

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

SULTAN SCHOOL DISTRICT,	)	
Complainant,	)	CASE NO. 4780-U-83-796
vs.	)	DECISION NO. 1930-A PECB
TEAMSTERS UNION, LOCAL 763,	)	
Respondent.	)	DECISION OF COMMISSION

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Joseph A. McKamey and Charles P. Foster, Labor Relations Specialists, Washington State School Directors' Association, appeared on behalf of complainant.

Davies, Roberts, Reid, Anderson and Wacker, by Herman L. Wacker, Attorney at Law, appeared on behalf of the respondent.

Sultan School District charged Teamsters Union, Local 763, (hereinafter Local 763) with violating RCW 41.56.150(2) and (4) by contacting individual school board members during the course of collective bargaining negotiations, thus circumventing the employer's designated bargaining representative. Following a hearing, an Examiner entered findings of fact, conclusions of law and an order dismissing the complaint.

The Examiner's salient findings of fact were these:

3. During negotiations in 1983, the issue of "agency shop" arose. Unable to convince the employer of its position on its proposal, the union business representative, Tom Krett, proposed that the board members meet individually with him and union executive officer Jon Rabine.
4. Krett contacted three of the five school board members. One agreed to the meeting. The other school board members, Tom Green and Jack Turner, refused. After the refusals, Krett did not attempt any other contact with the school board.
5. During this conversation with the school board members, Krett did not propose any substantive bargaining position nor did he threaten to withdraw from negotiations if the school board members refused to meet with him.

The school district has petitioned for review.

RCW 41.56.150(2) and (4) provide:

... It shall be an unfair labor practice for a bargaining representative:

(2) To induce the public employer to commit an unfair labor practice;

. . .

(4) To refuse to engage in collective bargaining.

There is no evidence to support the complaint under subsection (2). We shall focus our attention on subsection (4), which is substantially the same as section 8(b)(3) of the National Labor Relations Act. We shall set out the facts chronologically.

The Sultan School District includes a geographical area embracing Sultan, Startup and Goldbar, at the western terminus of Stevens Pass. It is governed by an elected board of five people who serve without compensation. During the period of time relevant to our inquiry, the board consisted of Jack Rasmussen, President, Jeanie Hensen, Tom Green, Jack Turner and one member whose name was not mentioned. Mr. Turner was a member of Local 763 and was employed by another school district as a bus driver.

In 1980, before Mr. Turner's election to the board, the school district recognized Local 763 as the collective bargaining representative of its eleven bus drivers.

Local 763 was and is a local union representing about 2,000 employees, many of whom are public employees, in about 150 bargaining units of which the Sultan School District bus drivers are one. These units are spread widely through the cities, counties and other governmental entities in Snohomish and King Counties. The chief executive officer of Local 763 is its secretary-treasurer Jon Rabine. Tom Krett is the business representative employed by Local 763 to negotiate collective bargaining agreements for, and process grievances of, the bus drivers employed by Sultan School District and other employees.

Since 1980 the school district has employed as its bargaining representative Mr. Charles P. Foster, a consultant.

In August, 1982 the parties were negotiating for a new agreement. Agency shop was one of the subjects of negotiation. RCW 41.56.122 authorizes, but does not require, public employers to agree to agency shop provisions in collective bargaining agreements. In an effort to obtain the agency shop clause, Local 763 proposed to Mr. Foster and Mr. Foster and the school board agreed, to hold an executive session at which Local 763 presented what it calls its philosophical views to the school board as a whole. This meeting

of August 16, 1982 lasted several hours. The school board did not change its position, and an agreement was concluded which contained no agency shop clause.

In April 1983 the school district placed a bond issue before the voters and the board members, as citizens, joined a citizens committee to promote it. In promoting the bond issue, Mrs. Hensen sent a letter to Mr. Rabine soliciting the endorsement of the bond issue by Local 763 and a contribution to assist in the campaign. Local 763 responding affirmatively. It endorsed the bond issue and made the contribution. In his letter of transmittal Mr. Rabine said in part:

It does appear however, to be somewhat ironic that this Local Union would be denied the means by which to secure the finances necessary to adequately endorse such a worthy cause by the very school district that serves to benefit from the passage of this bond issue.

Virtually all school districts with which this Local Union has had a bargaining relationship, other than the Sultan School District, have come to understand and recognize the need for some reasonable means by which to uniformly apportion the costs involved in providing their employees adequate union representation. Union representation is not limited to the wages, hours and working conditions contained within a Labor Agreement, but also spans to the furtherance of those same worthy causes raised in your letter.

This Local Union wishes to extend to the Sultan School District that same spirit of cooperation realized between this Local Union and other school districts in hopes of developing a closer line of communication and a more intimate understanding of each others respective needs.

In June 1983, contract negotiations again opened up, and agency shop was again on the agenda. On or about August 3, 1983, the parties found themselves at an impasse and requested the services of a mediator, noting as open issues: union membership (agency shop), health insurance, wages and duration. Mr. Krett was again spokesman for Local 763. The school district was represented by a bargaining committee headed, as before, by Mr. Foster, and including Superintendent Bigby and a third person.

Mr. Krett discussed the Sultan negotiating impasse with Mr. Rabine, and was instructed to contact individual members of the school board for the purpose of setting up meetings between those individuals and himself and Mr. Rabine to "make sure that our (local 763's) position was being clearly put to the individual board members" on the issue of agency shop.

Mr. Krett telephoned three board members: Mrs. Hensen, Mr. Green and Mr. Turner. This time Mr. Foster was not contacted, nor were the other members of the employer's bargaining committee. Mrs. Hensen and Mr. Green were both

facing elections. Mrs. Hensen said she would be glad to meet with Mr. Krett and Mr. Rabine. Messrs. Green and Turner declined. The other two board members were not called. Concerning his call to Mr. Green, Mr. Krett testified:

- A. What was our intent, or what did I tell Mr. Green. What I told Mr. Green is that we wanted to sit down and discuss with him in a relaxed one-on-one atmosphere and make sure he understood the Union's position on certain items.
- Q. In discussing strategies and options, what was the purpose in meeting with the individual board members on a one-on-one basis?
- A. It was two-fold. One was to, as I indicated earlier, to make sure that the individual board members clearly understood the rationale behind it, and understood our philosophies in taking that position. The second point was that we wanted to be able to identify what the individual positions of the individual board members were, so that we could, here again, identify that for use in the future.
- Q. And how was this going to be used, that information?
- A. Local 763 takes an active role in many of the school districts where we are bargaining representative, along such lines as endorsing school levies, providing monetary support to pass levies. We also take the position to either support or oppose individual members of the school board in their election. And our purpose was to find out what the individual positions of the school board members were on some items.

We note that, proposed by Local 763, the proposed meetings would not have been "one-on-one", but "two-on-one", the union double-teaming the individual board members.

No such meetings were ever held. Local 763 supported Mrs. Hensen in her bid for re-election and she was re-elected. It supported Mr. Green's opponent and Mr. Green was defeated. Mrs. Hensen did not testify at the hearing.

On August 24, 1983 the school district filed its complaint, initiating this case. An agreement between the parties was later reached which contained no agency shop clause.

The union relies heavily on Madison School District v. Wisconsin Employment Relations Commission, 429 U.S. 167 (1976), for the proposition that teachers and their representatives have a constitutional right to present their views to elected school board members at public meetings, even though their speech is addressed to the subject of pending collective bargaining negotiations. We have no quarrel with the rule of the Madison case. It is not in point here because Local 763 was not seeking to present its views to the board in a public meeting. It was soliciting private meetings with the board members as individuals.

Messrs. Krett and Rabine insist that they were merely exercising their rights as citizens to impart their philosophical view to elected public officials and, in turn, to elicit the officials' views. Public meetings are mandated by law for just such, as well as other, purposes. There is no question but that Messrs. Krett and Rabine could have addressed the school board at any public meeting, stated their views and asked for the board members' opinions. This they did not do.

In their exercise of free speech, Messrs. Krett and Rabine could have requested, as they did in August, 1982, an executive session of the board for an exchange of views. In any such meeting they could have reminded the board members that they risked political retribution at the polls and refusal of Local 763 to support future levies, if the board continued to be intransigent on the agency shop issue or any other issue. They had not achieved their objectives in 1982, so in 1983 they sought to separate the board members from each other and from their bargaining representative to meet with them separately.

The issue before us is whether Local 763 went too far, and bypassed the management negotiator to bargain with individual school board members. An employer, including a public employer, has just as much right to bargain through a designated representative as its employees have.

As far as the evidence shows, Mr. Krett invited three school board members to meet privately with him and Mr. Rabine. Two of the board members declined and the meeting with the one who accepted was never held. The sequence of events, the context of these invitations and the testimony at the hearing invite speculation as to the good faith of the union's bargaining; but in fact, nothing happened.

Union officials like other citizens have the right to lobby public officials on public issues. Just when lobbying becomes bargaining is a question not presented in this record. If it becomes bargaining, it will violate RCW 41.56.150(4).

We affirm the order of the Examiner.

Issued at Olympia, Washington, this 9th day of November, 1984.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

*Jane R. Wilkinson*  
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 JANE R. WILKINSON, Chairman

*Mary Ellen Krug*  
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 MARY ELLEN KRUG, Commissioner

Commissioner Mark C. Endresen did not take part in the consideration or determination of this decision.