STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE UNIVERSITY,	)	
	)	
Charging Party,	)	Case No. LA-CO-7-H
	)	
v.	)	PERB Decision No. 621-H
	)	
CALIFORNIA FACULTY ASSOCIATION,	)	May 29, 1987
	)	
Respondent.	)	
	)	

Appearances: William B. Haughton, Attorney for California State University; Edward R. Purcell for California Faculty Association.

Before Hesse, Chairperson; Craib and Shank, Members.

DECISION

HESSE, Chairperson: California State University (CSU) filed an unfair practice charge against California Faculty Association (CFA) on July 16, 1986, alleging that CFA attempted to bypass CSU negotiators and deal directly with the employer during the negotiations for a new contract. The charge was dismissed on September 12, 1986, and this appeal ensued.

DISCUSSION

CSU is governed by a Board of Trustees, which itself is divided into numerous committees. One such committee is the Collective Bargaining Committee, which oversees all negotiations

---

lrn analyzing a charge to see if it states a prima facie case, all facts alleged will be deemed true. (San Juan Unified School District (1977) EERB Decision No. 12. Prior to January 1, 1978, the Public Employment Relations Board (PERB) was known as the Educational Employment Relations Board (ERB).)

between CSU and the various exclusive representatives that represent bargaining units composed of CSU employees. The charge does not specify the precise composition of the Collective Bargaining Committee. However, it is clear from the charge that the Committee itself does not sit at the bargaining table but has a representative that does so.

The parties had been negotiating in 1986 for a new collective bargaining agreement. On June 27, 1986, a PERB agent declared that the parties were at impasse.[2] On June 30, 1986, CFA sent a mailgram to Thomas C. Stickel, Chaiperson of the Collective Bargaining Committee, offering to the trustees two proposals that CFA felt would facilitate agreement between the parties. CSU alleges that this behavior constituted direct dealing with the employer and contravened the Higher Education Emloyer-Emloyee Relations Act section 3571.1(d).[3]

The regional attorney dismissed the charge stating that, under San Ramon Valley Unified School District (1982) PERB Decision No. 230, an exclusive representative may communicate

---

[2]In Case No. LA-M-1605, CFA disputed this finding and appealed the agent's determination. The appeal was withdrawn December 11, 1986.

[3]Section 3571.1(d) reads:

> It shall be unlawful for an employee organization to:
>
> . . . . . .
>
> (d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3590).

with a school board so long as the communication seeks to facilitate the negotiations process and does not attempt to actually engage in negotiations. (Westminster School District (1982) PERB Decision No. 277.)

CSU appeals this dismissal arguing that CFA's mailgram was an attempt to directly negotiate with CSU. It observes that the mailgram was not an oral communication made at a public board meeting, but rather, was an entirely new negotiating proposal unlike any presented to CSU's negotiators in scheduled negotiating sessions. CSU argues that this clearly is negotiating, not merely attempting to inform the board of progress.

We believe that CSU has stated a prima facie case. The charge indicates that the CFA mailgram was sent directly to the Chairperson of the Collective Bargaining Committee. Copies were sent to Committee members and CFA bargaining team members only. Furthermore, the language used in CFA's mailgram is unambiguous as to its intent: "Although it would normally be the case that an offer such as this would be made directly to your representative at the bargaining table . . . we believe that this direct approach to you and members of your committee is both necessary and proper." (Emphasis added.) On its face, this document strongly suggests that negotiations outside normal channels were being attempted.[4]

---

[4]By issuance of a complaint, we make no finding here as to whether the declaration of impasse suspended the duty to

Based on the foregoing, we find sufficient factual allegations in the charge to establish a prima facie case that CFA's mailgram was an attempt to directly negotiate with the employer thereby bypassing CSU's designated spokesperson. We see no reason by CFA should be allowed to bypass the employer's chosen negotiators when an employer is prohibited from bypassing the employees' representative. (See Nassau Insurance Company (1986) 280 NLRB No. 103 [124 LRRM 1075]; sim. Spectator Freight Systems, Inc. (1982) 260 NLRB 86 [109 LRRM 1133].)

ORDER

This case is REMANDED to the General Counsel and he is ordered to issue a complaint not inconsistent with this Decision.

Members Craib and Shank joined in this Decision.

---

bargain until after issuance of the factfinder's report. Nor do we imply that bypassing negotiators after impasse is not a failure to participate in good faith in impasse proceedings. Those issues are left for the evidentiary hearing.