

HISTORICAL NOTE

BOISTFORT SCHOOL DISTRICT
and
BOISTFORT EDUCATION ASSOCIATION

DECISION 536-H (EDUC)

NPER 74.37 UNFAIR PRACTICE REMEDIES--TYPES OF ORDERS--INTERIM RELIEF

Following is an excerpt from the minutes of the Commission meeting held on June 10, 1977:

"This matter involves a charge of unfair labor practices filed by the Boistfort Education Association against the Boistfort School District and a request that the commission seek immediate injunctive relief.

"The Boistfort Education Association was represented by Judith Lonquist, general counsel for the Washington Education Association and the Boistfort School District was represented by William Coates of the firm of Kane, Vandeberg, and Hartinger.

"Chairman Krug stated that, in effect, the Commission was being asked to request the Superior Court to issue an injunction pendente lite. The chairman further stated that in order for the commission to determine whether an injunction should be sought, it would have to have evidence that one or more of the allegations is of such nature that if sustained the complaining party would have no fair or adequate remedy and that the complaining party would suffer irreparable harm. No showing has been tendered to the Commission on which it could make such an application. Accordingly counsel for the parties had been asked to appear to review the specific charges and advise the Commission as to which items the complaining parties think it would not have a fair, speedy and adequate remedy at law if the case proceeds without injunctive relief. The Chairman asked counsel for the complainant how much time would be required to furnish the necessary affidavits to the Commission.

"At this point counsel for the school district, Mr. Coates, sought recognition and protested he had not received adequate notice of the meeting, having been notified by a telephone call the morning of the meeting. Chairman Krug stated she felt the point was moot as counsel for the complainant had also received a call that morning and the meeting was merely for the purpose of exploring the injunction question and not a formal hearing on the merits of the case.

"Mr. Coates made the statement that in his opinion the Commission did not

have the authority to seek an injunction, that if the commission was going to have this procedure, it should adopt rules, and that if the complainants are going to make a showing of evidence, the Commission should hear the other side. Chairman Krug replied that she couldn't agree more and he would have that opportunity when application was made to the Superior Court for an injunction. In the meantime the complaining party has a right to indicate the basis for the request for equitable relief. The respondent will have every opportunity to respond in the Court.

"There was further discussion between Ms. Lonquist and the commission as to which items contained in the complaint were necessary of immediate relief. Ms. Lonquist reviewed some of the difficulties encountered in the district. Since the filing of the original complaint, more than 50% of the staff had received notice of non-renewal. She stated she was filing an amended complaint covering this and other items as soon as possible.

"The Commission discussed the procedure to be followed in furnishing the affidavits in support of the request for injunctive relief. Ms. Lonquist again stressed the need for keeping the affidavits confidential. Mr. Coates again questioned the statutory authority of the Commission to proceed on the question and again mentioned the lack of rules.

"At this point the meeting was recessed to allow the commission to discuss the matter with Assistant Attorney General Dick.

"The meeting was reconvened and at the request of the Chairman, Mr. Dick made the following statement:

As I understand the question before the Commission, the Commission wishes to know if there is a prima facie case which the commission, having the statutory authority to do so, could take to Superior Court seeking injunctive relief as petitioned for by the employees in this case. It is my belief and informal opinion that the making of that decision does not constitute a contested case under Chapter 34.04 RCW. It therefore becomes incumbent upon the Commission to decide how the commission wishes to get that information upon which to base its decision. The information would be only the most pertinent facts upon which to made that determination, i.e., does the Commission have a prima facie case.

It is also my belief and understanding of the law that since it is not an APA contested case, on that issue at this time, it would not be necessary or required of the Commission to either make that decision in public or share the information it used to make the decision.

"The Chairman requested a copy of Mr. Dick's remarks be furnished to the

parties.

"The motion was made that Mr. Dick's statement be the ruling of the commission. The motion was seconded and approved.

"Chairman Krug asked Ms. Lonquist how much time she would require to make a showing of need on the amended complaint in the form of affidavits which would be before the Commission only to enable it to decide whether or not to grant the request that it seek an injunction pendente lite. Ms. Lonquist replied she expected to have the affidavits in ten days. The Chairman stated the commission would expect to have the amended complaint and supporting affidavits filed by June 21st. The Chairman further stated the Commission would welcome and carefully study any and all briefs submitted to it on the Commission's statutory authority and the correct procedure it should be following. This includes any amicus curiae briefs also."

Following is an excerpt from the minutes of the commission meeting held on September 9, 1977:

"Each of the Commissioners questioned Ms. Lonquist with respect to the circumstances surrounding the case. At the conclusion of the discussion the chairman asked for a motion requesting the attorney general to seek equitable relief in the superior court. Commissioners Beck and Roberts declined to make such a motion. The chairman stated that, in the absence of a motion, the application is denied."

By: Mary Ellen Krug, Chairman
Michael H. Beck, Commissioner
Paul A. Roberts, Commissioner
September 9, 1977

Case 825-U-77-95

MDT