

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

HARRIETT CLARK,)	
)	
Complainant,)	CASE NO. 1937-U-79-259
)	
vs)	DECISION NO. 1062 EDUC
)	
WARDEN SCHOOL DISTRICT NO. 146-161,)	
)	
Respondent,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
)	AND ORDER

Symone Scales, Attorney, Washington Education Association, appeared on behalf of the Complainant.

Reis & Kenison by Jerry J. Moberg, Attorney, appeared on behalf of the Respondent.

On January 19, 1979, a complaint was filed with the Public Employment Relations Commission on behalf of the complainant, Harriett Clark, alleging that the respondent, Warden School District No. 146-161, has discriminated against her because of her protected union activities. The matter was heard April 12, April 13, and May 4, 1979 in Warden, Washington, before Examiner George G. Miller. The final post hearing reply briefs were filed on September 13, 1979 (complainant) and September 17, 1979 (respondent).

BASIS FOR THE COMPLAINT

The complainant alleges:

Since the spring of 1978, the above-named employer by its superintendent, administrators, agents and representatives, has engaged in a course of conduct to discriminate and retaliate against bargaining unit member Harriett Clark because of her activities in, and support for the Warden Education Association. In particular, after Clark was taking a leadership role in the filing of a grievance against certain principals (Weaver and Zirker) alleging that they had failed to evaluate employees as required by the collective bargaining agreement, Clark was for the first time in her employment by the school district given extra duties and subjected to other terms and conditions in addition to her normal duties as librarian. Although Clark produced medical evidence that she was unable to perform some of these duties, the employer continues to harass and impose difficult employment tasks upon this employee because of her continued pursuit of the aforesaid grievance.

Because of the reprisal taken against her on November 7, 1978, Clark filed an additional grievance which has now reached finality with an incomplete decision by the school board. The employer and Warden Education Association have not provided for binding arbitration in the contract.

On or about December 1, 1978, Principal Weaver gave Clark an unsatisfactory evaluation because she had filed a grievance on November 7. To date the employer continues to harass and attempt to intimidate employee Clark and otherwise to make her working conditions intolerable because of her activities pursuing the statutory and collective bargaining rights of herself and other bargaining unit members.

Relief Sought

To cease and desist from the aforesaid unfair labor practices and affirmatively to rescind the aforesaid evaluation; to remove all derogatory material from Harriett Clark's personnel file; to instruct Principal Weaver to prepare a written apology to Clark and to post appropriate notices.

BACKGROUND

The complainant, Harriett Clark, was hired by Warden School District No. 146-161 in 1970 as Library Supervisor and was placed in charge of all the libraries for the K thru 12 students operated by the District. She was permitted to schedule her own work place and work content. During her tenure as Library Supervisor, a new library (middle school) was added to the existing elementary and high school facilities.

Clark is physically handicapped (fused hip) due to a childhood illness. Prior to the 78/79 school year, the District apparently took note of her handicap and did not require her to act as chaperon for student activities, perform bus duty or perform duty on either of the playgrounds.

Clark is a member of the Warden Education Association and has held the position of President and of Chief Negotiator. On or about April 20, 1978, at an Association meeting, a motion was made by Clark to file a grievance concerning the District's failure to evaluate teachers in accordance with Section K of the the collective bargaining agreement between the Warden Education Association and Warden School District No. 146-161. The motion passed and the grievance was filed. Shortly thereafter, Clark was evaluated by both the Elementary School Principal, Walter Weaver, and the Principal of the High School and Middle School, Ken Zirker. Clark, feeling that there were significant irregularities in the evaluation process performed, filed a grievance on May 8, 1978. After receiving no response to the grievance, she filed a second grievance on or about May 15, 1978. As a result of the second grievance,

the District Superintendent, Ray Sheahan, replied on May 30, 1978 on the Grievance Form "B" under "Administrative Decision and Proposed Settlement":

To make one correction, Mr. Weaver was not the administrative appointed evaluator; none was appointed.

Mr. Weaver's evaluation was on the proper form and the first received. I will discard Mr. Zirker's evaluation.

Mr. Zirker will discuss all important library matters with the librarian."

Clark accepted this decision on May 31, 1978.

On the last day of school (June 5, 1978) Clark was approached by Weaver who shook his finger angrily at her and told her that things would be different next year.

When school reopened on August 28, 1978, Clark was given two job descriptions. In prior years, she had determined her duties, informed both Weaver and Zirker of same and received their concurrence. The new job descriptions substantially altered her responsibilities, to wit:

1. The description given to her by Zirker included providing assistance with student activities, a duty she had not been asked to perform previously because of her physical disability.
2. A teaching schedule was included in addition to library duties, although she had previously taught only on an "as needed" basis.
3. She was scheduled to remain at one school on certain days, an area that had been previously left to her discretion.
4. In the elementary school job description prepared by Weaver, her story-telling time was scheduled and directed to be held in a classroom rather than in the library as previously done.

Clark was placed on the playground duty roster in September 1978, something else she had never before been required to do. She performed bus duty on September 6 and playground duty on September 13. Subsequently, she obtained a statement from her physician and requested to be relieved from playground and bus duty because of her physical condition.

In October, 1978, Clark was told by Zirker that she had been assigned to chaperone an after school activity. She explained that the assignment would be physically difficult; however, Zirker insisted that she comply. She did not report for chaperon duty. As a result, she received a letter

from Sheahan telling her that her failure to fulfill the chaperon assignment was not in consonance with WAC 180-44-010, para. 4 and that a copy of the letter would be placed in her personnel file. .

On November 1, 1978, Weaver notified Clark as to how library aides would be used (a determination previously made by her).

On November 7, 1978, Clark filed a grievance complaining of acts of harrassment by the administration.

Clark was notified on November 22, 1978 by Sheahan, in writing, that the statement she received from her physician on September 20, 1978 was not of sufficient detail to enable the District to make a decision whether she should be excused from playground and recess assignments and requested a complete evaluation from a medical doctor to justify her release from playground and recess duties.

On December 5, 1978, Clark received her evaluation from Weaver. This evaluation included references to the grievance filed on November 7, and indicated unsatisfactory performance in several areas.

Zirker's evaluation of Clark was received by her on December 12, 1978. His evaluation also indicated some areas of performance deficiency.

On January 18, 1979, Clark requested sick leave. In a telephone conversation with Sheahan on February 6, 1979, she indicated that she did not plan on returning the remainder of the school year and that she contemplated surgery during the summer.

PERTINENT STATUTES

41.59.060 Employee rights enumerated--Fees and dues, deduction from pay. (1) Employees shall have the right to self-organization, to form, join, or assist employee organization, to bargain collectively through representatives of their own choosing, and shall also have the right to refrain from any or all of such activities except to the extent that employees may be required to pay a fee to any employee organization under an agency shop agreement authorized in this chapter.

(2) * * *

41.59.140 Unfair labor practices for employer, employee organization, enumerated. (1) It shall be an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060;

(b) * * *

(c) To encourage or discourage 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 subsection 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;

POSITION OF THE PARTIES

The complainant alleges that in addition to multiple contract violations, there is a pattern of consistent harassment and reprisals because of her Association activity.

The respondent contends it is not guilty of violating the statutes and has not committed an unfair labor practice and that Harriett Clark's complaint should be dismissed.

DISCUSSION

Except for an unrelated incident in 1972, it appears that Clark's employment relationship with the District was relatively normal until about the end of April, 1978. From there forward, her employment relationship started to change. What triggered this change? Was it, in fact, the filing of Clark's grievances charging the District with failure to evaluate the teachers as provided for in the collective bargaining agreement?

Principal Zirker's observation worksheet issued on May 4, 1978 indicated that "Mrs. Clark is very knowledgeable as a librarian and does an excellent job there. Many items on this evaluation do not apply to the support staff".^{1/} The narrative continues--"Several things have happened this year that hurt the rapport between student-teacher and librarian...." This evaluation was subsequently discarded by Superintendent Sheahan after Clark filed two grievances protesting the irregularities. Shortly thereafter came the finger shaking incident--Weaver advising Clark that things will be different next year (school year 78/79).

In apparent fulfillment of Weaver's threat, Clark's situation saw a number of changes at the outset of the next school year. The two job descriptions given Clark represented a change in and of themselves.

One contains sixteen (16) items headed "Responsibility", of which item number 13 reads "Assist with student activities (taking tickets at games, chaperon, etc.) when needed". As a result of Item number 13, Clark was assigned tasks she had not previously performed during her tenure of some eight (8) years!!! Did someone forget that she was physically

^{1/} And rightly so--Zirker was using the wrong form.

handicapped? Why was she assigned recess duty alone? Other teachers were assigned in pairs, one to cover the upper playground, one to cover the lower playground. Subsequent to performing playground duty on September 6, 1978, Clark asked for and received a communication, dated September 20, 1978, from her physician recommending that she be excused from patrol duty such as playground, lunch, hall and bus duty.

The job description as pertains to the elementary school required that Clark "teach" story-telling at least once per quarter (per class) in regular classrooms and not in the library. Item number 8, which advises:

"Observations will be made and two forms will be used this year. The observation worksheet for certificated classroom personnel will be used when you teach. The observation worksheet for support personnel will be used when you do not teach. The Final Evaluation will include information from both observation worksheets.",

is almost directly responsive to her successful grievance. Her conditions of employment were thus changed, not only by putting her into the classroom as a teacher on a recurring basis, but also by putting her on notice that she was to be evaluated both as a teacher and as a librarian.

Next, Clark was scheduled to chaperon some high school students. Well in advance of the evening activity, she sent a note to Zirker stating she would rather not perform the assigned task and alluded to the physical limitations placed on her by her handicap. On the same day, Zirker answered Clark's note advising her that she should perform the task as assigned. On October 23, 1978, Clark advised Zirker, in writing, of her reasons for declining the assignment. The communication indicates that a carbon copy was furnished Superintendent Sheahan. Clark did not perform the chaperon task on October 24, 1978. Sheahan sent Clark a reprimand letter on November 1, 1978 in which he advised her that:

"We are very disappointed that you did not fulfill your obligation of participating in the supervision of the evening activity of constructing the homecoming float as was requested by your Principal.

We feel that this is not an unreasonable request as long as all certified personnel in the high school were participating in the festivities and you were asked only to supervise and not requested to any physical labor.

'Teachers are required to make daily preparation for their duties, preparation to include attendance at teacher's meetings and such other professional work contributing to efficient school service as may be required by the Principal, Superintendent, or Board of Directors.' For your information, we are referring to WAC 180-44-010, paragraph 4.

We feel that this should be brought to your attention and a copy of this letter will be placed in your personnel file in the Administration Office."

This letter was addressed to Clark at her home address, signed by Superintendent Sheahan, and indicates that a carbon copy of the letter was furnished to High School Principal Zirker, to Grade School Principal Weaver, and to the Board of Directors of Warden School District. Since the incident here under scrutiny involved only the high school, one cannot help but wonder why a copy of Sheahan's letter was furnished to the Principal of the grade school.

On November 1, 1978, Clark acknowledged receipt of Sheahan's letter, and indicated to him that she desired to attend all teachers meetings in all three schools and had done so for eight years and that she was surprised to find that her current schedules, on which she had had no input, did not include faculty meetings. Clark's letter shows a copy to Zirker, Weaver and the Board of Directors.

In the memo to Clark dated November 1, 1978, Weaver informed Clark that she should be at her assigned school when an aide is absent, that the library aides should rotate rather than her, and that staff meetings were on the first and third Mondays of each month. The same letter appeared to accept the physician's statement on Clark's physical limitations which had been submitted September 21, 1978, as he notified Clark that an aide would assume the recess and bus duty tasks which Clark had ceased performing early in September. Clark was asked if she planned to attend the meetings. Both Zirker and Sheahan are shown as receiving a copy of the memo.

In reply to Weaver's memo of November 1, 1978, Clark sent the following to him on November 2, 1978:

"In reply to your letter of November 1, 1978:

It is obvious to me that both you and Ken Zirker are attempting to disrupt and possibly destroy the library program which has been running smoothly for eight years. You are doing it by:

1. Loading myself with as many extra duties and chores as you can think of.
2. Restricting myself so that I am not able to be wherever I am needed most.

You have been angry ever since I initiated the grievance which Warden Education Association filed against you because you did not follow statutory requirements for evaluating teachers.

Now, according to your letter, you are involving yourself in the direct operation of the library by rotating the personnel. I must strongly object because my professional judgement and knowledge

should be involved in such a decision. Naturally, I am responsible and accountable for everything which involves the three libraries of our district, so I must insist upon being involved in the decision-making.

Item #2 is just one more attempt on your part to disrupt and cause difficulty for the library. By unfairly loading the library aide with extra playground and bus duty you are taking her away from her necessary work in the library and adding to her personal stress by being unfair to her.

/s/ Harriett A. Clark

cc: Ken Zirker, High School Principal
Ray Sheahan, Superintendent
Ken Landis, Uniserv Director"

On November 7, 1978, Clark filed a grievance encompassing the events that had occurred since the filing of the grievance regarding teacher evaluations in mid-April 1978. Neither Step 2 (Superintendent's level) nor Step 3 (Board of Directors level) provided Clark with the sought for relief. Step 3 is the final step in the contractual grievance procedure.

Superintendent Sheahan sent the following letter to Clark on November 22, 1978:

"Dear Harriett,

In reply to your note from Dr. Kvamme dated September 20, 1978. We feel this note is not sufficient to make a decision whether you should be excused from playground and recess duty.

We need a complete evaluation from a medical Doctor to justify your release from above responsibilities.

Sincerely,

/c/ Ray Sheahan, Secretary of Board"

Clark replied on November 24, 1978, thusly:

"Ray Sheahan, Secretary of Board
Warden School District

Dear Ray,

I am surprised at your letter of November 22, 1978. If you will remember, on September 21 when I gave you Dr. Kvamme's letter, we discussed my physical condition and you were sympathetic. You said you would tell Walt and there would be no problem releasing me from patrol duties. Shortly thereafter, Mr. Weaver told his secretary to remove my name from the duty rosters. Then on November 1, Walt assigned Lupe Resendez to take my place on recess and bus duty. (See his letter to Harriett Clark dated November 1, 1978)

Now, two months later, after I have filed a grievance with you on November 7 protesting harassment, you reverse yourself.

I believe that Dr. Kvamme's evaluation and decision regarding my physical handicap is sufficient.

Sincerely,

/s/ Harriett"

Both Zirker and Weaver executed observation worksheets on Clark in early December, 1978. Both evaluations were considerably lower than the evaluations issued in May, 1978. Zirker found Clark deficient in: (1) Assisting teachers and administrators integrate specialized information into regular curricular program; (2) Commitment to school and professional activities; (3) Commitment to career-long professional growth; (4) Consultation with all persons involved to determine services to be given and (5) Planning and developing support programs in specialized areas.

Weaver downgraded Clark specifically because of her filing of the November, 1978 grievance and found Clark unsatisfactory in: (1) Responsiveness to supervision and constructive criticism; (2) Endeavors to implement constructive suggestions for improvement; and (3) Interest in teaching pupils.

Clark applied for and was granted sick leave on January 18, 1979. On February 6, 1979, Sheahan wrote to Clark:

"In review of our telephone conversation on February 6, 1979 you indicated that you did not plan on returning to your job at Warden the remainder of this school year, and that you contemplated surgery during this coming summer.

We feel in lite (sic) of the above it is necessary for your Doctor to submit a letter to us within ten (10) days stating the medical reasons why you are incapacitated and unable to return to your contracted position."

Clark replied on February 20, 1979:

"In reply to your letter of February 6, 1979, and as I told you in our telephone conversation on February 8, my plans are not certain at this time. I am scheduled to meet with Dr. Dunlap at the Deaconess Medical Center in Spokane on March 20th. It is my fervent wish that Dr. Dunlap will be able to find a way to alleviate the pain I experience in my legs, pelvis and lower back when I am working. I am sorry I have no time-table concerning my condition which would be helpful to you.

Enclosed, please find a copy of the X-ray report of the pelvis examination I had on January 18, 1979."

From the foregoing course of conduct, and particularly based on the evidence of direct threats and the evidence of inconsistencies on the part of the employer in the handling of Clark's physical problems, the

Examiner concludes that the employer has engaged in a course of harassment conduct in reprisal for the activities of Clark in and on behalf of WEA and has committed interferences violations under RCW 41.59.140 (1) (a). The Examiner is unable to conclude, however, that Clark was constructively discharged. The evidence does not establish any direct connection between Clark's physical condition and her work environment, nor even any extent by which Clark's pre-existing physical problems might have been worsened by the harassment which she suffered at the hands of the employer. The situation might have been different had the employer persisted in its assignments of Clark to duties beyond her physical limitations; but the evidence clearly establishes that Clark declined such assignments after her initial experience with playground and bus duty in September. The medical reports submitted in support of her sick leave request after January, 1979 tend to establish that her departure from active employment was attributable to her physical condition rather than the proven harassment by the employer or any overt discharge action by the employer.

Reinstatement and back pay are not available as remedies in this case; but the employer will be ordered to post appropriate notices and to purge Clark's personnel file of all references to the tainted transactions.

FINDINGS OF FACT

1. Warden School District No. 146-161 is a school district created under title 28A RCW, and is an employer within the meaning of RCW 41.59.020. Mr. Ray Sheahan is Superintendent of Schools, Mr. Kenneth E. Zirker is Principal of Warden High and Warden Middle School, and Walter M. Weaver is Principal of Jeanette Evans Elementary School.
2. Warden Education Association is an employee organization within the meaning of RCW 41.59.020(1) and is an exclusive bargaining representative of all certificated non-supervisory employees of the district.
3. Mrs. Harriett Clark, the complainant, held the position of District Librarian, Warden School District No. 146-161, from 1970 to approximately January 18, 1979.
4. The complainant has from the outset of her employment been physically handicapped.
5. The complainant has represented the Warden Education Association both as President and Chief Negotiator during her tenure with Warden School District No. 146-161. She initiated and posted grievances complaining about evaluations that resulted in the employer agreeing to the validity of her position.

6. On or about June 5, 1978 (the last day of school year 1977/78) the complainant was threatened by Walter Weaver, elementary school principal, who shook his finger at her and said angrily "things will be different next year." At the onset of the 1978/79 school year, the employer changed the accommodations theretofore granted the complainant in recognition of her physical handicap and during the period of September thru November demonstrated inconsistencies in its recognition of the complainant's handicap. For the first time, the complainant was assigned to student activities such as bus and playground activities and after duty hours chaperone functions. She was issued two job descriptions that substantially altered her librarian responsibilities and was assigned to a regular classroom teaching schedule. The employer, via one of the descriptions, advised her that she would be evaluated both as a certificated classroom teacher and as a certificated support person.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.
2. The Superintendent and Principals are agents of Warden School District No. 146-161.
3. By threats and by actions taken to alter the complainant's conditions of employment, Warden School District No. 146-161 has interfered with and discriminated against the complainant in violation of RCW 41.59.140(1)(a) and (c).

On the basis of the foregoing Findings of Fact and Conclusions of Law, the Examiner makes the following:

ORDER

It is ordered that Warden School District No. 146-161, its Board of directors, Officers and Agents shall immediately:

1. Cease and desist from:
 - (a) interfering with the exercise of the right of employees to form, join and support employee organizations as guaranteed by RCW 41.59.060.
 - (b) Discriminating against employees by changing work assignments, evaluation procedures or other conditions of employment in reprisal for exercise of the rights under RCW 41.59.060.

2. Take the following affirmative action designed to effectuate the policies of the act:

(a) Expunge from the employment records of Harriett Clark any and all references to unsatisfactory performance during school year 1978/79, including, but not limited to Superintendent Sheahan's letter of November 1, 1979 and the observation worksheets completed by Principal Weaver (December 14, 1978) and Preincipal Zirker (on or about December 12, 1978).

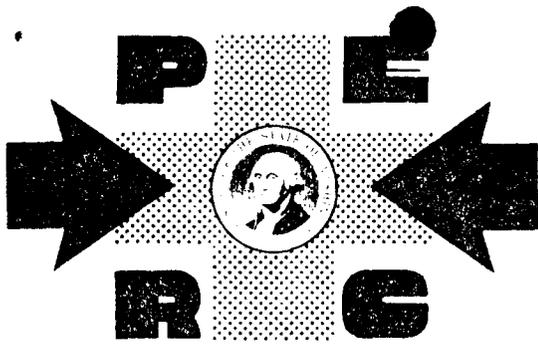
(b) Post, in conspicuous places on the employer's premises where notices to certificated employees are usually posted, copies of the notice "Appendix A". Such notices shall, after being duly signed by an authorized representative of Warden School District No. 146-161, remain posted for sixty (60) days. Reasonable steps shall be taken by Warden School District No. 146-161 to insure that said notices are not removed, altered, defaced or covered by other material.

(c) Notify the Executive Director of the Commission, in writing, within twenty (20) days following the date of this order, as to what steps have been taken to comply herewith, and at the same time provide the Executive Director with a signed copy of the notice posted in accordance with this order.

DATED this 2nd day of January, 1981

PUBLIC EMPLOYMENT RELATIONS COMMISSION


GEORGE G. MILLER, Examiner



PUBLIC EMPLOYMENT RELATIONS COMMISSION

Case No. 1937-U-79-259Date Issued January 2, 1981**NOTICE**

PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF RCW 41.59, WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT interfere with the exercise of the right of employees to form, join and support employee organizations as guaranteed by RCW 41.59.020.

WE WILL NOT discriminate against employees by changing work assignments, evaluation procedures or other conditions of employment in reprisal for exercise of the rights under RCW 41.59.060.

WE WILL expunge from the employment records of Harriett Clark any and all references to unsatisfactory performance during school year 1978/79.

DATED: _____

WARDEN SCHOOL DISTRICT NO. 146-161

By: _____
Superintendent of Schools

By: _____
Principal of High School

By: _____
Principal of Elementary School

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for sixty (60) days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, Olympia, Washington 98504. Telephone: (206) 753-3444.