STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

BETHEL EDUCATION ASSOCIATION, Complainant, vs. BETHEL SCHOOL DISTRICT NO. 403, Respondent.	CASE NO. 857-U-77-103 DECISION NO. 332-EDUC ORDER OF DISMISSAL

This matter is before the Executive Director under WAC 391-30-510. The complaint was filed on March 31, 1977. The relevant portion of the Complaint states:

> "On or about the 1st of March, 1977, the above-named employer through its superintendent, agents and representatives interfered with, restrained and coerced employees in the exercise of the rights guaranteed in RCW 41.59.060 and discouraged membership in an employee organization in violation of RCW 41.59.140(c), inter alia, by: making false and disparaging statements to employees concerning the Bethel Education Association and its affiliates and the employee benefit program sponsored by the education association, with the purpose of impairing the bargaining process and undermining the status of the education association with its members, with other educational employees in the district, and in the community at large."

The citation of the provision alleged to have been violated is incorrect, as there is no RCW 41.59.140(c). The language used in the text of the charge and the nature of the subject matter would indicate that the Complainant probably intended to cite RCW 41.59.140(1)(c) or RCW 41.59.-140(3). Those provisions are:

> "RCW 41.59.140 UNFAIR LABOR PRACTICES FOR EMPLOYER, EMPLOYEE ORGANIZATION, ENUMERATED. (1) It shall be an unfair labor practice for an employer:
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> . . . .
>
> (c) To encourage or discharge membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or condition of employment, but nothing contained in this subjection shall prevent an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 41.59.100.
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> . . . .

> "(3) The expressing of any views, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this chapter, if such expression contains no threat of reprisal or force or promise of benefit."

RCW 41.59.140(3) is patterned after Section 8(c) of the federal Labor-Management Relations Act of 1947. Section 8(c) was added to the National Labor Relations Act by Congress to overrule a series of cases in which the National Labor Relations Board had exercised control over "free speech". Subsequent to the passage of the 1947 amendments to the federal law, a two-level test emerged. In the context of a representation campaign, where the NLRB seeks to "maintain laboratory conditions" for the exercise of employee free choice, the NLRB has long been reluctant to undertake censorship of election propaganda, but did set aside elections under the following test:

> "(A)n election should be set aside only where there has been a misrepresentation or other similar campaign trickery, which involves a substantial departure from the truth, at a time which prevents the other party or parties from making an effective reply, so that the misrepresentation, whether deliberate or not, may reasonably be expected to have a significant impact on the election." Hollywood Ceramics, 140 NLRB 221 at 224.

Even Hollywood Ceramics has now been overruled in Shopping Kart Food Market Inc., 228 NLRB No. 190, and the Board no longer probes into the truth or falsity of campaign statements. In this case, there is no allegation that the statements complained of were made in the context of a representation campaign, and a search of the records of the agency discloses no representation case involving these parties during the period or subsequent to the date indicated in the complaint. Outside of the context of a representation case, the free speech provision of RCW 41.59.140(3) sets the outer limit of what an employer may do and say. There is no allegation of any threat of reprisal or force made to employees, nor is there any allegation of any promise of benefit made to employees by or as a part of the statements complained of. Defamation, libel and slander, as such, are not regulated by RCW 41.59.

The operative words in RCW 41.59.140(1)(c) are "by discrimination in regard to hire, tenure of employment or any term or condition of employment". There is no allegation of any action taken against any employee which could be characterised as unlawful discrimination.

For the reasons set forth above, it is the determination of the Executive Director that the facts as alleged do not, as a matter of law, constitute an unfair labor practice within the meaning of RCW 41.59.140.

NOW, THEREFORE, it is

ORDERED

The complaint filed in the above entitled matter is dismissed.

DATED at Olympia, Washington this 22nd day of December, 1977

PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director