

SEP 26 1978

BY EILEEN SCOLLARD
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

SEATTLE SCHOOL DISTRICT NO. 1,)
a municipal corporation,)
Plaintiff,)

NO. 851172

vs.)

SEATTLE TEACHERS ASSOCIATION,)
et al.,)
Defendants.)

PRELIMINARY INJUNCTION

I. HEARING

1. Date. September 25, 1978.

2. Notice of Hearing. Notice of hearing was served on Harold H. Green of MacDonald, Hoague & Bayless, attorneys for Defendant Seattle Teachers Association on September 18, 1978, at least five days before hearing as required by Rule 6(d).

3. Appearances. Gary M. Little, General Counsel, appeared for Plaintiff Seattle School District No. 1. Harold H. Green and Frank H. Retman of MacDonald, Hoague & Bayless appeared for Defendant Seattle Teachers Association and its affiliated organizations.

4. Purpose. To consider the Plaintiff's motion for a preliminary injunction.

5. Evidence. All affidavits filed with the court on or before September 25, 1978 were considered. No oral testimony was taken.

1 - ORDER GRANTING PRELIMINARY INJUNCTION

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II. FINDINGS

The Court, having considered the evidence, and the briefs, and argument of counsel, finds:

1. The Court has jurisdiction of the subject matter of this action.
2. The District has a legal right to be free of strikes by its employees.
3. Defendants are engaged in an illegal strike against the District.
4. The strike and actions in furtherance thereof by Defendants have caused and contributed to and, unless enjoined, will continue to cause and contribute to great injury to the District.
5. The District has no adequate remedy at law.
6. The District is entitled to the issuance of a preliminary injunction against Defendants.

III. ORDER

On the basis of the foregoing findings, it is ordered:

1. Enjoined. The Defendants and each of them, and all persons acting in active concert or participation with such defendants, be, and hereby are, enjoined from:
 - a. engaging in, encouraging or lending support or assistance of any nature to any strike or slowdown against the Seattle School District, including picketing in support of a strike or slowdown against the District, or otherwise interfering with the reopening and normal orderly operation of the District's schools and programs;
 - b. soliciting others, including students, employees, and other unions, to engage in or participate in any strike

2 - ORDER GRANTING PRELIMINARY INJUNCTION

1 or slowdown against the District;

2 c. threatening or coercing any person from discharging

3 contractual duties for the District;

4 d. interfering by picketing or otherwise with the free

5 ingress and egress of the District's agents, employees

6 and students, or other authorized persons, to and from

7 the schools and other facilities operated by the

8 District;

9 e. taking unjustified sick, personal or other leave in

10 concert with or in aid of any strike or slowdown.

11 2. Service. The District shall cause a copy of the

12 Preliminary Injunction to be served on each of the employees in

13 the three bargaining units represented by the Seattle Teachers

14 Association and its affiliated organizations.

15 3. Notice. The Seattle Teachers Association and its

16 officers shall be responsible for promptly notifying all

17 employees represented by the three STA units and acting in concert

18 with them that (a) the strike and related activities as described

19 in paragraph III.1 above, have been enjoined, and (b) they are

20 subject to court order to return to work on the day or days

21 selected by the District.

22 4. Report to Work; Release Time. All striking employees

23 in each of the three bargaining units represented by the

24 Seattle Teachers Association and its affiliated organizations be,

25 and they hereby are, ordered to report for work commencing with

26 *Thursday, Sept. 28, 1978*
~~the day or days selected by the District,~~ and to discharge their

27 contractual employment responsibilities or waive any present or

28 future claim to continued District employment, provided that ~~these~~ ^{the}

29 ~~named~~ defendants who are members of the bargaining team of the

30 Seattle Teachers Association are released from their employment

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32 3 - ORDER GRANTING PRELIMINARY INJUNCTION

FILED

KING COUNTY, WASHINGTON

SEP 26 1978

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BY EILEEN SCOLLARD
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SEATTLE SCHOOL DISTRICT NO. 1,)
a municipal corporation,)

Plaintiff,)

vs.)

SEATTLE TEACHERS ASSOCIATION,)
et al.,)

Defendants.)

NO. 851172

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter came on for hearing on September 25, 1978 before the Court sitting without a jury, plaintiff being represented by Gary M. Little and defendants being represented by Harold H. Green of MacDONALD, HOAGUE & BAYLESS. The Court, having considered the evidence, files and records herein, having heard and considered argument of counsel and having determined that a preliminary injunction should issue herein, makes its Findings of Fact as follows:

FINDINGS OF FACT

1. Plaintiff Seattle School District No. 1 (District) is a municipal corporation of the State of Washington, operating in King County under RCW Title 28A.

2. Defendant Seattle Teachers Association (STA) is the exclusive bargaining representative of certificated nonsupervisory educational employees of the District pursuant to RCW Ch. 41.59. Defendant Seattle Teachers Association-Seattle Association of Educational Office Personnel (STA-SAEOP) is the exclusive bargaining representative of educational office personnel of the

1 - FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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1 District pursuant to RCW Ch. 41.56. Defendant Seattle Teachers
2 Association Paraprofessional (STA-Paraprofessionals) is the
3 exclusive bargaining representative of paraprofessional employees
4 of the District pursuant to RCW Ch. 41.56. Of the District's
5 total employment force of approximately 6,000, approximately
6 3,200 are nonsupervisory certificated personnel represented
7 by STA-SAEOP; and approximately 800 are paraprofessionals
8 represented by STA-Paraprofessional. All named individual
9 defendants are officers, directors and/or agents of one or more
10 of the three STA units. Most other persons associated with or
11 acting in concert with the named defendants are members of one
12 of the three STA units and employees of the District.

13 3. Named individual defendants Peter Neuschwander, Reese
14 Lindquist, Margaret Grebbell, Mike Musselwhite, Bob Nolte, Ben
15 Romero, and approximately 3,200 of the unnamed defendants are
16 certificated employees of the District employed pursuant to
17 individual written contracts of employment. Each individual
18 contract obligates the employee to perform specified professional
19 services for the District in accordance with the applicable
20 collective bargaining agreement between the District and STA.

21 4. The District operates a total of 112 schools and 25
22 programs and is responsible under State law to provide a compre-
23 hensive educational program for approximately 55,200 students.

24 5. Pursuant to provisions of the existing two-year
25 Collective Bargaining Contracts between the parties, the District
26 and the three STA units began bargaining under RCW Ch. 41.59 and
27 RCW Ch. 41.56 on May 18, 1978, for new contract provisions relating
28 to salary schedules, group insurance contributions, and employee
29 performance evaluation. On August 25, 1978, the District declared
30 an impasse in collective bargaining and requested that the State
31 Public Employment Relations Commission (PERC) appoint a mediator.

32 2 - FINDINGS OF FACT AND
CONCLUSIONS OF LAW

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1 PERC did designate a mediator and mediation commenced on August 31,
2 1978 and is continuing.

3 6. On the morning of September 5, 1978, the three STA
4 organizations conducted a strike vote and approved a strike. The
5 District was soon thereafter notified of the results of the strike
6 vote by STA representatives.

7 7. As of September 5, 1978, defendants did commence a
8 strike against the District. Such strike has been and is
9 sanctioned, authorized, and encouraged by the officers, repre-
10 sentatives and agents of STA, STA-SAEOP and STA-Paraprofessionals.

11 8. The strike has continued to the date hereof.

12 9. The strike has caused and contributed to a material
13 and substantial interference with the District's educational
14 program including the delay and substantial disruption of the
15 educational programs of the District's 55,200 students, 112
16 schools and 25 programs.

17 On the basis of the foregoing facts, the Court makes its
18 Conclusions of Law as follows:

19 CONCLUSIONS OF LAW

20 1. The District has a legal right to be free of strikes
21 by its employees.

22 2. Defendants are engaged in an illegal strike against
23 the District.

24 3. The strike and actions in furtherance thereof by
25 defendants have caused and contributed to and, unless enjoined,
26 will continue to cause and contribute to great injury to the
27 District.

28 4. The District has no adequate remedy at law.

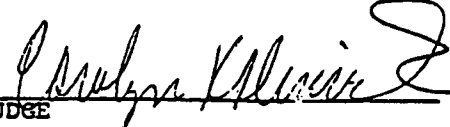
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32 3 - FINDINGS OF FACT AND
CONCLUSIONS OF LAW

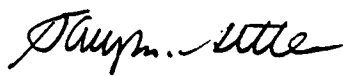
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5. The District is entitled to the issuance of a preliminary injunction against defendants.


DONE IN OPEN COURT this 26 day of September, 1978.


JUDGE

Presented by:
SEATTLE SCHOOL DISTRICT NO. 1

By 
Gary M. Little, General Counsel
Attorney for Plaintiff

Copy received; notice of presentation waived:
MacDONALD, HOAGUE & BAYLESS

By 
Harold H. Green
Attorneys for Defendants

4 - FINDINGS OF FACT AND CONCLUSIONS OF LAW

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Defendants.

NO. 851172

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COURT'S ORAL DECISION

BEFORE: CAROLYN R. DIMMICK, JUDGE

September 25, 1978

THE COURT: All right. As you know, I have had an opportunity to read all of these affidavits and all of the briefs this weekend, and the additional ones that were provided this morning. And while your oral argument was very interesting, nothing new was developed in it. And that is usually the case in all appellate review. You learn it all from the hard facts in the affidavits and from the briefs and from the law.

I should answer some of the questions that the

1 defendants have put forward: whether or not this Court has
2 jurisdiction. I hold that it does have jurisdiction of the
3 subject matter of this action through our equitable power;
4 that the legislature has not vested the Public Employees'
5 Relations Commission with exclusive jurisdiction. However, I
6 do specifically find that that organization, PERC, does have
7 the power, authority and duty to determine which side, if
8 either or both, may be guilty of unfair labor practices. That
9 is an adequate, effective remedy.

10 I specifically hold that it is not necessary that
11 the administrative process be complete or that all the
12 remedies be exhausted before the School Board, the plaintiff
13 herein, can apply for equitable relief. I think enough time
14 has elapsed and passed during the mediation process to
15 indicate to the Board that great harm is being done and
16 likely to be done and that the issues are probably not going
17 to be settled momentarily.

18 The narrow issue before this Court is whether or not
19 the strike is unlawful. I find that it is unlawful. The
20 common law against public employee strikes in Washington has
21 never been changed. The legislature has declined to do so.
22 And, of course, the philosophy is still sound today, because
23 a strike against the District is a strike against government
24 provision, constitutionally required duty, to make provisions
25 for education for all of the children and for which the people

1 as a whole pay.

2 The requirement for a temporary injunction has been
3 met in this case. The District has a clear right; it is
4 being invaded. And I believe the law in Washington to be
5 that of the majority of the states, that an unlawful strike
6 is presumed to cause substantial or irreparable or great
7 harm and should be enjoined per se. That is what the
8 prohibition is all about. It is presumed it is irreparable
9 and it need not be proven.

10 However, the affidavits that I have read have convinced
11 the Court, in addition, that there is evidence of great
12 injury about to be perpetrated because there is no end of
13 the strike in sight. All of the teachers' affidavits are
14 quite candid, and they are correct. They have expertise.
15 They can take children who start late and catch them up;
16 they can give them additional homework. However, that was
17 for a period of a couple of weeks, possibly three. There
18 being no end in sight, I feel irreparable damage has been
19 shown. In my opinion, education delayed is education denied,
20 especially in the cases of the people who are in special
21 education.

22 One of the teachers had a very poignant affidavit
23 where he indicated he had a child with a cleft palate;
24 another one with a speech defect. He felt that that child's
25 education was being damaged because of no summer school. I

1 am sure that he feels a delay in the opening of school is
2 just as disadvantageous for that child. There is also
3 the remote possibility of state funding being withheld and
4 several other horrors that we can all imagine that would show
5 irreparable damage were this strike to continue.

6 The clean hands doctrine to which you all have heard
7 so much about, I feel does not apply in an unlawful strike
8 situation. PERC can make that determination at a later time,
9 and they may even call for review by the court. That is one
10 of their procedural steps. Why should there be further
11 injury to the public just because both sides may have acted
12 improperly?

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