

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SEATTLE TEACHERS ASSOCIATION,	)	
	)	CASE NO. 5964-U-85-1112
Complainant,	)	
	)	
vs.	)	
	)	DECISION NO. 2524 - EDUC
	)	
SEATTLE SCHOOL DISTRICT,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW
Respondent.	)	AND ORDER
	)	
	)	

Donna Lurie, Associate Executive Director, appeared on behalf of the complainant.

Perkins Coie, by Russell L. Perisho, Attorney at Law, and Brown and Matthews, by Jackie R. Brown, Attorney at Law, appeared on behalf of the respondent.

On September 3, 1985, the Seattle Teachers Association (complainant) filed a complaint charging unfair labor practices against the Seattle School District (respondent), alleging that the school district committed unfair labor practices within the meaning of RCW 41.59.140 (1) (a), (c), and (d) through its actions against a bargaining unit member, Suck-Min Kim. A hearing was conducted on December 5, 1985, and March 25, 1986, in Seattle, Washington. The parties submitted post-hearing briefs.

BACKGROUND

The Seattle School District offers a variety of educational services to local residents. The district is operated under the policy direction of an elected board of directors, and daily operations are supervised by an appointed superintendent of

schools. At all times relevant to the instant unfair labor practice complaint, Robert Nelson served as superintendent. A number of administrative staff members assist the superintendent in the performance of his duties. Of particular importance to this case are certain administrators responsible for secondary education. Dr. Robert Gary served as executive director of secondary education. Douglas Danner served as supervisor of high schools, and Raymond Christophersen served as principal at Ballard High School. Christophersen reported directly to Danner who, in turn, reported to Gary.

Apart from the high school administrators, a member of Superintendent Nelson's office staff was also involved in the series of events leading to the instant dispute. Geraldine Bottomley served as an assistant to the superintendent, as well as the district's "ombudsman". As ombudsman, Bottomley dealt with parent and teaching staff complaints and attempted to find reasonable solutions. The record indicates that Bottomley dealt with a wide variety of issues, but she could only suggest alternatives to a perceived problem, rather than ordering a final resolution.

The school district has a collective bargaining relationship with the Seattle Teachers Association covering several bargaining units, including a unit of non-supervisory certificated employees. Events leading to the instant unfair labor practice arose at Ballard High School, involving Suck-Min Kim, a member of the non-supervisory, certificated bargaining unit.

Kim worked for the district for 14-1/2 years, with approximately 10 years spent as a "language arts" instructor at Ballard High School. In her capacity as a language arts teacher, Kim taught English grammar classes and Japanese. At the beginning of each semester, Kim issued lists of rules for her students. One set of

rules dealt with classroom deportment, and ended with a quotation from the novel Mutiny on the Bounty:

There shall be but one captain on this ship, and his name shall be Captain Bligh, and any man who defies his rule will be hanged by his thumbs from the highest yardarm in the British Navy.

The other set of rules dealt with test-taking and grading. The record indicates that Kim submitted both sets of rules to building administrators before they were distributed to her students.

During the latter part of 1984, Kim encountered several difficulties with students in her classroom. In November, 1984, several members of her senior English class disrupted class, and Kim disciplined them. At approximately the same time, Kim's disciplinary practices were called into question by school officials. Apparently, Kim had used a "fine system" to punish infractions of classroom rules. Under the system, a student was expected to pay a monetary fine or to perform cleaning work around the classroom for violating deportment rules. One of the high school's assistant principals learned of the fines, and reported the situation to Christophersen, who directed Kim to stop the practice immediately.

Problems with the fine system continued into December, 1984. Kim maintained that she had complied with Christophersen's directives and had abandoned the use of fines as a form of discipline. Christophersen testified that he continued to receive reports that Kim was imposing fines.

Apart from the controversy concerning the fines, Kim encountered difficulties with one of her students during a test. The student, who had been involved in the earlier class disruption,

left Kim's classroom during an examination without completing the test. When the student left, he took the examination paper that he had been using, but he only had one half of the test to work from. The student was finally directed to Christophersen's office by an assistant principal, and completed the partial test there. Kim was not aware of the student's whereabouts when he was in the principal's office.

The grading period ended in the latter part of January, 1985. Kim gave the student a failing grade. On February 11, 1985, Christophersen sent Kim a memorandum asking about the status of the student's grade. On February 27, 1985, Christophersen met with the student's parents to discuss the disputed grade. As a result of the meeting, Christophersen decided to administratively withdraw the student from Kim's class and to change the grade to "pass". The lack of a letter grade would not affect the student's overall grade point average, but would count toward the total number of credits that were needed for graduation.

On February 28, 1985, Christophersen met with Kim to explain his decision to change her grade. The meeting started in Christophersen's office, with Christophersen informing Kim of his action. Kim took strong exception to the grade change, and continued to argue the point after Christophersen wanted to end the meeting. The record indicates that Christophersen left his office, with Kim following him into the school's business office and speaking loudly about the grade situation. While Kim and Christophersen were in the business office area, Kim told Christophersen that she would give him her gradebook and he could assign grades to all members of her class.

On March 1, 1985, Christophersen issued a memorandum warning Kim that her conduct in the business office was "inappropriate and unprofessional". On March 12, 1985, Kim, through the Seattle

Teachers' Association filed a grievance concerning her situation at Ballard High School. In the grievance, Kim contended that the school administration violated terms of the existing collective bargaining agreement by:

. . . failing to support Suk-Min Kim in classroom discipline, classroom control, grading, and personal safety . . .

As a remedy, Kim asked that Christophersen rescind the "reprimand" he issued on March 1, 1986, as well as provide administrative support for teachers in classroom discipline, control and grading matters.

On March 21, 1985, Christophersen issued a second memorandum, warning Kim to be on time for the start of her work day. Christophersen was informed that Kim had come to work late on three different occasions.

On March 26, 1985, a "first step" grievance conference was held on Kim's grievance. At the meeting, Christophersen rejected Kim's arguments concerning her particular case, but did acknowledge that there were communications problems between faculty and administrators at Ballard High School. In addition, Christophersen agreed to rescind his March 1 and 21, 1985 memoranda. Christophersen's proposed settlement did not satisfy Kim, and the grievance progressed to the next step.

During April, 1985, Christophersen received at least one parental complaint about Kim's teaching. On April 30, 1985, Kim's grievance was discussed in a "step two" grievance conference. The meeting was conducted with Douglas Danner, administrative supervisor of Senior High Schools, Kim, and a representative from

the teachers' association, Donna Lurie. Danner summarized the results of the meeting in a letter sent to Kim on May 6, 1985:

. . . Mr. Christophersen, principal at Ballard High School, has agreed to remove any written reprimands of March 1 and 21, from your school file. He has been instructed to follow through on his offer and to send a confirmation to you that the reprimand has been removed.

Danner went on to instruct Christophersen to review school procedure concerning classroom discipline and grading with Kim to avoid future difficulties. Kim did not accept the proposed resolution, and the matter was advanced to the next step in the grievance procedure.

On May 2, 1985, Kim received her annual performance evaluation from the school district. The report, signed by Christophersen, indicated that Kim was doing satisfactory work, and made no comments regarding areas of improvement.

On May 9, 1985, Christophersen sent Kim a memorandum confirming the withdrawal of the March 1 and 21, 1985 reprimands, and offering to meet with her to discuss her concerns.

On May 29, 1985, the dispute was discussed in a "step three" grievance conference. In attendance were Kim, Lurie and Robert Gary. As a result of the meeting, Gary concluded that Christophersen had removed the offending reprimands, but instructed Christophersen to arrange a conference with Kim, an association representative, Gary and Danner to "review responsibilities" of teachers and administrators. Kim did not believe that Gary's decision dealt with her concerns, and the dispute was submitted for final and binding arbitration. At the time of the hearing, a decision had not been rendered in the grievance matter.

At some time either in the latter part of May, or the first part of June, 1985, Christophersen approached Kim with the idea of transferring from Ballard High School. Christophersen told Kim that he and his assistant principals would do what was possible to support her, but if she did not believe that she was receiving adequate administrative support, she should consider transferring to a different school. Kim was not interested in a transfer.

On May 31, 1985, Ombudsman Geraldine Bottomley became involved in Kim's situation. A parent had filed a complaint with the superintendent concerning Kim's teaching. The matter was referred to Bottomley, who suggested that the parent meet with her, Gary and Danner. That meeting took place on June 3, 1985. As a result of the meeting, Gary suggested that a "high school level" meeting should take place where Kim could be present to discuss the situation.

A meeting was arranged for June 6, 1985. Shortly before the meeting, Bottomley asked Gary about the availability of Japanese teaching positions throughout the school district. Bottomley had personal reasons for the information, as she desired to have a former exchange student from Japan return to Seattle to teach. Bottomley also asked Gary if she could talk with Kim about the existence of other Japanese classes. Gary gave Bottomley permission to approach Kim with the information she gained.

On June 6, 1985, a meeting was held with Kim, Lurie, Christophersen, Danner, Gary, Bottomley, and Assistant Principal Marta Cano participating. Apparently, there was serious disagreement over the nature of the meeting, and what was to be accomplished in that forum. Kim believed that the meeting would be used to improve communications at Ballard High School. However, Kim testified that the meeting was used as a forum to attack her character and her classroom rules. Kim went on to testify that

most of the meeting was devoted to a discussion of her problems with one particular student. Bottomley, Gary and Christophersen gave a different account of the meeting. According to their testimony, a wider range of issues was addressed, from Kim's deteriorating relationship with Assistant Principal Dano, to student discipline, to the "grade change" incident. All participants to the meeting who testified agreed that no final resolution was reached at that time.

Immediately after the meeting, Bottomley asked Kim to speak with her. During the course of that conversation, Bottomley talked about the student problems Kim was facing at Ballard High School, and discussed Kim's perception that the school administration was undercutting her authority.

Bottomley's next contact with Kim was on July 30, 1985, when Bottomley telephoned Kim to ask her to consider the possibility of a transfer to another school. Kim testified that Bottomley brought up Kim's unresolved grievance, and stated that there could be some form of retaliation if Kim prevailed. Kim also testified that Bottomley was insistent about the transfer, and that she only agreed to consider the matter in order to end her conversation with Bottomley. Bottomley testified that Kim brought up the grievance issue, and that retaliation was never mentioned during the telephone call. However, Bottomley did recall that she was "pressing the point" about a transfer, and that she "strongly recommended" that Kim should consider such action.

After the telephone call, Bottomley checked with Gary about the availability of other teaching positions involving at least some Japanese classes. She also referred the matter to Personnel Analyst Margo Williams for more analysis of the possible transfer. On August 2, 1985, Kim telephoned Bottomley, and told her



that she was not interested in a transfer. On August 5, 1985, Williams called Kim to discuss the situation. Kim testified that Williams mentioned the upcoming arbitration, and suggested that it could be in Kim's best interests to transfer. Williams testified that she only checked into Kim's receptiveness to the transfer idea, and did not mention anything about the grievance that Kim had filed. After her conversation with Kim, Williams contacted Gary and recommended that she should stay at Ballard High School. The record indicates that Kim was not contacted by any other school official after Williams' telephone call. Kim filed the instant unfair labor practice complaint on September 3, 1985.

#### POSITIONS OF THE PARTIES

Complainant argues that respondent committed unfair labor practices within the meaning of RCW 41.59.140 (1)(a), (c) and (d) by threatening to retaliate against Suck-Min Kim for filing a grievance. Complainant contends that respondent pressured her to accept a transfer solely because she was exercising collective bargaining rights guaranteed by statute.

Respondent denies that any unfair labor practice was committed. Respondent notes that complainant had several problems at Ballard High School, and that a transfer was suggested as a way to assist complainant as a teacher. Respondent maintains that the ombudsman did not have authority to order a transfer, and contends that all contact with complainant ended when she expressed a desire to stay at Ballard High School. Respondent further contends that complainant did not suffer any detrimental effects because she did not accept a transfer.

DISCUSSION

During the course of hearing, considerable testimony was offered about events occurring long before the instant unfair labor practice was originally filed. These proceedings are governed by RCW 41.59.150 which provides:

(1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission .  
. . (emphasis supplied)

To the extent that events described took place more than six months prior to the filing of this complaint charging unfair labor practices, those remote incidents cannot constitute a separate cause of action, nor can they be used to "cure" a complaint which does not contain a sufficient allegation to warrant a finding that an unfair labor practice took place within the six-month statute of limitations. See: City of Centralia, Decision 2481 (PECB, 1986). However, unfair labor practices do not occur in a vacuum. It is often necessary to establish a factual record that extends beyond the six-month time frame in order to gain an understanding of the series of events leading to the complaint. Although objection was made to testimony on events predating the six-month period, such evidence was admissible to establish the background leading to the transfer controversy.

Much of the testimony dealt with Kim's teaching style. While taking testimony concerning background events into consideration in making this inquiry, the examiner is not passing judgment on the complainant's abilities as a teacher or probability of success in the pending grievance arbitration.

Much of complainant's case deals with claims that the Seattle School District discriminated against her in violation of RCW 41.59.104(1)(c) and/or (d), because of her participation in a grievance. However, it is not enough to simply allege that respondent's actions were intended to discriminate against Kim. At the very least, complainant must establish that some form of discrimination took place (i.e.,) that she was actually deprived of some right or benefit to which she was otherwise entitled). In the instant matter, the complainant has not made such a showing. While Kim was approached about the possibility of a transfer, no transfer actually occurred. In fact, the record demonstrates that Kim did not suffer any adverse effects because she resisted the transfer idea. The complainant has not proven that respondent acted with a discriminatory intent. Kim received a satisfactory evaluation, and school officials respected her wish to remain at Ballard High School. Accordingly, complainant's charges that respondent violated RCW 41.59.140(1)(c) and (d) are dismissed.

Analysis of this case does not end, however, with a conclusion that respondent lacked discriminatory intent in its dealings with Kim. A serious question remains concerning Ombudsman Bottomley's role in the matter. Respondent presented considerable evidence that the ombudsman did not have authority to direct or order a transfer. While instructive, Bottomley's actual authority is not determinative. The primary analysis must focus on the affected employee's perception of the ombudsman's role in this matter.

In the context of a pending grievance, a high-ranking school district official made several attempts to persuade Kim to transfer from Ballard High School. In fact, Bottomley testified that she was "insistent" that Kim should consider a transfer. Although she was aware of the pending grievance, Bottomly did not

address the transfer proposal to Kim through the established grievance procedure or through her designated union representative.

Kim could reasonably have understood that the school district, through a designated representative, attempted to influence her to leave her regular teaching assignment. Bottomley may have acted in good faith in her dealings with Kim, but her motivation is not at issue. Given the type of pressure applied during the pendency of a grievance, Bottomley interfered with Kim's rights, and violated RCW 41.59.140(1). See: King County, Decision 1698 (PECB, 1983).

#### FINDINGS OF FACT

1. The Seattle School District is an "employer" within the meaning of RCW 41.59.020 (5). The school district provides a number of educational services to local residents. School district policies are implemented through the efforts of a number of administrators who ultimately report to the school superintendent.
2. The Seattle Teachers Association is an "exclusive bargaining representative" within the meaning of RCW 41.59.020(6). The association has a collective bargaining relationship with the Seattle School District for a bargaining unit of non-supervisory certificated employees teaching in the district's K-12 program.
3. Suck-Min Kim is an "educational employee" within the meaning of RCW 41.59.020(4). Kim is a language arts instructor at Ballard High School and is part of the bargaining unit represented by the Seattle Teachers Association.

4. In the latter part of 1984, Kim became involved in a series of difficulties with school officials at Ballard High School concerning her rules for classroom deportment. These difficulties led to warnings issued by Principal Raymond Christophersen.
5. In December, 1984 and January 1985, Kim became involved in a second controversy involving one of her students. One student left her English class during an examination, taking the first half of the test paper with him. The student finally ended up in Principal Christophersen's office, where he completed the portion of the test he had in his possession.
6. Following her standard rules, Kim failed the student for leaving her class before the test period was over, and because the student only completed one part of the examination.
7. As a result of the test incident, Christophersen met with the affected student's parents. After the meeting, Christophersen decided to take administrative action to withdraw the student from Kim's class, and to allow the student to receive a passing grade.
8. On February 28, 1985, Christophersen met with Kim to explain his actions concerning the "grade change" incident. During the course of the meeting, Kim strongly disagreed with Christophersen's decision, and commented that he should simply take her gradebook and grade all of the students in her class.

9. On March 1, 1985, Christophersen issued a memorandum to Kim expressing concern about her conduct in the February 28th meeting, and warning her not to repeat such behavior.
10. On March 12, 1985, Kim filed a grievance pursuant to a grievance procedure contained in the collective bargaining agreement in effect between the association and the school district. In the grievance, Kim alleged that Christophersen had violated the contract by issuing the memorandum and by not supporting her in classroom disciplinary matters.
11. On March 21, 1985, Christophersen issued a second memorandum to Kim. In the second memorandum, Christophersen warned Kim to arrive at school at the prescribed time every morning. The memorandum came about because Christophersen had received information that Kim had been late on several occasions.
12. On March 26, 1985, a "first step" grievance meeting was held. Kim was not satisfied with thhe district's response, and the matter was advanced to the next step of the grievance procedure.
13. On April 30th, a "second step" grievance meeting was conducted. As a result of that meeting, Christophersen was directed to withdraw the March 1 and 21, 1985 memoranda. The underlying issue was not resolved, and the grievance advanced to the next step of the procedure.
14. On May 9, 1985, Christophersen sent Kim a memorandum confirming that he had withdrawn the March memoranda.

15. On May 29, 1985, a "step three" grievance conference was held. The issue was not resolved, and the matter was submitted for final determination through arbitration.
16. At an unspecified time either in the latter part of May or the early part of June, 1985, Christophersen met with Kim and suggested that she should consider a transfer from Ballard High School if she did not believe that the school's administrators would support her classroom decisions.
17. On May 31, 1985, the district's ombudsman, Geraldine Bottomley, became involved in Kim's situation. Bottomley had authority to address problems raised by staff members, students or parents, and attempted to fashion acceptable remedies. The ombudsman did not have any authority to order specific action in any particular case. As the result of a parental complaint about Kim to the district superintendent, Bottomley participated in several meetings where Kim's difficulties were discussed.
18. On June 6, 1985, a meeting was held involving Kim, her association representative, Christophersen, Bottomley, and Dr. Robert Gary, executive director for secondary education. A final resolution was not reached at the meeting. Immediately after the meeting, Bottomley spoke privately with Kim about her situation.
19. On July 30, 1985, Bottomley telephoned Kim and strongly recommended that she consider a transfer to another school. The record contains conflicting testimony as to whether Bottomley raised the existence of Kim's grievance as a reason that Kim should transfer. Kim told Bottomley that she was not interested in a transfer, but agreed to consider the matter as a way to end the conversation.

20. On August 2, 1985, Kim telephoned Bottomley to reiterate her decision not to ask for a transfer. Kim did not have any further contact with Bottomley after the August 2nd conversation.
21. On August 5, 1985, Personnel Analyst Margo Williams contacted Kim at Bottomley's suggestion. During the course of conversation, Kim made it clear that she was not interested in a transfer. Williams later prepared a report supporting Kim's decision.

#### CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter pursuant to Chapter 41.59 RCW.
2. By events described in Findings of Fact 4 through 22, above, the Seattle School District did not commit unfair labor practices within the meaning of RCW 41.59.140 (1)(c) and (d).
3. By events described in Findings of Fact 19 and 20, above, the Seattle School District violated RCW 41.59.140 (1)(a) by interfering with Suck-Min Kim's processing of a grievance.

#### ORDER

Upon the basis of the above Findings of Fact and Conclusions of Law, and pursuant to RCW 41.59.150 of the Educational Employment Relations Act, it is ordered that Seattle School District, its officers and agents shall immediately:



(1) Cease and desist from:

- (a) Interfering with Suck-Min Kim's right to process grievances through the grievance procedure.
- (b) Approaching Suck-Min Kim concerning a possible transfer while the grievance is pending.

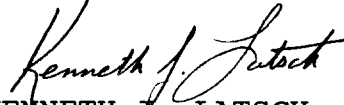
(2) Take the following affirmative action to remedy the unfair labor practice and effectuate the policies of the Act:

- (a) Post, in conspicuous places on the employer's premises where notices to all employees are usually posted, copies of the notice attached hereto and marked "Appendix A". Such notice shall, after being duly signed by an authorized representative of the Seattle School District, be and remain posted for sixty (60) days. Reasonable steps shall be taken by the Seattle School District to ensure that said notices are not removed, altered, defaced, or covered by other material.
- (b) Notify the Executive Director of the Public Employment Relations 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 required by the preceding.

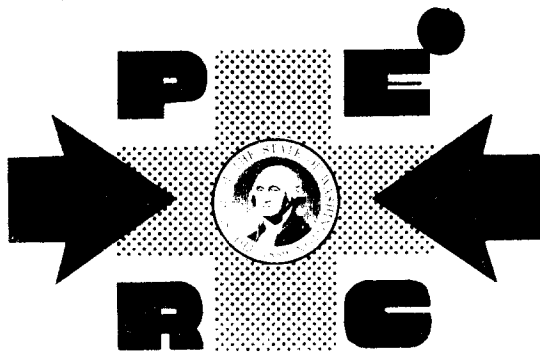
DATED at Olympia Washington, this 16th day of September, 1986.

PUBLIC EMPLOYMENT  
RELATIONS COMMISSION



KENNETH J. LATSCH  
Examiner

This order may be appealed by filing a petition for review with the Commission pursuant to WAC 391-45-350.



# PUBLIC EMPLOYMENT RELATIONS COMMISSION

APPENDIX A

# 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 an employee's right to process a grievance through a contractual grievance procedure.

WE WILL allow Suck-Min Kim to freely process her grievance without pressure to accept a transfer from Ballard High School or otherwise, from the Seattle School District.

DATED: \_\_\_\_\_

SEATTLE SCHOOL DISTRICT

BY \_\_\_\_\_  
AUTHORIZED REPRESENTATIVE

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

This notice must remain posted for sixty (60) consecutive 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.