STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

RON NILSON, Complainant, vs. CASTLE ROCK EDUCATION ASSOCIATION, Respondent.	)	CASE 9970-U-92-2278 DECISION 4722 - EDUC
RON NILSON, Complainant, vs. CASTLE ROCK SCHOOL DISTRICT, Respondent.	)	CASE 9971-U-92-2279 DECISION 4723 - EDUC FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER.

Ron Nilson appeared pro se.

Bennet J. Acker, Superintendent, appeared on behalf of the respondent employer.

Harriet Strassberg, Attorney at Law, Washington Education Association, appeared on behalf of the union.

On August 24, 1992, Ron Nilson filed two unfair labor practice complaints with the Public Employment Relations Commission. In Case 9970-U-92-2278, Nilson alleged that the Castle Rock Education Association (union)[1] had violated RCW 41.59.140(2)(a), by refusing to extend representation and other rights under the collective bargaining agreement covering certificated employees of the Castle Rock School District (employer). In Case 9971-U-92-2279, Nilson alleged that the employer had violated RCW 41.59.140(1)(a), by refusing to process a grievance which he filed under the collective

[1] This respondent is affiliated with the Lower Columbia Uniserv Council and the Washington Education Association.

bargaining agreement. A consolidated hearing on the two complaints was held at Castle Rock, Washington, on October 28, 1993 and January 6, 1994, before Examiner William A. Lang. The parties filed post-hearing briefs on March 14, 1994.

BACKGROUND

The Castle Rock Education Association is the exclusive bargaining representative of all certificated employees of the Castle Rock School District, except administrators, supervisors, and substitute teachers. At all times relevant to this proceeding, Ron Rodgers was president of the union and Bennet J. Acker was superintendent of the school district

The union and employer have been parties to a series of collective bargaining agreements over a period of many years. Their most recent complete agreement covered the period from September 1, 1989 through August 31, 1991, and was extended by an addendum through August 31, 1992. Appendix B to that contract contained extensive provisions concerning the classification and pay of employees for "Extra-Curricular Coaching Assignments".

Ron Nilson was hired by the Castle Rock School District on October 31, 1990, as head coach of the boys' basketball team. The position is among those listed in Appendix B to the collective bargaining agreement between the employer and union, and the "supplemental contract" signed by Nilson and the employer reflected a $2760 annual stipend in conformity with that collective bargaining agreement. Nilson and the employer signed another "supplemental contract" on March 19, 1992, providing additional compensation in the amount of $228.00 for coaching post-season play. Nilson held no other employment with the Castle Rock School District and was, in fact, a full-time certificated teacher in the Morton School District during the same time period.

On April 18, 1992, Athletic Director Lisa Dallas, who was Nilson's immediate supervisor, informally notified Nilson that he would not be given another contract as head coach of the basketball team.

On April 28, 1992, Nilson met with the Board of Directors of the Castle Rock School District, to discuss the reasons given for the nonrenewal of his contract as basketball coach.

On May 5, 1992, Acker formally notified Nilson that the employer's school board had decided not to renew his basketball coaching contract.

In a letter directed to the chairperson of the school board on May 20, 1992, Nilson cited a provision of the collective bargaining agreement as the basis for his request for a hearing,[2] and wrote that he was not satisfied with the reasons given for not issuing a

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[2] Article III, 2E states:

> E. The above provisions shall apply to all employee contracts. Extra-curricular contracts are non-continuing, one-year long agreements. Persons holding extra-curricular contracts cannot be dismissed during the term of the one year contract without due process procedures being followed.
>
> If a person who has held an extra-curricular position is not going to be issued a subsequent contract for that position, that person will be informed in writing of the reasons why he/she has not been offered a new contract by May 31, provided the M & O levy has passed. If the person is not satisfied with the reasons provided, he/she may request a hearing before an extra-curricular contract hearings group within fifteen (15) days following his /her request. This hearings group will consist of three members: a Board representative, a C.R.E.A. representative, and a neutral party. The neutral member will be selected in the following manner: (See Appendix H)
>
> A list of seven names will be selected by the Superintendent and the C.R.E.A. President at the beginning of each school year. Should a hearing be required, the Board representative and the C.R.E.A. representative will alternately remove one name from the list. The person to first eliminate a name will be determined by a coin flip. When six names have been eliminated, the remaining name is the third member of the hearings group. If the hearings group determines a new extra-curricular contract shall not be offered, the extra-curricular contract holder shall not have recourse to the courts to resolve the issue.

contract for the coaching position that he had held for the last two years. A copy of the letter was forwarded to Rodgers.

In a letter dated May 29, 1992, the chairperson of the school board informed Nilson that:

> In our April board meeting, you had an opportunity to meet with the board and discuss with them why you felt that your contract as basketball coach for Castle Rock School District should be renewed. The board feels that you had more than ample time to present your case and at that time you stated reasons why you felt you should be continued as our basketball coach.
>
> After examining the situation, the board decided they were not going to renew your contract and notified you of their decision. Coaching positions are for only one year in duration, and the board feels they have met all of their obligations regarding this matter.
>
> I have noticed that you have sent a copy of this [sic] letter to the C.R.E.A. and if they wish to purse [sic] it on your behalf, that is their prerogative. I must remind you, however, that **you are not a member of their association and will therefore not be warranted the protection of their contract.**

[Emphasis by **bold** supplied.]

On June 5, 1992, Nilson prepared a grievance for filing under the collective bargaining agreement, alleging that:

1. I was not provided a copy of the contract per the contract.
2. My coaching evaluation violated my due process rights per the contract.
3. I have been denied a hearing per the contract.
4. I have been denied protection of the contract because I am "not a member of their association and will therefore not be

> warranted the protection of their contract".

In a June 6, 1992 note covering transmittal of the grievance, Nilson asked Rodgers to sign the grievance and file it with the employer. Nilson also inquired as to what the union's position was on the grievance.

Rogers replied to Nilson's grievance and inquiry on June 11, 1992, as follows:

> I have received your grievance dated June 5, 1992. The Castle Rock Education Association will provide you representation as per the Collective Bargaining Agreement between the Association and the School District.
>
> The grievance procedure requires that prior to the formal filing of a grievance you must first meet informally with your immediate supervisor, Lisa Dallas, to attempt to settle the problem. I would be happy to accompany you to this meeting, however, I would need to meet with you prior to the meeting.
>
> Please let me know how you want to proceed.

On June 11, 1992, Nilson telephoned Julie Green, a representative of the Lower Columbia Uniserv Council. Green's notes of the conversation confirm Nilson's request that he be represented by the association. Green assured Nilson that the CREA would represent him in his grievance.

In a letter dated June 14, 1992, Nilson asked Dallas for a conference to discuss the grievance.

In a letter to Nilson dated June 15, 1992, Acker indicated that the union had contacted the employer about the grievance, and that the union thought Nilson may be covered by the collective bargaining agreement. Acker went on to say:

> I feel it is paramount that you get in touch with Mr. Ron Rodgers of the C.R.E.A. so that we can determine if that protection is warranted. **If C.R.E.A. determines that you should be provided protection and if you have followed the correct procedures of the contract, the school district will provide you a hearing** as outlined in Article III, Section 2E.
>
> I have sent a copy of this letter to Mr. Rodgers and will expect to hear from either or both of you in the near future.

[Emphasis by **bold** supplied.]

Nilson wrote two letters to the employer on June 19, 1992: One was to Acker, expressing procedural concerns and demanding payment for post-season play and $2500 for uniforms; the other was to Dallas, confirming a grievance meeting scheduled for July 6, 1992.

On June 26, 1992, Acker wrote Nilson:

> I received your letter dated June 19, 1992 regarding some concerns and/or complaints you have pertaining to your dismissal as basketball coach for the Castle Rock School District.
>
> I must admit I am somewhat confused regarding your allegations and where you stand with the district at this time. As of this date, **I have not been officially presented with any material or rationale on why you warrant protection of the C.R.E.A. contract.** It would appear to me that the **first step which you must take is to demonstrate why the contractual agreement with C.R.E.A. should include you as basketball coach.** As was stated in a previous letter we are willing to look at this situation; but until we are presented with specific materials, we have no response. It is our understanding you have a meeting scheduled with Lisa Dallas on July 6. **At this point, the district does not recognize that you are entitled to any C.R.E.A. contractual rights.** It is our assumption that the intent of this meeting is to listen to some of your concerns and/or to hear why you feel you de-

> serve a hearing as prescribed in the C.R.E.A. contract.
>
> A copy of the contract which you requested is enclosed. ...

[Emphasis by **bold** supplied.]

The grievance meeting took place on July 6, 1992, with at least Nilson, Dallas, and Gary Udd in attendance.[3] Nilson provided testimony and his notes taken at the meeting as evidence of what transpired on that occasion. That evidence indicates that Dallas first raised the question of his not paying dues to the union, and that Udd concluded Nilson was not covered by the collective bargaining agreement.

On July 14, 1992, Nilson wrote Dallas that, as a result of the meeting, he wished to add to the following grievances and/or concerns:

> ...
>
> 3. Lisa and Gary would only proceed with the meeting if I agreed that I was not afforded the protection of the contract.
>
> 4. I believe I am protected by the contract and that the district further violated the contract by not giving me the opportunity to join the CREA. That opportunity or requirement of paying dues to CREA is outlined in the contract. The district did not withhold dues from my salary and they did not provide me with a copy of the contract so that I would know my rights and responsibilities under the contract.

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[3] Udd is the principal of the high school. Dallas asked him to attend the grievance conference as her representative under a collective bargaining agreement covering the employer's supervisory personnel. Nilson objected to Udd's presence at the meeting on his grievance.

> ...
> 6. The district's pre-condition that I recognize that I am not protected by the contract made discussion of the specifics of my grievances and/or concerns impossible.
> 7. The district's continued violation of the contract results in unfair and unreasonable treatment to me.

Acting in his capacity as president of the union, Rodgers informed Nilson, on August 12, 1992, that:

> On July 27, 1992 the Castle Rock Education Association Executive Committee met to discuss extracurricular contract representation. **After consulting with WEA it would appears [sic] likely that PERC or an Arbitrator would rule that extracurricular positions would not be in the bargaining unit because no certificate is required to hold these positions.** After lengthy discussion it is the decision of the Association based on the merits of the case not to pursue the case further.

In a letter directed to union official Green on August 13, 1992, Nilson declared:

> After waiting a long time, I finally received a phone call from Ron Rodgers yesterday. He gave me the bad news that CREA does not wish to pursue my grievances and will not support me. This is contrary to what he had told me prior to this. This is also contrary to what you had told me earlier concerning the fact that I was covered by the contract and that the district was in error.
>
> I am confused by this sudden and unexpected turn of events. Would you please explain.

In a letter dated August 14, 1992, Nilson wrote Kathy O'Toole, the general counsel of the Washington Education Association, regarding the union's decision not to represent him. Nilson noted:

> I called your office on 8-14-92, and you were not available. From recent discussions with you I understood you are very busy, therefore I am writing to you. Ron Rodgers mentioned your name in explaining to me why CREA has chosen not to represent me and to agree with the district that I am not protected by the contract. I have found that it is better to go direct rather than rely on second hand information. Would you please explain to me what your position is on this matter?

In a note dated August 17, 1992, Nilson told Rodgers that he was confused because Rodgers had informed him several times in person and on the phone that the union would represent him on his nonrenewal, and that he deserved the protection of the contract. Nilson requested information on who was on the union's executive committee, and how each voted. Nilson also requested copies of the association's constitution and bylaws, its policy on grievances, and a list of who was on the grievance committee.

Also on August 17, 1992, Nilson informed Dallas that he was not satisfied with the outcome of the informal meeting. He noted that he had already filed a written grievance, and asked for a written statement of the employer's present position on the issues and concerns he had raised.

On August 20, 1992, Acker sent a letter to Rodgers, with a copy to Nilson, as follows:

> I am writing this letter to confirm our meeting on August 12, 1992 regarding the nonrenewal of Mr. Ron Nilson as basketball coach of the Castle Rock School District.
>
> As a result of this meeting, it is my understanding that the C.R.E.A. is not going to file a grievance and that as far as the Association is concerned, this issue is resolved and void. If my interpretation of this meeting and C.R.E.A.'s [sic] is incorrect, please

> notify me so that we can clarify any potential disagreements.
>
> Thank you for your cooperation.

Upon receiving his copy of the letter, Nilson filed the unfair labor practice complaints, which are the subject of these proceedings.

POSITION OF THE PARTIES

Ron Nilson argues that he and others performing similar assignments "deserve" the protection of the collective bargaining agreement, because that agreement covers the terms and conditions for extracurricular employment. Nilson contends that the employees who performed the same job before and after him would have been covered by the agreement, merely because they were certificated teachers in the district and not because the job required it. Nilson maintains that it would not be in the interest of the union, the teachers, or the local taxpayers to have to negotiate pay, hours, and working conditions with each individual coach. Nilson sees a stronger community of interest between the extracurricular employees and teachers than with classified employees, such as custodians or bus drivers, and he urges that the collective bargaining agreement has historically covered all coaches whether they were certificated or not. He notes that separate bargaining units for coaches and other extracurricular employees do not exist throughout the state, and that WIAA regulations which recognize an integration of extracurricular activities in education require these employees to be certificated. Nilson asserts that he meets the definition of an employee under Chapter 41.59 RCW, because he has a certificate to teach and meets the criterion under RCW 41.59.060. Nilson asserts that a decision against him would deny him equal protection under the law. Nilson contends that the union supported his grievance

until a day or two before the hearing, and then changed its position in a conspiracy to deny him his rights.

The employer argues that Nilson was not in the bargaining unit represented by the union and, therefore, was not entitled to the protection and due process provisions of the collective bargaining agreement. In the alternative, the employer asserts that even if Nilson was covered by the collective bargaining agreement, he was given an opportunity to plead his case before the school board and the three-person panel provided therein. The employer also contends that Nilson was given access to the grievance procedure of the collective bargaining agreement at the informal step, and that the union declined to process the grievance at a higher step.

The union argues that the Commission lacks jurisdiction to process the complaint, because it merely involves the enforcement of a collective bargaining agreement. It asserts that Nilson did not carry his burden of proof to show that the union failed to represent him, and that the union did represent him at the lower level of the grievance procedure. It contends that its decision to not take the grievance to arbitration was based on its merits. The union contends that its action on the grievance was not arbitrary, because the union believed an adverse award might jeopardize teacher bargaining units across the state. The union argues that Nilson waived his right to the hearing before the three-person panel by declining it when offered, so that the union did not deny him benefits under the collective bargaining agreement. In the alternative, the union argues that it had no duty to represent Nilson, because he lacked bargaining unit status. Finally, the union contends that matters regarding extracurricular contracts are mandatory subjects of bargaining for the union and employer.

DISCUSSION

Jurisdiction of the Commission

The union would characterize this controversy as involving the enforcement of a collective bargaining agreement, and not as a discrimination case subject to the jurisdiction of the Commission. Compare: Mukilteo School District, Decision 1381 (PECB, 1982); Othello School District, Decision 3037 (PECB, 1988).

It is true that the Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976). The Commission does, however, have jurisdiction to determine appropriate bargaining units and to police its certifications. City of Richland, Decision 279-A (PECB, 1978), affirmed 29 Wn.App. 599 (Division III, 1981), review denied 96 Wn.2d 1004 (1981). See, also, Spokane School District, Decision 718 (EDUC, 1979), which applied the same principles under Chapter 41.59 RCW.

In this case, the record shows that the employer and union have negotiated the terms and conditions of extracurricular positions, including the head basketball coach position formerly held by Nilson. The union appears to assert "unit work" claims to all of the extracurricular positions, which arguably should have included the complainant in his capacity as head basketball coach. Nilson alleges that he has been discriminated against by both the union and the employer in the processing of his grievance related to his job within that "unit work" claim.

It would be an unlawful interference with employee rights under RCW 41.59.140(1)(a), as well as an unlawful assistance to the union involved under RCW 41.59.140(1)(b), for an employer to extend recognition to a union as exclusive bargaining representative for

a bargaining unit that it does not lawfully represent. Conversely, it would be an unlawful interference with employee rights under RCW 41.59.140(2)(a) for a union to accept the unlawful assistance of an employer and/or hold itself out as exclusive bargaining representative of a bargaining unit that it does not lawfully represent. These complaints therefore state a cause of action over which the Commission has jurisdiction.

Appropriate Bargaining Unit for Coaches

This is a case of first impression before the Commission. It is clear that the employer and union have voluntarily negotiated terms and conditions of supplemental contracts for a variety of coaching and advising positions. The evidence shows that first the employer, and then the union, have subsequently disavowed the applicability of those provisions to Nilson. The question before the Examiner is whether those negotiations were ultra vires, because the extracurricular positions did not qualify for representation by the union. That question arises because at least some of the positions do not require certification.

The Washington Statute -

This case arises under the Educational Employment Relations Act, Chapter 41.59 RCW. The terms "employee" and "educational employee" are defined in that statute as including any **certificated employee** of a school district. RCW 41.59.020(4). While the term "certificated employee" is not defined within Chapter 41.59 RCW, it is clear that the Legislature had school districts and school teachers in mind when that statute was enacted. The statute setting forth general provisions concerning common schools provides:

> RCW 28A.150.060 CERTIFICATED EMPLOYEE. The term "certificated employee" as used in RCW 28A.195.010, 28A.150.060, 28A.150.260, 28A.405.100, 28A.405.210, 28A.405.240, 28A.405.250, 28A.405.300 through 28A.405.380, and chapter 41.59 RCW, shall include those persons

> who hold certificates as authorized by rule or regulation of the state board of education or the superintendent of public instruction.

The State Board of Education is authorized to establish and enforce rules determining eligibility for and certification of personnel employed in common schools of this state.

The rules adopted by the State Board of Education include the following:

> WAC 180-75-050. CERTIFICATE REQUIRED. **Persons serving as teachers in public** or private **schools or as** principals or **educational staff in public schools** and in vocational positions as established by chapter 180-77 WAC shall hold certificates authorized by the state board of education for service in their respective roles.
>
> [Emphasis by **bold** supplied.]

The academic requirements for teacher certification appear under Chapter 180-79 WAC.

Once it is determined that a position is "certificated", RCW 41.59.080 sets the standard for bargaining unit determination:

> (1) A unit including nonsupervisory educational employees shall not be considered appropriate unless it contains all such nonsupervisory educational employees of the employer.

In Columbia School District No. 400, et al., Decision 1189-A (EDUC, 1982), the Commission ruled that a bargaining unit of certificated employees must contain all such employees, including substitute

teachers who were employed a sufficient amount of time to have a community of interest with other certificated employees.[4]

RCW 41.59.180 makes provision for employees in specialized job categories:

> Notwithstanding the definition of "employee" in RCW 41.59.020, the commission may exclude from the coverage of this chapter any specialized job category of an employer where a majority of the persons employed in that job category consists of noncertificated employees. At such time as a majority of such employees are certificated, the job category may be considered an appropriate unit under this chapter.

Although that section was among the provisions of Chapter 41.59 RCW at the time of its enactment, no case is cited or found where it has been interpreted or applied by the Commission. The parties offered no evidence here as to the legislative history or intent of RCW 41.59.180.

When called upon to sort out the line between "certificated" and "classified" positions in College Place School District, Decision 795 (EDUC, 1980), the Commission's Executive Director wrote:

> It is the position which must be examined. A decision based only on the qualifications of an overqualified incumbent would have the effect of boot-strapping the disputed position into the bargaining unit which has no appropriate claim to the work actually required and performed.

Applying those principles in that case, it was found that the duties, skills, working conditions, and interests of an employee

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[4] A "substitute" teacher does not have an individual contract, but is required to possess a teaching certificate.

hired as a "Title I, Migrant Tutor" were similar to those of certificated employees in that school district, and that the position should be placed into the certificated bargaining unit.

The corollary to the conclusion reached in Columbia and College Place is that a bargaining unit of certificated employees cannot include positions for which educator certification is not required. Chapter 41.59 RCW is special legislation aimed at a narrowly defined class of public employees. In contrast, the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, applies by its terms to a wide range of public employers and public employees, and has been given expansive application in a series of cases decided by the Supreme Court of the State of Washington.[5] Based on the premise that educational service districts are municipal corporations but not "school districts", collective bargaining between those organizations and all of their employees are controlled by Chapter 41.56 RCW. In Olympia School District, Decision 799 (EDUC, 1980), an employee who held a teaching certificate was nevertheless placed in an "aides" bargaining unit under Chapter 41.56 RCW, based on substantial differences of duties, skills, and working conditions between the certificated teachers and the tutor-counselor position she held.

Status of Athletic Coaches in Washington -
High school athletics in Washington are conducted under the auspices of the Washington Interscholastic Activities Association

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[5] Chapter 41.56 RCW was applied to irrigation districts in Roza Irrigation District v. State, 80 Wn.2d 633 (1972); was "maximized" by giving court personnel dual employers in Zylstra v. Piva, 85 Wn.2d 743 (1975), and asserting jurisdiction over the county to bargain wages and wage-related benefits; was applied to a joint operating agency in Nucleonics Alliance v. PERC, 101 Wn.2d 24 (1984), notwithstanding that some of the partners claimed exemption from the statute; and was applied to public utility districts in PUD of Clark County v. PERC, 110 Wn.2d 114 (1988), overruling employer claims of exemption.

(WIAA). The WIAA handbooks for 1990-91 and 1991-92 state, at Article 27.11, that no school team or contestant can represent a school in an athletic event unless the coach is an employee of the district, and is a holder of a valid certificate to teach. That statement is at odds, however, with other authority on the subject and with the actual facts.

The record in this proceeding includes a copy of a letter dated October 4, 1990, written by Richard M. Wilson, the assistant counsel for administrative law services in the Office of Superintendent of Public Instruction (SPI), to Cliff Gillies of the WIAA. In relevant part, that letter states:

> [I]t is the position of this agency that certification is required only for teachers who are involved in instructional programs for which academic credit is given. The contrary of the above is that **certification is not required for extra-curricular or other instruction which is not part of the common school academic programs.**

[Emphasis by **bold** supplied.]

In a contest between the WIAA and SPI about "certification" requirements, the Examiner gives weight to the seemingly authoritative opinion set forth by the SPI official.

The absence of a "certification" requirement conforms with a recent newspaper report on the subject. A survey appearing in the Sunday Olympian on November 28, 1993, between the two days of hearing held in this case, indicated that 40% of the head coaches in the South Sound area did not teach in the school district where they coached, and that many of those coaches were not even certificated.

The absence of a "certification" requirement also conforms to the practices in effect at Castle Rock during the time period relevant to this case. Although Nilson holds a teaching certificate, he was

only employed at Castle Rock as an athletic coach. Out of 78 extracurricular positions in the Castle Rock School District, the record shows that 7 of them were held by "certificated" employees who did not teach in the district, and 20 positions were held by persons who do not hold any teaching certificate.

Precedent in Other Jurisdictions -

The union offers Palmyra Area School District, 24 NPER PA-24012 (Pennsylvania PERB, 1992), as authority for the proposition that teachers' supplemental contracts are considered a mandatory subject of bargaining between the employer and the exclusive representative of certificated employees in that district, when the controversy involves certificated employees within the bargaining unit. In deciding that case, the Pennsylvania Public Employee Relations Board ruled that the employer could unilaterally freeze the supplemental stipends of non-teacher coaches, because there was no obligation to bargain for positions outside the bargaining unit.

Other jurisdictions have arrived at the same conclusion reached in Pennsylvania. In Cinnaminson Township Board of Education, 15 NPER NJ-24051 (New Jersey, 1993), a dispute over the employer's decision not to retain a teacher as basketball coach was arbitrable under NJSA 34:13A-23; in New Milford Board of Education v. New Milford Educational Association, 15 NPER NJ-24132 (New Jersey, 1993), a teacher's grievance alleging a contract violation in connection with the appointment of a non-teacher to the extracurricular position of "athletic fund treasurer" was arbitrable. In Lafayette School Corporation v. Lafayette Education Association, 15 NPER IN-23022 (Indiana, 1992), it was held that the employer must meet and discuss changes in the hiring criteria with the union prior to implementation. In Baldwinsville Central School District v. AFSCME, 14 NPER NY 14034 (New York PERB, 1991), the New York Public Employment Relations Board dismissed a representation petition on a finding that a bargaining unit limited to coaches was too narrow. Although the coaches were excluded from the teacher unit pursuant

to a grievance settlement, that agency held they continued to share a community of interest with the teachers.

Each of the above-cited decisions interpreted a statute similar to the National Labor Relations Act (NLRA). In particular, those statutes provide for separate bargaining units of professional employees, unless the majority of the professionals vote to include themselves in the same unit with non-professional employees.[6]

There are other public jurisdictions which, similar to Washington, limit bargaining units to only certificated teachers. Decisions in some of these jurisdictions also uphold the right of the exclusive bargaining agent of the certificated employees to have a voice over extracurricular positions. In Harrisburg Community School District No. 31 v. Harrisburg Education Association, 14 NPER IL-23105 (Illinois, 1992),[7] the Illinois Appellate Court ruled that a teacher was entitled to due process for discharge from a coaching position under the Illinois Educational Labor Relations Statute. In Board of Education Charles County Maryland v. Charles County Educational Association, 14 NPER MD-22001 (Maryland, 1991), the Maryland Court of Special Appeals held that the failure to reappoint a teacher as coach impacted his working conditions, and was therefore a legal topic of collective bargaining under Section 6-408 of the Education Article.

There may have been a time when all, or virtually all, extracurricular activities jobs were performed by teachers from within the same school district. While Washington practice now includes

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[6] Section 1101.604(2) of Penna. Public Employees Relations Act; Section 34:13A-6(d)(2) of New Jersey Public Employment Relations Act; and, Indiana Statutes 20-7.5-1-10. New York Civil Service Statute, Article 14, Section 200 to 214, otherwise known as the Taylor Act.

[7] A "591 NE.2d 85" citation has also been seen for this case.

widespread use of non-teachers as athletic coaches, the Examiner recognizes that other governmental jurisdictions continue to hold that a historical tie of teaching positions and extracurricular assignments must continue to be recognized, or that the assignments are too closely identified with teaching to have a separate unit.

Washington Unit Determination Policies -

The "foreign" precedent supporting one or more theories does not compel a conclusion here, as the Examiner must resolve this controversy in a manner that is consistent with the unit determination policies set forth by our Commission. There are several problems with strict reliance on the cases cited above.

The "professional / non-professional" distinction used in several states raises different considerations than the "certificated" distinction used in our statute. The Examiner recognizes the possibility that athletic coaches might be regarded as "professionals", even without holding certification as educators. The same might be said for a variety of accountants, data processing personnel and others who work for Washington school districts, yet would have the right to organize under Chapter 41.56 RCW rather than under the law that governs the bargaining relationship between the employer and union involved here.

The Commission has the statutory authority to define appropriate bargaining units under both RCW 41.56.060 and RCW 41.59.080:

> The determination of appropriate bargaining units is a function delegated by the legislature to the commission. Unit definition is not a subject for bargaining in the conventional "mandatory/permissive/illegal" sense, **although parties may agree on units. Such agreement does not indicate that the unit is or will continue to be appropriate.**

City of Richland, supra [emphasis by **bold** supplied].

While the existing unit structure is a matter of agreement between the employer and union,[8] the Commission has ruled that any voluntary recognition agreement made by parties is inherently subject to the statute and to the unit determination authority of the Commission. Thus, South Kitsap School District, Decision 1541 (PECB, 1983), rejected a bifurcation of that employer's office-clerical workforce which created work jurisdiction conflicts. Similarly, Skagit County, Decision 3829 (PECB, 1991), disregarded a years-old agreement of the parties excluding a class of employees from a bargaining unit, where it appeared that the creation of a separate unit for them would lead to work jurisdiction conflicts.[9] The result reached by the Pennsylvania PERB in the case relied upon by the union here would certainly create the potential for two different groups of employees in competition for a limited number of extracurricular jobs. Such a result would be at odds with South Kitsap and Skagit County.

Adoption of the Pennsylvania approach (i.e., that the district's teachers would negotiate the provisions on extracurricular positions while coaches who are not teachers in the district would

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[8] The formal recognition clause of the collective bargaining agreement is set forth in Article I, as follows:

> Section 1. Exclusive Recognition
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> A. The District recognizes the C.R.E.A. as the sole and exclusive representative for all employees included in the bargaining unit as delineated in Part B hereof for wages, hours, working conditions.
>
> B. All certificated employees, except as provided below, are subject to the terms of this Agreement. Employees not subject to the terms and conditions of this agreement include all administrators and supervisors according to RCW 41.59, and substitute teachers.

[9] Although the question is neither directly presented nor the subject of a ruling in this case, the Examiner notes that the categorical exclusion of "substitute" employees in this contract would appear to conflict with Commission precedent including "regular part-time" substitute teachers in bargaining units under Chapter 41.59 RCW. See, Columbia School District, et al., supra.

be outside of the unit) would also conflict with well-established Washington precedent limiting the bargaining rights of an exclusive bargaining representative to the unit that it represents. City of Wenatchee, Decision 2216 (PECB, 1985) and City of Yakima, Decision 2387 (PECB, 1986) [standards for promotion to positions outside of the bargaining unit]; City of Pasco v. PERC, 119 Wn.2d 504 (1992) [interpreting the "peculiar to the bargaining unit" language of RCW 41.56.030(4)].

Finally, a combination of the Pennsylvania and New York approaches (i.e., that coaches who are not teachers in the district are not in the teacher bargaining unit, but cannot form their own bargaining unit) would conflict with Washington precedent which abhors stranding public employees in a unit structure which actually or effectively deprives them of their bargaining rights under Chapter 41.56 RCW. See, Zylstra v. Piva, supra; City of Vancouver, Decision 3160 (PECB, 1989). The Executive Director disregarded a distinction made in an employer's personnel system in finding that "intermittent" employees who work a requisite amount should be included in the same bargaining unit with employees holding "permanent" status in City of Seattle, Decision 781 (PECB, 1979), but all of the employees in that case were covered by a single statute, Chapter 41.56 RCW. The "certificated" distinction of Chapter 41.59 RCW cannot be disregarded.

An apt parallel can be drawn between the special bargaining rights of certificated teachers under Chapter 41.59 RCW and the special bargaining rights of "uniformed personnel" under Chapter 41.56 RCW. Where an employer watered down the distinction by having so-called "civilian" dispatchers work side-by-side with fire fighters in a dispatch center, the Commission ruled that the fire fighters lost their special status as "uniformed personnel" while working in the dispatch assignment, and that none of the dispatching work was subject to interest arbitration under the law then in existence.

King County Fire District 39, Decision 2638 (PECB, 1987).[10]

Finally, the Examiner recognizes the possibility that the situation which now exists in Castle Rock may be of the union's own creation. It is well-established in Washington precedent that a union's "work jurisdiction" gives it a right to notice and an opportunity to bargain prior to a transfer of bargaining unit work to persons outside of the bargaining unit. See, South Kitsap School District, Decision 472 (PECB, 1978), and its numerous progeny. The union's claim of work jurisdiction (and bargaining unit coverage) for extracurricular jobs would be consistent with a requirement and practice that all such positions be held by certificated employees teaching at Castle Rock. To the extent that the union may have tolerated (or even directly or indirectly endorsed) giving some of those assignments to persons who are not certificated teachers in the school district, it has severely weakened its work jurisdiction claim to the extracurricular positions.

Conclusions on "Unit" Issue -

The collective bargaining agreement contains several provisions which indicate that the employer and the union have de facto entered into an arrangement which recognized the union as the exclusive bargaining representative of extracurricular employees in the same unit as the employer's educational employees. Those provisions include a sample of a supplemental employment contract in Appendix D.3, detailed provisions for a point indexing system for wage rates for the various extracurricular coaching assignments in Appendix B, a requirement that the employer provide the reasons for nonrenewal of a supplemental contract, and a hearing before an arbitrator.

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[10] The law has subsequently been changed to provide all fire department dispatchers access to interest arbitration under Chapter 41.56 RCW on the same basis as fire fighters. No similar amendment has been made with respect to athletic coaches under Chapter 41.59 RCW, however.

An employee with a teaching certificate who happens to be employed in a position that does not require a teaching certificate would not be eligible to be placed within the certificated bargaining unit. In this case, the record shows that coaching positions and those of many of the advisor positions do not require that the employee possess a valid teaching certificate as a job qualification. Therefore, it was inappropriate for the union and employer to voluntarily include these employees in the same bargaining unit as the certificated employees. It follows that the contract terms negotiated by the parties were beyond the statutory authority of the employer and union, and that they unlawfully held themselves out to Nilson and other employees as bargaining on those subjects.

The bargaining unit is found to be inappropriate as presently constituted. Since both the existence of a "contract bar" and the duty to bargain are dependent on the existence of an appropriate bargaining unit, the union may well want to take steps to cure the defect noted herein.

The employer has committed "interference" and "unlawful assistance" violations by negotiating extracurricular assignments with the Castle Rock Education Association under color of compliance with Chapter 41.59 RCW.

The union has committed "interference" violations by accepting the unlawful recognition and assistance of the employer, and by holding itself out as exclusive bargaining representative of the employees performing extracurricular assignments under color of compliance with Chapter 41.59 RCW.

The Duty of Fair Representation

A duty of fair representation arises from the status of "exclusive bargaining representative" that is conferred upon a union under RCW 41.56.090. Under that duty, the union must represent fairly the

interests of all bargaining unit members during negotiations, administration, and enforcement of collective bargaining agreements. The standard, set forth by the United States Supreme Court in Vaca v. Sipes, 386 U.S. 171 (1967), requires that the union deal with all employees without hostility, or discrimination, in a reasonable nonarbitrary manner and in good faith. Pateros School District, Decision 3744 (1991).

All bargaining unit members are protected by the doctrine, even an employee who actively opposes the union or its leadership. Even those who refuse to become members are covered unless they are subject to a lawful union shop or other union security arrangements under the contract.[11] However, the duty extends only to members within the bargaining unit.[12] In Cooper v. General Motors Corp., 651 F.2d 249 (5th Cir., 1981) members of the bargaining unit were moved out of the unit as supervisors and back into the unit as work loads dictated. The supervisors alleged a violation of fair representation. In Cooper the court held that because supervisors could not be represented by a union which represented the rank and file, the union owed them no duty of fair representation when they were in their supervisory capacity.[13]

In this controversy, we have a situation similar to that described in Cooper, in that an extracurricular position does not require a teaching certificate and, consequently, does not meet the definition of "employee" under Chapter 41.59 of the Educational Employ-

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[11] Under Article II. BUSINESS, Section 1 A and B, "teachers" may sign authorization dues deductions for payment of dues to the CREA, WEA and the NEA. The employer is required to deduct the equivalent dues from the pay of "teachers" failing to execute a dues deduction form.

[12] Morris, The Developing Labor Law, 2nd Edition (BNA, 1983) pages 1285 & following, and 3rd Edition 1990-1992 Supplement at page 285.

[13] This is true since supervisors are not "employees" within the meaning of the NLRA.

ment Relations Act. Because Nilson was in a position outside of the bargaining unit, the union owed him no duty of representation.

Equitable Estoppel

Although the union owes no duty of representation to Nilson, he may be entitled to equitable relief. Complainant has argued that because the union has negotiated the terms and conditions of employment for the extracurricular coach positions and his job as head basketball coach had been filled and is currently held by certificated teachers who are represented in the bargaining unit, that he also deserves to be represented and is entitled to the protection in the collective bargaining agreement. Nilson also asserts that the union supported his grievance until it reached the arbitration hearing level and then changed their position to conspire with the employer to deny his rights.

Because the complainant is not an attorney learned in the theories of jurisprudence, the Examiner interprets these arguments as those raising a question of equitable estoppel. For equitable estoppel to arise, a respondent must act inconsistent with a claim afterwards asserted and the complainant must have relied on the prior statement to his injury. Beggs v. City of Pasco, 93 Wn.2d 682 (1980).

The union concedes that it did not represent Nilson at the hearing, but maintains that the complainant did receive all of the representation to which he was entitled. The union argues that Nilson was offered a hearing before an arbitration panel pursuant to Article III(2)(e), but declined it and thereby waived his rights. The union contends that Nilson has failed to take advantage of the only remedy available under the agreement and, therefore, Nilson cannot meet his burden to show that the union discriminated against him because it did not deny him a benefit to which a bargaining unit member in a similar circumstance would be entitled.

The record does show that the complainant was offered a hearing before the Article III panel on two occasions. Nilson testified that he declined to submit to the panel because he believed it to be biased. Nilson also believed the provisions of Article III of the agreement were ambiguous that even, if he had prevailed, it was uncertain whether the employer would have to re-employ him. Instead, Nilson opted to continue the processing of the grievance.

The difficulty with the union's argument is that it ignores the fact that the union purported to represent him on his grievance even though the agreement showed that an arbitrator of such a grievance may not have the authority to consider reemployment to supplemental positions.

The agreement is not clear whether the panel is the exclusive remedy because employees are also granted the right to file grievances over violations of the contract. The agreement may be construed to limit the rights of the complainant or it may not.[14] At the minimum Nilson had a colorable argument to pursue the

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[14] Section 10 of Article IV, INSTRUCTION, contains the grievance procedure which is defined to include disputes that arise out of the interpretation or application of terms of the agreement. Grievant is defined as an employee of the district. Supplemental Contracts are excluded from arbitration.

Attached to the grievance procedure are various forms including one which is to be completed by the association president or executive committee ten days prior to arbitration. This form is entitled, "Determination Regarding Arbitration" and requires the president or association to determine whether the grievance has sufficient merit to proceed to arbitration.

Under Article IV, Section 10 a grievance is to proceed through formal steps at the Superintendent, and Board of Directors' levels before arbitration. In addition, the parties may opt for mediation before submitting it to arbitration. The record does not disclose why the union ignored or failed to process Nilson's grievance through these steps prior to arbitration.

grievance instead of the panel and the union apparently thought so because they filed and processed the grievance on his behalf.

At this point the Examiner is compelled by the circumstances of the controversy to distinguish between the genuine uncertainty at the local union level on whether the collective bargaining agreement covered Nilson and the decision of the Washington Education Association to represent him. The record shows that Rodgers, who was president of the local WEA affiliate, thought that the reference in the recognition clause of the agreement to "certificated" could possibly include Nilson who, in fact, was certificated. The WEA, on the other hand, was acutely aware that coaches could not be included in the bargaining unit.

The union contends that the decision not to take the grievance further was not arbitrary because it was not "outside the wide range of reasonableness" as to be irrational. The union relies on Pe Ell School District, Decision 3801-A (EDUC, 1992). The union argues that its decision was based on sound legal advice that balanced Nilson's individual interest with the union's collective interest locally and statewide and the merit of the grievance itself. The union also relies on Othello School District, Decision 3037 (PECB, 1988) and Elma Teachers Organization, Decision 1349 (EDUC, 1982) in support for the contention that a union after investigation may determine a grievance lacks merit or agree with the employer's assessment of the situation and for that reason decide not to pursue the employee's grievance.

The facts set forth in the record clearly show, however, that the union declined to process Nilson's grievance into arbitration not on the basis of the merits of the grievance but on what would be advantageous to the union on a statewide basis as a de facto representative of coaches and other extracurricular positions. Rodgers, in his letter to the complainant on August 12, 1992, stated that after considerable discussion and consultation with the

WEA, the union's executive committee believed that the Commission or an arbitrator would rule that the coaches would be excluded from the bargaining unit because the extracurricular positions did not require teaching certificates.

O'Toole later testified that it was her belief that pursuing the grievance would jeopardize the representation of coaches throughout the state and therefore she advised the association representatives not to represent Nilson in arbitration or before the Commission. O'Toole stated that she:

> ... would refuse to engage in any step whether its litigation or arbitration or a state agency proceeding that would produce a legal ruling as to whether or not coaches who are not certificated employees are in the cert bargaining unit. I don't want a ruling on that issue.
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> Transcript, page 357

The union's general counsel worried that separate bargaining units for the extracurricular and certified employees would:

> ... vastly reduce the bargaining power of the certificated employees during work stoppages where the question of whether the coach is going to work or not is often determinative of whether or not there is going to be a strike and how long a strike is going to last and how successful the strike is going to be.
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> Transcript, page 360

The union proceeded to represent the complainant as if he were entitled to the benefits of the collective bargaining agreement by filing a grievance on his behalf and representing him in the informal level with his immediate supervisor, Dallas. It was only at the arbitration step that the union's executive board was advised by the union's legal counsel not to proceed further because

of the potential of an adverse award from an arbitrator or examiner regarding the exclusion of coaches from the bargaining unit.

While the union may be correct from its perspective that it would not only lose Nilson's grievance but the statewide representation rights for coaches as well, the decision had little to do with the actual merits of Nilson's grievance. The decision not to proceed to arbitration was thus a political decision based on previously stated policy. The decision was not, as the union argues, simply a result of competing needs, but taken as foreordained by unwritten policy.

While there may be ample precedent in other jurisdictions that coaches share a community of interest with the certificated staff, the record shows that the union at least was aware of the fact that extracurricular positions did not require teaching certificates and, therefore, were outside the bargaining unit. The record is sufficiently clear that the question of whether the positions were outside the union's claim while unanswered was within the knowledge of the union as a worrisome probability to the extent of fashioning a union policy of silence.

There is sufficient evidence to conclude the decision not to press forward into arbitration was arbitrary and lacking in good faith.

It is clear from the record that Nilson relied on the union's representation that he was entitled to the protection of the contract.[15] Nilson relied on this representation to his detriment. The union cannot now take the position that Nilson is not covered by the agreement. The union is estopped by its prior actions to

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[15] The record shows, however, Nilson was not a member of the Castle Rock Education Association nor did he pay a representation fee even though the collective bargaining agreement required the employer to make agency fee deductions.

insist that the complainant is not entitled to the protection of the contract.

The employer gave further credence to claim that the union represented coaches and advisors by negotiating an extracurricular compensation schedule and special arbitration provision for the nonrenewal of supplemental agreements. Although the employer at every stage of the processing of the grievance declared that it believed that the complainant was not entitled to the remedy because he was not in the bargaining unit, the employer's action of negotiating the terms and conditions of extracurricular employment is also estopped from now asserting that Nilson is not entitled to the protection of the collective bargaining agreement.

Remedy

The Commission is authorized under RCW 41.59.150(2) to take such affirmative action as may effectuate the purposes and policies of the Act. Therefore, the union and the employer will be required to process Nilson's grievance as if he was entitled to the protection of the collective bargaining agreement. The union and the employer shall submit Nilson's grievance to arbitration or to the arbitration panel in Article III(2)(e), as Nilson chooses. The union and the employer shall pay such representation and arbitration costs incurred as a result of processing the grievance into arbitration in accordance with the collective bargaining agreement.

FINDINGS OF FACT

1. Castle Rock School District is a "public employer" within the meaning of RCW 41.59.020 (5).

2. The Castle Rock Education Association, and the Lower Columbia Uniserv Council, affiliated with the Washington Education Association, a bargaining representative within the meaning of

RCW 41.59.020(6), is the exclusive representative of employees of the Castle Rock School District who are "certificated employees" within the meaning of RCW 41.56.020(4).

3. The parties to this proceeding were parties to a collective bargaining agreement that expired on August 31, 1992. The collective bargaining agreement contains several provisions which indicate that the Castle Rock School District and the Castle Rock Education Association have de facto entered into an arrangement which recognized the union as the exclusive bargaining representative of extracurricular employees in the same unit as educational employees. Those provisions include a sample of a supplemental employment contract in Appendix D.3, detailed provisions for a point indexing system for wage rates for the various extracurricular coaching assignments in Appendix B, a requirement that the employer provide the reasons for nonrenewal of a supplemental contract, and a hearing before an arbitration panel.

4. Ron Nilson, a certificated teacher employed by Morton School District and complainant in these proceedings, was hired by Castle Rock School District under a Supplemental Contract in an extracurricular position of Head Basketball Coach on October 31, 1990.

5. On April 18, 1992, Athletic Director Lisa Dallas notified Ron Nilson that he would not be given another supplemental contract as head coach of the basketball team. On April 28, 1992, Nilson met with the Castle Rock Board of Directors to discuss the matter of his nonrenewal. On May 5, 1992, Nilson was formally notified that the Board of Directors decided not to renew his contract.

6. On June 5, 1992, Nilson filed a grievance challenging the nonrenewal with the assistance and cooperation of the Castle

Rock Education Association and the Lower Columbia Uniserv Council. The Castle Rock School District expressed concerns that Nilson was not entitled to the protection of the collective bargaining agreement because he was not a member of the bargaining unit.

7. An informal grievance conference was held on July 6, 1992, with Dallas, Ron Rodgers, president of the Castle Rock Educational Association, and Gary Udd, principal of the high school. The matter was not resolved. Both Udd and Dallas reiterated the district's position that Nilson was not covered by the collective bargaining contract. Nilson asked Rodgers to process the grievance into arbitration.

8. The Castle Rock Education Association and the Castle Rock School District offered Nilson the opportunity to utilize an arbitration panel under the provisions of the collective bargaining agreement. Nilson declined because he was uncertain of its authority and because he believed it was biased.

9. The Washington Education Association has a policy not to process grievances or other complaints of extracurricular employees into arbitration or before the Commission because the association did not want a legal ruling as to whether or not coaches were a part of the bargaining unit as it would "vastly reduce the bargaining power of the certified employees during work stoppages".

10. On August 12, 1992, Rodgers informed Nilson by letter that the executive committee of the Castle Rock Education Association on advice from the Washington Education Association had decided that the Castle Rock Education Association would not pursue the grievance further because it was likely that an arbitrator would rule that the extracurricular position of basketball coach would not be in the bargaining unit because

it did not require a teaching certificate. Nilson wrote the union several letters dated August 13 and 14, 1992, expressing confusion by this "sudden and unexpected turn of events".

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction over this matter under Chapter 41.59 RCW.

2. The Castle Rock Education Association's bargaining unit, as voluntarily recognized by the Castle Rock School District to include extracurricular positions, as described in paragraphs 2,3, 9 and 10 of the foregoing findings of fact, is not an appropriate unit.

3. By accepting the unlawful recognition and assistance of the employer and by holding itself out as the exclusive representative of the employees performing extracurricular assignments as described in paragraphs 1 through 10 of the foregoing findings of fact, the Castle Rock Education Association has committed, and is committing an unfair labor practice in violation of RCW 41.59.140(2)(a).

4. By its actions negotiating extracurricular assignments with the Castle Rock Education Association for employees who are not eligible for representation in the same bargaining unit as educational employees, and then stating that Nilson was not protected by the collective bargaining agreement and not entitled to process his grievance, as described in paragraphs 4 through 8 of the foregoing findings of fact, Castle Rock School District has committed, and is committing an unfair labor practice under RCW 41.59.140(1)(a) and (b).

ORDERED

1. [Case 9970-U-92-2278] The Castle Rock Education Association, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

a. CEASE AND DESIST from:

(1) Restraining or coercing employees in the exercise of their rights guaranteed in RCW 41.59.060 by giving the appearance of representing employees who are not eligible for representation in the same bargaining unit as educational employees and then abandoning such representation in order to prevent discovery.

(2) In any other manner interfering with, restraining or coercing employees in the exercise of their collective bargaining rights secured by the laws of the State of Washington.

c. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.59 RCW:

(1) Represent the complainant, Ron Nilson, in the processing of his grievance as if he was entitled to the protection of the collective bargaining agreement. The Castle Rock Education Association shall submit Nilson's grievance to arbitration or to the arbitration panel in Article III(2)(e), as Nilson chooses. The Castle Rock Education Association shall pay its share of the representation and arbitration costs incurred as a result of processing the grievance into arbitration in accordance with the collective bargaining agreement.

(2) 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 notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

(3) Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

(4) Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

2. [Case 9971-U-92-2279] The Castle Rock School District, its officers and agents, shall immediately take the following actions to remedy its unfair labor practices:

a. CEASE AND DESIST from:

(1) Restraining or coercing employees in the exercise of their rights guaranteed in RCW 41.59.060 by negotiating the terms and conditions for extra-

curricular assignments in the collective bargaining agreement for employees who are not eligible for representation in the same bargaining unit as educational employees and, then, stating that such employees are not protected by the collective bargaining agreement.

(2) In any other manner interfering with, restraining or coercing employees in the exercise of their collective bargaining rights secured by the laws of the State of Washington.

c. TAKE THE FOLLOWING AFFIRMATIVE ACTION to effectuate the purposes and policies of Chapter 41.59 RCW:

(1) Cooperate with the Castle Rock Education Association and with the complainant, Ron Nilson, in the processing of his grievance as if he was entitled to the protection of the collective bargaining agreement. The Castle Rock School District shall process Nilson's grievance to arbitration or to the arbitration panel in Article III(2)(e), as Nilson chooses. The Castle Rock School District shall pay its share of the representation and arbitration costs incurred as a result of processing the grievance into arbitration in accordance with the collective bargaining agreement.

(2) 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 B". Such notices shall be duly signed by an authorized representative of the above-named respondent, and shall remain posted for 60 days. Reasonable steps shall be taken by the

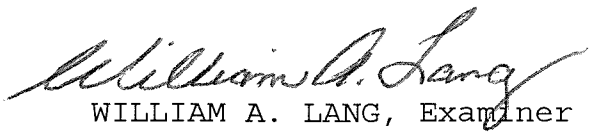
above-named respondent to ensure that such notices are not removed, altered, defaced, or covered by other material.

(3) Notify the above-named complainant, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the above-named complainant with a signed copy of the notice required by the preceding paragraph.

(4) Notify the Executive Director of the Public Employment Relations Commission, in writing, within 20 days following the date of this order, as to what steps have been taken to comply with this order, and at the same time provide the Executive Director with a signed copy of the notice required by this order.

Issued at Olympia, Washington, this 9th day of June, 1994.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WILLIAM A. LANG, Examiner

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

Appendix "A"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT restrain or coerce employees in the exercise of their rights guaranteed in RCW 41.59.060 by giving the appearance of representing employees who are not eligible for representation in the same bargaining unit as educational employees and then abandoning such representation in order to prevent discovery.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL, together with the Castle Rock School District, process the grievance of Ron Nilson to arbitration and share the costs of arbitration with the Castle Rock School District as if Nilson was entitled to the protection of the collective bargaining agreement.

DATED: _____

CASTLE ROCK EDUCATION ASSOCIATION

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (206) 753-3444.

Appendix "B"

PUBLIC EMPLOYMENT RELATIONS COMMISSION

NOTICE

THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, A STATE AGENCY, HAS HELD A LEGAL PROCEEDING IN WHICH ALL PARTIES WERE ALLOWED TO PRESENT EVIDENCE AND ARGUMENT. THE COMMISSION HAS FOUND THAT WE HAVE COMMITTED UNFAIR LABOR PRACTICES IN VIOLATION OF A STATE COLLECTIVE BARGAINING LAW, AND HAS ORDERED US TO POST THIS NOTICE TO OUR EMPLOYEES:

WE WILL NOT restrain or coerce employees in the exercise of their rights guaranteed in RCW 41.59.060 by negotiating the terms and conditions for extracurricular assignments in the collective bargaining agreement for employees who are not eligible for representation in the same bargaining unit as educational employees.

WE WILL NOT, in any other manner, interfere with, restrain, or coerce our employees in the exercise of their collective bargaining rights under the laws of the State of Washington.

WE WILL, together with the Castle Rock Educational Association, process the grievance of Ron Nilson to arbitration and share the costs of arbitration with the Castle Rock Education Association as if Nilson was entitled to the protection of the collective bargaining agreement.

DATED: _____

CASTLE ROCK SCHOOL DISTRICT

BY: _____
Authorized Representative

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

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material. Questions concerning this notice or compliance with the order issued by the Commission may be directed to the Public Employment Relations Commission, 603 Evergreen Plaza Building, P. O. Box 40919, Olympia, Washington 98504-0919. Telephone: (206) 753-3444.