STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SANTA MARIA JOINT UNION HIGH SCHOOL DISTRICT,	)	
Charging Party,	)	Case No. LA-CO-500
v.	)	PERB Order No. IR-53
SANTA MARIA HIGH SCHOOL DISTRICT FACULTY ASSOCIATION, CTA/NEA, AND CALIFORNIA TEACHERS ASSOCIATION,	)	November 2, 1989
Respondents.	)	

Appearances: Liebert, Cassidy & Frierson, by Jeffrey Sloan, Attorney, for Santa Maria Joint Union High School District; Rosalind D. Wolf, Attorney, for Santa Maria High School District Faculty Association, CTA/NEA, and California Teachers Association.

Before Hesse, Chairperson; Porter and Camilli, Members.

DECISION AND ORDER

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on a Request for Injunctive Relief filed by the Santa Maria Joint Union High School District (District) after a one-day strike by the Santa Maria High School District Faculty Association, CTA/NEA, and California Teachers Association (Association).

STATEMENT OF FACTS

The District and the Association are parties to a collective bargaining agreement which expired on June 30, 1989, and are presently involved in negotiations for a successor agreement. On

July 26, 1989,[1] PERB determined the existence of an impasse between the parties (Cal. Code of Regs., tit. 8, sec. 32792) and a mediator was appointed. The parties have engaged in mediation sessions on July 26, September 8, September 14, October 17, and as recently as October 27. The negotiations are still in the mediation stage as the mediator has not yet certified the dispute to factfinding.

On October 17, the Association filed an unfair practice charge against the District, alleging violations of subdivisions (a), (b) and (c), of section 3543.5 of the Educational Employment Relations Act (EERA or Act)[2] by making unilateral changes,

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[1]All dates occurred in 1989.

[2]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

Section 3543.5 states:

> It shall be unlawful for a public school employer to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.
>
> . . . . . .
>
> (e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

failing and refusing to bargain in good faith, and failing and refusing to participate in good faith in the impasse procedures.[3] On October 18, with one hour notice given to the District, the Association engaged in a one-day strike. On that day, 4 of 98, 7 of 76, and 2 of 11 teachers reported to work at the three schools in the District, respectively. There were pickets at each of the three schools. On October 23, the District filed an unfair practice charge against the Association alleging violations of subdivisions (b) and (d) of section 3543.6 of the EERA[4] based upon the one-day strike activity. On October 25, the District filed a request for injunctive relief, specifically

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[3]On October 25, the Association filed an amended unfair practice charge alleging violations of section 3543.5(a), (b), (c) and (e). The amended unfair practice charge included additional facts involving the October 17 mediation session.

[4]Section 3543.6 states, in pertinent part:

> It shall be unlawful for an employee organization to:
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> . . . . . .
>
> (b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> . . . . . .
>
> (d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

noting that it desired nothing less than a full injunction prohibiting further strike activity.

DISCUSSION

In Public Employment Relations Board v. Modesto City Schools District, et al. (1982) 136 Cal.App.3d 881, 896 [186 Cal.Rptr. 634], the appellate court ruled that a superior court must grant the Board's request for injunctive relief when two essential requirements have been met: (1) the Board has "reasonable cause" to believe that the charged party has committed an unfair practice; and (2) injunctive relief is "just and proper."

In determining whether there is reasonable cause to believe an unfair practice has been committed, PERB " . . . need not establish an unfair labor practice has in fact been committed," but that PERB's theory is ". . . neither insubstantial nor frivolous." (Id. at pp. 896-897, emphasis in original.) In the present case, PERB statutory impasse procedures have not been completed. The importance of the statutory impasse procedures cannot be overemphasized. In San Diego Teachers Association v. Superior Court (1979) 24 Cal.3d 1, 8, the California Supreme Court stated:

> The impasse procedures almost certainly were included in the EERA for the purpose of heading off strikes. [Citation.] Since they assume deferment of a strike at least until their completion, strikes before then can properly be found to be a refusal to participate in the impasse procedures in good faith and thus an unfair practice under section 3543.6, subdivision (d). [Citation.]

In Sacramento City Unified School District v. Sacramento City Teachers Association, CTA/NEA (1987) PERB Order No. IR-49, at p. 3, the Board ruled that a strike which occurs prior to the exhaustion of impasse procedures creates a "rebuttable presumption" that the employee organization is either refusing to negotiate in good faith and/or refusing to participate in impasse procedures.

In an attempt to rebut the presumption that its preimpasse, one-day strike was an unfair practice, the Association here asserts that it was provoked to strike by the District's alleged unfair practices. In determining the issue of sufficient provocation, " . . . this Board will examine . . . whether the work stoppage was provoked by the District's own unlawful conduct and was undertaken as a last resort." (Id. at p. 6, emphasis in original.) In this case, the Association has failed to show that the strike was either provoked by the District's alleged unlawful conduct or taken as a "last resort." On October 17, the Association filed an unfair practice charge alleging the District's previous conduct violating EERA. After one additional alleged unfair practice, the Association's only response was to call a strike the following morning. We therefore find there is reasonable cause to believe that an unfair practice has occurred, and that a complaint should issue against the Association.

The second prong of the test set out in Modesto is that injunctive relief must be just and proper. The question is whether the purposes of the Act will be frustrated unless

injunctive relief is granted. (Modesto City Schools District, supra, 136 Cal.App.3d 902.) In this case, the District has alleged that various acts of violence and disruption occurred during the one-day strike of October 18. However, the Association has stated in a telegram to the Board, dated October 27, that it ". . . will not be on strike on Monday October 30, Tuesday October 31, or Wednesday November 1." In addition, the Association stated, in its Opposition to Request for Injunctive Relief, that, " . . . (a)t this time, . . . there is neither a strike nor a threat of strike." Finally, the October 25 declaration of Joe Nunez, president of the Association, sworn under penalty of perjury and submitted as part of the Association's opposition, stated: "As of this date, the Association has no plan, intention, or desire to strike again."

Under these circumstances, we find there is no indication that the Association will strike in the future. Mediation-assisted bargaining is in progress, and, at this point, it appears that the Board's regular unfair practice procedures and remedial powers can effectively resolve the violations alleged by the parties in this case. As stated in San Diego Teachers Association v. Superior Court, supra, 24 Cal.3d 1, 13:

> . . . the EERA gives PERB discretion to withhold as well as pursue, the various remedies at its disposal. Its mission to foster constructive employment relations (sec. 3540) surely includes the longrange minimization of work stoppages. PERB may conclude in a particular case that a restraining order or injunction would not hasten the end of a strike (as perhaps neither did here) and, on the contrary, would

> impair the success of the statutorily mandated negotiations between union and employer. . . . [Fn. omitted.]

However, if, at any time in the future, either party believes that additional unfair practices have been committed, it may file an unfair practice charge with the Board and/or request that the Board seek injunctive relief.

ORDER

Based on all of the foregoing, the District's Request for Injunctive Relief is hereby DENIED. It is hereby ORDERED that the General Counsel shall issue a complaint in the District's unfair practice Case No. LA-CO-500. It is further ORDERED that the General Counsel expedite the processing of the Association's unfair practice charge in Case No. LA-CE-2907.

Chairperson Hesse and Member Porter joined in this Decision.