make a declaratory ruling regarding whether a bargaining subject is mandatory or permissive.

The District's request to withdraw its complaint if the status of the student calendar is not first decided, is granted.

FINDINGS OF FACT

1. Seattle School District No. 1 is an employer within the meaning of RCW 41.59.020(5).
2. Seattle Teachers Association is an employee organization within the meaning of RCW 41.59.020(1).
3. On June 23, 1977, Seattle School District No. 1 filed a complaint of unfair labor practices with the Public Employment Relations Commission, alleging that the Seattle Teachers Association engaged in bad faith, surface bargaining and refused to embrace its own proposals or bargain on the mandatory subject of the student calendar. The Executive Director of PERC dismissed other allegations of the District.
4. The Seattle Teachers Association has admitted that the subject of student calendar is a mandatory subject for bargaining.
5. During the hearing on this matter, the District moved to amend its complaint to include the allegation that the STA insisted to impasse upon a permissive subject for bargaining, namely, the student calendar. The matter was referred by the Examiner to the Executive Director for decision. The Executive Director denied the motion to amend the complaint and held that the existing complaint would not support a permissive subject for bargaining allegation. On appeal, the Public Employment Relations Commission affirmed.

6. Upon remand, while the Examiner indicated to the parties that he would consider the course of events through August 12, 1977, rather than through June 23, 1977, he also ruled that no additional testimony would be allowed in the record to prove that student calendar is a permissive subject for bargaining. He also denied another motion by the District "to amend so that there is no doubt about the District's position that the student calendar is a permissive subject of bargaining."

7. In its post-hearing brief, the District requested that it be permitted to withdraw its allegations which are based on the premise that student calendar is a mandatory subject of bargaining, if the status of student calendar is not first adjudicated.

CONCLUSIONS OF LAW


1. The Public Employment Relations Commission has jurisdiction over this matter pursuant to Chapter 41.56 RCW.
2. Whether the subject of student calendar is a mandatory or a permissive subject for bargaining is not at issue before this tribunal.
3. The District's request to withdraw its complaint is granted.

ORDER

The complaint charging unfair labor practices is hereby dismissed.

DATED at Olympia, Washington this 5th day of December, 1980.

PUBLIC EMPLOYMENT RELATIONS COMMISSION


ALAN R. KREBS, Examiner